

CALIFORNIA COASTAL COMMISSION

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Staff Report: November 20, 2003
Hearing Date: December 10, 2003

**STAFF REPORT – APPEAL
SUBSTANTIAL ISSUE**

APPEAL NO.: A-2-MAR-03-008

APPLICANTS: Warren Webber

LOCAL GOVERNMENT: Marin County

ACTION: Approved with Conditions

PROJECT LOCATION: 95 Olema-Bolinas Road & 850 Lauff Ranch Road
APNs 195-290-13, 188-170-45, & 193-010-19

PROJECT DESCRIPTION: Removal and disposal of approximately 153 cubic yards of fill, after-the-fact authorization for construction of a 6.5-foot-high deer fence, and the restoration and maintenance of two pre-existing drainage ditches adjacent to Bolinas Lagoon.

APPELLANTS: Tomales Bay Association

RECOMMENDATION: No Substantial Issue

1.0 EXECUTIVE SUMMARY**1.1 Summary of Staff Recommendation: No substantial Issue**

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The approved development includes removal of an estimated 153 cubic yards of fill consisting of side cast material and rock debris from an approximately 8.99 acre parcel, spreading of removed fill over APNs 188-170-45 and 193-010-19, after-the-fact authorization for construction of a deer fence, and the restoration and maintenance of two pre-existing interior drainage ditches adjacent to Bolinas Lagoon.

The Commission received an appeal of the County's approval of the proposed development contending that: (1) the approved development is inconsistent with the wetland resource protection policies of the LCP; (2) the approved deer fence impacts wetland resources, visual resources, and wildlife movement; (3) the methodology used to determine the amount of fill to be removed was inadequate; (4) the change in type of agricultural use is inconsistent with the LCP; (5) the change in type of agricultural use is subject to a master-plan, development plan, and/or design review process according to the zoning; (6) the County approval does not include tidelands and wetlands findings necessary for resolving violations related to the settlement agreement between the applicant and the U.S. Army Corps of Engineers; and (7) the County in its approval of the development did not resolve outstanding violations.

Staff recommends that the Commission find that the appeal of the development approved by Marin County does not raise a substantial issue regarding the conformity of the approved development to the LCP wetland resource protection policies and impacts to visual and sensitive habitat resources. Furthermore, staff recommends that the Commission find that the appellant's contentions regarding development not approved by the County, the lack of tidelands and wetlands findings in the County's resolution approving the coastal development permit, and the County action's failure to carry out the terms of the settlement agreement between the U.S. Army Corps of Engineers and the applicant are invalid grounds for appeal of the coastal development permit.

2.0 STAFF RECOMMENDATION

No Substantial Issue

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

Motion

I move that the Commission determine that Appeal No. A-2-MAR-03-008 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue

The Commission finds that Appeal No. A-2-MAR-03-008 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

3.0 PROJECT SETTING AND DESCRIPTION

3.1 Project Location and Site Description

The approved development is located on an 8.99-acre parcel located at 95 Olema Bolinas Road, Bolinas, Marin County. The property is zoned C-ARP-10 (Coastal, Agricultural, Residential Planned District, one unit per 10 acres maximum density). The site is located on the west shore of Bolinas Lagoon approximately one mile north of the town of Bolinas and approximately 0.2 miles south of State Highway 1 (Exhibit 1, Location Map and Exhibit 2, Vicinity Map). Bordering the parcel on the east are tidal and transitional wetlands of Bolinas Lagoon, as well as a 2.36-acre parcel (APN 195-290-24, Parcel 24) also owned by the applicant (Exhibit 3, Assessors Parcel Map). A vacant parcel owned by the Marin County Open Space District abuts the site on the south. The project site is also bounded by Pine Gulch Creek to the north and Olema-Bolinas Road to the east. The project site and the adjacent parcel (Parcel 24) create an "L" shaped piece of property totaling approximately 11 acres, which together constitute a portion of an approximately 100-acre organic farming operation known as Star Route Farms.¹

Located on the northeastern and southern sides of the project site are drainage ditches, levees, a deer fence, and a historic cattle fence (Exhibit 5, Site Plan). The levee on the southern boundary measures approximately 150 feet in length, four feet in height, and two feet in width and continues for another 225 feet onto Parcel 24 for a total length of approximately 375 feet. The eastern levee of approximately the same height and width of the southern levee measures 225 feet in length. It continues onto the southern boundary of Parcel 24 for approximately 562 feet. A drainage ditch runs parallel to each of the levees. The drainage ditches are approximately three feet deep and vary in width from approximately two to eight feet, and, like the levees, continue onto Parcel 24 as well. A 6.5-foot-high wire grid fence with wooden posts four to six inches in diameter set every 60 feet, and metal deer fence stakes infilling the posts at 20-foot intervals, rests atop the levees demarcating the approximate southern and northeastern boundaries of the project site. Immediately adjacent to the levees and the deer fence is a three-foot-high historic cattle fence. The elevation increases slightly from Olema-Bolinas Road (east to west) over the entire 11 acres (project site and Parcel 24) with the adjacent parcel receiving the most tidal influence.

The applicant organically farms the southwestern portion of the project site, with row crops in the summer and a cover crop in the fall. Typically, the cover crop is turned under in the spring unless it is too tall, in which case it is cut, composted, and reapplied. Salad greens, squash, or potatoes are sown and watered as needed. After the last harvest, a cover crop (clover, vetch, or other species) is sown in the fall whereupon it germinates with the first few rainfall events. The northern section of the project site is left fallow and includes a corner of riparian vegetation associated with Pine Gulch Creek. Portions of the remaining acreage, including the project site, are periodically mowed and composted and cows are sometimes brought in to graze the cover crop in the spring.

¹The applicant also proposes development that requires a CDP on Parcel 24 ; however, Parcel 24 is located in the Coastal Commission's original coastal development permitting jurisdiction. A coastal development permit application proposing development on Parcel 24 is also before the Commission as Item 12a.

3.2 Project Description

The approved development consists of removal an estimated 153 cubic yards of fill from the southern and eastern levees (Exhibit 6, Site Plan of Restoration Area). The fill consists of side-cast material and rock debris from ditches adjacent to the levees. Once removed, the fill would be spread over approximately 20 acres of farmland property also owned by the applicant (APNs 188-170-45 and 193-010-19) located north and west of the project site on the west side of Olema Bolinas Road. The approved development also includes the removal of side cast soil material and rock debris along the north drainage ditch to be off-hauled to the upland farm property and the restoration and maintenance of two pre-existing interior ditches that convey water from across the Olema-Bolinas Road through the project site to the ditch along the eastern boundary of the property. In addition to the above development, the approved development includes after-the-fact authorization for a 6.5-foot high deer fence.

4.0 APPEAL PROCESS

4.1 Local Government Action

On September 12, 2002, the Marin County Deputy Zoning Administrator conditionally approved a coastal development permit authorizing the approved development.

On September 19, 2002, the Tomales Bay Association filed an appeal of this approval with the Marin County Planning Commission.

On November 18, 2002, the Marin County Planning Commission denied the appeal and conditionally approved the proposed project.

On November 25, 2003, the Tomales Bay Association appealed the Planning Commission approval to the Marin County Board of Supervisors.

On January 28, 2003, the Board of Supervisors denied the appeal, and upheld the decision of the Planning Commission, and approved the coastal development permit.

4.2 Filing of Appeal

On February 13, 2003, the Commission received notice of the County's final action approving a coastal development permit for the project. The Commission's appeal period commenced the following working day and ran for ten working days thereafter (February 14 through February 28, 2003). On February 28, 2003, within the 10-working day appeal period, the Commission received an appeal from the Tomales Bay Association (TBA) (Exhibit 4, Appeal by Tomales Bay Association). Following receipt of the appeal, the Commission mailed a notification of appeal to the County and the applicant.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on February 28, 2003. The 49th day was April 18, 2003. The only Commission meetings within the 49-day period were, March 4-7, 2003 and April 8-11, 2003.

In accordance with the California Code of Regulations, on February 14, 2003, staff requested all relevant documents and materials regarding the subject approval from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request

from the Commission to provide the relevant documents and materials. The Commission received the local record from the County on April 3, 2003. Consequently, the County permit file information had not been received as of March 28, 2003, the day of the mailing of staff reports to the Commission and interested parties on items on the Commission's April 2003 meeting agenda. Therefore, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not receive the requested documents and materials, Commission staff was prepared to recommend that the Commission open and continue the hearing. On March 18, 2003, the applicant waived his right to a hearing within 49 days of the date the appeal was filed, obviating the need to open and continue a hearing on the April agenda.

4.3 Appeals Under the Coastal Act

After certification of local coastal programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area; or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may also be appealed, whether they are approved or denied by the local government.

The approved development is located between the sea and the first public road paralleling the sea, and thus within the Commission's appeal jurisdiction as defined in Section 30603 (a)(1) of the Coastal Act. Pursuant to Section 30603 (b)(1) of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies is set forth in the Coastal Act.

Section 30625 (b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In this case, because staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible 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. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or subsequent hearing. If the

Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

4.4 Standard of Review

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to California Code of Civil Procedure, Section 1094.5.

5.0 SUBSTANTIAL ISSUE ANALYSIS

5.1 Appellants' Contentions

The Coastal Commission received one appeal of the County's action on the approved development. The full text of the appeal is included in Exhibit 4. The appeal filed by the Tomales Bay Association includes the following contentions (Exhibit 4):

- The methodology used to determine the amount fill approved for removal was inadequate.
- The resolution for the coastal development permit authorizing the approved development lacks wetland resources protection findings.
- The authorization of the construction of the 6.5-foot fence deer fence is inconsistent with wetland resource protection policies of the LCP.

- The approved deer fence impacts visual resources, restricts movement of and is a danger to wildlife, and is not set back a sufficient distance to minimize impacts to sensitive habitat.
- The creation of ditches, removal of vegetation, construction of a platform, installation of culverts, a drainage sump, and an irrigation system, and land planning and plowing, have significantly altered on-site wetlands inconsistent with wetland and habitat resource protection provisions of the LCP.
- The change from infrequent grazing to intense row cropping is inconsistent with LUP Natural Resource Policy 17 and Zoning Code Section 22.56.130(G-6) and that the County did not evaluate the conflict raised by the change under those policies.
- The change in use is subject to a master plan, development plan and/or design review process according to C-ARP (Coastal, Agricultural, Planned) and Zoning District (Zoning Code Section 22.57.024).
- The County in its approval of the development did not include tidelands findings and wetland resource protection findings necessary for resolving violations related to the settlement agreement between the applicant and the U.S. Army Corps of Engineers. The appellant also contends that the tidelands findings contained in the approval resolution fail to recognize the property as a wetland.
- The County in its approval of the development did not resolve outstanding violations.

In this case, for reasons further specified below, the Commission exercises its discretion and determines that the appeal of the development approved by the County does not raise a substantial issue of conformity of the approved development with the certified LCP.

5.2 Appellant's Contentions that Raise No Substantial Issue

5.2.1 Wetland Resources

Contention

The appellant contends that the after-the-fact authorization of the 6.5-foot fence deer fence is inconsistent with LUP Natural Resource Policies 13(b) and 18 and Zoning Code Sections 22.56.130(G-5) and 22.56.130(4).

Applicable Policies

LCP Natural Resources Policy 13 (b) states:

The diking , filling , dredging, and other alterations of these wetlands shall occur only for minor public works projects and shall be in conformance with the Coastal Act Section 30233. The construction of physical improvements along Bolinas Lagoon parklands is not consistent with these Lagoon policies.

Section 22.56.130 (G)(5) states in relevant part:

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. The 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.*
- ...
- f. All conditions and standards of the LCP, relating to diking, filling and dredging shall be met.*
[Emphasis added.]

LCP Natural Resource Policy 18 states:

To the maximum extent feasible, a buffer strip, a minimum of 100 ft. 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 US Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip.

Section 22.56.130 (G) (4) states:

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.

Discussion

The approved development is located adjacent to Parcel 24, which consists entirely of wetlands, and Bolinas Lagoon. The report prepared by Prunuske Chatham, Inc. for the County of Marin and contained in the administrative record concluded that the vegetative makeup of the project site and Parcel 24 prior to the applicant's purchase of the property included approximately one acre of salt marsh in the southeast quadrant of the property (Parcel 24) that graded to seasonal freshwater wetland and gradually sloped to upland near the road. Although Prunuske Chatham, Inc. did not determine an exact wetland upland boundary, the historic record indicates that perhaps as much as 50% or more of the area currently under cultivation on the project site was

seasonal wetland. The report further states that both the project site and the adjacent parcel are predominantly wetland (Prunuske Chatham, Inc. 2002).

The Marin County Unit I LCP contains policies and standards that are intended to protect Marin County's wetland resources. Both Natural Resources Policy 13 (b) and Zoning Code Section 22.56.130 (G)(5) strictly limit the types of development allowed within a wetland, and Natural Resources Policy 18 and Zoning Code Section 22.56.130 (G)(4) require a minimum of a 100-foot buffer area be maintained along the periphery of all wetlands. As approved, the coastal development permit includes after-the-fact authorization for a 6.5-foot high deer fence in what likely constitutes wetlands or is within 100 feet of wetlands. As noted above, the appellant asserts that the fence is not allowable development under the wetland resource protections of the certified LCP.

In determining whether the appellant's contention raises a substantial issue, the Commission considers, in part: (1) the degree of factual and legal support for the local government's decision; (2) the extent and scope of the approved development; and (3) the precedential value of the local government's decision for future interpretation of its LCP.

The County approved approximately 700 linear feet of a 6.5-foot high deer fencing on APN 195-290-13 (Exhibit 7, Photographs of Deer Fence). Four square feet of fill results from the posts supporting the approved fence. The approved fence is located immediately adjacent to an existing historic cattle fence. The cattle fence, while only 3 feet tall, results in approximately 60 square feet of fill (15 times the amount of fill that caused by from the approved fence). Given the insignificant amount of fill associated with the approved fence, the extent and scope of the development as approved by the County is minor.

Moreover, the approved development allows for continuing agricultural use of the property, which is clearly contemplated by the LCP. Section 22.56.130 (G)(5)(C) states that agricultural uses in wetlands are limited to those in reclaimed areas, presently used for such activities. The approved development is located on agriculturally zoned land and agricultural activities have occurred on the property since the early 1900s, long before the passage of the Coastal Act and certification of the Marin County Unit I LCP. Grazing was the primary historic use of the site, which was supported by the historic cattle fence that still exists on the property. In the early 1980s the applicant changed the type of agricultural use from grazing to row cropping. With the change in agricultural use came different managerial challenges, including foraging deer. Deer are capable of jumping over the three-foot high cattle fence and will graze the row crops. As such, the cattle fence was not effective in keeping out the deer and thus, no longer sufficient to support the ongoing agricultural use of the property. At first the applicant managed the deer under a predator permit from the Department of Fish and Game (DFG); however, DFG stopped issuing predator permits in the early 1990s if applicants did not try nonlethal control methods first, which required the applicant to approach managing the deer differently. Thus, the applicant installed a deer fence, for which the County gave after-the-fact authorization. As discussed, such circumstances under which the County authorized the fence are very specific. Since the property was in agricultural production prior to the passage of the Coastal Act and certification of the Marin County Unit I LCP, the LCP contemplates continued agricultural production on the parcel, and the fence is needed to support the continued agricultural use of the property the County's action approving the fence can be considered consistent with Section 22.56.130 (G)(5)(C) and will not set an adverse precedent for future interpretation of the LCP.

Because the approved development is minor in extent and scope and is in support of a continued agricultural use consistent with the land-use designation and zoning of the certified LCP, the Commission finds that the appellant's contention that the approved fence is inconsistent with the wetland protection policies raises no substantial issue of conformity with policies of the certified LCP.

5.2.2 Visual Resources

Contention

The appellant contends that the deer fence, impacts visual resources. The appellant further states:

About 1996 a 6-ft. game fence was erected on top of the dikes from Olema Bolinas Road east to the south/east corner and thence north to the northeast corner of the property and adjacent to Bolinas Lagoon. This game fence detracts from the enjoyment by the public of the previously highly scenic unobstructed view of Bolinas Lagoon and a picturesque and unmaintained low historic fence. The game fence is alongside and within a few feet of the trail on public parkland from Olema Bolinas Road traveling east to the Lagoon and degrades the view experience of the walkers and is incompatible with the area.

Based on the above information, the appellant contends that the approved development fails to protect public views to and along the coast from public roads and recreational areas.

Applicable Policies

LUP Visual Resources Policy 21 states in relevant part:

To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean, Bolinas Lagoon, or the national or State parklands from Highway 1 or Panoramic Highway.

Section 22.56.130 (O)(3) states:

The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.

Discussion

LUP Visual Resources Policy 21 requires that new development not impair or obstruct an existing view of Bolinas Lagoon. Zoning Code Section 22.57.130(O)(3) requires that the height, scale, and design of the structures be compatible with the character of the surrounding natural or built environment. It further requires that structures are designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places. As approved, the development includes a 6.5 ft.-high wire mesh deer fence with two strands of top wire. Wooden posts four to six inches in diameter are set every 60 feet, and metal deer fence stakes infill the posts at 20-foot intervals. The appellant contends that the approved fence obstructs the views of Bolinas Lagoon from the adjacent open-space parkland and Olema Bolinas Road. While the fence is visible from both the road and the public trail, the wire mesh,

which measures approximately six inches by six inches, is essentially transparent and does not impair or obstruct views of the ocean, Bolinas Lagoon or parklands. Furthermore, the approved fence will sit three to four feet lower than it does presently once the unpermitted fill is removed so that it follows the natural contours of the landscape.

Thus, as approved, the deer fence is designed such that it would be compatible with the character of the surrounding natural and built environment, follow the natural contours of the landscape, and would not obstruct significant views of Bolinas Lagoon as seen from Olema Bolinas Road and the adjacent open-space parcel, consistent with the LUP Visual Resources Policy 21 and Zoning Code Section 22.57.024(1)(g)(B). Therefore, the Commission finds that the appeal raises no substantial issue regarding the conformity of the approved development project with LUP Visual Resources Policy 21 and Zoning Code Section 22.57.130(O)(3).

5.2.3 Fill Removal Estimation

Contention

The appellant contends that the methodology used to determine the amount of the fill approved for removal was inadequate. The appellant states:

Another troublesome area between the permits and the Settlement Agreement is the fact that in the survey intended to estimate the fill removal there is not one full cross-section showing all of the dikes to the wood fence and grade level as described in the Settlement Agreement. This leads to serious concerns about the estimates on volume to be removed. We support the removal of the dikes (side cast/fill), but without a more complete survey [MC 22.77.040 (1)], there is no assurance that all the side cast/fill material will be removed and the contours restored to the 1981 levels.

Applicable Policies

LCP Natural Resources Policy 13 (b) states:

The diking, filling, dredging, and other alterations of these wetlands shall occur only for minor public works projects and shall be in conformance with the Coastal Act Section 30233. The construction of physical improvements along Bolinas Lagoon parklands is not consistent with these Lagoon policies.

Section 22.56.130 (G)(5) states:

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:

- ...
- 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.*

...
All conditions and standards of the LCP, relating to diking, filling and dredging shall be met.

Discussion

To determine the estimated amount of fill to be removed from the existing berms on the property, the applicant hired an engineering geologist who prepared a Soil Reconnaissance Investigation. The objective of the reconnaissance was to investigate the depth of contact between new and old fill material on the berms located along the southern and eastern boundaries of the project as shown on the partial site survey map, prepared by surveying engineers (Exhibit 8, Sediment Sample Cross-sections).

