

CALIFORNIA COASTAL COMMISSION

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original staff report

W15a

Prepared March 4 for March 11, 2015 Hearing

To: Commissioners and Interested Persons

From: Nancy Cave, District Manager
Shannon Fiala, Coastal Planner

Subject: STAFF REPORT ADDENDUM for W15a
Appeal Number A-2-MAR-12-008 (Kirschman/Trivelpiece)

The purpose of this addendum is to modify the important hearing procedural note for the above-referenced item. This change is minor and does not modify the staff recommendation, which is still substantial issue. Thus, the staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~striketrough~~ format indicates text to be deleted):

1. Important Hearing Procedure Note

a. Modify text on staff report page 1 as follows:

Important Hearing Procedure Note: ~~This is a substantial issue only hearing. Public testimony will be taken only on the question whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly.~~ The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three (3) Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a subsequent Commission meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

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W15a

Appeal Filed:	4/16/2012
49th Day:	Waived
Staff:	S. Fiala - SF
Staff Report:	2/20/2015
Hearing Date:	3/11/2015

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE
DETERMINATION ONLY**

Appeal Number:	A-2-MAR-12-008
Applicant:	Richard Kirschman (Wayne and Susan Trivelpiece)
Appellant:	Terence Carroll
Local Government:	Marin County
Local Decision:	Coastal development permit (CDP) number 2009-0377 approved with conditions by the Marin County Deputy Zoning Administrator on March 29, 2012.
Location:	5959 State Route One (APN 188-100-35) in Bolinas, Marin County.
Project Description:	After-the-fact CDP to install a domestic water well and associated distribution infrastructure.
Staff Recommendation:	Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

In 1985, Marin County issued a "Permit to Operate Mutual Water Supply System" for a domestic water supply well to serve two single-family residences on adjacent parcels at 5959 and 5963 State Route One in Bolinas, Marin County. The Permit to Operate included a provision that it was valid only after approval of a coastal development permit (CDP) for the installation of the

well. However, the well was subsequently constructed in 1987, without the benefit of a CDP. In 2012, Marin County approved after-the-fact CDP 2009-0377 for the well and associated underground piping that distributed water from the subject well to a pre-Coastal Act well that was constructed in 1974.¹ The County found that because this project entailed only the legalization of an existing well, it would not result in depletion of water supply, grading, vegetation removal, physical changes in any identified sensitive habitat area, or other potentially adverse impacts on the environment. The Appellant contends that the approved project is inconsistent with Marin County Local Coastal Program (LCP) policies related to stream, lagoon, and wetland resource protection. After reviewing the local record, Commission staff has concluded that the approved project raises a substantial issue with respect to the project's conformance with these LCP provisions.

More specifically, the Appellant contends 1) the subject well is located within a mapped 100-foot wetland buffer inconsistent with LCP wetland protection policies; 2) the County erroneously found that the subject well was a resource-dependent use; 3) the County did not consider the condition of the wetland buffer prior to actual development of the well as a baseline for assessing the built well's impacts; and 4) the County did not consider restoration or mitigation of disturbance of the wetland buffer when finding that relocation of the subject well was a more environmentally damaging alternative than permitting it as-built. The Appellant further asks the Commission to state that a water well located in a wetland buffer is not a resource-dependent use.

The LCP requires protection of stream, lagoon and wetland resources, including through the application of buffer areas in which very limited uses and development are allowed. The approved well appears to have been constructed within the minimum LCP-required 100-foot buffer of Cronin Creek, a tributary to Pine Gulch Creek, which has a designation of special significance under the Marin LCP as a primary tributary to Bolinas Lagoon and as a salmonid-bearing stream. The approved well was also constructed within the LCP-required 100-foot buffer of wetlands that had been previously mapped on the property.² In addition, it is possible that the project raises these and similar LCP consistency issues on other points as the full extent of the riparian protection and stream buffer areas were not adequately identified in the County's record. Furthermore, a LCP-standard wetland delineation of the property identifying the full extent of wetlands on site and an alternatives analysis for the location of the well were not conducted as a part of the CDP application, and it appears possible that portions of the site where the well is located constitute wetland. The County also did not fully analyze the impacts of the well compared to the baseline (i.e., before construction). In short, the County approved a well in an area where the LCP only allows development in very limited circumstances (and these have not been demonstrated here), and it is possible that there may be more LCP conformance issues once the full extent of wetlands on this site are known. Thus, the County did not adequately evaluate the sensitive resources and required buffers on the property, the impacts of the proposed

¹ The pre-Coastal Act well is connected via underground piping to a 4,200 gallon storage tank located adjacent to the existing residence on the western side of the property.

² In the "Dogtown Biological and Wetland Assessment Report," prepared for a tentative map waiver with adjacent property owners in 2007.

development, or potential alternatives or mitigation measures, all of which raise substantial LCP conformance issues.

The County also found that the well could be located as it had been constructed, within the wetland buffer because it was a resource-dependent use, and one of the Coastal Act enumerated uses allowed in wetlands.³ The subject well does not meet any of the categories of allowable uses identified in the LCP or Section 30233 of the Coastal Act, nor does it qualify as a resource-dependent use. The County's decision could set an adverse precedent, leaving wells, or allowing them to be located, within wetlands and their associated buffers as allowed and/or resource-dependent uses. Thus, the approved project raises a substantial issue with respect to the project's conformance with the Marin County LCP wetland resource protection policies.

Thus, staff recommends that the County-approved project raises substantial LCP conformance issues regarding stream, lagoon and wetland resources protection and resource-dependent use policies. The motion and resolution to effect this recommendation are found on page 5 below. If the Commission finds substantial issue, then the de novo portion of the hearing on the merits of the CDP application would be scheduled for a future Commission meeting. Before that can occur, the Applicant will need to provide the Commission with the information necessary to fully evaluate the project for consistency with the County's certified LCP (i.e., an updated biological report, including a wetland delineation, conducted pursuant to Coastal Act/LCP wetland delineation criteria, and an alternative analysis that compares the impacts associated with installing the well at the current location with other alternatives for providing domestic water to the two properties, including alternative well locations) because the local record lacked that information.

³ The County stated that "wells and other appurtenant facilities of the mutual water system are dependent on the water resources in the wetlands and are allowable as incidental public services within the wetland buffer pursuant to Section 30233(5) (meaning § 30233(a)(4) [incidental public services]) of the Coastal Act."

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Site Map

Exhibit 2 – Project Site Images

Exhibit 3 – Approved Project Plans

Exhibit 4 – County’s Final Local CDP Action Notice

Exhibit 5 – Appeal of Marin County’s CDP Action

Exhibit 6 – Applicable LCP Policies and Standards

Exhibit 7 – Dogtown Biological and Wetland Assessment Report (2007) Wetlands Map

Exhibit 8 – Kirschman Master Plan Waiver, Coastal Permit, Land Division, and Precise Development Plan Initial Study and Mitigated Negative Declaration (2011) Composite Constraints Map

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-2-MAR-12-008 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-2-MAR-12-008 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The County-approved project is located at 5959 State Route One in Bolinas, Marin County, more than two miles inland of the Pacific Ocean and within the watershed of Bolinas Lagoon. Cronin Creek and Coppermine Creek, two tributaries to Pine Gulch Creek, a stream of special significance under the Marin LCP, run adjacent to and through the 10-acre subject parcel. The site also contains two constructed ponds, which have been identified as freshwater wetlands under the National Wetlands Inventory. The parcel is zoned C-RSP (Coastal-Residential, Single-Family Planned). Land uses adjacent to the subject property include Point Reyes National Seashore to the north, single-family residential parcels to the east and south, and a larger, predominantly agricultural parcel to the west.

In 1985, Marin County issued a “Permit to Operate Mutual Water Supply System” for the subject well, which included a provision that the permit was valid only after approval of a CDP for the well. However, without the benefit of a CDP, the well and associated infrastructure were constructed in 1987, at a location within 100 feet of Cronin Creek and within 100 feet of wetlands identified on the property. Approximately 375-feet of underground piping connects the well to the distribution system and storage tanks. The piping is also located within 100 feet of previously identified wetlands and within 25 feet of the adjacent property lines. For the past thirty years, the well has provided water for two existing residences on adjacent parcels at 5959 and 5963 State Route One. In 2012, roughly at the same time as the appeal was filed with the Commission, Richard Kirschman sold the property to Wayne and Susan Trivelpiece, the current owners.

See **Exhibit 1** for a location map; see **Exhibit 2** for photographs of the site and surrounding area; and see **Exhibit 3** for the County-approved project plans.

B. MARIN COUNTY CDP APPROVAL

On March 29, 2012, the Marin County Deputy Zoning Administrator approved after-the-fact CDP 2009-0377 for the subject well and associated underground pipes. Prior to the hearing, the Appellant commented on the pending permit in a letter to the Marin County DZA. The County's Final Local Action Notice was received in the Coastal Commission's North Central Coast District Office on Friday, April 6, 2012, within the ten working day deadline. The Appellant submitted the one valid appeal (**Exhibit 4**) received.

See **Exhibit 4** for the County's Final Local Action Notice.

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. This project is appealable because it is located between the sea and the first public road paralleling the sea, and it is located within 100 feet of wetlands and streams.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Marin County has a certified LCP applicable to this property. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.⁴ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in

⁴ The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of a local government's CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding would need to be made if the Commission were to approve the project following a de novo portion of the hearing, if substantial issue is found.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. The Appellant made his views known to the County on this matter and is qualified to testify. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellant contends that 1) the subject well is located within a mapped 100-foot wetland buffer on the subject parcel, inconsistent with the LCP; 2) the County erroneously found that the subject well is a resource-dependent use; 3) the County did not consider the condition of the wetland buffer prior to development of the well as a baseline for assessing the well's impacts; and 4) the County did not consider or require restoration or mitigation of disturbance of the wetland buffer caused when the well was constructed in finding that relocating the well was a more environmentally damaging alternative. The Appellant further asks the Commission to state that a water well located in a wetland buffer is not a resource-dependent use.

