

CALIFORNIA COASTAL COMMISSION

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

W10

NORTH CENTRAL COAST DISTRICT DEPUTY DIRECTOR'S REPORT

For the

September Meeting of the California Coastal Commission

MEMORANDUM

Date: September 12, 2012

TO: Commissioners and Interested Parties
FROM: Dan Carl, 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 12, 2012 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.

IMMATERIAL AMENDMENTS

1. 2-08-020-A1 Aimco Esplanade Avenue Apartments, LLC, Attn: Sean Finnegan (Pacifica, San Mateo County)

TOTAL OF 1 ITEM

DETAIL OF ATTACHED MATERIALS

REPORT OF IMMATERIAL AMENDMENTS

The Executive Director has determined that there are no changes in circumstances affecting the conformity of the subject development with the California Coastal Act of 1976. No objections to this determination have been received at this office. Therefore, the Executive Director grants the requested Immaterial Amendment, subject to the same conditions, if any, approved by the Commission.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
2-08-020-A1 Aimco Esplanade Avenue Apartments, Llc, Attn: Sean Finnegan	As contemplated by the Commission in special condition 1(d) of CDP 2-08-020, the CDP would be amended to allow for the approved engineered, vegetated bluff to be replaced with a soil nail wall in the same configuration and subject to the same criteria as apply to the other approved seawall segments. The Commission's reference number for this proposed amendment is 2-08-020-A1.	360 & 380 Esplanade Avenue, Pacifica (San Mateo County)

CALIFORNIA COASTAL COMMISSION

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**NOTICE OF PROPOSED PERMIT AMENDMENT**

Date: August 30, 2012
To: All Interested Parties
From: Madeline Cavaliere, District Manager *Madeline Cavaliere*
Karen J Geisler, Coastal Planner *Karen J Geisler*
Subject: Proposed Amendment to Coastal Development Permit (CDP) 2-08-020
Applicants: AIMCO, Esplanade Avenue Apartments LLC

Original CDP Approval

CDP 2-08-020 was approved by the Coastal Commission on October 7, 2011, and provided authorization for work performed along the bluff and shoreline fronting 360 and 380 Esplanade Avenue in the City of Pacifica in San Mateo County (APNs 009-413-060 & 009-131-060) under six prior emergency permits, including authorization for (1) a rock riprap revetment along the toe of the bluff extending approximately 475 feet, (2) three soil nail seawall segments covering a total area of approximately 7,772 square feet, and (3) an engineered, vegetated bluff atop a portion of the seawalls. The approved project also included a 14,171 square-foot public beach access dedication area at 360 Esplanade and a \$289,014.96 beach impact mitigation payment.

Proposed CDP Amendment

As contemplated by the Commission in special condition 1(d) of CDP 2-08-020, the CDP would be amended to allow for the approved engineered, vegetated bluff to be replaced with a soil nail wall in the same configuration and subject to the same criteria as apply to the other approved seawall segments. The Commission's reference number for this proposed amendment is 2-08-020-A1.

Executive Director's Immateriality Determination

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that the proposed CDP amendment is immaterial for the following reasons:

The Commission's approval of CDP 2-08-020 authorized 531 tons of riprap rock located in the mid to upper bluff and above the top of one of the proposed soil nail walls to be removed and then replaced with a 2,202 square-foot area of engineered, vegetated bluff unless the underlying condition of the bluff could not stabilize and support such reconstruction. Based on concerns regarding whether the bluff in this area could adequately support such an engineered vegetated bluff both the Commission's adopted findings and special conditions identified a specific substitute. The Commission's findings state:

In area 6, approximately 531 tons of rock will be removed from the mid-bluff. Once rock is removed from area 6, the Applicant plans to replace the rock with an engineered slope consisting of earth and native vegetation. However, following the removal of rock in area 6, if the underlying condition requires a soil-nail wall rather than the reconstructed slope, the applicant will apply for an amendment to this coastal development permit.

NOTICE OF PROPOSED PERMIT AMENDMENT

CDP 2-08-020 (AIMCO Esplanade)

Proposed Amendment 2-08-020-A1

Page 2

Similarly, Special Condition 1(d) states:

Area 6 – Removal of 531 tons of rock from the upper bluff and construction of a 2,202 sq. ft. engineered, vegetated slope on the area identified as Area 6 in the Plans S1 and S4. If the conditions of the bluff cannot support an engineered, vegetated bluff, a soil nail wall may be substituted, upon submittal of a permit amendment.