The County in its administrative record further detailed the manner in which the total amount of estimated fill was determined. The record shows that the extent of the volumetric estimates of soil to be removed was determined by: (1) continuously digging and logging 13 hand-auger soil borings located at approximately 100 foot intervals along the berms; (2) plotting the contact between the pre-existing grades and the applicant's fill material on cross-sections of the berms surveyed by the engineers; and (3) providing the completed cross-sections to the surveying engineers to facilitate the estimation of the volume of new fill to be removed from the berms. The borings ranged in depth from approximately two to three feet below ground level at each of the cross-section locations marked on the Partial Site Survey. The borings were continuously sampled using the hand auger and a six inches long Modified California Sampler using a slide hammer. A small test pit was hand excavated in one location to better observe the nature of the contact between the old and new fill material. The borings and soil samples were logged under the supervision of a California Registered Certified Engineering Geologist in accordance with industry practices and standards. The approximate depth of contact between the old and new fill materials for each of the cross-sections was shown on the cross-sections illustrated on the Partial Site Survey. Where the contact was not observed in the field, the depth of the contact was inferred from the observed contact depth at adjacent boring locations and is shown as a queried dotted line on the cross-sections. Using this information, the engineers estimated the volume of fill material to be removed from the berms as approximately 153 cubic yards.

As noted above, the factual support contained in the record demonstrates that the methodology employed by the applicant is adequate to estimate the amount of fill to be removed. Furthermore, the County's action in approving the CDP acknowledged the volumetric quantities provided by the applicant's consultants were estimates only. The County conditioned the permit such that the ultimate volumetric quantity of soil to be removed from the project site will be determined by the methodologies utilized by the supervising engineers of the Army Corps of Engineers during the physical activity of the soils removal. The conditions of approval also allow for a differential between the estimated in actual amounts of fill material to be removed.

Therefore, the Commission finds that the appellant's contention that the methodology used to determine the amount of fill approved for removal was inadequate does not raise a substantial issue of conformity with the policies of certified LCP.

5.2.4 Habitat

Contention

The appellant contends that the approved deer fence restricts movement of and is a danger to wildlife. The appellant further asserts that approved development is not set back a sufficient distance to minimize impacts on sensitive habitat.

Applicable Policies

LCP Habitat Protection Policy 23:

Development adjacent to wildlife nesting and roosting areas shall be set back a sufficient distance to minimize impacts on the habitat area. Such development activities shall be timed so that disturbance to nesting and breeding wildlife is minimized and shall, to the extent practical, use native vegetation for landscaping.

LCP Habitat Protection Policy 25 states:

Fences, roads, and structures which significantly inhibit wildlife movement, especially access to water, shall be avoided.

Discussion

LCP Habitat Protection Policy 25 requires that fences that significantly inhibit wildlife movement, particularly access to water, be avoided. LCP Habitat Protection Policy 23 requires that development adjacent to wildlife nesting and roosting areas be set back a sufficient distance to minimize impacts on the habitat area. As discussed, the approved development includes after-the-fact authorization of a 6.5-foot high wire mesh deer fence with two strands of top wire. Wooden posts four to six inches in diameter are set every 60 feet, and metal deer fence stakes infill the posts at 20-foot intervals. The fence continues onto the adjacent Parcel 24, which effectively separates the 11-acre property (the project site and Parcel 24) from Bolinas Lagoon.

In determining whether the appellant's contentions that the approved fence inhibits wildlife movement and that it does not minimize impacts on sensitive habitat raise a substantial issue, the Commission considers, in part the significance of the coastal resource affected by the decision.

The purpose of the approved fence is to keep deer from entering the project site and grazing the row crops. As such, the fence is designed to be tall enough to prevent deer from jumping the fence and the wire mesh openings are small enough that deer cannot pass through; however, the approved fence will not prohibit wildlife movement of birds and small mammals. In addition, not only will the approved fence allow birds and small mammals to access the project site, but also the nature of the wire mesh fence allows the tides of Bolinas lagoon to continue to move onto the parcel. Nevertheless, the approved fence will directly impact the deer by excluding potential foraging land from the available land in the region; however, the amount of excluded

land will only equal 11 acres. In addition, deer are currently not endangered or are listed as species of concern. Therefore, adverse impacts to deer that will result from the approved fence are insignificant.

Thus, as approved, the deer fence is designed such that it will not significantly inhibit wildlife and is set back a sufficient distance from wildlife nesting and roosting areas, consistent with LCP Habitat Protection Policies 23 and 25. Therefore, the Commission finds that the appeal raises no substantial issue regarding the conformity of the approved development project with LCP Habitat Protection Policies 23 and 25.

5.2.5 Wetlands Findings

Contention

The appellant contends that the County in its approval of the development did not include wetland resource protection findings necessary for the project to be in harmony and conformance with the LCP.

Discussion

The appellant's contention does not include allegations that the approved development is inconsistent with the policies of the certified LCP or the Coastal Act public access policies. In addition, although the County did not include wetland resource protection findings in its resolution approving the project; other than the fence discussed above, the approved development extends to removal of wetland fill. Therefore, the Commission finds that even if this contention is a valid grounds for appeal under Section 30603 of the Coastal Act despite its failure to allege that the approved development does not conform to the certified LCP or the Coastal Act public access policies, the contention does not raise a substantial issue of conformity of the approved development with the certified LCP or the access policies of the Coastal Act.

5.3 Appellants Contentions that are Not a Valid Ground for Appeal

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

As discussed below, some of the contentions raised in the appeal do not present potentially valid grounds for appeal in that they do not allege the project's inconsistency with policies and standards of the LCP.

5.3.1 Wetlands and Environmentally Sensitive Habitat Areas

Contention

The appellant contends that development other than that approved by the County in its action on CDP No. 01-03 such as the creation of ditches, removal of vegetation, construction of a platform, installation of culverts, a drainage sump and an irrigation system and land planing and plowing, have significantly altered wetlands on-site inconsistent with LUP Natural Resource Policy 13 (b) and Zoning Code Section 22.56.130 (G-5), which list allowable development in a wetland, LUP Natural Resource Policy 18 and Zoning Code Section 22.56.130 (4), which require a minimum 100-foot wetland buffer, LUP Habitat Policy 23, which requires habitat buffers, LUP Habitat

Policy 26 and Zoning Code Section 22.56.130, which protect upland grassland feeding areas, and Zoning Code Section 22.56.130 (I-1), which prohibits significant alteration or removal of significant vegetation on sites identified on the natural resource maps and described in the LCP.

Discussion

The appellant's contentions do not include allegations that the approved development is inconsistent with the policies of the certified LCP or the Coastal Act public access policies. Rather, the appellant's contentions allege that development not considered by the County in its action on CDP No. 01-03 is inconsistent with the policies of the certified LCP. The Commission's review authority under the appeal is limited to the approved development. The construction of ditches and platforms, installation of culverts, a drainage sump and irrigation pipes, as well as plowing and land planing activities, were not considered by the County in its action on CDP No. 01-03. Furthermore, the platform and culverts referenced in the appeal are located on the adjacent property, which is part of the Coastal Commission's original permitting jurisdiction. Therefore, the Commission finds that this contention is not a valid ground for appeal under Section 30603 of the Coastal Act because it does not contain an allegation that the development approved by the County in its action on CDP No. 01-03 fails to conform to the certified LCP or the Coastal Act public access policies.

5.3.2 Change in Use

Contention

The appellant contends that the change from infrequent grazing to intense row cropping is inconsistent with LUP Natural Resource Policy 17 and Zoning Code Section 22.56.130(G-6) and that the County did not evaluate the conflict raised by the change under those policies. In addition, the appellant's assert that the change in use is subject to a master plan, development plan and/or design review process according to C-ARP (Coastal, Agricultural, Planned) and Zoning District (Zoning Code Section 22.57.024).

Discussion

LUP Natural Resource Policy 17 states that in order to protect the wetlands and upland habitat values of the parcel, changes in existing grazing use of the site shall be preceded by detailed environmental investigation and shall assure protection of the habitat values of the site in accordance with other policies and the LCP. Zoning Code Section 22.56.130(G-6) also states that any change in the present density and type of use shall be preceded by a detailed environmental investigation and assessment of the resources of the site. It further state that no development or change in use which adversely impacts these resource values shall be permitted. The appellant maintains that a detailed environmental assessment as required by the LCP should have been completed before the applicant began cultivating crops on the property and that a master plan, development plan and/or design review should have been carried out according to Zoning Code Section 22.57.024.

The appellant's contentions do not include allegations that the approved development is inconsistent with the policies of the certified LCP or the Coastal Act public access policies. The Commission's review authority under the appeal is limited to the approved development. The change from infrequent grazing to row cropping was not considered by the County in its action on CDP No. 01-03. However, even if the contentions were valid under Section 30603 of the Coastal Act, the County has taken the position that a change from one type of agricultural use to another type of agricultural use is not considered development under the certified LCP.

Furthermore, the Commission has received correspondence from individuals involved in authoring language from which some of the original certified LCP was drafted (Exhibit 9, Heneman Letter). These individuals have stated that the intention of both the LUP policy and zoning code section was to prevent a change from the existing grazing use of the site to a use other than agriculture. Therefore, the Commission finds that these contentions are not valid grounds for appeal under Section 30603 of the Coastal Act because they do not contain allegations that the approved development does not conform to the certified LCP or the Coastal Act public access policies.

5.3.3 Tidelands Findings

Contention

The appellant contends that the County in its approval of the development did not include tidelands findings and wetland resource protection findings necessary for resolving violations related to the settlement agreement between the applicant and the U.S. Army Corps of Engineers. The appellant also contends that the tidelands findings contained in the approval resolution failed to recognize the property as a wetland.

Discussion

The appellant's contentions do not include allegations that the approved development is inconsistent with the policies of the certified LCP or the Coastal Act public access policies. The adequacy of the County's review of the approved development under the settlement agreement and the tidelands permit ordinance is not governed by the policies of the certified LCP or by the public access policies of the Coastal Act. Therefore, the Commission finds that these contentions are not valid grounds for appeal under Section 30603 of the Coastal Act because they do not contain allegations that the approved development does not conform to the certified LCP or the Coastal Act public access policies.

5.3.4 Violations

Contention

The appellant contends that the County in its approval of the development did not resolve outstanding violations.

Discussion

The appellant's contentions do not include allegations that the approved development is inconsistent with the policies of the certified LCP or the Coastal Act public access policies. Instead, the contention alleges that the County in its review of the approved permit failed to address alleged violations other than the unpermitted fill and deer fence. The Commission's review authority under the appeal is limited to the County's action on the approved development. Therefore, the Commission finds that this contention is not a valid ground for appeal under Section 30603 of the Coastal Act because it does not contain an allegation that the approved development does not conform to the certified LCP or the Coastal Act public access policies.

Exhibits:

1. Location Map
2. Vicinity Map
3. Assessors Parcel Map

A-2-MAR-03-008 (Weber)

4. Appeal by Tomales Bay Association
5. Site Plan
6. Site Plan of Restoration Area
7. Photographs of Deer Fence
8. Sediment Sample Cross-sections
9. Correspondence from Burr Heneman dated September 2, 2003

Exhibits

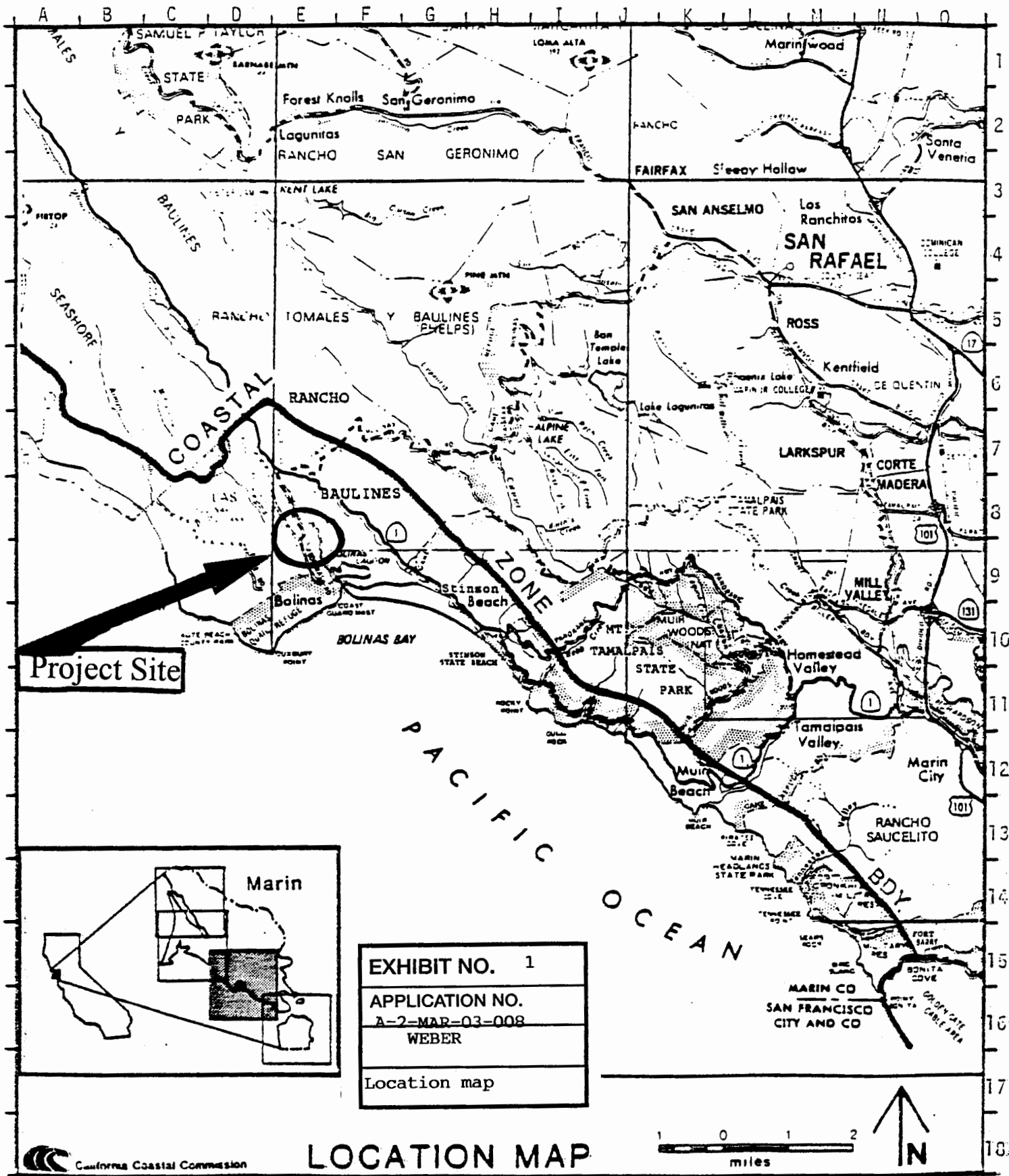
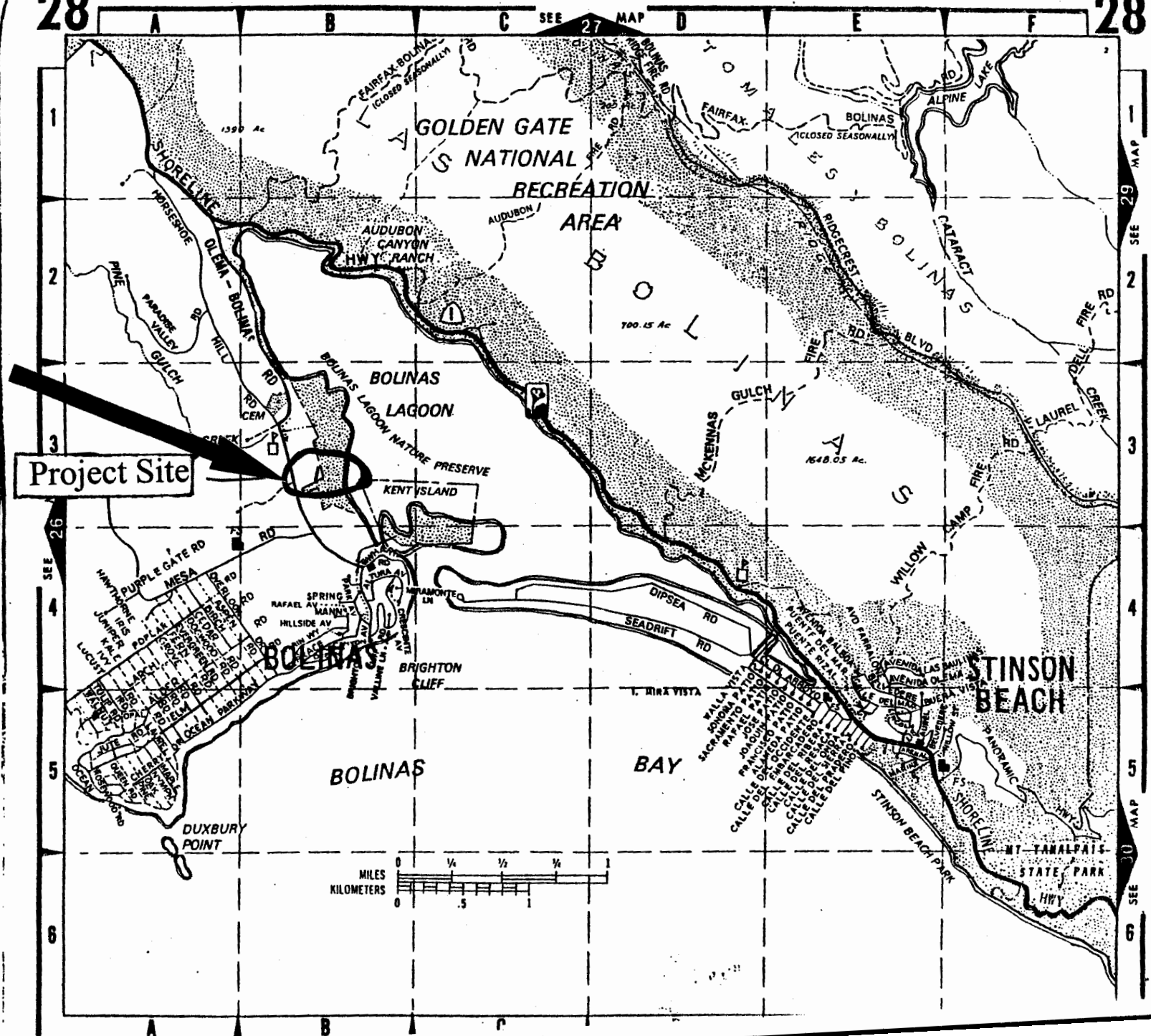


