

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
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**Th4**

# **NORTH CENTRAL COAST DISTRICT DEPUTY DIRECTOR'S REPORT**

For the

## **September Meeting of the California Coastal Commission**

MEMORANDUM

Date: **September 8, 2011**

TO: Commissioners and Interested Parties

FROM: Charles Lester, North Central Coast District Deputy Director

SUBJECT: **Deputy Director's Report**

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the North Central Coast District Office for the **September 8, 2011**, Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the North Central Coast District.

# **NO ITEMS TO REPORT THIS MONTH**

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**Memorandum****September 6, 2011**

To: Commissioners and Interested Parties

FROM: Charles Lester, Deputy Director  
 North Central Coast District

Re: *Additional Information for Commission Meeting*  
*Thursday, September 8, 2011*

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th5.5a	Kelham & Kelham Investments LLC	Staff Report Addendum	
Th5.5a	Kelham & Kelham Investments LLC	Addendum: Exhibit 13	
Th5.5a	Kelham & Kelham Investments LLC	Addendum: Additional technical materials associated with Appeal, Exhibit 4	
Th6a	California Department of Transportation (Caltrans)	Staff Report Addendum	
Th5.5a	(Kelham & Kelham Investments LLC, Sonoma County)	Correspondence, Tony & Carol Anello	1-3
		Correspondence, Raymond Waldbaum	4-8
		Correspondence, Sheila J. Gilmore	9
		Correspondence, Margaret Briare	10-12
		Correspondence, Francis Drouillard	13-14
Th6a	California Department of Transportation (Caltrans)	Correspondence, Amy Trainer	15-17
		Correspondence, Linda Emme	18-20
		Correspondence, Steve Watanabe	21-22

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Th5.5a



## MEMORANDUM

DATE: September 7, 2011  
TO: Commissioners and Interested Parties  
FROM: Charles Lester, Senior Deputy Director  
Ruby Pap, North Central Coast District Supervisor  
SUBJECT: Staff Report Addendum to Item Th5.5a (Kelham)

This addendum to the Staff Report, dated August 25, 2011, has been prepared to (1) provide clarification to the findings and conditions; and (2) respond to comments received from the Applicants and the public.

Recommended additions to the Staff are shown in **bold underline**. Recommended deletions are shown in bold **~~strikethrough~~**.

*Page 5, Special Condition 1(B)(2):*

- 1) Erosion and Drainage Runoff Control Plan
  - a. The final runoff control plans shall at a minimum include the following provisions:
    - i. ~~Soil grading activities shall be restricted to the dry season between April 15 and October 14;~~  
**No phase of the project may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm event, where that construction phase may result in the introduction of sediment or sediment-laden water into a watercourse. A seventy-two-hour weather forecast from the National Weather Service shall be consulted prior to start up of any phase of the project that may result in runoff.**

*Page 10, Special Condition 6:*

- A. All final design and construction plans including foundations, grading, and drainage plans, shall be consistent with the recommendations contained in ~~the Geotechnical Investigation report submitted with the application (1) PJC and Associates, 2009, "Report, Geologic hazard investigation, proposed residence, garage, second unit~~

**and private driveway, 1835 Bay Flat Road, Bodega Bay, California"; and (2) PJC and Associates, 2009, "Design level geotechnical investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California".**

*Page 31, first full paragraph, last sentence:*

...In addition, he has agreed to move the garage closer to the main house, relocating the entire envelope further **north west** to avoid identified plants and, as discussed below, eliminating the second unit.

*Page 31, paragraph 2:*

2. Alternative placements of the house

According to the alternatives analysis, relocating the house, and/or reducing pathways to it has the potential to reduce project impacts on rare plants. If the house were relocated approximately 50 feet to the north or northwest, impacts on the rare plants could potentially be reduced by 33%. **However, based on updated habitat mapping on August 12, 2011 (exhibit 7) and staff's assessment of the habitat, there would be no added habitat benefit beyond the 10-15 feet to the west necessary to avoid the plant clusters to the east. Further, moving the house 50 feet to the north or northwest would require additional grading into the hillside, and there would be added visual impacts when viewed from Bay Flat Road. In addition,** the actual reduction in **habitat** impact would depend on the extent of grading limits and careful fencing/avoidance of plant populations during construction. The Commission's Staff Ecologist opined that moving the residence 50 feet to the west would be appropriate if there were no additional driveway impacts. The alternatives analysis did not specifically analyze whether this option would result in additional area required for the driveway and hence additional dune ESHA impacts. According to the site plans and habitat map, moving the residence 50-feet to the northwest, would not necessarily require a driveway extension, since the plans already show the driveway extending north and west of the residence to reach the garage; **however the Applicant maintains that such a driveway extension would be necessary to maintain consistency with the architect's design. Therefore, there would potentially be additional driveway impacts if the proposed residential envelope were relocated 50 feet to the northwest. Moreover,** the garage would have to be reconfigured and be attached to the residence or eliminated to minimize dune ESHA impacts. This may require a redesign of the residence to accommodate an attached garage or the garage could be eliminated if it does not work with the design of the residence.

## CALIFORNIA COASTAL COMMISSION

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17 August 2011

**GEOTECHNICAL REVIEW MEMORANDUM**

To: Ruby Pap, Coastal Program Manager  
From: Mark Johnsson, Staff Geologist  
Re: Kelham Appeal (A-2-SON-10-023)

In connection with the above-referenced appeal, I have reviewed the following documents:

- (1) PJC and Associates, 2009, "Report, Geologic hazard investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California", 17 p. geotechnical report dated 2 March 2009 and signed by S.M. Schurke (PG 8619) and P.J. Conway (CEG 2452).
- (2) PJC and Associates, 2009, "Design level geotechnical investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California", 25 p. geotechnical report dated 7 August 2009 and signed by P.J. Conway (CEG 2452).
- (3) The Engineering Geologist, 2009, 1 p. letter to DeWayne Stames dated 24 September 2009 and signed by R. Waldbaum (CEG 923).
- (4) The Engineering Geologist, 2009, "Peer review of Geologic Hazard Evaluation Report dated March 2, 2009 by PJC & Associates, Inc., 1835 Bay Flat Road, Bodega Bay, Sonoma County, California", 4 p. peer review letter dated 30 September 2009 and signed by R. Waldbaum (CEG 923).
- (5) The Engineering Geologist, 2009, "Peer review of Design Level Geotechnical Investigation, proposed residence, garage, second unit and private driveway, 1835 Bay Flat Road, Bodega Bay, California Report dated August 7, 2009 by PJC & Associates, Inc.", 4 p. peer review letter dated 22 October 2009 and signed by R. Waldbaum (CEG 923).
- (6) PJC and Associates, 2010, "Geotechnical plan review, proposed private driveway, GRD 09-0175, 1835 Bay Flat Road, Bodega Bay, California", 1 p. review letter dated 27 January 2010 and signed by P.J. Conway (CEG 2452).
- (7) The Engineering Geologist, 2010, "Summary of geologic feasibility issues, 1835 Bay Flat Road, Bodega Bay, California", 4 p. letter to Maggie Briare dated 8 February 2010 and signed by R. Waldbaum (CEG 923).

Exhibit No. 13  
A-2-SON-10-023

Kelham & Kelham Inv. LLC

Geotechnical Review Memorandum from Mark Johnsson, CCC staff Geologist

- (8) Rowland, 2010, "1835 Bay Flat Road, Bodega Bay, California, Private driveway", 2 p. letter to County of Sonoma dated 10 February 2010 and signed by C. Rowland (CE 039886).
- (9) Rowland, 2010, "1835 Bay Flat Road, Bodega Bay, California, Private driveway", 2 p. letter to County of Sonoma dated 10 March 2010 and signed by C. Rowland (CE 039886).

Although I have not visited the subject site, I am very familiar with the geologic conditions of the immediate vicinity, having visited it numerous times.

References (1) and (2) are preliminary and design-level (respectively) geotechnical reports evaluating the geologic hazards at the site. Given the proximity of the site to the San Andreas fault and the sandy nature of the soils, ground shaking, fault rupture hazard, and lateral spread are identified as the principal hazards. Despite the poorly graded sandy soils, liquefaction is not identified as a likely hazard due to the presumed depth to groundwater, which was not encountered in any of the borings, the deepest of which extended to a depth of 21 feet. Nevertheless, the reports recommend the structures be supported by "stiff" foundations that can accommodate differential settlement due to possible seismic densification of soils. Reference (1) recommends that the stability of the bluff at the southeastern side of the property be evaluate in order to ensure the stability of the proposed driveway. This was done only qualitatively in reference (2).