Thus, in its action on the CDP, the Commission identified a soil nail wall as a substitute to an engineered vegetated bluff if the conditions of the bluff could not support an engineered vegetated bluff. This amendment application is the amendment application contemplated by the Commission in its original approval of the project. Based on materials submitted by the Permittee, the conditions of the bluff cannot support an engineered vegetated bluff because the engineered slope reconstruction would require excavation into the bluff in order to create the required 1:1 slope (which is the minimum slope required to support geogrid placement), which would reduce the setback between the bluff edge and the apartment building (currently approximately 30 feet). In addition, the materials indicate that this steepened area would make it difficult for plants to be established, leading to potential exposure of the geogrid, increasing viewshed impacts and the potential for this steepened area to further cause geologic problems. Thus, the materials establish that the bluff cannot support an engineered, vegetated reconstructed bluff and that a soil nail wall in this area is necessary to ensure bluff stability and protection consistent with the Commission's original permit. The Commission's Senior Coastal Engineer and Senior Geologist have both reviewed the Permittee's materials and concur.

In terms of mitigation for impacts associated with changing from an engineered vegetated bluff to a soil nail wall in this area, the original CDP terms and conditions ensure that the soil nail wall will be required to conform topographically and made to emulate natural bluffs in this area. In addition, the Commission's original CDP approval already included mitigation for the effects of constructing a soil nail wall in this area should it be required, as is now the case, in terms of sand supply and beach access. In other words, the Permittee already mitigated for the effect of altering the area in question, regardless of whether it were to be by soil nail wall or by engineered vegetated bluff.

Therefore, the proposed amendment is consistent with the Commission's original CDP approval and the Coastal Act.

Coastal Commission Review Procedure

The CDP will be amended as proposed if no written objections are received within ten working days of the date of this notice. If such an objection is received within ten working days of the date of this notice, the objection and the Executive Director's response to it will be reported to the Commission at its next Commission meeting in either September or October, depending on when the objection is received. If three Commissioners object to the Executive Director's determination of immateriality at that time, then the application shall be processed as a material CDP amendment.

If you have any questions about the proposal or wish to register an objection, please contact Karen J Geisler in the North Central Coast District office.

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 45 FREMONT ST, SUITE 2000
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**Memorandum****September 10, 2012**

To: Commissioners and Interested Parties

FROM: Dan Carl, North Central Coast District Deputy Director
 North Central Coast District

Re: *Additional Information for Commission Meeting
 Wednesday September 12, 2012*

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
W13a	A-2-SON-11-037 Bodega Bay Public Utilities Dist., Marin Co.)	Correspondence, Norma Jellison Correspondence, Margaret Briare Email, Bill Kortum Email, Leah Goldberg	1 2-4 5 6-7

W13a

From: NORMA JELLISON [normalj@sonic.net]
Sent: Tuesday, September 04, 2012 3:05 PM
To: mkshallenberger@gmail.com; Lester, Charles@Coastal
Cc: Cavaleri, Madeline@Coastal
Subject: Appeal No. A-2-SON-11-037

13. NEW APPEALS. See AGENDA CATEGORIES.

A. Appeal No. A-2-SON-11-037 (Bodega Bay Public Utilities District Marin Co.) Appeal by Bodega Bay Concerned Citizens of County of Sonoma decision granting permit with conditions to Bodega Bay Public Utilities District for a 100-ft. Deep municipal water well transmission piping and 80 sq.ft. Chlorination facility on Bay Flat Road in Bodega Bay Sonoma County. (JM-SF)

Dear Chair Shallenberger:

I am writing regarding the Appeal No. A-2-SON-11-037.

It is incorrectly cited on the CCC agenda - see above taken directly from the agenda listing - as Marin Co (see my hi-lite). As a result, the item is incorrectly posted and noticed.

I further request that the item be postponed to the December meeting in San Francisco to allow for meaningful public participation by local stakeholders.

Travel to Caspar from Bodega Bay poses a hardship on many who might otherwise attend and address the Commission. Many who would attend and provide comments will be unable to meaningfully participate in this process, counter to the intent of the Coastal Act to facilitate participation by the public.

Thank you or your consideration.

