

CALIFORNIA COASTAL COMMISSION

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

**Memorandum****September 6, 2007****To:** Commissioners and Interested Parties**FROM:** Charles Lester, Deputy Director
North Central Coast District**Re:** **Additional Information for Commission Meeting Thursday, September 6, 2007**

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th 22a,b,c,d	A-2-SON-07-009, -010, -011, -012 (RJB-GP LLC Bodega Bay)	Correspondence	1
Th 22f	A-2-PAC-07-022 (PACIFICA BEACH LLC)	Staff Report Addendum	39
Th 23b	2-07-019 (MARIN COUNTY (ENVIR HEALTH SERVICES)	Staff Report Addendum with Revised Exhibit 3 Correspondence	46 51

Th22a, 22b, 22c and 22d

YinLan Zhang

From: Philip Young [philipyong@battagliainc.com]
Sent: Thursday, August 30, 2007 5:52 PM
To: YinLan Zhang; Michael Endicott; Jo Ginsberg
Cc: David Hurst; David B. Hardy; cjwhit@comcast.net; Judy V. Davidoff
Subject: Appeal #: A-2-SON-07-009, A-2-SON-07-010, A-2-SON-07-011 and A-2-SON-07-012.

Dear YinLan:

We received your STAFF REPORT regarding the above referenced appeal sent out for the upcoming Hearing to be held on Thursday, September 6, 2007. Please know that we do appreciate all your hard work to compile the materials, understand the issues, make your analysis and come to a clear determination. Obviously, in this case, we also greatly appreciate your findings.

The STAFF REPORT does list one "Staff Note", however, which we feel is perhaps unclear or misleading (page 5, item 5). It seems to suggest that there may have been damage to the wetlands on Parcel A. The STAFF REPORT notes that this issue is a "separate enforcement allegation" also "being investigated by the Commission's enforcement staff". We are concerned that this statement of "being investigated" might sound more serious to others than it actually was intended.

We do know that during the past few years the California Coastal Commission enforcement staff has had two issues that they "have been keeping an eye on" but that any serious investigation has long since been completed. The May 29, 2007 letter from WRA, wetland specialty consultant to the County, which we sent to you and Michael Endicott on June 19, fully addressed the status of the two issues.

In WRA's letter, both the issues, minor leakage into the storm drain from the wetlands and that the Juncus is re-colonizing (all-be-it more slowly than originally desired) over the storm drain (and that the developer added to Parcel B a wetland area equal to that which might have been lost to the storm drain had the growth not occurred), are clearly described as non-threatening and successfully working with excellent long-term prognosis.

Is it too late to add WRA's May 29, 2007 letter as an exhibit to your STAFF REPORT or as supplemental materials to be given to the Commissioners prior to the meeting on September 6, 2007?

Thank you again for all your many hours and hard work on this STAFF REPORT. You are appreciated.

Philip Young

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8/31/2007

As sent to you on June 19, 2007:

Dear YinLan:

This letter and the attachments hereto are in response to the discussion we had with you and Mike Endicott on May 11th at the meeting in your office.

- In the attached letter from Douglas Spicher, Professional Wetland Scientist, WRA, our wetland specialist, he clarifies the status of Parcel A wetland, and specifically addressed the issue of the storm drain pipe, both in terms of the re-colonization of the wetland habitat over the storm drain and in terms of the two cracks in the pipe which leak ground water from the wetland. Please note that both Doug and Bill Cox, CDFG, concur that the *Juncus* is re-colonizing; it is just slower than the other wetland plants. Also please note that both Doug and Chris White, our hydrologist, concur that the minor amount of leakage of groundwater into the storm drain has no negative effect on the Parcel A wetland.
- Per the attached letter to Sonoma County's David Hardy at PRMD, we have withdrawn our request, at this time, to place a project sign on the north side of Harbor View Way, which turned out to be within the 100 ft. wetland buffer of Parcel A. No sign is now therefore proposed on the north side of the Harbor View Way entry road.

We hope that this letter and attached document provide you with the necessary responses to your questions. We trust that with them, you concur that there is **no substantial issue** raised by the Concerned Citizens' appeal, and that we can be scheduled for the July Coastal Commission agenda.

Thank you for your attention to this matter.

Sincerely,

Richard J. Battaglia

Richard J. Battaglia
President
RJB-GP, Inc.

PS: We have faxed you copies of the attached letter at 415 904-5400 which contain original signatures. If you would like hard copies please let us know. Thank you.



May 29, 2007

YinLan Zhang
Coastal Program Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Harbor View Subdivision - Parcel A Wetland Condition

Dear Ms Zhang:

This letter addresses the condition of the Parcel A wetland based on comparison of recent observations with conditions recorded in the past. A site visit was conducted on April 24, 2007 with you, staff from California Department of Fish and Game, Balance Hydrologics (hydrologists), and Carlile and Macy (civil engineers).

Background

Local citizens who oppose the project have provided comments to government agencies, including Sonoma County, California Department of Fish and Game, U.S. Army Corps of Engineers, and most recently in an appeal of a Coastal Development Permit to the California Coastal Commission, charging that the Parcel A wetland has been negatively affected (drained) by activities conducted by the Harbor View project since construction commenced in 1999. These activities included: widening of Highway 1, installation of the storm drain across the southern portion of the wetland, installation of a drainage swale upslope of the wetland, and other infrastructure improvements. Studies that have been conducted over the years that allow wetland conditions to be monitored are summarized as follows:

- A wetland delineation conducted in 1990 was compared with a second wetland delineation conducted in 2003 using the same delineation procedures, and it was concluded that the wetland boundary was substantially unchanged.
- Ground-water studies conducted since 1993 have indicated that water supply to the wetland from the east toward the bay has not changed with partial construction of the project and that there is a surplus of ground water flowing through the wetland area.
- The wetland consists of a perennially wet area in the center portion that intergrades into dryer seasonal wetland areas, commonly referred to as fringe wetlands, north and south of the center area. This general condition was apparent in historic aerial photographs of the site dating from the 1940's to the present.

Present Conditions

Observations of present conditions in Parcel A wetland on April 24, 2007 are summarized as follows:

- The central area of the wetland is inundated (water on the surface) and remains perennially wet as has been observed in the past. Fringe areas have vegetation dominated by wetland classified plants as was observed during the 1990 and 2003 wetland delineations. Vegetation in the wetland (and surrounding areas) is no longer grazed. This allows plants to grow to their full extent, changing the appearance of the wetland and surrounding upland area. In the wetland, some weedy plants (e.g., poison hemlock) have colonized as result of eliminating grazing, but these plants are also wetland classified plants.
- Dominant vegetation in the area over the storm drain consists of wetland classified plants, however, the species of reed (*Juncus*) that originally was present prior to storm drain installation has been slow to re-colonize.
- A leak into the storm drain was detected. Later video inspection discovered that the leaks occur at two joints between sections of the storm drain pipe. It has been estimated that ground water outflow through the storm drain averages approximately 3 gallons per minute (gpm) during the dry season.

Discussion

The Parcel A wetland continues to function as it has historically. The perennially wet central portion is inundated with ground water that surfaces in the wetland and slowly flows westward toward Highway 1. Obligate wetland classified plants occupy this area. Drier fringe wetland areas still support the wetland classified plants that were recorded during the two wetland delineation studies.

Re-colonization of *Juncus* over the storm drain has been slow, however, other wetland classified plants have colonized the area. It is believed that *Juncus* will gradually spread across the area through time.

The leaking storm drain pipe is draining ground water from a depth of approximately 6 feet below the surface, however the estimated outflow rate of 3 gpm is not an amount significant enough to affect the hydrology of the wetland because of the surplus of water flowing through the wetland. This minor outflow is not believed to have an affect on the wetland plants growing in the wetland, including the area over the storm drain. Nevertheless, it is anticipated that the leaks will be repaired if repairs can be made with no excavation or other disturbance to the wetland habitat area.

Mitigation for permanent impacts to Parcel A wetland from Highway 1 widening and temporary impacts from slow re-colonization of *Juncus* over the storm drain will be provided by re-construction and expansion of the mitigation wetland in Parcel B. Environmental assessment of Parcel B mitigation wetland conducted in conjunction with the Coastal Development Permit application assures that the re-constructed wetland will provide necessary habitat mitigation and that it will be protected from disturbance and other potential adverse environmental factors. This parcel will be dedicated to provide habitat and will be protected from intrusion by pets and unauthorized persons by 5-foot tall perimeter screening as recommended by California Department of Fish and Game.

If you have questions or require additional information, please contact me by telephone at 415-454-8868 ext. 126 or by email at spicher@wra-ca.com.

Sincerely,



Douglas Spicher PWS

RJB-GP, Inc.

Harbor View Subdivision

3366 Via Lido • Newport Beach, California 92663
Tel (949) 723-8900 • Fax (949) 723-8915

June 19, 2007

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

Dear YinLan:

This letter and the attachments hereto are in response to the discussion we had with you and Mike Endicott on May 11th at the meeting in your office.

- In the attached letter from Douglas Spicher, Professional Wetland Scientist, WRA, our wetland specialist, he clarifies the status of Parcel A wetland, and specifically addressed the issue of the storm drain pipe, both in terms of the re-colonization of the wetland habitat over the storm drain and in terms of the two cracks in the pipe which leak ground water from the wetland. Please note that both Doug and Bill Cox, CDFG, concur that the *Juncus* is re-colonizing; it is just slower than the other wetland plants. Also please note that both Doug, and Chris White, our hydrologist, concur that the minor amount of leakage of groundwater into the storm drain has no negative effect on the Parcel A wetland.
- Per the attached letter to Sonoma County's David Hardy at PRMD, we have withdrawn our request, at this time, to place a project sign on the north side of Harbor View Way, which turned out to be within the 100 ft. wetland buffer of Parcel A. No sign is now therefore proposed on the north side of the Harbor View Way entry road.

We hope that this letter and attached document provide you with the necessary responses to your questions. We trust that with them, you concur that there is **no substantial issue** raised by the Concerned Citizens' appeal, and that we can be scheduled for the July Coastal Commission agenda.

Thank you for your attention to this matter.

Sincerely,

Richard J. Battaglia

Richard J. Battaglia
President
RJB-GP, Inc.

RJB-GP, Inc.

Harbor View Subdivision

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Via email dhardy@sonoma-county.org
Via Facsimile 707 565-1103

June 18, 2007

Mr. David B. Hardy, AICP
Supervising Planner
Permit and Resource Management
Sonoma County
2550 Ventura Avenue
Santa Rosa, CA 95403-2829

RE: Harbor View Subdivision, 1000 Highway 1, Bodega Bay, California
• **Coastal Permit CHP06-0022 Amendment**

Dear David,

RJB-GP, Inc. wishes to withdraw and amend that portion of the above referenced Coastal Permit that involves specifically the construction of a new entry sign, as proposed, for the north side of the entry road to Harbor View Subdivision, at the intersection of Harbor View Way with Highway 1, within a County of Sonoma dedicated right-of-way.

We do request that all other elements of Coastal Permit CHP06-0022 remain intact.

Please find attached our letter to YinLan Zhang, California Coastal Commission, informing her of our decision to withdraw the above noted portion of Coastal Permit CHP06-0022.

On behalf of **RJB-GP, Inc.**, with warm regards,

Philip Young

Philip Young

Attachments: June 4, 2007 Letter to California Coastal Commission - 3 pages

LAW OFFICE OF JERRY BERNHAUT

535 CHERRY AVE.
SONOMA, CA 95476
TELEPHONE: (707) 935-1815
EMAIL: jbernhaut@comcast.net

Commissioners
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

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COASTAL COMMISSION

RE: Response to Staff Report; A-2-SON-07-009 thru 012; Harbor View
subdivision-Bodega Bay

September 4, 2007

Dear Commissioners:

There are complex, interrelated issues raised by this appeal which go beyond the four coastal permits for single family dwellings recognized by Commission staff as falling within appeal jurisdiction. I would like to highlight the following crucial concerns for your consideration.

Exclusion Of The Parcel B Mitigation Wetland Reconfiguration From Appeal To
The Commission

The Staff report, on page 9, refers to the revised local CDP No. CHPH06-0022 as originally including two entry signs and “the creation of a wetland on Parcel B”. (emphasis added). It further states that the northern sign, which was removed from the revised Permit, was the only portion appealable to the commission because it was within 100 feet of the Parcel A wetland. By characterizing the reconfiguration of the Parcel B mitigation wetland as the “creation” of a wetland rather than work within an existing wetland, the report implicitly, with no discussion, justifies excluding this project from appeal to the Commission because it is not within 100 feet of a wetland. This characterization is in direct conflict with prior references in the record to this site.

The application for the amended Permit for Parcel B, from the developer’s representative Carol Whitmire, dated January 5, 2007, describes the project as follows: “The purpose of this application is to amend PLP 05-0083 to include an application for a Coastal Permit/Grading Permit to reconstruct the Parcel B wetland...”.(emphasis added) The County Of Sonoma Staff Report to Board of

Supervisors, dated January 30, 2007, on page 1 states: "On December 18, 2006, the applicants filed a grading permit to revise the Parcel B wetland..." (emphasis added) The Memo from Crystal Acker, PRMD environmental specialist, dated October 19, 2006, on page 1, under the heading "Parcel B Mitigation Wetland" states: "A small shallow depression within Parcel B was apparently created as a mitigation wetland to compensate for impacts to roadside wetlands during the widening of Highway 1". The memo goes on to conclude that the site is not functioning as a wetland, that the mitigation effort was unsuccessful. Based on that fact, the County found that the reconstruction is not appealable to the Commission, and Commission staff apparently agreed, despite prior references to the site as an already created wetland. If the site was a long standing naturally occurring wetland which was damaged by development activities and no longer functioned as a wetland, would staff exclude it from appeal to the Commission? Is it staff's position that the site never satisfied wetland criteria, or that it was initially a functioning wetland which subsequently failed?

However one might argue the fine points of legal analysis, the practical reality is that the position most convenient for the developer was adopted with no analysis. The intent of the Coastal Act to retain appeal jurisdiction over activities within and adjacent to wetlands was clearly frustrated.

