

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AND NORTH CENTRAL COAST DISTRICT OFFICES

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

PHONE: (831) 427-4863

FAX: (831) 427-4877

WEB: WWW.COASTAL.CA.GOV

Th6**NORTH CENTRAL COAST DISTRICT
DEPUTY DIRECTOR'S REPORT***For the**April Meeting of the California Coastal Commission***MEMORANDUM**

Date: April 11, 2013

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 April 11, 2013 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.

DE MINIMIS WAIVERS

1. 2-08-023-W Ione Conlan (Fallon, Marin County)
2. 2-12-012-W San Mateo County Harbor District, Attn: Peter Grenell (Half Moon Bay, San Mateo County)

TOTAL OF 2 ITEMS

DETAIL OF ATTACHED MATERIALS

REPORT OF DE MINIMIS WAIVERS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 30624.7 of the California Coastal Act of 1976.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
2-08-023-W Ione Conlan	Lot line adjustment of three existing contiguous parcels.	1257 Estero Rd., Fallon (Marin County)
2-12-012-W San Mateo County Harbor District, Attn: Peter Grenell	Clamshell bucket dredging of 5,600 cubic yards of material at an existing boat launch ramp and disposal within the Pillar Point Harbor breakwater at the Perch Beach disposal site. The dredged materials will be placed into dump trucks and transported via an existing roadway to the disposal site. The disposal will cover an area of approximately two-thirds of an acre. Dredging is expected to take approximately 25 days to complete. The dredged material will have containment k-rails and silt buffers, to remain for approximately 30 days, to prevent migration of materials into adjacent waters until ready to vegetate. As part of the proposed project, the Applicant will continue evaluating alternative disposal sites for beneficial reuse of materials associated with future dredging activities at the Harbor	One Johnson Pier, Half Moon Bay (San Mateo County)

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**NOTICE OF PROPOSED PERMIT WAIVER**

Date: March 29, 2013

To: All Interested Parties

From: Madeline Cavalieri, Central Coast District Manager *SC for MC*
Laurel Kellner, Coastal Planner

Subject: Coastal Development Permit (CDP) Waiver 2-08-023-W
Applicant: Ione Conlan

Proposed Development

Lot line adjustment of three existing contiguous parcels at 1257 Estero Road, in the Fallon area of Marin County (APNs 100-010-03, 100-010-04, 100-040-05). Currently there is one lot of 584 acres north of Estero Road bordering the Estero Americano, one lot of 259 acres directly south of Estero Road, and one lot of 260 acres south of that lot. The lot line adjustment would result in one large lot of approximately 519 acres south of Estero Road and two smaller lots of approximately 292 acres each north of Estero Road bordering the Estero Americano.

Executive Director's Waiver Determination

Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

Currently, the lots in question include one lot that is mostly wetland, and two others that support an organic cattle ranching operation. The revised lot configuration will make it so there is no longer an all wetland lot, better protecting that lot from potential development pressure in the future. The existing organic cattle ranching operation would be unaffected. The project includes minor site improvements, such as new cattle fencing, but no other development is planned and no building sites or commitments to future development will be created. The revised lots are all large lots that will better protect both wetland and agricultural resources consistent with the Coastal Act and the Marin County LCP. Thus, as proposed, the project is consistent with the Coastal Act. This is a split jurisdiction case, with the Commission's retained coastal permit jurisdiction covering roughly the same area as the smallest existing lot (i.e., the all-wetland lot). The County has already taken action to authorize the rest of the lot line adjustment that is located in their coastal permit jurisdiction.

Coastal Commission Review Procedure

This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on April 11, 2013, in Santa Barbara. If four

Conlan L.L.A
March 22, 2013
Page 2

Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

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

CALIFORNIA COASTAL COMMISSION

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**NOTICE OF PROPOSED PERMIT WAIVER****Date:** April 4, 2013**To:** All Interested Parties**From:** Madeline Cavalieri, North Central Coast District Manager *SC for MC*
Nicholas Dreher, Coastal Analyst**Subject:** Coastal Development Permit (CDP) Waiver 2-12-012-W

Applicant: Peter Grenell, San Mateo County Harbor District

Proposed Development

The proposed project includes clamshell bucket dredging of 5,600 cubic yards of material at an existing boat launch ramp and disposal within the Pillar Point Harbor breakwater at the Perch Beach disposal site. The dredged materials will be placed into dump trucks and transported via an existing roadway to the disposal site. The disposal will cover an area of approximately two-thirds of an acre. Dredging is expected to take approximately 25 days to complete. The dredged material will have containment k-rails and silt buffers, to remain for approximately 30 days, to prevent migration of materials into adjacent waters until ready to vegetate. As part of the proposed project, the Applicant will continue evaluating alternative disposal sites for beneficial reuse of materials associated with future dredging activities at the Harbor.

Executive Director's Waiver Determination

Pursuant to Title 14, Section 13252(e) of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

The proposed dredging activities are necessary to open up boat launch ramps, which are presently not usable due to sediment build-up (only one out of the four available docks/ramps is operable). The project materials demonstrate dredging at this location is not expected to result in significant impacts to coastal resources. The site does not contain sensitive habitats, such as eelgrass. The removal of the material will open up docks and ramps used by the Harbor and the public for fishing and recreational opportunities. The disposed materials will not significantly impact public access, because the existing nearby kayak rental company will not be impacted and there is still direct access from the Perch Beach site to the Harbor waters. The disposed materials will be contained on three sides with silt containment systems, and on two sides (to the west and south) with concrete k-rails to ensure sediment does not migrate to Harbor waters and/or sensitive habitats during dewatering. The Applicant has received all necessary federal, state and local approvals for the proposed project.

It is noted that the Applicant is committed to seeking alternative dredge material disposal sites, such as along the Princeton Shoreline and at Surfer's Beach (south of the Harbor), for future dredge projects. It is possible that such alternative sites would provide important beach nourishment benefits, but they are not timely available at this point (e.g., these other sites are currently being evaluated by the Army Corps,

NOTICE OF PROPOSED PERMIT WAIVER

CDP Waiver 2-12-012-W (Pillar Point Harbor Dredging)

Page 2

the County, and others, but approvals would appear to be some time off). Given the need to open up the dock and ramp area for use in the near term, including for the start of salmon fishing season on April 6, 2013, the proposed project makes sense in the short term. For all of the above reasons, including the Applicant's commitment to pursuing evaluation of nearby beach nourishment sites for future dredging episodes, any impacts of the development on coastal resources or coastal access are insignificant, and the proposed project is consistent with Chapter 3 of the Coastal Act.

Coastal Commission Review Procedure

This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on Thursday, April 11, 2013, in Santa Barbara. If three Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

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

April 4, 2013

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Proposed Waiver for San Mateo County Harbor District Dredging at Pillar Point Harbor

Commissioners:

My concerns with the proposed launch ramp dredging project placing dredge material at Perched Beach are two-fold:

Perched Beach was originally intended to mitigate for lost beach from harbor development. This area has already been impaired as a beach due to excess dredge material placed there more recently during two previous launch ramp dredging events. The excess dredge has led to weed growth and a steeper descent to the water. To place four additional feet of dredge over two thirds of the beach will make water access steep and difficult for most of the width of the beach. Please do not allow this decrease in beach access and area for small watercraft events so suitable for Perched Beach.

My other concern is nearby eroded beaches crying out for sand nourishment. A reasonable quick alternative would be to combine the launch ramp dredging project with the Harbor District's high priority West Trail erosion repairs for which engineering studies and estimates were completed a year ago, along with project budget allocation for current fiscal year. That comparable size project could be completed with the dredge material instead of hard armoring as the Harbor District proposes. The West Shoreline Trail is a very popular harbor coastal access trail that is in danger of being closed due to erosion.

Please deny the waiver and require a full Coastal Development Permit for this project.

Sincerely,

Lisa Ketcham
172 Culebra Lane
Moss Beach, CA 94038

From: April Armijo [mailto:aprilarmijo@hotmail.com]
Sent: Thursday, April 04, 2013 8:44 AM
To: Dreher, Nicholas@Coastal
Subject: Please, save our beach letter attached

Please preserve our beach access

April 4, 2013

Nick Dreher
CCC Coastal Analyst
California Coastal Commission

Mr. Dreher and Members of the California Coastal Commission,

I object to the proposed waiver for dredging, and filling in existing beach access at Pillar Point Harbor.

Perched Beach provides important public beach access. This beach has long been used for Outrigger Canoe races, kayak gatherings, sailing regattas, and other large group activities. The proposed dredge and fill of the beach will eliminate over 200' of beach access forever.

I have the following comments and proposed conditions:

1. This is not an emergency. The launch ramp area is located at a stream outfall, causing silt build-up, and dredging events have occurred in 1999, and 2006, and will occur in the future. The Harbor District has had over 6 years to find a suitable site for the dredge material, and apply for permits.
2. Any sand placed on Perched Beach should not take away beach access. The boat launch area could be made usable with many fewer yards of dredging than is being proposed. If more sand is dredged than will fit onto Perched Beach without losing 200' of public access to the water, than the excess sand should be stored elsewhere. This dredging will likely occur every 6-7 years in the future, and another site for the sand will have to be found. Filling in public access to California waterways is not an appropriate use for dredged sand.
3. Any material placed on site that does not conform to a usable sloping contour should be removed and full beach access restored within a period of one year.
4. Any beach access lost must be mitigated by harbor beach access in another location, with similar access to parking, bathrooms, and the safe pedestrian crossing at HWY1.

Please save our beach access for future generations.

Respectfully,

April Lee Armijo

Please preserve our beach access

April 3, 2013

Nick Dreher
CCC Coastal Analyst
California Coastal Commission

Mr. Dreher and Members of the California Coastal Commission

I object to the proposed waiver for dredging, and filling in existing beach access at Pillar Point Harbor.

Perched Beach provides important public beach access. This beach has long been used for Outrigger Canoe races, kayak gatherings, sailing regattas, and other large group activities. The proposed dredge and fill of the beach will eliminate over 200' of beach access forever.

I have the following comments and proposed conditions:

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2. Any sand placed on Perched Beach should not take away beach access. The boat launch area could be made usable with many fewer yards of dredging than is being proposed. If more sand is dredged than will fit onto Perched Beach without losing 200' of public access to the water, than the excess sand should be stored elsewhere. This dredging will likely occur every 6-7 years in the future, and another site for the sand will have to be found. Filling in public access to California waterways is not an appropriate use for dredged sand.
3. Any material placed on site that does not conform to a usable sloping contour should be removed and full beach access restored within a period of one year.
4. Any beach access lost must be mitigated by harbor beach access in another location, with similar access to parking, bathrooms, and the safe pedestrian crossing at HWY1.

Please save our beach access for future generations.

Respectfully,

April Lee Armijo

From: Neil & Jennifer Merrilees [<mailto:mermade4@yahoo.com>]

Sent: Tuesday, April 02, 2013 1:05 PM

To: Dreher, Nicholas@Coastal

Subject: Re: Pillar Point Dredge Project (2-12-012)

Nick

I am interested in objecting to the proposed waiver for the placing of dredging material on Perched Beach.

I feel that the substantial loss of public beach access should be prevented or mitigated.
of Could you place me on a notification list for the waiver?

Thank you

Neil Merrilees
215 Mirada Road
Half Moon Bay, CA 94019
(650) 728-3813

-----Original Message-----

From: Lennie Roberts [<mailto:ennie@darwin.ptvy.ca.us>]

Sent: Thursday, March 28, 2013 7:38 PM

To: Dreher, Nicholas@Coastal

Subject: SMC Harbor District dredging

Hi Nicholas, Could you please add me (on behalf of Committee for Green Foothills) to the list for notification of the proposed waiver regarding dredging for the boat launch ramp at the Harbor? CGF would like to object.

