

## CALIFORNIA COASTAL COMMISSION

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Staff: M. Endicott-SF  
Staff Report: 8/21/07  
Hearing Date: September 6, 2007

## STAFF REPORT: REGULAR CALENDAR

**Application:** 2-07-019

**Applicant:** Marin County Environmental Health Services

**Project Location:** Properties in the town of Marshall area extending north from the Marshall Boatworks to the Hog Island Oyster Company, along Tomales Bay, Marin County.

**Project Description:** Septic system upgrades or replacements for 38 developed lots and installation of collection pipe for connection to a community leachfield collection system.

**Other Approvals:** California Department of Transportation (CalTrans)  
State Water Resources Control Board  
US Army Corps of Engineers  
United States Environmental Protection Agency  
San Francisco Regional Water Quality Control Board

**Substantive Project Files:** East Shore Wastewater Improvement Project Final Environmental Impact Report (April 2007). Storm Water Pollution Prevention Plan (SWPPP) for Marshall Phase I Community Wastewater System (May 2007). A Cultural Resources Inventory for the East Shore Wastewater Improvement Project, Marshall North to South of Marconi, Marin County, California, Archaeological Resource Service (ARS) (Feb 2007).

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### **SUMMARY OF STAFF RECOMMENDATION**

The County of Marin, the applicant, is seeking to improve the treatment of wastewater produced by up to 38 developed properties (Phase 1 parcels) along the eastern shore of Tomales Bay. Most of these properties lie next to or even over the bay and are bounded on the shore side by Highway 1 (Hwy 1). A few of the parcels are just across Hwy 1. Many of these parcels have minimal setbacks from the bay (generally less than 50 feet and some less than 25 feet). The soil conditions have limited capacity to absorb or filter the sewage effluent. Surveys of the septic systems in the area indicate that about 24% are failing. Because of bacteria levels, Tomales Bay is listed as an impaired waterbody for pathogens pursuant to Section 303(d) of the Federal Clean Water Act.

In order to reduce the potential of wastewater reaching Tomales Bay, the applicant is seeking to connect the Phase 1 parcels to a permitted community leachfield that is located further from the bay. This permit will allow the owners to voluntarily connect up to the community system. If approved, the permit explicitly authorizes for Phase 1 parcels with existing septic tanks: (a) the repair or replacement of failing septic tanks onsite; (b) installation of a Septic Tank Effluent Pump (STEP) systems to move the effluent from the septic tank to a common collection line; (c) installation of the STEP pressure main (“common collection line”) in the State right of way to the remote community leachfield located about 300 feet from the edge of Tomales Bay; (d) and connection to the leachfield.

The applicant has received grant funding from the U.S. EPA and the State Water Resources Control Board (SWRCB) using Proposition 13 funds which has helped it conduct a septic system survey, establish the Phase 1 area, complete an EIR and organize the property owners to establish a community assessment district to help pay for the upgrade and future monitoring programs by the County. In addition, the County has worked to arrange for a low interest loan to help pay for the public portions of the project (i.e. the pipeline and the leachfield. In order to receive those funds construction must be complete by next year and so construction must start very soon.

Although development activities will occur inland on individual properties and along Hwy 1, the proposed project construction occurs very close to Tomales Bay and has the potential to result in significant resource impacts. Therefore, special conditions associated with the siting of the treatment works are required to assure that all feasible mitigation measures are incorporated to avoid impacts to marine resources, archaeological resources and water quality. Also, the geographic limit of the service area is constrained to serve only lots with existing septic tanks so as to limit its potential for inducing growth.

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**Staff recommends approval of the proposed project with special conditions regarding: 1) construction practices, erosion control, and spill prevention; 2) limits on growth inducement; 3) and prohibition of fill in coastal waters; and 4) archaeological resources.**

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**EXHIBITS**

1. Project Vicinity Map
  2. Project Site Map
  3. Specific Property Septics Profile
  4. Sample Access Agreement
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**STAFF NOTES:**

**Standard of Review**

The proposed development will occur in close proximity to Tomales Bay waters and in the Hwy 1 right of way. This location is considered tidelands, submerged lands or other areas subject to the public trust. Pursuant to Section 30519 of the Coastal Act, the Coastal Commission retains jurisdiction over the review and issuance of Coastal Development Permits in these areas even though Marin County has a certified Local Coastal Plan. The standard of review for projects located in the Commission's original jurisdiction is Chapter 3 of the Coastal Act.

Because this application involves a treatment works, Section 30412(c) of the Coastal Act places limitations on the Commission's review of the project. Section 30412(c) states, in part:

*any permit [the Commission] issues, if any, shall be determinative only with respect to the following aspects of the development: (1) The siting and visual appearance of treatment works within the coastal zone. (2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division. (3) Development projections which determine the sizing of treatment works for providing service within the coastal zone.*

Thus Section 30412(c) limits the Commission's determinations on a permit application for a treatment work to three specified aspects of the development within the coastal zone: (1) siting and visual appearance; (2) geographic limits of service areas and the timing of use of capacity; and (3) development projections which determine the sizing of the treatment work.

Staff notes that it has reviewed the proposed project for its consistency with the Chapter 3 policies of the Coastal Act. All conditions of approval necessary to ensure the approved project is consistent with the Chapter 3 policies of the Coastal Act are consistent with the limitations of Section 30412(c) because the conditions recommended by staff regulate the treatment work's siting and/or the geographic limits of its service area.

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**I. STAFF RECOMMENDATION**

Coastal Development Permit Application 2-07-019

The staff recommends conditional approval of the permit application.

**Motion:**

*I move that the Commission approve Coastal Development Permit 2-07-019 pursuant to the staff recommendation.*

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

**Resolution:**

*The Commission hereby approves the Coastal Development Permit and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

**II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. SPECIAL CONDITIONS**

1. Incorporation of Applicant's Mitigation Measures and Monitoring Program:

The mitigation measures 3.1 to 3.10 contained in the Final Impact Report for East Shore Wastewater Improvement Project (April 2007) are incorporated into this permit.