I concur with the conclusions of these reports that the site can be developed safely if the recommendations contained therein are adhered to. I note that surface fault rupture is a risk, but one that cannot be quantified easily because the young sand dunes deposit riaking up the upper 21 feet or more of the site are not likely to record offsets by historic earthquakes. The site lies some 2500 feet from the 1906 rupture of the San Andreas fault, and does not lie within an Alquist-Priolo fault zone.

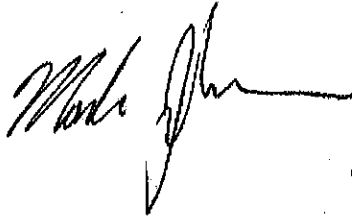
References (4), (5), and (7) are reviews of the references (1) and (2) and raise two major, and one minor, issue that the author feels are not adequately mitigated for by the proposed project and that the project's feasibility has accordingly not been demonstrated. First, these reviews state that the "absence of fault traces within proposed building footprints must be demonstrated" [emphasis in original] to establish project feasibility. The reason for this necessity is unclear, but appears to derive from a quotation from reference (1) in which the authors of that report conclude that "the likelihood of ground rupture at the site due to faulting is considered to be moderate to high." However, the site does not lie within an Alquist-Priolo Fault Zone and, as indicated above, trenching or shallow geophysical techniques are likely to yield equivocal results due to the recent sandy soils that exist at the site. The reviewer does not propose any means of conducting a fault hazard study that would yield unambiguous results. It is my opinion that a fault rupture hazard exists at the site, but that there is no evidence of a known active fault at the site, and the risk is no higher than at most other localities in and around Bodega Bay. Further investigation is unlikely to yield conclusive results regarding fault rupture hazard. The second issue raised in references (4), (5), and (7) is the stability of the dune bluff face at the southeastern edge of the property, which must be traversed by the driveway and utilities. Although reference (1) recommended further evaluation of this slope's stability, reference (2) only did so in a

qualitative way, as pointed out in references (5) and (7). Nevertheless, the driveway will traverse this slope in cuts supported by retaining walls. The design criteria for the retaining walls provided in reference (20), and further described in reference (8), are conservative and will mitigate any instability of the natural dune bluff. I note that this bluff lies landward of Bay Flat Road, several hundred feet from the water's edge, and is not subject to marine erosion in any but the most severe wave or tsunami events. Finally, references (4) and (5) make reference to poor drainage that exists at the base of this bluff, and opine that ponded waters at this location could reduce the overall stability of the bluff. I concur, and recommend that drainage plans be submitted for review by the Executive Director that demonstrate that such ponding will not be allowed to continue after the project is developed.

To summarize, I concur with the project consultants that the proposed development can be undertaken so as to assure stability, as required by the LCP, provided that the recommendations provided in references (1) and (2) are adhered to. I recommend a special condition be added to the permit requiring such adherence.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Johnsson", with a long horizontal flourish extending to the right.

Mark Johnsson, Ph.D., CEG, CHG  
Staff Geologist

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JUN 02 2010

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The Engineering Geologist  
Since 1969  
RG 3142 CEG 923  
7945 St. Helena Road Santa Rosa, CA 95404  
Phone 707-539-2577  
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February 8, 2010

Ms. Maggie Briare  
P.O. Box 998  
Bodega Bay, CA 94923

Subject: **Summary of Geologic Feasibility Issues, 1835 Bay Flat Rd.  
Bodega Bay, Sonoma County, California.**

Dear Ms. Briare:

#### INTRODUCTION

The purpose of this letter is to summarize the unresolved geologic safety and stability issues that affect proposed development of the subject site. These are fundamental feasibility issues that will be considered at a public meeting of the Sonoma County Board of Zoning Adjustments on February 11, 2010.

The two geologic feasibility issues are the potential presence of active fault traces underlying the proposed building sites and the stability of the slope along Bay Flat Road that will be traversed by the driveway. Until these issues are resolved using methods that conform to statewide standards of geologic and geotechnical engineering practice, these issues will remain unresolved. These unresolved issues are described in more detail below.

#### ACTIVE FAULT HAZARDS

The Aiquist-Priolo Earthquake Fault Zoning Act became law on December 22, 1972 and became effective March 7, 1973. The Act prohibits construction of structures for human occupancy over the traces of active faults. The PJC report dated March 2, 2009 (Reference 1) states "In the event of a large or major earthquake, particularly on the nearby San Andreas Fault System, the project is susceptible to ground rupture, ground shaking and seismic related ground failures". Also on page 8, the PJC report states "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". In other words, it is the finding of PJC that active faults probably underlie the site.

Once this probability has been suggested, just as with a preliminary diagnosis of a



suspected life threatening disorder, the question must be answered by a totally through diagnosis.

The Mitigated Negative Declaration states "The site is located in the San Andreas Fault Zone..." There is contradictory information in the PJC report dated March 2, 2009 concerning whether or not the site is located in the San Andreas Fault Zone. On page 6 the report states "The site is located in the San Andreas Fault Zone". However, also on page 6 the report states "...the site is not located in the Alquist Priolo Earthquake Fault Studies Zone".

Additionally, on page 6 the report incorrectly states that the proposed project is exempt from the Act because it "...is not part of a development of four or more dwellings". This is a very serious error in understanding the requirements for geologic investigation of fault hazards in Sonoma County for two reasons.

First, in *Alquist-Priolo Earthquake Fault Zoning Act*, by DeWayne Starnes, Deputy director of PRMD, in *The PRMD Newsletter*, Spring 2009 (Reference 6), Starnes states "Although the State Alquist-Priolo Zone exempts single family homes from the requirement, the County Ordinance does not include the exemption for singly family homes". Thus, the requirements of the Act apply to this project regardless of the number of homes because of the site's location in the Fault Zone according to PJC and the Mitigated Negative Declaration

Second, and far more important from a scientific standpoint, PJC states on page 8 of their report dated March 2, 2009 (Reference 1) "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". Placement of habitable structures over the traces of active faults is exactly what the Alquist-Priolo Earthquake Fault Zoning Act was enacted to prevent. Since, according to PJC, this hazard probably exists at the site, the site must be considered seismically unsafe under the requirements of the Act based upon present geologic information. Subsurface investigation of fault hazards is required in building area according to a personal communication from DeWayne Starnes to Ray Waldbaum that states "In order for an appropriate licensed professional to 'address' the proximity of structures to faults, this requires subsurface investigation, and not simply looking at a map and stamping a report or letter".

For both of the reasons described above, the absence of active faults in proposed building areas has not been demonstrated in accordance with either statewide standards of practice nor with the requirements of Sonoma County PRMD. A great deal more work needs to be done to resolve this basic feasibility issue.

#### SLOPE STABILITY

The proposed driveway providing access to the proposed structures traverses a steep

sand dune slope. Under the heading of "Slope Stability" the PJC report dated March 2, 2009 (Reference 1) states "This section of driveway should be evaluated for static and seismic instability during the geotechnical phase of the project", in other words "later". This deferred "geotechnical" work is presented in the PJC report dated August 7, 2009 (Reference 2). This report does not present stability analysis of the steep slope to be traversed by the driveway. Reference 2 states "... the slope could be prone to lurching or instability during seismic ground shaking". "Could" is not stability analysis. Stability analysis is an Engineering Geologic and Geotechnical Engineering calculation that results in determination of a numerical factor of safety that either does or does not conform to minimum criteria based on statewide standards of practice.

The subject of stability analysis is described in detail in various published forms including *Guidelines For Evaluating And Mitigating Seismic Hazards In California*, Chapter 5, *Analysis And Mitigation Of Earthquake-Induced Landslide Hazards*, and Chapter 7, *Guidelines For reviewing Site Investigation Reports*, California Division of Mines and Geology Special Publication 117, adopted March 13, 1997, (Reference 7)

In order for the project to be feasible this driveway must remain stable and functional to underground utilities and pedestrian, homeowner and emergency vehicle traffic even during and after an earthquake on the San Andreas Fault. The ability of the driveway slope to meet this requirement has not been demonstrated. In fact no effort to demonstrate that has even been attempted.