See **Exhibit 5** for the full appeal of Marin County's CDP Decision.

E. SUBSTANTIAL ISSUE DETERMINATION

Stream and Lagoon Protection

The Marin County LCP is very protective of streams, wetlands, and Bolinas Lagoon. Within the County's coastal zone, two streams are labelled with special significance because they support annual runs of steelhead trout and Coho salmon. One of these is Pine Gulch Creek, the principal source of freshwater to Bolinas Lagoon, contributing approximately half of the Lagoon's freshwater inflow. Pine Gulch Creek is also the most important steelhead and salmon stream tributary to Bolinas Lagoon, an estuarine area composed of salt water, tidal mudflats, marshlands, and sandbars, most of which are flooded by high tides. Bolinas Lagoon is managed by the Marin County Open Space District (MCOSD), although portions of the site are included in the Gulf of the Farallones National Marine Sanctuary and managed by the National Oceanic and Atmospheric Administration. Bolinas Lagoon is also recognized as a Wetland of International Importance by the Ramsar Convention.⁵

The LCP requires the establishment of riparian protection areas and stream buffer areas for all streams to extend 50 feet from the edge of the adjacent riparian vegetation, which in no case

⁵ The inclusion of a site in the Ramsar Convention's List of Wetlands of International Importance embodies the government's commitment to take the steps necessary to ensure that its ecological character is maintained. Wetlands included in the List acquire a new national and international status: they are recognized as being of significant value not only for the country or the countries in which they are located, but for humanity as a whole. See <http://www.ramsar.org/about/wetlands-of-international-importance> for more information.

shall be less than 100 feet from the banks of the stream, and states that no construction, alteration of land forms, or vegetation removal shall be permitted within the riparian protection area. Where a finding based upon factual evidence is made that development outside a riparian protection or stream buffer area would be more environmentally damaging to the riparian habitat than development proposed to be located within the riparian protection or stream buffer area, the LCP states that development of principal permitted uses may occur within such area, subject to design review and appropriate mitigation measures.

The LCP prohibits the diking, filling, dredging or other alterations of wetlands, with the exception of minor public works projects that are in conformance with Coastal Act Section 30233. The LCP states that, to the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands. Development activities and uses proposed to be located within the wetland buffer shall be limited to those allowed pursuant to Section 30233 of the Coastal Act. No uses other than those dependent upon the resources, identified as fishing, recreational clamming, hiking, hunting, nature study, birdwatching and boating, shall be allowed within the buffer strip.

See **Exhibit 6** for the full text of the applicable LCP Policies and Sections referenced above.

The Appellant contends that:

- The approved well raises LCP consistency questions relating to protection of Bolinas Lagoon because the project is located within a mapped 100-foot wetland buffer strip.
- No finding was made by the County that construction of the well outside the wetland buffer was infeasible.
- Marin County incorrectly determined that the well was a resource-dependent use.
- The County erroneously found that permitting the well in its current location was the least environmentally damaging alternative, and that relocating the well is a more environmentally damaging alternative.
- The County “should have used as a baseline for determining the impact of development, the status of the wetland buffer prior to the construction of the well.” Under this reasoning, the Appellant argues that any illegal development which occurs without a CDP in a wetland buffer could be legalized on the grounds that its continued existence and use is the least environmentally damaging alternative.

In terms of stream protection, the LCP-required riparian protection areas and stream buffer areas were not identified as a part of the CDP application for the well. From the site plans, the well appears to have been constructed within 100 feet of Cronin Creek, a tributary to Pine Gulch Creek that feeds into Bolinas Lagoon. Further, the well is not a principal permitted use in the C-RSP zoning district. If the well is located in the stream buffer area, it would be out of conformance with the LCP. Neither a LCP-standard wetland delineation⁶ nor an alternatives analysis for the location of the well were conducted as a part of the CDP application. Thus, the approved project raises a substantial issue with respect to the LCP stream protection policies.

⁶ LCP Natural Resource Protection Policy 18 states that wetlands shall be delineated by the standards of the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. See Exhibit 6 for all applicable LCP policies and standards.

Although the project did not include a wetland delineation, a 2007 wetland delineation was completed for a different project.⁷ The wetland assessment surveyed the subject property for the presence of jurisdictional wetlands and waters of the U.S. as categorized by the U.S. Army Corps of Engineers (ACOE). **Exhibit 7** illustrates the wetland resources identified on the property as in close proximity to the constructed well. **Exhibit 8** illustrates the wetland buffers identified on the property through the initial study and mitigated negative declaration prepared for the tentative map waiver. This figure more clearly shows that the subject well had been constructed within the 100-foot wetland buffer strip. Given the wetland delineation was to ACOE standards, and not LCP/Coastal Act standards, there is also the possibility that the wetland is even larger than identified here, raising additional issues.

The County's CDP approval found that the subject well was a resource-dependent use because "wells and appurtenant facilities of the mutual water system are dependent on the water resources in the wetlands and are allowable as incidental public services within the wetland buffer pursuant to Section 30233 (a)(4) of the Coastal Act" and could therefore be located within the wetland buffer. Section 30233(a)(4) of the Coastal Act specifies uses allowable in wetlands to include, "incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines." The subject use is not a public service, and is also not incidental. The subject well is a private well that serves two homes and the water supplied is for domestic use. The County's action also refers to resource-dependent activities, which are described both in the Coastal Act and in the LCP. Coastal Act Section 30233, subdivision (a)(7) limits allowable uses in wetlands to "nature study, aquaculture, or similar resource-dependent activities." The County's determination focuses on water as the resource in question. However, the resource in question is a wetland, and it is the wetland, and not any of its individual constituents per se, to which the resource dependency must attach. A well does not meet that criteria. In addition, the LCP specifically defines resource-dependent uses allowable in wetlands as fishing, recreational clamming, hiking, hunting, nature study, birdwatching, and boating (LCP Implementation Plan (IP) Section 22.56.130(G)(5)(b)). Other development and uses in wetland buffers are limited to those allowed by Coastal Act Section 30233 (Section 22.56.130(G)(5)(d)). Thus, the subject well does not meet the allowable use test under Section 30233 of the Coastal Act, nor the definition of resource-dependent uses allowable in wetlands in the LCP. For all of the above reasons, the approved project raises a substantial issue of LCP conformance with respect to stream, wetland, and lagoon resource protection policies.

F. CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP and review the project under the de novo standard. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission is guided in its decision of whether the issues raised in a given case are "substantial" by the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of

⁷ The "Dogtown Biological and Wetland Assessment Report" was conducted by EIP Associates for a tentative map waiver for the Dogtown co-tenancy, which included the former owner, Kirschman.

the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. In this case, these five factors, considered together, support a conclusion that this project raises a substantial issue of LCP conformance.

While the extent and the scope of the development is fairly minor, the other four factors are overwhelming. First, the County lacked factual and legal support for its decision. The determination that permitting the well was the least environmentally damaging alternative and that relocating the well is a more environmentally damaging alternative was not supported by substantial evidence such as a wetland delineation and/or an alternatives analysis for the proposed location of the well. In addition, the project was approved without proper identification of the type and extent of sensitive resources on the property and their associated buffer areas, without proper evaluation of the potential impacts of the proposed project, and without proper evaluation of alternative locations or mitigation measures which may have reduced impacts associated with construction of the well at the proposed location. Thus, the County has not provided adequate factual and legal support for its decision that the approved development would be consistent with the certified LCP.

Second, the decision affected significant coastal resources. A previously conducted ACOE wetland delineation indicated that the well had been constructed within the buffer of wetlands identified on the property and within the stream buffer of Cronin Creek, a tributary to Pine Gulch Creek that is identified in the LCP as a stream of special significance. The County's approval of the construction of the subject well stated that no impacts to coastal resources had occurred because no new construction was proposed and therefore, no mitigation for impacts was required. The County failed to consider the impacts of the unpermitted 1987 construction. The County should have evaluated the proposed development and its potential impacts as if the project had not already occurred. Significant coastal resources, including the onsite wetlands, adjacent streams, and downstream Bolinas Lagoon, may have been affected by 1987 construction of the proposed project. The County's interpretation of after-the-fact development as presented in the approved findings may encourage other property owners to perform development before obtaining CDPs. The County's approval implies that it will not require impact analysis of the baseline nor require adequate mitigation measures for after-the-fact CDPs.

Third, there is considerable precedential danger associated with the County's decision for future interpretations of its LCP. The County's assertion that the well is a resource-dependent use sets an adverse precedent, allowing private use wells to be located within wetlands and their buffers. The subject well does not meet the allowable use test under Coastal Act Section 30233 nor the definition of resource-dependent uses allowable in wetlands as identified in the LCP.

Finally, development in wetlands buffers is an issue of statewide significance. California has lost over 90% of its historical wetlands.⁸ Wetlands and buffers are of particular importance within the Commission's jurisdiction because they are coastal resources. This is evidenced by several protective sections in the Coastal Act (e.g., §§ 30006.5 [findings], 30231 [quality shall be

⁸ See U.S. EPA, "Threats to Wetlands," available at <http://www.epa.gov/gmpo/education/pdfs/WorldBackyard4.pdf>.

maintained] 30601 [permit required for development], 30603 [retained jurisdiction], 30607 [mitigation requirements]) along with the uses limited by Section 30533. The concern is also reflected in Coastal Act regulations, which employ a “one-point delineation” methodology for wetlands that is stricter than the “three point” standard used for federal permits. (Compare tit. 14, § 13577(b); U.S. Army Corps of Engineers, Wetlands Delineation Manual, Introduction, § 7(b)). A mistake in allowing continued development in a wetlands buffer is cause for regional and statewide concern.