Compliance With Permit Conditions

The Staff Report, on page 5, states that concerns regarding damage to wetlands from development activities, in violation of Permit conditions for the subdivision, is not a valid grounds for appeal but rather a separate enforcement issue. The Report notes that a Commission Staff Ecologist, after a site visit in 2003, determined that the Parcel A wetland had been impacted by the installation of a storm drain system and that this is the subject of a pending independent enforcement action. The Report reiterates on page 12 that any alleged non-compliance with a coastal development permit is a separate enforcement issue independent of the appeal process. However, on page 14, discussing the potential impacts on the wetlands of the four residence parcels subject to appeal, the Report states: "While the County did not perform a specific environmental assessment of the four residences' impacts on the wetlands as required for development between 100 and 300 feet of wetlands pursuant to LUP Chapter III Policy 26, potential impacts of the approved developments were analyzed at the subdivision approval stage in 1994... Because the extent and distribution of the Parcel A wetland has not experienced any significant changes based on wetland delineations performed in 1990 and 2003 (Exhibit 5), the wetland assessment conducted for the subdivision

remains valid”.

The claim that the Parcel A wetland has not experienced significant changes is the major disputed issue of fact in the enforcement action. The delineations referenced as Exhibit 5 were performed by the applicant’s consultants. Their conclusions have been disputed, with detailed analysis, by recognized experts whose declarations are in the record, including Greg Kamman, the certified hydrologist who performed the baseline study for the subdivision. The Staff Report, while purporting to maintain a clear separation between appeal and enforcement issues, has incorporated a determination of the primary enforcement issue, based solely on the applicant’s version of the facts, in order to justify the lack of current environmental assessments by relying on assessments made in the EIR in 1994. The assessments in the EIR found that there were significant potential impacts on the wetlands from the subdivision development and set up a mitigation monitoring program which was incorporated into the Permit conditions. The contention of appellants, Bodega Bay Concerned Citizens, is that the conditions have not been complied with and significant impacts to the Parcel A wetland have occurred. Commission staff has improperly inserted a determination of this issue, with no analytical justification, into the appeal process.

Relationship Between Appeal And Enforcement Actions

Both County and Commission staff have referred back to general environmental assessments for the overall subdivision, made in 1994 and earlier, as an underlying justification for approving the execution of specific portions of the development these many years later, despite appellant’s contentions that past development activity has resulted in significant impacts, that Permit conditions regarding the wetlands and geological review have been violated. If these contentions are properly the subject of an independent enforcement action, then the Commission should delay ruling on this appeal pending a ruling on the enforcement action. That the enforcement and appeal issues are inextricably related is clear from the above analysis. It is improper for the County and the Commission to rely on past assessments, based on a mitigation program compliance with which is the subject of an enforcement action, to justify piecemeal approval of portions of the subdivision. The enforcement action has been pending for approximately one year. If portions of the subdivision are allowed to proceed without resolution of the enforcement issues, momentum for the overall project will build and appellants’ concerns will be effectively mooted. A timely resolution of the enforcement action is critical. This appeal should be extended pending a ruling on the enforcement action.

Respectfully submitted,

Jerry Bernhaut
Attorney for Bodega Bay Concerned Citizens

KIMBERLY BURR
Attorney at Law
Post Office Box 1246
Forestville, CA 95436
707.887.7433 • 707.887.0847 facsimile

September 4, 2007

By Electronic Mail

Commissioners
California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

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COASTAL COMMISSION

RE: **Response to Staff Report; A-2-SON-07 009 thru 012; Harbor View subdivision-Bodega Bay; selected Attachments for your convenience**

Dear Commissioners:

Thank you for the opportunity to provide a focused response to the Staff Report in the appeal of four Coastal permits. We'd like to also once again thank Coastal staff for reviewing our concerns. We will specifically address the **substantial issue** test, which is a subjective test.

In the areas of geologic requirements and wetland mitigation the precedential value of the Commission's decision loom very large. In addition, the impact of the decision will be felt statewide. For clarification purposes, the name of this development has changed several times as developers sold out and new ones signed on to try their luck. The confusion expressed by Mr. Johnson of your staff over this point is somewhat understandable, however the project still involves the same subdivision and same tract of land.

GEOLOGIC REQUIREMENT

The Statewide Importance of the Precedent in the Balance

There is great precedential value in the decision involving the conflict between a local agency and a state agency over the requirements of state law in the Coastal Zone (PRC 3603 - Alquist-Priolo Earthquake Fault Zone Act).

“[T]he California Geological Survey (formerly DMG) has received no other geological reports for this site from Sonoma County **per the provisions** of

the Alquist-Priolo Earthquake Fault Zoning Act since the "Molinaro Report" of 1987." (Attachment A)

"Although a lead agency is required by the Alquist-Priolo Act to have geological site investigation's performed prior to permitting a project, and to provide a copy of the investigation's results to the Survey, CGS has no regulatory enforcement authority to ensure this activity occurs."
(Attachment A)

It is no surprise that the lead agency without the benefit of licensed geologist on staff, when it received the critique by independent state geologist at DMG, cut that state agency out of the process and did not send any more developer-generated geologic reports to the state for further review.¹

The "[Sonoma County] planning commission has long been noncompliant with the A-P Act..." (DMG Attachment B – page 4)²

"We feel that the fault rupture trench study was primitive and inconclusive..."(DMG Attachment C – page 3; May 1994)

In the case of development on a coastal bluff in the Alquist-Priolo Earthquake Fault Zone (A-P Zone), the experience and opinions of the state geologists who have intimate knowledge of this project will always be highly relevant, and we reinsert that history at this time.

¹ (e) A geologist registered in the State of California, within or retained by each lead agency, shall evaluate the geologic reports required herein and advise the agency.

² See RECENT examples of noncompliance discovered by Mr. Waldbaum, CEG and confirmed by the Licensing Board for Geologists in Sonoma County include: Cornell winery approved by Sonoma County planner who was censured by Board for Geologists and Geophysiscists for unlicensed practice of geology; Saddle Mountain was an approved 1200-acre subdivision, now in Open Space, because county improperly approved geology of the developer which was wholly inadequate disciplinary actions followed; RGH submitted report accepted by the County which was later found inadequate by Department of Water resources and the Licensing Board.

The decision before you carries great precedential weight also because it involves the treatment of state geologist by a local government, by non-geologists, and by developers. As we are sure will agree, notwithstanding the silence about this issue in the staff report, when state scientists risk their careers by "blowing the whistle" on powerful developers and a local government, that action must be supported if good government is to mean anything.

"[T]he developer's attorney and geologist were phoning to discourage and subtly threaten us for our apparent change in position, to opposition of the project." (DMG Senior Engineering Geologist Martin-Attachment A - page 3)

"[W]e softened many statements in the letter, changing strong definite statements to conditional ones, and suggesting (in the last paragraph) that mitigations could remediate our concerns." (DMG Senior Engineering Geologist Martin-Attachment A - page 2)

Unfortunately, the geologic investigation, that has been required all along, never occurred. The fault investigation has never been concluded, peer reviewed, or found acceptable.

It will be a dreadful precedent if powerful developers are rewarded for threatening state employees. It will send a loud message throughout the state that intimidation works and even worse that it is acceptable. This is a clear case and can only be swept under the rug at great peril.

The Legal Requirement is NOT a Subjective Requirement

The law states that A-P reports shall be submitted to the state for developments in the A-P Zone.³ This requirement is NOT subjective. The lead agency in this case, however has unilaterally dropped this requirement.

³ One (1) copy of all such [AP] geologic reports shall be filed with the State Geologist by the lead agency within thirty (30) days following the reports acceptance. The State Geologist shall place such reports on open file. PRC §3603

In the case of development on a coastal bluff in the Alquist-Priolo Earthquake Fault Zone (A-P Zone), the experience and opinions of the state geologists who have intimate knowledge of this project will always be highly relevant, and we reinsert that history at this time.

As outlined by D. Parrish, State Geologist in April of this year, A-P reports **must** be prepared and filed with the state for projects proposed in the A-P Zone unless that requirement is waived. The lead agency tempted what might be called a waiver here; however, the so-called geological studies were flatly **rejected by DMG**. Waiver was not an option, and no A-P report was forthcoming. Why not?

The stressful experience of the scientists quoted is still very relevant and must be a part of your decision to require compliance with the A-P Act and the statewide standards of care for the practice of geology. It is apparent from the incredible avoidance of the DMG and now the California Geologic Survey that serious geologic wrinkles are inextricably linked to this project on the coastal bluff.

And finally, Mr. Johnsson misunderstands the response from the State Geologists Dr. Parrish received in April of this year. Dr. Parrish was responding to a specific request concerning the existence of the required A-P report for this project. He responded by writing that he was not familiar with the activities at Harbor View strictly in the context of the A-P discussion,⁴ because no A-P report was filed and no contact was maintained.

With great respect, we find the fact that Mr. Johnsson of your staff speaks to the developer's studies, rather than the extensive evidence of wrong doing that state employees went to great risk to document, inconceivable.

As the internal memos and correspondence carefully memorialize, DMG was subjected to extreme pressure. Notwithstanding the subtly threats, DMG did, for many months repeatedly maintain that serious questions were left unanswered like liquefaction, sand filled fissures, recency, and inadequate trench logs. These questions needed to be answered not smoothed over with words more acceptable to the lead agency. DMG was forced to agree to deferred studies, only after it first

⁴One (1) copy of all such geologic reports **shall** be filed with the State Geologist by the lead agency within thirty (30) days following the reports acceptance. The State Geologist **shall** place such reports on open file. PRC §3603 (f)

clearly stated that that would be an improper process, in response to pressure from the developer and the lead agency.

As you can read for yourself, despite the perpetuation of the notion that Department of Mines and Geology's purported acquiescence, as unfortunately repeated by Mr. Johnsson of your staff on page 22 of the Staff Report 8/23/07), to the geologic review of this project including the four coastal permits under your consideration now, was NOT voluntary. Mr. Johnsson ignores the pleas of independent professional geologists who, against their will, had their opinions molded. It is a disservice to those brave public employees to perpetuate inaccurate statements that public employees attempted to expose and memorialize for the record.

Requests with Respect to the Geologic Investigation

At a minimum, we urge you to ask staff if there is indeed a requirement that the proposed construction be preceded by A-P reports when they are proposed in the A-P Zone? What weight did your staff geologist give to the purported acquiescence of DMG?

In order that you may fairly consider whether to respect the efforts of the independent geologists of the DMG, we urge the Commission to seek further illumination in the area of geology by consulting with the California Geologic Survey.

We urge the Commission to await the outcome of the active investigation by the Licensing Board for Geologists and Geophysicists into the lead agency's failure to have licensed geologist reviewing reports submitted by the developers and the failure of the lead agency to require the A-P report in this case, before ruling on this appeal.

As the documents show, neutral state geologists were pressured by non-geologists, developers, and county personnel to fudge the facts in the case of Harbor View, and that situation has left a broken trail of so called studies, reports and approvals in its wake. The Harbor View reviews and approvals were not proper, as evidenced most recently by the letter from Dr. Parrish, and should not be allowed to stand as-is at the expense of the public, future home owners, and the professional state geologist involved.

This issue sits squarely in your lap. You have regulatory enforcement authority and responsibility in this area where Dr. Parrish does not.

We, respectfully, maintain that it is the Commission that must fulfill its duty to enforce the Coastal Act and the LCP where the lead agency declines to act as in this case.

WETLAND REQUIREMENT

Precedential Value of the Decision with Respect to Wetlands

The precedential significance of surrendering the power to demand meaningful wetland protection and mitigation is directly related to the adverse impact on wetland hydrology threatened by the proposed structures. Will the impacts of the new structures be required to be mitigated and actually mitigated? Or will the developers' failures persuade the Commission that this important requirement can be waived?

As Commission staff concedes, the Parcel A wetland will suffer reduced flows by construction of the proposed structures (Staff report 15- 8/23/07). Staff, however reiterates the plan to depend on the recharge area in Parcel B to compensate for that impact.

What staff did not address is that an unacceptable change in the project is being made here. ⁵ **Parcel B is being changed to a wetland NOT a recharge area.** As we are sure that the Commission can appreciate, the two functions are not compatible. One is supposed to hold water year round with a clay liner and the other **percolates** all the water that falls onto it. The attempted inconsistent change in Parcel B is necessary due in large part to the failures of the developer. Additional impacts were discovered in Parcel A by a relatively young (translated-innocent) County biologist Crystal M. Acker. Those impacts in turn require mitigation on site, **in-kind**, and at a 1:1 ratio.

⁵ The storm drain right thru the Parcel A wetland left an 8 to 10 foot dead zone along its length and cut off flows across the wetland requiring additional unanticipated by some wetland mitigation. (County biologist Crystal M. Acker Attachment D page 3)

We urge you to exercise your common sense here and ask staff if the mitigation recharge area is now going to be a wetland, then what is to be done about the recharge to Parcel A? Is it going to be a year-round wetland, like the wetland destroyed, **as required**? If not, how is that justified? Another large unanswered question is where will the water for the perennial mitigation wetland come from?

At the Commission meeting in Santa Rosa and took to heart in the opinions expressed with respect to the need for prevent wetland destruction because of the difficulty of recreating them. We are confident that your actions will back up your educated assessments in this case and you will not settle for a token inferior wetland effort in this case.

Widespread Negative Precedent if Wetlands Not
Fully Protected or Mitigated as Required

“The margins of the marsh, however are now exhibiting indicators of reduced near-surface soil saturation during spring-summer growing season; upland plants are (intolerant of prolonged soil saturation or waterlogging) are invading the margins of the relic marsh margins. This is specifically indicated by declining vigor of **perennial** marsh species.” (Peter Baye, Ph. D.)

“Installation of the pipeline does appear to have had some affect on the overall hydrology of the wetland since the eastern portion appeared to be relatively drier than the western portion.” (Attachment D page 3; Crystal M. Acker Sonoma County)

“The wetland swath [8 to 10 feet wide] does not appear to be functioning as a wetland...” (Attachment D page 3; Crystal M. Acker Sonoma County)

Additional approvals that ignore the failed efforts to date **open the door for making wetland protection and mitigation a low priority**. Your staff repeatedly misquotes the requirement to mitigate the wetland destruction (Page 4 and 14 staff report 8/23/07). The requirement says that wetland destruction will be mitigated on site, at a 1:1 ratio, and **in kind**. Your staff does not, for whatever reason, acknowledge the requirement that the wetland be of the same type and quality. In this case, this further weakens an already weak scheme to accommodate development. We hope that such a backsliding and cynical approach is not acceptable to this decision-making body.