#### FALSE STATEMENTS IN MITIGATED NEGATIVE DECLARATION

Under the heading "GEOLOGY AND SOILS" the MND makes statements that can only be described as outrageous. For the potentials hazards of fault rupture, strong seismic ground shaking, seismic-related ground failure including liquefaction and landslides a hazard level of **Less than Significant Impact** is indicated. It is impossible to imagine these hazard designations for a site in the most well known and dangerous fault zone known to humankind where the project geologic consultant has indicated that active faults probably underlie the site! Even the most optimistic description of the the potentials hazards of fault rupture, strong seismic ground shaking, seismic-related ground failure including liquefaction and landslides would have to be **Potentially Significant Impact** considering the location of this site and the inevitability of "The Big One".

#### CONCLUSION

The present issue is whether or not geologic hazards exist at the site whose mitigation, for example construction of a buttress fill to support the driveway slope, would be 1. feasible from a construction standpoint, and 2. consistent with the laws, codes and criteria that govern development in this Coastal Area.

Briare Feb. 8, 2010

page 4

I trust that the forgoing information fulfills your present requirements. If you have any questions or require additional information, please do not hesitate to call.

Very truly yours,

*Raymond Waldbaum*  
Raymond Waldbaum  
Professional Geologist 3142  
Certified Engineering Geologist 923



#### REFERENCES

1. Report, Geologic Hazard Evaluation, Proposed Residence, Garage, Second Unit & Private Driveway, 1835 Bay Flat Road, Bodega Bay, California, dated March 2, 2009, by PJC & Associates, Inc. Job No. 4238.01.
2. Design Level Geotechnical Investigation, Proposed Residence, Garage, Second Unit & Private Driveway, 1835 Bay Flat Road, Bodega Bay, California, dated August 7, 2009, by PJC & Associates, Inc. Job No. 4238.02.
3. Peer Review of Geologic Hazard Evaluation Report dated March 2, 2009 by PJC & Associates, Inc, 1835 Bay Flat Road, Bodega bay, Sonoma county, California, by Raymond Waldbaum, dated September 30, 2009.
4. Peer review of *Design Level Geotechnical Investigation, Proposed Residence, Garage, Second Unit & Private Driveway, 1835 Bay Flat Road, Bodega Bay, California, dated August 7, 2009, by PJC & Associates, Inc.,* by Raymond Waldbaum, dated October 22, 2009.
5. *Fault-Rupture Hazard Zones In California*, California Division of Mines and Geology Special Publication 42.
6. *Alquist-Priolo Earthquake Fault Zoning Act*, by DeWayne Starnes, Deputy director of PRMD, in *The PRMD Newsletter*, Spring 2009.
7. *Guidelines For Evaluating And Mitigating Seismic Hazards In California*, Chapter 5, *Analysis And Mitigation Of Earthquake-Induced Landslide Hazards*, and Chapter 7, *Guidelines For reviewing Site Investigation Reports*, California Division of Mines and Geology Special Publication 117, adopted March 13, 1997

Commission Appeal No. A-2-SON-10-023

California Coastal Commission  
North Central Coast District Office  
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JUN 11 2010

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ATTENTION: Charles Lester, Senior Deputy Director  
Ruby Pap, District Supervisor  
Grace Ma, Coastal Program Analyst

As promised in our initial appeal form, we are forwarding further information with regard to the following project:

Sonoma County Permit PLP08-0131  
William Kelham; Kelham Investments LLC  
1835 Bay Flat Rd., Bodega Bay, Sonoma County, CA

The necessary requirements for all environmental documents are that they must contain specific and mandatory findings on all elements of a project. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project level, indirect as well as direct, and construction as well as operational impacts. The plans and documents prepared for this project by County of Sonoma PRMD and the applicant do not come close to these standards.

The environment of Bodega Bay has always been one of the most fragile along the California coast. It has always been considered the single most important area for rare and endangered species and non-migrating and migrating birds found along the coast. The environment supporting these creatures must be protected to the fullest extent.

Environmental Issues:

The heron/egret rookery on this property is one of the last sanctuaries remaining in and around Bodega Bay. The environment necessary to house such sanctuaries has steadily disappeared over the years due to encroachment, the felling of trees, the destruction of vital and necessary wetlands and the degradation of the land in general.

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NOTE: This area was chosen by Alfred Hitchcock for his film "The Birds" and it remains a popular tourist destination for people from all over the country, Europe and Asia. The historic farmhouse used in the film was moved adjacent to the rookery in 1869.

This refuge for herons, egrets, osprey, owls, bats and a myriad of protected animals and birds will be seriously affected by this project, especially due to the placement of the access/egress road as proposed.

The Conditions of Approval contained in the May 18, 2010 draft (copy enclosed) are ineffective for protection. Item 11, page 2 states; "To avoid potential disturbance to the active heronry, construction of the driveway and associated grading activities is prohibited between March 15 and August 15. The allowed construction period may be extended if a survey conducted by a qualified biologist determines that nesting activity has not yet occurred or is already complete for the season. **Work on the proposed single family house, garage, and second dwelling unit MAY proceed during the breeding season [emphasis added]** provided that construction noise is reduced to the maximum extent feasible."

No grading or construction activities should be allowed to take place during any time of bird occupancy of the heronry. The March 15 and August 15 dates are not relevant to the arrival of the birds and the nesting season, which can be anytime between late January to late October. This year the birds began arriving in late January, with the greater number arriving on February 10<sup>th</sup>. The conditioned dates do not coincide with the actual nesting season and do not provide protection.

More importantly, Condition 11 allows for the construction of the residences and garage to take place **during** the nesting season regardless of the known consequences. Construction noise involving heavy equipment, trucks, etc. necessary for construction would have a devastating effect on the rookery during the nesting season, allowing this traffic to utilize the access/egress road under the canopy of the rookery in order to get to the construction site. No construction noise, even that reduced to the maximum extent feasible, can be mitigated to the extent necessary to protect the rookery.

Condition 12, page 2, states; "If active nests or behavior indicative of nesting birds are encountered while constructing the proposed structures or driveway, establish a 50 ft. buffer area for small songbirds and 200 feet for larger species (e.g., raptors, owls, etc.) to be avoided until the nests have been vacated. The applicant shall report any nests encountered during construction. PRMD staff shall inspect the site and verify that protection measures are in place."

This condition completely overlooks the fact that **NO CONSTRUCTION CAN BE ALLOWED TO TAKE PLACE DURING THE NESTING SEASON AND NO LESSER BUFFER AREA SHOULD BE ESTABLISHED DURING NESTING SEASON**. Condition 12 is completely out of context with all protection measures that must be taken for preservation of this environmental resource.

With regard to Condition 13, page 2, it states: "All trees on the site shall be preserved and protected against damage during construction activities. If a licensed arborist determines that a tree needs to be removed during construction due to damage or disease, the tree shall (sic) surveyed by a qualified biologist for roosting bats or nesting birds prior to removal. Removal shall not occur until the roost or nest is unoccupied."

This condition blatantly allows for trees to be removed from the rookery at the whim of the applicant and his arborist/biologist, even during the nesting season. Audubon Canyon Ranch again visited the site on Sunday, June 6<sup>th</sup> and once again will have a report on the number of birds, variety, nesting conditions, nesting sites, etc. and this report will be forwarded to you. Observation shows a great majority of the birds nesting in the forward portion of the rookery (the portion that will be greatly affected by the project's access road) while a number of birds are also utilizing many of the adjacent trees. ANY REMOVAL OF ANY TREES will have a profound effect. All trees in the area of the rookery are utilized, including dead and dying trees. Dead wood is utilized in the building of the nests and fallen debris from the trees is used for stability in the nests. Many of the nests remain after the nesting season and are utilized season after season. In addition, the tree root systems rely on each other for stability against the weather and ground conditions. This is especially important in this area that is comprised mostly of sand dunes. To remove even one tree can and will weaken the grove and construction on and use of the access/egress road will have a serious effect.

Geological issues:

The strong geological issues associated with this project were absent from the Mitigated Negative Declaration and Conditions of Approval. The Summary of Geologic Feasibility Issues by Engineering Geologist Ray Walbaum dated February 8, 2010 clearly defines the serious nature of this project. This summary outlines the facts of the Alquist-Priolo Earthquake Fault Zoning Act which was enacted into law in 1972 and is the basis for all review regarding geological conditions. The applicant's own geologist, PJC & Associates, in the report dated March 2, 2009 stated "In the event of a large or major earthquake, particularly on the nearby San Andreas Fault System, the project is susceptible to ground rupture, ground shaking and seismic related ground failures." They further stated, "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". This information is not evident in the findings of the Mitigated Negative Declaration, which declares the issues to be "Less than Significant". No required subsurface investigation was undertaken for the project site and the potential hazards of building at this site were not adequately addressed by the County of Sonoma. The law within the Alquist-Priolo Fault Zoning Act prohibits placement of habitable structures over the trace of an active fault with no exceptions.