For the reasons stated above, the Commission finds that Appeal Number A-2-MAR-12-008 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Information Needed for De Novo Review of Application

The LCP provides for exceptions to buffering requirements only under exacting circumstances. Unfortunately, the County’s record was not well developed in terms of the location of resource types affected by the well, including whether the well might itself be in a wetland, and it lacked an evaluation of alternatives, both of which would be necessary to make the findings under the LCP to allow a well in a buffer. Thus, prior to bringing this matter back for Coastal Commission review in a de novo CDP hearing context, the Applicant will need to provide the following information necessary to evaluate the project for consistency with the LCP:

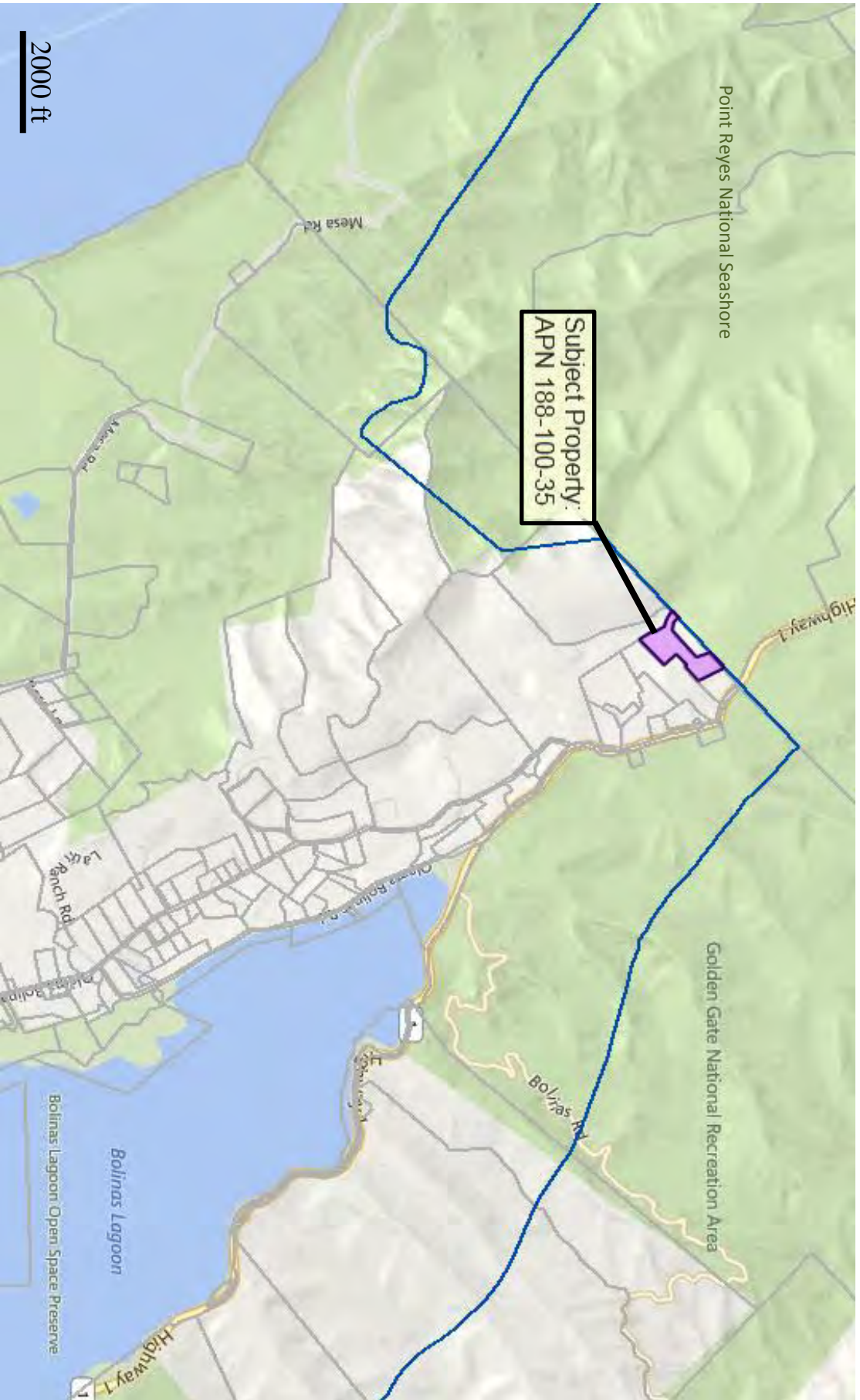
- An updated biological report that identifies all stream, riparian, and wetland areas (including via a wetland delineation conducted pursuant to Coastal Act/LCP wetland delineation criteria), and any sensitive species habitats, on and adjacent to the project area, along with LCP-required buffers and mitigation measures necessary to both avoid impacts of the development on such resources to the maximum extent possible, and to mitigate for unavoidable impacts. The updated biological report must include an alternatives analysis that compares the impacts associated with installing the well at the current location with other alternatives for providing domestic water to the two properties, including alternative well locations.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Dogtown Biological and Wetland Assessment Report, prepared for Russell Faure-Brac, et. al., by EIP Associates, May 2007.

Dogtown Biological and Wetland Assessment Addendum prepared for Richard Kirschman, by PBS&J, April 28, 2010.

Project Site Map



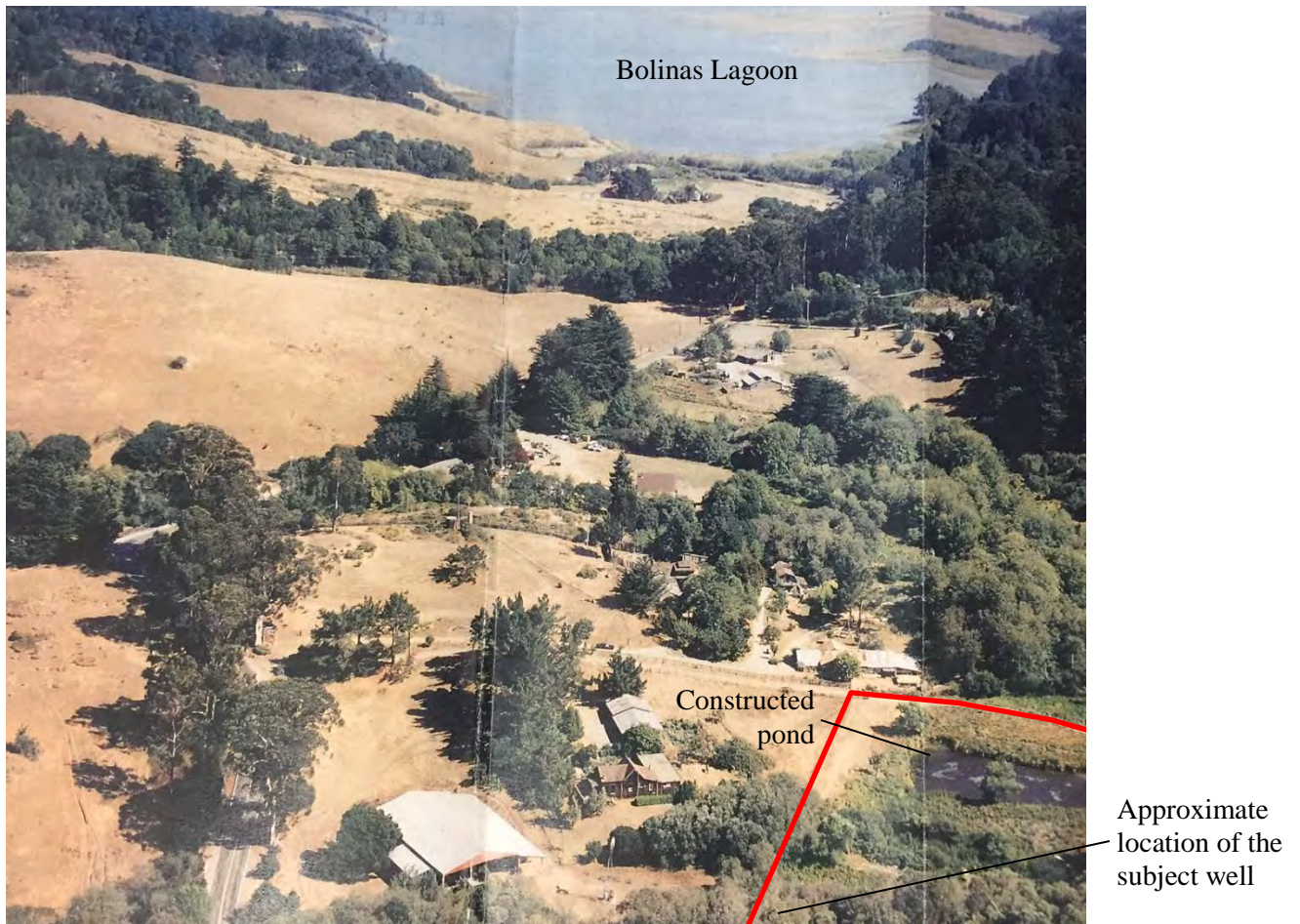


Image 1. The subject property (outlined in red) looking south to Bolinas Lagoon.