We urge the commission and staff to look at requiring that the mitigation wetland be relocated to a more protected area on site allowing the planned recharge area every opportunity to function as intended, before approving large structures to further interrupt flows to the high value Parcel A wetland adjacent to these lots.

Precedent on the Issue of ESHA is that Burden on the Public and the Commission to Protect ESHA will be Much More Burdensome

What we have here is a protected freshwater coastal wetland that is admitted by all to have been impacted by road widening activities, storm drain installation and impervious areas that cut off the historic water flows to the high value habitat in the Pacific Flyway. In addition, eminent scientists have confirmed the existence of habitat for a species clinging to survival (California Red-legged Frog) for which no care or consideration was taken. The weight of the credible evidence in this case demands a much more sensitive approach to approvals being granted. The effort to protect rare wetlands and species by the concerned public and some public agencies has been enormous. The public cannot be expected to inform the process if it's efforts are not respected and if heroic efforts are still not enough.

The decision of the Commission, can either value the public's input and place the burden where it should on those who are speculating that they will realize enormous profits through development, or it can send a message that the tactic of bulldozing ahead and pressuring state employees easily trumps the public interest. **Independent** surveys and monitoring are the minimum of what is needed here before further development threatens the viability of this important habitat.

"[T]he project site, its remaining wetlands, in my judgment, lie within likely dispersal distance of **California Red-Legged Frog habitat.**" (Peter Baye, Ph. D.)

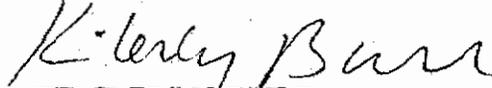
The Bodega Bay Concerned Citizens hereby incorporate all materials previously submitted in support of and in opposition to this project and do not waive any issues previously raised relative to the approval of design review for 70 houses and 14 high density units in the Harbor View subdivision.

CONCLUSION

We urge the Commission to find that substantial issues do exist relevant to the appeal before you. A finding of substantial issue will provide the Commission and Commission staff the opportunity to fully explore the issues raised here and to make sure that no negative precedents are set. Concerned Citizens, have confidence that the Commission will make every effort to review the correspondence previously submitted on this appeal and the critically important attachments to those letters.

Thank you for your kind attention to this matter.

Very truly yours,


KIMBERLY BURR
Attorney at Law

cc: Peter Douglas, Executive Director
Cynthia Traxler, Esq. Counsel for California Geologic Survey

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**DEPARTMENT OF CONSERVATION****CALIFORNIA GEOLOGICAL SURVEY**

801 K STREET • MS 12-30 • SACRAMENTO, CALIFORNIA 95814

PHONE 916/445-1825 • FAX 916/445-5718 • TDD 916/324-2555 • WEBSITE conservation.ca.gov

April 12, 2007

Kimberly Burr, Esq.
Attorney at Law
P. O. Box 1246
Forestville, California 95438

Re: **998 and 1800 Highway One, Bodega Bay, Sonoma County, Harbor View
Subdivision**

Dear Ms Burr:

We are in receipt of your letter of April 11, 2007 and the attached geological status report by Mr. Raymond Waldbaum (via facsimile).

In response to your inquiry about geological investigative reports for the above referenced Harbor View Subdivision, the California Geological Survey (CGS) has received no other geological reports for this site from Sonoma County per the provisions of the Alquist-Priolo Earthquake Fault Zoning Act since the "Molinero Report" of 1987 (your reference name). In response to a Public Records Act request from you about mid-December, 2006, CGS provided you with copies of its existing records through Ms Cindy Traxler, attorney for the Department of Conservation. Since that time, CGS has received no further documents regarding this development.

CGS is not aware of the development activities of the Harbor View Subdivision. Although a lead agency is required by the Alquist-Priolo Act to have geological site investigations performed prior to permitting a project, and to provide a copy of the investigation's results to the Survey, CGS has no regulatory enforcement authority to ensure this activity occurs.

If we can be of any further service, please do not hesitate to contact us.

Sincerely,



John G. Parrish, Ph. D.
State Geologist

cc: Cindy Traxler, Staff Counsel, Department of Conservation

*The Department of Conservation's mission is to protect Californians and their environment by:
Protecting lives and property from earthquakes and landslides; Ensuring safe mining and oil and gas drilling;
Conserving California's farmland; and Saving energy and resources through recycling.*

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Memorandum

Internal Memo

To : Trinda L. Bedrossian
Supervising Geologist

Date : March 8, 1993

From : Department of Conservation
Division of Mines and Geology
801 K Street, MS 12-32
Sacramento, CA 95814-3531

Subject: Critique and history of our involvement with the Bodega Bay Village Project, SCH# 89062008

- The NOP for this project, then called the "Molinaro Bodega Bay Planned Development Project, SCH# 89062008, was reviewed by ERP (John Schlosser) in July, 1989. The review included a geologic investigation report by Field Engineering Associates (apparently the long-standing Eric Oldsberg report of August 28, 1987). The NOP review did not object to the proposal to perform "additional geotechnical study" "prior to project construction" to further evaluate site liquefaction potential. Schlosser suggested that mitigation measures for liquefaction be proposed in the EIR in the event that the risk of liquefaction turns out to be greater than the consultant presently believes.
- The DEIR, for the "Bodega Bay Precise Development Plan" was reviewed February 20, 1991 by ERP (Kit Custis). This review addressed the following points:
 - 1) The lack of a map showing location of the Alquist-Priolo Zone.
 - 2) The lack of liquefaction data or a map showing its extent, and the lack of appropriate mitigation measures "if needed".
 - 3) That DMG cannot adequately assess the seismic safety of the project because of lack of ground motion data. We requested an additional geologic and seismic study addressing ground motion.
 - 4) The review further stated that the proposal to perform future site-specific studies was inconsistent with CEQA goals and concludes by recommending that the proposed additional soils engineering investigation should be completed before approval of the FEIR.
- September 1992. FEIR material arrived via OGER for DMG approval. Unusually busy time period. DMG rarely comments on FEIR responses and normally attaches little importance to

Trinda L. Bedrossian
March 8, 1993
Page Two

them except as a vehicle for effectiveness studies. I checked the file, read Custis' review, and asked Jack to check the material to see if the review comments, particularly the liquefaction issue, had been satisfied.

FEIR response material was written by Allen Kropp, much respected by us because of his association with David Rogers and the University of Wisconsin slope stability course. Kropp's new material addressed seismic/ground motion issues and discussed the liquefaction with apparent confidence. Jack then prepared the October 14 "sufficient information to make a decision letter" which I signed.

- November 1992. Ron Lazar of the Bodega Bay Concerned Citizens phoned to complain of our approval. He related information about swales and a sink hole that had deepened during the past 50 years, and comments by an independent CEG (Noguchi), who said the A-P report contained errors and misinformation. The comments seemed plausible to me and worthy of our attention.
- December 2nd, Jack McMillan and Bill Bryant visited the site. They met the developer's geologist, Eric Oldsborg on site, who gave them a copy of the previously missing trench log.
- Analysis of the trench log indicated poor quality, i.e., lack of geologic and soils details, and virtual absence of geologic interpretation and analysis of features, notably the sand-filled fractures that were logged.
- Swales and pock-marked terrain, seen on air photos were also not noted or interpreted in the air photos. These plus the sand-filled fractures suggested secondary seismic hazards, e.g., liquefaction and lateral spreading as potential hazards.
- Letter of December 16 was prepared by Jack and much altered by me and others. I believe the County extended the normal FEIR certification date to receive our input. Because of the lateness and the contradictory nature of this letter with our previous one of October 14, we, with specific encouragement from OGER, softened many statements in the letter, changing strong, definite statements to conditional ones, and suggesting (in the last paragraph) that mitigations could remediate our concerns.

While the December 16 letter was being processed and approved by HQ, OGER, and Pat Meehan (for Michael Bryne), the-developer's-attorney and geologist were phoning to

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Trinda L. Bedrossian
March 8, 1993
Page Three

discourage and subtly threaten us for our apparent change in position, to opposition to the project.

- At the December 16 evening meeting of the Sonoma County Planning Commission, our letter apparently did not present our case as clearly or strongly as it could. The developer's attorney, Mizzone, and Alan Kropp belittle the letter and denied some of our statements. For example, Attorney Mizzone stated "the letter is filled with conditional language...based upon suppositions". Mizzone quoted Oldsberg in denying the existence of closed depressions on the site, and the Geotechnical Engineer Kropp, argued that they were not sag ponds, but sink holes!!! Kropp also misrepresented the depth to bedrock and the zone of potential liquefaction.
- The letter was apparently discredited, and the Planning Commission then certified the EIR. The project was not approved however, because of the issue of traffic, which was also pressed by the homeowners.
- The County Board of Supervisors met to deal with two appeals to disapprove the project, on Tuesday, February 23. The homeowners visited me a week earlier, asking that DMG appear to address the geologic issues. I informed them that DMG could not act as a consultant for advocacy groups, and that the State could not take a position such as advocating use of the property as a greenbelt. I advised them to hire a geologic consultant to challenge the 1987 Oldsberg geology report.
- The February 23 Supervisors meeting was continued (unresolved) to March 2. Meanwhile, I was informed by the homeowners of the statements in opposition to our December 16 letter made by Mizzone and Kropp at the December Planning Commission meeting and proceeded to seek internal(DMG) approval to attend the March 2 meeting and clarify DMG's position.
- On your advice, I called Melanie Perry, planning commissioner, for an invitation to attend. I perceived her reaction as cool and reserved, but after consultation with her boss, it was evident that she could not to advise us not to attend.
- On further discussion with Dave Beeby, afternoon of March 2, it was decided that, since the County had made their decision to approve the project, DMG's appearance would be viewed as an advocate and/or an ally of an advocacy group. Consequently, it was deemed best not to attend the meeting,

Trinda L. Bedrossian
March 8, 1993
Page Four

but that DMG nevertheless maintained the position expressed in our December 16 letter. I phone Melanie Perry's office, she later returned the call and learned from Jack, that we would not attend, but that our concerns were nevertheless, unchanged. Jack also informed the project property owner that we would not attend, and our position expressed in the December 16 letter was unchanged.

- During the meeting, Melanie phoned Trinda to confirm that we were not attending, but that our concerns remained the same.
- We learned the next day (March 3) that attorney Mizzone misrepresented DMG's position, stating that DMG had dismissed McMillan from the case and now had no objections to the project. One Supervisor, Ernie Carpenter, asked if McMillan was dismissed "because he told the truth?", and Mizzone replied, "no, because he was inaccurate". Homeowners attorney, Susan Brandt-Holly questioned Melanie Perry if she was aware of DMG's position. Perry replied, yes, but she didn't contradict Mizzone or inform the Supervisors because she wasn't asked.
- Later, attorney Brandt-Holly phone me, repeating the above information. When she suggested that she might better question our legal counsel, I gave her Marcie Steinberg's number, then informed you, along with Jim Davis and Dave Beeby, of her phone call.
- In retrospect, the reason this case is different from other projects we have reviewed is that the Sonoma County Planning Department has not hired its own geologist or geologic consultant to review geologic reports. They apparently were not confident that our EIR review comments had been adequately addressed, and unknown to us, they were apparently relying on DMG to serve as their approving agent, hence, their request for written approval of the FEIR material.

Earl Hart reports that that planning commission has long been noncompliant with the A-P Act (in contrast to the Sonoma County Public Works Department). Most of the Sonoma County A-P reports in Earl's A-P files show no evidence of ever being approved by a Registered Geologist.

Roger C. Martin
Senior Engineering Geologist
Environmental Review Project

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Ms. Melanie Perry
Sonoma County Planning Dept.
575 Administration Drive, Roo
Santa Rosa, CA 95403-2885

Roger
parts of this
sound like a
complaint to
the Board of Registrars
- probably over the
head of Ms. Perry.
Condense?

Subject: Notice of Preparat
Impact Report (DEII
A.P.N. 100-180-30 &
FORMER SCH# 89062008 - PROPER # 93071064

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ision,

Thank you for forwarding the N
an 84-unit residential subdiv
Bodega Bay Village project. T
project has been deleted and left as a remnant parcel for future
land use determination.

oject,
former

The Department of Conservation's Division of Mines and Geology
(DMG) has examined the NOP and Tentative Map for this project, and
reviewed the geologic report and associated documents prepared for
the former Bodega Bay Village project. Some geologic hazard issues
for this site had been raised but not satisfactorily resolved. DMG
believes that the following issues should be investigated and
addressed in the Draft EIR:

Potential for Seismic Liquefaction. DMG's primary concern is
the potential for strong earthquake shaking to induce
liquefaction of sediments within or at the base of the marine
terrace sediments that underlie the site. Liquefaction can
occur in saturated, low density sands and silts during strong
earthquakes as soil particles are re-arranged and pore water
pressure increases to the point that the bearing capacity is
diminished. This can occur at depths as great as 50 feet. *or more*

Extreme liquefaction could cause the terrace material to break
up and drift downslope as slabs, a phenomena called lateral
spreading. This could occur over a wide area, on which homes
would be displaced and tilted, and connecting roads and
utility lines broken up. This possibility may be remote, but
geologic evidence suggests that it may have happened in the
past, and no geotechnical investigations have been done to
prove or disprove the possibility of it occurring in the
future.

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To determine if a soil has the potential for liquefaction, a
number of tests are performed. Typical of these are the
determination of ground water level, laboratory determination
of particle size distribution and soil density, and field
determinations of firmness, as indicated by penetration
resistance measured by hammer blows required to drive a
standard soil sampling device or cone penetrometer. According
to the previous (Bodega Bay Village) geology and geotechnical
reports, the critical zone of potential soil liquefaction
between 15 and 50 feet depth was not explored or analyzed for
this site.

Such an
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Unusual Geomorphic Depressions. Unusual topographic swales at the site have become a topic of concern at the project site from the standpoint of wetland ecology and also geologic stability. Some local residents allege that one swale has deepened in recent time. In correspondence, DMG noted their proximity to the San Andreas fault, suggesting a sag pond type origin in which subsurface voids are created. In the Bodega Bay Village project area the project geologist (1993) noted the northwest alignment and apparent continuity of the upper swale and the filled depression and former pond south of the dairy barn. This alignment is approximately parallel to the fault and consistent with sag pond formation. At a public meeting, December 17, 1992, geotechnical engineer Alan Kropp disputed the likelihood of sag ponds at the site, and referred to at least one of the features as a "sink hole". This implies that the soil was partially soluble or possible susceptible to hydrocompaction.