EXHIBIT NO.	2
APPLICATION NO.	A-2-MAR-03-008
WEBER	
Vicinity map	

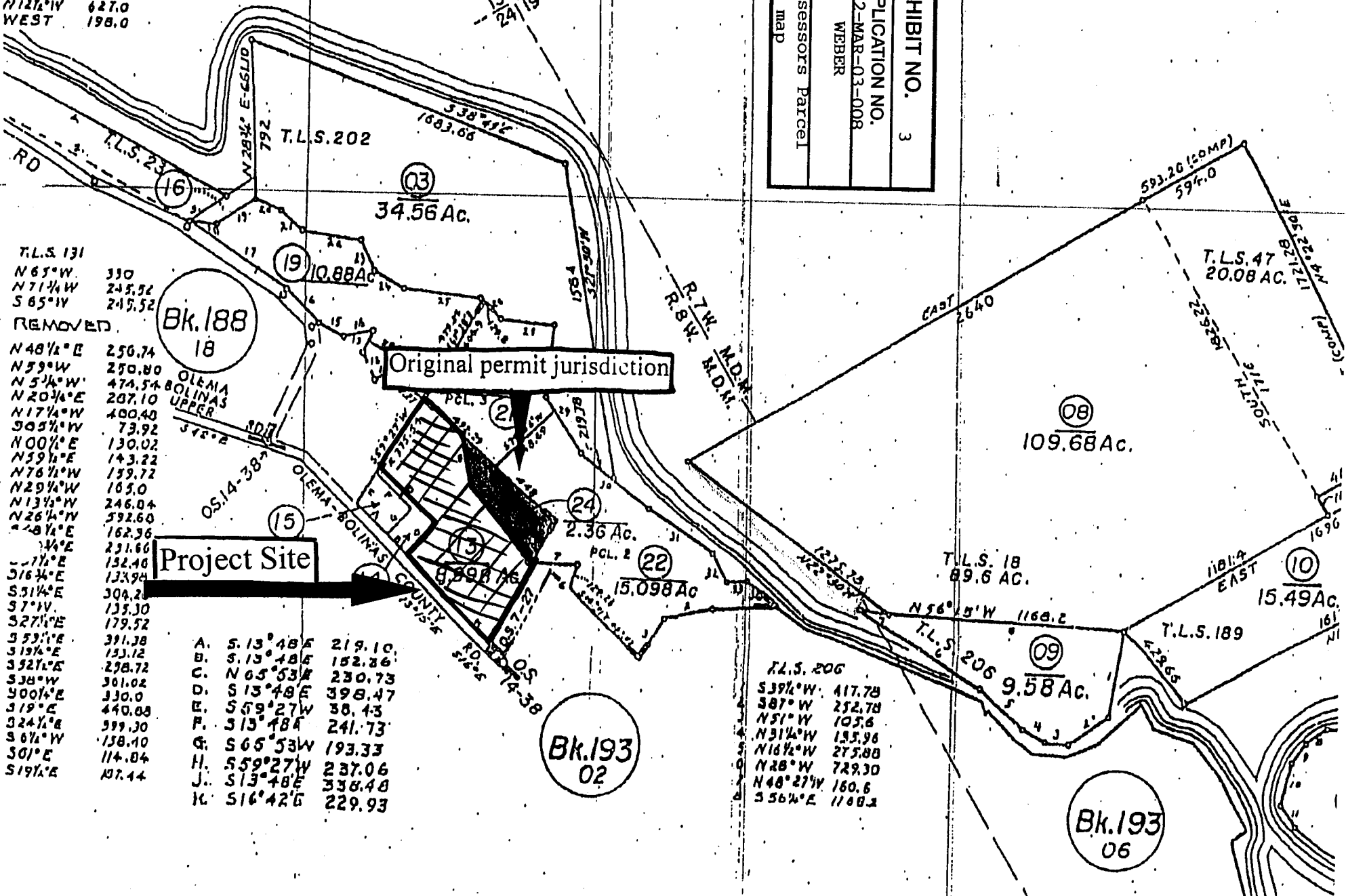


BD 21-99
APN 195-290-013 and 24

BK 145
Pg 29

T.L.S. 23
S 12 1/2° E 627.0
S 31° E 1316.02
EAST 190.0
N 31° W 1516.02
N 12 1/2° W 627.0
WEST 190.0

EXHIBIT NO.	3
APPLICATION NO.	A-2-MAR-03-008
ASSESSORS	WEBER
map	Parcel



T.L.S. 131
N 65° W 330
N 71 1/4° W 245.52
S 65° W 245.52

REMOVED
N 48 1/2° E 250.74
N 59° W 250.80
N 5 1/4° W 474.54
N 20 3/4° E 207.10
N 17 1/4° W 400.40
S 65 1/2° W 73.92
N 00° E 130.02
N 59 1/2° E 143.22
N 76 1/2° W 139.72
N 29 1/4° W 165.0
N 13 1/2° W 246.04
N 26 1/4° W 592.60
N 48 1/2° E 162.36
N 17 1/2° E 231.66
S 16 1/4° E 152.40
S 51 1/4° E 133.94
S 7° W 304.2
S 27 1/2° E 135.30
S 53 1/2° E 179.52
S 19 1/2° E 391.38
S 13 1/4° E 133.12
S 32 1/2° E 228.72
S 38° W 301.02
S 00 1/2° E 330.0
S 19° E 440.08
S 24 1/2° E 999.30
S 6 1/2° W 158.10
S 01° E 114.04
S 19 1/2° E 107.44

A. S 13° 48' E 219.10
B. S 13° 48' E 162.36
C. N 65° 53' E 230.73
D. S 13° 48' E 398.47
E. S 59° 27' W 38.43
F. S 13° 48' E 241.73
G. S 65° 53' W 193.33
H. S 59° 27' W 237.06
J. S 13° 48' E 338.48
K. S 16° 42' E 229.93

T.L.S. 206
S 39 1/2° W 417.78
S 87° W 252.78
N 51° W 105.6
N 31 1/2° W 155.96
N 16 1/2° W 275.88
N 28° W 729.30
N 48° 27' W 180.6
S 56 1/2° E 1168.2

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

SECTION I. Appellant

Tomales Bay Association

P.O. Box 369, Pt. Reyes Station, CA 94956
Telephone (415) 663 -1467

RECEIVED
FEB 27 2003

CALIFORNIA
COASTAL COMMISSION

SECTION II. Decision Being Appealed

1. Name of local government: County of Marin

2. Brief description of development being appealed:

The conversion of a transitional wetland to row cropping with the associated development that supports the conversion, including the construction of dikes. The removal of the dikes and all other sidecast/fill material placed on the property (Assessors Parcels 195-290-13 and 24). The dikes are proposed to be removed under Coastal Permit No. 01-03 and Tidelands Permit No. 01-01. In addition, we believe that the associated development is germane to and subject to review within this permit process.

The developments that took place beyond the construction of the dikes to support the row cropping included:

- 1) substantial ditching (much of which created the dikes) to drain the wetland,
- 2) removal of wetland and upland vegetation and plowing on five of the eleven acres,
- 3) construction and installation of platforms, culverts, and a sump,
- 4) construction of a 6-foot game fence and other fencing,
- 5) installation of an irrigation system with an off site water source to irrigate the row-crops.

A December 14, 1998 Settlement Agreement between Mr. Weber and the United States Army Corps of Engineers (ACOE) resulted in Mr. Weber agreeing to remove the sidecast/fill material that was used to create the dikes, plus other sidecast/fill material across a northern section of the property. We believe the volume of material to be removed to restore 1981 ground contours of the property and restore tidal influence is substantially underestimated.

3. Development's location:

80 Olema-Bolinas Road, Assessor's Parcels 195-290-13 and 24,
850 Lauff Ranch Road, Assessor's Parcel 188-170-45, and
95 Olema-Bolinas Road Assessor's Parcel 193-010-19, Bolinas, California

4. Description of decision being appealed:

Approval with special conditions of the Weber Coastal Permit No. 01-03 and Tidelands Permit No. 01-01 as described in the Marin County Board of Supervisors Resolution No. 2003-07. The decision and approval of permits ignored the terms of the Settlement Agreement and failed to properly address the violations and unpermitted development that has occurred on the property.

5. Decision being appealed was made by:

Marin County Board of Supervisors

6. Date of local government's decision: January 28, 2003

7. Local government's file number (if any): (see number 4 above)

TO BE COMPLETED BY COMMISSION:

APPEAL NO: 4-2-MAR-03-008

DATE FILED: 2/28/03

DISTRICT: North Central Coast

EXHIBIT NO.	4
APPLICATION NO.	A-2-MAR-03-008
	WEBER
Appeal by	Tomales Bay Association
	(Page 1 of 6 pages)

SECTION III. Identification of Other Interested Persons

a. Name and mailing address of permit applicant:

Mr. Warren Weber
95 Olema-Bolinas Rd.
Bolinas, CA 94924

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

✓ Dr. David Ainley
105 Headlands Court
Sausalito, CA 94965

✓ Roger Hurt
P.O. Box 98
Stinson Beach, CA 94970

✓ Robert Berner, Executive Director
Marin Agricultural Land Trust
P.O. Box 809
Pt. Reyes Station, CA 94956

✓ Herb Kutchens
Sierra Club Marin Group
P.O. Box 215
Point Reyes Station, CA 94956

✓ Phil Buchanan
Bolinas Community Public Utility District
Box 390 (270 Elm Road)
Bolinas, CA 94924

✓ Peter Martinelli
Marin Organic Stewardship Coordinator
P.O. Box 962
Pt. Reyes Station, CA 94956

✓ Catherine Caulfield, Executive Director
EAC of West Marin
Box 609, Pt. Reyes Station, CA 94956

✓ Celia O'Connor
P.O. Box 116
Bolinas, CA 94924

✓ Amelia Cortez
California State Lands Commission
100 Howe Ave. Suite 100-South
Sacramento, CA 95825

✓ John O'Connor
P.O. Box 116
Bolinas, CA 94924

✓ Andrea di Marco
P.O. Box 443
Stinson Beach, CA 94970

✓ U.S. National Ramsar Committee
William W. Howard, Chairman
P.O. Box 13714
Silver Spring, Maryland 20911

✓ Beth Dyer/Jane Hicks
U.S. Army Corps of Engineers
Regulatory Branch
333 Market St.
San Francisco, 94105

✓ Charles Rich
State Water Resources Control Board
Water Rights Division
P.O. Box 944213
Sacramento, CA 94244

✓ Rudi Ferris
P.O. Box 154
Bolinas, CA 94924

✓ Barbara Salzman
Audubon Society
Box 599
Mill Valley, CA 94941

✓ Ken Fox
P.O. Box 369
Pt. Reyes Station, CA 94956

✓ Eric Tattersall
California State Dept. of Fish and Game
P.O. Box 47
Yountville, CA 94599

✓ Phillip C. Hoffman
P.O. Box 927
Bolinas, CA 94924

- ◇ The decision may be appealed under the Public Resources Code Division 20 of the California Coastal Act (PRC) **Section 30603 (a)(1)** because the development is located between the sea and the first public road paralleling the sea or 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.

The development is located between the Olema-Bolinas Road and the Bolinas Lagoon in a designated environmentally sensitive habitat area (PRC 30107.5) which requires coastal permits for certain agricultural development projects—if allowed. The Army Corps of Engineers (ACOE) Settlement Agreement allows for row-cropping to continue following the removal of the sidecast/fill material (dikes) and also allows activities and developments initiated by Mr. Weber since he acquired ownership of the property on May 8, 1981 to remain. But, the Settlement Agreement (Attachment #1) also calls for local and state violations and unpermitted development as defined in PRC 30106 to be resolved during the permit process prior to the removal of the sidecast/fill material (dikes).

- ◇ Notwithstanding Section 30603 (a)(1) described above, the decision may be appealed under the **PRC Section 30603 (a)(2)** because the development is located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Following a complaint to the Army Corps of Engineers and resulting investigation, the ACOE exercised its authority over wetlands which resulted in the December 14, 1998 Settlement Agreement. Much of the eleven acres meets the definition of a seasonal wetland (PRC **Section 30121**).

The County of Marin, through the actions of the Board of Supervisors in granting the approval of the Coastal and Tidelands Permits, failed to recognize and acknowledge the wetland properties of any part of the eleven acres, and cited CEQA (Title 14. California Code of Regulations, Chapter 3. Guidelines) **SECTION 15304, Class 4 (a)** as the basis for the Categorical Exemption for the Permits, but failed to note that the exemption does not apply in a waterway, in any wetland, etc.. The Board of Supervisors agreed with the categorical exemption determination of the Deputy Zoning Administrator's and the Environmental Coordinator's decision which concluded that, "while wetlands exist adjacent to the project site, the proposed activity is (merely) the removal of soils on uplands outside any wetland or waterway area." The decisions further relied on the conditions of the environment at the (dry season) time of the proposed activity.

- ◇ Notwithstanding sections 30603 (a)(1)&(2) described above, the decision may be appealed under **PRC Section 30603 (a)(3)** because the developments are located in a sensitive coastal resource area as defined in **PRC Section 30116**.

- (a) "Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan", and
- (b) "Areas possessing significant recreational value", and
- (c) "Highly scenic areas"

The subject eleven acres is bordered on the south and east property lines by County owned Bolinas Lagoon wetlands with restricted recreational use and designated as a "Nature Preserve." Nature preserves are County parks "where the primary objective is to retain the area in its natural state" (LCP Page 23). The marshy areas south of Pine Gulch Creek and east of Olema-Bolinas Road were singled out as significant environmentally sensitive habitat with the majority of significant marshy habitat within the "Wilkins"(now Weber) 11 acre site (LCP Page 24). **PRC Section 30240** of the Coastal Act requires that environmentally sensitive areas be protected against any significant disruption of habitat values, that proposed development in areas adjacent to sensitive areas be sited and designed to prevent impacts which would significantly degrade such habitat, and that the development be compatible with the continuance of the habitat area (LCP Page 24). The scenic value of Bolinas Lagoon and its wetlands is without question. One of the primary concerns of the Coastal Act is to protect views to scenic resources from public roads, beaches, trails, and vista points (LCP Page 56).

Basis Of Grounds For Appeal

- ◇ The decision constitutes grounds for appeal because under **PRC Section 30603 (b)(2)** the development fails to protect public views from any public road or from a recreational area to, and along, the coast. Visual Resources (LCP Page 56) reference **PRC Section 30251**. About 1996 a 6-ft. game fence was erected on top of the dikes from Olema-Bolinas Road east to the south/east corner and thence north to the northeast corner of the property adjacent to Bolinas Lagoon. This game fence detracts from the enjoyment by the public of the previously highly scenic unobstructed view of Bolinas Lagoon and a picturesque unmaintained low historic fence. The game fence is alongside and within a few feet of the trail on public parkland from Olema-Bolinas Road traveling east to the lagoon and degrades the view experience of the walkers and is incompatible with the area. Furthermore, the game fence restricts and is a danger to wildlife.
- ◇ The decision constitutes grounds for appeal because under **PRC Section 30603 (b)(4)** the development may significantly alter existing landforms. The change from infrequent grazing by occasional trespassing cows to intense row-cropping and development which has occurred to support the row-cropping, have significantly altered the verdant marshy transitional wetland and upland habitat. This has come about by the substantial excavation to develop ditches to drain the wetlands, the construction of the dikes, and seasonal plowing and land-planing of approximately five of the eleven acres. The installation of an irrigation system, drainage sumps, platforms, culverts have all served to adversely alter this protected transitional wetland and associated upland as described in the LCP Unit I, Pages 22 and 27..

Violations Of The LCP And Land Use Plan

- ◇ The decision constitutes grounds for appeal under **PRC Section 30603 (c)** because the development and change in intensity and type of land use subsequent to Mr. Weber's purchase of AP# 195-290-13 and 24 does not conform to and is in violation of the certified Local Coastal Program Unit I (LCP) Policies and Land Use Plan:

LCP POLICIES CONCERNING LAGOON PROTECTION:

- LCP Policy #13 (b), Page 26: *"The diking, filling dredging and other alterations of these wetlands shall occur only for minor public works projects and shall be in conformance with the Coastal Act Section 30233. The construction of physical improvements along Bolinas Lagoon parklands is not consistent with these Lagoon policies."* The Marin County Development Code (MC) 22.56.130 G-5 concerning limitations on diking, filling, and dredging and other alterations of wetlands, states that *"no physical improvements along the county parklands surrounding Bolinas Lagoon shall occur,"* and under
 - G-5(b) allows only resource-dependent activities in wetlands.
 - G-5(c) *"No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities."*
 - G-5 (d) describes a buffer strip one hundred feet in width etc., and limits development activities and uses pursuant to PRC 30233.
 - G-5(f) dictates adherence to LCP conditions and standards for dredging, diking and filling.
- LCP Policy # 18, Page 28: *"To the maximum extent feasible, a buffer strip, a minimum of 100 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 the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed."*

Relevant to this policy, MC 22.56.130 G-4 states, *"Development applications on lands surrounding Bolinas Lagoon...shall include the designation of a wetland buffer area.....no less than one hundred feet... Only those uses dependent upon resources of the wetland shall be permitted within the wetland buffer area."* But, this clear requirement of the designation of a wetland buffer area is absent from the permit application.

- LCP Policy #17, Page 27, defines the allowable land use and development governing Mr. Weber's eleven acre property. *"The eleven-acre Henry Wilkins property (assessors Parcel Numbers 195-290-13 and 24) is the only remaining high tide roost for shorebirds and water fowl in Bolinas Lagoon that is protected from significant disturbance, and is the only habitat adjacent to the lagoon for snipe (Capella gallinago), with a population of about 100 individuals. In addition, it is one of the few locations around the lagoon where there is a transition from salt marsh to freshwater marsh habitats and thereby adds to the total diversity of habitat areas around the lagoon. In order to protect the wetland and upland habitat values of the parcel, changes in existing grazing use of the site shall be preceded by detailed environmental investigation and shall assure protection of the habitat values of the site in accordance with other policies in the LCP. Public Acquisition of the site is encouraged."*

The LCP Policy #17 is further codified in MC 22.56.130 G-6 which states, *"In order to protect the significant wetland and upland habitat value of that eleven-acre property known as the Henry Wilkins property (AP# 195-290-13 and 24) and any change in the density and type of use shall be preceded by a detailed environmental investigation and assessment of the resources of the site. No development or change of use which adversely impacts these values shall be permitted."*

LCP POLICIES CONCERNING HABITAT PROTECTION:

- LCP Policy #23, page 34, *"Development adjacent to wildlife nesting and roosting areas shall be set back a sufficient distance to minimize impacts on the habitat area. Such development activities shall be timed so that disturbance to nesting and breeding wildlife is minimized and shall, to the extent practical, use native vegetation for landscaping."*
- LCP Policy # 25, Page 34. *"Fences, roads, and structures which significantly inhibit wildlife movement, particularly access to water, shall be avoided."*
- LCP Policy 26, Page 34. *"Upland grassland feeding areas shall be protected against significant disruption of habitat value."* MC 22.56.130-I.1 Wildlife Habitat Protections concerning removal of vegetation.

LCP Policies 13(b), 18, 23, 25 and 26 are all LCP policies which serve to strengthen the specific protections of the eleven acres stated in LCP #17.

CONCLUSION

Wetland resource protections of MC 22.56.130 G-4, 5(b), (c), (d), (f), and (6), were eliminated from Finding X.G. of Marin County Board of Supervisor's Resolution No. 2003-07 that denied the TBA Appeal. The Tidelands Findings XI of the Resolution also failed to recognize this property as a wetland and is therefore inadequate and incomplete [MC22.77.040 (4)]. We believe that recognition of this property as a wetland and the inclusion of wetland resource protections were necessary in order to:

- 1) resolve any violations to satisfy the terms of the Settlement Agreement between Mr. Weber and the ACOE (Page 3, Item A, Page 4, Item C and Paragraph 4, and Page 5, Paragraph 5. (Attachment #1); and
- 2) be in harmony and conform with the LCP and the Marin County Code.

The County of Marin has failed to recognize the importance of these eleven acres to the Bolinas Lagoon Wetland Ecosystem—while at the same time recognizing this site as a very sensitive area. Absent necessary and appropriate findings, the County declared that the project site is outside any wetlands or water way and that there are no violations on these eleven acres, despite the fact that violations had been reported during the permit process prior to the appeal and again to the Code Enforcement Division of the Community Development Agency on December 23, 2002 (MC 22.56.095 Findings).

The County also claims that the present use and development of the subject property is allowable and consistent with County policy on agriculture, but has failed to adequately

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
address the natural resource protections or the impacts to these seasonal wetlands and the adjacent parklands if row cropping continues.

(6)

PRC Section 30200 (b) indicates that where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts. But, the County of Marin has failed to do this.

The LCP recognizes the project site as an area of "land use resource conflict on or near the Bolinas Lagoon." (LCP Page 24). LCP Policy #17 resolves this conflict by mandating an environmental assessment prior to any change in existing grazing use to assure protection of wetland and upland habitat values of this property. An environmental assessment was essential and should have been done prior to any proposal to develop this site for row cropping in order to prevent what has occurred through unregulated development of this site. The natural resources of this property are further protected by its designated C-ARP (Coastal, Agricultural, Planned) zoning. Although agriculture is a stated goal in these districts, the Principal Permitted Uses are subject to a "master plan, development plan and/or design review process, as necessary, to implement the goals and policies of the LCP..." (MC 22.57.024)

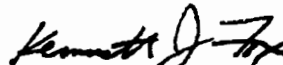
Prior to the purchase of this property by Mr. Weber in 1981, this verdant wetland and associated upland was grazed only occasionally by trespassing cows from adjacent property. About 1987, Mr. Weber excavated over 700 cubic yds. to build ditches on the south and east perimeters of the property in order to drain the tidelands and marshy wetlands --without the necessary environmental assessment or a coastal or tidelands permit application.