Thanks,

Lennie

From: Edmundo Larenas [<mailto:surfdoggie@gmail.com>]

Sent: Sunday, April 07, 2013 8:18 PM

To: Dreher, Nicholas@Coastal

Subject: Coastal Development Permit (CDP) Waiver 2-12-012 – W

Dear Nick Dreher,

Please consider the attached document regarding

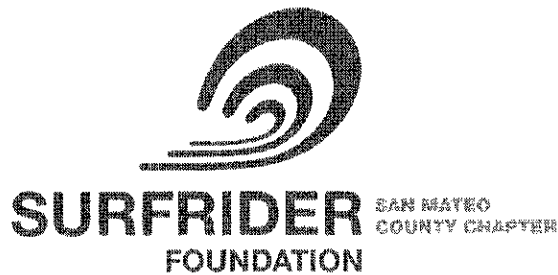
Coastal Development Permit (CDP) Waiver 2-12-012 – W

Thank you.

Very truly yours

Edmundo Larenas

Surfrider Foundation San Mateo Chapter Chair



April 7, 2013

Item Th.6
Oppose Waiver

Chair Mary Shallenberger, and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Coastal Development Permit (CDP) Waiver 2-12-012 – W

Dear Chair Shallenberger and Commissioners,

I am writing you on behalf of the Surfrider Foundation San Mateo Chapter to strongly object to the granting of the proposed Waiver which would allow dredging of 5,600 cubic yards of material at the existing boat launch ramp at Pillar Point Harbor without a Coastal Development Permit. Surfrider absolutely objects to the proposed placement of the dredged material on Perch Beach, especially since there are several alternatives where addition of these spoils would provide a benefit to public access and shoreline protection. For example protection of the northwest Shore Line Trail or erosion mitigation at Surfers Beach.

Perched Beach provides safe access for several public activities such as Kayaking, Standup paddling and much more. This area has already been assaulted twice by unwise deposition of dredged material, once in 1999 and again in 2006, in both instances making beach access sequentially more difficult. We urge you to protect Public Access at this special place and deny the Waiver and rule in a manner consistent with the Coastal Act.

Sincerely yours,

Edmundo Larenas

San Mateo Chapter Chair

From: Mary Larenas [<mailto:mnlarenas@gmail.com>]
Sent: Sunday, April 07, 2013 8:36 PM
To: Dreher, Nicholas@Coastal; Dreher, Nicholas@Coastal
Cc: Lisa Ketcham; Sabrina Brennan
Subject: Perched Beach - Pillar Point Harbor

April 7, 2013

Nick Dreher

CCC Coastal Analyst

California Coastal Commission

Dear Mr. Dreher and Members of the California Coastal Commission,

I would like to express my concerns and my objection to the proposed waiver to allow the dredging of Pillar Point Harbor and the filling in of an area known as Perched Beach.

Perched Beach is the only public access area within the Harbor that provides safe and easy access to the water and open, non-sandy beach (safe footing) for elderly, families and persons with disabilities that is located next to restrooms, parking, restaurants, and fishing pier. Perched Beach should be preserved for those members of the public who cannot access other areas along the coast.

Thousands of Harbor visitors never go beyond ¼ mile from the parking lot. To take away this valuable and beautiful section of beach for the purpose of landfill (which will require a future seawall to prevent erosion) in order to build more office space is not in the best interest of the public and especially those who have limitations.

Perched Beach is accessible by a trail that gradually slopes down and ends at the water's edge. All other such access is only available a mile or so away at Maverick's parking lot which has limited parking, smelly outhouses and requires a long walk to the water which may be difficult for older people, families with small children and those with disabilities. Access at the southern corner where dredging is proposed again has similar limitations as the Maverick's parking lot.

The proposed dredge and fill of the beach will result in over 200' of beach access lost forever.

I am asking you to please protect public access and to continue to save our beach access for future generations.

Sincerely,

Dr. Mary Larenas

Specializing in Adult and Geriatric Mental Health

301 Nevada Ave.

Moss Beach, CA

94038

650-728-5067

From: Merrill Bobele [<mailto:mlbobe@comcast.net>]

Sent: Sunday, April 07, 2013 11:17 PM

To: Dreher, Nicholas@Coastal

Subject: Letter to Coastal Commission Re: Oppose CDP Waiver for Dredging Pillar Pt. Harbor

Dear Nick,

Attached is a letter in opposition of a CDP Waiver for dredging Pillar Pt. Harbor Boat Ramp. Would you please forward it to the Coastal Commission for the appropriate agenda item.

Thanks,

Merrill Bobele

650-726-6429

Co-Chair Coastal Issues Committee

Loma Prieta Chapter, Sierra Club

Merrill Bobele, Co-Chair Coastal Issues Committee Loma Prieta Chapter, Sierra Club

P.O. Box 2486

El Granada, CA. 94018

April 6, 2013

California Coastal Commission

C/O: Mr. Nick Dreher, Coastal Analyst,

California Coastal Commission

Re: Oppose CDP Waiver for Dredging Pillar Pt. Harbor Boat Ramp

Dear Commissioners:

We oppose the proposed dredging and filling existing beach access at Pillar Pt. Harbor, San Mateo County Harbor District. Presently, Perched Beach provides important public beach access for kayak gatherings, outrigger canoe races, sailing regattas, and other group activities. The proposed fill from the dredge on the beach would eliminate over 200 feet of beach access. The following points support our position:

1. This is not an emergency. The launch ramp area is located at the outfall of Deer Creek, causing silt and build -up. Dredging has occurred in 1999 and 2006, and will occur in the future on a similar schedule. The District has had over six years since the last dredging to find a suitable site for dredge material and to apply for the necessary CDC permit.
2. Any sand placed on Perched Beach should not take away or restrict public beach access.
3. The Harbor District projects should not be piecemeal, but part of an updated General Plan with specific objectives that are consistent with the requirements of the California Coastal Act.
4. The West Shoreline Trail, within the harbor is threatened by shoreline erosion, and is scheduled for repair this year. It makes sense to use dredging material from the Boat Ramp as beach nourishment either at this location and/or at Surfers' Beach, south of the Breakwater.

We urge that the Commission deny the request for waiver so that the application can be processed as a regular CDP application.

Sincerely,

Merrill Bobele, Co-Chair Coastal Issues Committee

From: Neil & Jennifer Merrilees [<mailto:mermade4@yahoo.com>]
Sent: Monday, April 08, 2013 8:53 AM
To: Dreher, Nicholas@Coastal
Subject: Waiver 2-12-012-w objection

Nick

Here is my letter objecting to the perched beach dredging waiver

Neil Merrilees
215 Mirada Road
Half Moon Bay, CA 94019
(650) 728-3813

April 7, 2013

Item Th.6
Oppose Waiver

Chair Mary Shallenberger, and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Coastal Development Permit (CDP) Waiver 2-12-012 – W

Dear Chair Shallenberger and Commissioners,

I am writing to object to the granting of the proposed Waiver, which would allow placing 5,600 cubic yards of material on an existing recreational beach at Pillar Point Harbor without a Coastal Development Permit. Reducing beach access permanently for an ongoing dredge process is unnecessary, and reducing it without mitigation would be inconsistent with the Public Access and Recreational Policies of the Coastal Act.

1. If the waiver is granted, a rare section of beach that has long provided beach access for group activities will be lost permanently, with no mitigation. Gatherings of kayak clubs, outrigger canoe races, sailing regattas, paddleboard races and large water based recreation group activities will become difficult or impossible without this large staging beach.
2. There is no longer time pressure for the dredging. Salmon Season opened with 3 usable launch lanes at low tide, and 3 more lanes that could be usable at high tide. In addition, district staff has had 6 years to apply for a permit and consider alternate disposal sites since the last dredging at this site in 2006.
3. Three of the 6 available launching lanes are currently completely usable at the lowest tides (over 5' deep at a .2 low tide). The remaining three lanes could be made usable with much less dredging than is being proposed. By removing only what is necessary for boat launching, the lesser amount of sand (1-2000 cubic yards) could be placed on Perched Beach with no negative effects to beach access.
4. While the proposed waiver infers that the sand on Perched Beach will be temporary ("the Applicant is committed to seeking alternative dredge material disposal sites") there are no conditions in the waiver that require restoration of the lost beach access. The proposed sand placement follows the exact outline of Harbor District plans for a parking lot, behind a sheet pile bulkhead, as part of the Pillar Point Harbor general plan, making it possible that the dredge placement is to facilitate future development, as much as clearing of the launch ramp.
5. Many alternate disposal sites exist, and have been proposed by residents, and local governmental groups (including the Coastal Commission Staff at a community meeting in 1997 discussing the Princeton waterfront). To date, no permits for

alternate sites have been applied for. While staff at the Gulf of the Farallones Marine Sanctuary has stated publicly (HMB Review 1/17/13) that they would welcome an application to place sand on Surfer's Beach, no permit has been applied for. While there is currently a study underway by the Army Corps, that study is not for, or required by the Gulf of the Farallones Marine Sanctuary. The requirements necessary for an approved GOFMS permit, will likely be determined only after the permit is applied for. That process has not been started.

Coastal beach access is important. There are many alternatives to this plan, none of which require the loss of coastal access. Please deny the Waiver so the application can be processed as a regular Coastal Development Permit application.

Sincerely,

Neil Merrilees



COMMITTEE FOR
GREEN FOOTHILLS

April 7, 2013

Item Th.6
Oppose Waiver

Chair Mary Shallenberger, and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Coastal Development Permit (CDP) Waiver 2-12-012 – W

Dear Chair Shallenberger and Commissioners,

On behalf of Committee for Green Foothills (CGF), I am writing to object to the granting of the proposed Waiver, which would allow dredging 5,600 cubic yards of material at the existing boat launch ramp at Pillar Point Harbor without a Coastal Development Permit. CGF's particular concern is the proposed placement of the dredging spoils on Perched Beach.

Perched Beach is a rare section of beach within the Harbor that has long provided beach staging and access for group activities including gatherings of kayak clubs, outrigger canoe races, sailing regattas, paddleboard races and large water-based recreation group activities. Perched Beach has twice been used for disposal of dredged spoils from previous launch ramp maintenance (in 1999 and 2006), which has steepened the natural beach grade. Placing an additional four feet of dredged materials over two thirds of the beach will make water access even more difficult, if not impossible, and thus would be inconsistent with the Public Access and Recreation Policies of the Coastal Act.

The San Mateo County Harbor District has characterized the dredging as an urgency project based on the need to complete the dredging (which is projected to take 25 days) by the start of salmon fishing season on April 6. That "deadline" has passed, which gives the District time to find a more suitable site for the dredging spoils.

One alternative location is the West Shoreline Trail, also within the Harbor, that is threatened by shoreline erosion. The District is currently considering three proposals to armor the shoreline to protect this trail: Rip-Rap, Soldier Pile Wall, and Shotcrete/Soil Nail Wall, all of which would appear to be inconsistent with Section 30235 of the Coastal Act, and thus may not be approvable. The District plans to move forward with the West Shoreline Trail repair this year, and is a logical place to use the dredging spoils as beach nourishment.

Other alternatives include the Princeton Shoreline, within the Harbor, and Surfer's Beach, south of the Breakwater where there is an accelerated loss of beach sand. Please deny the Waiver so the application can be processed as a regular Coastal Development Permit application.

Sincerely,

A handwritten signature in black ink that reads "Lennie Roberts".

Lennie Roberts, San Mateo County Legislative Advocate

April 4, 2013

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Proposed Waiver for San Mateo County Harbor District Dredging at Pillar Point Harbor

Commissioners:

My concerns with the proposed launch ramp dredging project placing dredge material at Perched Beach are two-fold:

Perched Beach was originally intended to mitigate for lost beach from harbor development. This area has already been impaired as a beach due to excess dredge material placed there more recently during two previous launch ramp dredging events. The excess dredge has led to weed growth and a steeper descent to the water. To place four additional feet of dredge over two thirds of the beach will make water access steep and difficult for most of the width of the beach. Please do not allow this decrease in beach access and area for small watercraft events so suitable for Perched Beach.