2. Area of Archaeological Significance

A. BEFORE CONSTRUCTION CAN COMMENCE ON Phase 1 properties 106-020-01, 106-020-14, 106-010-06, 106-010-02, which are in the area of the identified prehistoric sites, the permittee shall complete the Phase II study as prescribed in the FEIR. For each of the sites that meets at least one of the National Register criterion, a site specific mitigation Archaeology Plan shall be submitted for the review and approval of the Executive Director and no construction can commence on the APN containing that site until an amendment to this permit is approved by the Commission. No changes to the approved archaeological plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required. B. On any of the properties governed by CDP 2-07-019 as identified on Exhibit 3, if an area of cultural deposits is discovered during the course of the project:

- (i) All construction shall cease and shall not recommence except as provided in subsection C hereof; and
- (ii) Within 90 days after the date of discovery of such deposits, the applicant shall provide evidence to the Executive Director of execution and recordation of a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

C. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director. In order to protect archaeological

resources, any further development may only be undertaken consistent with the provisions of the supplementary archaeological plan.

- (i) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director receives evidence of recordation of the deed restriction required above.
- (ii) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission and the Executive Director receives evidence of recordation of the deed restriction required above.

3. Standards for Project Work:

- a. Disposal of Excess Material and Vegetation: All construction debris and cut vegetation shall be removed from the site and disposed of only at an authorized disposal site. Side casting of such material or placement of any such material within Tomales Bay, any other coastal waters, tideland or wetland areas surrounding the project is prohibited.
- b. No Fill in Coastal Waters: No permanent or temporary fill of coastal waters is allowed by this permit. No activities involving changes to buttresses, supports, walls or structures in Tomales Bay may be undertaken without a Commission-approved amendment to this permit.
- c. Pre-construction Contractor Training: Prior to the commencement of any development authorized by this permit, the permittee shall ensure that the contractor understands and agrees to observe the standards for work outlined in these Special Conditions and included as part of the permittee's coastal development permit application.
- d. Erosion Control: Construction shall not commence until all temporary erosion control devices (*e.g.*, silt fences) are in place. Erosion controls shall also be used to protect and stabilize stockpiles and exposed soils to prevent movement of materials (*e.g.*, silt fences, plastic sheeting held down with rocks or sandbags over stockpiles, *etc.*). A supply of erosion control materials shall be maintained on site to facilitate a quick response to unanticipated storm events or emergencies. Erosion control devices are considered temporary structures and shall be removed after completion of construction.
- e. Onsite Construction Plans: Construction activities on each individual property shall be consistent with the Sediment and Water Control

Drawings contained in Attachment B of the SWPPP for the Marshall Phase I Community Wastewater System (May 2007). These drawings indicate whether or not the septic tank will be replaced in addition to the installation of the STEP as well as the location of the new tank. If there is any deviation from those drawings, the permittee must inform the Executive Director and provide the Executive Director with a new construction plan for the particular site showing where and what design changes are being made and an explanation for the need to change the construction plan. Such changes shall not be incorporated into the project until the applicant obtains a Commission-approved amendment to CDP 2-07-019, unless the Executive Director determines no amendment is legally required.

- f. Other Changes to the Project: Any proposed changes to the approved project shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- g. Obtain Necessary Permits: BEFORE CONSTRUCTION IS COMMENCED, the applicant shall obtain all necessary permits from local, other state and federal agencies.
- h. Access Agreements: Upon completing the upgrades and connections to all of the participating Phase I properties, the permittee shall provide the Executive Director with a copy of all the completed access agreements.

#### 4. Geographic Limits of Service Area

This permit is only valid for: (a) upgrading the existing septic systems listed in the chart in Exhibit 3 as indicated in Attachment B of the Storm Water Pollution Prevention Plan (SWPPP) for Marshall Phase I Community Wastewater System; (b) installation of the pressurized community collection line; and (c) connection of the community collection line to the individual properties; and (d) connection of the community collection line to the leachfield. Lateral connections to the main collection line shall be limited to the 38 properties that are identified by both APN and property address in Exhibit 3.

#### 5. Future Development Restriction

A. This permit is only for the development described in coastal development permit No. CDP No. 2-07-019. Approval of this permit does not imply Commission approval of any new or intensified uses within the service area. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, occurring on any of the properties identified by APN and property address on Exhibit 3



including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. CDP No. 2-07-019 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission finds and declares the following:

##### **A. Project Location, Setting, and Description**

###### **1. Location and Purpose**

The project consists of developing sanitary wastewater facility improvements for the East Shore project area located along the eastern shore of Tomales Bay in unincorporated western Marin County. The project area lies within the overall East Shore Planning Area which extends approximately 9 miles along the bay and encompasses 16,000 acres, including the communities of Marshall, Marconi, and Millerton; shoreline development extending north to the mouth of Walker Creek; and agricultural land to the east. State Hwy 1 runs north-south through the area parallel to the eastern shoreline of Tomales Bay. The East Shore Planning Area contains approximately 279 parcels, about half of which are located in the project area, including 96 existing residences and businesses.

The greatest concentration of developed parcels in the East Shore area is in the Marshall South neighborhood, where there are 27 existing residences and three other parcels developed for commercial and/or mixed use; these include the Post Office, the Marshall Store and Marshall Boat Works. At less than 1/4 acre per parcel, this neighborhood also has the smallest median lot size. Many of the parcels in the project area have lot boundaries that extend into the bay so that the actual useable land area is much smaller. The Marshall North neighborhood has an additional 12 developed parcels, about half of which are residential, and a median lot size of 0.4 acre. Hog Island Oyster Company and the former Marshall Tavern are also located in this neighborhood. There are also two bed and breakfasts in Marshall North. Together, the Marshall South and North neighborhoods represent about 44 percent of the developed parcels in the project area. These two neighborhoods comprise what is termed the Phase 1 project area for which this permit is provided.