DMG has not made a study of the site and therefore does not advocate an origin for these features. We do however, point out that they are unexplained inhomogeneities at the site and none of the suggested explanations regarding them suggest earth stability. Aerial photographs show similar geomorphic depressions on the marine terrace elsewhere in the region.

Recommendations: DMG recommends that the issue of deep liquefaction be investigated early in the permitting process because it could affect the feasibility of the project. This would require a conventional subsurface liquefaction investigation with borings to a depth of 50 feet or to bedrock, whichever is less.

We feel that the fault rupture trench study was primitive and inconclusive and that a new Special Studies Zones investigation, preferably by a registered geologist experienced in Quaternary geology, is appropriate to explain the significance of the sand filled fractures and also the geomorphic depressions at the site. Mechanical and chemical analyses of the terrace materials at the base and adjacent to the depressions would be instructive to and evaluate the stability of the depressions and adjacent areas.

If you have any questions regarding these comments, please contact Roger Martin, Environmental Review Project Manager, at (916) 322-2562.

Stephen E. Oliva
Acting Environmental Program Coordinator

cc: Roger Martin

M E M O R A N D U M

To: Mr. Douglas P. Wheeler
Secretary for Resources

Date: May 2, 1994

Ms. Melanie Perry
Sonoma County Planning Department
575 Administration Drive, Room 105A
Santa Rosa, CA 95403-2885

From: Department of Conservation
Office of Governmental and Environmental Relations

Subject: Draft Environmental Impact Report (DEIR) for the Harbor
View Subdivision, A.P.N. 100-180-30, 53. SCE# 94033069.

Thank you for forwarding the EIR and associated documents for the above-referenced project, an 84-unit residential subdivision of 27.1 acres adjacent to the Bodega Bay community. The Department of Conservation's Division of Mines and Geology (DMG) has examined the EIR, four technical reports in the EIR Appendix volume, and the soil tectonic trench logs supplied by the geologic consultant.

Summary and Recommendations. DMG finds the Geologic analysis is focused on active faulting and tectonics, while the issues of liquefaction induced lateral spreading and instability associated with adjacent wetland depressions were not addressed in the EIR. New evidence pertinent to instability at the wetlands depressions adjacent to the project site is evident in the geotechnical report and deserves analysis. We recommend that geologic analysis of the Harbor View site be completed by the construction of geologic cross sections and application of ground water information, lithologic, and structural data obtained from the geotechnical and soil tectonic investigations to further analyze the issues of liquefaction, lateral spreading and slope stability.

We suggest that the geotechnical engineer be consulted regarding the question of the effects of slope on ground integrity above zones undergoing liquefaction at this site. Similarly, the final EIR should address the potential for exacerbated liquefaction at the site as a result of the wetland recharge proposal.

NOP Review Summary

In reviewing the Notice of Preparation for the Harbor View Subdivision EIR, DMG cited the need for further evaluation of the following issues:

1. The potential for deep seismic liquefaction of sediments within or at the base of the marine terrace sediments under the site.

2. The possibility that liquefaction could cause the terrace soils to break up and drift downslope, a phenomenon called lateral spreading.

3. The significance of unexplained features in trench logs of a 1987 geologic report, especially fissures filled with sand of unknown origin.

4. The origin of unusual geomorphic depressions, a large swale in the center of the site and two smaller marshy depressions; and apparently associated ground instability indicated by tilted and dislocated floor slabs of a former dairy barn near the site.

EIR Review

Items Adequately Investigated

In the *Soil Tectonics (Pedochronological)* and *Geological* reports, the issues of active (Holocene) faulting and interpretation of the sand-filled fissures (soil tongues) and other features observed in the exploration trenches (Item 3) have been explained adequately for this level of investigation. The consultants have discovered important evidence suggesting that the elongate swale (Item 4) was formed by deformation along pre-Holocene faults. Thus defined, the swale is a very old "sagpond type" feature within the San Andreas fault zone, as suggested in the NOP review. Because of the age of its formation, it can be regarded as benign with respect to Alquist-Priolo concerns of future faulting.

Issues Requiring Further Analysis

The issues of lateral spreading and the significance of the marshy depressions adjacent to the project were not addressed in the EIR or technical reports. Additionally, we continue to assert that the potential for liquefaction exists at the project site.

Liquefaction Potential. Site specific physical tests by the geotechnical engineer indicate that the potential for liquefaction exists. The geotechnical report is based upon the boring of 8 exploration/test holes and standard penetration testing of soils *in situ* at intervals as the bores were deepened. The report concludes that liquefaction potential is low except in the event of another magnitude 8 earthquake, which could result in 2½ to 3½ inches of settlement at the site. The settlement calculation indicates potentially liquefiable material about 10 feet thick. DMG staff recalculated the liquefaction potential of the sediments in the 16 to 25 foot interval of Boring #4 using a similar program used by the geotechnical engineer. Our calculations verified that liquefaction could occur near the base of the marine terrace sediments during a M 8 earthquake, and showed further, that even a M 7.5 earthquake could cause half of the interval to liquefy.

Mr. Wheeler and Ms. Perry
May 2, 1994
Page Three

Sediments of even greater liquefaction potential appear in some other bore logs.

DMG is further concerned with the possibility that the proposed wetlands recharge scheme (EIR Figure 13) would exacerbate the liquefaction potential of the site. The construction of an ephemeral pond over an infiltration trench in the central swale might add or redistribute water into the terrace sediments to adversely increase the amount of liquefiable sediments. The potential effects of this scheme were not addressed in the documents reviewed by the Department.

Lateral spreading and extent of liquefaction. The Harbor View site lies on a marine terrace that slopes gently westward from an elevation of 115 feet to nearly sea level. The lower edge is a subdued escarpment presumably cut by wave action. If the Geotechnical Engineer is correct in that deep liquefaction could effect $2\frac{1}{2}$ to $3\frac{1}{2}$ inches of settlement of the overlying soil, there appears to be an obvious potential for the upper portion of the terrace to spread, or slide downslope on the liquefied material. Evidence indicating the tendency of the upper layer of the terrace to shift downslope is reported in the Soil Tectonics report (page 9) which describes tensional fractures or soil tongues perpendicular to the trench, i.e. parallel to the slope contours. The final EIR should address mitigation measures for lateral spreading.

Stability of Irregular Geomorphic Depressions. Questions regarding the practical significance of peculiar geomorphic depressions on the marine terrace were raised in the NOP review and previous correspondence on this site. One, the central swale, was evaluated in detail in the Soil Tectonic study, but two, containing marshy ground and adjacent to the site, were not addressed. Just south of the site, severely tilted floor slabs of a destroyed dairy barn suggest ground instability adjacent to one depression. A small gully, eroding beneath the edge of one slab indicates the surficial soil is noncohesive, but deeper soil and ground water, that would have been involved in the tilting and subsidence of the slabs, were apparently not investigated.

The crescent-shaped marshy depression in Parcel A also was not described or analyzed for engineering geologic significance. Trench T-4 next to the depression was, unfortunately, excavated to only 5 feet and only the uppermost soil profiles were examined. Perusal of Bore Logs 2 and 8 near the depression by DMG staff finds a layer of relatively clean (low fines content) poorly indurated sand at the base of the marine terrace sequence. These sands would daylight near the base of the depression and account for the crescentic indentation of the terrace escarpment there by the erosional process of spring sapping. The bore log data suggests that where saturated, these sands are seismically liquefiable.

Mr. Wheeler and Ms. Perry
May 2, 1994
Page Four

Based on the above data, DMG believes that the lower part of the terrace may be unstable because of the potential for liquefaction and lateral spreading. This could adversely affect the western half of the proposed development. In addition, the upper walls of the depression appear to be unstable due to progressive spring sapping and block slumping if minor seismic liquefaction were to occur. Effects of the latter problems would probably be limited to lots 9, 10 and 11.

DMG suspects that slope failure associated with spring sapping was responsible for the distortion of the dairy barn foundations at the edge of the depression south of the project site. That problem appears to have been mitigated by partially filling the depression with soil and other debris prior to construction of the adjacent *Inn At The Tides*.

Conclusions. We believe that the geological work (particularly the Soils Tectonics study) has positively advanced the knowledge of regional geology at Bodega Bay, but the above mentioned items omitted from the reports may have an important bearing on the stability of the site and should be addressed. The geotechnical investigation provided important subsurface information that was not evaluated in the geology report or the EIR. No geologic cross sections were drawn to show the subsurface vertical and lateral extent of liquefiable beds, of lithologically distinct units such as clay or clean sands that might indicate structure, or of zones of weakness or stability within the terrace. The geotechnical logs reveal clay beds at the base of the terrace sequence under the east (upper) part of the site; these are not shown in section nor was their engineering geologic significance, if any, mentioned. Most importantly, the occurrence of ground water and its significance to local slope stability, liquefaction, and lateral spreading is not discussed in the geologic report.

If you have any questions regarding these comments, please contact Roger Martin, Environmental Review Project Manager, at (916) 322-2562.


Jason Marshall
Environmental Analyst

cc: Roger Martin,
Environmental Review Project Manager
Division of Mines and Geology

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COUNTY OF SONOMA
PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-8358

Memorandum

To: Dave Hardy, Supervising Planner
From: Crystal M. Acker
Environmental Specialist
cacker@sonoma-county.org
(707) 565-8357

Cc: Rich Stabler, Environmental Specialist

Date: October 19, 2006
Subject: Harbor View Jurisdictional Determination

This technical memorandum summarizes findings of a site visit conducted on the Harbor View project site in Bodega Bay on October 17, 2006. Attendees from PRMD were Dave Hardy, Rich Stabler, and myself. The purpose of the site visit was to investigate the current wetland status of two potential wetland areas within and/or adjacent to Parcel A and Parcel B, and to document any changes that might have occurred since the areas were last evaluated.

The October 17 site assessment was performed as an independent study; however, previous studies conducted on the site were reviewed for comparison, including a 2005 report by WRA, a 2006 declaration by Allan Buckman (DFG), and a 2006 letter by Balance Hydrologics.

Parcel B Mitigation Wetland

A small shallow depression within Parcel B was apparently created as a mitigation wetland to compensate for impacts to roadside wetlands during widening of Highway 1. According to Margaret Briare (personal communication, 17-Oct-06), wetland soils were brought in to the site when the wetland was built and an irrigation system set on a timer was also installed at that time. An irrigation timer was observed during our site visit, but we could not determine whether the system was still functioning as designed. Margaret believes that it may no longer be working properly, potentially due to disturbance by small mammals.

The site does not currently appear to be functioning as a wetland, and does not currently meet wetland criteria for any of the three wetland parameters- vegetation, hydrology, or soils. Data were collected at two sample points within the depression. Approximate locations are drawn on the attached plan map. Both were located in what appeared to be the lowest elevation portions of the depression, areas which would be most likely to exhibit wetland characteristics.

Both sample locations were vegetated primarily by a single upland herb, hairy cat's ear (*Hypochaeris radicata*). Some wetland-classified plant species were present, but in minor amounts (see attached datasheets). Most were non-native, weedy, facultative and facultative wetland (FAC and FACW) species that are known to occur in both wetlands and non-wetlands in response to disturbance. The only obligate (OBL) wetland species present was soft rush (*Juncus effusus*), and all individuals appeared to have been planted as part of the original mitigation effort (black weed protection fabric was observed around the base of plants). Spreading rush (*Juncus patens*) also appears to have been planted.

The soil was a fine sandy loam with no visible redoximorphic features, such as mottles or oxidized root channels. Sandy loam soils generally drain too rapidly to support wetland conditions, unless they are underlain by a confining layer (e.g., clay, bedrock) or are very compacted. The soil was compacted, but was apparently not compacted enough to pond surface water and allow wetland formation. No visible indicators of surface hydrology were observed.

Conclusion

Because none of the wetland parameters are present, the site would not qualify as a wetland under either Army Corps or Coastal Commission jurisdictions. It follows that the area is probably not meeting success criteria as a mitigation wetland either. We recommend that remediation actions be undertaken during construction of the adjacent development project. The lack of hydrology could be corrected by installing a clay liner under the wetland topsoil to capture and hold precipitation and surface runoff. Presence of a confining clay liner may alleviate the need for artificial irrigation. After regrading is completed, the area should be revegetated with native wetland species suitable for the location, and the site should be monitored for a minimum of three years after planting to ensure that success criteria are met.

Parcel A Seep Wetland

Concern has been expressed from various sources that the large seep wetland present in and adjacent to Parcel A has been or is being drained as a result of installation of infrastructure for the Harbor View project. A storm drain pipe was installed through the eastern edge of the wetland in 2000. The pipe was installed in a gravel-filled trench, and backfilled with existing topsoil. It has been suggested that the pipeline has altered hydrology of the wetland sufficiently to result in a degradation of overall wetland condition, and has resulted in a loss of wetland acreage.

Four sample points were taken in the large seep wetland. A pair of sample points (1 in wetland, 1 in upland) were taken on the eastern boundary of the wetland and two were located within the pipeline alignment (1 near the northern extent and 1 near the southern extent of the wetland).

Positive indicators of all three wetland parameters were observed in the eastern portion of the wetland. Dominant vegetation consisted of an OBL herb, wire rush (*Juncus balticus*), and a FAC grass, velvet grass (*Holcus lanatus*). Soils were a fine sandy loam, and were slightly moist in the wetland point, but dry in the upland point. The wetland soil sample exhibited hydric indicators in

the form of common oxidation mottles. Because the site has seasonal hydrology, no direct evidence of hydrology was observed; however, secondary hydrology indicators were observed, including many oxidized root channels and satisfaction of the FAC-neutral test.

Two data points were taken in the pipeline area. Approximate locations are drawn on the attached plan map. The upper point lacked indicators of wetland hydrology and hydric soils, but did have marginal wetland vegetation (see attached datasheets). The lower point had marginal indicators of all three parameters. Because wetland indicators were either lacking or marginal along the pipeline, this area would likely not meet jurisdictional requirements of the Army Corps. We estimated that an approximately 8 to 10-foot wide swath would not meet the three parameters. Although obviously not as robust as adjacent wetland areas, vegetation along the pipeline would likely still be considered to meet requirements for a Coastal Commission wetland.

The western portion of the wetland exhibited obvious wetland indicators upon a cursory visual inspection, therefore, no sample points were taken.

