

## 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.

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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).

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**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 Allman, Daniel	2544 Etna Berkeley, CA 94704
8	106-020-01	Zalesky, Ronald J.	P.O. Box 543 Pt. Reyes Station, CA 94956
9	106-020-09	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 Riven 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, & Maretha, 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 746 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 786 Marshall, CA 94940
23	106-030-10	Halley, Mary C.	PO Box 752 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	17837 San Jose St Granada Hills, CA 91344
27	106-030-14	Markwald, 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. & Sheri 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 either 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](mailto: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.”

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 US mail with Questa's 4/27/2007email 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. You 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 recognize email as an official way to communicate with them, you 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.

**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.

***"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.

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

"To

<b>North Central Coast District Office</b>	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 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 too 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](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