The purpose of the project is to move the effluent generated by developed residences and businesses abutting Tomales Bay to a community leachfield set further back to prevent the effluent with pathogens reaching the bay waters. The project is conditioned to service only properties with existing septic systems so that it will not be growth inducing.

The community leachfield portion of the project is located at the south end of the Phase I area outside the Commissions retained jurisdiction. That part of the project was approved by the County on April 26, 2007 and the Commission appeal period on the project ran on May 21, 2007. No appeal was filed with the Commission.

## **2. Setting**

Tomales Bay is a major tourist and recreational destination. In addition Hwy 1, which serves as a major public access artery for the area, runs north-south through the project area. It often passes very close to the water so it is very scenic. Most of the properties in the Phase I area immediately border Hwy 1 and extend out over the Bay (predating the Coastal Act).

Existing development in the East Shore project area is served entirely by individual onsite septic systems. The type and condition of the individual systems range widely, but most are old, and non-conforming with respect to current codes, and a source of potential public health and water quality concern. Many of the systems are in need of replacement or major repairs. A 2001 sanitary survey of a portion of the area documented leakage of partially treated sewage into the bay, and an overall failure rate of about 24 percent.

Properties on the west side of Highway 1, which account for approximately 90 percent of the development in the project area, face serious constraints for on-site sewage disposal. The setback distance available between the septic system and the waters of Tomales Bay is generally minimal, and the soils are a combination of colluvium and old fill material associated with the pre-existing railroad grade and the current highway, or placed by property owners as part of the development of individual parcels. These conditions offer very limited capacity for absorption and filtration of sewage effluent and pose a high risk of release of untreated effluent into the bay.

Tomales Bay is an impaired water body for pathogen levels (bacteria) and has been listed as such in accordance with Section 303(d) of the Federal Clean Water Act. Faulty on-site wastewater systems, especially for properties along the shoreline, have been identified as one of the potential sources contributing to the water quality impairment. Two oyster aquaculture operations also share the bay waters with the wildlife and boaters.

In 2001, the East Shore Planning Group (ESPG) and the County of Marin organized an inspection team to gather information on the state of existing septic systems in the Town of Marshall. Based on the inspection findings, each on-site septic system was rated adequate, marginal, or failing on the day of the test. Of the 37 systems inspected, 22 (60 percent) were ranked Adequate, 6 (16 percent) were ranked Marginal, and 9 (24 percent) were ranked Failing. Of the systems ranked adequate on the day of the test, approximately 27 percent were uplands systems. The adequate systems next to Tomales Bay typically did not meet current code requirements for setback distances to the bay, wells, or groundwater. Approximately 95 percent of the inspected systems that were

adjacent to the bay had their effluent disposal within 50 feet of bay waters. All but one of the failing systems were located alongside the bay.

### **3. Biological Resources and Cultural Resources in Project Area**

The development involved in this project is either in the yards of private homes and businesses or in the State's non-vegetated right of way on Hwy 1. Indeed some of the placement for the new septic tanks will involve encroachment into the right of way. But the primary construction along and under Hwy 1 is for installation of the collection line. Very little habitat will be disturbed. There are three identified prehistoric sites in the project area that need further investigation.

### **4. Description of Proposed Project**

The project has four components: (a) replacement and/or upgrade of existing septic tanks that need it; (b) attachment to a pump system that will draw off the liquid effluent up to the pressurized collection line; (c) underground placement of the common collection line from the STEP systems that run from the northern end of Phase I south along Hwy 1 to the leachfield; and (d) connection of the common collection line to the leachfield.

Completion of all hookups is expected to take six to seven months to complete. Each individual septic tank replacement or STEP installation is expected to take about two days.

#### a. Septic Tank Upgrade:

In order to work with the Septic Tank Effluent Pumps (STEPS), the septic tanks must have watertight access risers. As shown in Exhibit 3, the applicant has already surveyed the septic systems on each property and established what type of work is needed. In addition, the SWPPP contains a detailed chart of showing what is to happen with the existing septic tank on each property and, if a new one is to be placed there, where it goes. Before work on the site can commence, the owner must complete an access agreement which will be recorded for each property with a map showing the location for placement of the septic tank.

#### b: Septic Tank Effluent Pump (STEP) Installation

In order to pull off the liquid effluent that would have gone to the leachfield on the Phase 1 property and to send it to the common collection line, a STEP must be attached to the septic tank. The STEP unit includes a submersible effluent pump installed in a separate chamber following the septic tank or in the second compartment of the septic tank, along with associated electrical controls and float-activated switches programmed to operate on demand (i.e., in response to flow from the property). The STEP unit allows pumping of primary treated effluent to the pressure main. The sewage solids are retained in the septic tank and require periodic pump-out and hauling, as is typical for septic tank.

#### c: Common Collection Line Installation

The common collection line is a pressurized main, two to three inches in diameter. It will be approximately 5,000 lineal feet installed in a continuous collection network leading from each septic tank to the community treatment-disposal site at the Goodman-Barinaga Ranch property.

The pipe would be installed within one of the lanes or within the unvegetated shoulder of Hwy 1 until it reaches the entrance to the Goodman-Barinaga Ranch, which is located about 300 feet south of the Marshall Post Office. The pipe would then proceed for a distance of about 100 feet within the disturbed area of the unpaved ranch road to a central collection tank, from which effluent would be dosed to the community leachfield.

Additional Agency Activities and Permits:

The state and federal funding has two specific objectives: (1) to develop and implement improvements to repair or replace marginal or failing septic systems for a minimum of 20 to 35 homes (Phase 1 improvements); and (2) to establish a management and financing program to provide for on-going inspection, monitoring, and management oversight for all existing developed properties in the East Shore project area. It is completely voluntary for property owners to choose to connect up, and all but three have done so.

All septic tank owners in the broader East Shore Area Wastewater Management Program (including those in the Phase 1 area who do connect up) must participate in a monitoring and septic system management program run by the County.

d Geographic Limits .