My other concern is nearby eroded beaches crying out for sand nourishment. A reasonable quick alternative would be to combine the launch ramp dredging project with the Harbor District's high priority West Trail erosion repairs for which engineering studies and estimates were completed a year ago, along with project budget allocation for current fiscal year. That comparable size project could be completed with the dredge material instead of hard armoring as the Harbor District proposes. The West Shoreline Trail is a very popular harbor coastal access trail that is in danger of being closed due to erosion.

Please deny the waiver and require a full Coastal Development Permit for this project.

Sincerely,

Lisa Ketcham
172 Culebra Lane
Moss Beach, CA 94038

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AND NORTH CENTRAL COAST DISTRICT OFFICES
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
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WEB: WWW.COASTAL.CA.GOV



Memorandum

April 5, 2013

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, April 11, 2013*

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th9c	Magee & Brader, Marin Co.	Correspondence, Kenneth S. Roe Correspondence, Wyliam Holder Correspondence, John S. Bridges	1 2-5 6-85

Th 9c

✓ Attention: Jeff Staben

RECEIVED

MAR 05 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 2, 2013

California Coastal Commission
North Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: A-2-MAR-10-022 Hearing (a proposed agriculture operation on Tomales Bay)

TO WHOM IT MAY CONCERN

Briefly, my ancestors settled in West Marin in 1851, after an unsuccessful effort to succeed in Mother Lode gold mining. My ranching family established summer cabins at Dillon Beach, commencing in 1912. All my life, I have explored and loved the Tomales Bay region. I contribute monthly to Malt and EAC and have written many articles about the area.

My concern about the proposed development in that beautiful and sensitive area is its extensive and remaining openness is subject to section by section encroachment. The operation in contention seems gigantic, with potential for erosion and agricultural run-off; that would pollute what was once the most pristine bay south of Alaska.

My family and I ask to go on record opposing this appeal, the size unnecessary.

Sincerely,

Signature on File

Kenneth S. Roe
3325 Saint Moritz Court
Redding, CA 96002

✓ I wish to substitute
"development" in my
original letter, deleting
the word, "appeal."

Thank you

Kenneth S. Roe

Th 9c

From Wyliam Holder
4038 Green Valley School Rd
Sebastopol, CA 94572
415-755-8634
wyliamholder@gmail.com

To The California Coastal Commission

C/O Charles Lester, Executive Director

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April 1, 2013

RE: Magee Project No. A-2-MAR-10-22 (Item Th9c)

Formal Request to Deny this Project for Cause.

There are two reasons why I request that this project be denied. In addition, I request that a specific clause be re-written to remove a potential loophole which would allow the importation of grapes for distillation under some circumstances.

Reason for Denial 1.

The Project, as presented, clearly states the intention for the owner of the property to store in excess of 1000 gallons of highly volatile brandy on this property at peak production (280 gallons per year times at least 4 years). There is no mention anywhere in this report of the location at which this volatile liquid would be stored, nor of any preparation to avoid and/or suppress a fire should one break out. In the event of a fire, the first responders are at least 20 minutes away, and by the time they arrive, it is quite likely that

the entire area would be engulfed in flames.

This clear and present danger to the owner, the property, and the local community has gone completely un-addressed. Unless and/or until this serious threat to the community is addressed, this project should be denied.

Staff Report: Coastal Development Permit Application Appeal No.: A-2-Mar-10-022

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A distillery located in the brandy barn would process, bottle, and package the on-site grape harvest into brandy. At peak production, the vineyard harvest is estimated to annually produce 280 gallons of finished brandy, which equals approximately 80 to 100 cases (960-1200 bottles) of brandy per year.

Page 38 Paragraph 2

Given the four to five years required for the vineyard to produce a grape harvest suitable for use in the brandy distillery, and the three to four years of aging required before the finished brandy product is available for sale,

Reason for Denial 2.

The North and the South sides of the property are separated by a series of buffer zones to protect various endangered species and a local water shed.

This proposal contains a section which would allow the owner to drive directly through the protected zones across the Earthen dam at any time and to drive across all areas of the property on occasion. These uses of the land are inconsistent with the protection of the property and violate the commitment to protect the property by the use of buffer zones. I suggest that all access from the north

side of the property to the south side of the property should be denied without the issuance of a one time specific permit for any one time specific use.

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2. Repair and maintenance, if authorized by a coastal development permit, of the development listed in Section 1, above, and of the following existing development in the Habitat Conservation areas:
 - a. Earthen dam and farm road on crest

Page 24 end of paragraph 2

Condition 1. The proposed project also includes surveying, geotechnical site investigations, and septic system leach field investigation and percolation testing, including vehicle access across the property using existing, unimproved, two-track farm roads.

3. Request for the re-write of a specific clause to remove a potential loophole.

Another item, while not cause for a denial of permit should be cause for a re-write of the specific language of two portions of the permit which contain the same language. The intent of this language appears to be to deny the importation of grapes to the property for the purposes of distillation. What the language actually says is that grapes cannot be imported before grapes are harvested or if the vineyard fails.

If it is, as I believe, the intent of the Commission to prohibit the importation of grapes for the purpose of distillation under all conditions, then the wording can be changed to

"No Importing of Grapes and Alternate Brandy Barn Use.
Consistent with the Applicant's proposal, no grapes harvested off-site are allowed to be imported to the distillery

operation in the brandy barn."

The additional clause currently in use is both unnecessary and a potential loophole in the proposed intention.

Page 12 Second Paragraph

8. No Importing of Grapes and Alternate Brandy Barn Use.

Consistent with the Applicant's proposal, no grapes harvested off-site are allowed to be imported to the distillery operation in the brandy barn, either during the time period before grapes are harvested from the on-site vineyard or in the event that the vineyard fails to produce a crop suitable in quality or volume to produce brandy.

Embedded in Paragraph 2 on page 38

The proposed distillery/brandy barn project includes a commitment by the Applicants that under no circumstances would grapes be imported to the property for use in the distillation process, either before grapes are harvested from the on-site vineyard or in the event that the vineyard fails to produce a crop suitable in quality or volume to produce brandy.

Thank you for your kind consideration.

Signature on File 

Regards, Wyliam Holder

Former Resident of Marshall California

Th9c

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VIA OVERNIGHT MAIL AND EMAIL

California Coastal Commission
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Re: Magee/Brader Project (A-2-MAR-10-022; West Marin County)
Our File: 33447.31025

Dear Coastal Commissioners:

This letter is submitted on behalf of appellants in the above referenced matter (Scott Kivel/Lia Lund) who are joined by several other parties and entities in opposing the Magee/Brader project. As the Commission determined previously when finding (9-1) that the appeal raised Substantial Issue, the project warrants very careful review particularly since Marin County considered the project Categorically Exempt from CEQA and consequently did no environmental review under CEQA. Based on the record before you we request the Coastal Commission either 1) deny the project;¹ or 2) condition the project to delete the brandy distillery and require the other development to be relocated away from the ESHA, to an alternative site on the 150 acre property which is south of the blue line stream.²

The brandy distillery should be deleted in all scenarios because:

¹ Continuation of the current agricultural use of the property is feasible (staff report pg. 28) and would thus continue to constitute a reasonable economically viable use of the land. Any purported economic necessity argued to justify the proposed brandy distillery is a false premise. One hundred cases of brandy at \$45 per bottle would gross \$57,000 per year from which all costs of vineyard, labor, equipment, building and production would then be deducted. The net return (if any) would be de minimis at best.

² See attached schematic showing conceptual alternative site (Attachment 1).
(JSB-268280;6)

1) It is directly across the highway from and within 75 feet of Marconi Cove State Park and its proposed overnight campground, day use area, boat launch, and other lower cost visitor serving facilities which are to be protected (PRC § 30213);

2) It is not "appurtenant and necessary" to the continued agricultural use of the property and is therefore not an "accessory" use and conflicts with C-APZ Master Plan requirements;

3) It is inconsistent with the rural community character of the area (generally only permitted in heavy industrial/manufacturing zones);

4) It would set an adverse precedent for such industrial/commercial type uses along the rural coastline of Marin County and throughout the state; and

5) It creates odors, involves discharge of boiling water, and produces and requires on site storage of high strength environmentally damaging waste products the effects of which have not been adequately evaluated, all in an area within and immediately adjacent to ESHA.

The balance of the project (e.g., residence, equipment barn, out building for jam making) should be moved to an alternative development site south of the blue line stream because:

1) It would completely avoid numerous ESHA resources (stream, wetlands, pond, riparian, CRLF habitat, WPT habitat);

2) It would minimize public view impacts (alternative site is off the hillside, is average 75' lower in elevation than proposed house site, and is not visible from Marconi Cove State Park);

3) It would eliminate the long (1,276 foot) hillside switchback road that requires substantial grading (15,000+ cy) and retaining walls whereas the alternative site driveway would be relatively flat and less than 100 feet long;

4) It would minimize conflicts with Marconi Cove State Park (public access, highway safety, visibility); and

5) It would maximize building clustering on the property as required by the LCP.

Appellants have made significant efforts to ensure a thorough and critical evaluation of the project and its impacts consistent with the Commission's Substantial Issue determination. The wisdom of your determination has certainly been borne out by the amount of further study that has been required, the discovery of wetlands and sensitive species previously not disclosed, the revelation of numerous Coastal Act violations on the property, and the many mitigations and

conditions staff and responsible agencies are proposing.³ Despite this effort, staff has been unable to fully define the project's impacts due to the applicant's penchant for delivering only minimal, piecemeal, data and constantly redesigning and reconfiguring the project in an attempt to shoehorn the development within, between, and around the ever expanding (as new data continually comes to light) number and scope of resource constraints and buffers. As a result, the staff recommendation is not legally supportable.

The project cannot be approved as proposed because the two most essential findings required under the Coastal Act for approval cannot be made based on the record before the Commission. The two essential findings cannot be made because 1) the project is inconsistent with the Coastal Act and the Marin County LCP (PRC 30604); and 2) there are feasible alternatives and feasible mitigation measures available that would substantially lessen significant adverse effects the project (even if mitigated as staff has proposed) may have on the environment (PRC § 21080.5.d.2.A⁴). This letter will briefly discuss how the project conflicts with:

- ESHA protection
- Viewshed protection
- Traffic safety
- LCP land use policies

And how approval of the project would conflict with coastal zone policies intended to:

- Preserve and protect agricultural land from commercial/industrial encroachment
- Preserve and protect public access (Marconi Cove)
- Require remediation and restoration of coastal act violations and disallow development advantage to be gained from violations

Finally, the project should not be approved because it would establish a precedent of allowing industrial/commercial activities in this relatively pristine undeveloped agricultural rural coastal area.

³ This record also refutes applicant's attempt to misdirect the Commission's focus on the important environmental aspects of the development by suggesting this is merely a neighbor dispute (ref. also project opposition by Sierra Club and others).

⁴ To the extent the staff report suggests (as it does on pg. 5 by proposing a resolution motion in the alternative "either/or") that as long as some mitigations were incorporated the project may be approved, it misapplies this statutory mandate. The project can only be approved if no feasible mitigations are available that would substantially lessen a significant adverse effect the project may have on the environment.

1. Environmental Review in General. The Coastal Commission's de novo review process qualifies as a certified regulatory program under CEQA. Accordingly, the written staff report must contain an environmental analysis functionally equivalent to an Environmental Impact Report including, without limitation, a thorough and finite project description⁵, mitigation measures for all potential project impacts (primary, secondary, project specific, and cumulative), and a discussion of alternatives to the project. The functional equivalent environmental document must also include written responses to all significant environmental points raised during the evaluation process (Pub. Res. Code § 21080.5.d.2.D; 14 Cal. Code of Regs. § 13057.c.3).