The Settlement Agreement allows for maintenance of the east, south, and north ditches in addition to the two tri-secting ditches to be maintained. But, these three additional ditches have yet to be permitted, and could only be allowed by the LCP following an environmental assessment. This is just one specific example of a state and local violation occurring on the property which will be allowed to continue unless it is resolved at this time.

Another troublesome area between the permits and the Settlement Agreement is the fact that in the survey intended to estimate the fill removal there is not one full cross section shown of the dikes to the wood fence and ground level as described in the Settlement Agreement. This leads to serious concerns about the estimates on volume to be removed. We support the removal of the dikes (sidecast/fill), but without a more complete survey [MC 22.77.040(1)], there is no assurance that all the sidecast/fill material will be removed and the contours restored to the 1981 levels.

SECTION V. Certification

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


Kenneth J. Fox, President
Tomaes Bay Association

Enclosed and incorporated herein:

Attachment 1- Settlement Agreement Pages 3, 4, and 5

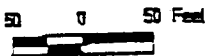
Separate schematic map showing activities and development on the property from 1981 to December 14, 1998.

Separate map from Prunuske-Chatham, Inc. October 12, 2000 Habitat Investigation of StarRoute Farms.

Bolinas Olema Highway

Roadside Drainage Ditch

Flow



Approximate Property Boundary

Parcel 13

North Drainage Ditch

Flow

Water Well

Flow

Culvert

Parcel 13

Central Drainage Ditch

Flow

Culvert

Central Drainage Ditch

Flow

South Drainage Ditch

Historic South Wood Fence & Levee

Restoration Area

Flow

Restoration Area

Historic East Wood Fence & Levee

Parcel 24

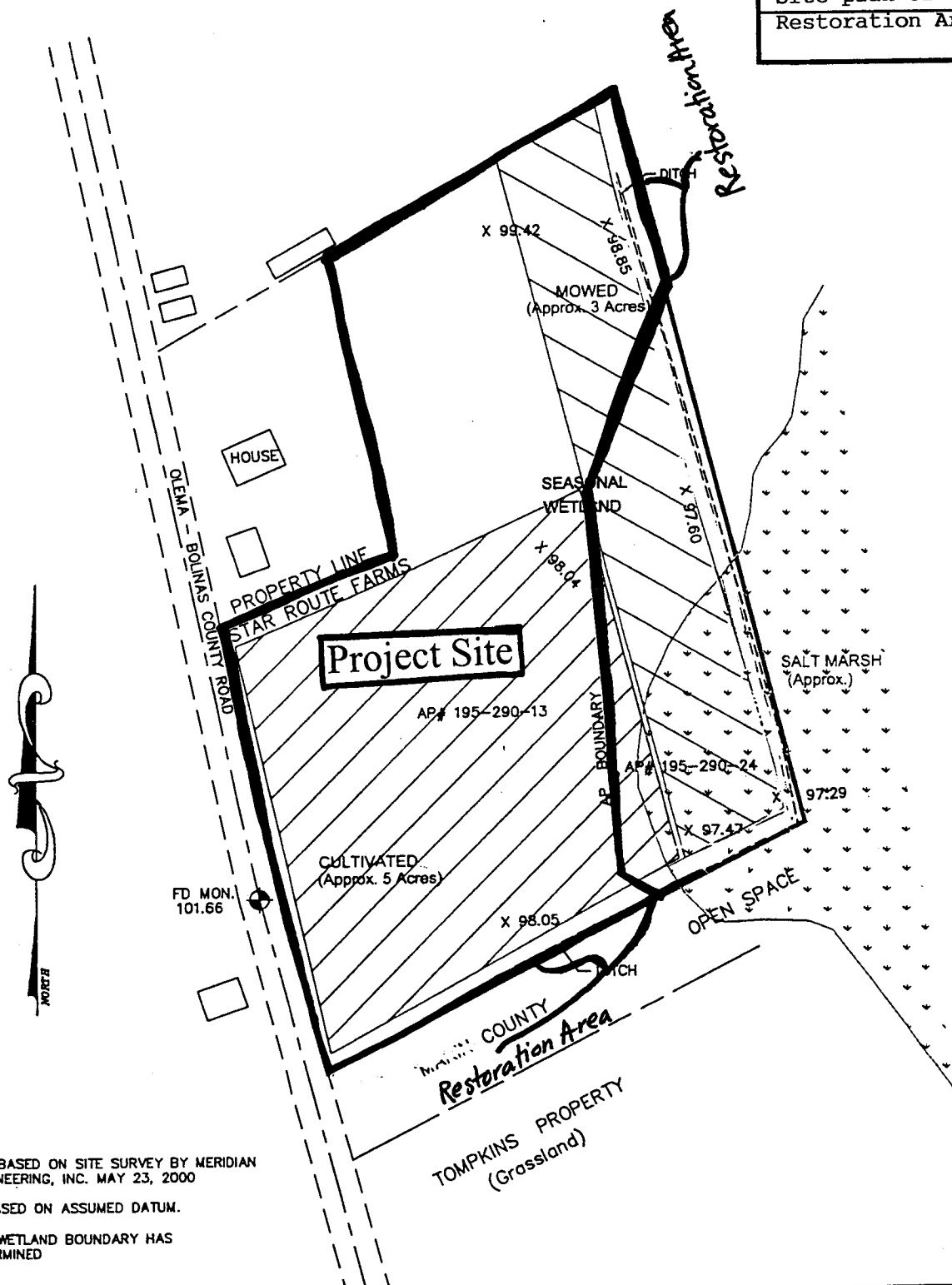
Flow

Culverts

EXHIBIT NO.	5
APPLICATION NO.	A-2-MAR-03-008
	WEBER
	Site plan

Exhibit No. 1. Site Location Map

EXHIBIT NO.	6
APPLICATION NO.	A-2-MAR-03-008
WEBER	
Site plan of	
Restoration Area	



NOTES:
 CONTOURS ARE BASED ON SITE SURVEY BY MERIDIAN
 SURVEYING ENGINEERING, INC. MAY 23, 2000
 ELEVATION IS BASED ON ASSUMED DATUM.
 EXACT UPLAND/WETLAND BOUNDARY HAS
 NOT BEEN DETERMINED

PRUNUSKE CHATHAM, INC.
 P.O. BOX 828
 OCCIDENTAL, CA 95465
 (707) 874-0100

DATE: August, 2000
 SCALE: 1"= 200'
 CHECKED BY: HA
 DRAFTED BY: EA
 DESIGNED BY:

HABITAT TYPES
 Star Route Farms
 for: Marin County Community
 Development Agency

Figure
 3

EXHIBIT NO. 7

APPLICATION NO.
A-2-MAR-03-008

WEBER

Photographs of
Deer Fence

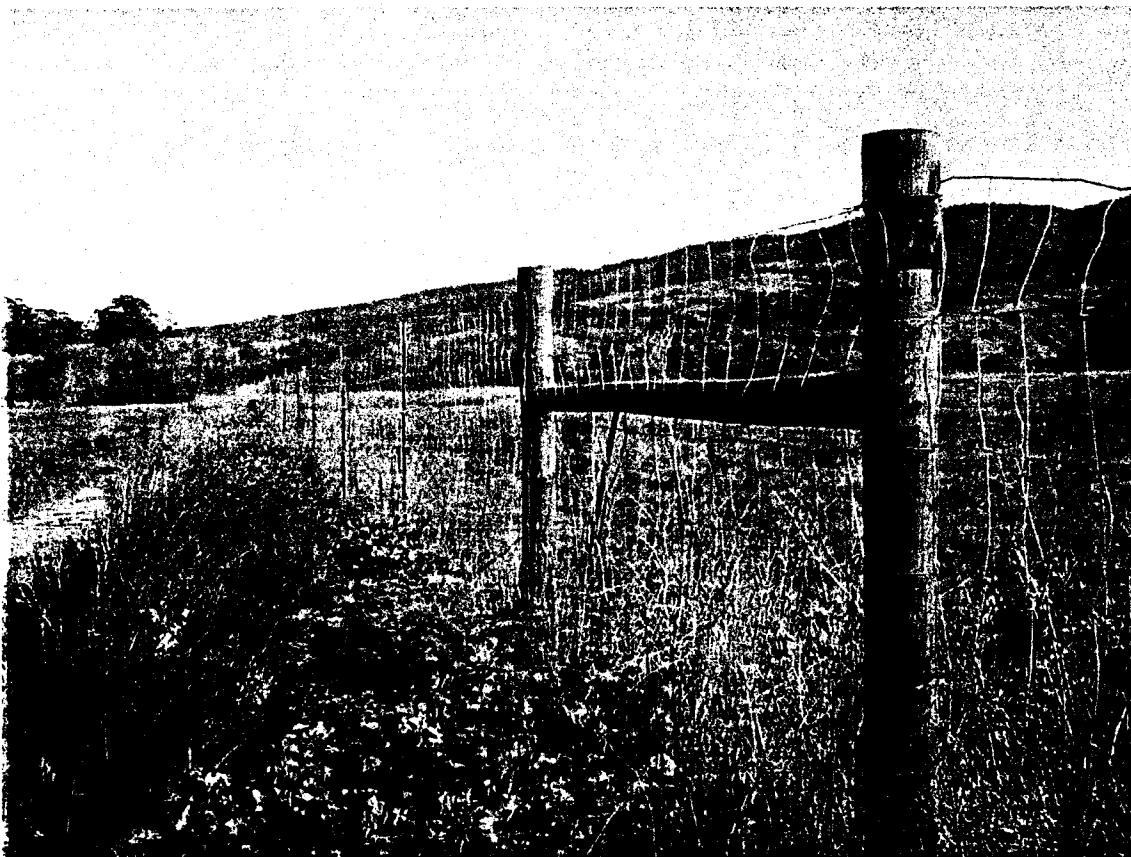


EXHIBIT NO.	8
APPLICATION NO.	A-2-MAR-03-008
	WEBER
	Sediment sample
	Cross-sections
	(Page 1 of 2 pages)

Restoration Area

195-230-13

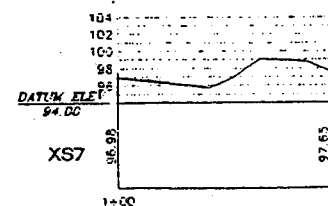
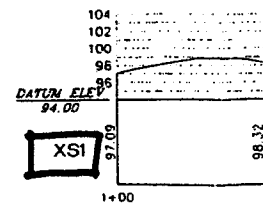
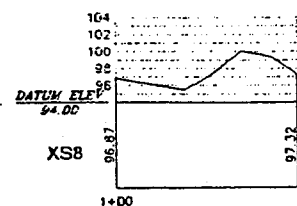
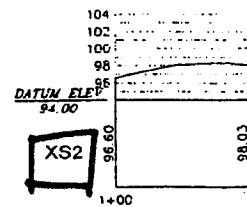
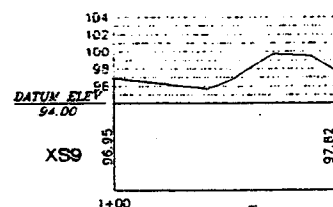
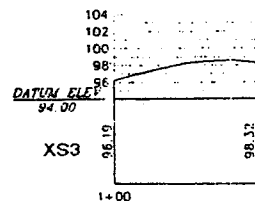
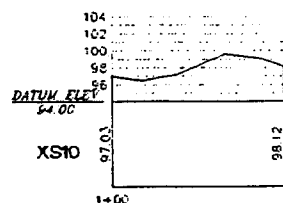
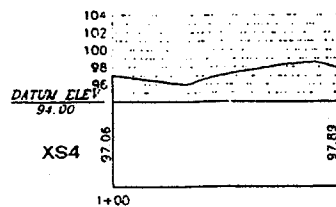
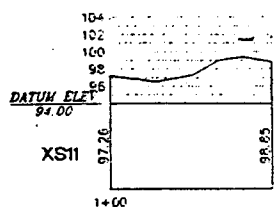
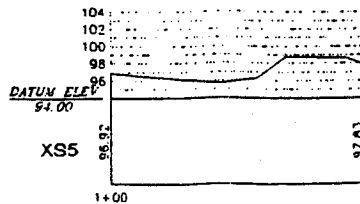
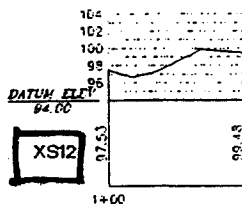
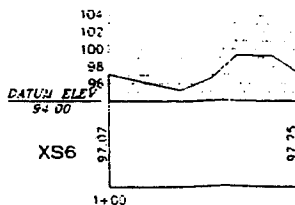
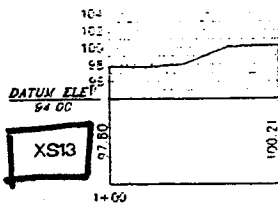
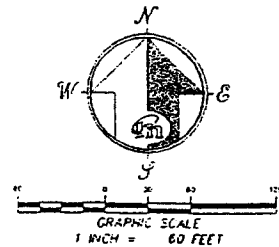
RESTORATION AREA

OLEMA - BOLINAS COUNTY ROAD

195-230-13

- XS13
- XS12
- XS11
- XS10
- XS9
- XS8
- XS7
- XS6
- XS5
- XS4
- XS3
- XS2
- XS1

SURVEY
 ORDERED IN DOC#89-04774 ON JANUARY 25, 1989. MARIN
 PLACES
 SURVEY, PORTION OF BOLINAS LAGOON & OLEMA-BOLINAS
 CITY OF MARIN, CALIFORNIA, DEPT OF PUBLIC WORKS.
 ELEVATION
 SHOWN AT A CHAIN SHOWN HEREON ON THE TOP OF THE LEVEE.
 NOTES
 PREPARED FOR THE EXCLUSIVE USE OF MR. WARREN T
 OTHER PARTY FOR ANY PURPOSE WHATSOEVER IS
 NOT WARRANTED.
 BOUNDARY SURVEY.
 SURVEY HAS BEEN RECOMMENDED TO THE CLIENT, IN
 SECTION 8752 OF THE PROFESSIONAL LAND SURVEYORS' ACT,
 AND THE CODES OF THE STATE OF CALIFORNIA AND LOCAL



□ = SAMPLES TAKEN FROM RESTORATION AREA

LEGEND

- FD FOUND
- C CINNY
- MON MONUMENT
- PLS PROFESSIONAL LAND SURVEYOR
- XS CROSS SECTION
- FOUND CITY MONUMENT
- △ SURVEY CONTROL POINT

PARTIAL SITE SURVEY

OF
ASSESSOR PARCEL NUMBERS
195-290-13 & 195-290-24

CITY OF BOLINAS
PREPARED AT THE REQUEST OF
WARREN T. WEBER

MARIN COUNTY
SCALE 1"=60'

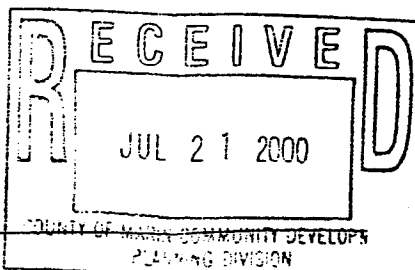
CALIFORNIA
MAY 2000



MERIDIAN SURVEYING ENGINEERING, INC.
1812 UNION STREET 100 DRAKES LANDING #164
SAN FRANCISCO 94123 GREENBRAE, CA 94904
(415) 440-4131 (415) 451-1241

DATE	07/21/00	BY	JMA/KOC
PROJECT	00077	CHECKED	00077
APPROVED	STC	APPROVED	CHC

CROSS SECTIONS 1-13
HORIZONTAL & VERTICAL
SCALE: 1"=10'



DZA ATTACHMENT #7 (a)

Burr Heneman . 35 Horseshoe Hill . Bolinas, California 94924

Phone 415.868.1460

burr@igc.org

Fax 415.868.1439

2 September 2003

Peter Douglas
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

EXHIBIT NO.	9
APPLICATION NO.	A-2-MAR-03-008
	WEBER
Correspondence from	Burr Heneman dated
	9/2/03 -Page 1 of 5

RECEIVED

SEP 04 2003

CALIFORNIA
COASTAL COMMISSION

Dear Peter,

I am writing in support of Warren Weber and Star Route Farms.

I am addressing two issues: the question of whether Star Route Farms' activities constitute a change of use, and the habitat value of the Star Route Farms lagoon field for the purposes listed, first, in the Bolinas Community Plan and, subsequently, in the LCP. Attached to this letter are relevant excerpts from those two documents.

I'm writing as someone who was intimately involved in drafting the Bolinas Community Plan (1975) and the Bolinas Lagoon Management Plan Update (1996). I am a former executive director of the Point Reyes Bird Observatory. For about 25 years, I have been either a representative or an alternate on the county's Bolinas Lagoon Technical Advisory Committee.

1. Change of use?

The Bolinas Community Plan was the origin of the "change of use" language in regard to the Star Route Farms lagoon field and some adjacent parcels. Those of us who wrote the Community Plan considered "change of use" only to refer to a change from agriculture to development. That's what we had in mind because that's how the County told us they used that term: a change from one zoned use to another. There was no County "grazing" zoning, nor a "cultivated agricultural" zoning. Just "agricultural" zoning. So the plan proposed that "an environmental impact report be required on projects that change the use of existing shorebird winter feeding lands" (page 29). There's no mention of grazing. Other community plan excerpts attached show the strong support for agriculture of various types for the Pine Gulch Creek Delta properties, which include much of Star Route Farm.

Warren Weber began to cultivate his lagoon field only a few months after several Bolinas residents had put hard work in on drafting the LCP (and the 1981 Bolinas Lagoon

Resource Management Plan), yet no one, including the drafters of those planning documents, raised an issue about what Warren was doing with the County. Why? Because none of us considered it to be a change of use. We welcomed the change, in part because we saw it as implementation of a Community Plan goal, and in part because there were some problems with the grazing operation that the shift to cultivation solved.

Why does the LCP say "if current agricultural uses were to change" on page 24 and "changes in existing grazing use" on page 27? The explanation is straightforward: inconsistent and sloppy re-drafting of the Community Plan wording quoted above.

I'm sure you can imagine what happens if the Coastal Commission starts saying that changing from grazing to row crops is a change of use that triggers various reviews.

2. Habitat value

For better or worse, both the Community Plan and the LCP focus entirely on shorebird use of Warren's lagoon parcels and other nearby parcels during winter storms and extreme high tide events. (The Community plan mentions several species of shorebirds, including snipe. The LCP mentions shorebirds, generally, and snipe specifically.) Presumably, shorebird use of those parcels should be of interest.

I have done storm and high-water event bird censuses of Warren's lagoon field several times over the past four years. Up to 1,200 shorebirds were on those parcels during some censuses. Hundreds of shorebirds are routinely present during high-water events. Those numbers compare favorably with the censuses of those parcels conducted by Gary Page and Lynne Stenzel of PRBO in the early 1970s. In addition, wintering snipe still use Warren's lagoon field.

The real change of use has occurred on the parcels south of Warren's lagoon field, those owned by the County and the Buells. Those parcels are no longer grazed, and the vegetation on them is so tall that shorebirds (with the exception of snipe) can no longer use those parcels. Perhaps the Coastal Commission should require "a detailed environmental investigation" of the change of use on the County and Buell parcels.

Regards,

Documentary History of Policy Related to the Weber Property
(Prepared by Burr Heneman, August, 2003)

1. Bolinas Lagoon Plan. 1972, County of Marin

This plan, approved by the State Lands Commission, fulfilled the County's obligation under legislation passed in 1969 granting Bolinas Lagoon lands to the County. The plan does not mention the Weber (formerly Wilins) property or adjacent properties, and makes no specific recommendations related to privately owned property around the lagoon.