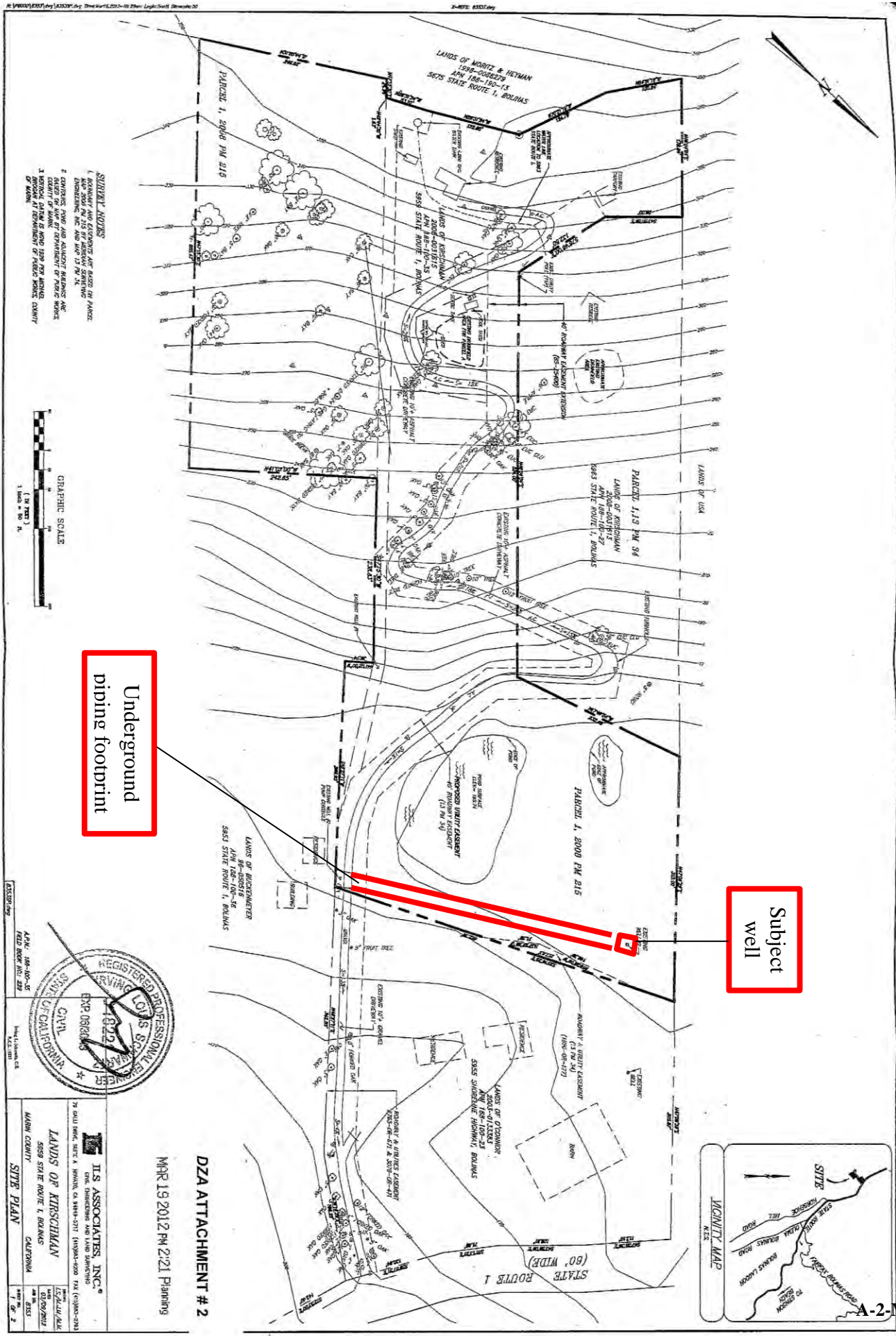
Image 2. Constructed freshwater ponds on the subject property.



Image 3. Property line of subject parcel and Point Reyes National Seashore, near the location of the subject well.



Image 4. The site of the subject well.



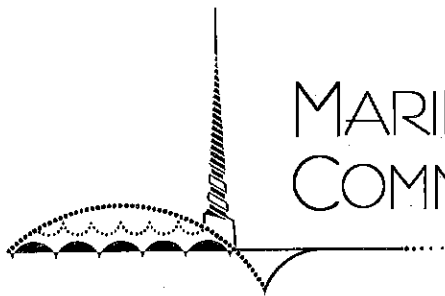
Underground
pipeline footprint

Subject
well



IS ASSOCIATES, INC.
75 GOLD HILL, SUITE A, HAYWARD, CA 94541-2071 (415)844-5900 FAX (415)844-2933
LANDS OF KIRSCHMAN
5555 STATE ROUTE 1, BOLINAS
MARIN COUNTY CALIFORNIA
DATE: 02/09/2012
BY: JKS
SHEET NO. 1 OF 2

DZA ATTACHMENT # 2
MAR 19 2012 PM 2:21 Planning



MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY
BRIAN C. CRAWFORD, DIRECTOR

2-MAR-12-027
Appealable

NOTICE OF FINAL LOCAL (DEPUTY ZONING ADMINISTRATOR) DECISION

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and LCP Policy and/or Implementation Plan.

SENT BY CERTIFIED MAIL

April 5, 2012

California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

RECEIVED
APR 06 2012
CALIFORNIA
COASTAL COMMISSION

Attention: Coastal Planner

Applicant's Name: Kirschman Coastal Permit
Coastal Permit Number: CP I. D. 2009-0377
Assessor's Parcel Number: 188-100-35
Project Location: 5959 State Route One, Bolinas
Determination: Approved With Conditions
(Resolution of the March 29, 2012 Deputy Zoning Administrator hearing is attached specifying action.)
Decision Date: March 29, 2012
County Appeal Period: Five (5) Working Days

Local review is now complete.

This permit IS appealable to the California Coastal Commission (see Marin County Code Section 22.56.080 attached); please initiate the California Coastal Commission appeal period.

Any correspondence concerning this matter should be directed to Neal Osborne, at (415) 473-7173.

Sincerely,

Neal Osborne by JWS

Neal Osborne
Planner

Attachment

22.56.080 APPEALS TO THE CALIFORNIA COASTAL COMMISSION

For those coastal project permits which are approved for developments defined as "appealable" under California Public Resources Code, Section 30603 (a), an appeal may be filed with the California Coastal Commission by: (1) an aggrieved party; (2) the applicant; or (3) two members of the coastal commission. Such appeals must be filed in the office of California Coastal Commission not later than 5:00 p.m. of the tenth working day following the date of action from which the appeal is taken. In the case of an appeal by an applicant or aggrieved party, the appellant must have first pursued appeal to the county appellate body (or bodies) as established in Section 22.56.074 of the Marin County Code to be considered an aggrieved party.

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION 12-106

**A RESOLUTION APPROVING
THE KIRSCHMAN (TRIVELPIECE) COASTAL PERMIT**

ASSESSOR'S PARCEL 188-100-35

5959 STATE ROUTE ONE, BOLINAS

SECTION 1: FINDINGS

- I. WHEREAS, Richard Kirschman, on behalf of Wayne and Susan Trivelpiece, proposes to obtain a Coastal Permit for a common domestic well (Well 2) constructed in 1987 that provides water to two single-family residences. The subject well provides water for a mutual water supply system to two existing residences at 5959 and 5963 State Route One, Bolinas. The County of Marin, Department of Health and Human Services, Environmental Health Services issued a "Permit to Operate Mutual Water Supply System" with this well in 1985. This permit to operate includes a provision that it is valid only after approval of a Coastal Permit for the well. The well is located 50 feet from the front (northeastern) property line and 60 feet from the side (northwestern) property line, approximately 310 feet from Copper Mine Creek and 100 feet from Cronin Creek. The subject property is within the C-ARP-5 zoning district and is located at 5959 State Route One, Bolinas, further identified as Assessor's Parcel 188-100-35.
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly noticed public hearing on November 17, 2011, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, the Marin County Deputy Zoning Administrator continued the public hearing to an unspecified date and directed the application to prepare additional geotechnical studies based on exploratory trenches within the proposed Building Envelope, and to prepare driveway plans that would comply with the requirements of the Bolinas Fire Protection District.
- IV. WHEREAS, on January 12, 2012 Richard Kirschman submitted a formal written request withdrawing the Master Plan Waiver, Land Division, and Precise Development Plan application and amending the project to only proceed with the Coastal Permit application for existing Well 2.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1(a) of the CEQA Guidelines because it entails the legalization of an existing well and mutual domestic water supply system for two single-family residences that would not result in depletion of water supply, grading, vegetation or tree removal, physical changes in any identified sensitive habitat area, or other potentially adverse impacts on the environment.

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COASTAL COMMISSION

VI. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (§22.56.130I of the Marin County Interim Zoning Code) as described below

A. Water Supply:

The Community Development Agency, Environmental Health Services Division staff determined that a common water supply system can be approved for the as-built well and distribution system with minor upgrades for treatment facilities at the storage tank. The existing well and 4,200-gallon storage tank would be adequate to supply water to two single-family residences. Well testing for Well 2 documented pumping of 21 gallons per minute without drawdown of the water table. Conditions of approval will require an upgrade to the water system permit to indicate any treatment facilities that may be required to meet current standards.

B. Septic System Standards:

Marin County Environmental Health Services staff reviewed the proposed project and recommended approval with conditions of approval.

C. Grading and Excavation:

No grading or excavation is proposed.

D. Archaeological Resources:

Review of the Marin County Archaeological Sites Inventory indicates that the subject property is located in an area of high archaeological sensitivity. A Cultural Resources Study was completed in 2007 for the Buckenmeyer project that found no cultural resources on the previously proposed lot. The steep slope of the proposed lot is unlikely to have supported Native American habitation. However, no grading or site disturbance is proposed.

E. Coastal Access:

The project is located more than two miles inland of the Pacific Ocean and one mile from Bolinas Lagoon at an elevation of approximately 300 feet and would not impede coastal access.

F. Housing:

The proposed project would not result in the removal of a residential unit that would provide housing opportunities for people of low or moderate income. The project would not affect the availability of affordable housing within the Bolinas community.

G. Stream and Wetland Conservation Protection:

The project site is located along protected blue-line creeks -- Copper Mine Creek bisects the property, and approximately 50 feet of the northwest side of the property is within 100 feet of

Cronin Creek. The site also contains two constructed ponds that the National Wetlands Inventory identifies as Freshwater Ponds. While a complete delineation of hydric soil and hydrophytic vegetation was not prepared, the applicant mapped a 100-foot wetlands buffer around the edge of the ponds based on Section 404 of the Clean Water Act. The 100-foot creek buffer along Copper Mine Creek is also mapped on a Composite Constraints Map. The existing common driveway crosses Copper Mine Creek over a two culverts, permitted Well 1 is within the 100-foot creek buffer area, and as-built Well 2 was constructed in 1985 within the 100-foot wetland buffer area mapped. No fill is proposed within the mapped wetlands or the creek and no work is proposed within the buffer areas.