2. Environmental Impacts.

A. ESHA Impacts. The proposed development is concentrated in the northwestern portion of the property which is comprised of a complex of environmentally sensitive habitats. The proposed development area is within an ecosystem which represents a unique convergence of numerous ESHAs that combine to create a labyrinth of interrelated and interdependent sensitive resources and development constraints. As such, nearly the entire proposed development area represents an "especially valuable" resource/ESHA.⁶ The biological resources converging in the proposed development area include a blue line stream flowing directly into Tomales Bay just 250' away,⁷ a pond, riparian habitat, federally delineated wetlands, Coastal Commission wetlands, seeps, a natural drainage area, a swale, terrestrial habitat, breeding, nesting and foraging habitat, and dispersal and movement corridors for California Species of Special Concern California Red Legged Frog (CRLF) and the Western Pond Turtle (WPT).⁸ As explained by EMC Planning biologist Bill Goggin (see Attachment 2),⁹ this fragile ecosystem with its myriad resources is far too sensitive to be protected with only

⁵ Since the Substantial Issue determination the project has consistently been revised and changed and the project description continues to morph and modify (as recently as January-February 2013 when definition of the brandy distillery and its operation was modified yet again). Review by responsible agencies could not have accounted for the more recent project changes and legally adequate environmental review therefore has not been performed. Also, contrary to the latest version of the project description, the application has never included a proposal to "retain" illegal/unpermitted development.

⁶ P.R.C. 30107.5. Staff has tacitly acknowledged the overall sensitivity of the proposed development area by virtue of the numerous design changes requested and the numerous mitigation measures required.

⁷ Tomales Bay, designated as a wetland of international importance, is (according to the SWRCB) already pathogen and nitrogen impaired.

⁸ The Commission should require a formal Endangered Species Act consultation process with both USFWS and CDFW due to the presence of CRLF and the project's potential to adversely impact them and their habitat.

⁹ Attachment 2 is comprised of two parts: 1) a letter from biologist Bill Goggin about ESHA impacts/setbacks; and 2) a report from EMC Planning commenting on all aspects of the staff report as a CEQA functional equivalent document. The EMC letter includes a brief executive summary that we urge the Commission to consider essential reading.

“minimal” setbacks and buffers especially where the primary purpose of buffers is to ensure avoidance of ESHA disruption and/or fragmentation of habitat.¹⁰

1) Species Dispersal/Movement Corridor. That the proposed development of numerous large buildings (including a precedent setting brandy distillery), roads (requiring substantial cut and fill (15,000+ cubic yards) and retaining walls), and parking lots would fragment this ecosystem and its interrelated ESHAs is self-evident. In addition to recommending buffers more protective than bare minimums, EMC also accounts for the fact of the immediate upland sensitive species, foraging, dispersal, and movement corridor. EMC recommends protection of this corridor as an ESHA under the Coastal Act definition. That ESHA status is warranted for this corridor is further evidenced by the January 10, 2013, recommendation from the California Department of Fish & Wildlife (CDFW) (staff report Exhibit H, pgs. 6-9) to require eight specific “avoidance” measures within the proposed development area (i.e., within the upland habitat corridor). The CDFW measures are also intended to ensure the “continual movement” of species through the development area precisely because the area is and will be occupied by the species of special concern. These special protective measures are necessary to address potential impacts to the species precisely because, according to CDFW, they “have been documented to use the area.” An area of documented species use that requires special management considerations or protection constitutes habitat.¹¹ Habitat for listed species constitutes ESHA. Under the Coastal Act, encroachment into ESHA must be avoided.¹²

2) ESHA Buffers (greater than “minimum” required).

a) Undefined Hydrogeological Impacts. Greater than “minimum” ESHA buffers and ESHA characterization of the upland habitat corridor must be applied because the resources stand to be seriously compromised/jeopardized by the potential hydrogeological impacts of the proposed project (which impacts have not been adequately assessed). Attachment 3 is a report from certified professional geologist and consulting hydrogeologist Aaron Bierman explaining the serious inadequacies of the project’s water impact assessment. Mr. Bierman concludes:

¹⁰ EMC’s setback recommendations are consistent with Commission rulings in other circumstances involving CRLF (LCP minimum 150’ setback from CRLF corridors found insufficient. Greater than minimum setbacks required to protect dispersal corridors and surrounding foraging and breeding habitat. Ref. Pacific Ridge project A-1-HMB-99-022, pgs. 52-58).

¹¹ The staff report acknowledges the upland grassland areas (i.e., the proposed development area) “provide some potential dispersal and foraging habitat for the CRLF” (staff report pg. 43).

¹² As noted in the staff report at pg. 48, if there may be potential take of CRLF (which is the case here) then USFWS suggests an alternative design be pursued to avoid potential impact to the species. (See Alternatives discussion in section 3 of this letter below.)

In summary, due to the hydrogeologic complexities of the site, including the potential interaction between the surface and groundwater resources, which has not been adequately defined, Bierman Hydrogeologic concludes that there could be potentially significant effects on 'the onsite well field not being able to meet the project water demand and on SERs [sensitive environmental receptors: species habitats, creeks, streams, springs, and other off-site neighboring wells]. It is our opinion that the data/reports reviewed do not sufficiently demonstrate that there would be no significant impacts to the aquifer and SERs and that additional hydrogeologic characterization is needed. And even if the conclusions of additional hydrogeologic characterization may indicate no project specific potential hydrogeologic impacts, there remains insufficient data at this time to confirm no cumulative significant impact to the aquifer and SERs.

Indeed, the applicant's own hydrologist admits in his report (which the staff report cites) that the hydrologic resources on the site are complex and that because the analysis was not sufficiently site specific their report "must be seen solely as addressing the question of potential effects on wetland and riparian habitat in a watershed context; they are not to be taken as a recommendation for how, when, where, or whether to draw water from the stream or alluvial aquifer system."¹³ Moreover, the applicant's report draws its non-site specific conclusions from multiple assumptions derived from inferences drawn upon other inferences based on limited data from an illegal well.¹⁴ The report is full of qualifications and reservations to, no doubt, attempt to shield the author from consequent professional liability. In a case like this the Coastal Commission should demand more and should require the project not impact the resources at all...not just that it avoid total depletion of them (a standard apparently applied by the applicant's consultant). The record contains no evidence that the ESHAs will not be disturbed or degraded by the extraction of water to serve the project from the stream and/or the alluvial aquifer system on the site. Critical and thorough hydrogeological analysis is absolutely essential in this case due to the water regime dependence of the myriad ESHAs in the proposed development area.

b) Illegal Development Impacts. Greater than "minimum" ESHA buffers and ESHA characterization of the upland habitat corridor must also be applied in this case due to the fact that the extent and quality of habitat assessed by the staff in the first instance was manipulated by the unpermitted development activities of the applicant and his predecessor. An illegal water diversion was constructed by the applicant along the property boundary

¹³ November 2, 2012, report from Balance Hydrologics, Inc. at pgs. 5-6 (emphasis added).

¹⁴ The well drilled and proposed for project use is in a different, unpermitted, location than was approved by Marin County.

immediately north and upslope of the development area, shortly after the Commission voted to require a de novo hearing, in an effort to dry the area out before Commission biological staff could visit the site (which visit finally happened in May of the following year). Consequently the true "natural" (i.e., pre-violation) condition and extent of the wetlands within the development area cannot now be precisely determined.¹⁵ Further, a wetland to the immediate south of the proposed development area was illegally filled by the applicant's predecessor¹⁶ and this illegal activity has enabled access to the proposed development area and reduced the extent of natural wetland/riparian habitat area from which buffers and setbacks are being measured.¹⁷ The locations of these Coastal Act violation areas are shown on the EMC ESHA map (Attachment 4).

c) Wastewater Impacts. Greater than "minimum" ESHA buffers and ESHA characterization of the upland habitat corridor are also necessary to protect against potential impacts to the site specific water regime due to water quality impacts from the proposed development. The significance of these impacts are exacerbated by the distillery component of the project.¹⁸ CEQA requires these impacts be identified and mitigated before a project is approved, not afterwards. Staff proposes, by condition, to address many of the water quality issues related to wastewater and septic discharge later,¹⁹ after the fact, through a future

¹⁵ Note on staff report pg. 45, wetland indicator plants are confirmed as being present within the distillery footprint but are dismissed as merely upland plants because other wetland conditions are absent. Precisely the possible result of the illegal diversion. Applicant should not be allowed to gain development advantage through illegal activity.

¹⁶ Liability to remedy Coastal Act violations runs with the land. The resource damage caused by applicant's predecessor (unpermitted wetland fill by prior owner has been tacitly admitted by applicant and the work was red tagged by County) is continuing and thus constitutes a present violation and a continuing public nuisance for which the applicant is responsible to abate (ref. Leslie Salt Co. v. San Francisco Bay Conservation, etc. Com. (1984) 153 Cal.App.3rd 605, 622; see also Civil Code § 3483).

¹⁷ Planting native plants on top of the illegal fill does not restore wetland or lost riparian habitat (ref. staff report pg. 67).

¹⁸ Note: many of applicant's responses to questions about "brandy distillery" impacts (relied upon without question by staff; ref. staff report pg. 55) reference "winery" or "beer and wine" standards. Brandy/alcohol production is much more hazardous than wine production. The Commission should not rely on the applicant's self-serving "belief" (staff report pg. 55) about theoretical wine/beer production treatments.

¹⁹ The applicant represents the distillery will not "use" hazardous materials to make the brandy...but they have admitted it will "produce" "high strength waste" (ref., November 14, 2012, letter from Mr. Lincoln to County of Marin). Although applicant fails to define the characteristics of this "high strength waste," according to the literature distilleries produce extremely polluting waste and waste water which is highly acidic, high in temperature, odorous, containing putrescible organics such as skatole, indole, and sulfur compounds, and dark colored spent wash all of which interferes with natural photosynthesis, oxygenation, and results in eutrophication of contaminated water sources. Kalyango: Characteristics of Wastewater in a Distillery (August 3, 2011). This article, along with numerous EPA and other technical reports provided to staff by appellants are in the record. Odor impacts to the adjacent sensitive receptor (State Park Campground) must also be addressed/mitigated. Staff reference to the {JSB-268280;6}

State Water Resources Quality Control Board permitting process. However, that future permit process must necessarily rely upon the California Coastal Commission's CEQA functional equivalent document (which, by deferral, is not analyzing the impacts nor defining necessary mitigations). In effect, both agencies are deferring to the other regarding responsibility for analysis and definition of performance standards for mitigation that legally must be done before project approval in order for the essential project findings to be made.²⁰ Moreover, in this case, because of the proximate ESHA issues it is entirely possible, if not likely, that water quality mitigations, if they are even definable post-approval, will have significant secondary impacts to ESHA which must also be addressed before project approval.²¹

As applicant's attorney Mr. Faust well knows and recently testified to the Commission about, deferred definition of mitigations violates CEQA (Sundstrom v. County of Mendocino (1988) 202 Cal.App.3 296).²² According to Mr. Faust, "If there is discretion involved, if all the facts are not known, then they can't do it. It's just against the law. It's a pure CEQA violation."²³

The staff report also fails to identify, discuss, and/or mitigate other potential water quality impacts such as the applicant's proposed solution to "filter" oil and grease from storm water drainage flowing over the lengthy proposed road through "existing vegetation" which vegetation is located immediately adjacent to and/or within wetlands, riparian habitat, a blue line stream corridor that flows directly into adjacent Tomales Bay and within the upland corridor species ESHA.

simplistic diagram (staff report Exhibit 12) seriously under-describes the brandy distillation process and its inherent perils and risks.