2. Aspects of the Ecology of Shorebirds on Bolinas Lagoon. 1975, Gary Page and Lynne Stenzel, PRBO.

This report to the Marin County Department of Parks and Recreation summarized and interpreted four years of censuses and studies of feeding ecology of shorebirds on the lagoon. It includes the following relevant statements (emphasis added):

Shorebirds used several areas other than the tidal flat for feeding and roosting. These areas included the estuary's salt marsh (located primarily on Kent Island and the Pine Gulch Creek delta), the fish ponds and marshy pastures adjacent to the Pine Gulch Creek salt marsh, the Seadrift sand spit (particularly the tip), intertidal areas of the open coast, and pastures near the fire station on Bolinas mesa. . . . Several species of shorebirds fed or roosted at the fish ponds and adjacent marshy pastures (area J, Fig. 1). [p. 34]

Bolinas Lagoon does not totally support the entire shorebird population that occurs there. The adjacent open coast, including Duxbury Reef, and pastures near and adjacent to Bolinas Lagoon contribute resources for some species. It is the combined resources of all the areas that allows the establishment of the particular shorebird population in the estuary-open coast-upland area. [p. 78]

Area J of Figure 1, referred to above, includes the Weber property and several other properties. The PRBO report, on which all subsequent references is based, makes it clear that there were several properties south of the Pine Gulch Creek delta that were important for shorebirds.

3. Bolinas Community Plan. 1975, County of Marin and Bolinas Planning Group.

The Bolinas Community Plan includes the following relevant statements (emphasis and bracketed information added):

Certain grassland areas marked on the habitat map on which water stands during the winter are surprisingly important to shorebirds wintering on the Lagoon. Gary Page and Lynne Stenzel, who are completing a three-year study of the Lagoon for the Point Reyes Bird Observatory, have reported that the results of 16 censuses show shorebirds . . . use Area 1 [pastures on the Bolinas mesa], and Area 2 [which includes the Wilkins/Weber and several adjacent properties] is used by Killdeer, Common Snipe, Willet, Marbled Godwit, Least Sandpiper, Greater Yellowlegs, and Long- and Short-billed Dowitchers. It is clear that the shorebirds feed in these pastures when suitable habitat on Bolinas Lagoon is unavailable, and at times substantial percentages of the Lagoon population are found there. . . . Grazing seems to improve these areas as shorebird feeding habitat since tall vegetation obstructs movements of these feeding birds. [p. 79]

It has been determined that many of the grassland areas on the Peninsula are necessary upland feeding areas for several species of shorebirds that winter on the Lagoon. The Plan

proposes an environmental impact report be required on projects that change the use of existing shorebird winter feeding lands. [p. 29]

The second quote above does not say existing *grazing* use because we were only concerned, in drafting the Community Plan, about real change of use — from agriculture to development. The first quote makes it clear why shorebirds no longer use the fields south of the Weber parcels because the vegetation is no longer kept short enough.

The open lands to the north and east of the Gridded Mesa, the Francisco Mesa bordering downtown to the north, the Pine Gulch Creek delta, and the three small valleys north along Pine Gulch Creek are Bolinas' main agricultural lands. The lands to the north and west are used for cattle grazing (although this may change to crop growing with the finish of the BCPUD's sewerage resource system). The Pine Gulch Creek delta and the three Pine Gulch Creek Valleys have the warmest, sunniest climate, the best soil in Bolinas and a fairly abundant water supply. They have the potential of becoming the Bolinas "Breadbasket." . . . This Community Plan supports all public and private attempts to ensure continued agricultural use of the land. [page 33]

Gospel Flat (Pine Gulch Creek delta): this area lies along the West shore of the Bolinas Lagoon running from the intersection of the Bolinas Olema Road with Horseshoe Hill Rd. south to and including Francisco Mesa and west to the foot of the Bolinas Mesa. Present uses include horse and cattle grazing, small farming, a small earth moving and grading contractor, a nursery, the Bolinas-Stinson School, the Christian Science Church, and about 10 residences, some of which house the operators of the above listed activities. The soils of the Pine Gulch Creek delta were rated 2 on a 1969 U.S. Soil Conservation Service survey on a scale of 1-8 (1 being the best). . . . The weather is sunnier and less windy than most of the Peninsula, and the low elevation, high water table, and proximity to Pine Gulch Creek give it important agricultural potential as is shown by its present and past use. Recommended zoning is A-10 (10 acre minimum lot size). [page 39]

The Community Plan clearly supports agricultural uses without reservation for the area that includes the Weber lagoon parcels.

4. Bolinas Lagoon Resource Management Plan. 1981, Madrone Associates.

This report, prepared for the Marin County Parks and Recreation Department, includes the following relevant statements (emphasis added):

Upland grassland feeding areas, including but not limited to the Bolinas Mesa and the Henry Wilkins [Weber] property, should be protected against any significant disruption of habitat values. Efforts should be made to secure the Wilkins [Weber] property in the Nature Preserve for permanent open space and eliminate inappropriate uses, such as hunting. . . . Numerous water birds feed and roost in these areas, especially during the winter, when high tides and heavy rains reduce the area of available mudflat on the Lagoon. The Henry Wilkins property is the only remaining hightide roost for shorebirds and waterfowl in Bolinas Lagoon which is protected from significant disturbance, and is the only habitat adjacent to the Lagoon for snipe (*Capella gallinago*), supporting a population of about 100 individuals. In addition, it is one of the few locations around the Lagoon where there is a transition from salt marsh to freshwater marsh habitats, adding to the total diversity of habitat areas around the Lagoon. However, the continued quality of the habitats depends on the adherence to conditions of the grazing contract, which presents potential conflicts with habitat management and water quality. [p. 30]

The first underlined statement is simply not true, nor was it when it were written (1981). As the earlier PRBO report and Community Plan recognized, that description also applied to the County and Buell properties just to the south of the Weber property. Since 1981, however, grazing has ended on the County and Buell properties. Those two properties are no longer used as "hightide roosts for shorebirds and waterfowl" because the vegetation is now too high (see the 1st quote from the Community Plan). The Weber property, on the other hand, is used heavily as a hightide and winter-storm roost and feeding area for wintering shorebirds and waterfowl.

5. Marin County Local Coastal Program, Unit 1. 1981, County of Marin.

The LCP includes the following relevant statements (emphasis added):

[Two remaining areas of land use resource conflict.] One concerns the marshy pastures south of the Pine Gulch Creek Delta. These lands have been identified by Page and Stenzel (1975) as important feeding and resting areas for shorebirds. A portion of this land has been acquired by the County, but the section adjacent to the Bolinas-Olema Road is in private ownership. The land is zoned A-10, but none of the parcels are ten acres in size. Homes are found on several of the parcels. The land known as the "Wilkins" [Weber] parcel contains the majority of the significant marsh areas. Under the existing zoning, one home could be built on this land. The value of the land to shorebirds could be greatly reduced if current agricultural uses were to change. [p. 24]

The eleven-acre Henry Wilkins property . . . is the only remaining hightide roost for shorebirds and water fowl in Bolinas Lagoon that is protected from significant disturbance, and is the only habitat adjacent to the Lagoon for snipe (*Capella gallinago*), with a population of about 100 individuals. In addition, it is one of the few locations around the lagoon where there is a transition from salt marsh to freshwater marsh habitats and thereby adds to the total diversity of habitat areas around the Lagoon. In order to protect the wetland and upland habitat values of the parcel, changes in existing grazing use of the site shall be preceded by detailed environmental investigation and shall assure protection of the habitat values of the site in accordance with other policies in the LCP. Public acquisition of the site is encouraged.

The first LCP quote is entirely correct. The second LCP quote repeats the mistaken habitat characterization from the Bolinas Lagoon Resource Management Plan and botches the "change of use" language by substituting "grazing" for "agricultural."

Correspondence



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

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reply to: P.O. Box 12867 Oakland, CA 94604-2867

tel 510.451.3300
fax 510.451.1527
www.fablaw.com

Barry H. Epstein, Chair
Environment, Natural Resources
and Energy Group

Writer's Email Address
bepstein@fablaw.com

RECEIVED
APR 29 2003
CALIFORNIA
COASTAL COMMISSION

April 28, 2003

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

**Re: Appeal By Tomales Bay Association of
Marin County Coastal Permit No. CP-01-3
APN 195-290-13, Warren Weber, Bolinas, Marin County**

Dear Ms. Borchelt:

On January 28, 2003, the Marin County Board of Supervisors approved Mr. Weber's application for a Coastal Permit to remove approximately 153 cubic yards of sidecast soil material from the south and east perimeter levees on APN 195-290-13, together with the removal of additional sidecast material and rock debris along the north ditch, and the restoration and maintenance of two pre-existing interior ditches that convey water from across the Olema Bolinas Road through that parcel. The removed soil material will be off-hauled to upland farm property and spread on APN 188-170-45 and APN 193-010-19. (These above-mentioned restoration activities are collectively referred to as the "County Coastal Permit Restoration Project" or the "Project.")

The Coastal Permit has been appealed to the Commission by the Tomales Bay Association ("TBA"), which previously unsuccessfully appealed to the County Board of Supervisors the County Zoning Administrator's and Planning Commission's determinations to grant the Coastal Permit. The purpose of this letter is to briefly set forth reasons in support of a determination by the Commission that there is no substantial issue warranting consideration of the Appeal.

Because the TBA's Appeal is of the granting of a permit, the only proper grounds for an appeal are that the County Coastal Permit Restoration Project approved in the Coastal Permit does not conform to the standards set forth in the County's LCP or the public access policies of the Coastal Act. (Public Resources Code §30603 and 30625(b)(2)).

Given that, the TBA's Appeal exceeds the limited scope of permissible appeal grounds *in its entirety* and fails to even purport to assert any way in which the proposed County Coastal Permit Restoration Project (removal of sidecast soil material etc.) violates the County's LCP. Instead, the Appeal cites nonexistent provisions of the Coastal Act (provisions that were repealed in

1991) and raises numerous issues (such as the farming land use on other portions of the property not involved in the Project and the interpretation of the Settlement Agreement between Mr. Weber and the U.S. Army Corps of Engineers) that are not before the Commission because they are not part of the County Coastal Permit Restoration Project.

Specifically, the Appeal states three grounds of appeal: (1) that the Project fails to protect public views; (2) that the Project may significantly alter existing landforms; and (3) that the Project involves a change in the intensity and type of land use. (TBA Appeal, Page 4.) In fact, the first two grounds are not allowable bases for an appeal of the County Permit (these grounds were eliminated by the Legislature in 1991) and the third ground is obviously inapplicable in light of the limited scope of the Project that was permitted.

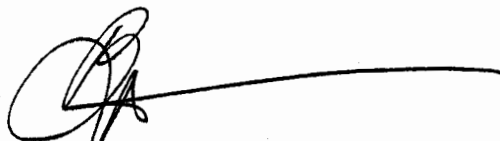
Indeed, keeping in mind that the Project involves *only* the *restoration* of certain areas of APN 195-290-13, it is hard to imagine how the County Permit approved by the Board of Supervisors could possibly violate the LCP. It is also more than a little strange that an organization devoted to environmental protection would seek to impede a restoration project by repeatedly appealing the permit needed to conduct the restoration work.

The County Board of Supervisor's rejected the TBA's off-point arguments, specifically noting that TBA's objections were "not relevant to the proposed project, which is limited to the removal of fill material," that TBA's allegation that land use "violations exist on the subject property ... are handled through the Code Enforcement process [and that] [c]urrently, there are no land use violations pending," and that the purpose of the Project "is not intended to address broader policy issues concerning the extent to which the County should regulate the agricultural use of the property." (Marin County Board of Supervisor's Resolution No. 2003-07)

Similarly, given the narrow grounds for authorized appeals of this type of Coastal Permit, and given that the appealed Coastal Permit is only for a restoration project, we believe that there is no basis for the Commission to find any substantial issue within its appeal jurisdiction.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY LLP

A handwritten signature in black ink, appearing to be "Barry H. Epstein", with a long horizontal line extending to the right.

Barry H. Epstein

cc: Warren Weber
Carol Whitmire

John O'Connor
PO Box 116
Bolinas CA. 94924

March 17, 2003

California Coastal Commission
% Chris Kern & Sarah Borchelt
45 Fremont St.
San Francisco CA. 94105

RECEIVED

MAR 21 2003

CALIFORNIA
COASTAL COMMISSION

RE: Commission Appeal No. A-2-MAR-03-008

In Support of the Tomales Bay Association Appeal of the Marin County Board of Supervisors approval of W. Weber Coastal and Tidelands Permits on Marin County parcels APN #195-209 13 & 24

Dear Commissioners:

Beginning in 1996 others and myself began contacting Marin County Community Development Agency with letters and phone calls questioning the legality of the dikes and other activities on the Wilkins/Weber wetland property adjacent to the Bolinas Lagoon Open Space property (Attachments 1 & 2). The CDA did not respond to our inquiries. We then contacted the California Coastal Commission and the Army Corps of Engineers with the same questions. After investigating the site, CCC red tagged the one thousand foot game fence and the ACOE challenged the dikes with the Clean Water Act. Except for the dikes, other violations have remained unchallenged by Marin County.

There are two projects on the property, among others, that deserve immediate attention in addition to the dikes and they are the game fence, and the irrigation piping system including the water source and the amounts of water used. Neither of these activities is categorically excluded from the coastal permitting process because these activities occur between Olema-Bolinas Rd. and Bolinas Lagoon (Attachment 3). Both of these activities, among others, have been reported to CDA many times. The six foot fence on top of a three foot dike impairing a special view field and wildlife movement, and the development of the irrigation system that adversely impacts sensitive environmental habitat should not be allowed without community input and coastal project permits, if allowable following an environmental assessment (Attachments 1 & 2).

Although reported specifically to CDA, existence of the Pine Gulch Creek water diversion supporting the irrigation system has not been acknowledged by Marin County. Water from Pine Gulch Creek, which under California water rights law is required to be diverted for riparian use only, is being piped through a county culvert under Olema-Bolinas Road to irrigate this non-riparian land. The added acreage of irrigated farming and the appreciable amount of water diverted from a struggling salmon and steelhead stream, Pine Gulch Creek, would be addressed in the required, but yet to be performed detailed environmental assessment. An environmental assessment is called for prior to any change of use that would affect the habitat conditions existing on this land prior to 1981. The change of use that has occurred on this wetland from essentially lying fallow for twenty five years, to intensive row-cropping must be assessed to determine the impacts on Pine Gulch Creek, and the wetland and the upland habitats of parcels #13 & 24 (Attachments 1 & 2).

I received letters from the State Water Resources Control Board, Water Rights Division in response to the January 9, 1998 complaint I filed with them concerning the riparian water being diverted to non-riparian parcels #13 and 24. One of their letters stated that they performed a thorough investigation which concluded in, absent any physical evidence, that the water questioned was ground water, although they did not look at any of the piping. A later letter from the Board stated that they had no way of checking the diversion's piping that I had witnessed (Attachment 4) being installed several years after the installation of the tile drain system on parcel # 193-010-19 and therefore concluded their investigation (Attachment 5). The Division considers the complaint closed until they can be provided more information sufficient to reopen the investigation.

There are two water sources irrigating parcels #13 & 24, a field drainage collection system in parcel #193-010-19 that the Division submitted findings on and the Pine Gulch Creek diversion that has not been investigated. The Division incorrectly suggested that I was only talking about the field drainage system in our discussion.

I believe a coastal permit for development of an irrigation system, if allowed in this location, on land which previously had no water source for agricultural development would certainly require the applicant to submit a detailed plan of the irrigation system to include: any off site water source, impacts to the water source, off site storage capacity, estimated daily/weekly water use, etc.

Sincerely,



John O'Connor

Cc/ Brian Crawford, CDA

Ed Anton, Division Chief, SWRCB, Water Rights Division

Attachments included with this letter.

1. December 2, 1997, letter to Marin County Community Development Agency Director Mark Riesenfeld describing possible land use violations on parcels 13 & 24.
2. January 1, 1999, letter to Marin County Community Development Agency planner Andrea Fox describing possible land use violations on parcels 13 & 24.
3. Marin County Coastal Permit Notice of Exclusion form describing water and fence permit requirements in the different Marin County coastal zones, pages 1 & 2. Fences and water systems are clearly not categorically excluded from permits on this property according to law and as stated on this permit form and found in Marin County Zoning Code Title 22 and the LCP Unit 1.
4. My signed statement to Marin County Planning Commission of observing the installation of the water pipe that conducts water from Pine Gulch Creek and explaining the riparian diversion piping.
5. March 1, 1999, 6 page Memorandum, Division of Water Rights-Files 262.0 (21-06-01)

2.062

RECEIVED

MAR 21 2003

CALIFORNIA
COASTAL COMMISSION

Dec. 2, 1997

John O'Connor
5955 Shoreline Hwy.
Bollinas Ca. 94924

copy

Mark Riesenfeld
Marin County Community Development Agency. Rm. 328
3501 Civic Center Drive
San Rafael , Ca. 94903

Re: Land use on the east side of Dipsea Rd. in the Seadrift development and on the Weber property APN # 195-290 13 & 24.

Dear Mark:

As per our conversation Nov. 18, 1997. The long term preservation of the lots on the east side of Dipsea Rd. is a priority. These lots are protected in perpetuity in the deeds* dedicated to Marin County which restrict development and allow limited public access. The transfer to and acceptance of these dedications by Marin County Open Space district, as we discussed, could achieve this goal. We need and urge your cooperation.

Bollinas Lagoon has recently been declared a "national treasure " and has been nominated as a Ramsar Site of international importance. The protection of the integrity of the Bollinas Lagoon shoreline deserves an extra effort from all of us.

Regarding the other topic discussed, the Weber property (referred to as Wilkins prop. in title 22), you indicated that you would assign a planner to keep abreast of the Corps of Engineers investigation into the violations of Section 404 of the Clean Water Act and the conversion of adjacent wetlands with dikes, ditches and drainage structures.

Here listed for the assigned planner's attention are possible violations of Title 22 of the Marin County zoning code:

22.56.023	Coastal zone to be consistent with the Coastal act.
22.56.030 C4&5	Change of intensity of land and water use.
22.56.040 & B	Project permit & tidelands permit. chapter 22.77.
22.56.055 B & C	Significant alteration of land forms.
22.56.060	Coastal project permit.
22.56.070 A	Tideland permit, excavation permit.
22.56.090	Tideland permit, public trust lands permit.
22.56.130 A	Water diversion permit.
C	Grading and excavating.
G	Wetland protection.
G1	Water diversions.

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G4	Wetland buffer area.
G5	Diking, filling and dredging.
G5d	Wetland buffer area section 30233 Coastal act of 1976.
G5f	Diking and filling.
G6	Detailed environmental assessment Wilkins property .
H	Fences.
H2	Fences.
I	Wildlife habitat protection.
I1	Vegetation.
J	Protection of native plants.

22.77 Tidelands permit.

The ACOE has been using for its investigation aerals of this property for the years 1978, 84,85,86, 88 and 89, as well as lateral aerals from low altitude and ground level photos that give a dated history of the degradation of this wetland and salt marsh.

Please tell me the assigned planner's name at your earliest convenience so these photos can be made available to the proper person. Marin Community Development Agency should review this evidence in reference to the above listed possible violations. Thank you for the opportunity to meet with you on these matters.

Sincerely,

John O'Connor

*Official records County of Marin 86-015532 lot 205 Dipsea Rd.
87-17154 parcel C Dipsea Rd.
87-17151 Walla Vista

c: Steve Kinsey--Supervisor
Liz Varnhagen--Corps of Engineers
Bill VanBeckum--California Coastal Comm.
Nancy Woo--EPA
Liz Carolan--Regional Water Quality Control Bd.
Ron Miska--MCOSD-BLTAC

Copy

John O'Connor
PO Box 116
Bolin, Ca. 94924

Jan. 1, 1999

Andrea Fox
Marin County Community Development Agency

Re: Conversion of 11 acre wetland on Warren Weber's Bolinas Star Route Farms. AP# 195-290-13 & 24

Dear Andrea:

As you may know Warren Weber and the Army Corps of Engineers (COE) have reached an agreement to remove dirt from dikes that were built in violation of Section 404 of the Clean Water Act on the above described Bolinas Lagoon wetlands. The agreement is conditioned on the requirement that within 180 days other agencies that have regulatory control on this property provide in writing that there are no known pending violations pertaining to the property or activities under these agencies' laws and regulations and, that present activities will need no further authorization or permits from those agencies. The agreement also states that the COE will assist Weber in securing these determinations from the agencies.