Conclusion

Installation of the pipeline does appear to have had some affect on the overall hydrology of the wetland since the eastern portion appeared to be relatively dryer than the western portion. However, observed wetland indicators in the east area are still robust and the site meets requirements to be considered a wetland under both Army Corps and Coastal Commission jurisdictions. Furthermore, the overall shape and extent of the seep wetland as of October 17, 2006, appears to be similar to that mapped by WRA in 1990 (before the pipeline) and again in 2003 (after the pipeline). It is important to note that we have not observed the wetland in any past state, and therefore, can only report on its current condition. We agree with WRA that any fluctuation in the area of the fringe wetland may be due to climatic variation, and we can not conclude or deny that any changes are directly attributable to installation of storm drain infrastructure.

The "pipeline swath" does not appear to be functioning as a wetland and would likely not be considered a wetland by the Army Corps, but may be considered a wetland by the Coastal Commission. Both points had very shallow top soils (6-7 inches) over drainage gravel. Due to the fine sandy loam soils, underlying gravel, and slope of the hillside, all of which promote drainage, it would be difficult to maintain wetland hydrology without a constant input of water. An irrigation line was observed running along the pipeline alignment, but it does not appear to be supplying adequate hydrology to support a wetland. Past efforts to restore this area (described in WRA report) have not been successful. Therefore, rather than attempt additional remediation in this area, it may be a better solution to replace the lost wetland acreage in a nearby location, possibly by expanding the seep wetland in another direction, or by creating additional acreage in Parcel B.

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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Th 22f

Prepared September 4 (for September 6, 2007 hearing)

To: Coastal Commissioners and Interested Persons
From: Charles Lester, Deputy Director
Michael Endicott, North Central Coast District Supervisor
Michelle Jespersion, Coastal Program Analyst
Subject: STAFF REPORT ADDENDUM for Item Th 22f
Appeal No. A-2-PAC-07-022 (Pacific Beach LLC)

The purpose of this staff report addendum is to respond to additional correspondence from the appellant, Patrick Rentsch, attached herein as Exhibit 19, which brings forth information with regard to the project's consistency with the City of Pacifica certified Local Coastal Program (LCP) that was not specifically addressed in the staff report.

Mr. Rentsch's correspondence includes information from a geologic engineering evaluation completed in May 2002 for a property at 220 Shoreview Drive in Pacifica, just north of the subject site. The evaluation describes significant environmental concerns regarding seawall protection from coastal erosion and hazards along the section of coast in Pacifica. Based on the conclusions made in this report, Mr. Rentsch contends that a cooperative approach for shoreline protection is necessary in this area to protect all properties and must be taken into consideration before any project of such a scale of the proposed 9-unit condominium at 1567 Beach Blvd can be undertaken.

Mr. Rentsch contentions regarding the merits of uniform shoreline protection are justifiable; as a policy matter, the Commission encourages local governments, through Local Coastal Programs, to formulate or outline options for regional shoreline protection strategies that can be implemented throughout a section of shoreline that has consistent geologic and coastal conditions. Various types of shoreline protection in a region can raise concerns including visual inconsistencies, end effects of the different shoreline treatments, the development of weaknesses at the junctions between the various structural options and different maintenance requirements, long-term efficacy and durability of the different treatments.

This area does have various types of shoreline protection: Beach Blvd seawall along Beach Blvd and various quarry stone revetments interspersed with a shotcrete wall to the north of Beach Blvd along Shoreview Drive. Regional shoreline protection, though, is not part of the project description for the subject development. In addition, the City of Pacifica's certified LCP does not require a regional shoreline protection approach; rather, shoreline protection is addressed on a property by property basis. However, to the extent that future seawall development may be necessitated by the project, the relationship of this future armoring to adjacent shoreline structures is a relevant issue to be addressed in the de novo review for the project.

Note: In this correspondence, Mr. Rentsch also raises the contention of the projects consistency with the LCP-Implementation Plan (Zoning Code) Section 9-4.4406(c)(2), that prohibits new development from requiring seawall as a mitigation measures, because the retaining wall required as mitigation for flooding will act as a seawall. This contention is already addressed in Section 3.3.2a.iv of the staff report on page 23.

MAKE THE FOLLOWING REVISIONS TO STAFF REPORT, PAGES 10 AND 19, IN UNDERLINE:

Page 10, new second paragraph:

Mr. Rentsch also contends that a cooperative approach for shoreline protection is necessary in this area to protect all properties and must be taken into consideration before any project of such a scale of the proposed 9-unit condominium at 1567 Beach Blvd can be undertaken.

Page 19, new third paragraph:

Appellant Rentsch also assert that the structural integrity of the surrounding area should rely on cooperative approach to shoreline protection for this area. The Commission generally recommends the local governments take a regional approach shoreline protection through Local Coastal Programs in an area of similar geology and wave conditions to avoid impacts such as visual inconsistencies, end effects of the different shoreline treatments, the development of weaknesses at the junctions between the various structural options and different maintenance requirements, long-term efficacy, and durability of the different treatments.

This area of Pacifica does in fact have various types of shoreline protection: Beach Blvd seawall along Beach Blvd and various quarry stone revetments interspersed with a shotcrete wall to the north of Beach Blvd along Shoreview Drive. Regional shoreline protection, though, is not part of the project description for the subject development. In addition, the City's certified LCP does not require a regional shoreline protection approach; rather, shoreline protection is addressed on a property by property basis. However, to the extent that future seawall development may be necessitated by the project, the relationship of this future armoring to adjacent shoreline structures is a relevant issue to be addressed in the de novo review for the project.

Michelle Jespersion

From: Patrick Rentsch [prentsch@pacbell.net]
Sent: Wednesday, August 22, 2007 2:26 PM
To: Michelle Jespersion
Cc: Patrick Rentsch; Jo Ginsberg
Subject: Appeal of CDP-273-06

Dear Ms. Jespersion,

I write to again express my concern about this project. As you can see from the attached photos, this area of Beach Blvd. is subject to extreme wave action by the Pacific ocean. The sidewalk pictured floods 70 feet back from the edge of the seawall; the entire street can have enough water on it to contain waves. What will happen when the street is raised, ramping downwards towards my property? This may easily be detrimental to the health, safety and welfare of the persons residing in the neighborhood.

I would like to draw your attention to the Engineering Geologic Evaluation, dated May 14, 2002, prepared by Earth Investigations Consultants for Mr. Ashour Yadegar, a former neighbor at 220 Shoreview Drive, Pacifica, California. As you may know, the proposed development is contiguous with Shoreview Drive. The report noted several significant environmental concerns to be addressed before Mr. Yadegar began reconstruction of the seawall adjoining his property. <!--[endif]-->

- The Shoreview area is reported “to be in a high hazard zone where cliff erosion and inundation by storm waves threatened residences in 1983.” Page 3.
- “High winter storm waves in 1995-96 again attacked the bluff, damaging much of the Shoreview Drive revetment.” Page 7.
- “High winter storm waves and extreme tides in 1997-98 again damaged the local revetment system. The City file revealed that a ‘general’ emergency permit for revetment repair by adding more rock to the damaged segment(s) of revetment was granted to a group of Shoreview Drive residents[.]” Page 7.
- “Your property occupies probably one of the highest risk areas for development in the City of Pacifica, if not the whole San Mateo coast. . . . It is extremely important for you to realize your property lies in a very high storm wave hazard zone, and with a steadily rising sea level, this condition is likely to worsen[.]” Page 11.
- “We perceive that there is also an imperative for adjoining property owners to cooperate in shoreline protection once a revetment system has been established. In our opinion, it is unconscionable for any individual property owner to ignore bluff protection, or to initiate an independent dissimilar approach to bluff protection because historically such behavior has resulted in damaging consequences[.]” Page 12.

This last note of the report is most imperative, as it suggests the importance of conducting a cooperative and mutual approach to shoreline protection. The needs of the entire seawall as a whole and of neighboring property owners must be taken into consideration before any project of such a scale can be undertaken.

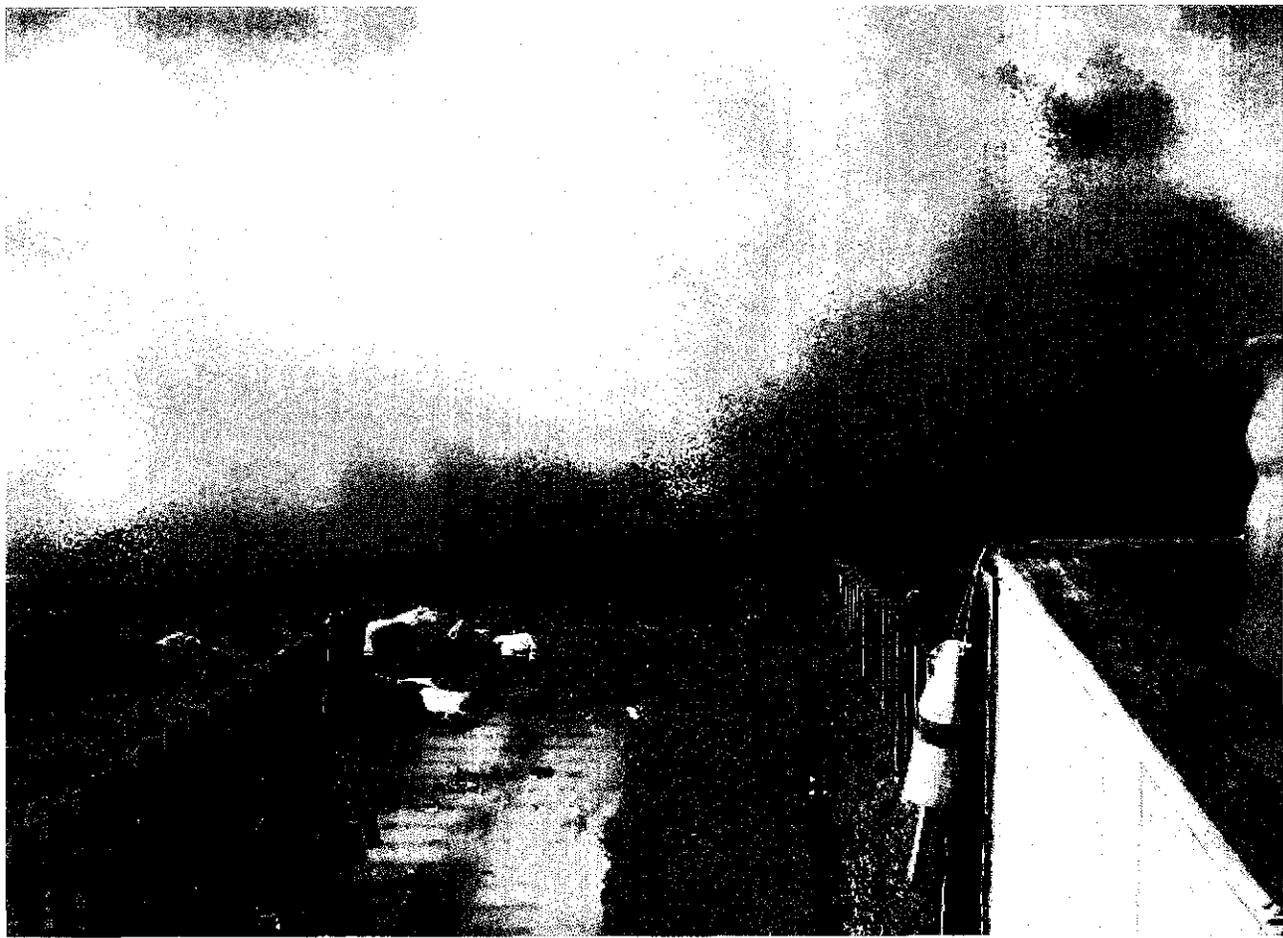
Further, it is inconsistent with Pacifica Municipal Code Section 9-4.4406(c)(2), which states "Consistent with the City's Seismic Safety and Safety Element, new developments which require seawalls as a mitigation measure or projects which would eventually require seawalls for the safety of the structures shall be prohibited, unless without such seawall the property will be rendered undevelopable [*sic*] for any economically viable use". The applicant may be calling it a retaining wall (see applicants plans); but as a wall specifically to keep out the sea it is by definition a seawall. In fact, the original Pacifica Planning Commission Staff Report stated: "The increase in height of the seawall is necessary to protect the road (Beach Blvd.) and the new structure from wave action".

Clearly feasible alternatives exist for economically viable development. I urge you to find substantial issue with the plans as proposed, and have the applicants seek alternatives.