The project is specifically not intended to allow for building and connection of currently undeveloped properties, nor to allow new bedroom additions to existing residences.

**B. Geographic Limits of Service Area**

Coastal Act Policies

Section 30254 of the Coastal Act states that:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

Coastal Act requirements limit the capacity of public works facilities to avoid inducing growth beyond what can be accommodated consistent with the protection of coastal resources. The geographic limits of service areas provide an important tool for carrying out this objective. Another way in which the Coastal Act regulates public works facilities to prevent growth beyond what can be supported by the area's coastal resources is to limit the sizing of treatment works consistent with the provisions of the Coastal Act.

Construction of a wastewater treatment facility to replace existing septic systems is essential to protect health and environment of Marin County. Providing service to undeveloped lots is not, however, an immediate environmental protection need. Rather, new development facilitated by the provision of wastewater service to undeveloped lots can pose adverse impacts to coastal resources as detailed in others sections of this report.

Therefore, the permit has been conditioned to prohibit the provision of wastewater treatment service to vacant lots. In addition, to prevent false expectations regarding the allowable level of future development, the permit has been conditioned to provide notice to property owners that Commission approval of the permit to construct the treatment project provides no guarantee regarding allowable future development intensities, which must be determined on a case by case basis, according to all applicable standards of the Coastal Act. As conditioned by Special Conditions 4-5, the proposed project is consistent with Section 30254 of the Coastal Act.

### **C. Public Access**

Hwy 1 is a major north-south artery for both local residents and visitors to access many coastal and marine related activities. It is recognized as a world class scenic travel route.

#### Coastal Act Policies

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

The various components of this project involves work in areas either in the State's right of way of Hwy 1 or on properties immediately adjacent to Hwy 1, which is a winding two lane road which often has little shoulder. As all of the components to the project will be underground there will be no permanent impediment to coastal access.

However, because installation of the common pipeline will be in the CalTrans right of way, some disruption of traffic flow is likely to occur. In the Phase I section of Hwy 1, there is little shoulder to the road. In some cases the septic system work will be done in the area of the private property that otherwise would serve as its driveway. Construction equipment or work has the potential to temporarily reduce slow traffic through the area.

The FEIR requires the County to develop and implement a traffic control plan for construction operations. A traffic management plan must be approved by CalTrans.

All of the tanks, STEPs and pipes will be placed underground so there will be no long-term effects on public access to the water or the areas resources.

Therefore, as proposed, the project will not significantly interfere with the public's right of access to the sea, and existing access along the highway will only be limited temporarily, in order to assure public safety during installation of the septic systems and collection pipe in a manner consistent with Sections 30210, 30211 and 30214 of the Coastal Act.

#### **D Protection of Coastal Waters, Water Quality, and Marine Resources**

The central purpose for this project is to eliminate the discharge of sewage effluent into Tomales Bay, which is already listed as a 303(d) impaired water body for bacteria. In addition, Tomales Bay is a 303(d) impaired water body for nutrients and sedimentation/siltation. The extremely close location of the septic systems in the Phase I to the edge of Tomales Bay mean that the development is subject to Section 30230 and 30231 of the Coastal Act that require marine resources, biological productivity and quality of coastal waters to be maintained, enhanced, and where feasible, restored.

#### **Coastal Act Policy**

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

### Analysis

As discussed above, the survey of the Phase I septic tanks clearly demonstrates that if nothing is done to shift the location of the effluent discharge, water quality in the bay will continue to degrade. There are three ways that the reconfiguration of the Phase I individual septic systems to a community based system could potentially affect health and productivity of our coastal waters: (i) runoff or erosion while the upgrade/replacement is being done to the septic tank and installation of the STEP; (ii) runoff or erosion while installing the common pipeline in the roadway; and (iii) emergency failure of the community system to work because of power outages, or because a pipe breaks.

The SWPPP contains the BMPs that should be followed at each site to prevent runoff and erosion at the sites, and the conditions are noted on a map showing the Phase I properties. Using horizontal drilling for placing the common collection lines wherever possible instead of open trenching can reduce the risk of further impairing the waters of Tomales Bay.

As a condition of the County's approval of the Use Permit, the project sponsor has to file with the SWRCB Division of Water Quality a Notice of Intent to comply with the General Permit for Storm Water Discharges Associated with Construction Activities (General Permit) under the NPDES regulations, and comply with the requirements of the permit to minimize pollution from stormwater discharge during construction activities. The General Permit also requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). In addition, CalTrans requires a SWPPP to be submitted along with the encroachment permit application for any work within the State right-of-way.

The pipeline must cross more than a dozen culverts on the way to the leachfield. The project mitigations require that the permittee develop specific plans for each pipeline crossing that shall be submitted to CalTrans for its review and approval. Passing beneath the culvert is suggested as the preferred alternative. If it has to pass on top where it is more vulnerable to breakage, a protective sleeve is to be provided. It also includes putting a shut off valve on each side of the culvert in case it is broken.

The replacement of individual septic system leachfields in this area with a community system, that moves effluent away from the shore, will eliminate a major potential source of contamination to Tomales Bay. Therefore, the mitigation measures contained in the FEIR and implemented through the SWPPP reduce the risk of affecting the bay's water quality. As conditioned, the proposed project will protect coastal waters, marine resources, water quality and riparian habitat consistent with Coastal Act sections 30230 and 30231.

**E. Environmentally Sensitive Habitat (ESHA)**

The improvements being made to the septic tanks in the Phase I project area are all on private property that has been extensively modified and does not contain any ESHA. The collection pipe will run in the State's right of way and be underground. Analysis prepared for the FEIR evidences that plants along the edges of Hwy 1 do not meet ESHA criteria. Therefore, this project will not disturb ESHA, nor is it adjacent to ESHA, and is therefore consistent with the criteria of Section 30240 of the Coastal Act.