However, Well 2 is subject to a Coastal Permit and shall be evaluated for conformance with LCP Policy 18, "To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands as delineated by the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip." The wells and appurtenant facilities of the mutual water system are dependent on the water resources in the wetlands and are allowable as incidental public services within the wetland buffer pursuant to Section 30233(5) of the Coastal Act. Permitting the well to remain is the least environmentally damaging alternative because relocating it would entail additional ground disturbing activities.

It is noted that the mapped buffer is likely smaller than the buffer would be if based upon the United States Fish and Wildlife Service wetlands classification system, which defines wetlands based on one or more of the three attributes: 1) The land supports predominately hydrophytic vegetation; 2) The substrate is predominately undrained hydric soil; and 3) The substrate is saturated with water or covered by shallow water at some time during the growing season of each year. The construction of Well 2 occurred 27 years ago and additional disturbance of the site is not proposed or required for maintenance. The project would comply with the stream and wetland conservation protection policies of the Local Coastal Program.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit I of the Local Coastal Program.

I. Wildlife Habitat:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. Also, review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates nine special-status wildlife species occurring in the project area including the Marin hesperian (*Vespericola marinensis*), Ricksecker's water scavenger beetle (*Hydrochara rickseckeri*), American Badger (*Taxidea taxus*), California black rail (*Laterallus jamaicensis coturniculus*), black swift (*Cypeloides niger*), saltmarsh common yellowthroat (*Geothlypis jamaicensis coturniculus*), California red-legged frog (*Rana draytonii*), hoary bat (*Lasiurus cinereus*), and the northern spotted owl (*Strix occidentalis caurina*). The habitat associations for four of these species do not exist on the project site and the small-scale scope of the project would not adversely affect the existing habitat. However, there is

suitable habitat for Marin hesperian, Ricksecker's water scavenger beetle, American badger, California red-legged frog, and northern spotted owl, although none were observed during the biologist's field surveys. A saltmarsh common yellowthroat was observed in the study area, but no nests were located in the wetlands area. The beetle and semi-aquatic snail require very specialized wetlands of perennial seeps or shallow streams that would not be disturbed by the project. The project would not result in improvements that would impact wildlife habitat and the project would protect wildlife consistent with LCP policies.

J. Protection of Native Plant Communities:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is not located in an area containing rare plants. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property may contain habitat for Marin manzanita (*Arctostaphylos virgata*) and the Coast yellow leptosiphon (*Leptosiphon croceus*). The Marin manzanita requires sandstone or granite outcroppings that are not located on the project site. The Coast yellow leptosiphon is plant found in Coastal bluff scrub and Coastal prairie that are not present on the project site. In addition, the project would not involve new work that would have an adverse impact on the habitat of native plant communities.

K. Shoreline Protection:

The subject property is not adjacent to the shoreline, and the proposed project would not result in adverse affects to the shoreline. The project would not require additional shoreline protection.

L. Geologic Hazards:

The project site is located entirely within the Earthquake Hazard Zone along the San Andreas Fault Zone and would be subjected to strong ground shaking during a proximate seismic event. The project would not involve new work or substantial improvements to the existing well and mutual domestic water supply system, and as a condition of project approval, the applicant shall execute and record a waiver of liability holding the County, other governmental agencies and the public, harmless of any matter resulting from the existence of geologic hazards.

M. Public Works Projects:

The proposed project does not entail expansion of public works facilities such as public roads, flood control projects, or utility services.

N. Land Division Standards:

A land division is not a part of this project.

O. Visual Resources:

The project would not involve new work or substantial improvements to the existing well and mutual domestic water supply system and would not affect visual resources.

P. Recreational/Commercial/Visitor Facilities:

The project site is governed by C-ARP-5 (Coastal, Agricultural Residential, Planned District) zoning regulations and would not affect the established character of the Bolinas village commercial area in the VCR zoning district. The project would have no effect on recreation, commercial, or visitor facilities.

Q. Historic Resource Preservation:

The property is not located within the boundaries of the Bolinas Historic District and no historic resources would be affected by the project.

SECTION 2: ACTION

NOW, THEREFORE, LET IT BE RESOLVED, that the Deputy Zoning Administrator approves the Kirschman Coastal Permit application pursuant to Marin County Interim Coastal Zoning Code Section 22.56.130I. This Coastal Permit approves the as-built common domestic water supply well (Well 2) on a 10-acre lot.

SECTION 3: CONDITIONS OF PROJECT APPROVAL

1. The County of Marin Deputy Zoning Administrator approves the Kirschman (Trivelpiece) Coastal Permit (Project ID 2009-0377) pursuant to Marin County Interim Zoning Code Section 22.56.130I (Coastal Permit) for a domestic water supply well (Well 2) that was drilled in 1987 on a 10-acre lot. The existing well is located 50 feet from the front (northeast) property line and 60 feet from the side (northwest) property line and provides water for a mutual domestic water supply system to two single-family residences at 5959 State Route One and 5963 State Route One. The subject property is located at 5959 State Route One, Bolinas and is further identified as Assessor's Parcel 188-100-35.
2. Except as modified herein, plans submitted for a Water Permit Amendment for the approved project shall substantially conform to plans on file in the Marin County Community Development Agency (CDA), Planning Division, identified as Exhibit A, "Lands of Kirschman, Site Plan", consisting of one sheet prepared by ILS Associates, Inc., Civil Engineering and Land Surveying, date stamped received March 19, 2012.
3. The applicant shall apply for a Water Permit Amendment within 60 days of this project approval and shall diligently pursue said Amendment to approval within 180 days of this project approval.
4. BEFORE ISSUANCE OF A WATER PERMIT AMENDMENT, the applicant shall record a Waiver of Public Liability holding the County of Marin, other governmental agencies, and the public harmless because of loss experienced by geologic actions associated with the San Andreas Fault through the property. The Waiver of Public Liability shall be submitted to the Community Development Agency Director for review and approval before recordation.
5. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as

determined by the Community Development Agency staff, shall be halted until proper authorization for the modifications are obtained by the applicant.

Marin County Environmental Health Services: Water Supply

6. BEFORE ISSUANCE OF A WATER PERMIT AMENDMENT, the applicant shall submit a water treatment proposal plan to install water treatment equipment in the form of filtration and disinfection.

SECTION 4: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest the Kirschman (Trivelpiece) Coastal Permit (Project ID 2009-0377) approval by obtaining a Water Permit Amendment before March 29, 2014, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date and the Community Development Agency approves it.


NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency, Planning Division, Room 308, Marin County Civic Center, San Rafael, no later than 4:00 p.m. on April 5, 2012.

SECTION 5: DECISION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 29th day of March, 2012.


JEREMY TEJIRIAN
DEPUTY ZONING ADMINISTRATOR

Attest:


Joyce Evans
Deputy Zoning Administrator Secretary

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE

45 FREMONT STREET, SUITE 2000

SAN FRANCISCO, CA 94105-2219

VOICE (415) 904-5260 FAX (415) 904-5400

TDD (415) 597-5885

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Terence Carroll

Mailing Address: P O Box 103

City: Forest Knolls, CA

Zip Code: 94933

Phone: (415) 488-1957

SECTION II. Decision Being Appealed

1. Name of local/port government:

Marin County

2. Brief description of development being appealed:

Legalization of a water well in a wetland buffer.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

5959 State Route One, Bolinas, CA

APN 188-100-35

4. Description of decision being appealed (check one.):

☐ Approval; no special conditions☒ Approval with special conditions:☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-2-MAR-12-008

DATE FILED:

4/16/12

DISTRICT:

North Central Coast

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

X Planning Director/Zoning Administrator

☐ City Council/Board of Supervisors

☐ Planning Commission

☐ Other

6. Date of local government's decision: March 29, 2012

7. Local government's file number (if any): CP ID 2009-0377

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Richard Kirschman
P O Box 417
Point Reyes Station CA 94956

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Cela O'Connor
P O Box 116
Bollinas CA 94924

(2) John O'Connor
P O Box 116
Bollinas CA 94924

(3) Bridger Mitchell
P O Box 31
Inverness CA 94937

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Development violates the certified Marin County LCP Unit I.

The water well was constructed without the applicant first obtaining a coastal development permit. In 1985, the Marin County Department of Environmental Health Services issued a permit for the construction and operation of the well, with the provision that: "This permit is valid in Coastal Zones I and II only after approval by the Coastal Commission." Nevertheless, in 1987, the well was constructed and has been in more or less continuous use since then. No application for a coastal development permit was made until the present time.

LCP Unit I Policy 18 (at page 28) states: *To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands as delineated by the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip.*

The well was constructed in 1987, subsequent to the certification of LCP Unit I, and is located within a mapped 100-foot wetland buffer. The subject property is 10 acres, with wetlands and wetland buffers constituting a minimal amount of the total area. No finding was made that construction of the well outside the wetland buffer area was infeasible.

Marin County Deputy Zoning Administrator (DZA) erroneously found that the water well is a resource-dependent use.

Finding VI.G. of the DZA's adopted resolution granting a coastal development permit cites Coastal Act Section 30233(5) as a pertinent exception in permitting the water well. Resource-dependent uses are those uses that must be located within a resource in order to function properly¹. A water well clearly does not meet this definition, as properly functioning wells are commonly located outside ESHAs and their buffers.

¹The principle that a use is not resource-dependent if it does not have to be located in the resource to function properly is referenced in CDP 4-07-101 Smith (at page 36); CDP 4-05-064 Conrad (at page 22); CDP 4-10-040 Lunch Properties (at page 44); et al.

Marin County Deputy Zoning Administrator (DZA) erroneously found that permitting the water well is the least environmentally damaging alternative.