Those of us who have brought this wetland conversion to the attention of the Marin County Community Development Agency, the California Coastal Commission, the COE, and the State Water Rights Board, are deeply concerned that if this agreement is accepted by the agencies then Marin County wetland protection by ordinance will be further diminished or lost by this precedent.

Agriculture land use exemptions are protected by County regulations. Below are two Marin County zoning regulations written specifically to protect the Wilkins (Weber) wetlands, both requiring an environmental assessment (investigation). One is from Title 22 Marin County Zoning Code, the other is from the Marin County Local Coastal Plan Unit 1. These regulations are followed by a list of specific Marin County regulations that must be addressed in the required environmental investigation.

From Title 22 the Marin County Zoning Code item 22.56.130-G-6:

"In order to protect the significant wetland and upland habitat value of that eleven-acre property known as the Henry Wilkins property (AP# 195-290-13 and 24) and any change in the density and type of use shall be preceded by a detailed environmental investigation and assessment of the resources of the site. No development or change of use which adversely impacts these values shall be permitted."

From Marin County Local Coastal Plan Unit 1, #17 page 27:

"The eleven acre Henry Wilkins property (assessors Parcel Numbers 195-290-13 and 24) is the only remaining hightide roost for shorebirds and water fowl in Bolinas Lagoon that is protected from significant disturbance, and is the only habitat adjacent to the lagoon for snipe (Capella gallinago), with a population of about 100 individuals. In addition, it is one of the few locations around the lagoon where there is a transition from salt marsh to freshwater marsh habitats and thereby adds to the total diversity of habitat areas around the lagoon. In order to protect the

wetland and upland habitat values of the parcel, changes in existing grazing use of the site shall be preceded by detailed environmental investigation and shall assure protection of the habitat values of the site in accordance with other policies in the LCP. Public acquisition of the site is encouraged.

Following are some of the regulations from Marin County Zoning Code Title 22 to be addressed in the required environmental investigation. Many of the items are also covered in the LCP Unit 1 Policies.

22.56.023	Coastal zone to be consistent with Coastal Act.
22.56.030 C4 & 5	Change in intensity of land and water use.
22.56.040 B	Tidelands permit, grading, excavating permit title 23.
22.56.055 B	Significant alteration of land forms.
22.56.060	Coastal project permit.
22.56.070 A	<u>Public hearing</u> , tideland and excavating permit.
22.56.090	Coastal public trust lands permit.
22.56.095	Permit issued if project conforms to requirements.
22.56.130 A	Adequate water supply.
C	Grading and excavating permit 150 cu. yds. or more.
G	Wetland protection.
G1	Water diversion.
G4	Wetland buffer area.
G5	Diking filling and dredging.
G5d	Wetland buffer area. Also sec.30233 of Coastal Act.
G5f	Diking and filling.
G6	Detailed environmental investigation and assessment.
I	Wildlife habitat protection.
I1	Vegetation.
J	Protection of native plants.
22.77.015	Tidelands permit for filling and excavating.

In closing, I request that Marin County Community Development Agency exercise their jurisdiction over this property and not conform to the terms of this agreement. I also request that the regulating laws of the Marin County Local Coastal Plan Unit 1, the Marin County Zoning Code Title 22, and the Coastal Act are carefully and publicly implemented.

Sincerely,

John O'Connor

cc: Supervisor Steve Kinsey

Marin County Community Development Agency

Alex Hinds, Director

COASTAL PERMIT NOTICE OF EXCLUSION

On _____, 20____, _____ applied for a permit to
(date) (applicant)

_____ (project description)
at _____, Assessor's Parcel # _____
(project location)

in Marin County. This application is for a development that is excluded from the coastal development permit requirements pursuant to:

- ☐ Categorical Exclusion Order E-81-2 (Unit I, Items I & II)
- ☐ Categorical Exclusion Order E-81-6 (Unit II, Items I through V)
- ☐ Categorical Exclusion Order E-82-6 (Units I & II, Items VI & VII Only)

I. AGRICULTURAL EXCLUSIONS

The following agricultural projects are categorically excluded when located: 1) on property zoned agricultural (C-ARP or C-APZ); and 2) outside the area bounded by the mean high tide line and the first public road paralleling the sea or 1/2 mile inland, whichever is less (See Categorical Exclusion Maps). Further, this exclusion shall not apply on lots immediately adjacent to the inland extent of any beach.

- ☐ 1. Barns, storage, equipment and other necessary buildings.
- ☐ 2. Dairy pollution project including collection, holding and disposal facilities.
- ☐ 3. Storage tanks and water distribution lines utilized for on-site, agriculturally-related activities.
- ☐ 4. Water impoundment projects not to exceed 10 acre feet, in canyons and drainage areas not identified as blue line streams on USGS 7 1/2 Minute Quad Sheets.
- ☐ 5. Electric utility lines.
- ☐ 6. New fencing for farm or ranch purposes, provided no solid fence designs are used.

Agriculture means the filling of the soil, the raising of crops, horticulture, viticulture, livestock, farming, dairying, and animal husbandry, including all uses customarily incidental and necessary thereto.

II. NON AGRICULTURAL EXCLUSIONS

The following non-agricultural projects are categorically excluded, except when located within tidelands, submerged lands, public trust lands or on lots immediately adjacent to the inland extent of any beach. (See Categorical Exclusion Maps)

- ☐ 1. On-site signs (as conditioned) advertising available services or products. An on-site sign is defined as an advertising structure which is located on the property or building occupied by the business, product or services advertised. Signs may not: exceed 25 square feet, use artificial lighting; be free-standing; exceed 15 feet in height; or exceed the height of the building.
- ☐ 2. Lot line adjustments not resulting in a change in density or the creation of new parcels.
- ☐ 3. Traffic control signing and minor roadway improvements (as conditioned) including:
 - a. Culvert replacement.
 - b. Guard rails, retaining walls.
 - c. Slope stability.
 - d. Signs for traffic control and guidance, including roadways markings and pavement delineation.
 - e. Drainage course maintenance and cleaning involving less than 50 cubic yards of excavation.

III. POINT REYES STATION SINGLE FAMILY RESIDENCES

The construction of a single family residence shall be excluded when:

- ☐ 1. The application is for a single family residence on a vacant lot located within the Community Expansion Area of the Point Reyes Station (excluded lots are shown on the Categorical Exclusion Maps), and
- ☐ 2. Marin County Planning staff has certified that the structure does not exceed the height of 24 feet above the average finished grade, and
- ☐ 3. The dwelling is set back at least 50 feet from any active fault trace (as shown on Alquist-Priolo Maps)

IV. POINT REYES STATION LAND DIVISION

Land Divisions (4 parcels or less) in the community of Point Reyes Station shall be excluded when:

- ☐ 1. The size of the parcels resulting from a division under this order shall be not less than the minimum acreage allowed for the zone district under the County Zoning Maps in effect at the time this order is adopted by the Coastal Commission (May 13, 1982), and
- ☐ 2. Either: The property to be divided has frontage on State Highway One and the applicant has recorded an irrevocable offer to dedicate to any public agency, or appropriate transportation agency or a private association approved by the Planning Commission, an easement consisting of a ten-foot automobile alternative transportation. The offer is irrevocable for a period of 20 years, binding successors and assigns of the applicant and/or landowner. Or: The parcel does not have frontage on State Highway One; and

On September 12, 2002 I testified before the Deputy Zoning Administrator regarding Warren T. Weber CP 01-03 and TP 01-01, as follows:

I, John O'Connor, the undersigned, state:

1 During the time of previous ownership there was no water on parcels 13 and 24. There is no evidence of an old well or a BPUD water service meter. The first attempt at supplying irrigation water for the property was a shallow well dug by Mr. Weber which was on parcel 13 adjacent to Bolinas Olema Road. This well was seldom used and now seems to have been abandoned. The next water source for irrigating the wetland was a cistern that collects water from a French drain that underlies and drains the east end of parcel 193-01-19 on the west side of Bolinas Olema Road across from parcels 13 and 24. Mr. Weber and his attorney Mr. Epstine described this water source as recycled riparian water. This water from the underground French drain to the cistern is being conducted to parcels 13 and 24 through a 4" pipe that goes under Bolinas Olema Road through a county culvert. A short time ago I checked with Marin County Public Works Dep't and at that time Mr. Weber did not have a county encroachment permit to install this four inch water pipe through a county culvert.

2 On the southern side of the French drain, cistern field which is parcel 193-01-19, there is a large buried pipe (it looked to be about 8 or 10 inches in diameter when I saw it being installed) that runs from west to east and conducts Pine Gulch Creek water to the cistern. Water from Pine Gulch Creek and water from the French drain are pumped from the cistern under Bolinas Olema road to irrigate Parcels 13 and 24. At the May 20, 2002 Marin County Planning Commission meeting concerning the parcels 13 and 24 Habitat Investigation Mr. Weber stated that he irrigates with Pine Gulch Creek water.

3 I filed a two part complaint with the State Water Rights Board. The first part stated that water from the French drain was tail water and was therefore riparian water agreeing with Mr. Weber and Mr. Estein's riparian description of the water. The Water Rights Board decided that water from the French drain was ground water and not riparian water and could be transported across the road to parcels 13 and 24. On the second part of my complaint the Water Rights Board's investigators did not have access to the

property other than a field check nor did they look into the cistern's plumbing or any other part of the Pine Gulch Creek water source system. The second part of the complaint, the diversion of riparian Pine Gulch Creek water to nonriparian land remains unaddressed and should be part of the coastal permit process.

From the Marin County Zoning Code Title 22 #22.56.030 C5. A change in the intensity and or use of water, or of access thereto, is a project and requires a coastal permit.

Also from Marin County Zoning Code title 22 #22.56.030 D. Pipe is a structure which is also considered a project and requires a coastal permit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of September, 2002, at Bolinas California.

JOHN O'CONNOR
Declarant

Memorandum

To: Files - 262.0 (21-06-01)

Date: March 1, 1999

Charles A. Rich

Charles A. Rich, Chief
Complaint Unit

From: DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject: ANALYSIS OF FEBRUARY 23, 1999 LETTER FROM JOHN O'CONNOR
REGARDING HIS COMPLAINT AGAINST WARREN WEBER

Mr. John O'Connor submitted a letter dated February 23, 1999 to Mr. Harry Schueller, Chief of the Division of Water Rights (Division). This letter objects to the handling of Mr. O'Connor's complaint against Mr. Warren Weber. The following is a point-by-point analysis of Mr. O'Connor's letter:

1. Page 1 - ¶2: Mr. O'Connor alleges that a physical examination was not performed in order to substantiate the conclusions reached by Division staff.

Division staff spent several hours on November 3, 1998 inspecting the diversion and use of water on all of Mr. Weber's lands in the vicinity of Pine Gulch Creek. The two points of diversion on the creek, the regulatory reservoir, the cistern located in the southeast corner of Parcel #19, and the lands located on Parcels #45, #19, and #13 were all inspected in as much detail as possible. Division staff are not aware of any way to conduct a more detailed or thorough inspection of Mr. Weber's operations with the resources currently available to staff.

Division staff met with Mr. O'Connor the same afternoon to discuss the inspection. Mr. O'Connor stated at that time that he believed a pipeline ran between the regulatory reservoir and the previously mentioned cistern. Staff could find no evidence of an inlet for such a pipeline in the reservoir. The reservoir was partially full so staff could not provide absolute verification that such a connection does not exist. The only method of doing so would

appear to be to stop the diversion of water into the reservoir; pump out all the water possible with the portable pump stationed at the reservoir; and then allow the remainder of the water to either seep into the ground or evaporate. This could take quite some time, if at all possible, during periods when use of the reservoir is not required (spring and early summer). This task would be easier to accomplish during the late summer but would either result in adverse impacts to Mr. Weber's operations if all diversions from the creek were terminated or could possibly result in adverse impacts to public trust resources if diversion through the regulatory reservoir were forgone in favor of diversions at higher rates directly from the creek to the fields. Since evidence is available to demonstrate that the cistern is fed by a tile drainage system, staff do not believe that further investigative activities that could adversely impact the use of water by either Mr. Weber or instream resources is justified.

2. Page 1 - ¶2: Mr. O'Connor states that Mr. Weber has admitted using "recycled" water on Parcels #13 and #24 that are most likely not riparian to Pine Gulch Creek.

Mr. Weber's attorney, Mr. Barry Epstein, makes the following statements in his "Answer to Complaint":

"Contrary to the specific allegation in the Complaint, water diverted from Pine Gulch Creek is not 'conduct[ed]'
to a 'pumping station cistern' and applied to Parcel No. -
13. Only groundwater and recycled water are used on
Parcel No. -13." [Page 3; Lines 11-14]

"Further, the use of extracted groundwater and recycled
water on Parcel No. -13 is proper and requires no permit,
approval, or filing with the SWRCB." [Page 4; Lines 14-16]

These are the only references to "recycled" water of which Division staff are aware. At no time during the inspection did Mr. Weber or his farm manager make any reference to the term "recycled" water. Division staff are not certain of the exact reference Mr. Epstein was making in his response. While, the tile drain located under the field on Parcel #19 appears to collect mainly deep percolation from winter precipitation and percolating groundwater that originates on the upgradient plateau, any applied irrigation water from Pine Gulch Creek that results in deep percolation would also be collected in the tile drain. The "deep percolation" may be the water to which

Mr. Epstein was referring. However, Division staff believe that any "deep percolation" water has become part of the percolating groundwater and, as such, is not within the permitting authority of the State Water Resources Control Board (SWRCB). Division staff also believe that very little of the applied irrigation water actually becomes "deep percolation". In order to generate this condition, an amount of water much larger than actually required to meet the evapotranspiration needs of the crops would have to be applied. This would cause the field to become unworkable and cost Mr. Weber significant yield. Consequently, there is considerable incentive for Mr. Weber to try and minimize "deep percolation" and staff do not believe that this is a significant component of the water balance on Mr. Weber's farm.

3. Page 1 - ¶2: Mr. O'Connor alleges that staff did not investigate an 8-inch or larger pipe that brings water from the west end of Parcel #19 to the cistern.

Mr. Weber showed staff an aerial photo of his ranch taken just after the tile drain system was installed. This photo clearly depicts the diagonally oriented tiles and the collection line that extends along the southerly side of the irrigated field on Parcel #19 and terminates at the cistern. Based on an extensive discussion with Mr. O'Connor on November 3, 1998, Division staff understand that the collection pipe is the pipeline with which Mr. O'Connor is concerned.

Staff are only aware of two ways of conducting a more detailed investigation of this pipeline. The first would be to run an underwater camera up the line to see if it connects with the regulatory reservoir. The Division does not have access to this type of equipment. Most such cameras utilized to check sewers are pulled from manhole to manhole. Since this pipeline appears to deadend near the western end of this field, the camera cannot be pulled through and a more exotic and expensive setup would have to be obtained to inspect the inside of this pipeline. The Division has no funding for this purpose.

The second method would involve digging up the pipeline. This would be even more expensive and detrimental to Mr. Weber's operations. He would probably oppose such activity and I doubt the Division could justify any type of order to require him to allow us to undertake this activity; especially in view of the fact that all available evidence suggests that the pipeline is

merely a collection line for the tile system. In addition, the Division has no funding for this activity.

4. Page 1 - ¶3: The staff report of investigation states that Mr. Weber has denied using water from Pine Gulch Creek on Parcels #13 and #24. Mr. O'Connor states that *"this is directly contrary to the written and verbal explanations given by Mr. Weber and his attorney"*.

Division staff are not aware of any verbal or written explanations from Mr. Weber or his attorney providing any indication that any water from Pine Gulch Creek are used on Parcels #13 or #24 -- with the possible exception of "recycled" water discussed above. All available evidence indicates that the limited irrigation operations on these parcels are supplied with percolating groundwater from the cistern located on Parcel #19 and from the shallow well located on Parcel #13.

5. Page 1 - Last ¶:

The point of this paragraph is not clear. Apparently, Mr. O'Connor is attempting to develop an argument that the cistern is not capable of acquiring sufficient water from the groundwater to provide irrigation water for all the lands that might be irrigated on Parcels #13 and #24 and, therefore, he must have a connection with the Pine Creek Gulch diversion system. The computations for water demand are based on irrigation operations for the upper field located on Parcel #19. The soils on this field appeared to be more coarse than those contained on the lower fields on Parcel #13. If so, the amount of water that could be applied to the lower fields without causing excessive waterlogging would probably be less than 1-inch per application. An assumption is also made that the field is irrigated each week. Considering the proximity of the field to the coast and the cool, humid conditions encountered, this would seem to be excessive. Even if Mr. O'Connor's numbers are correct, a cistern that is connected to an extensive tile drain system that draws from the groundwater should be capable of producing significant quantities of water -- possibly even more water than would be available from the creek during the summer, low-flow period.

6. Page 2 - ¶2:

Again, the point of this paragraph is not clear. Mr. O'Connor may be arguing that groundwater will move horizontally into the tile drains at the same rate that applied irrigation water will move vertically and, thus, more of the applied irrigation water will reach the tile drains. If the soil profile in the first 4-feet of the field is uniform¹, one could expect that vertical and horizontal permeabilities under saturated conditions are probably fairly consistent for coarse grained soils. However, while the groundwater connection with the tile drains is in a saturated state, the vertical movement of applied irrigation water is through the unsaturated (or vadose) zone. Accordingly, the vertical movement of water is hindered by soil moisture tension, vapor pressures, and plant uptake. In view of these considerations, staff's conclusion that the cistern is supplied from the percolating groundwater is quite reasonable.

7. Page 2 - Last ¶: Mr. O'Connor argues that an accurate assessment of his complaint has not been made due to an alleged failure of staff to perform an adequate "physical investigation" and that discrepancies be reconciled before he considers his complaint withdrawn.

While staff may not fully understand Mr. Epstein's original characterization of "recycled" water, Mr. Weber and his farm manager, Mr. Gallagher, were exceedingly clear in their explanations of how irrigation operations are conducted. This is the reason why staff did not ask Mr. Epstein for clarification of his remarks.

inspecting staff were of the opinion at the conclusion of the inspection (and still are of the same opinion) that the physical facts surrounding Mr. Weber's diversion and use of water are quite clear. All of the available evidence indicates that water from Pine Gulch Creek is only utilized on riparian parcels and that the only water utilized on Parcels #13 and #24 is percolating groundwater obtained from either the cistern or the shallow well located on Parcel #13. Division staff are not aware of any real benefit that Mr. Weber might accrue by connecting the cistern directly to the regulatory

¹ - Since the field was dug up to lay the tile drains and Mr. Weber did not mention any special precautions to set aside a top layer of soil, the consistency of the 4-feet of soil excavated in this field is probably fairly uniform.

reservoir or by applying excess amounts of water to the field on Parcel #19 in order to produce deep percolation that would be collected by the tile drains. Withdrawal of Mr. O'Connor's complaint does not appear necessary as all of the available evidence indicates that the Division's dismissal or rejection of the complaint was and continues to be warranted.



SIERRA
CLUB
FOUNDED 1892

Sierra Club Marin Group
P.O. Box 3058, San Rafael, CA 94912
<http://sanfranciscobay.sierraclub.org/marin/>

June 10, 2003

The California Coastal Commission
Attn: Sarah Borchelt
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RECEIVED

JUN 12 2003

CALIFORNIA
COASTAL COMMISSION

Re: Commission Appeal No A-2-Mar-03-008

The Sierra Club Marin Group would like to re-affirm our position on this issue as noted in our letter of December 16, 1998 (attached) which reads in part: "The 11 acres of (Weber) wetlands . . . are both unique and scarce and of vital importance to Bolinas Lagoon and its wildlife. We recommend that the California Coastal Commission use its full regulatory authority to protect and restore this Bolinas Lagoon wetland."

Thank you for your consideration.