**F. Archaeological or paleontological resources**

*Section 30244 of the Coastal Act provides:*

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

**Analysis**

A cultural resources study of the area was conducted (ARS, 2/2007). Four previously recorded prehistoric sites that might be affected by project construction lie within the Phase 1 Service Area. The 2007 study determined that midden soils and isolated artifacts could be distributed in many areas in the Phase 1 Service Area. The study is part of the Final Environmental Impact Report as Appendix E (FEIR, 2007). The four prehistoric sites are listed as being on the eastern side of Hwy 1 and the properties being upgraded are on the west side, but the report concludes that it is likely that the sites continue across the highway. No new prehistoric areas were found in the Phase I area.

As detailed in the FEIR:

Because the proposed project [is], in part, funded by the Environmental Protection Agency (EPA), all prehistoric properties located within the project area have to be identified and evaluated under Section 106 of the National Historic Preservation Act (NHPA), following regulations issued by the Advisory Council on Historic Preservation (36 CFR 800). The NHPA directs federal agencies to take into account the effects of proposed activities on historic properties. Historic properties are properties that are



included in the National Register of Historic Place. California has similar policies.

Public Resources Code Section 5097 implements a number of federal laws and specifies procedures in the event that human remains are discovered during any site disturbance activity. The disposition of Native American burials falls within the jurisdiction of the California Native American Heritage Commission. California Code of Regulations Section 15064.5(f) identifies the need to establish procedures in the event of discovery during construction of buried cultural resources on nonfederal land.

The State's Office of Historic Preservation (OHP) has primary responsibility for the administration of historic preservation programs in California through the *California's Comprehensive Statewide Historic Preservation Plan*, as well as other laws and regulations. The California Native American Heritage Commission works to identify, catalogue, and protect places of special religious or social significance, graves, and cemeteries of Native Americans per the authority given the Commission in Public Resources Code 5097.9.

The four prehistoric sites that might be affected by the proposed project have the potential to meet National Register criteria but the integrity of the sites is currently unknown.

The FEIR requires the following specific measures to mitigate the potential impacts to the prehistoric sites:

***Mitigation Measures***

3.4-A.1 Wherever feasible, the project shall avoid construction within archaeological sites.

3.4-A.2 A qualified archaeologist shall prepare a Phase II archaeological investigation, which shall include delineating the prehistoric site boundaries, assessing their integrity, and defining the significance of each site. This can be accomplished by conducting a series of auger borings and excavation units at each site. A series of auger borings can be executed to determine the subsurface boundary of a site, while test units (typically a few one and/or two meter square holes) can be excavated to gather data (artifacts, soil characteristics, stratigraphy, etc.) that will help assess integrity, determine significance, and establish if the site(s) has yielded or may be likely to yield information important in prehistory (National Register Criterion D). The results of a Phase II study will determine if each site meets the definition of a historic property, as defined by Section 106 of the NHPA. If a site(s) retains integrity and meets at least one National Register criterion, then the lead agency (Marin County), in consultation with the SHPO, shall make an assessment of adverse effects based on criteria found in Advisory Council on Historic Preservation (ACHP) regulations. If warranted, the archaeologist shall identify a partial

site-specific mitigation strategy that shall include data recovery or archaeological monitoring during construction. Even if a site does not meet National Register criteria, archaeological monitoring shall still be conducted during construction within the site boundaries.

3.4-A.3 If any unanticipated artifacts or cultural soil deposits are discovered during grading or underground excavation, all work in the vicinity of the find shall be stopped until the discovery area can be evaluated by an archaeologist. Depending on the extent and cultural composition of the discovered materials, it may be advisable to have subsequent excavation monitored by an archaeologist who should be ready to record, recover, and/or protect significant cultural materials from further damage.

3.4-A.4 Human burials, if encountered, require that work be discontinued in the vicinity of the discovery while the county coroner is contacted. If the skeletal remains are found to be prehistoric, Native American and not modern, then the coroner must call the Native American Heritage Commission in Sacramento, which will designate the "Most Likely Descendant" of the remains. The Most Likely Descendant will be responsible for recommending the disposition and treatment of the remains.

As there are known prehistoric sites in the project area, more investigation is required for a portion of the project before commencement of development on that portion of the property can occur. Therefore, Special Condition 2 is necessary. With the mitigation measures contained in the FEIR and Special Condition 2, the proposed development as conditioned meets the criteria of section 30244 of the Coastal Act.

### **G. Scenic and Visual Qualities**

The Tomales Bay area of Marin is known for its scenic beauty so the visual impacts of development is an important consideration.

*Section 30251 of the Coastal Act provides:*

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The septic tanks and the common collection pipe will be entirely underground and so there will be no long-term visual impact from this project. Therefore, the proposed project is consistent with Section 30251 of the Coastal Act.