Respectfully,

Patrick Rentsch
1581 Beach Blvd.
Pacifica, CA 90444

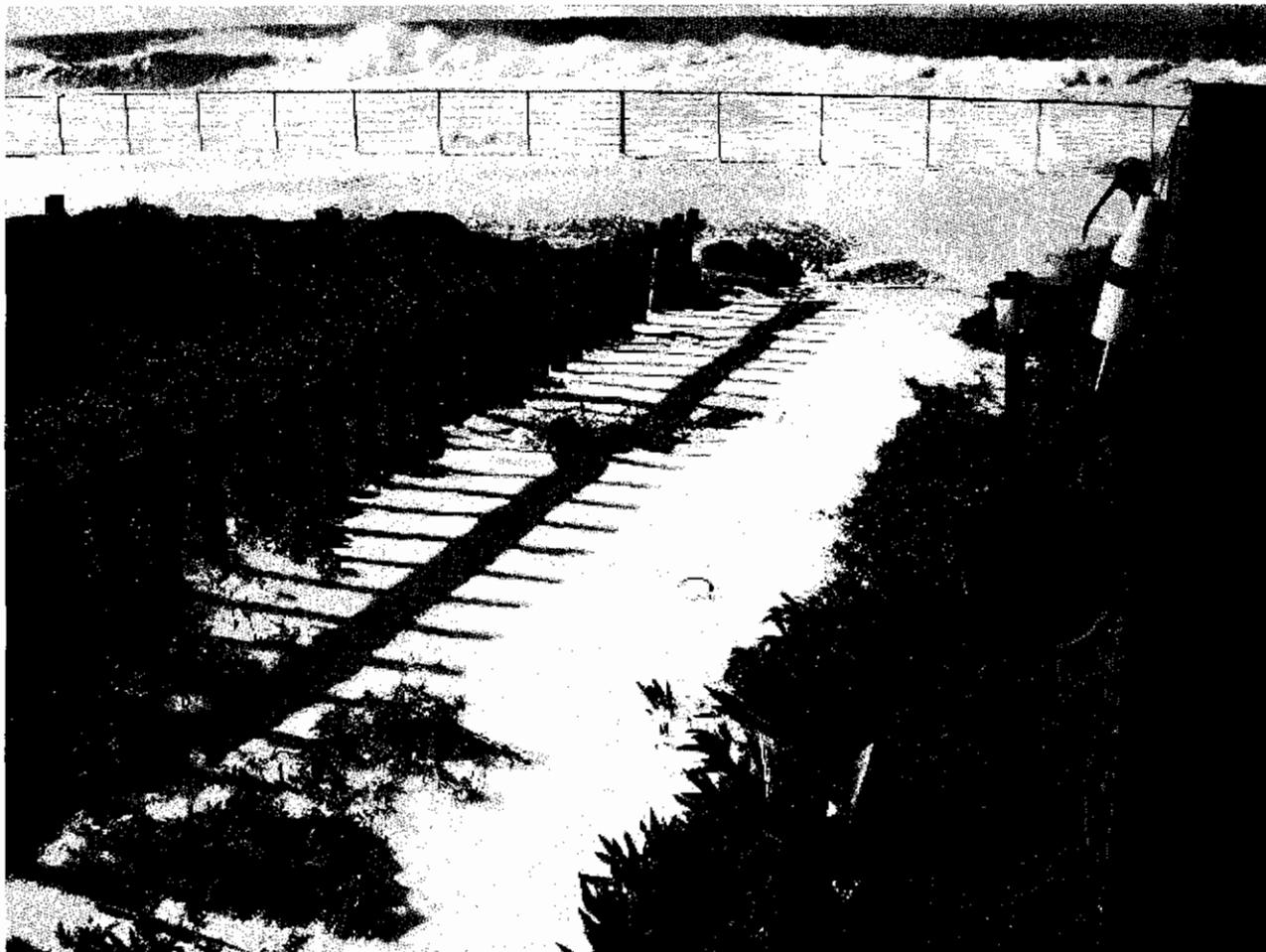
cc: Jo Ginsberg



Beach Blvd - wave overtopping

Source: Gary Virginia

Date: October 2006



Beach Blvd sidewalk and walk up flooding
Source: Gary Virginia
Date: October 2006



Beach Blvd flooding in front of 1567 Beach Blvd
Source: Gary Virginia
Date: October 2006

CALIFORNIA COASTAL COMMISSION

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Th – 23b

ADDENDUM for Thursday # 23b

DATE: September 4, 2007
TO: Commissioners and Interested Parties
FROM: North Central Coast District Staff

SUBJECT: Agenda Item 23b: **Marin County Environmental Health services, Marshall)** Application of Marin County Environmental Health Services for (1) East Shore Wastewater Improvements, (2) repair, improve and/or replace septic tanks serving up to 38 developed lots, and (3) installation of collection pipe and community leachfield treatment system. Located from 19145 to 20230 Highway 1, Marshall, Marin County.

The purpose of the addendum is to make technical corrections to the staff's recommended Special Conditions to the permit and to replace Exhibit 3 to the Staff Report. This addendum also responds to public comments received about the proposed project.

Note: ~~Strikethrough~~ indicates text to be deleted from the August 21, 2007 staff report and underline indicates text to be added to the August 21, 2007 staff report.

1) The Staff Report Exhibits shall be revised as follows:

Exhibit 3 to the August 21, 2007 Staff Report, entitled, "East Shore Wastewater Improvement Project On-site System Survey and Recommendation is replaced by the Attachment 5 to this addendum. All references to Exhibit 3 in the Staff Report, including Special Conditions, shall reference this replacement Exhibit 3 entitled: the Marshall Phase I Community Wastewater System Assessment District.

Exhibit 3 contains the APN's subject to this permit CDP 2-07-019.

2) The STAFF'S RECOMMENDED FINDINGS AND DECLARATIONS shall be modified as follows:

Add new section H. RESPONSE TO PUBLIC COMMENTS on Page 19 (before Section H. California Environmental Quality Act (CEQA) and change CEQA section to Section I. :

H. California Environmental Quality Act (CEQA) Response to Public Comments

The Commission has received written communications from Robert Field who expressed concerns regarding "...what Marin county has done to influence the property owners to approve the project. It is clear from the recorded history of this project that the only thing Marin county is trying to accomplish is getting millions of additional dollars in grant money. If they had used the best option which is a home based system to repair and upgrade the home septic systems, all the work would have been done by now with money left over." Most of his comments do not relate to Coastal Act issues such as : (1) the procedures followed by Marin County to exert pressure on homeowners to become part of a community system; (2) that constructing this community septic system in part with grant funding is an illegal gift of public funds; and (3) lack of due process by the county in distributing the draft and final EIRs to Phase I property owners. He contends that the county is causing a public health hazard by installing the common collection pipeline too close to fresh water pipelines and the edge of the bay.

Staff Response:

As noted on page 4 of the Staff Report, the standard of review for this project is for its consistency with the Chapter 3 policies of the Coastal Act and in accordance with the requirements of Section 30412(c).

Most of the comments raised by Mr. Field do not address policies contained in Chapter 3 of the Coastal Act. He does express concern with potential issue of pollution due to failure of the STEP pumps and pressurized common pipeline due to a storm, power outage, or earthquake. He also feels that occupants of houses will not be adequately trained in operating the systems. He feels the FEIR was wrong when it favored a community STEP system over an advanced single home based system which discharges "water cleaner than bay water and could be used for underground watering of a garden." Staff notes that participation in this Phase I project is voluntary and that property owners that want to stay with a home based septic system do not have to participate in the project. As described in the Staff Report on page 10, an inspection conducted by the county of the septic systems in the area demonstrate the problems created by the close proximity of the septic systems to the bay. Tomales Bay is already listed on the 303 (d) impaired water bodies list. The project will move the disposal of waste to a community system further away from the bay, minimizing adverse effects of waste water discharges.

The findings and declarations relating to Section D of the Staff Report (Protection of Coastal Waters, Water Quality and Marine Resources. P.14-16) already address the issues that are presented by the unique challenges posed by the proximity of the Phase I

properties to the bay waters. Marin County has established an ongoing monitoring and septic system management program to be run by the county for all septic tank owners in the broader East Shore Area Wastewater Management Program which includes Phase I projects covered by this permit. This program will ensure that the Phase I property systems are operating properly whether or not the owner is in residence or it is occupied by a renter.

The FEIR (page 41) includes mitigation measures to require that the project comply with the State of California's "Guidance Criteria for the separation of Water Mains and Notable Pipelines" (April 14, 2003) for sanitary sewerwater lines separation, including appropriate vertical and horizontal separation distances, use of special pipe, where needed, and possible relocation of sections of water lines, if necessary.

In addition, the engineering requirements for the design of the common collection pipe (and its laterals) in the project's description are crafted to minimize potential effects related to construction and system operation (including appropriate reinforcement of pipeline, and shutoff valves where necessary such as crossing culverts or under roads). Furthermore, the project includes mitigation specifically designed to address emergency failures of the system, which include: (a) Reserve emergency storage capacity equal to approximately one day of normal sewage flow for individual residential pump units; (b) Ability to operate STEP units using a portable emergency generator; (c) Regular program of inspection and maintenance for all pump systems by qualified maintenance personnel; (d) On hand supply by county of replacement pumps and other critical components to facilitate quick restoration of service in the event of pump failure; (e) County provided educational information to all property owners regarding the operation and limitations of pump units and the recommended practices during pump and power outage situations; and (f) Operation and maintenance procedures for the project facilities that include a sewage spill contingency plan. The plan shall include, but not be limited to the following: Manual shutoff procedures; Equipment and material inventory and procedures to absorb or contain a spill; Emergency repair options; and contact information for licensed septage haulers and qualified septic system contractors.

Therefore, because:

1) the project description contains components that: (a) account for the unique site characteristics; (b) provide engineering designs contained in the SWPPP for the construction activities related to the upgrade or replacement of septic tanks and installation of STEPS at each Phase I property; (c) establish procedures and require emergency supplies to prevent spills in the event of an emergency (from breakage, pump failure or power outage); and (d) provide for owner/operator education and regular monitoring for the project and its location; and,

2) the project incorporates the mitigation measures from the Final Environmental Impact Report (including 3.2-I, 3.10-C) as part of Special Condition 1; and

3) the permittee must follow the onsite construction plans as contained in Special Condition 3,

this project, as described and conditioned, is located such that it will protect coastal waters, marine resources, water quality and riparian habitat consistent with Coastal Act sections 30230, 30231, and 30412(c).

List of Attachments

Item 5 - Revised Exhibit 3.

Item 6 - August 28, 2007 letter from Robert Field.

MARSHALL PHASE 1
COMMUNITY WASTEWATER SYSTEM ASSESSMENT DISTRICT

NAMES AND ADDRESSES OF PROPERTY OWNERS
County of Marin
State of California

ASMT #	ASSESSOR'S PARCEL NUMBER	OWNERS	MAILING ADDRESS
1	106-010-02	Beall, Alice H. & Hockenos, Robert F.	Box 711 Marshall, CA 94940
2	106-010-07	McCoy, Thomas W.	1155 Third St., Ste. #230 Oakland, CA 94607
3	106-010-09	Weiner, Michael	141 San Carlos Ave. Sausalito, CA 94965
4	106-010-05	Orr, Norman	20155 St. Rte. 1 Marshall, CA 94940
5	106-020-14	Martinelli, Peter J.	PO Box 237 Bolinas, CA 94924
6	106-020-38	Atid Avi Altman, Daniel	2544 Etna Berkeley, CA 94704
7	106-020-39	Atid Avi Altman, Daniel	2544 Etna Berkeley, CA 94704
8	106-020-01	Zalesky, Ronald J.	P.O. Box 543 Pt. Reyes Station, CA 94956
9	106-020-08	Davis, Patricia C.	P.O. Box 784 Marshall, CA 94940
10	106-020-18	Grymes, Ann	P.O. Box 846 Marshall, CA 94940-0846
11	106-020-22	Mills, Frances B. & Thomas, Margaret B.	382 River Rock Ct. Santa Rosa, CA 95409
12	106-020-04	Bodisco, Richard G. & Dawson-Baron, Nancy A.	638 57th St Oakland, CA 94609
13	106-020-40	Hester, Cynthia Rosen, Marni, & Mareta, Don	925 Clayton St. #3 San Francisco, CA 94117
14	106-010-06	Sanchez, Pedro & Ishmael	P.O. Box 494 Pt. Reyes Station, CA 94956
15	106-030-02	Calestini, Susan F. & Rayn, Milton	6347 Pedrick Rd. Dixon, CA 95620
16	106-030-03	Kaul, William E. & Kyle, Lois J.	862 Euclid Ave. Berkeley, CA 94708
17	106-030-04	Wright, Paul	5435 Locksley Ave. Oakland, CA 94618
18	106-030-05	Goodman, Corey S. & Barinaga, Marcia	5610 Golden Gate Ave. Oakland, CA 94618
19	106-030-06	Rodoni, Fred and Karen	PO Box 748 Pt. Reyes Station, CA 94956
20	106-030-07	Field, Robert C. & Loretta S.	19825 St. Rte. 1 Marshall, CA 94940
21	106-030-08	Hall, Pamela J. & James C C/O Citimortgage, Inc.	PO Box 786 Marshall, CA 94940
22	106-030-09	Young, Nancy	P.O. Box 796 Marshall, CA 94940
23	106-030-10	Halley, Mary C.	PO Box 762 Marshall, CA 94940
24	106-030-11	Smith, Gehrard J.	P.O. Box 761 Marshall, CA 94940
25	106-030-12	Davis, Benjamin J & Patricia A.	23250 Sir Francis Drake Blvd. Inverness, CA 94937
26	106-030-13	Gohstand, Robert & Kelly, Maureen	17637 San Jose St Granada Hills, CA 91344
27	106-030-14	Marckwald, Andrew K.	2151 Pacific Ave. #2 San Francisco, CA 94115
28	106-030-15	Mac Mahon Jay R. & Joan A.	201 Van Winkle Dr. San Anselmo, CA 94960
29	106-040-04	Arrendell, Jane R.	162 Cervantes San Francisco, CA 94123
30	106-040-05	Cuyler, Aviva & Richard M.	P.O. Box 845 Marshall, CA 94940
31	106-040-07	Clyde, George H. Jr. & Shari S.	80 Alamo Ave. Berkeley, CA 94708
32	106-040-08	Smith, Brian D. & McClean, Alison C.	228 Lake Dr. Berkeley, CA 94708
33	106-040-10	Fields, John & Betty J.	P.O. Box 802 Marshall, CA 94940
34	106-040-11	Clarke, Richard P. & Bonnie G.	P.O. Box 806 Marshall, CA 94940
35	106-050-01	Vilicich, Edward A. & Bernadette C., John and Jeanne Vilicich, Frances A. & Gwendolyn Vilicich	P.O. Box 801 Marshall, CA 94940
36	106-050-11	Vilicich, Edward A. & Bernadette C., John and Jeanne Vilicich, Frances A. & Gwendolyn Vilicich	P.O. Box 801 Marshall, CA 94940
37	106-050-12	Vilicich, Edward A. & Bernadette C., John and Jeanne Vilicich, Frances A. & Gwendolyn Vilicich	P.O. Box 801 Marshall, CA 94940

RECEIVED

AUG 8 0 2007

CALIFORNIA
COASTAL COMMISSION

Date 8-28-2007

To

**North Central Coast District
Office**

Charles Lester, Senior Deputy
Director

Michael Endicott, District
Manager

Sonoma

Marin

San Francisco

San Francisco

Daly City, Half Moon Bay, Pacifica

45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

(415) 904-5260 or

(415) 904-5200

FAX (415) 904-5400

San Mateo

And Staff

From

Robert C Field

Po Box 824/19825 HW 1

Marshall CA 94940

415 663 8181 home

707 765 1325 x105 work

Subject. Written material to be considered at the hearing regarding Permit approval for the Marshall Phase 1 Community Wastewater System & WARNING of certain pollution of Tomales Bay by the proposed STEP system.

Dear Charles Lester, Senior Deputy Director
Michael Endicott, District Manager
and Staff

I have received notice of the new hearing date on September 6 2007 in Eureka CA. The contents of this letter must be considered before a vote is taken on the matter.