The summary written by Ray Walbaum was enclosed with the original appeal document sent to you on May 28, 2010. Should you require additional copies of this or any other documents relevant to this appeal, please don't hesitate to contact us and they will be forwarded to you as soon as possible.

Public Safety:

The issue of public safety is also an important part of this appeal and one that was not significantly addressed in the documents prepared by the County of Sonoma for this project.

This project has, to some degree, already impacted public safety for the surrounding residents. The degradation of the sand dunes has already taken place at the site of the access road, and will further impact the businesses and residents on Westshore Road down slope from the site. The ability of the dunes to invade onto Bay Flat Road will seriously compromise accessibility to the entire dune area in the event of an emergency. Dune fires are not uncommon in this area and Bay Flat Road at this site is the closest possible road allowing access to the entire dune area to the north.

Drainage issues from the site have not been fully addressed, especially as to the placement of the access road. The County of Sonoma simply states that water will be allowed to filter through the sand dune. Unfortunately, that water will quickly drain under the dunes and onto the Bay Flat Road area below as it does now, as there is simply no other place for it to go. Drainage is already compromised on Bay Flat Road as shown in the photo sent with the appeal as there are no drainage facilities in place in the area to carry away the water generated on the site. Failure and slippage of this site during an earthquake will also have a serious effect on the entire area.

We urge you to take a serious look at the factors of this project and their effect on the environment of Bodega Bay and its citizens and visitors alike. The propriety of the actions of the County of Sonoma PRMD is being called into question at this time as to their willingness to overlook and change the provisions and laws of the State of California, the Coastal Act, and especially the Local Coastal Plan, over which they have control.

We ask that you accept our appeal on its merits and **deny a coastal permit** for the project at 1835 Bay Flat Road in Bodega Bay for its lack thereof.

Thank you.

BODEGA BAY CONCERNED CITIZENS, et al  
P. O. Box 815  
Bodega Bay, CA 94923

**CALIFORNIA COASTAL COMMISSION**

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# Th6a

**Prepared September 6, 2011 (for September 8, 2011 hearing)**

**To:** Commissioners and Interested Persons  
**From:** Charles Lester, Acting Executive Director  
Madeline Cavalieri, Coastal Planner  
**Subject:** **STAFF REPORT ADDENDUM for Th6a**  
**CDP Application Number 2-11-011 (Caltrans)**

The purpose of this addendum is to clarify the staff recommendation for the above-referenced item. In the time since the staff report was distributed, Staff has identified an inadvertent omission and a typo in the staff report. In addition, Staff received public comments about the staff report and project that warrant additional explanation in the recommended findings.

First, staff had intended to specify that the \$266,000 mitigation fee required under Special Condition 8. B. would be transferred through the Cooperative Agreement to State Parks to support the Marconi Cove Access Rehabilitation and Construction Project. Therefore, Item 1 below adds this specification. This does not result in substantive changes to the agreement or to the public access mitigation requirement. In addition, the staff recommendation uses a capital 'I' when describing the interagency Cooperative Agreement, where a lowercase 'i' is more appropriate. Item 2, below, makes this change so that there is no confusion about whether this condition relates to an "Interagency Agreement" or a "Cooperative Agreement," which are two separate types of state agency instruments that can be used to transfer funds.

Finally, staff received public comments about the character of the shoreline area at the mitigation site and asserting the need for additional Commission oversight and environmental evaluation of the proposed mitigation project before it is constructed. Although the staff report described the mitigation site as providing 1,400 linear feet of 'beach area,' the site has minimal sandy beach, and therefore, it would be more appropriate to describe it as a 'shoreline' area. Therefore, Item 3, below, makes this change. In addition, as recommended, this CDP approval requires the mitigation project to be initiated and designed consistent with Marin County Local Coastal Program and Coastal Act policies; however, nothing in this action authorizes the access improvements at this time. Development of the mitigation project requires separate environmental and CDP review, which State Parks and the Department of Boating and Waterways have committed to undertaking. Therefore, Item 4 below adds language to the



recommended findings explaining that environmental and coastal development review of the mitigation project will be carried out at a future time.

Thus, the staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strikethrough~~ format indicates text to be deleted):

**1. Modify Special Condition 8.B, as follows:**

**Within one year of approval of this CDP**, the Permittee shall submit to the Executive Director evidence that a nonrefundable public access/sand supply mitigation fee of \$266,000 has been transferred to State Parks and deposited into an interest-bearing account created solely to manage the funds consistent with the Cooperative Agreement described herein...

**2. On line 4 of Special Condition 8.A and in paragraph 2 on page 20 of the staff report replace "Interagency" with "interagency."**

**3. In the first paragraph on page 20 of the staff report, replace "1,400 linear feet of beach area" with "1,400 linear feet of shoreline access."**

**4. Modify the findings in paragraph 2 on page 20 of the staff report as follows:**

Special Condition 8 requires Caltrans to carryout the proposed mitigation through an Interagency Cooperative Agreement between Caltrans, State Parks and the Department of Boating and Waterways (DBW). Pursuant to this condition, the in-lieu fee will be deposited into an account held by State Parks, and will be used for public access improvements on the Marconi Cove State Park property, consistent with the Tomales Bay State Park General Plan, such as grading, signage, landscaping, campsite design, formation of pedestrian pathways, fencing, lighting parking, and the inclusion of campsite amenities such as fire rings, picnic tables and food lockers. The public access improvements are to be designed and constructed consistent with the requirements of the Coastal Act and the County of Marin's certified LCP. No development may take place on the Marconi Cove site until a separate coastal development permit(s) has been issued for the proposed work. State Parks, in partnership with DBW, intends to meet all CEQA requirements for the proposal. It can be anticipated that these processes will include any avoidance, minimization or mitigation measures necessary to bring any allowable development into conformance with applicable environmental law and regulations. The project's construction and the removal of existing structures will be overseen and additionally funded by the California Department of Boating and Waterways, and after construction, State Parks will take over the operation of Marconi Cove State Park. State Parks and Boating and Waterways have submitted "letters of intent" to the Commission demonstrating their commitments to enter into a Cooperating Agreement to provide for the design, permitting, construction and long-term operation and maintenance of the new Marconi Cove State Park facilities (see Exhibits E and F). If the proposed mitigation project cannot be carried out as expected, Special Condition 8.C.ii requires the funds to be transferred to an entity able to complete the project, or for an alternative project to be proposed as an amendment to this CDP.

Th5.5a

Tony & Carol Anello  
Spud Pt. Crab Co.  
Bodega Bay, CA 94923

August 29, 2011

Coastal Commission North Central Coastal District Office  
45 Fremont Suite #2000  
San Francisco, CA 94105

Subject: Property on Bay Flat Rd: Parcel # 100-020-025 owned  
by Kelham Investments

Dear Members of the Coastal Commission, North Central Coastal  
District

My husband and I own and live on the property right below the  
above mentioned parcel. The front of our property is on Westshore  
Rd. and the back of our property is on Bay Flat Rd.

We are concerned with the development of parcel # 100-020-025.  
Directly behind our property is a hill that is all sand dunes. There  
are clusters of large trees at the top of the sand dunes. We feel that  
if Kelham Investments puts a road in behind our property we will  
be in danger of the hillside eroding, the trees and the sand coming  
down and burying us and our property. I have talked to one of the  
owners and expressed my concerns. I was told that there would be  
an extensive retaining wall put up. Down the road, off of  
Whaleship Dr. there are homes with retaining walls that after time

disturbance of the sand dunes our well being and our property will  
be in jeopardy.

If Kelham Investments wants to build on the site that they bought  
we have no problem with that, as long as they stay within the  
boundaries that we all had to abide by when we built. We do have  
a problem with them disturbing the sand dunes and putting us in  
danger, if not in the present, in the future. We believe there are  
other options to putting a road into their property. Easements from  
surrounding properties could be an option that would benefit  
everyone involved. If there are not any easements then maybe the

everyone involved. If there are not any easements than maybe the owners of the property can try to obtain one from any of the surrounding neighbors. We are not against growth, but we are against disturbing a natural part of our landscape when there could be other alternatives.