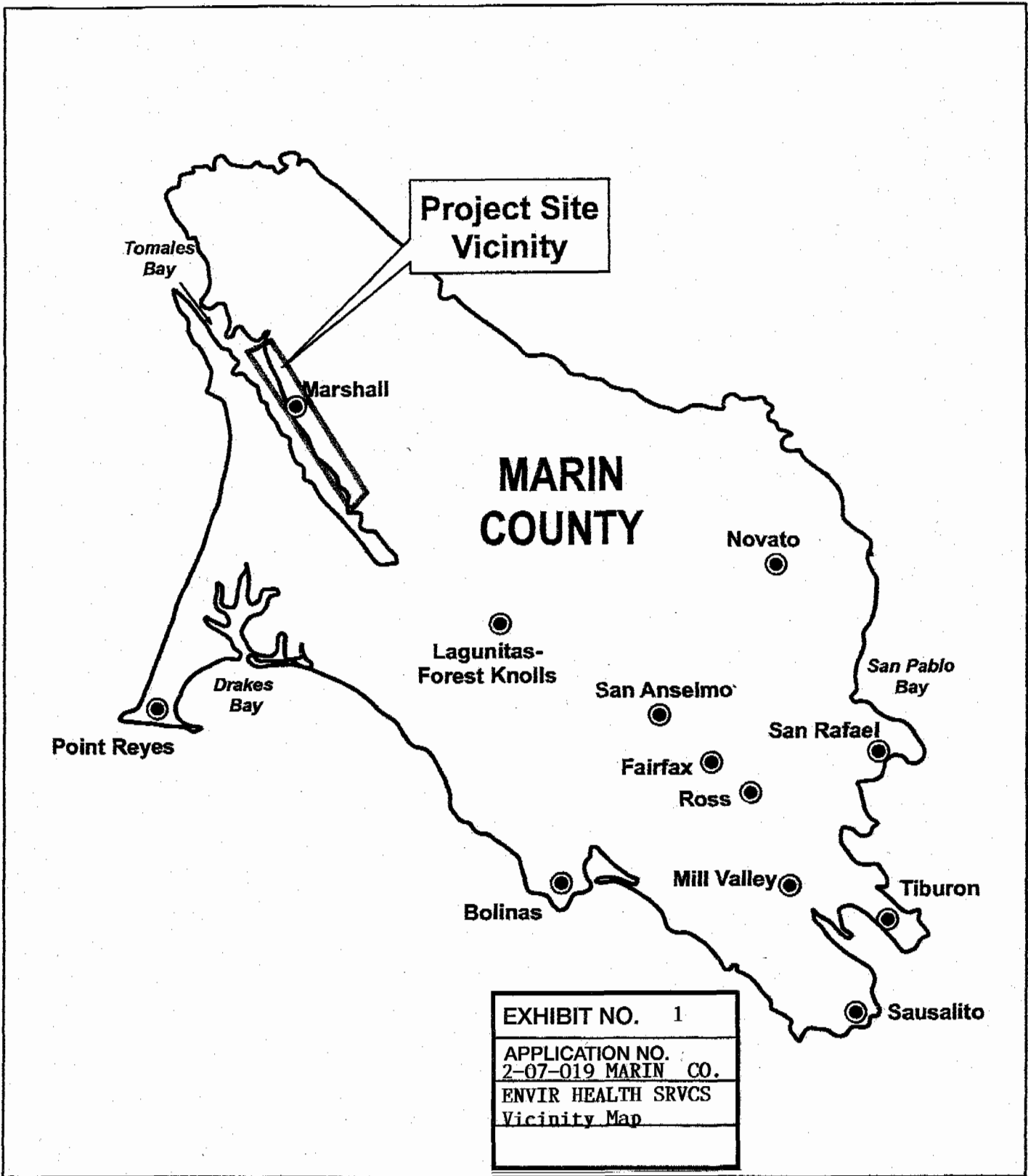
## **H. California Environmental Quality Act (CEQA)**

The Coastal Commission's review and analysis of coastal development permit applications has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Section III, "Special Conditions").

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to achieve consistency between the proposed project and the requirements of the applicable policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. Mitigation measures that will minimize or avoid all significant adverse environmental impact have been required.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, that would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA. As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