Respectfully,

Norma Jellison
PO BOX 1636
Bodega Bay CA 94923
(707) 875-3799

September 4, 2012

W/3a
RECEIVED

CALIFORNIA COASTAL COMMISSION
North Central Coast District
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SEP 05 2012

CALIFORNIA
COASTAL COMMISSION
NORTH CENTRAL COAST

ATTENTION: Charles Lester, Executive Director ✓
Dan Carl, Deputy Director
Madeline Cavalieri, District Manager

RE: Appeal Staff Report: Substantial Issue Determination dated 8/29/12
Appeal A-2-SON-11-037
Applicant: Bodega Bay Public Utilities District
Appellants: Bodega Bay Concerned Citizens

Today we received the above Appeal Staff Report dated 8/29/12 and find it to be unconscionable that you now find No Substantial Issue with the construction of a 100 foot-deep municipal water well, transmission piping and an 80 square-foot chlorination facility all within a Sanctuary Preservation Area that is ESHA, containing sensitive and threatened plants and species. This area is one of the most sensitive areas in Sonoma County, a part of the Western Pacific Flyway and one of the most important birding areas on the entire west coast. And yet, you are willing to allow this area to be severely impacted and sacrificed by this well.

Also important is the information given to you in the appeal concerning the protection of this area that is under the protection and jurisdiction of the Coastal Commission itself. To allow a protected area such as this to be impacted and quite possibly destroyed is inconceivable and goes against the very tenets established in the Coastal Act for the Coastal Commission to follow. Areas held under the Coastal Commission jurisdiction are to be protected.

Staff's recommendation that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue when staff's original report found "Substantial Issue Exists" is quite honestly just plain wrong. In your review of the local record, your conclusion that the approved project does not raise substantial issue because the project alternative chosen has the fewest coastal resource impacts is entirely incorrect. The proposed site of this well will have the greatest number of impacts on the environment of this area if allowed. Much more than just "transmission piping connecting to an existing water main" will be located within 100 ft. of historic and protected wetlands and landmark trees. The well and its entire system are all situated within a protected area. Potential impacts on wetlands and other habitats in this area cannot be avoided nor will be avoided by simply putting conditions of approval on the project when these conditions could not be made viable even with "best management practices".

The biological and hydrology reports submitted on behalf of the BBPUD and the County of Sonoma were submitted without proper consideration and content as the entire site is situated on private property and the BBPUD did not receive permission to survey the area for their information. The reports from WRA were based solely on information contained in aerial maps and dated information and are lacking in substance. The same is true for the TODD Engineering reports. In fact, information contained in the records show that their initial report placed the well site in the wrong location. On the other hand, the scientific reports submitted by Dr. Peter Baye and Gregory Kamman were carried out with the permission of the property owners and with proper and careful attention to the details of the project. The reports were an essential part of our appeal and all the scientific data contained in their reports is now being overlooked.

Page 18, Exhibit 2 submitted by Brelje & Race on behalf of the BBPUD does not show the wetlands or the trees that will be greatly affected by this project. Landmark protected trees that are the most important part of the Sanctuary area will be seriously impacted and eventually destroyed by the trenching from the proposed chlorination shed to the main line that will be allowed **directly** within the roots and bases. This was brought out in the original appeal but seems to have disappeared from the information provided.

In addition to environmental issues, your decision will greatly impact the property rights of the individual residents listed on the cover page. It will allow BBPUD to continue with eminent domain proceedings on those properties most affected by this project. One homeowner has already lost their home and property adjacent to the well site because of legal costs incurred in attempting to fight condemnation proceedings. Others have seen their property values diminished by the installation of the well on private property and the condemnation proceedings placed on their properties. Only one property owner has been in agreement with the proceedings and he is affiliated with Brelje & Race and the BBPUD. Since there has not been full CEQA compliance on the project that is the asserted justification for the condemnation, the law clearly states:

“...compliance with CEQA is mandatory before a public entity may condemn property for a proposed project.” In addition, eminent domain proceedings should not be allowed to continue until a permit for the project is issued. The Commission’s decision to allow a delay of the appeal hearing (approximately 11 months) has already allowed the BBPUD to continue these proceedings unlawfully. This is pure denial of public property rights.

We believe we, as appellants, are being denied our right to a fair and honest hearing on this project that was given when our appeal was accepted. Past experience has shown that the handling of LCP issues by County of Sonoma has been flawed. In every instance, records show that all of the projects that come before them are simply issued Use Permits to amend and change the tenets of the LCP in favor of the applicant. In Sonoma County, applicants are allowed to "hire" and pay planners from the Permit & Resource Management Department to prepare and submit applications ;thus depriving the public of the right to a fair and proper hearing . We have amassed more and more information as to the true need for this well to be placed in this site but have had little time to prepare due to having just received notification today.

Your assertion that appellants may obtain judicial review of a local government's decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure is correct but seldom feasible due to the cost of such procedures.

We have always put credence in the fact that the California Coastal Commission has always been there for the public and dedicated to the preservation and protection of our coast and its resources. Your decision regarding this project shows otherwise.

We are hereby asking for a continuance of this hearing to be held in December in San Francisco due to the hardship of the meeting being held in Caspar in September. It is simply not possible for many of us to attend.