Most everyone that you talk to that lives in Bodega Bay say that they live here for the beauty and tranquility. Nature has provided us with a beautiful and natural environment that makes up our landscape. When we built we were told that NOTHING would ever be built on that hill because of the birds and the natural habitats. I do not want to see our natural landscape altered. Fearing that you will be buried under sand and trees is not my idea of tranquility.

Mr. Kelham and Kelham Investments (the people that bought the property) should have had the foresight to check into how they were going to get into their property or the problems they may in counter in putting roads in. They are in the business of buying property, building and selling real estate. A good business person could have put in a contingency about access to the property before buying it. Because of the Kelham's neglect the rest of us will be paying for it.....maybe even with our lives. The Coastal Commission is to protect the coast and the beauty of our area, I

think that it also has a obligation, to the people living there. This is a problem of the environment and peoples well being verse an investor trying to make money off of a piece of property. PLEASE, before there are any more decisions made on this project, go to the site. Check out the landscape. See if you would be comfortable with the sand being disturbed while roads are being put in if you lived below the site. If the people buying the property didn't have the foresight to think about the roads and getting into their property how can we have faith in their knowledge that they have everything under control. The sand and trees are part of nature and no engineer or well meaning person has control over Mother Nature now or a few years down the line when things can go wrong. All they saw was \$\$ signs and a way to make money off their investment.... That is what they do for a living....but it is at the people living in the areas expense. We have a lot to lose if things go wrong, we not only live on the property below the Kelhams property, we have our business there. We have told them that if our lives, home or business are in any way effected by their project we will have our lawyer go after any and all that approved this hap hazard project....and if we are not here to pursue it our Estate will.

We hope that you can help us with this problem. If you were living below this project I'm sure that you would have the same concerns that we do. We would like to thank-you for your time. Feel free to contract us at any time. Our home phone is 875-9408 and my husbands cell phone number is (707) 953-7743.

Sincerely yours,

**Signature on File**

Tony & Carol Anello

Th55<sub>a</sub> RECEIVED

AUG 31 2011

The Engineering Geologist  
Since 1989

COASTAL COMMISSION  
NORTH CENTRAL COAST

RG 3142 CEG 923

7945 St. Helena Road Santa Rosa, CA 95404

Phone 707-539-2577

Fax 707-539-5778

August 30, 2011

Ms. Ruby Pap, District Supervisor  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

**Subject: California Coastal Commission Appeal, Proposed Grading and Residential Construction, 1835 Bay Flat Rd., Bodega Bay, Sonoma County, California.**

**Reference: Summary of Geologic Feasibility Issues, 1835 Bay Flat Rd. Bodega Bay, Sonoma County, California dated February 8, 2010, by Raymond Waldbaum.**

Dear Ms. Pap:

#### INTRODUCTION

I have been asked by Bodega Bay Concerned Citizens to provide you and the Commissioners with information about the unresolved geologic feasibility issues affecting proposed development of the subject site. These geologic issues are described in my referenced report dated February 8, 2010.

The Coastal Commission Staff Report dated August 25, 2011 fails to acknowledge that resolution of these two geologic feasibility issues is essential in determining the very legality of this proposed project.

The two geologic feasibility issues are the potential presence of active fault traces underlying the proposed building sites and the stability of the slope along Bay Flat Road that will be traversed by the driveway; the only access to the proposed residence. These unresolved issues are described in more detail below.

#### ACTIVE FAULT HAZARDS

The Alquist-Priolo Earthquake Fault Zoning Act became law on December 22, 1972 and became effective March 7, 1973. The Act prohibits construction of structures for human occupancy over the traces of active faults. The PJC report dated March 2,

2009 states "In the event of a large or major earthquake, particularly on the nearby San Andreas Fault System, the project is susceptible to ground rupture, ground shaking and seismic related ground failures". Also on page 8, the PJC report states "Consequently, we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high". In other words, it is the finding of PJC that active faults probably underlie the site.

Under the Alquist-Priolo Earthquake Fault Zoning Act, the Office of State Geologist delineates areas of fault hazards. An integral part of that work is reviewing consultants' geologic site investigations of fault hazards so that the State Geologist's Official Map can be revised and modified. These revisions occur when site investigations disclose previously unknown active faults, as is apparently reported by PJC on this site. Revisions by the State Geologist also occur when geologic site investigations determine that faults shown on the Official Maps are absent or incorrectly plotted on the maps. In other words, the Official Maps are works in progress that are periodically updated based on exactly the kind of information that has apparently been developed by PJC on this site.

On this site where the geologic consultant, PJC, has stated "... we judge the likelihood of ground rupture at the site due to faulting is considered to be moderate to high" the precise locations of the fault traces must be determined so that appropriate building setbacks can be determined in order to conform to the requirements of the Alquist-Priolo Earthquake Fault Zoning Act. Contrary to what is stated in the Staff Report, this requirement is not voided by the difficulty of the task or the presence of neighboring residences that may be subject to the same or similar active fault rupture hazards.

The absence of active faults in proposed building areas has not been demonstrated. A great deal more work needs to be done to resolve this basic feasibility issue.

#### SLOPE STABILITY

The proposed driveway providing access to the proposed structures traverses a steep sand dune slope. Under the heading of "Slope Stability" the PJC report dated March 2, 2009 states "This section of driveway should be evaluated for static and seismic instability during the geotechnical phase of the project", in other words "later". This deferred "geotechnical" work is presented in the PJC report dated August 7, 2009. This report does not present a stability analysis of the steep slope to be traversed by the driveway. The August 7, 2009 report states "... the slope could be prone to lurching or instability during seismic ground shaking". "Could" is not stability analysis. Stability analysis is an Engineering Geologic and Geotechnical Engineering calculation that results in determination of a numerical factor of safety that either does or does not conform to minimum criteria based on statewide standards of practice.

It is my understanding that it is proposed to construct the driveway using retaining

walls. There are two obvious logistical problems associated with this retaining wall concept.

First, in order to construct a retaining wall it is necessary to make a temporary excavation called a "backcut" upslope of the wall to create working room to construct a wall foundation system that conforms to code requirements concerning footing design and setback from descending slopes and to construct the wall itself. This proposed driveway traverses the face of a sand dune that appears to be standing at the "Angle of repose", which is the maximum (most steep) gradient that loose dune sand will stand at without falling.

The inherent instability of excavations into loose sand deposits is the reason why there are fatalities when children dig sand tunnels and when excavations into sand collapse onto construction workers. On this site, any "Backcut" made at a steeper angle than the "Angle of repose" will probably cause a failure that extends upslope until the "Angle of repose" is reestablished, at which time a condition of equilibrium will exist again. In simple terms, this means that conventional retaining wall design and construction methods may not work in this application. Failure of retaining wall backcuts in loose dune sand are diagrammatically illustrated below.

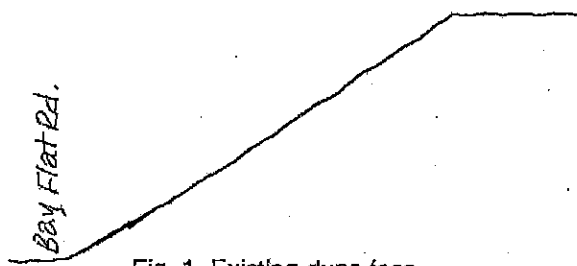


Fig. 1. Existing dune face.

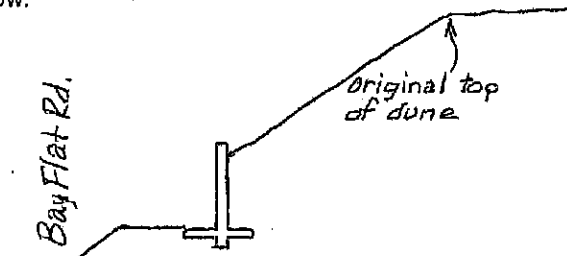


Fig. 2. Design concept.

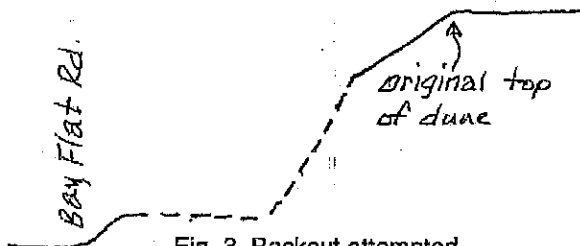


Fig. 3. Backcut attempted.