I want to open by stating that I believe this STEP system project and the way it has been pushed down the throats of 33 Phase One property owners is the most unfair and unjust action I have ever seen by government. Over one third of the Phase One owners voted no or didn't vote for the STEP system assessment district. Many who voted yes were led to believe they had no choice in the matter by Questa, Tom Flynn (who works for Questa and was the Phase One committee chairman until March of 2007), The county personnel, The ESPG management, and the Phase One committee. This was despite the fact that the project was voluntary from the start. The EIR required that all the East Shore Property owners be part of the Wastewater Disposal Zone, but the county knew they could never get all of the owners to vote for the Zone so they only included the 33 Phase One owners in the Zone knowing they had enough votes to pass it. Once the Zone was in place it was a done deal.

There have been a number of new details regarding this project. Many of the significant facts have to do with what Marin County has done to influence the property owners to approve the project. It is clear from the recorded history of this project that the only thing Marin County is trying to accomplish is getting millions of additional dollars in grant money. If they had used the best option which is a home based system to repair and upgrade the home septic systems, all the work would have been done by now with money left over.

I will list the different actions taken.

1. There is a letter from the Marin County Planning Commission addressed to the Phase One owners which is called a Firewall Letter. This letter protects the property owners from the

county going after them because of illegal and non permitted work being done on their property. This letter has resulted in multiple property owners actually doing major illegal and non permitted improvements to their property. With few exceptions the building included placing new foundations in the bay under the homes. In one case the owner built a two story rental B&B home. Another owner has a studio rental with a septic system and out side shower above his home which is totally illegal and wasn't included in the Phase One project. Most of these owners are members of the Phase One committee that helped push this project through.

2. The county used the grant money as a gift of public funds to pay for the private property owners home based STEP systems. The cost for each home system varies considerably so many owners benefit much more from this action then others. This action prejudices and influences a yes vote from the owners who benefit the most from it. This action was taken despite the fact that the county said in writing that they could not do this, and used that as a major reason why the home based solution couldn't be used.
3. The county will not allow owners to buy in to the common system without paying the same cost to totally connect to the STEP system. (It costs \$19k to do ether). This action stops the owners from being able to install their own home systems and from participating in the common system. It is also a violation of Prop 218 law.
4. The county has forced liability for environmental pollution of the bay caused by the home STEP systems on the property owners causing reverse condemnation of their property. The County is paying for, and installing the home based STEP systems with a gift of public funds, The County will not take ownership of these systems or be responsible for any liability the systems bring with them. The county has stated that they will not provide insurance coverage for any pollution of the bay or property damage which is caused by the On Lot home based STEP systems and lateral connections to the common system. The owners can not get insurance coverage for the liability the county is forcing on them from normal home owners insurance. The owners in order to get insurance must form a home owners association and fund it to accomplish getting insurance to cover the pollution liability. The expense of this is not included in the assessment district or in the proposed O/M assessments. The owners have no control of the On Lot systems and maintenance of them. The Phase Owners property is permanently damaged by the County forcing them to install the On Lot systems and take the liability for them. The County knows that the owners can not get insurance to cover the liability. Additionally we received the following information from our current insurance provider. "***You have limited coverage for your system backing up in your home. Typically the damage that results to the residence but not the line or problem itself.***

There would be absolutely no coverage under any homeowner's policy for the other exposures you described.

The coverage you would need if the system is owned by the homeowners and it would normally be some type of a homeowners association but certainly would not be covered by your homeowners. If the county owns and maintains the system they would be liable.

Normally sewer projects are funded through an assessment district and the approval of a certain percentage of the property owners is necessary to make the district happen. The system you are describing seems fraught with potential problems for the homeowners that they have no control over. "

The liability to the Phase One Owners caused by the county is unlimited if insurance can not be obtained. If it can be, the liability is in excess of \$2,000,000.00 per incident. The Town of Tomales

has already been sued by the Tomales Bay Oyster Companies and lost when their sewer system failed and polluted the bay.

5. Illegal gift of public funds. On June 7 2007 we asked Phil Smith in an email the following questions.

"1. I would like to know why it is legal for the county to use the grant money to pay for the On Lot Step systems? I would like the specific law that allows you to do this?

1. I would like to know why it is legal to distribute the grant money unevenly to the Phase One Owners which benefits a minority number of owners with Step 3 or 4 septic tanks including the commercial owners, and gives them incentive to vote yes on the assessment district?"

We have not received any response to our questions which is another example of a violation of due process. In the past Phil Smith advised us as follows regarding the gift of public funds for improvements for the On Lot Step Systems which benefit the property owner by saying the following.

"

Another potential stumbling block with this approach is the Gift of Public Funds laws in the California Constitution & Codes. It's one thing to use public grant funds to build a community system as we're proposing, but I'm advised that it may potentially be difficult from a legal standpoint to spend all that money on homeowner's individual systems on their own property."

And in his answer to this question from us. **"I found it interesting that none of the grant money can be used to improve a private home owners septic."** Phil said.

" [Smith, Philip] True - unless the District takes ownership of the wastewater facilities in the yards - legal instruments are needed for this e.g. easements etc."

These statements of position from County regarding the Gift of public funds contradict the actions that the County is now intending to take by giving a gift of public funds to private property owners. The County is also allocating the Gift of public funds unevenly between the Phase One Owners which is a special benefit to the owners with the more expensive On Lot system requirements. This action also gives them incentive to vote for the Assessment District because of that. The County is getting around the Prop 218 law by assigning all the assessment cost to the common system by using an illegal gift of public funds. The County is not taking possession of the On Lot systems or taking legal liability for the On Lot systems which exposes all the Phase One Owners to unacceptable liability for the pollution of the bay that the On Lot systems will cause. The law regarding Gift of public funds is as follows.

A. Gift of Public Funds

California Constitution, Article 16, Section 6 prohibits making gifts of any public funds. The state must receive commensurate value whenever its resources are used, including time, equipment, materials, supplies and facilities.

B. Limitations Upon Official Action

Public Purpose. All public funds must be expended for public or municipal purpose and there may not be a "gift" of public funds for a private purpose. The taxpayers' monies cannot be diverted into projects other than those which serve a public or municipal purpose. An improper expenditure (not authorized by law) may result in personal liability of the individual council member.

CALIFORNIA CONSTITUTION
ARTICLE 16 PUBLIC FINANCE

SEC. 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever;

6. Causing a hazard to public health. The County intends to install the STEP common system pipe line on the edge of HW 1 and within 4 feet of our public fresh water lines, and the bay's edge. The location of our water lines will not allow this to happen. The STEP pipe line must be located as far away from the bay and the public water lines as possible. The following is a quote from Questa/Norm regarding this.

"I just finished speaking with Marianne Watada at State Health in Santa Rosa. She reviewed our drawings showing our proposed plan to install the wastewater force main with a 4-ft lateral setback and 1-ft vertical clearance below private water lines. She agreed with our approach and said the design would be acceptable to State Health if they had jurisdiction over the installation. However, she will not be providing a written approval letter because they have determined it is not in their jurisdiction unless there is a public water system involved. "

You will notice this statement from the SWQCB " However, she will not be providing a written approval letter because they have determined it is not in their jurisdiction unless there is a public water system involved. " . The SWQCB has been told by Questa that there are no public water systems which is not true.

I sent Norm and Phil the following email April 13 2007.

"I asked Norm last night if they got permission to use the 4 foot offset from the water lines instead of 10 feet required by the State for sewer line separation from water lines.. He said no.

He said your position is that our water line does not exist as far your records are concerned, and therefore it isn't a problem. Only Phil has to approve installing the STEP pipe line on the shoulder of the road. This is NOT ok with me or other owners that your decision affects.

Our water line has been where it is now since 1945. No permits were required back then. Considering the fact that other decisions have been made based on your fear of liability, example *not allowing the owners to install their own home systems*, I can not understand why you would want to risk contaminating the drinking water of 16 homes when you know the water line is probably closer then 4 feet from the shoulder of the road.
Please advise and revise the plans for the STEP pipe line."

Our water systems are public, but not regulated by the State at this time. Locating the STEP sewer line where the county currently plans, will not work and is not legal.

7. The County has denied the Phase One Owners due process. Due process is defined in your government handbook as-follows.

“Due Process. In all procedural functions of local government, whether legislative, administrative or quasi-judicial, the council must accord due process to the citizens. This term is not subject to precise definition, but in general means confirming to fundamental principles of justice and constitutional guarantees. *Unfair determinations, such as bias, predetermination, refusal to hear one person’s side, failure to explain the basis for council action, and so on, are examples of failure to accord “procedural due process” and may invalidate some kinds of council action.* “Substantive due process” means city action may not be arbitrary or capricious and must promote legitimate municipal purposes.”

The county has denied due process in many ways which have allowed this project to get where it is now. They are as follows.

- A. Failure to mail copies of the DEIR and DFR to the Phase one owners when they were released. This prevented any response from the owners to ether report...
By the time we received the reports the time limit for response was over. Strong objection to the STEP system over better and cheaper Hi Tech home based systems would have been made.
- B. The county in combination with the ESPG, the ESPG P1 committee chaired by a Questa employee, Questa Engineering (hired by the county), and a number of local owners conspired with each other to produce their desired outcome. This denied the Phase One owners of the right to vote on and make important decisions for them selves. Examples of decisions that were made by the county instead of the Phase One owners are.
Eliminating all the non Phase One owners from the wastewater zone and not allowing them to vote on the formation of it. By doing this they insured that they could pass the Assessment District and get the Zone petition approved. The 33 Phase One Owners were *never* polled by anyone on whether they wanted the STEP system. They were denied the right to a straw vote on the subject which was announced to them, but cancelled by a decision of the county and the P1 committee chairman with no notice or approval. Regarding proper notice and allowing the owners to vote on the Zone and formation of the Assessment district. I received a copy of Questa's 4/27/2007email which announced the Zone meeting via US mail on the same day the Board had the hearing and established the assessment District. Hardly enough time to read every thing and drive to a 9 am meeting. I had to request

that Questa mail their email to everyone to get that. The county used email as the official notification for the Assessment District Formation which is not a legal way to advise property owners of some thing that will allow the county to charge them for services provided to their property. Many Phase One owners do not have email, and the law requires that US mail be used. Due process was denied to the owners because they were not given enough time to read and understand what was sent or respond to it. Questa was the only party who sent email, and they are not the county of Marin, and we all should have received US mail notification from Marin which we did not. The writers of the Zone petition did not advise the owners of any of the details of what allowing the Zone meant to them. The owners were not allowed to vote on the Zone. There were objections to the Zone in email form, but because the county doesn't recognized email as an official way to communicate with them, they didn't acknowledge the complaints. I offer the fact that as of June 1 2007, the Board of supervisors had not responded to any of my emails to them as proof that email communication doesn't count.

As I close this letter a new attack by the government has started regarding regulating vessels on Tomales Bay. They are going to require that all moorings install post 1981 be removed. They will require dumping stations for many areas of the bay where moorings are still installed including individual homes. All of this is being done to fix a problem that doesn't exist. It is time that legal action is taken to force the RWQCB to prove there actually is a pollution problem and what is causing it. I leave you with a quote from the RWQCB

Until the issue of the unauthorized moorings is addressed, any efforts in Tomales Bay to address boater-generated sewage will be incomplete. Any future look at this mooring issue must also include requiring the mooring holders to provide their own pumpout station or an acceptable alternative at each location. "

You can find the report at

<http://www.swrcb.ca.gov/rwqcb2/download/Tomales%20Bay%20FINAL%20REPORT.doc>

Please do not approve this STEP system. You will be guaranteeing that Tomales Bay will be polluted when it fails.

Best regards

Robert and Loretta Field

PO Box 824/19825 HW 1

Marshall CA 94940

415 663 1587

Ebonynizzer1@aol.com

I have included my protest letter against the assessment district for your review.

Date June 13 2007
To The County of Marin Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael CA 94903
Attention Clerk of the Board

From Robert C and Loretta S Field
PO Box 824/19825 HW 1
Marshall CA 94940
APN 106-030-07

Subject; **MARSHALL PHASE 1 COMMUNITY WASTEWATER
SYSTEM ASSESSMENT DISTRICT, Protest**

Dear Board

This letter is being sent to satisfy the conditions of the following statement in your May 2 2007 ballot letter.

“Property owners wishing to preserve the opportunity to file a lawsuit challenging the assessment, if levied, are required by the 1913 Act to file a written protest and to state therein the specific grounds of protest. Any grounds of protest not stated in written protest filed prior to the close of the public hearing of protests are deemed waived in any subsequent lawsuit and may not be raised in such lawsuit.”

We will list our protests and include the reasoning and support for them. There are causes for action that fall under a Reverse Validation Action, and for a Civil Trial Court Action. We are listing all of them now because some of the Civil action causes resulted in the formation of the Zone, and the Assessment District.

Causes for action are.

2. **Cause of action, Violation of Prop 218 law.** Assessment

Districts can only be used to finance a project that has special benefit to the affected property owners. If the project is voluntary, and the property owner can reasonably avoid the service being provided, then there is no special benefit to the property owner. In the Phase One Owners case, these facts apply, and under the laws of Prop 218 an assessment district can not be used to finance the project. Additional facts regarding this are, the current Phase One Owners septic systems are legal and function correctly. There is no pollution of the bay by the Phase One homes. The current septic systems will be legal under the currently proposed AB885 rules.

2. **Cause of action, Violation of Prop 218 law.** The Prop 218 law states the following;

- "No property owner's fee may be more than the cost to provide service to that property owner's land.

- First, local governments must estimate the amount of "special benefit" landowners receive--or would receive--from a project or service. Special benefit is defined as a particular benefit to land and buildings, not a general benefit to the public at large or a general increase in property values. If a project provides both special benefits and general benefits, **a local government**

may charge landowners only for the cost of providing the special benefit.

Local government must use general revenues (such as taxes) to pay the remaining portion of the project or service's cost. In some cases, local government may not have sufficient revenues to pay this cost, or may choose not to pay it. In these cases, a project or service would not be provided.

• Second, local governments must ensure that no property owner's assessment is greater than the cost to provide the improvement or service to the owner's property. This provision would require local governments to examine assessment amounts in detail, potentially setting them on a parcel-by-parcel or block-by-block basis. "

The assessment district engineering report has assigned a single ESD amount of \$19,200.00 for single family homes for full connection to the STEP system. This cost includes the On lot costs and the common system costs. The assessment also offers a buy in or standby cost assessment of \$19,200.00 for locating a connection box in front of the owner's property with no connection or cost for the on lot home system.