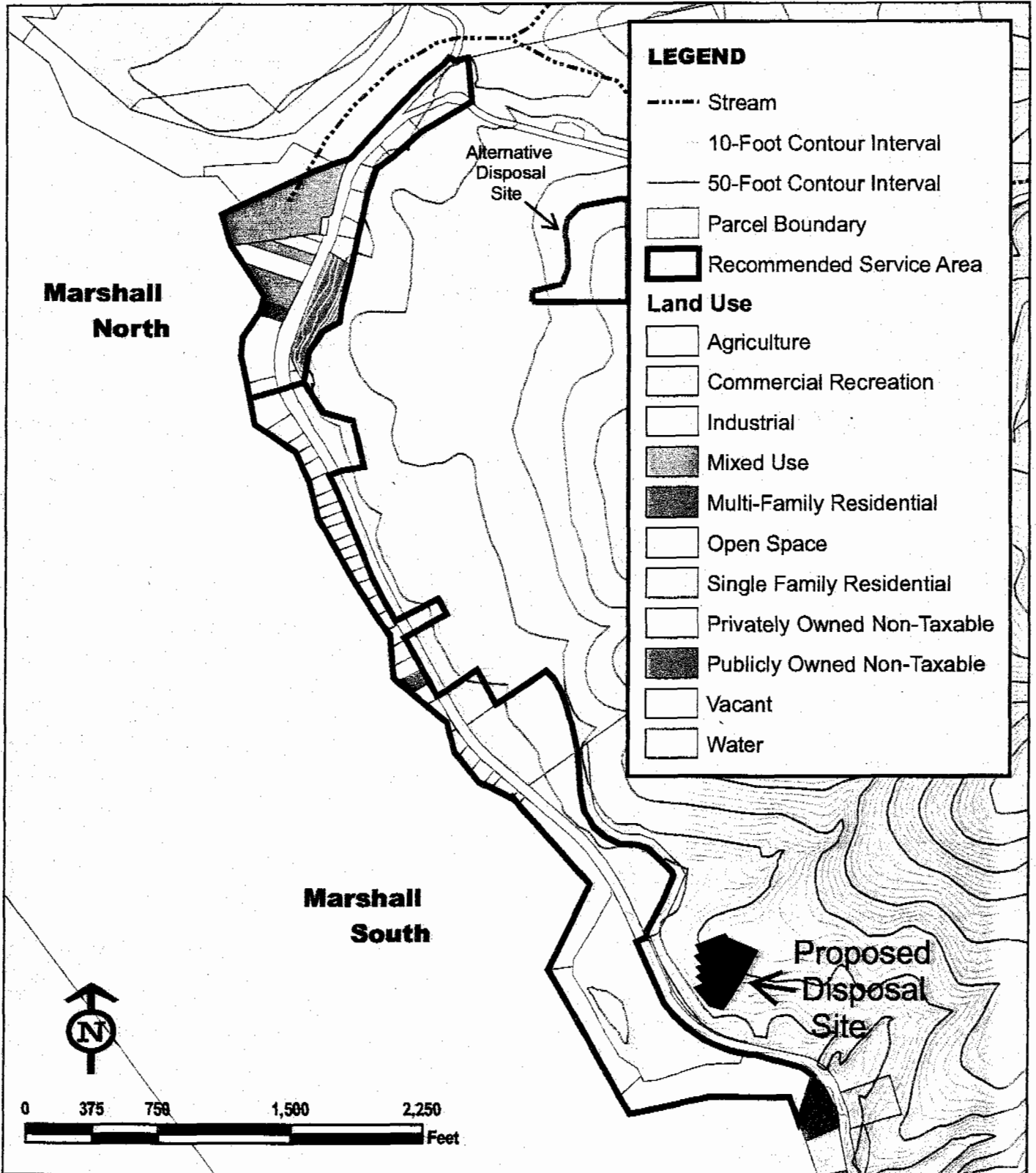


DATE: 11 March 2005  
 PROJECT: E. Shore WW Improvement  
 PROJECT NUMBER: 240200  
 DRAWN BY: KOW  
 APPROVED: NH

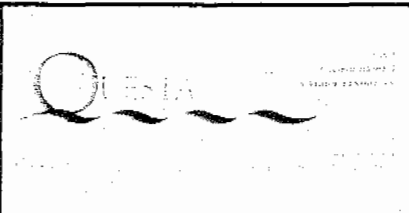


PROJECT LOCATION MAP  
 East Shore Wastewater  
 Improvement Project

FIGURE  
 1



DATE: 11 March 2005  
 PROJECT: E. Shore WW Improvement  
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 DRAWN BY: KOW  
 APPROVED: NH



**RECOMMENDED SERVICE AREA**  
**East Shore Wastewater**  
**Improvement Project**

**EXHIBIT NO. 2**  
**APPLICATION NO.**  
**2-07-019 MARIN CO.**  
**ENVIR HEALTH SRVCS**  
**Project Map**

**Table 1  
EAST SHORE WASTEWATER IMPROVEMENT PROJECT  
ON-SITE SYSTEM SURVEY AND RECOMMENDATIONS**

Parcel No.	Property Address	EXISTING SEPTIC TANK				STEP Tank Elevation (ft. MSL)	PROPOSED ON-LOT IMPROVEMENTS		NEW TANK LOCATION	
		MTL	VOL	CONST R. TYP	RISERS		CONDITION	Facilities	Tank Category	Approx. Dist. To Bay (Ft)
106-050-01	19180 State Rt. 1	C	1200	MFG	N	G	(E) STEG to Cluster Tank #1.	STEG (2)	--	--
	19200 State Rt. 1 (U.S. Postal Office)	C	1200	MFG	Y (C)	G	(E) STEP to Cluster Tank #1.	(E) OK NO WORK	--	--
106-050-11	19225 State Rt. 1 (Marshall Store)	C	1200	MFG	Y (C)	G	(E) STEG to Cluster Tank #1.	STEG (1)	--	--
106-050-12	19225 State Rt. 1 (Harbor Master)	C	1200	MFG	Y (PRW)	G	(E) STEG to Cluster Tank #1.	STEG (2)	--	--
106-050-12	19145 State Rt. 1	C	UNK	HB	Y (P)	F/P	New Cluster Tank #1, 2000-gal.	Cluster STEP	186'	205'
	19145 State Rt. 1	C	1200	MFG	(N) P	G	(E) STEG TO Cluster Tank #1	STEG (2)	--	--
	19123 State Rt. 1	C	UNK	HB	N	P	New STEG to Cluster Tank #1.	STEG (4a)	60'	100'
106-040-08	19485 State Rt. 1	C	800-1000	HB	N	F	New STEP tank	4b	50'	40'
106-040-07	19495 State Rt. 1	C	800-1000	MFG	Y (P)	G	Convert (E) Tank to STEP	1	--	--
106-040-05	19535 State Rt. 1	C	1200	HB	N	F/G	New STEP tank	4b	6'	5'
106-040-04	19555 State Rt. 1	C	UNK	HB	N	F	New STEP tank	4b	11'	10'
106-040-11	19570 State Rt. 1	C	1200	MFG	N	F/G	Convert (E) tank to STEG tank	STEG (1)	--	--
106-030-15	19675 State Rt. 1	C	1000	MFG	Y (P+C)	G	Convert (E) tank to STEP	1	--	--
106-030-14	19695 State Rt. 1	C	1000-1200	HB	N	G	New STEP Tank	4b	6'	5'
106-030-13	19715 State Rt. 1	C	1200	MFG	Y (P)	G	Convert (E) tank to STEP	1	--	--
106-030-12	19735 State Rt. 1	C	1200	MFG	N	G	Convert (E) tank to STEP	2	--	--
106-030-11	19755 State Rt. 1	C/RW Top	UNK	HB (?)	N	P	New STEP tank	4b	13'	12'
106-030-10	19775 State Rt. 1	C	800-1000	HB	N	F	Retain (E) tank, add new pump tank	3b	31'	30'
106-030-09	19795 State Rt. 1	C	800-1000	HB	Y (P)	F	New STEP tank	4b	36'	35'
106-030-08	19815 State Rt. 1	C	1200	MFG	Y (P)	G	No Work	EX	--	--
106-030-07	19825 State Rt. 1	C	1000	MFG	N	F/G	No Work	EX	--	--
106-030-06	19835 State Rt. 1	F	1200	MFG	Y (P)	G	Convert (E) holding tank to STEP	1	--	--
106-030-05	19845 State Rt. 1	C/RW	UNK	HB	N	P	New STEP tank	4b	35'	34'
106-030-04	19855 State Rt. 1	C	1200	MFG	Y	G	Convert (E) tank to STEP	1	--	--

**EXHIBIT NO. 3**  
**APPLICATION NO. 2-07-019 MARIN CO.**  
**ENVR HEALTH SRVCS**  
**Specific Property**  
**Septics**  
**(Page 1 of 2 pages)**