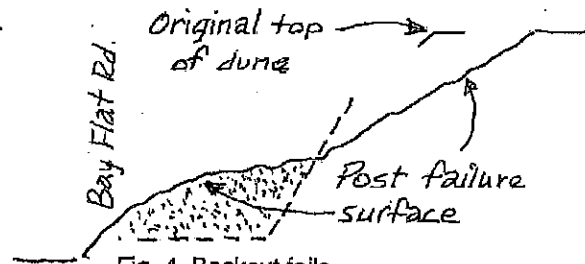


Fig. 4. Backcut fails.

Alternative retaining wall designs and construction methods that can be proven to be feasible may not meet Coastal Commission criteria. With regard to retaining wall design, unreinforced masonry and/or rocks simply placed on the ground surface

without proper footings and reinforcement do not appear to comply with the requirements of Sonoma County Permit and Resource Management Department retaining wall design criteria for new construction.

Secondly, dunes are deposits of loose sand moved about by strong winds. In order for the project to be feasible this driveway, that traverses the face of a sand dune, must remain stable and functional to underground utilities and pedestrian, homeowner and emergency vehicle traffic even during and after an earthquake on the nearby San Andreas fault. The ability of the driveway slope to meet this requirement has not been demonstrated. In fact no effort to demonstrate that has even been attempted.

With regard to the geologic stability of the sand dune face PJC & Associates, in their report dated August 7, 2009, states "...the slope could be prone to lurching or instability during seismic ground shaking".

"Could be prone" is not a stability analysis to either demonstrate stability or to improve stability to minimum industry standards, typically a factor of safety against failure of 1.5. In fact, "Could be prone" should mean to everybody involved with this project to not move forward with design, approvals and/or construction until the stability issue is resolved along with the issue of active fault hazards.

CONCLUSION

The present issue is whether or not geologic hazards exist at the site whose mitigation, for example existence of a building site free of active fault hazards and construction of a buttress fill to support the driveway slope, would be 1. feasible from a construction standpoint, and 2. consistent with the laws, codes and criteria that govern development in this Coastal Area.

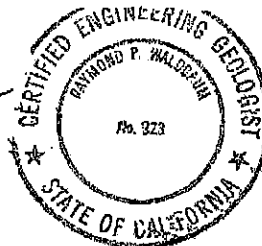
Copies of this report and my prior reports on this site are being provided to the California State Geologist, John G. Parrish, Ph.D., PG to verify that State laws and criteria concerning seismic hazards are applied uniformly by all State agencies with review authority on this project.

I trust that the forgoing information fulfills your present requirements. If you have any questions or require additional information, please do not hesitate to call.

Very truly yours

Signature on File

Raymond Waldbaum  
Professional Geologist 3142  
Certified Engineering Geologist 923





Pap, August 30, 2011

page 5

distribution: Addressee

Bodega Bay Concerned Citizens, attn. Ms. Maggie Briare  
John G. Parrish, Ph.D., PG, State Geologist

Th 5.5a

**SHEILA J GILMORE**

P O Box 352  
Cazadero CA 95421-0352

**Attention: Ruby Pap**  
California Coastal Commission  
North Central Coast District Office  
45 Fremont, Suite 2000  
San Francisco CA 94105-2219

8/30/11  
Permit #A-2-SON-10-023

**RECEIVED**

AUG 31 2011

CALIFORNIA  
COASTAL COMMISSION

Dear Members of the California Coastal Commission,

I write to you as a member of the Concerned Citizens of Bodega Bay. I live right next door to the proposed multi-family home at 1835 Bay Flat Road.

Please know that there were once 5 egret/heron nesting sites around the bay. But now there is only this one, for which the only existing remnant of protection is the body of rules/law protecting ESHA. These rules/law can simply be "taken", and then what of the loss that might result?

Your very purpose as a Coastal Commission is to sort out in responsible manner the issues of human interaction in the delicate ESHA that is so vital to our well-being and the well-being of the many varied forms of life that inhabit that ESHA.

If you simply allow the taking of these rules, you vacate them entirely. You vacate their intention of caretaking. If you are only a rubber stamp for moneyed interests, you have not fulfilled your purpose.

The proposed driveway to the houses intended at 1835 Bay Flat Road would pass directly alongside and under the trees which are the nesting site...not 600 feet away, as per ESHA guidelines. If ANY trees come down as a result of the (driveway or home) building, that site is deeply compromised. Every tree lost significantly reduces the viable nesting spots.

One by one, all the other nesting sites have come down around the bay, and now this proposal nibbles at the last one. How much taking is enough? When do we say "No"? And when it IS too late, do we just say, "Oops"?

Nothing in our lifetimes can restore a nesting site. Once those birds are gone, how does the balance restore itself, and will we like it when it does? It is easier to protect this stand of trees for the birds than to try to "shore up" the resulting sways in natural balance. Please consider rejecting the proposed development.

Sincerely,

**Signature on File**

Sheila J Gilmore

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SEP 02 2011

CALIFORNIA  
COASTAL COMMISSION

Th5.5a

September 1, 2011

To:  
COMMISSIONERS & STAFF OF THE CALIFORNIA COASTAL COMMISSION

Regarding:

a. Appeal No. A-2-Son-10-023 (Kelham & Kehlam Investments LLC, Sonoma Co.  
Appeal by Commissioners Wan and Blank and appeal by Bodega Bay  
Concerned Citizens, et al, from decision of County of Sonoma granting permit to  
William Kelham & Kelham Investments LLC for construction of a new 2,515 sq. ft.  
home, 1,216 sq. ft. garage, driveway, and 840 sq. ft. second dwelling unit on  
vacant 9.96 acre parcel at 1835 Bay Flat Rd., Bodega Bay, Sonoma County.

The Bodega Bay Concerned Citizens, appellants in the above project, hereby  
request a postponement be granted for the above agenda item scheduled to be  
heard on Thursday, September 8, 2011, for the reasons listed below:

- Proper noticing procedure not followed. Information of the hearing and subsequent staff report was not received in a timely manner.
- Inconvenient time and place of hearing for all appellants to attend due to long distance and short notice.
- Staff report did not distinguish that two separate appeals were received. Each should be accepted separately for its merits and not combined.
- Development is inconsistent with the Local Coastal Plan.
- Project and staff recommendations violate LCP policies, LUP Environmental Resource Management Policies 4, 5, and 66; View Protection Policy 2; Alteration of Natural Landforms Policy 4; and Landform Guidelines Policy 5.
- Development is proposed within 600 ft. of established rookery. Access/egress road is sited within the rookery.
- Proposed development site consists entirely of coastal dunes and rookery. Entire site is determined to be ESHA.
- Lack of proper mitigation for loss of ESHA for dune habitat and for functionality of historic rookery.
- Incomplete geological hazards study. Appellants technical geologic reports submitted with the appeal were not provided to the Commissioners. Serious impacts were not fully addressed in staff report and recommendations. Project is sited in the San Andreas Fault Zone.
- Zoning was changed prior to purchase by Applicant to RR (Rural Residential). Prior to change, parcel had not been deemed "buildable" for decades due to its environmental and dunes status.

Page 2 – Request for Postponement for Hearing of September 8, 2011  
Appeal No. A-2-SON-10-023 (Kelham)

- Applicant did not pursue due diligence with regard to the purchase of the property despite the fact that he is a licensed contractor and well versed in land acquisition. County of Sonoma allowed the applicant to pay necessary fees for permitting up front in order to establish a reasonable assumption of development.
- "Takings" claim is weak. County approval and staff recommendations did not adequately analyze existing feasible alternatives to the project and its impacts.
- No Environmental Impact Report was prepared for the project. A Mitigated Negative Declaration prepared by County staff was found to be flawed and was not included with the staff report. Staff recommendations contain virtually no workable mitigation for harm that will occur to ESHA.
- Staff Report Special Conditions beginning on Page 4 of 41, do not adequately protect the area, especially with regard to the rookery. Habitat protection Measures, Page 8 of 41, G & H allows for disturbance as it does not protect the area during the complete nesting period. Nesting can begin as early as January and last thru August. It also calls for and allows for the prevention of birds to establish nests within the work area prior to construction and calls for all nest structures and vegetation to be removed during the non-breeding season once the nests are vacated. All large species of raptors, osprey etc. along with the herons rely on the same nests they return to year after year. Removal of osprey nests, snags or dead tops of trees in areas surrounding osprey sites is prohibited by the LCP [see Page 5 of 16 of the staff report under "applicable policies", Items 61, 62, 63 and 64, along with Items 65 and 66 regarding heron rookeries.]
- Although the staff recommendations (K) call for all trees on the site to be preserved, it does not go far enough to ensure preservation. The site map for the road shows that it would be necessary to remove some of the most important trees containing nests in order to install the road. The recommended condition allows for removal of these trees when the roost or nest is unoccupied upon the word of a licensed arborist. Seldom are proper procedures followed regarding removal of trees and preservation of active rookeries. This is the prime reason why the 600 ft. buffer zone was established in the LCP and the Coastal Act. Most of the trees carry Landmark status due to their age and use. All the more reason the access road should not be placed as proposed.
- Staff did not adequately take into effect the fact that the road would be used for construction access for the residences during the nesting

**Page 3 – Request for Postponement of Hearing – September 8, 2011  
Appeal No. A-2-SON-10-023 (Kelham)**

season. Use of this access site by heavy construction equipment would have a far-reaching effect to the rookery and stability of sand dunes.