Sincerely,

Robert Wrubel, Co-Chair Conservation Committee



SIERRA CLUB MARIN GROUP

Marjorie Macris, Chair, Executive Committee
45 Wildomar St., Mill Valley, CA 94941
(415) 381-6667, fax (415) 381-6668, e-mail - mmacris@aol.com

December 16, 1998

Mr. Bob Merrill
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA, 94105

copy

RE: W. Weber Marin County 11 acre wetland property [AP 195-290 (13&14)]

Dear Mr. Merrill,

We understand you will be meeting with Mr. Weber in the near future to discuss possible California Coastal Act violations on this 11 acre parcel. We wish to emphasize that all efforts be made by your agency to ensure that the correct procedures for obtaining authorization for wetlands activities are adhered to and that the permitting process is followed with full public knowledge and opportunities for public input. To date a permit process has not been initiated and another year of possible adverse impacts to this unique Bolinas Lagoon wetland has gone by.

This year Bolinas Lagoon received world recognition when it was officially designated a Wetlands of International Importance under the 1971 Ramsar Convention on Wetlands. Bolinas Lagoon is the only wetlands in the western United States and one of the 17 in the United States to receive the Ramsar designation. To add to its importance the ACOE is now in the process of conducting a study of the Bolinas Lagoon and its watershed to determine the preferred alternative for a Bolinas Lagoon restoration project. The federal contribution of \$925,000 to support this study is to be matched by local cost sharing which has almost been achieved due to the \$500,000 contribution by the State of California.

The 11 acres of wetlands that will be the subject of your discussion with Mr. Weber are both unique and scarce and of vital importance to Bolinas Lagoon and its wildlife. We recommend that the California Coastal Commission use its full regulatory authority to protect and restore this Bolinas Lagoon wetland.

Please keep us advised and thank you for considering our comments.

cc/ Assemblywoman Kerry Mazzoni
Congresswoman Lynn Woolsey
Senator Barbara Boxer
Supervisor Steve Kinsey

Sincerely,

Marjorie Macris

Handwritten mark resembling a stylized 'N' or a signature.



MARIN CONSERVATION LEAGUE

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e-mail: mcl@marinconservationleague.org • web site: www.marinconservationleague.org

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MAY 14 2003

CALIFORNIA
COASTAL COMMISSION

May 9, 2003

California Coastal Commission
Attn: Sarah Borchelt
45 Fremont St. #2000
San Francisco, CA 94105-2219

Re: Weber application
Appeal Number: A-2-MAR-03-008

Dear Commissioners;

As part of your action on this matter, the Marin Conservation League urges that the Coastal Commission require resolution of any possible violations of Local Coastal Program policies that may exist on the portion of the Weber property in Bolinas that is included in the application/appeal.

Thank you for your consideration of our comment on this important matter.

Sincerely,

Jana Haehl
President



Recycled Paper

California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
MAR 05 2003
CALIFORNIA
COASTAL COMMISSION

Re: Tomales Bay Appeal of
Weber Coastal Permit No. 01-03 and Tidelands Permit No. 01-01

Dear Commissioners:

I am writing in support of the Tomales Bay Association's appeal of the Marin County Supervisor's decision and failure to protect the ecosystem of Bolinas Lagoon. While I support organic agriculture, it should not be at the expense of our vanishing wetlands. Please support the appeal of the Tomales Bay Association and uphold the Local Coastal Program. Thank you.

Sincerely,

Helena Russell

California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

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MAR 05 2003

CALIFORNIA
COASTAL COMMISSION

Re: Tomales Bay Appeal of
Weber Coastal Permit No. 01-03 and Tidelands Permit No. 01-01

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Sincerely,

Will Muir
Po Box 476
Inverness, CA, 94937

California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

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MAR 05 2003

CALIFORNIA
COASTAL COMMISSION

Re: Tomales Bay Appeal of
Weber Coastal Permit No. 01-03 and Tidelands Permit No. 01-01
Dear Commissioners

Dear Commissioners:

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Sincerely,

Kathleen O. McDermott

P.O. Box 563

Inverness CA 94937

P.S. This is an issue I feel so
strongly about. Please do your
proper job as a coastal commission,
& protect the Lagoon.

California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

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MAR 05 2003

CALIFORNIA
COASTAL COMMISSION

Re: Tomales Bay Appeal of
Weber Coastal Permit No. 01-03 and Tidelands Permit No. 01-01

Dear Commissioners:

I am writing in support of the Tomales Bay Association's appeal of the Marin County Supervisor's decision and failure to protect the ecosystem of Bolinas Lagoon. While I support organic agriculture, it should not be at the expense of our vanishing wetlands. Please support the appeal of the Tomales Bay Association and uphold the Local Coastal Program. Thank you.

Sincerely,

Ben Moseley
Box 679
Inverness CA 94937

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MAR 05 2003

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Tomales Bay Appeal of
Weber Coastal Permit No. 01-03 and Tidelands Permit No. 01-01
Dear Commissioners

Dear Commissioners:

I am writing in support of the Tomales Bay Association's appeal of the Marin County Supervisor's decision and failure to protect the ecosystem of Bolinas Lagoon. While I support organic agriculture, it should not be at the expense of our vanishing wetlands. Please support the appeal of the Tomales Bay Association and uphold the Local Coastal Program. Thank you.

Sincerely,

Vicki Leeds
120 Mera Rd.
Pt Reyes Sta., CA
94956



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Executive Director

FOUNDED IN 1980 BY

Ellen Straus &

Phyllis Faber

September 12, 2003

Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

Re: File No. 2-03-003 (Weber)

Dear Mr. Douglas:

I am writing to urge the staff and Commission to deny the Tomales Bay Association's appeal of the Marin County Board of Supervisor's conditional approval of the Weber Coastal Permit and Tidelands Permit application.

The portion of the property which is the subject of this project had been in agricultural use when Mr. Weber acquired the property. The project will not result in any expansion or change in use and would not result in any encroachment over tidelands.

The County does not require permits for a change from one agricultural use to another, and that there are no violations related to the current (or past) agricultural use of the property. We are especially concerned about the appellant's attempt to attack the agricultural use of the property through the County's and Commission's jurisdictions over particular aspects of the voluntary restoration agreement between the Army Corps of Engineers and the property owner that relate only to restoration activities and not to past or current agricultural uses on the property.

Agriculture is a vitally important land use in California coastal areas. Star Route Farms is a pioneering organic farm, and is an important contributor to Marin County's and the region's economy, culture and environment.

We urge the Commission to deny the appeal.

Thank you.

Sincerely,

Robert Berner
Executive Director

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SFP 17 2003

CALIFORNIA
COASTAL COMMISSION

**Margot Patterson Doss
120 Horseshoe Hill Road
Bollinas, CA, 94924-0220**

RECEIVED
SEP 09 2003

CALIFORNIA
COASTAL COMMISSION

Supervisor Steve Kinsey
County of Marin
Civic Center
San Rafael, CA 94903

March 10, 1999

Dear Steve,

This note is in support of Warren Weber's Star Route Farm.

The property owned by Warren Weber east of the Olema-Bollinas Road that has been questioned by opponents is zoned for agriculture and no zoning regulations have been violated.

The Bollinas Community Plan, designates these parcels as agricultural, and rightfully so. As planners envisioned, farming these parcels has kept the vegetation down thereby enhancing the environment for shorebirds. This is evidenced by their large numbers compared to the neighboring properties.

This is a textbook example of a symbiotic relationship between man and nature —pumpkin in the fall, a panoply of shorebirds in the spring.

I hope that the County will do all it can to preserve organic agriculture in our area.

Ever,

Margot

Burr Heneman . 35 Horseshoe Hill . Bolinas, California 94924

Phone 415.868.1460

burr@igc.org

Fax 415.868.1439

2 September 2003

Peter Douglas
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED

SEP 04 2003

CALIFORNIA
COASTAL COMMISSION

Dear Peter,

I am writing in support of Warren Weber and Star Route Farms.

I am addressing two issues: the question of whether Star Route Farms' activities constitute a change of use, and the habitat value of the Star Route Farms lagoon field for the purposes listed, first, in the Bolinas Community Plan and, subsequently, in the LCP. Attached to this letter are relevant excerpts from those two documents.

I'm writing as someone who was intimately involved in drafting the Bolinas Community Plan (1975) and the Bolinas Lagoon Management Plan Update (1996). I am a former executive director of the Point Reyes Bird Observatory. For about 25 years, I have been either a representative or an alternate on the county's Bolinas Lagoon Technical Advisory Committee.

1. Change of use?

The Bolinas Community Plan was the origin of the "change of use" language in regard to the Star Route Farms lagoon field and some adjacent parcels. Those of us who wrote the Community Plan considered "change of use" only to refer to a change from agriculture to development. That's what we had in mind because that's how the County told us they used that term: a change from one zoned use to another. There was no County "grazing" zoning, nor a "cultivated agricultural" zoning. Just "agricultural" zoning. So the plan proposed that "an environmental impact report be required on projects that change the use of existing shorebird winter feeding lands" (page 29). There's no mention of grazing. Other community plan excerpts attached show the strong support for agriculture of various types for the Pine Gulch Creek Delta properties, which include much of Star Route Farm.

Warren Weber began to cultivate his lagoon field only a few months after several Bolinas residents had put hard work in on drafting the LCP (and the 1981 Bolinas Lagoon

Resource Management Plan), yet no one, including the drafters of those planning documents, raised an issue about what Warren was doing with the County. Why? Because none of us considered it to be a change of use. We welcomed the change, in part because we saw it as implementation of a Community Plan goal, and in part because there were some problems with the grazing operation that the shift to cultivation solved.

Why does the LCP say "if current agricultural uses were to change" on page 24 and "changes in existing grazing use" on page 27? The explanation is straightforward: inconsistent and sloppy re-drafting of the Community Plan wording quoted above.

I'm sure you can imagine what happens if the Coastal Commission starts saying that changing from grazing to row crops is a change of use that triggers various reviews.

2. Habitat value

For better or worse, both the Community Plan and the LCP focus entirely on shorebird use of Warren's lagoon parcels and other nearby parcels during winter storms and extreme high tide events. (The Community plan mentions several species of shorebirds, including snipe. The LCP mentions shorebirds, generally, and snipe specifically.) Presumably, shorebird use of those parcels should be of interest.

I have done storm and high-water event bird censuses of Warren's lagoon field several times over the past four years. Up to 1,200 shorebirds were on those parcels during some censuses. Hundreds of shorebirds are routinely present during high-water events. Those numbers compare favorably with the censuses of those parcels conducted by Gary Page and Lynne Stenzel of PRBO in the early 1970s. In addition, wintering snipe still use Warren's lagoon field.

The real change of use has occurred on the parcels south of Warren's lagoon field, those owned by the County and the Buells. Those parcels are no longer grazed, and the vegetation on them is so tall that shorebirds (with the exception of snipe) can no longer use those parcels. Perhaps the Coastal Commission should require "a detailed environmental investigation" of the change of use on the County and Buell parcels.

Regards,

A handwritten signature in dark ink, appearing to read "B. Buell". The signature is fluid and cursive, with a large initial "B" and a trailing "Buell".

Documentary History of Policy Related to the Weber Property (Prepared by Burr Heneman, August, 2003)

1. Bolinas Lagoon Plan. 1972, County of Marin

This plan, approved by the State Lands Commission, fulfilled the County's obligation under legislation passed in 1969 granting Bolinas Lagoon lands to the County. The plan does not mention the Weber (formerly Wilins) property or adjacent properties, and makes no specific recommendations related to privately owned property around the lagoon.

2. Aspects of the Ecology of Shorebirds on Bolinas Lagoon. 1975, Gary Page and Lynne Stenzel, PRBO.

This report to the Marin County Department of Parks and Recreation summarized and interpreted four years of censuses and studies of feeding ecology of shorebirds on the lagoon. It includes the following relevant statements (emphasis added):

Shorebirds used several areas other than the tidal flat for feeding and roosting. These areas included the estuary's salt marsh (located primarily on Kent Island and the Pine Gulch Creek delta), the fish ponds and marshy pastures adjacent to the Pine Gulch Creek salt marsh, the Seadrift sand spit (particularly the tip), intertidal areas of the open coast, and pastures near the fire station on Bolinas mesa. . . . Several species of shorebirds fed or roosted at the fish ponds and adjacent marshy pastures (area J, Fig. 1). [p. 34]

Bolinas Lagoon does not totally support the entire shorebird population that occurs there. The adjacent open coast, including Duxbury Reef, and pastures near and adjacent to Bolinas Lagoon contribute resources for some species. It is the combined resources of all the areas that allows the establishment of the particular shorebird population in the estuary-open coast-upland area. [p. 78]

Area J of Figure 1, referred to above, includes the Weber property and several other properties. The PRBO report, on which all subsequent references is based, makes it clear that there were several properties south of the Pine Gulch Creek delta that were important for shorebirds.

3. Bolinas Community Plan. 1975, County of Marin and Bolinas Planning Group.

The Bolinas Community Plan includes the following relevant statements (emphasis and bracketed information added):

Certain grassland areas marked on the habitat map on which water stands during the winter are surprisingly important to shorebirds wintering on the Lagoon. Gary Page and Lynne Stenzel, who are completing a three-year study of the Lagoon for the Point Reyes Bird Observatory, have reported that the results of 16 censuses show shorebirds . . . use Area 1 [pastures on the Bolinas mesa], and Area 2 [which includes the Wilkins/Weber and several adjacent properties] is used by Killdeer, Common Snipe, Willet, Marbled Godwit, Least Sandpiper, Greater Yellowlegs, and Long- and Short-billed Dowitchers. It is clear that the shorebirds feed in these pastures when suitable habitat on Bolinas Lagoon is unavailable, and at times substantial percentages of the Lagoon population are found there. . . . Grazing seems to improve these areas as shorebird feeding habitat since tall vegetation obstructs movements of these feeding birds. [p. 79]

It has been determined that many of the grassland areas on the Peninsula are necessary upland feeding areas for several species of shorebirds that winter on the Lagoon. The Plan

proposes an environmental impact report be required on projects that change the use of existing shorebird winter feeding lands. [p. 29]

The second quote above does not say existing *grazing* use because we were only concerned, in drafting the Community Plan, about real change of use — from agriculture to development. The first quote makes it clear why shorebirds no longer use the fields south of the Weber parcels because the vegetation is no longer kept short enough.

The open lands to the north and east of the Gridded Mesa, the Francisco Mesa bordering downtown to the north, the Pine Gulch Creek delta, and the three small valleys north along Pine Gulch Creek are Bolinas' main agricultural lands. The lands to the north and west are used for cattle grazing (although this may change to crop growing with the finish of the BCPUD's sewerage resource system). The Pine Gulch Creek delta and the three Pine Gulch Creek Valleys have the warmest, sunniest climate, the best soil in Bolinas and a fairly abundant water supply. They have the potential of becoming the Bolinas "Breadbasket." This Community Plan supports all public and private attempts to ensure continued agricultural use of the land. [page 33]

Gospel Flat (Pine Gulch Creek delta): this area lies along the West shore of the Bolinas Lagoon running from the intersection of the Bolinas Olema Road with Horseshoe Hill Rd. south to and including Francisco Mesa and west to the foot of the Bolinas Mesa. Present uses include horse and cattle grazing, small farming, a small earth moving and grading contractor, a nursery, the Bolinas-Stinson School, the Christian Science Church, and about 10 residences, some of which house the operators of the above listed activities. The soils of the Pine Gulch Creek delta were rated 2 on a 1969 U.S. Soil Conservation Service survey on a scale of 1-8 (1 being the best). . . . The weather is sunnier and less windy than most of the Peninsula, and the low elevation, high water table, and proximity to Pine Gulch Creek give it important agricultural potential as is shown by its present and past use. Recommended zoning is A-10 (10 acre minimum lot size). [page 39]

The Community Plan clearly supports agricultural uses without reservation for the area that includes the Weber lagoon parcels.

4. Bolinas Lagoon Resource Management Plan. 1981, Madrone Associates.

This report, prepared for the Marin County Parks and Recreation Department, includes the following relevant statements (emphasis added):

Upland grassland feeding areas, including but not limited to the Bolinas Mesa and the Henry Wilkins [Weber] property, should be protected against any significant disruption of habitat values. Efforts should be made to secure the Wilkins [Weber] property in the Nature Preserve for permanent open space and eliminate inappropriate uses, such as hunting. . . . Numerous water birds feed and roost in these areas, especially during the winter, when high tides and heavy rains reduce the area of available mudflat on the Lagoon. The Henry Wilkins property is the only remaining hightide roost for shorebirds and waterfowl in Bolinas Lagoon which is protected from significant disturbance, and is the only habitat adjacent to the Lagoon for snipe (*Capella gallinago*), supporting a population of about 100 individuals. In addition, it is one of the few locations around the Lagoon where there is a transition from salt marsh to freshwater marsh habitats, adding to the total diversity of habitat areas around the Lagoon. However, the continued quality of the habitats depends on the adherence to conditions of the grazing contract, which presents potential conflicts with habitat management and water quality. [p. 30]

The first underlined statement is simply not true, nor was it when it were written (1981). As the earlier PRBO report and Community Plan recognized, that description also applied to the County and Buell properties just to the south of the Weber property. Since 1981, however, grazing has ended on the County and Buell properties. Those two properties are no longer used as "hightide roosts for shorebirds and waterfowl" because the vegetation is now too high (see the 1st quote from the Community Plan). The Weber property, on the other hand, is used heavily as a hightide and winter-storm roost and feeding area for wintering shorebirds and waterfowl.

5. Marin County Local Coastal Program, Unit 1. 1981, County of Marin.

The LCP includes the following relevant statements (emphasis added):

[Two remaining areas of land use resource conflict.] One concerns the marshy pastures south of the Pine Gulch Creek Delta. These lands have been identified by Page and Stenzel (1975) as important feeding and resting areas for shorebirds. A portion of this land has been acquired by the County, but the section adjacent to the Bolinas-Olema Road is in private ownership. The land is zoned A-10, but none of the parcels are ten acres in size. Homes are found on several of the parcels. The land known as the "Wilkins" [Weber] parcel contains the majority of the significant marsh areas. Under the existing zoning, one home could be built on this land. The value of the land to shorebirds could be greatly reduced if current agricultural uses were to change. [p. 24]

The eleven-acre Henry Wilkins property . . . is the only remaining hightide roost for shorebirds and water fowl in Bolinas Lagoon that is protected from significant disturbance, and is the only habitat adjacent to the Lagoon for snipe (*Capella gallinago*), with a population of about 100 individuals. In addition, it is one of the few locations around the lagoon where there is a transition from salt marsh to freshwater marsh habitats and thereby adds to the total diversity of habitat areas around the Lagoon. In order to protect the wetland and upland habitat values of the parcel, changes in existing grazing use of the site shall be preceded by detailed environmental investigation and shall assure protection of the habitat values of the site in accordance with other policies in the LCP. Public acquisition of the site is encouraged.

The first LCP quote is entirely correct. The second LCP quote repeats the mistaken habitat characterization from the Bolinas Lagoon Resource Management Plan and botches the "change of use" language by substituting "grazing" for "agricultural."



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Agriculture & Natural Resources

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SEP 0 2003

CALIF. COASTAL COMMISSION

August 29, 2003

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont St, Suite 2000
San Francisco, CA 94973

Dear Peter:

I am writing this letter in support of the Star Route Farm operation owned by Mr. Warren Weber in Bolinas, California. I have worked with Mr. Weber in a professional capacity as the Farm Advisor for the University of California Cooperative Extension (UCCE) for the past 15 years. I have brought many different tours, fieldtrips and individuals from all over the world to see his exemplary organic operations.

Mr. Weber has been in the organic farming business for more than 25 years. He operates in the urban-rural interface with an elementary school adjoining and the town of Bolinas not far away. A portion of his farm also adjoins the Bolinas Lagoon, and Pine Gulch Creek bisects his farming operation.

I consider Warren to be our most outstanding organic farmer in Marin and the North Bay. He has stewarded the creek and surrounding areas with utmost sensitivity to the natural community that surrounds his property. Each time I visit I see many different species of songbirds and raptors; and Pine Gulch Creek has one of the few remaining healthy salmon runs in the county.

Any form of farming or human development has its obvious impact on the ecosystem. We are fortunate to have an organic farmer who grows local, high quality food for those of us living in the Bay Area, which reduces the need for transporting food from great distances.