²⁰ In a September 13, 2012, email (staff report Exhibit H, pg. 11) RWQCB staff Blair Allen acknowledges having received incomplete data from the applicant regarding wastewater discharge for the project (including brandy manufacturing and processing) and describes the procedural conundrum as "a bit of a chicken or egg situation between our two agencies." "Future review" and post approval definition of brandy distillery Waste Discharge Requirements by the responsible agency is legally inadequate.

²¹ For example, numerous septic tanks and lines and test wells will be placed in/or leach into ESHA that is dependent on the fragile water regime flowing in, through and all around the development area. Similarly necessary haz mat storage and/or containment facilities will likely impact ESHAs.

²² In Sundstrom, the court held that the county's adoption of a CEQA condition that a sludge disposal plan be later approved by the Regional Water Quality Control Board and the Department of Public Health was insufficient to justify its failure to address this issue itself as part of the environmental review process.

²³ Ralph Faust testimony representing the Environmental Action Committee (EAC) of West Marin on the Lawson Landing project regarding deferred mitigation (July 13, 2011; Agenda item W10a). Also, regarding EAC, contrary to the applicant's representations, EAC has clarified for the record (staff report Appendix J, pg. 16) that "...EAC does not support the proposed project." (Emphasis in original.)

d) Fire Protection Impacts. Greater than “minimum” ESHA buffers and ESHA characterization of the upland habitat corridor are also necessary to protect against potential fire suppression impacts. The staff report fails to address fire suppression requirements which invoke significant ESHA exposure to hazardous materials including the ATC (alcohol type concentrate) foam necessary to suppress fire at a brandy distillery (see Attachment 5, report from Fire Captain Chris Miller dated October 12, 2012; traditional water sprinkler system inadequate for brandy distillery). Miller concludes that the proximity of the proposed brandy distillery to ESHA combined with proximate San Andreas earthquake fault conditions require special measures for containment of fire suppression materials, that the containment system must be designed to capture 100% of all suppression contaminant materials, and that it must be strategically located “beyond the edge of the development area (i.e., beyond buildings and pavement) yet not encroaching into sensitive resources areas.” The location of the proposed brandy distillery would necessarily require such a containment system to encroach into ESHA protection areas even if only bare minimum ESHA setbacks were imposed.²⁴ Captain Miller also notes that a “Hazardous Materials Management Plan must also be prepared for the project.” The project site is also in a remote rural area (with limited cellular phone coverage) that is 20 minutes away (via a narrow, windy, two-lane, at times congested, shoreline highway) from the nearest fire station. This conflicts with Emergency-Code 3 response times for commercial/industrial uses like a brandy distillery.

e) Other ESHA Considerations. Other failures to adequately define and analyze ESHA impacts include the failure to survey for sensitive bird species likely to inhabit the wood snags prevalent within the proposed development area. In addition, the record lacks seasonally appropriate plant surveys in areas where the project has very recently been relocated/modified to and/or where utilities (required to be underground and thus encroaching on vegetation) will be located (e.g., new well sites, sewer lines, leach fields, power lines, water/wastewater tanks). Botanical information obtained in October and November is not seasonally appropriate (staff report pg. 42).

In summary, with regard to ESHA, the proposed development area is substantially occupied by ESHA and the convergence of so many sensitive resources make this area especially unique and valuable. The California legislature has declared that the coastal zone is a “distinct and valuable natural resource of vital and enduring interest.” As such, it is the Coastal Commission’s essential duty to protect the natural and scenic coastal resources which are of “paramount concern” to California residents (Pub. Res. Code § 30001). ESHA must be protected against disruption of habitat values, whether direct or indirect, and mitigations for all primary and secondary impacts as well as all project specific and cumulative impacts must be defined and vetted before project approval. Avoidance of ESHA for non-resource dependent development is mandatory, and development adjacent to ESHA must be designed to “carefully safeguard the preservation” of ESHA (Sierra Club v. California Coastal Commission (1993) 12

²⁴ The staff report defers definition of the final suppression plan to the County building permit stage. This fails to identify/mitigate potential secondary impacts and creates yet another Sundstrom problem (ref. footnote 22).

Cal.App.4 602). The project, even as staff has proposed it be mitigated, fails to avoid, protect, and preserve ESHA. The project cannot be approved because ESHA encroachment and/or unmitigated impacts to ESHA are prohibited under the Coastal Act and are inconsistent with the certified Marin County LCP, and because feasible alternatives and mitigations exist that would substantially lessen the significant adverse environmental effects the project may have on ESHA.

B. View Impacts. Despite specific comments from Commissioners at the 2010 Substantial Issue hearing, precise direction from staff on numerous occasions that all development be staked and flagged per LCP requirements, and repeated requests from the public for the same, the applicant has continually refused to erect adequate staking and flagging of all proposed development (including all grading (15,000+ cubic yards) structural roof lines, roads (on slopes which require retaining walls), all accessory buildings, water/wastewater tanks (five (or more) of them), and other infrastructure). Only corner poles with minimal (and practically invisible from a distance) rope lines (not the typically required 18" wide orange netting at the tops of the poles to show actual roof lines) were erected for only some of the structures. This partial effort (purportedly shown by black and white photos in the staff report) did not allow for adequate analysis of the project and, in fact, served to conceal several significant impacts on the public viewshed.²⁵ As a result, the Commission has not been provided sufficient information to understand the nature, extent, and duration²⁶ of the actual significant unmitigated adverse impacts on public views. Additional feasible mitigations and/or alternatives are available that would substantially lessen these impacts to the protected viewsheds. Feasible mitigation measures would include lowering all buildings to single story, limiting roads to existing alignments, and/or relocating the entire development to the much lower elevation alternative site location south of the creek (reference Attachment 1)].²⁷

The screening mitigation proposed by staff will not substantially reduce the impact and, in any event, conflicts with LCP policy which requires views from Highway 1 to the

²⁵ This public viewshed is acknowledged in the staff report as "the southern gateway to the Community of Marshall." The LCP describes this area as follows: "Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there. New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed." The project does not comply with this standard.

²⁶ Staff attempts to compare the project against the Appellants' home in this regard. While not an appropriate measure of LCP compliance, nonetheless, Appellants' home is single story (average 12 feet high) and visible from Highway 1 northbound only 20 seconds while the project is visible 25% longer.

²⁷ Although development at the alternative site would also be visible from some points along Highway 1, it would certainly not be any more visible than the proposed project. Most importantly, however, is the fact that the alternative site would be invisible from the major public access destination point in the vicinity (i.e., Marconi Cove State Park) in contrast to the proposed project which is extremely visible from there. Thus, the alternative site, overall, substantially lessens the adverse public view impacts.

east across the property not be obstructed or impaired by such screening (contrast staff recommended conditions 1.f and 15). Staff seeks to justify the impacts of the very visible 1,276 foot long new hillside cross contour serpentine switchback driveway as "necessary" because the existing access road is within ESHA buffers. The new driveway is not necessary. The alternative site south of the blue line stream would involve a much shorter (less than 100') driveway on relatively flat ground and not visible at all from the Marconi Cove public view thus substantially lessening the impacts of the proposed road (visual and biological).²⁸

In addition, it should be noted that pending Marin County LCP amendments would require permitted processing facilities to be set back at least 300 feet from adjoining roads. This setback standard should be applied in this case to protect public views from Highway 1 (which is less than 50 feet away from the proposed distillery (which staff characterizes as a processing facility)) as well as to protect safe public access to and from Marconi Cove State Park located immediately across Highway 1 from the proposed project area.

C. Traffic Impacts. Traffic impacts of the proposed project, with its entrance at the downhill blind curve immediately across the street from Marconi Cove State Park, must be analyzed for cumulative impacts in the context of the planned Marconi Cove State Park Improvement Plans which include a boat launching facility (thus involving slow moving boat trailers with limited maneuverability on the Highway) (Attachment 6).²⁹ The analysis must also include discussion of the large truck traffic that will be associated with the distillery operation including hauling materials in³⁰ and out of the site and hauling hazardous waste byproducts associated with the brandy distillery.

3. Alternatives. As shown on Attachment 1, a readily available and feasible alternative site for the project exists on the applicant's property.³¹ As noted above, development at this alternative location would involve far fewer and substantially lesser impacts on the environment and far fewer conflicts with the LCP. This alternative location (and other development configuration possibilities within the 12.6 acre area) is not on the hillside and is not in ESHA. It would substantially lessen significant adverse effects that the proposed project (even as staff has proposed it be mitigated) may have on the environment including, without

²⁸ Note: Two access points onto Highway One south of the blue line stream already exist. One has even been improved with a steel gate.

²⁹ As a mitigation mandated by the Commission for permit CDP 2-11-011, the park improvements are not a speculative future project. Lack of comment from CalTrans or State Parks does not relieve the duty to analyze potential cumulative impacts under CEQA.

³⁰ The staff report could be interpreted as ambiguous regarding the possibility of importing grapes or other products (e.g., wine) to be processed at the brandy distillery even though the Applicant has represented that no product importation will ever happen under any circumstance. This should be made clear in the record.

³¹ The southerly alternative site was presented to staff in the EMC Draft Initial Study on September 7, 2011.

limitation, adverse impacts to ESHA and the functional capacity of the hydrologic regime on the property which supports wetland, riparian, and sensitive species habitats. Impacts related to stream crossings (vehicle and animal crossings immediately next to the pond in conflict with 300' buffer requirement; staff report pg. 14) would also be avoided by this alternative.³² The alternative site would also reduce overall viewshed impact by enabling tighter clustering, by being located approx. 75' lower in elevation and off of the hillside, and by being invisible from Marconi Cove, and it would substantially reduce the amount of grading, slope cut, and length of driveway (reduced from 1,276 lineal feet of cross contour hillside road switchbacks with retaining walls through and amongst wetlands and ESHA) to less than 100 feet on relatively flat ground largely parallel to topographic contours. The least environmentally damaging alternative and one which would substantially lessen project impacts would clearly be in an area south of the stream.³³

Staff's dismissive two sentence discussion (staff report pg. 34, para. 3) of the southerly alternative site is based on four points. In response: 1) a new driveway would provide far safer access than the current driveway on the blind curve immediately across from the State Park entrance and would involve no impact to ESHA, the stream, riparian and wetlands;³⁴ 2) the project elements could be substantially more clustered and nearer the road due to the absence of the myriad ESHA constraints;³⁴ 3) potential visibility of buildings at the alternative site from Highway 1 is purely speculative (and could be easily mitigated and substantially less than the project in any event) relative to the known significant impacts of the proposed project on the sloping northwest hillside particularly since the alternative site is located some 75' lower in elevation than the proposed development area; and 4) agricultural resource policies would actually be better served by the alternative because it would remove approximately 90% less area than the proposed project from potential agricultural use.³⁵ It is important to note that staff does not dispute that the alternative would, in fact, substantially lessen adverse impacts of the proposed project.

³² The condition proposed by staff to limit such crossings could result in additional traffic and possibly animal herding impacts on Highway 1, none of which have been considered or mitigated.

³³ See also the alternatives analysis section of the EMC comment letter (Attachment 2). The importance of thorough alternatives analysis in this case is heightened by the fact that no such analysis was undertaken by the County because no CEQA review was done and because, according to County correspondence, the applicant simply "did not want to put the residence there." The availability of feasible alternatives and mitigations, the fact that a distillery is not "necessary" to agricultural use (e.g., cattle grazing as has existed for decades), and acknowledgement that agricultural use of the land remains feasible without the project dispel any concern that denial of the project as proposed may invoke a takings claim.

³⁴ The referenced clustering policy pertains to clustering of onsite development not the relative proximity of off site development. In any event, there are existing homes nearby (500' to the south).

³⁵ The actual alternative development envelope would also be approximately 75% smaller than the proposed project development envelope.