For these reasons along with other important issues, we ask that this project be postponed to allow for a hearing be held at a more accessible place and time in the near future.

Thank you for your consideration.

Sincerely,

Signature on File

Margaret Briare, Representative  
Acting on Behalf of the Bodega Bay Concerned Citizens, Appellants

Copies to: Peter M. Douglas, Executive Director  
Charles Lester, Senior Deputy Director  
Mary K. Shallenberger, Chair

Th5.5a

From: Francis Drouillard [mailto:dooly@novato.net]  
Sent: Friday, September 02, 2011 9:43 AM  
To: Charles Lester  
Cc: Ruby Pap  
Subject: Request to Postpone Hearing Item Th5.5a

Dear Senior Deputy Director Lester and District Supervisor Pap,

First, allow me to apologize for this late request. With the distant Commission hearing following a holiday, I believe you too will see the urgency.

Project: Hearing item Th5.5a Appeal No. A-2-SON-10-023 (Kelham & Kelham Investments LLC, Sonoma Co.)  
Appellants: Commissioners Wan and Blank, as well as Bodega Bay Concerned Citizens and others.

For: Maggie Briare of Bodega Bay Concerned Citizens  
(appellant)  
Seeking: Postponement of hearing

This is a flawed project that can be turned into a good project with the right Commission action. For that reason, a postponement of the hearing is sought so this project can become a "win" for the applicants as well as the appellants.

The reasons for this request are enumerated below:

1. Request postponement of Appeal hearing.
  - 1a. It appears that the Commission did not follow their own noticing procedure for a legal Appellant, and if so, should remedy that by granting a brief postponement;
  - 1b. This appeal is entirely independent of the one filed by [former Commissioner] Sara Wan, and Commissioner Steve Blank, and thus deserves to be considered separately of theirs;
  - 1c. Material technical attachments to the Appeal were not provided to the Commission in their meeting packet, which could also allow for an postponement;
  - 1d. There appears to be no pressing deadline or economic urgency to the project applicant to have the appeal held at this meeting.
2. If the Commission chooses to begin the Appeal hearing now, ask them either to Continue it [without a final vote] until the next meeting, to give all commissioners a chance to read, and consider, technical reports left out of their packets;
3. If the Appeal is held now, ask the Commission to Deny the Project without Prejudice, due to the unmitigated Class One adverse impact under the Coastal Act [and CEQA] of the proposed drive constructed in the middle of a protected Heron rookery.
4. While there was some casual discussion of "a taking" at the Sonoma County PC hearing, this is clearly not a genuine issue here, since no

one has proposed that the property owner be allowed no reasonable use of any kind for the project site.

5. It would set a terrible precedent to approve a project that openly violates Sonoma County's LCP and its CEQA guidelines;

5a. If the project, and the driveway through the Heron rookery, were approved without mitigation or major offsets, off of a "mitigated Negative Declaration" rather than an EIR, even though the project site is delineated Coastal Zone ESHA.

5b. Sonoma County has, thus, never published public findings of "urgent or significant public benefit" to justify findings of overriding consideration for the applicant's proposed project.

6. There are "reasonable and feasible alternatives" to the driveway location and project footprint which might eliminate all significant Class One CEQA and Coastal Act impacts, if they were pursued.

6a. That the Appellant has offered to work with the Applicant and Sonoma County staff to pursue "reasonable and feasible alternatives" to the driveway location and project footprint, but that, so far, the applicant has categorically refused to accept the offer.

7. Note that the potential impact to the sensitive coastal dunes project site could be significantly reduced if the footprint of the proposed house were slightly shifted within the applicant's existing acreage, but that they have refused to consider that as well.

8a. Note that the issues of seismic stability, and potential coastal inundation and liquefaction issues, have not been fully or adequately addressed, either by Sonoma County, or by Coastal Commission staff.

8b. Geotechnical issues were addressed in the technical report that was left out of the Commissioner packets.

9. The significance and totality of these issues under the Coastal Act justify Denial without Prejudice for this application.

10. The Appellant would be willing to seriously consider accepting a revised project which would be conditioned on use of the "environmentally superior alternative" for the driveway, and a slight re-positioning of the proposed house on the site to reduce "worst damage" to the sand dune system.

Thank you very much for considering this late and lengthy request.

Frank Drouillard, PE  
Novato, CA  
ORCA Mendocino Chapter  
Commissioner Liaison

ORCA DOES NOT TAKE A POSITION ON ANY PROJECT HEARD BY THE COMMISSION!  
Rather, we present the position of other environmental groups in a manner that addresses Coastal Act and LCP requirements and allows Commissioners to act well within their authority.

Th6a



September 2, 2011

Mr. Charles Lester, Acting Director  
California Coastal Commission  
Via email: [clester@coastal.ca.gov](mailto:clester@coastal.ca.gov)

Re: CalTrans Application No. 2-11-011

Dear Mr. Lester,

The Environmental Action Committee of West Marin (EAC) appreciates the opportunity to provide comments on the CalTrans proposal as detailed in Application No. 2-11-011. We support the CalTrans proposal to install rock slope protection to Highway 1 at milepost 37.09. We have performed a site visit and it is clear that immediate action is needed to protect Highway 1 before the next storm season.

EAC has concerns, however, with the nature and timing of the proposed mitigation measures, which are the focus of this letter. EAC believes that if done correctly a low-impact "environmental" campground would be a tremendous asset for the east shore of Tomales Bay. However, given the financial uncertainty of funding for Tomales Bay State Park, EAC strongly suggests that the improvements be phased, permit conditions be added, and that the Commission retain the ability to revisit this matter prior to commencement of construction.

Tomales Bay State Park is Slated For Closure on July 1, 2012<sup>1</sup>

Tomales Bay State Park is one of seventy California State Parks slated for closure on July 1, 2012 due to California's budgetary crisis. EAC is participating in the Marin Open Parks Coalition co-chaired by 6<sup>th</sup> District Assemblyman Jared Huffman and Marin Community Foundation CEO Thomas Peters. The Open Parks Coalition is working to find solutions to maintain both full public access to all units of Tomales Bay State Park (the Park) and ensure that such facilities management is performed by State Parks. The goal is to keep our public lands managed by professional public lands managers. A strong local concern shared by EAC is that public lands will come under the management of commercial interests whose priorities and skills differ from public service professionals.

<sup>1</sup> The Commission staff report details the public access mitigation proposed for "Marconi Cove State Park." It should be clarified for the record that the proposed public access improvements would be performed on Tomales Bay State Park property at Marconi Cove. The improvements will not be made at the Marconi Cove Conference Center, which it is separate State Park unit from the Tomales Bay State Park.



EAC's is concerned that the CalTrans proposed mitigation may use considerable public funds to construct substantial new park facilities at a time when basic operational funding for the Park has been cut beyond July 1, 2012. There is no guarantee that the necessary funding for Park management staff or facilities personnel will become available by 2015 when construction is proposed to commence.

Long before the current fiscal crisis, the small hike-in/bike-in campground at the Hearts Desire unit of the Park was closed because State Parks could not justify the costs of operating such a small campground. It is therefore unclear how State Parks can assure its partners or the public that the new facilities proposed as mitigation here – which are so similar to the Heart's Desire unit - will be operated in "perpetuity."

#### Proposed Mitigation

The proposed mitigation for loss of public access due to the highway repair project provides that CalTrans will deposit \$266,000 into an account that will go toward making considerable improvements to the Park at Marconi Cove, including: low-impact environmental campgrounds, restrooms, a new boat launch, sidewalks, parking facilities, park entrance, picnic areas, drainage system, grading, interpretive signage, pathways, fencing, and lighting. The Department of Boating and Waterworks will provide additional funding for these improvements, and the Park will perform the required CEQA review.