**Table 1  
EAST SHORE WASTEWATER IMPROVEMENT PROJECT  
ON-SITE SYSTEM SURVEY AND RECOMMENDATIONS**

106-030-03	19865 State Rt. 1	C	1200	MFG	N	F/G	11	Convert (E) tank to STEP	2	--	--
106-030-02	19885 State Rt. 1	C	1200	HB	N	F	11	Retain (E) tank, add new pump tank	3a	21'	30'
106-020-40	19925 State Rt. 1	C	UNK	HB	YM	UNK	11	New STEP tank	4b	14'	13'
106-020-04	19935 State Rt. 1	C/RW	UNK	HB	Y (RW)	P	11	New STEP tank	4a	11'	10'
106-020-22	19945 State Rt. 1	C/RW	UNK	HB	Y (RW)	P	12	New STEP tank	4b	21'	20'
106-020-18-10	19865 State Rt. 1	C	UNK	HB	N	P	12	New STEP tank	4a	11'	10'
106-020-09	20020 State Rt. 1	C	1200	MFG	N	G	23	Convert (E) tank to STEP	2	--	--
106-020-01	20086 State Rt. 1	F	1200	MFG	N	G	31	New STEP tank	4a	80'	80'
106-202-39	20105 State Rt. 1	C	(2) @ 1,500	MFG	N	G	12	Convert (E) tank to Cluster Tank #2, 1,500gal. (By Owner)	(E) Tanks	--	--
106-020-14	20135 State Rt. 1	C	UNK	HB	N	F/P	12	New STEP tank	4b	35'	10'
106-010-05	20155 State Rt.1	C	1000	MFG	Y (P)	G	11	Convert (E) tank and sump to STEP	1	--	--
106-010-09	20165 State Rt. 1	F	1200	MFG	N	G	12	Convert (E) holding tank to STEP	1	--	--
106-010-06	20175 State Rt. 1	F	1500-2000	MFG	Y	G	12	Convert (E) holding tank to STEP	1	--	--
106-010-02	20230 State Rt. 1	C	1200	HB	N	F	26	New STEP tank	4b	140'	140'

**Key to Table**

**Existing Septic Tank**  
 MTL - Material  
 C - Concrete  
 RW - Redwood  
 F - Fiberglass  
 P - Plastic  
 VOL - Estimated Volume (in gallons)  
 UNK - Unknown  
**CONST. TYP** - Construction Type  
 MFG - Manufactured  
 HB - Home Built  
 RISERS - Yes/No  
 (E) - Existing

**Categories**

STEG Gravity connection using existing or new septic tank; no pump required.

1 Existing manufactured tank in good condition with suitable risers;  
 Minor work required for conversion to STEP unit.

2 Existing manufactured tank in fair to good condition without suitable risers;  
 Requires addition of risers and other minor work for conversion to STEP unit.

3 Existing home built tank in apparent fair to good condition without suitable risers; install separate pump basin; homeowner responsible for installation of risers & other minor work to retain existing tank. (3a non-traffic; 3b traffic)

4 Existing home built tank unusable; Abandon existing and replace with new STEP unit. (4a non-traffic; 4b traffic)

EX Exempt from project; no work proposed

THIS DOCUMENT IS RECORDED  
FOR THE BENEFIT OF THE  
COUNTY OF MARIN  
MARSHALL PHASE 1 ONSITE WASTEWATER DISPOSAL ZONE  
AND IS EXEMPT FROM FEE  
PER GOVERNMENT CODE  
SECTIONS 6103 AND 27383

WHEN RECORDED MAIL TO:

C/O QUESTA ENGINEERING CORPORATION  
PO BOX 356  
1220 BRICKYARD COVE ROAD  
POINT RICHMOND, CA 94807  
ATTENTION: MR. NORMAN HANTZSCHE

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ACCESS AGREEMENT

Grantors described below ("Grantors") are the owners of certain real property located in the County of Marin, State of California as more particularly described on EXHIBIT A attached hereto ("Property"). For good and valuable consideration, receipt of which is hereby acknowledged, Grantors do hereby grant to the County of Marin Marshall Phase 1 Onsite Wastewater Disposal Zone ("Grantee") a perpetual right of access to erect, construct, install, lay, inspect, maintain, alter, clean, remove, and replace septic tanks, sewer pipes, pumps, and all appurtenances necessary and incidental thereto (collectively, "Sewer Facilities") in, on, under, over, and along that portion of the Property as approximately shown on EXHIBIT B attached hereto ("Access Area"). The limits of access shall encompass the area extending a distance of approximately five feet on either side of the sewer lateral, septic tank and pumping unit and a distance of approximately five feet in front of and to either side of the building exterior where electrical equipment is located.

The above mentioned access shall include the right to temporarily place machinery and materials on the property as necessary for the construction, installation, maintenance, removal, replacement, and repair of the Sewer Facilities, together with the right of ingress and egress over the property as necessary to effectuate the purposes of this Access Agreement.

Grantee expressly agrees that any damage to the surface of the Property caused by Grantee during the initial installation of Sewer Facilities or at any time thereafter shall be promptly repaired and, to the extent possible, the Property shall be restored to the condition existing prior to Grantee's entry thereon.

EXHIBIT NO.	4
APPLICATION NO.	2-07-019 MARIN CO.
ENVI HEALTH SRVCS	Sample Access
Agreement	(Page 1 of 5 pages)



State of California )  
County of Marin )

On \_\_\_\_\_, 2007 before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument of the persons, or the entity upon behalf which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

State of California )  
County of Marin )

On \_\_\_\_\_, 2007 before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument of the persons, or the entity upon behalf which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT B- page 1**

**DESCRIPTION  
OF SEWER ACCESS AREA**

A portion of that certain real property described on Exhibit A attached to this Grant of Sewer Access and as approximately show on the plat attached hereto as Exhibit B- page 2.

**EXHIBIT B**

APN \_\_\_\_\_  
\_\_\_\_\_ State Route 1