4. Violations. Numerous Coastal Act violations exist on the property which must be remedied and restored before any development on the property can proceed.³⁶ As noted above, several of these violations were intended to and did improve the development potential of the proposed project area. The public was repeatedly assured by staff that all the violations would be remedied by action on the project but that is not what is recommended in the staff report. In fact, the staff report seems to overlook several of the violations by rolling them into the description of existing conditions (e.g., the staff report claims: a) no new farm roads are proposed: but that is only because a labyrinth of new illegal roads exist which the project relies on for unlimited vehicular access across the property³⁷; no grassland or ESHA exist within the footprint of the labyrinth of roads: but that is only because the vegetation was illegally removed when the roads were developed between August 2006 and June 2007 (ref. Attachment 7); and b) the proposed driveway does not cross the blue line stream or enter riparian/wetland areas or their buffers that is only true because illegal fill reduced the wetland. It is indeed curious the staff report purports to leave open the possibility of "later" enforcement action (pg. 67) yet proceeds to recommend project approval violations notwithstanding. The Commission should not allow the applicant to benefit from illegal activities and should instead require full restoration of all impacted areas and impose conservation easements over those areas so as to prevent similar future activities prior to entertaining any development proposal.

5. Other Critical LCP Inconsistencies.

A brandy distillery should not be a permitted use on the property under the provisions of the Marin County LCP. The applicant seeks to characterize the distillery as an "accessory" use based on the theory that it creates "added value" to the agricultural operation on the property. Staff refers to this as "contributing" to economic viability (a.k.a. more profit). "Added value"/enhanced profit is not a factor in defining accessory uses (ref. also footnote 1). LCP section 22.57.0321 defines accessory structures or uses as those being "appurtenant and necessary" to the operation of the agricultural use. A distillery is absolutely not "necessary" for agricultural operation on the applicant's property. Without the distillery, agricultural production could still continue on the property (e.g., grazing) and the applicant could still build a personal

³⁶ The violations (ref. correspondence and substantive data provided to staff on 9-20-12, 1-31-12, 5-6-11, 4-20-11, and 2-2-11) include construction and associated grading of a natural drainage course diversion system within and adjacent to ESHA; creation of a substantial road system throughout the property including in ESHA (clear evidence of this new road system development, which staff claims is lacking, is shown on Attachment 7); placement of fill into the blue line creek area; planting of a cypress hedge along Highway 1 in an attempt to screen the property in conflict with LCP viewshed protection policy; removal of native vegetation (including potentially sensitive plant species constituting ESHA) preparatory to vineyard planting (note: staff report pg. 33 acknowledges the vineyard area is now "non-native" grass. Such a non-native condition is only possible if the native vegetation was removed.).

³⁷ Reference staff report page 22, paragraph 3. Also, Applicant's proposal to simply leave some of the illegally developed roads alone so they can "revert" back to a natural condition on their own over time is not restoration. (JSB-268280;6)

residence.³⁸ Because the brandy distillery is not necessary it also fails to meet the LCP Master Plan finding requirement (22.37.036.b).³⁹ Deletion of the distillery component of the project would avoid significant adverse impacts to ESHA, scenic resources, water quality, community character and highway safety. In fact, alcohol producing facilities are not even an approved use in light industrial zones in Marin County. Alcohol producing facilities (e.g., distilleries) are generally only allowed in urban heavy industrial or manufacturing zones.⁴⁰ Moreover, the Coastal Act contains express policy language to preserve agricultural land and ensure the conflict between agricultural and urban land uses are minimized (PRC 30241 and 30242).

6. Conclusion.

The proposed project (even as staff has proposed it be mitigated) cannot be approved because:

- A. It is located within and immediately adjacent to and conflicts with a unique and intense convergence of multiple kinds of hydrologically connected ESHA.
- B. It is located on a very visible hillside immediately adjacent to and visible from the Marconi Cove State Park public access area and includes 1,276 lineal feet of cross contour serpentine switchback roads requiring retaining walls and 15,000+ cubic yards of grading.
- C. The hydrologic impacts of the project on all the water regime reliant ESHA and sensitive species are unknown.
- D. The proposed distillery is not necessary to the agricultural use of the property and is, in any event, totally inappropriate in this remote rural location where its approval would establish a negative precedent for the rural Marin County Coastal Zone.
- E. The applicant should not be allowed to gain development advantage from illegal activities.

³⁸ A critical finding to approve the required Master Plan is that absent the project agricultural use of the property is no longer feasible (§ 22.37.036.b). This finding cannot be made. Staff report page 28, last paragraph, admits that continued agricultural use of the property remains feasible.

³⁹ A brandy distillery is not a principally permitted use. Even if it was a conditionally approvable use (as staff argues) it is still not necessary and therefore cannot be approved under a Master Plan.

⁴⁰ For example, even wineries are disallowed on agricultural property in Coastal Zone Mendocino County (Mendocino LCP § 20.336.035).

- F. The record reflects feasible alternatives and mitigation measures are available that would substantially lessen the adverse impacts the project (even as staff has proposed it be mitigated) may have on the environment and therefore the project cannot be approved.
- G. The project is inconsistent with many provisions of the Marin County LCP or the Coastal Act including, without limitation, Master Plan findings requirements.

Again, we request the Coastal Commission either 1) deny the project; or 2) condition the project to delete the brandy distillery and require the other development (e.g., residence, equipment barn, out building for jam making) to be relocated away from the ESHA, to an alternative site on the 150 acre property which is south of the blue line stream.

Very truly yours,

FENTON & KELLER
A Professional Corporation

Signature on File

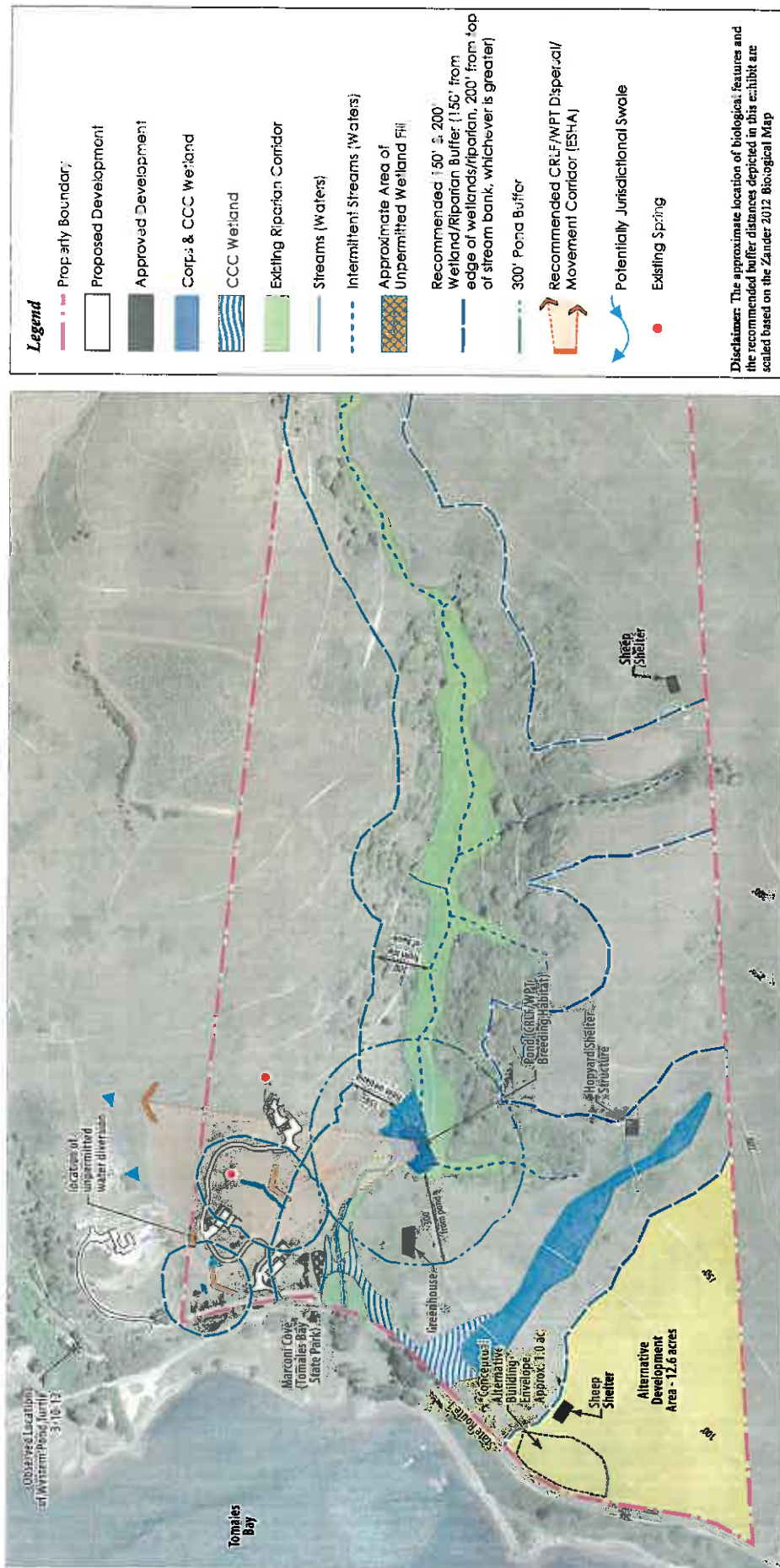
John S. Bridges

JSB:kmc

Enclosures

cc: (all w/encls.)

Charles Lester, Executive Director
Dan Carl, Deputy Director
Hope Schmeltzer, CCC Chief Legal Counsel
Lisa Haage, Chief Code Enforcement Officer
Commissioner Steve Blank (via Mr. Staben)
Commissioner Dayna Bochco (via Mr. Staben)
Commissioner Dr. William A. Burke (via Mr. Staben)
Commissioner Wendy Mitchell (via Mr. Staben)
Commissioner Mary K. Shallenberger (via Mr. Staben)
Commissioner Jana Zimmer (via Mr. Staben)
Commissioner Martha McClure (via Mr. Staben)
Commissioner Steve Kinsey (via Mr. Staben)
Commissioner Carole Groom (via Mr. Staben)
Commissioner Brian Brennan (via Mr. Staben)
Commissioner Dr. Robert Garcia (via Mr. Staben)
Commissioner Esther Sanchez (via Mr. Staben)
Scott Kivel/Lia Lund



Source: Zander 2012, EMC Planning Group 2013

Potential Alternative Development Sites

17990 Shoreline Highway Coastal Development Permit Appeal Project

ATTACHMENT 2

**BILL GOGGIN
LETTER**



Planning for Success.

April 1, 2013

Mr. John Bridges, Esq.
Fenton & Keller
2801 Monterey-Salinas Hwy
Monterey, CA 93940

**Re: Comments to Final Revised Magee Property ESHA Setback Map, A-2-Mar-10-022
(Brader-Magee Project) Coastal Permit Appeal, West Marin County, California**

Dear Mr. Bridges:

At your request, and on behalf of Mr. Scott Kivel and Ms. Lia Lund, the Appellants in an appeal of Local Coastal Program permit application A-2-Mar-10-022, EMC Planning Group has reviewed the Environmentally Sensitive Habitat Area (ESHA) setbacks map prepared by the Applicant for the 150-acre property identified as APN 106-220-20, located at 17990 Shoreline Highway (Highway 1), Marshall, in Marin County.

EMC Planning Group has prepared this letter and the two attached Recommended Environmentally Sensitive Habitat Areas graphics to support our opinion that all ESHA within the proposed development area has not been adequately identified, that the area constitutes especially valuable habitat, and that the ESHA buffer widths proposed by the Applicant with input from California Coastal Commission staff should be expanded. The opinions are based on our review of the most recent ESHA/Plant Communities maps (included in the staff report as Figures 1 and 2 in Exhibit E) prepared by the Applicant's biologist, the Coastal Commission staff report Th 9c dated March 22, 2013, technical data and information prepared by the Applicant and EMC Planning Group, sensitive habitat conditions and features within the proposed development area, topography of the property including the proposed development area north of the blue-line creek, configuration and layout of the proposed development, the proximity of development to sensitive habitat features, and the presence of jurisdictional waters and Tomales Bay.