Also, it is unclear whether a feasibility study will be performed prior to undergoing environmental review. Feasibility issues to consider include that:

- There is no fresh water source at the site,
- There will likely be a need for a substantial breakwater or jetty to allow for functional boat access on most days due to northerly winds, and
- Dredging may be needed to install the boat ramp.

#### Alternative Mitigation Measures

EAC proposes that the following additional and alternative mitigation measures be considered for inclusion.

1. **Mitigate for Habitat Loss:** The mitigation proposal does not address habitat loss. Even though the slope between Highway 1 and the beach is mostly covered with non-native Ice plant, this loss of habitat must be mitigated. In the staff report, CalTrans is less than optimistic about being able to replant the revetment area with native strawberry. CalTrans must mitigate for habitat loss by providing for similar habitat within the vicinity.
2. **Clean Up Marconi Cove Site:** Currently there is a significant amount of debris from the old marina facility that, with or without the development at this site, should be removed from the inter-tidal and sub-tidal zones. This debris includes:
  - a. Remnants of the breakwater,
  - b. Various sized clusters of large truck tires that were bolted together and filled with concrete,
  - c. Creosote pilings, and
  - d. Loose debris such as culverts and pipes.

3. **Acquire the Adjacent Parcel to the North:** If State Parks' funding for Tomales Bay staff and personnel is not restored in the next three years to allow State Parks to operate the proposed new facilities at Marconi Cove, the mitigation funds could be used to purchase the undeveloped parcel immediately to the north of the Marconi Cove site. This private property is used by a large segment of boaters in Tomales Bay as an access point, though permission has never been acquired. It is the only "ramp" on Tomales Bay that is not limited by the tides and is relatively protected from the northerly winds that make it a better site than the Marconi Cove site.

Proposed Permit Conditions

EAC understands the need to plan for the future as if funding for the Park -- and all State Parks -- is a temporary problem that will be resolved within the next few years. However, because of the very real possibility that funding for the Park may not be resolved prior to initiating construction of the proposed mitigation improvements, EAC urges the Commission to adopt permit conditions to ensure that:

1. The proposed mitigation measures can be revisited by the Commission at a future date to consider modifications and other alternatives based on the financial situation of the Park,
2. The project can be implemented in phases and that certain phases of the proposed mitigation go forward as funding allows,
3. A portion of the mitigation funds are earmarked for State Parks staff or facilities management personnel,
4. Any transfer of operating or management control of the Marconi Cove improvements from State Parks to a for-profit entity will undergo the Commission's review to ensure the level of public access is maintained and that the new operator does not intensify uses beyond those previously approved,
5. The timing of any future boat launch construction is coordinated with the Audubon Canyon Ranch's Cypress Grove Preserve to prevent adverse impacts to migrating birds that forage, rest, and nest on Tomales Bay,
6. Require mitigation for habitat loss of like kind within the vicinity, and
7. Require immediate removal of the creosote pilings, old tires filled with cement, remnants of the breakwater, and derelict building, and at least prior to any grading or construction of improvements at the site.

Thank you for considering EAC's comments and concerns with the proposed mitigation for the CalTrans Highway repair permit.

Respectfully submitted,

/s

Amy Trainer, Executive Director

Cc: Danita Rodriguez, Marin District Superintendent, California State Parks  
Cicely Muldoon, Superintendent, Point Reyes National Seashore

Th6a

**From:** Linda Emme [mailto:lindaemme708@gmail.com]  
**Sent:** Monday, September 05, 2011 8:14 PM  
**To:** Charles Lester  
**Cc:** Jeff Staben  
**Subject:** Th6a

RE: Th6a,  
Caltrans Application for Reynold's Cove and Mitigation Funds Moved to Marconi State Park

Dear Dr. Lester and Commissioners,

I have several concerns about the use of the mitigation funds from the Reynold's Cove Caltrans improvement to develop the Marconi State Park. I live across the highway from the property in Marconi Cove and I wholeheartedly support the development of a safe boat ramp, parking area and restrooms.

However, the Staff Reports' analysis of the loss of beach at Reynolds' Cove and the mitigated gain of 1,400 linear feet of beach at the proposed Marconi State Park is incorrect. At Marconi State Park, there is a short section of gravel beach to the north by the present boat ramp, perhaps 200 linear feet. To the south of the present boat ramp, the old marina parking lot is fill held by riprap. There is no beach. Please see attached photos.

My primary concern, though, is the plan to develop the old marina parking lot into a camp ground. It was once a wetland that was filled in with riprap. In the thirty plus years that the area has been in disuse, and nearly undisturbed, it is again naturally returning to a wetland. In the winter, there is 2-12" of water standing over the entire area and a huge population of native frogs and other amphibians, plus shore birds hunting the frogs. On spring evenings, one hears a booming, harmonious blend of frog calls. Considering that frogs are declining drastically in other areas and are considered an indicator species, I believe that serious consideration should be given to this place where they are living and breeding successfully. Please consider returning the southern half of the old marina parking area, from the old gas station south to the southern side of the blue-line stream, back to it's natural wetland state so that the frogs will not be lost. The loss of this frog population will have a serious adverse effect on the health of the coast and Tomales Bay.

An additional consideration is that this fill area has no source of potable water or sewage disposal. Both must be trucked in and out. Considering the lack of water/sewage disposal present here for campers use and the important coastal resource of a large frog population in a natural wetland, I respectfully ask that this plan should be reconsidered and adjusted to better reflect the best use of the actual coastal resources present.

Sincerely,

Linda Emme  
18050 Shoreline Highway  
P.O. Box 708  
Marshall, CA 94940





**DEPARTMENT OF BOATING AND WATERWAYS**

2000 EVERGREEN STREET, SUITE 100  
SACRAMENTO, CA 95815-3888  
(888) 326-2822  
www.dbw.ca.gov

Th6a



September 6, 2011

Dr. Charles Lester, Interim Executive Director  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Subject: Th6a CDP Application Number 2-11-011 (Caltrans)  
DBW Support of Staff Report and Comments on West Marin EAC Letter dated 9-2-2011

Dear Dr. Lester,

The Department of Boating and Waterways (DBW) has reviewed the staff report for the subject item and supports the recommendation of your staff.

The Department has also been given the opportunity to provide comments on the letter from the West Marin Environmental Action Committee (WMEAC) commenting on the Caltrans application and would like to provide the following points of clarification:

1. On Page 2 of the letter, the WMEAC asks the Coastal Commission to consider feasibility studies regarding the lack of potable water, the need for a breakwater, and the need for dredging at the proposed Marconi Cove boat launching facility and boat-in/environmental campground. The DBW and State Parks have agreed that the campground is intended to be a small, low-impact facility and will be served by a single water storage tank that will contain water trucked in from a potable source. The existing unofficial boat ramp at this location does not have a functional breakwater and the proposed new ramp does not have one in the preliminary design either because a breakwater at the new ramp could give boaters a false sense of the actual boating conditions on the open water during periods of high winds, potentially putting them in harm's way. Finally, the DBW conducted a hydrographic survey of the shoreline at Marconi Cove and identified the present location of the proposed boat ramp as a site suitable for launching and retrieving recreational boats during all tidal conditions without the need for dredging. Therefore, no dredging will be required as part of the proposed new project at Marconi Cove.
2. Also on Page 2 the WMEAC proposes the existing Marconi site be cleaned up as an additional mitigation measure when the proposed project is brought before the Commission under a Coastal Development Permit application. The DBW has already factored clean up of the existing site in our preliminary project cost estimate and plans to remove all deleterious material within the project limits as part of the construction of the project.

The DBW would like to assure the California Coastal Commission that we are committed to working cooperatively with State Parks to prepare the CEQA document and to fulfill the Coastal Development Permit requirements for this project and that the final project design will protect all sensitive resources on the project site in accordance with existing law.

Please do not hesitate to contact me at (916) 263-8147 or at [swatanabe@dbw.ca.gov](mailto:swatanabe@dbw.ca.gov) if you have any questions or comments regarding our participation in this project.

Sincerely,

  
**Signature on File**

Steve Watanabe, Chief  
Boating Facilities Division

cc: Tami Grove  
California Coastal Commission

Roy McNamee  
California State Parks Marin District

Betsy Joseph  
California Department of Transportation