I humbly ask that this matter be allowed to be heard at the December meeting in San Francisco to allow more people to attend and be heard.

Thank you.

Sincerely,

Signature on File

Margaret Briare
Appellant for the Bodega Bay Concerned Citizens

CC via electronic communications to:

Dr. Charles Lester, Executive Director ✓
Mary Shallenberger, Chairman, California Coastal Commission

From: Lucy Kortum <blkortum@sbcglobal.net>
To: Briare Maggie <briarepach@aol.com>
Sent: Thu, Sep 6, 2012 10:30 am
Subject: Rail ponds and Bay Flat well

W13a

Maggie, Please forward to the Coastal Commission

TDo the California Coastal Commission re Appeal #A-2-SON-11-037

Recognizing the critical ecological function of sites where fresh water and bay salt water do their mixing, the fresh water rail ponds along Bay Flat Road have been severely impacted for years by the hasty road design, done long ago before environmental impact studies were required.

What exists now is an inadequate and often plugged culvert under the road, that created the ponds and interferes with the original salt water, fresh water, marsh function.

My inquiry of the County engineer in 1974 revealed his recognition of PG&E's hurry up road construction to accommodate tailings excavated for their defunct nuclear power plant. A functional bridge like structure to straddle the marsh should have been built instead of a culvert, according to the late Don Head, the engineer.

Now we have a new challenge to this fresh water supply to Bodega Bay. The Bay Public Utilities District proposes a well that will probably dry up the manmade ponds that nature has adapted to accommodate an endangered specie but also dry up a fresh water source for Bodega Bay.

The rare but occasional visible rail, and the fresh water/salt water mixing, will be lost for the Bay itself.

This utility proposal is a classic challenge for the arms length judgement of the Coastal Commission. Repairing man's damage to this marsh function and protecting this fresh water function for the Bay should dominate the Commission and the Staff's decision.

Sincerely,

Bill Kortum

Manna, Jeannine@Coastal

W/3a

From: Goldberg, Leah [lgoldberg@meyersnave.com]
Sent: Thursday, September 06, 2012 11:21 AM
To: Manna, Jeannine@Coastal
Cc: 'Janet Mantua'; Gorham, Claudia; 'IPriestaf@toddengineers.com'; Hayes, Peter
Subject: Bodega Bay Public Utilities District Bay Flat Road Supply Well/CDPH A-2-SON-11-037

Dear Ms. Manna,

Thank you for taking the time to talk with me yesterday. The Bodega Bay Public Utilities District (BBPUD) respectfully requests that at the September 12, 2012 meeting in Fort Bragg—as scheduled--the Coastal Commission take up the issue of whether the Bodega Bay Concerned Citizens raised a substantial issue in its appeal of Sonoma County's decision to issue a Coastal Development Permit for a groundwater supply well in the residential neighborhood off of Bay Flat Road.

Further delay in reviewing whether to take the appeal creates a hardship for the District. First and most importantly, the District is under a State mandate from the Department of Public Health (DPH) to install an additional well. The District must meet the water supply needs from water sources without reliance on water storage. This well is long overdue .

Second, this past year the State was essentially in a drought condition. If it were not for a very wet 2011, the State would have been in a water crisis during this past summer. Should the 2012-2013 rainy season prove to be equally as dry, the District may need to employ the redundancy mandated by DPH to meet the water supply needs next summer. While this won't affect some of the appellants because they are not served by BBPUD, it could have significant consequences for the BBPUD water customers.

Third, there is a limited window to install the new well between the butterfly wintering-over season and the bird nesting season. One of those construction windows falls around February. A hearing in December, even if the Commission finds no substantial issue, would not allow sufficient time to put the project out for bid and accept a bid prior to the construction window.

Fourth, there are two lawsuits that are on hold pending the decision by the Coastal Commission on this appeal. The first is a CEQA lawsuit filed by the appellants and the second is an eminent domain action. Although both lawsuits are stayed, there are still costs associated with continued case management.

It should be noted that this is a public project to secure the water supply for the Bodega

Bay area. This is not a discretionary development project, but is required by the State. The BBPUD did its due diligence to secure a site for the mandated well with the fewest environmental impacts. And through the Sonoma County mitigation measures coupled with the additional mitigation requirements suggested (and accepted) by BBPUD, any potential impacts will be addressed and mitigated. The issue is no longer risk to the environment. Therefore, the BBPUD urges the Coastal Commission to decide the substantial issue question at the September meeting in Fort Bragg.

Sincerely yours,

Signature on File



Leah S. Goldberg

Leah Goldberg
Attorney at Law
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