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Special Status Species Dispersal/Movement Corridor ESHA

We believe that potential ESHA, specifically, California red-legged frog (*Rana draytonii*) (CRLF) and western pond turtle (*Emys marmorata*) (WPT) upland movement corridor habitat exists within the proposed development area that to date has not been defined by the Applicant or in the staff report. The on-site population of CRLF and WPT could reasonably be expected to use available upland habitat located within the proposed development area as a dispersal/movement corridor based on its location adjacent to known breeding habitat and riparian habitat, which also serves as dispersal habitat. The presence of defined wetlands within the upland area to which CRLF could also be attracted suggests that the intervening upland area could be used for movement, as does the presence of off-site wetlands and streams located to the north of the Applicant's property.

The United States Fish and Wildlife Service (USFWS) CRLF Critical Habitat Final Rule (Federal Register 2010) cites CRLF experts who found that:

Riparian and upland habitats adjacent to aquatic areas used by CRLF are essential in maintaining frog populations, and for protecting the appropriate hydrological, physical, and water quality conditions of the aquatic area. Riparian habitat includes vegetation that grows along banks and in the floodplains of streams and adjacent to ponds and that is dependent on the bordering water source for survival. Adjacent uplands are marked by vegetation that is not dependent on a nearby supply of surface water. The California red-legged frog uses both riparian and upland habitats for foraging, shelter, cover, and non-dispersal movement."

The USFWS *Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog* (August 2005) contains the following descriptions of non-breeding habitats that apply to this situation:

Upland Habitat: California red-legged frogs are frequently encountered in open grasslands occupying seeps and springs. Such bodies may not be suitable for breeding but may function as foraging habitat or refugia for dispersing frogs. During periods of wet weather, starting with the first rains of fall, some individuals make overland excursions through upland habitats.

Movement Habitat: California red-legged frogs may move up to 3 kilometers (1.88 miles) up or down drainages and are known to wander throughout riparian woodlands up to several dozen meters from the water. Dispersing frogs have been recorded to cover distances from 0.40 kilometer (0.25 mile) to more than 3.2 kilometers (2 miles) without apparent regard to topography, vegetation type, or riparian corridors.

California red-legged frogs have been observed to make long-distance movements that are straight-line, point to point migrations rather than using corridors for moving in between habitats. Dispersal distances are considered to be dependent on habitat availability and environmental conditions. On rainy nights California red-legged frogs may roam away from aquatic sites as much as 1.6 kilometers (1 mile).

The USFWS indicates that “dispersal of individual CRLF plays an important role in meta-population dynamics and therefore the persistence of populations.” (USFWS 2002).

To date, there is no conclusive information in the record to adequately demonstrate that CRLF and/or WPT are not using suitable upland grassland areas within the proposed development area and outside of the Applicant’s proposed 100- and 150-foot riparian and 300-foot CRLF breeding habitat (pond) setbacks as disposal/movement corridor habitat. Within the northwestern portion of the site there are no existing barriers to CRLF dispersal or movement from occupied habitats into the adjacent upland area. Based on our visit to the site in May 2011 and a detailed review of satellite imagery, these upland areas can provide suitable habitat that could be occupied by CRLF and the upland area is well within the distance limits known to be traveled by this species. Either additional protocol surveys are needed to document that CRLF do not disperse into these upland areas or it must be assumed the upland areas provide suitable CRLF movement/dispersal habitat that constitutes ESHA.

Note that the January 10, 2013 letter submitted to Coastal staff by the California Department of Fish and Wildlife (CDFW) contains a series of measures to protect CRLF during the construction process because, “California red-legged frogs, a California Species of Special Concern, have been documented to use the area.” In the letter, the CDFW recognized that the proposed project includes proposed ESHA buffers as have been previously described, yet protective measures are still recommended. At page 48 of the March 22, 2013 staff report, staff notes that the USFWS was contacted about the project, but as of February 2012, the

USFWS had not heard of or worked on the project. The USFWS noted that if the project would result in take of CRLF, then the Applicant would need to pursue incidental take coverage under Section 10 of the Endangered Species Act. Staff contacted the USFWS again in September 2012, but received no response. Given the potential that CRLF are using suitable upland grassland areas within the proposed development area and outside of the Applicant's proposed 100- and 150-foot riparian and 300-foot CRLF breeding habitat (pond) setbacks as disposal/movement corridor habitat, the proposed project could result in take of CRLF. Further consultation with USFWS is required, as may be the need for incidental take coverage.

Movement corridors that are considered ESHA are protected through Local Coastal Program policies, including Natural Resources Policy 5b which states:

Other sensitive habitats include habitats of rare or endangered-species and unique plant communities. Development in such areas may only be permitted when it depends upon the resources of the habitat area. Development adjacent to such areas shall be set back a sufficient distance to minimize impacts on the habitat area. Public access to sensitive habitat areas, including the timing, intensity, and location of such access, shall be controlled to minimize disturbance to wildlife. Fences, roads, and structures which significantly inhibit wildlife movement, especially access to water, shall be avoided.

Buildings, especially the brandy distillery, the access road, and other improvements could represent barriers to CRLF and WPT movement from the pond and riparian areas into upland areas, potentially causing degradation of habitat functions and/or values and increasing the potential for incidental take from human activities. To better protect this special-status species ESHA habitat and further substantially lessen potential for take, upland areas within the proposed development area should be buffered. Buffering would ensure that an uninterrupted connection from the defined breeding and riparian dispersal habitat features to the upland and seep wetland habitats and to points north of the proposed development area is maintained and protected. The attached Recommended Environmentally Sensitive Habitat Areas graphic shows a recommended 300-foot wide ESHA movement corridor buffer that includes portions of the riparian, pond breeding habitat, and upland wetland ESHA setbacks currently proposed by the Applicant and CCC staff, as well as the areas located between the proposed setbacks.

Development Area Contains “Especially Valuable” Habitat

The Coastal Act (Section 30240) provides that ESHA shall be protected against *any significant disruption of habitat values*, and only uses dependent on those resources shall be allowed in those areas. Section 30107.5 of the Act states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or *especially valuable* because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. (emphasis added)

Further, the Coastal Act establishes that certain habitats are *especially valuable* due to their role in: the local ecosystem; supporting rare, threatened, or endangered species; providing important breeding, feeding or movement grounds for a particular stage of a species life history cycle; providing corridors that link sensitive habitats; protecting water quality; and other reasons.

The complex, interrelated ESHA within the proposed development area as illustrated in the attached Recommended Environmentally Sensitive Habitat Areas graphic is an indication that this area is *especially valuable* due to the concentration of important biotic resources located there. Protected riparian habitat, wetland habitat, two upland wetland habitats, breeding and upland habitat for federal and state listed special status species, and a potentially jurisdictional seasonally charged swale all converge and overlap within the same small portion of the Applicant’s property. This is the same area in which the Applicant proposes to concentrate development and human activity.

As one example of a potentially significant project impact resulting from placing development within an especially valuable habitat area, only one access road between the north and south sides of the blue-line stream is available. The access road traverses across the top of the earthen dam that retains the on-site pond. The pond is known breeding habitat for CRLF and WPT and represents especially valuable habitat. This road is infrequently used under existing conditions. Use of this road will increase if the project is implemented as proposed. Increased daily and regular vehicle use of this access road will degrade ESHA and increase the potential for take of protected species. The staff report at page 14 recognizes that the pond is to be protected with a 300-foot buffer, but simultaneously would allow the applicant to maintain and repair the earthen dam road to accommodate its expanded use. As another example, siting of the proposed brandy distillery at the edge of the proposed 150-foot

blue-line stream ESHA buffer would introduce significant human activity within an area that could be used for CRLF and WPT dispersal (thereby significantly increasing potential for take), and would introduce a potential source of surface water contamination that could indirectly degrade water quality within the blue-line stream and protected Tomales Bay.

As you know, the Coastal Act allows only for resource dependent uses within ESHAs and requires all development within or adjacent to an ESHA to be sited to prevent significant disruption to the ESHA. If an ESHA is identified, it must be avoided unless the proposed development is dependent on the resource. The Coastal Act does not allow avoidable impacts to ESHAs, even with mitigation. Clearly, the development proposed on the north side of the blue-line stream is not resource dependent and even with the Applicant's currently proposed ESHA buffers, the development area directly overlaps with suitable upland CRLF and WPT dispersal/movement corridor habitat that has not yet been described by the Applicant or staff, nor appropriately defined as ESHA.

Expanded ESHA Buffers

Notwithstanding the fact that potential upland CRLF dispersal/movement habitat has not yet been fully described by the Applicant or staff, given the especially valuable and complex ESHAs located within the proposed development area, more than minimum protection of these ESHA resources is warranted. This is especially true in light of the fact that direct and indirect degradation of ESHA habitat and potential take of protected species from development and human activity within the development area would be likely if the project were to be implemented as proposed. For these reasons, we believe that the width of the ESHA buffers proposed by the Applicant and staff should be increased. The proposed 100-foot wide riparian buffer should be increased to 150 feet as measured from the riparian boundary (including the outside edge of the riparian area that was previously filled as described in our prior submissions). The proposed 150-foot wide buffer from the blue-line stream top-of-bank should be increased to 200 feet to provide increased species and water quality protection. Additionally, the proposed 100-foot buffers around the upland wetlands should be increased to 150 feet. These expanded buffers are depicted on the attached Recommended Environmentally Sensitive Habitat Areas graphic.

To properly ensure the protection of known special-status species and unique, *especially valuable* ESHA habitat, we recommend that either: 1) the configuration of proposed development on the north side of the blue-line stream be modified to ensure that it is located entirely outside of the expanded buffers and the suitable upland CRLF and WPT

*John Bridges
Fenton and Keller
April 1, 2013, Page 7*

dispersal/movement corridor habitat, or 2) all development proposed on the north side of the blue-line stream be relocated to a different portion of the property where no ESHA constraints are known to exist.