The well was constructed in 1987 without a permit and in violation of LCP Unit I. The DZA should have used as a baseline for determining the impact of development the status of the wetland buffer prior to the construction of the well. The DZA's reasoning -- that since the well is already there, it should be permitted -- stands the coastal development permit process on its head. Under this reasoning, any illegal development in a wetland buffer could be granted a permit after the fact on the grounds that its continued existence and use is the least environmentally damaging alternative.

Marin County Deputy Zoning Administrator (DZA) erroneously found that relocating the well is a more environmentally damaging alternative.

The DZA did not consider requiring restoration or mitigation of disturbance of the wetland buffer in finding that relocating the well was a more environmentally damaging alternative.

Appellant has standing to file this appeal.

- 1) Appellant participated in the local permitting process by submitting written comments (attached) to the Marin County Deputy Zoning Administrator.
- 2) Marin County requires payment of a fee for filing a local appeal.
- 3) A water well is not a principal permitted use in the applicable zoning district.

Appellant seeks a remedy.

Appellant seeks the following remedy:

- 1) that the Coastal Commission deny the coastal development permit;
- 2) that the applicant be required to relocate the well outside the wetland buffer;
- 3) that the wetland buffer area be restored, or the disturbance to it mitigated;
- 4) that the Coastal Commission issue a statement that water wells in wetland buffer areas are not a resource-dependent use.

Alternatively, if the Coastal Commission does not deny the permit, appellant seeks the following remedy:

- 1) that the disturbance to the wetland buffer be mitigated;
- 2) that appropriate enforcement action be taken, and fines imposed, for the construction of a well without a coastal development permit;
- 3) that the Coastal Commission issue a statement that water wells in wetland buffer areas are not a resource-dependent use.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

TR Carroll

Signature of Appellant(s) or Authorized Agent

Date: _____

4/12/2012

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

March 23, 2012

Marin County Deputy Zoning Administrator
Jeremy Tejirian, Hearing Officer
Via e-mail

Re: Kirschman Coastal Permit Application, APN 188-100-35, PID 2009-0377

Dear Mr. Tejirian:

Thank you for the opportunity to comment on the Kirschman application for a coastal permit.

Section VIII.G of the proposed Resolution presented for your approval contains a number of errors of fact and logic. These errors render this finding invalid, and call into question the legality of permitting the subject well.

The finding, relating to Stream and Wetland Conservation Protection, states: *The wells and appurtenant facilities are dependent on the water resources in the wetlands and could be allowed within the buffer pursuant to Section 30233 of the Coastal Act.* This statement is erroneous in two respects. First, Section 30233 of the Coastal Act pertains to the diking, filling, or dredging of wetlands, none of which are at issue in this permit application. Second, even if 30233 did apply, it defines resource-dependent uses as "Nature study, aquaculture, or similar...activities" (30233(7)). A water well is development under Section 30106 of the Coastal Act; it is not a resource-dependent use.

The finding also states: *The construction of Well 2 occurred 27 years ago and additional disturbance of the site is not proposed or required for maintenance.* While this statement may be true as a matter of fact, it is immaterial in the consideration of whether the well can be legally permitted. By this logic, any illegal dwelling could be permitted on the grounds that living in it would not cause "additional disturbance of the site."

In addition, there is no claim of a vested right to a pre-existing use, nor can there be, since the well was constructed subsequent to the enactment of the Coastal Act and the adoption of LCP Unit I. The fact that the well is already there has no bearing on the question of whether it can be legally permitted to be there.

In short, because Section VIII.G is invalid, you cannot make the required findings for approval of this coastal permit application.

Respectfully,

Terence Carroll
P O Box 103
Forest Knolls, CA

Marin County Local Coastal Program Unit I – Land Use Plan

Section II. NATURAL RESOURCE PROTECTION

LCP POLICIES ON STREAM PROTECTION

The following policies are applicable to all USGS Blue-line Streams.

3. A riparian protection area and a stream buffer area shall be established for all streams within Unit I. The riparian protection area shall include all existing riparian vegetation on both sides of the stream. The stream buffer area shall extend a minimum of 50 feet from the outer edge of the riparian vegetation, but in no case shall be less than 100 feet from the banks of the stream.
4. No construction, alteration of land forms, or vegetation removal, shall be permitted within the riparian protection area. However, if a parcel is located entirely within the stream buffer, design review shall be required for any proposed structure and shall consider impacts on water quality, riparian vegetation/and the rate and volume of streamflow. In general, development shall be located on that portion of the site which results in the least impact on the stream, and shall include provision for mitigation measures to control erosion and runoff and to provide restoration of disturbed areas by replanting with plant species naturally found on the site.

LCP POLICIES ON LAGOON PROTECTION

18. To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands as delineated by the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip.

Marin County Local Coastal Program Unit I – Implementation Plan

Chapter 22.56I C DISTRICTS

22.56.130I Development requirements, standards and conditions.

A. Water Supply. Coastal project permits shall be granted only upon a determination that water service to the proposed project is of an adequate quantity and quality to serve the proposed use.

1. Except as provided in this section, the use of individual water wells shall be allowed within the zone in conformance with Chapter 7.28 (Domestic Water Supply) of the Marin County Code:

a. New developments located within the service area of a community or mutual water system may not utilize individual domestic water wells unless the community or mutual water system is unable or unwilling to provide water or the physical distribution improvements are economically or physically infeasible to extend to the proposed site. Additionally, wells or water sources shall be at least one hundred feet from all property lines or a finding shall be made that no development constraints are placed on neighboring properties.

d. The issuance of a coastal permit for any well shall be subject to a finding that the well will not have an adverse impact on coastal resources individually or cumulatively.

2. Prior to the authorization of subdivisions or construction of project utilizing individual water wells, the applicant shall demonstrate sustained water-well yield of at least one gallon per minute per residential unit. Additional requirements for fire protection, including increased yield rates, water storage facilities and fire hydrants shall be installed as recommended by the applicable fire protection agency.

G. Stream and Wetland Resource Protection. The following standards shall apply to all development within or adjacent streams identified as blue-line streams on the most recent edition of the USGS seven and one-half minute quadrangle map(s) for the project area.

3. For proposed projects located adjacent to streams, application submittals shall include the identification of existing riparian vegetation as a riparian protection area. No construction, alteration of land forms or vegetation removal shall be permitted within such riparian protection area. Additionally, such project applications shall identify a stream buffer area which shall extend a minimum of fifty feet from the outer edge of riparian vegetation, but in no case less than one hundred feet from the banks of a stream. Development shall not be located within this stream buffer area. When a parcel is located entirely within a stream buffer area, design review shall be required to identify and implement the mitigation measures necessary to protect water quality, riparian vegetation and the rate and volume of stream flows. The design process shall also address the impacts of erosion and runoff, and provide for the restoration of disturbed areas by replacement landscaping with plant species naturally found on the site. Where a finding based upon factual evidence is made that development outside a riparian protection or stream buffer area would be more environmentally damaging to the riparian habitat than

development within the riparian protection or stream buffer area, development of principal permitted uses may occur within such area subject to design review and appropriate mitigation measures.

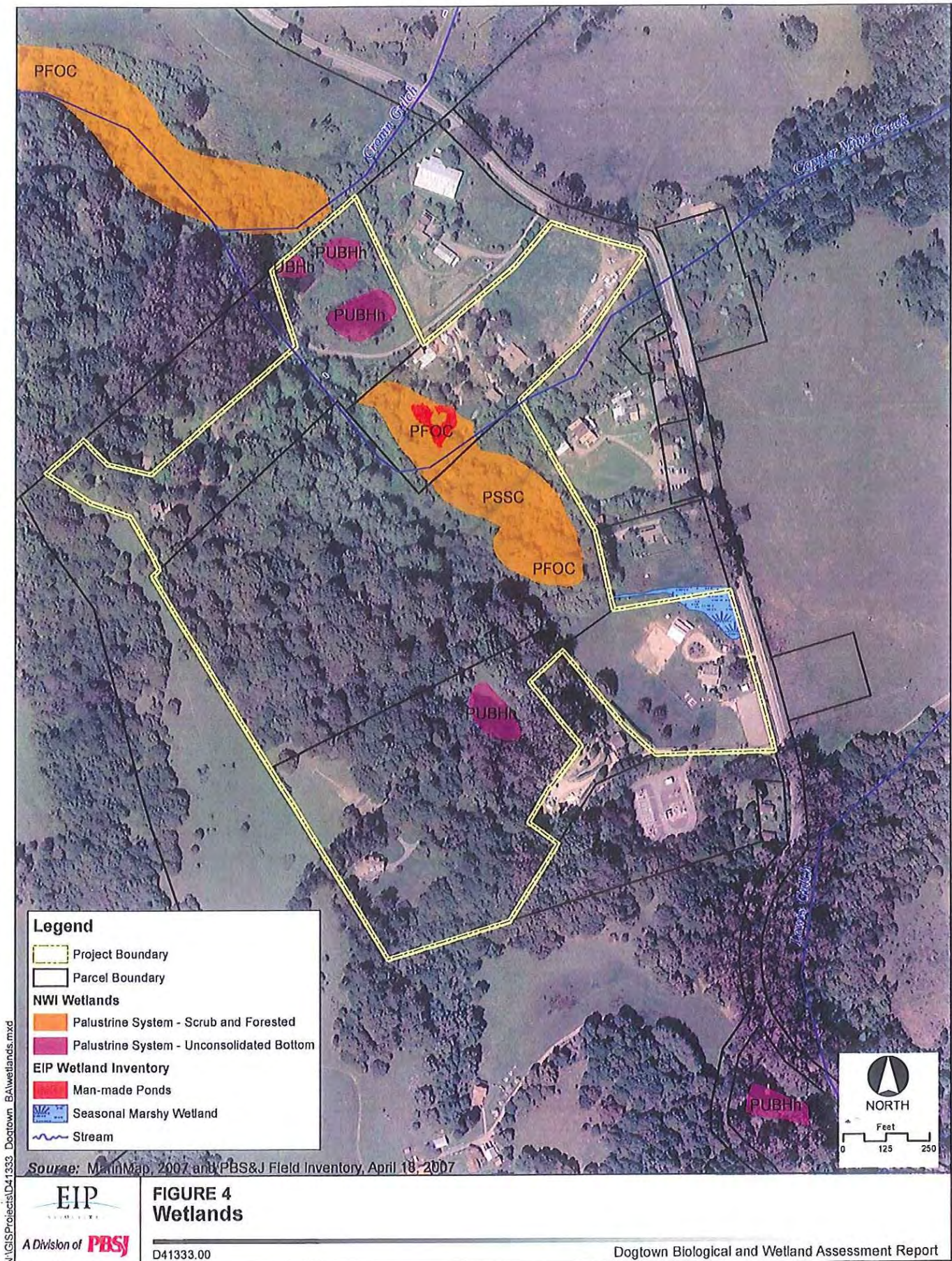
4. Development applications on lands surrounding Bolinas Lagoon and other wetlands as identified on the appeals area map(s) shall include the designation of a wetland buffer area. The buffer area shall include those identified or apparent wetland related resources but in no case shall be less than a minimum of one hundred feet in width from the subject wetland. To the maximum extent feasible, the buffer area shall be retained in a natural condition and development located outside the buffer area. Only those uses dependent upon the resources of the wetland shall be permitted within the wetland buffer area.