Sometimes we criticize (wearing our environment hat) what isn't perfect in our own backyard while we make food purchase decisions (wearing our consumer hat) that have much greater negative impacts on the environment (transportation distances, use of pesticides, increased packaging, etc.) Growing food locally with organic standards and conservation practices needs to be encouraged and supported.

Warren also participates as the President of Marin Organic, a non-profit community organization that is educating other agricultural landowners about transitioning to organic practices. This organization encourages its member producers to consider the ecological, conservation, and labor issues on their farms that enhance rather than degrade their environment. I don't think it's necessary to require permits each time a rancher or farmer changes a crop or product. This would place undue economic burden on the producer.

Warren has worked cooperatively with the County and the Army Corps of Engineers to remove two dikes on his property. The project has been approved by all parties to this point, and I encourage the Commissioners to vote to approve this project as well.

Sincerely,


Ellie Rilla
UCCE Director-Marin Co.

SEIFER, MURKEN, DESPINA & JAMES
A LAW CORPORATION

MONROE A. SEIFER
DOUGLAS G. MURKEN
ELEANORE DESPINA
H. NATHAN JAMES
LISA A. SALIMAN
LARISSA C. BROOKES

2135 LOMBARD STREET
SAN FRANCISCO, CALIFORNIA
94123-2712

August 26, 2003

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AUG 27 2003

CALIFORNIA
COASTAL COMMISSION

TELEPHONE: (415) 749-5900
FAX: (415) 749-0344
E-MAIL: general@amdjlaw.com

California Coastal Commission
Attn: Sarah Borshelt
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Dear Commissioners:

As a member of the board of directors of Marin Organic, a West Marin non-profit which promotes responsible agriculture, and as a resident of West Marin, I am writing in support of Warren Weber's application to remove two dikes from his farm land in Bolinas.

Marin Organic supports the environment *and* agriculture. Marin environmental organizations have traditionally found a balance between these two considerations, which are both so essential to our way of life in West Marin. It is with regret that I've watched the recent polarization between these groups which were allied for twenty years, striking a balance that kept agriculture healthy while protecting our wild lands.

The agricultural use of Warren's land, as I understand it, goes back more than 100 years. I believe it was once grazing land - a use that must have had much more impact on the waterway. I understand that a change in use permit is being considered for West Marin agriculture and feel that this would be very burdensome to already financially burdened farmers. We can't expect farmers to grow our food for nothing! If we value locally grown food and the savings to the planet when fossil fuel is not used to transport it; if we value our rural way of life; if we value the open space that agriculture protects and preserves, we should be very thoughtful about the additional burdens we place on farmers.

Warren's use of the land is organic. It therefore does not spew industrial fertilizers or pesticides into the waterway. In the winter, the field is idle, and appears to be grown over lightly in grasses to protect it from erosion.

When I was at Star Route Farms this winter, the parcel was gently flooded, and migratory birds were feeding on it. The parcels on either side, which are not farmed, were growing spikey native grasses. No birds were feeding on those parcels.

California Coastal Commission
August 26, 2003
Page 2

Please, as you do your work, consider the seven years and thousands of dollars which have been consumed by Warren Weber's effort to find a balance for this piece of land. It is my hope that the Commission will not entertain this appeal any further.

Very truly yours,


ELEANORE DESPINA

cc: Carol Whitmire

August 19, 2003

California Coastal Commission
c/o Peter Douglas
45 Fremont St., Ste. 2000
San Francisco, Ca. 94105-2219

RECEIVED
AUG 25 2003
CALIFORNIA
COASTAL COMMISSION

RE: File No: 2--03-003 (Weber)

Dear Mr. Douglas,

I am writing in support of a fellow farmer and esteemed colleague, Warren Weber, and his application for a permit to remove the dikes on his farm, Star Route. I am a farmer in Marin County, chair of the Marin Food Policy Council, and the Program Officer for food systems at the Center for Ecoliteracy, a public foundation. This letter provides an opportunity to acknowledge a valued and trusted leader of the Marin County agricultural community and to say a few obvious and noteworthy things about him that he is entirely too modest to ever say about himself.

As you know, Star Route Farm has been engaged in a long (seven years) permit process to take down dikes on two of their parcels. Star Route is now reaching the conclusion of this arduous process with the impending date of their last hearing before the Coastal Commission. The project has been approved by the Army Corps and the County.

It has come to my attention as Chair of the Marin Food Policy Council that the granting of permits has been appealed by a small group of people who claim to be the ones to speak for environmental interests. The County Planning Commission and the Board of Supervisors each unanimously denied the appellants, and so the appellants are now appealing to the Coastal Commission. Since I worked closely with precisely these individuals during the Food Policy Council's 18 month development of food policy related input to the recent updating of the Countywide Plan, I feel compelled to add a farming and policy perspective to your deliberations. In doing so, I am characterizing myself and my fellow organic farmers as environmentalists. Our expression of that environmental perspective is the unmediated, long-term, and firsthand care and responsibility for the living systems we engage in the practice of agriculture.

I wonder if you have ever visited Star Route Farm. If so, you know it to be one of the most beautiful and consciously run farming operations in the country. Even for those without a farming background, it seems clear. Something is going terribly right at Star Route. In addition, the farm is providing a service to the whole community in many ways, seen and unseen. Due to the inspired, thoughtful, patient and informed farming ethic of Warren Weber and his accomplished farm manager, Doug Gallagher, the set of production practices employed at Star Route have helped to inform the course and set

the standard for organic and ecologically sound farming operations throughout the state and the nation. Over the course of the last 30 years and more, which is essentially the entire history of "organic" production in the United States, Star Route Farm has established itself as the shining example of how it is possible to farm productively, and at the same time, protect the environment and wildlife.

Warren Weber is highly regarded by his peers as a leader in what has become a national movement to develop criteria for a benign methodology of food production that is environmentally sound, economically viable and socially just. Star Route has defined the upper range of those values, year in and year out, for the rest of the industry. Recently, Warren was awarded the Sustainable Agriculture Stewardship Award, known by organic farmers throughout the world as the "Sustie." The award was presented by the Governing Committee of the Ecological Farming Association in a ceremony at their annual conference at Asilomar Conference Center. The conference and ceremony are attended by thousands of farmers. This recognition is the highest expression of acknowledgment a farmer can receive from this world class body and is the equivalent of a lifetime achievement award from the heart of sustainable agriculture.

In my own work through the Marin Food Policy Council with the individuals who are seeking to delay or derail approval of Star Route's permit, I would say that some confusion was present in the thinking that would seek to eliminate productive farming from that landscape in the name of "environmentalism" but could not describe any system of production that would be more locally responsive, environmentally sound, or considerate of place. The problem with this kind of thinking is that it tars all farming operations with the same brush. Such faulty thinking falls into the pothole of short-sightedness—a failure to assess a system at the level of the whole system. The presenting challenge at hand is to provide food for our communities, and the question ought to be how best to accomplish that...not whether or not it needs to be done or whether or not we need farms to do it. This especially egregious blind spot occurs at a time when the ability to distinguish between farming with nature or against it is a critical requirement for developing more sustainable and equitable human patterns of living.

In the years of research conducted by the Marin Food Policy Council, we could not describe a single more environmentally beneficial action than to move the field closer to the table by shortening the distance food travels between producer and consumer. Since food is essentially 80% water by weight, this single action, with all that it implies, would drastically stave the drawdown on our non-renewable resources by cutting "food miles". There are no logical environmental arguments to support the use of non-renewable resources to move renewable resources (food) around. What does make sense is to decentralize food production and locate farms near people. In following that course, communities experience a greater degree of community food security and increased benefits in the areas of health, environment and disaster preparedness. The task is to insure that those many and small, locally responsive farming operations employ production practices that protect the environment and ensure a future for farming. The location, production and distribution practices of Star Route,

and of its neighboring farms, are part of that locally oriented pattern of ecologically sound production and Star Route Farm is the exemplar for the Marin watershed.

I urge the Coastal Commission to use its best thinking when considering the granting of a permit to Star Route Farm. If possible, visit the farm and observe for yourselves the tranquil and sheltered setting the farm has become over its many decades of ethical operation. Star Route is a part of Marin's illustrious farming history and carries with it that critical regard for tradition. It is an irreplaceable treasure to all Marin residents.

Consider that the best farmers have always relied on ingenuity, innovation and regard for future generations to keep the farm productive and to respond to changing conditions. Changing conditions may imply a range of challenges such as a shift in climate, market opportunity, community need, and the maintenance of soil fertility. Please refrain from introducing a cumbersome set of regulatory "hampers" to the permit that will only increase the difficulty of being appropriately responsive and agile in rotating crops, introducing new crops, and allowing the farm to rest or over-winter in soil building "covers". In these activities it is important to recognize that the farmer, when the farmer is the owner/operator, really does know best.

Warren Weber has always been considerate of the landscape in the design and implementation of his vision for Star Route. His first years at Star Route were spent in the patient art of horse farming—using draft horses for traction. In the countless hours Warren devoted to this slow and reflective practice, he came to know every partial degree of elevation, and every slight transition in the quality of the soil across the field, like the back of his hand. The borders, hedgerows, brushy banks and surrounding hills that also make up the farm are part of his understanding of farming with nature, not against it. Star Route maintains critical wildlife corridors and accepts those inevitable crop losses as part of the whole pattern of farming with nature. It is a fruitful haven for migratory birds throughout the year, a stopover on the flyway where they can shelter, rest and nourish themselves. In late winter and early spring, it is obvious that birds in particular are being sustained in part by what they "glean" from the fields. Migratory pollinators arrive in early spring to the support of nectar producing plants introduced to the cover crops in tandem with the native perennials that thickly surround the fields.

I would also like to bring to your attention to another of those unseen contributions the farm makes to the community. I am referring to the thousands of pounds of fresh organic vegetables Star Route Farm has donated to the Marin Food Bank, soup kitchens, seniors lunch programs and programs for those with limited access and increased need for chemical free foods. Over the years, through the Marin County Gleaning Project, hundreds of Marin teenagers have spent part of a day at Star Route gleaning crops that would otherwise be turned under to make way for winter plantings and delivering the food they harvest to those in need. The students learn more about how food reaches the table and have an opportunity to visit a working farm. The farm reduces the amount

of food that would otherwise go to waste, and hungry people in Marin County are fed. Warren Weber's generosity, and the commitment he places on helping the next generation learn how to feed themselves, make this program a success.

I would be remiss if I omitted mention of Star Route's first and foremost mission: to produce delicious, wholesome, and nutritionally exceptional food to Bay Area communities. In this it is an incomparable resource and outstanding success. Although Star Route markets its produce to some of the finest groceries and restaurants in the Bay Area, it still maintains a welcome presence at large and small farmer's markets and is a mainstay of the local CSA subscription box distributed throughout Marin County. This is due in part to Warren's commitment to nurture and maintain connections between city folk and rural folk to the advantage of both.

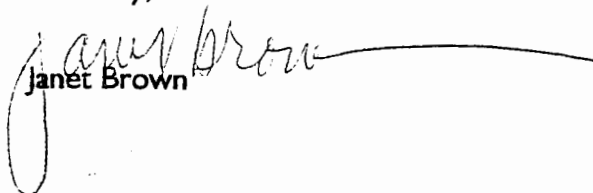
At the very bedrock of all the above mentioned productivity and ethical business management is Warren Weber's long term commitment to a small and particular, beloved place on the planet we are referring to as Star Route Farm. Commonsense would naturally lead one to conclude that it is not possible to deliver a diverse and nourishing harvest, year after year after year, without a particular skill and regard for maintaining soil fertility, and that soil fertility cannot be maintained without care and concern for the entire ecology that surrounds and upholds the farm. This is the foundation of sustainable farming and Warren Weber has devoted a significant part of his life to mastering it.

In closing, I would want you to know that Warren Weber has shown extraordinary vision and leadership to the organic farming community in Marin County. Currently, he is president of Marin Organic, an association of over 25 organic farms. In that capacity, Warren is doing what he has always done, which is to share his energy, talent and knowledge base of sustainable farming practices with his peers and with new farmers in need of guidance and mentoring. His message is the same as it has been for decades; care for the soil, consider the whole farm, fit the solution to the farm and not the other way around, focus on quality, respect the customer, and give something back.

In closing, I urge the Coastal Commission to act in support of an environmentally considerate, ecologically integrated food system by upholding the decisions of the County and the Army Corps of Engineers. Please deny the appeal to the permit process and allow Star Route Farm the necessary and well deserved freedom to move forward.

If I can be of any further assistance to you please do not hesitate to call me. I can be reached at home at (415) 488-9464 or you may email me at janet@ecoliteracy.org.

Sincerely,


Janet Brown

The Environmental Action Committee of West Marin

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JUL 21 2003

CALIFORNIA
COASTAL COMMISSION

Management guidelines for APNs 195-290-13 and 195-290-24

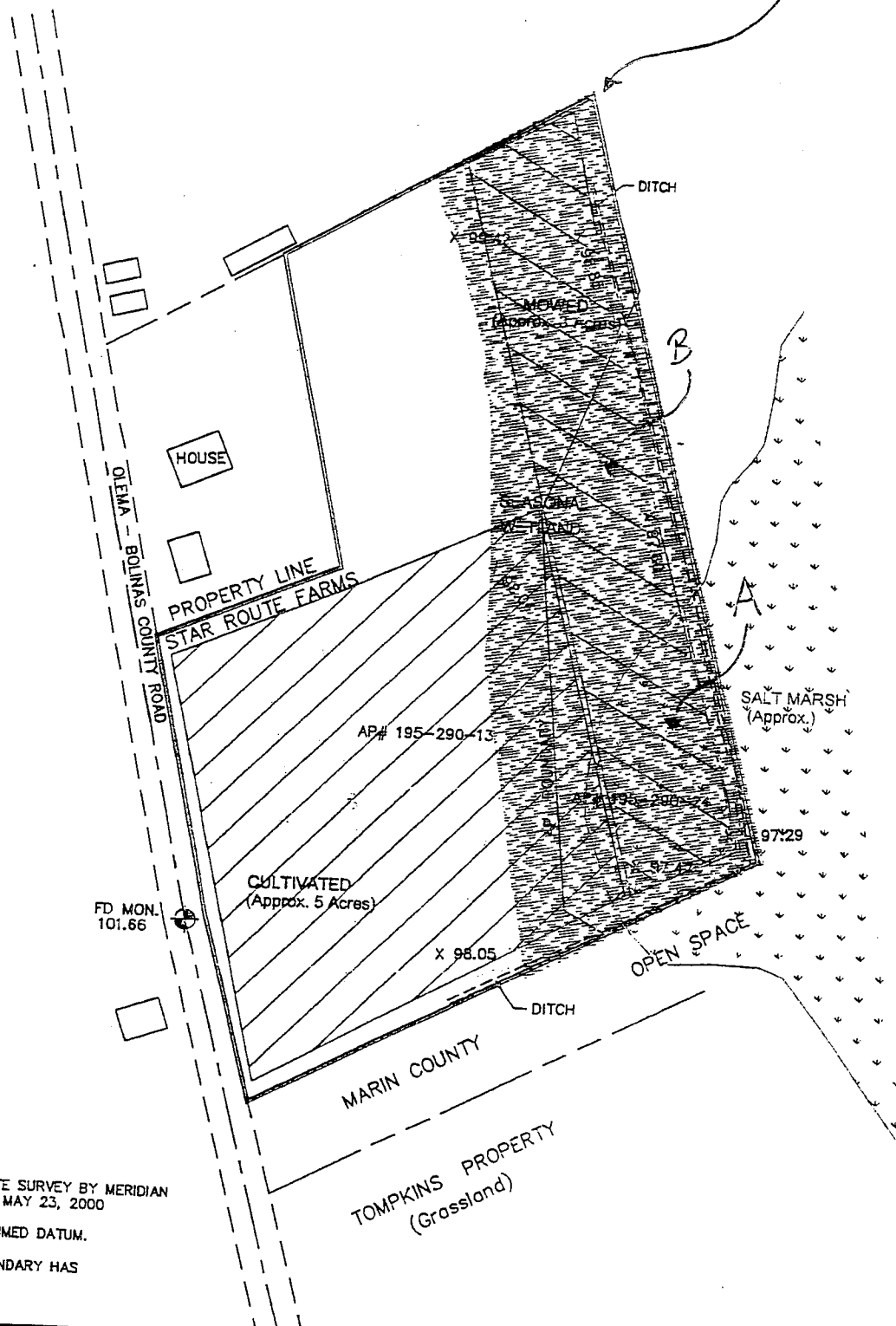
The lower portion of the property, that acreage within and adjacent to and upland from the natural mean higher high water (MHHW) line, has the most significant habitat values for wildlife and the ecological health of the lagoon. Restoration of the lagoon edge will progress as human disturbances cease or are modified to allow natural vegetation types to re-colonize wetland portions of the site. As the natural plant community becomes established, it will form a relatively continuous band of habitat from the Pine Gulch Creek delta habitat southward along the edge of the lagoon to the MCOSD and Tompkins properties. This will add value to the existing intertidal habitat at the lower elevations of the Wilkins-Weber parcel as well as to adjacent properties and provide critical habitat to tidal marsh-dependent plant and wildlife species.

Rehabilitation of the site depends first and foremost on adherence to the Army Corps Agreement that requires the removal of the unauthorized fill to allow full tidal influence and restore intertidal habitat along the western edge of Bolinas Lagoon. EAC recommends that the following *additional* steps be undertaken to restore the intertidal habitat (section A on the accompanying map) as well as to provide transitional habitat that will create a buffer between tidal marsh and upland or cultivated habitat.

1. Establish a transition zone (section B) by leaving the substrate undisturbed a minimum of 10 meters upgradient of the MHHW line so that peripheral transitional vegetation becomes established to provide refuge for tidal marsh-dependent species during periods of extreme inundation. This transition zone will provide a buffer between the fully tidal wetland and any potentially cultivated upland area;
2. Cease cultivation of the lower portion (Sections A & B) of the property and remove fences that currently run through historic tidal wetlands;
3. Discontinue mowing of the *Juncus* community that occupies the NE corner of the property and allow vegetation to reestablish itself to natural height and provide habitat for Common Snipe and other wetland dependent species (in Sections A & B);
4. Implement appropriate control measures if alien species colonize the site after cessation of cultivation in Sections A&B.
5. Outside Sections A & B:
 - ☐ Limit the addition of soil amendment to cultivated area, as recommended in the Prunuske Chatham report.
 - ☐ Limit the application of fresh water to the cultivated area to an amount that can be beneficially used by the crops plus the transpiration amount, so that overwatering does not freshen adjacent salt and brackish marshlands;
 - ☐ Prohibit the application of herbicides and pesticides in the cultivated area;
 - ☐ Limit fencing to the perimeter of the cultivated area



→ Shaded area represents approx. area for restoration



NOTES:

CONTOURS ARE BASED ON SITE SURVEY BY MERIDIAN SURVEYING ENGINEERING, INC. MAY 23, 2000

ELEVATION IS BASED ON ASSUMED DATUM.

EXACT UPLAND/WETLAND BOUNDARY HAS NOT BEEN DETERMINED

PRUNUSKE CHATHAM, INC.
P.O. BOX 828
OCCIDENTAL, CA 95465
(707) 874-0100

DATE: August, 2000
SCALE: 1" = 200'
CHECKED BY: HA
DRAFTED BY: EA
DESIGNED BY:

HABITAT TYPES
Star Route Farms
for: Marin County Community
Development Agency

Figure

3



The Environmental Action Committee of West Marin

June 16, 2003

California Coastal Commission
45 Fremont St. #2000
San Francisco, CA 94105-2219

RECEIVED

JUN 17 2003

CALIFORNIA
COASTAL COMMISSION

RE: Weber Application/Appeal No: A-2-MAR-03-008

Dear Commissioners,

As part of your action on this matter, the Environmental Action Committee of West Marin hopes that you will ensure that Local Coastal Plan policies are enforced and that any violations of those policies on the portion of the property that is included in the application/appeal are resolved.

Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Catherine Caufield".

Catherine Caufield
Executive Director