Cause of action, *The cost being assessed for the buy in /standby option violates Prop 218 law by not assessing the owner for the actual and reasonable cost to provide the improvement or service to the owner's property. The cost to buy in does not require the cost of the on lot system, and the net cost for buy in must be \$19,200.00 less the on lot cost. The correct and reasonable cost of the buy in should be \$9,963.24 based on the engineers report. This would be the case whether or not the grant money or some other source of revenue was used to pay for the on lot system. There would be no on lot system cost.*

Cause of action, *The assessment does not charge the owners for the actual and reasonable cost of the on lot systems. Instead it uses a gift of public funds distributed unequally between the owners to pay for the on lot systems. Using the engineer's report the assessment district is based on, the following numbers would apply. They show the disparity and unfairness of the counties plan and are a violation of the Prop 218 law and Gift of Public Funds law.*

The costs should be as follows

To buy in/ standby fee for the common system only, an option required by the FEIR, \$9,963.24 per ESD.

(This number is based on "NO" on lot cost or overhead included)

The cost for the different On Lot system types with the total estimated cost.

STEP 1 = \$52,325.00 or estimated average of \$6,540.62 each STEP 1 ESD. Estimated total = \$16,503.86

STEP 2 = \$43,125.00 or estimated average of \$7,763.00 each STEP 2 ESD. Estimated total = \$17,726.24

STEP 3 = \$44,160.00 or estimated average of \$10,062.00 each STEP 3 ESD. Estimated total = \$20,025.24

STEP 4 = \$132,825.00 or estimated average of \$9,978.00 each STEP 4 ESD. Estimated total = \$19,941.24

STEG = \$6,325.00 or estimated average of \$3,162.00 each STEG. Estimated total = \$13,125.24

Cluster STEPS \$48,300.00 or estimated \$24,150.00 each cluster STEP. Estimated total \$34,113.24

All of these different costs under Prop 218 should be assessed individually to the affected property. They are fair and reasonable costs based on the engineers report. The county instead of doing what the law requires is assessing all the owners for \$19,200.00 per ESD and using the Gift of Public Funds to pay for the On Lot cost. In addition to that the county is allocating the grant

funds unequally. Although the county states all the owners have the same special benefit and equal liability for the cost of the system, they are not giving the same equal benefit share of the grant funds to each owner. The county by distributing the grant money unequally between the Phase One owners is discriminating against the owners that have better existing septic systems which would require much less capital cost to convert to the new system. It eliminates the option to just buy into the common system. It also prejudices the assessment District voting because it rewards the owners with the most expensive capital cost requirements by eliminating them. It also increases the capital cost of the common system by using all the grant funds to pay UN proportionally for all the On Lot Systems. The gift of public funds can only be justified if the county can prove that it serves a public interest to do so. How you justify unequal allocation of the public funds I don't know. Additionally **the grants were issued for the repair and up grade of existing septic systems. In at least one case you are using the grant money for paying for a new and increased capacity system for one of the commercial (The Tavern) owners who currently does not have an operating septic system or legal live in able building.**

3. Cause of action, The County has denied the Phase One Owners due process. Due process is defined in your government handbook as follows.

“ Due Process. In all procedural functions of local government, whether legislative, administrative or quasi-judicial, the council must accord due process to the citizens. This term is not subject to precise definition, but in general means confirming to fundamental principles of justice and constitutional guarantees. Unfair determinations, such as bias, predetermination, *refusal to hear one person's side, failure to explain the basis for council action, and so on, are examples of failure to accord “procedural due process” and may invalidate some kinds of council action.* “Substantive due process” means city action may not be arbitrary or capricious and must promote legitimate municipal purposes.”

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4. Cause of action, Forced liability for environmental pollution of the bay, reverse condemnation. The County is paying for with a gift of public funds, and installing On Lot Step systems on the Phase One Owners property. The county will not take ownership of these systems or be responsible for any liability the systems bring with them. The county has stated that they will not provide insurance coverage for any pollution of the bay or property damage which is caused by the On Lot STEP systems and lateral connections to the common system. The owners can not get insurance coverage for the liability the county is forcing on them from normal home owners insurance. The owners in order to get insurance must form a home owners association and fund it to accomplish getting insurance to cover the pollution liability. The expense of this is not included in the assessment district or in the proposed O/M assessments. The owners have no control of the On Lot systems and maintenance of them. The Phase Owners property is permanently damaged by the County forcing them to install the On Lot systems and take the liability for them. The County knows that the owners can not get insurance to cover the liability. Additionally we received the following information from our current insurance provider.

"You have limited coverage for your system backing up in your home. Typically the damage that results to the residence but not the line or problem itself.

There would be absolutely no coverage under any homeowners policy for the other exposures you described.

The coverage you would need if the system is owned by the homeowners and it would normally be some type of a homeowners association but certainly would not be covered by your homeowners. If the county owns and maintains the system they would be liable.

Normally sewer projects are funded through an assessment district and the approval of a certain percentage of the property owners is necessary to make the district happen. The system you are describing seems fraught with potential problems for the homeowners that they have no control over. "

The liability to the Phase One Owners caused by the county is unlimited if insurance can not be obtained. If it can be, the liability is in excess of \$2,000,000.00 per incident. The Town of Tomales has already been sued by the Tomales Bay Oyster Companies and lost when their sewer system failed and polluted the bay.

5. **Cause of action, illegal gift of public funds.** On June 7 2007 we asked Phil Smith in an email the following questions.

"1. I would like to know why it is legal for the county to use the grant money to pay for the On Lot Step systems? I would like the specific law that allows you to do this?

3. I would like to know why it is legal to distribute the grant money unevenly to the Phase One Owners which benefits a minority number of owners with Step 3 or 4 septic tanks including the commercial owners, and gives them incentive to vote yes on the assessment district?"

We have not received any response to our questions which is another example of a violation of due process. In the past Phil Smith advised us as follows regarding the gift of public funds for improvements for the On Lot Step Systems which benefit the property owner by saying the following.

"

Another potential stumbling block with this approach is the Gift of Public Funds laws in the California Constitution & Codes. It's one thing to use public grant funds to build a community system as we're proposing, but I'm advised that it may potentially be difficult from a legal standpoint to spend all that money on homeowner's individual systems on their own property."

And in his answer to this question from us." **I found it interesting that none of the grant money can be used to improve a private home owners septic."** Phil said.

" [Smith, Philip] True - unless the District takes ownership of the wastewater facilities in the yards - legal instruments are needed for this e.g. easements etc."

These statements of position from County regarding the Gift of public funds contradict the actions that the County is now intending to take by giving a gift of public funds to private property owners. The County is also allocating the Gift of public funds unevenly between the Phase One Owners which is a special benefit to the owners with the more expensive On Lot system requirements. This action also gives them incentive to vote for the Assessment District because of that. The County is getting around the Prop 218 law by assigning all the assessment cost to the common system by using an illegal gift of public funds. The County is not taking possession of the On Lot systems or taking legal liability for the On Lot systems which exposes all the Phase One Owners to unacceptable liability for the pollution of the bay that the On Lot systems will cause. The law regarding Gift of public funds is as follows.

A. Gift of Public Funds

California Constitution, Article 16, Section 6 prohibits making gifts of any public funds. The state must receive commensurate value whenever its resources are used, including time, equipment, materials, supplies and facilities.

B. Limitations Upon Official Action

Public Purpose. All public funds must be expended for public or municipal purpose and there may not be a "gift" of public funds for a private purpose. The taxpayers' monies cannot be diverted into projects other than those which serve a public or municipal purpose. An improper expenditure (not authorized by law) may result in personal liability of the individual council member.

CALIFORNIA CONSTITUTION
ARTICLE 16 PUBLIC FINANCE

SEC. 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever;

6. Cause of action, causing a hazard to public health.

The County intends to install the STEP common system pipe line on the edge of HW 1 and within 4 feet of our public fresh water lines, and the bay's edge. The location of our water lines will not allow this to happen. The STEP pipe line must be located as far away from the bay and the public water lines as possible. The following is a quote from Questa/Norm regarding this.

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You will notice this statement from the SWQCB " ***However, she will not be providing a written approval letter because they have determined it is not in their jurisdiction unless there is a public water system involved. "*** The SWQCB has been told by Questa that there are no public water systems which is not true.

I sent Norm and Phil the following email April 13 2007.

"I asked Norm last night if they got permission to use the 4 foot offset from the water lines instead of 10 feet required by the State for sewer line separation from water lines.. He said no. He said your position is that our water line does not exist as far your records are concerned, and therefore it isn't a problem. Only Phil has to approve installing the STEP pipe line on the shoulder of the road. This is NOT ok with me or other owners that your decision affects.

Our water line has been where it is now since 1945. No permits were required back then. Considering the fact that other decisions have been made based on your fear of liability, example not allowing the owners to install their own home systems, I can not understand why you would want to risk contaminating the drinking water of 16 homes when you know the water line is probably closer then 4 feet from the shoulder of the road. Please advise and revise the plans for the STEP pipe line.

The follow letter to the Coastal Commission provides detailed information regarding this action.

"To

North Central Coast District Office	Sonoma	San Francisco
Charles Lester, Senior Deputy Director	Marin	Daly City, Half Moon Bay, Pacifica
Michael Endicott, District Manager	San Francisco	

45 Fremont Street, Suite 2000 San Mateo
San Francisco, CA 94105-2219
(415) 904-5260 or
(415) 904-5200
FAX (415) 904-5400

And Staff

From

Robert C Field
Po Box 824/19825 HW 1
Marshall CA 94940
415 663 8181 home
707 765 1325 x105 work

Subject. Permit approval for the Marshall Phase 1 Community Wastewater System & WARNING of certain pollution of Tomales Bay by the proposed STEP system.

Dear Charles Lester, Senior Deputy Director
Michael Endicott, District Manager
and Staff

I have been a resident of Marin County since 1952, growing up in Tiburon. I moved my family to Marshall in 1972 and have lived in the same home since then. I am a commercial fisherman and local business owner. My home is part of the 33 home Phase One Wastewater Zone. I have been involved with the process the county has been putting the owners through to get the STEP system approved. I am apposed to the STEP system being installed because it will pollute Tomales Bay when it fails. Home based systems are much safer for the bay, do a much better job of purifying the septic effluent, and are much cheaper and easier to install then the STEP system.

There are many reasons why you should not approve the STEP system. They include at least the following.

The Phase One 33 homes are located on the edge of Tomales Bay which is in Flood Zone V. Flood Zone V is the most dangerous flood zone because it exposes property and sewer lines placed close to it, to high tides and high wind blown waves in addition to the regular floods

and slides caused by heavy rain and run off into the bay. As recently as Jan 1 2006 a large part of the Marshall Boat Works where the STEP pipe line will be located was washed out by a combination of 7 foot high tides, heavy rain and two days of 60 MPH wind. Significant damage was done to many other homes including mine during this storm. We lost power for an extended time and the roads in and out of Marshall were blocked. Roads to Inverness were blocked for days by the flood and slides. It is the current plan of the county to locate the STEP sewer pipeline less than 10 feet from the edge of Tomales Bay in many places and within 4 feet of multiple public fresh water system water lines. The STEP system takes the Septic tank effluent from 33 homes (9000 gallons per day), pressurizes it with a STEP pump in each of the current home septic tanks, and feeds it through a small diameter plastic pipe lateral connection to a 3 inch diameter plastic main sewer line which runs for one mile along the side of Tomales bay. The STEP systems, both the treatment site and home systems are computer controlled and totally dependant on power, they do not function without power. When the community loses power, which is a very common occurrence for us (at least once a week is typical), the STEP system will not function. When we have our next Jan 1 2006 storm and lose power for days, and the roads are closed, and the sewer pipe line gets washed out by the bay waters and waves we will experience pollution of Tomales Bay in ways you can't imagine. Our home non pressurized systems have never polluted the bay, and can't pump the total contents of the septic tank into the bay because they do not have any pumps. Any of the 33 plus lateral connections can be run over by a truck and cause pollution. If the power fails and a home continues to use water the effluent will back up into the homes and pollute the bay. At least half of the homes are used as weekend rental units which puts ignorant public customers in the homes most of the time. They don't know how to deal with a sewer failure. The other homes are for the most part second homes that are lived in 40% of the year. There is no one around most of the time to catch a system failure. There is no remote monitoring engineered into the current STEP systems at the homes. It is available, but wouldn't work with power out, but with power on the home systems could be monitored and immediate email or pager notification can be given if a problem is detected. It also provides for a permanent record of the systems performance.

The system as currently engineered is an absolute Hazard to Tomales Bay and it will pollute it. Here are some comments from a local contractor Tim Furlong, who will be bidding on the project. He said he questions the Questa engineering of the system. He said they should not be putting the sewer line on the home/ Tomales Bay side of the road. He said it should be located on the east side of HW1 as far away from the bay as possible. That is what Sonoma County made them do at Gleason Beach. They protected the sewer line as much as possible from the ocean and high tides, waves and wind. As it is now they will be putting the sewer line within 4 or 5 feet of the bays edge. He also said that determining where the fresh water lines are and keeping the 4 foot separation would be difficult to do. He said the sewer line will have to be cased in another pipe when it is located next to a water line which the county doesn't intend to do. He said the number of lateral connections from the main sewer pipe line to the homes should be reduced and multiple homes should share a lateral which lowers the risk of breakage and pollution. He said the Gleason Beach design kept the main common system on the other side of HW 1 so if the house did get damaged by the wind and waves and slid or broke away it would not take the sewer line with it.

I did a lot of research on what type of system would be better for the Phase One Homes. A home based high tech system from Orenco is by far the best solution for upgrading the current septic systems in the future. The Orenco AdvanTex system

(http://www.orenco.com/ots/ots_adv_index.asp), can be adapted to the existing septic tank systems for approximately \$10k each. These systems produce output water that is cleaner than the bay water and can be used for underground watering of your garden. They are self contained and can not pollute the bay. They come with remote internet monitoring that sends email and pages to anyone concerned about the system along with keeping a permanent record of the systems performance. The EIR was wrong when it assessed the viability of a home based system versus the STEP system. It also did not consider Flood Zone V and the history of devastating storms Marshall and Tomales Bay have gone through and will again in the future.

I urge you to vote no on the STEP system, and warn you if you say yes you are voting for pollution of Tomales Bay.

Best regards

Robert C Field"

Best regards
Robert and Loretta Field