5. The diking, filling, dredging and other alterations of wetlands shall occur only for minor, public works projects and shall be in conformance with the Coastal Act Section 30233. No physical improvements along the county parklands surrounding Bolinas Lagoon shall occur. Land uses in and adjacent to wetlands shall be evaluated as follows:

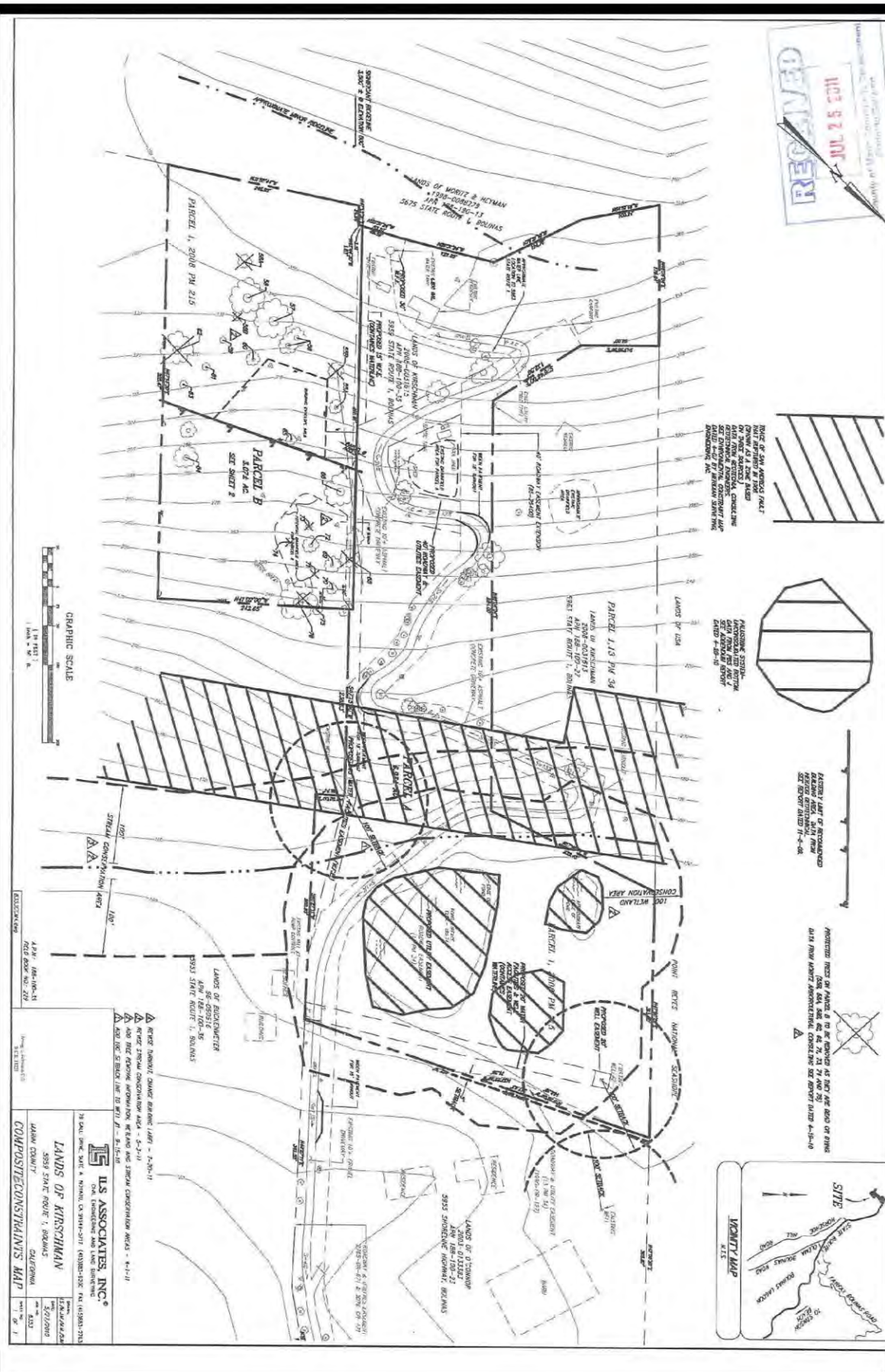
- a. Filling of wetlands for the purposes of single-family residential development shall not be permitted.
- b. Allowable resource-dependent activities in wetlands shall include fishing, recreational clamming, hiking, hunting, nature study, birdwatching and boating.
- c. No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities.
- d. A buffer strip one hundred feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Development activities and uses in the wetland buffer shall be limited to those allowed pursuant to Section 30233 of the Coastal Act of 1976.

I. Wildlife Habitat Protection.

2. Siting of New Development. Coastal project permit applications shall be accompanied by detailed site plans indicating existing and proposed construction, major vegetation, watercourses, natural features and other probable wildlife habitat areas. Development shall be sited to avoid such wildlife habitat areas and to provide buffers for such habitat areas. Construction activities shall be phased to reduce impacts during breeding and nesting periods. Development that significantly interferes with wildlife movement, particularly access to water, shall not be permitted.



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CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
 45 FREMONT ST, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE (415) 904-5260
 FAX (415) 904-5400
 TDD (415) 597-5885

**Memorandum****March 9, 2015**

To: Commissioners and Interested Parties

FROM: Dan Carl, North Central Coast District Deputy Director
 North Central Coast District

Re: ***Additional Information for Commission Meeting
 Wednesday March 11, 2015***

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
W15a	A-2-MAR-12-008 Kirschman/Trivelpiece, Marin Co.	Staff Report Addendum	
W16a	2-14-0673 Lundberg, Bodega Bay	Staff Report Addendum	
W15a	A-2-MAR-12-008 Kirschman/Trivelpiece, Marin Co.	Correspondence, Bridger Mitchell/Amy Trainer	1-2
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W15a

March 3, 2015

California Coastal Commission
Dr. Charles Lester, Executive Director
Via email: Charles.lester@coastal.ca.gov

Re: Appeal [W15a-3-2015](#)

Dear Dr. Lester,

The Environmental Action Committee of West Marin (EAC) writes to support the importance of finding Substantial Issue in the appeal of a coastal development permit issued to Richard Kirschman after-the-fact by Marin County for development of a domestic water well in an environmentally sensitive habitat area.

This Commission has consistently acted to protect coastal resources in the vicinity of ESHA and it must do so again in this instance when the County has completely disregarded established ESHA protection standards. Among the myriad reasons for finding a substantial issue noted in your staff's thorough analysis, we emphasize these:

- Marin County did not properly identify the extent and nature of the ESHA on the site.
- Marin County wrongly used the unpermitted, as-built condition of the site as the baseline for determining the environmental impacts of permitting the well.
- Marin County did not properly analyze the alternatives to leaving the well in the location where it had already been developed.

It is vital that the Commission proceed to hear this appeal *de novo*. Not to do so would serve to reinforce Marin County's failure to carry out Coastal Act requirements to protect sensitive resources in issuing this permit. It would likely be taken by other local governments as license to similarly issue coastal development permits without carrying out the appropriate analysis. And, it could spur developers to construct unpermitted development in ESHAs if they realize

that there is no consequence from the authority vested with protecting these sensitive resources.

In fact, the precedent set by this permit, if upheld, would make unpermitted development the rational choice by holding after-the-fact permit applications to a much lower and inadequate standard of review. These substantial issues strike at the heart of the Coastal Act's resource protection provisions.

We thank you for your consideration of our concerns.

Sincerely yours,



Bridger Mitchell, President

EAC Board of Directors



Amy Trainer, Executive Director

EAC of West Marin

Fiala, Shannon@Coastal

W15a

From: Richard Kirschman <kirschman@marincounty.net>
Sent: Thursday, March 05, 2015 3:22 PM
To: Lester, Charles@Coastal; Fiala, Shannon@Coastal
Cc: SKinsey@marincounty.org; wayne.trivelpiece@noaa.gov
Subject: Dogtown Well

Dear Mr. Lester and Ms. Fiala,

I write to support Marin County's 3 year old approval of the well at 5959 State Route #1 in Dogtown — the home I sold to the Trivelpieces in 2012.

This fine well served my home as well as 5963 State Route #1 — which I also owned at the time — for over 30 years. It did so without harm to either the environment or any neighbor.

After much back and forth and great expense to me and my wife, the County of Marin approved the well in 2012.

I was shocked and dismayed to learn today that a disgruntled ex-neighbor is attempting resurrect this matter and that a hearing before the Coastal Commission is scheduled in 6 days.

I hope that the commission will recognize the unfairness and needlessness of revisiting this 3 year old decision by Marin County.

Sincerely,

Richard Kirschman
(415) 663-0800

March 5, 2015

Cela O'Connor
PO Box 1617
5955 Shoreline Hwy.
Bollinas, Ca 94924
Phone 415-888-3085
email jfoconnor@att.net

RECEIVED

MAR 06 2015

W15a

CALIFORNIA
COASTAL COMMISSION
NORTH CENTRAL COAST

California Coastal Commission
Dr. Charles Lester, Executive Director

Re: Appeal W15A-3-2015

Dear Commissioners,

I support the importance of finding "substantial issue".

My husband, John O'Connor, and I own the property adjacent to the wetland where the unpermitted well is located. The easement to access the Trivelpiece property from Shoreline Highway crosses our land.

The well is 25' from our property line and directly affects our aquifer. Then 100' setback required by California State law would do the same.

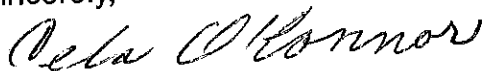
Marin County did not require Mr. Kirschman to permit the well at the time the well was installed by Weeks Welldrilling Co. The well is located in an ESHA of international significance on a tributary of Pine Gulch Creek, spawning and rearing habitat of both the endangered salmon and the steelhead salmonids.

It was the duty of Marin County to notify the CDFG, GFNMS, US Fish and Wildlife and SWRCB among others when a permit is applied for in this location.

FYI, Trivelpiece is in the process of building a two story building on site. The coastal zoning code does not allow this.

It is my hope that the Commission will find "substantial issue" and deny any well to be located in or within 100' of this unique and precious wetland.

Sincerely,



Cela O'Connor

To: California Coastal Commission
Dr. Charles Lester, Executive Director

W15a

Subject: Appeal Number A-2-MAR-12-008 (Kirschman/Trivelpiece)

Dear Dr. Lester and Commissioners:

In 1985, Marin County issued a “Permit to Operate Mutual Water Supply System” for a domestic water supply well to serve two single-family residences on adjacent parcels at 5959 and 5963 State Route One, Bolinas, Marin County. The Permit to Operate included a provision that it was valid only after approval of a coastal development permit (CDP) for the installation of the well. However, the well was subsequently constructed in 1987 without the benefit of a CDP.

On March 29, 2012, under resolution 12-106, the Marin County Deputy Zoning Administrator approved an after-the-fact CDP 2009-0377 permit for the well and associated underground piping that distributed water from the new well (Well 2 in the report) to a pre-Coastal Act well site that was constructed in 1974. The new well was located as far as possible away from the main stream (Coppermine Creek) that traverses the property, and the existing supply pipes were used for water transport to the storage tank adjacent to our home.

In this 2012 Report, the County Zoning Administrator noted that:

1. The well project was “categorically exempt” from the requirements of the CA Environmental Quality Act because this project entailed only the legalization of an existing well that would not result in depletion of water supply, grading, vegetation or tree removal, physical changes in any identified sensitive habitat area, or other potentially adverse impacts on the environment; and
2. The proposed well project was consistent with the mandatory finding for Coastal Permit approval pursuant to the requirements and objectives of the local Coastal Program. The staff determined that a common water supply system can be approved for the as-built well (Well 2) and distribution system with minor upgrades for treatment facilities at the storage tank; and
3. The existing well and 4200-gallon tank would be adequate to supply water to two single-family residences. Testing for Well 2 documented a pumping rate of 21 gallons/minute without drawdown of the water table.

This well was constructed 30 years ago. It was largely this fact, and the lack of any evidence documenting impacts of this change in location, that led to Marin County’s favorable decision to approve, after the fact, the well and water system installed and operating for the last 3 decades. They correctly pointed out that the well was not an increased use issue and that any disturbance associated with the new well was long since mitigated by time. It was their opinion that any alternative to relocate the well would be more disruptive than supporting the status quo. Moreover, the original 1974 well was located less than 30’ from Coppermine Creek, the main tributary of Pine Creek, and we suggest that relocating the well over 300’ from this stream was a substantial environmental improvement.

Coppermine Creek runs completely through the property from south to north and the stream hugs the western side of the valley. The terrain on the west side of Coppermine Creek goes sharply up hill within 50' of the creek; however, the eastern side slopes gently uphill away from the creek. Well 2 was placed along the eastern boundary of the property, over 300 feet from the creek.

In Mr. Carroll's appeal, the County is chastised for not doing a thorough study of possible alternative sites for the well. However, it only takes a few minutes of time at the property to see that the well must be located in the valley and that the present site of the well greatly reduced the environmental impact of the old well. In addition Mr. Carroll claims, and the CC staff report reiterates, that this appeal is valid because this project is located between the nearest public road and the sea. This is completely false. The property is more than 3 miles from the Ocean and approximately a mile from Bolinas Lagoon. There are two main roads between the property and the Lagoon; Horseshoe Hill Road and the Olema-Bolinas Road. He further states that the well is less than 100' from Cronin Creek, when in fact the well is over 100' from this stream. Clearly neither Mr. Carroll nor the CC staff are familiar with the property nor did they actually visit the site. The newly appointed CC staff seems to have relied on Mr. Carroll's erroneous statements in supporting his appeal.

The Marin County staff members are the experts in this matter and are the only persons to have taken the time to actually visit the site before recommending approval of the existing well as the best option. The well has been in operation for 30 years and this case has been pending before the Coastal Commission for nearly 3 years. We ask the Commission to support the recommendation of the Marin County Staff that a permit for the existing well be approved and the matter resolved. Two families rely on this well. We both purchased separate parcels from Mr. Kirschman in 2012, nearly 3 decades after the well was constructed. The new location is a vast improvement over the old 1974 creek-side location of the first well. Every property in Dogtown has a well for domestic use located in this valley. Regardless of where our individual wells are located, it is clear we all use water from the same watershed.

We implore you to end this controversy and approve the well. Enough time and money has been wasted on this issue, which common sense says should be resolved in favor of the Marin County decision to permit the well and lay this 30 year old issue to rest.

Sincerely,

Wayne and Sue Trivelpiece
5959 State Route 1
Bolinas, CA 94924

From: Wayne Trivelpiece - NOAA Federal
To: Flala, Shannon@Coastal
Subject: FYI - background info, regarding the well issue.
Date: Friday, March 06, 2015 3:58:39 PM

Dear Shannon,

A copy of our response to the appeal regarding the well permit has been sent to you and Dr. Lester for consideration at the upcoming CC meeting. As noted in the letter, your staff recommendation to the Commissioners in support of Mr. Carroll's arguments relied on several faulty claims made in his letter; most notably that the appeal is valid because the property is located between the sea and the first road and second, that the well site is within 100' of Cronin Creek. Both statements are untrue, as detailed in our response. It would be appreciated if you could add a clarifying comment for the commission meeting as to the truth of our statement, which can be easily verified by simply looking at a map of Bolinas.

We might also mention a little history about this well issue as background for you as we fear we have not seen the last of this issue. All of this opposition is orchestrated by Cela O'Connor, our immediate neighbor and a long-time, extremely venomous foe of Mr. Richard Kirschman, the previous owner of our property. Prior to selling his Dogtown properties to us and the Waterman's, Richard was in the process of applying to split his 10 acres into two parcels, a legal right under current zoning regulations for Marin County. Cela opposed this split and used every possible delaying tactic available to her to thwart Richard's application. From discussions with Richard, he spent well over \$100,000 and more than 2 years before finally giving up on the land split and selling. The final roadblock was the permit for the well. Cela knows that Richard is still financially responsible for providing us and the Waterman's a clean well permit and she is determined to make this process as drawn out and expensive as possible.

We also find her concerns extremely disingenuous, especially the environmental objections she raises. The O'Connor property well is located a mere 35 feet from the bank of Cronin Creek, which has been diked to prevent flooding of her well site during high water. Furthermore, the storage tank to which the water is pumped before distribution to her 2 homes is located entirely within the 40' right-of-way road to our property. Everyone in this neighborhood has experienced Cela's harassment and we have heard from all of her immediate neighbors wanting to form a united front to counter this behavior. Her letter to the Commission states our well is within 25 feet of her property. This is totally untrue and we would wager that she has not seen our well site in years, except perhaps on a map. She expresses grave concern for the effect of our well on her aquifer, yet our well site is down grade from her well, which as we stated above is within 35 feet of Cronin Creek. The diked stream bank along her property line has no doubt caused increased erosion of sediment into the stream. In addition, her septic leach field is well within the 100' boundary of the

wetlands she so adamantly claims to care about.

Finally, the mother-in-law structure that we spoke of and that she mentions in her letter to the Commissioners is currently being handled by us with the help of Mr. Robert Harris of the Marin County Planning Department. The structure is only 600 sq ft and just stud walls, with a partial roof covered in plastic. The County is awaiting our decision about the options we have going forward with this small second unit.

Thank you for your assistance and our apologies for ranting a bit, but we have never experienced such poor behavior from a neighbor.

Cheers, Wayne and Sue

--
Dr. Wayne Z. Trivelpiece
Leader - Seabird Research
Antarctic Ecosystem Research Division
NOAA-NMFS
3333 N. Torrey Pines Court
La Jolla, CA 92037

From: Jacqueline Waterman
To: Lester, Charles@Coastal; Fiala, Shannon@Coastal
Subject: Comment on Appeal Number A-2-12-008
Date: Saturday, March 07, 2015 2:11:45 PM

Dear Mr Lester and Ms. Fiala,

I am writing this to first ask the question why as the owner at 5963 Shoreline Hwy.(Hwy 1) was I not inform regarding this pending appeal. This was brought to my attention by my neighbors.

The established well that is being reviewed here is my family's water source for our home which we purchase almost three years ago. As the current property owner I would like to be included in any further notifications affecting my family only water source.

I just wanted to clearly state that all the information provided by my neighbors Wayne and Sue Trivelpiece is true and correct.

It goes without saying that to establish a new well would be obviously more damaging to the environment.

Thank you,

Jacqueline and Evan Waterman
5963 Shoreline Hwy (Hwy 1)
Bollinas, CA 94924
415-868-9659