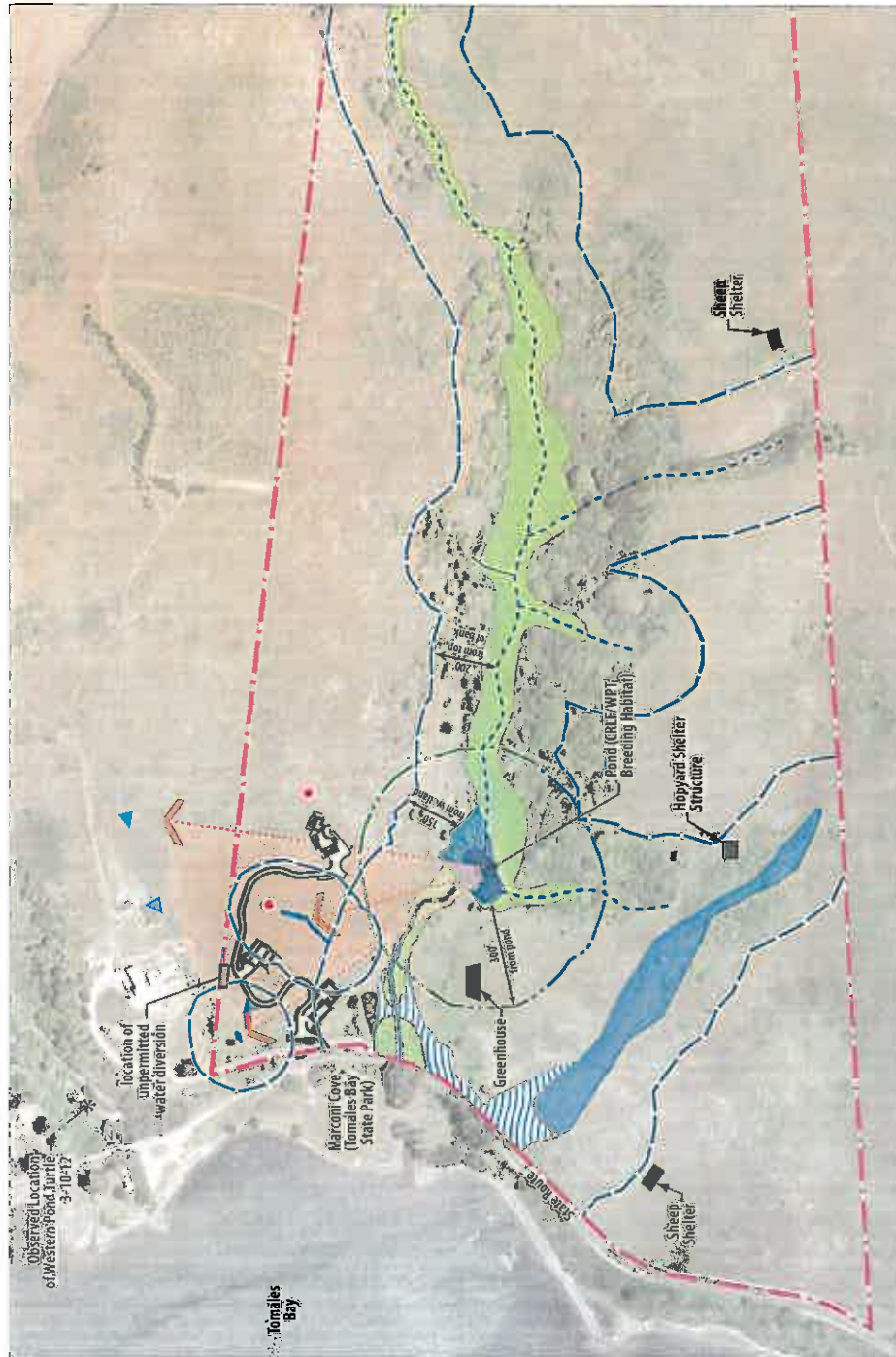
Sincerely,

A handwritten signature in blue ink, appearing to read "Will F. Goggin".

Bill Goggin
Senior Biologist
EMC Planning Group

Attachments:

Recommended Environmentally Sensitive Habitat Areas Map (large scale)
Recommended Environmentally Sensitive Habitat Areas Map (small scale)



Legend

- Property Boundary
- Proposed Development
- Approved Development
- Corps & CCC Wetland
- CCC Wetland
- Existing Riparian Corridor
- Streams (Waters)
- Intermittent Streams (Waters)
- Approximate Area of Unpermitted Wetland Fill
- Recommended Wetland/Riparian Buffer
- 300' Pond Buffer
- Recommended CRLE/WPT Dispersal/Movement Corridor (ESHA)
- Potentially Jurisdictional Swale
- Existing Spring

Disclaimer: The approximate location of biological features and the recommended buffer distances depicted in this exhibit are scaled based on the Zander 2012 Biological Map

Source: Zander 2012, EMC Planning Group 2013

Recommended Environmentally Sensitive Habitat Areas

17990 Shoreline Highway Coastal Development Permit Appeal Project



Legend

- Property Boundary
- Proposed Development
- Corps & CCC Wetland
- CCC Wetland
- Existing Riparian Corridor
- Streams (Waters)
- Intermittent Streams (Waters)
- Approximate Area of Unpermitted Wetland Fill
- Recommended Wetland/Riparian Buffer
- 300' Pond Buffer
- Recommended CRF/WPT Dispersal/Movement Corridor (ESHA)
- Potentially Jurisdictional Swale
- Existing Spring

Disclaimer: The approximate location of biological features and the recommended buffer distances depicted in this exhibit are scaled based on the Zander 2012 Biological Map

Source: Zander 2012, EMC Planning Group 2013



Recommended Environmentally Sensitive Habitat Areas

17990 Shoreline Highway Coastal Development Permit Appeal Project



ATTACHMENT 2

**EMC PLANNING
REPORT**



Planning for Success.

REVIEW OF COASTAL COMMISSION STAFF REPORT TH 9C

MAGEE DISTILLERY PROJECT

(A-2-MAR-10-022)



PREPARED FOR

John Bridges, Esq.

April 1, 2013

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REVIEW OF STAFF REPORT TH 9C

MAGEE DISTILLERY PROJECT

(A-2-MAR-10-022)

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April 1, 2013



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Appendix A	Potential Alternative Development Sites Map
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EXECUTIVE SUMMARY

This document contains comments on the functional environmental review conducted for the Magee Project (Appeal No. A-2-MAR-10-022) presented in staff report Th 9c, dated March 22, 2012. California Coastal Commission (CCC) staff must conduct an environmental analysis that is functionally equivalent to an environmental impact report. The analysis in the staff report fails to meet the standard of review necessary to adequately inform the CCC of: 1) significant impacts and mitigation measures to substantially lessen or avoid impacts, 2) LCP policy inconsistencies, and 3) alternatives that substantially lessen or avoid environmental impacts.

Inadequate Evaluation of Significant Impacts

The staff report evaluation of key project impacts is incomplete and the true magnitude of impacts is understated, especially for visual resource, biological resource, public service, and traffic impacts. Comments on these issues are found starting with Section III.2 on page 13.

The visual resource analysis is based on the Applicant's outdated visual simulation that does not reflect the currently project (e.g. 1,276-foot access road, cut and fill, retaining walls, etc.). The text description of visual effects fails to disclose the full extent and significance of impacts.

Impacts on ESHA are underrepresented. The full extent of federal and state listed special status species potential habitat ESHA is not identified, nor is the fact that the proposed development area is within an especially valuable, complex ESHA system that includes wetlands, riparian habitat, special status species habitat, and a blue line stream. Protection with more than minimally required buffers is warranted. These and other omissions lead to an incomplete representation of potential direct and indirect project impacts on biological resources/ESHA.

Groundwater and surface water quality impacts (and indirectly, ESHA impacts) and fire hazards are inadequately addressed. Surface and groundwater quality could be adversely impacted by failure of a wastewater disposal system that the staff report acknowledges may require redesign based on uncertainty regarding soils and groundwater conditions. The system must be designed to dispose of potentially hazardous and high strength wastewater from the proposed distillery. Potential indirect impacts of increased groundwater withdrawal on ESHA have not been adequately defined or characterized. The distillery has elevated potential fire hazard; fire service response times exceed recommended standards, and use of fire suppression foams for alcohol based fires could contaminate surface water quality within an ESHA.

Cumulative traffic impacts are not addressed due to a faulty assumption about the status of State Park's adjacent Marconi Cove project (public boat launches, day use facilities, camping, etc.)

Marin County LCP Policy Inconsistencies

Because analysis of impacts is incomplete, many of the presumptions of project consistency with Marin County LCP policies are premature and/or not well founded. Comments regarding LCP policy consistency issues are provided within the discussion of each environmental topic starting with Section III.2 on page 13, and summarized in Section IV.2 starting on page 36.

The crux issue is the inability to demonstrate project consistency with key LCP Agricultural Resources policies. Agricultural Resources policies 4 and 5 describe findings required to approve a Master Plan for development within the APZ zone. The mandatory findings cannot be made for Policy 4 that adequate water supply or sewage disposal services are available, necessary services are available (e.g. fire protection), or that no significant impacts on environmental quality or natural habitats or scenic resources will occur. The mandatory findings for Policy 5 cannot be made that development is clustered to maximize the amount of land in agricultural production and to minimize impacts on scenic resources and ESHA. For similar reasons, project consistency with LCP New Development and Land Use Policies 3, 6, and 8f(3); Natural Resources Policy 5; and Public Services Policies 1, 2, and 3 is in question; as is consistency with Marin County Code sections 22.57.024I, 22.57.036I, and 22.57.031I.

Inadequate Evaluation of Alternatives

Evaluation of alternatives that are capable of substantially lessening or avoiding the impacts of a proposed project is a fundamental component of a functionally equivalent environmental analysis and is mandated in Public Resources Code section 21080.5 As described in Section III., the staff report largely disregards the requirement to meaningfully identify and evaluate project alternatives; the topic is cursorily addressed in two to three paragraphs. The proposed project is being “forced” into an area of the property that is highly constrained by topography, visibility, the presence of diverse types of ESHA and related setbacks, and location immediately across Highway 1 from the planned Marconi Cove public recreation area. Many significant impacts of the project would be substantially lessened or avoided and many LCP policy inconsistencies would be resolved by placing development in an alternative location on the south side of the blue line stream. A conceptual alternative site is shown in [Appendix A](#). Comments regarding the staff report inadequacies on this topic are found in Section III on page 5. Benefits of this alternative are described throughout Section III.2, and summarized in Section IV on page 34.

I. INTRODUCTION

The purpose of this letter is to: 1) identify potentially significant environmental impacts which have been omitted or inadequately addressed in the staff report; 2) where such impacts are identified, recommend feasible mitigation measures whose implementation would substantially lessen adverse effects of the project (as it is proposed to be mitigated in the staff report) may have on the environment; 3) describe Local Coastal Program (LCP) policies with which the proposed project remains inconsistent; and 4) reiterate and further define that a feasible project alternative exists whose implementation would: a) substantially lessen adverse effects that the project (as it is proposed to be mitigated in the staff report) may have on the environment; and b) either eliminate inconsistencies of the proposed project with LCP policies/Marin County Code regulations or improve consistency of the proposed project with the policies and regulations. A summary of conclusions regarding the feasibility of the alternative and its superior ability to lessen impacts of the proposed project is included at the end of this letter.

This review is a follow up to our earlier evaluation of potential environmental impacts associated with the proposed project and our evaluation of project consistency with the LCP contained in the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project* (Draft IS) dated September 6, 2012. The Draft IS can be found on pages 103 – 175 of Appendix I in the CCC staff report. The Draft IS was prepared to: 1) identify potential project impacts that Marin County failed to consider during its permit deliberation process and 2) to assist CCC Staff with its environmental review process for the proposed project pursuant to its obligations under Public Resources Code (PRC) Section 21080.5; and 3) define project inconsistencies with LCP policies. There is no evidence in the staff report that CCC staff explicitly considered the Draft IS content as part of its functionally equivalent environmental analysis process.

The fact that the environmental analysis in the staff report is inadequate is not surprising in light of CCC staff's recommendation at the September 15, 2010 substantial issue hearing that the proposed project does not raise substantial issues. This recommendation was made even though the proposed project clearly has significant environmental impacts that rendered the County's exemption of the project from CEQA review clearly in error.

II. COASTAL COMMISSION ENVIRONMENTAL REVIEW REQUIREMENTS

The Coastal Commission's project review process qualifies as a certified regulatory program under CEQA as described in CCR 15250:

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible.

As context for the standard of review required in a functionally equivalent environmental analysis, the following quotes are excerpted from PRC 21080.5:

A project cannot be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect the project may have on the environment (21080.5.d.2.A).

The plan or other written documentation required by the regulatory program does both of the following: (A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity (21080.5.d.3.A).

The CCC is required to conduct an environmental review process that is functional equivalent to an EIR. The environmental analysis must clearly identify mitigation measures for all project impacts and include a discussion of alternatives to the proposed project.

III. INADEQUATE ANALYSIS OF IMPACTS, FEASIBLE MITIGATION MEASURES AND FEASIBLE ALTERNATIVES

A primary inadequacy of the staff report is in its failure to identify and meaningfully evaluate feasible alternatives to the proposed project that would substantially lessen its significant, adverse environmental impacts. Other inadequacies exist as do omissions. This portion of our comments highlight shortcomings of the functionally equivalent environmental analysis by identifying where applicable: 1) significant impacts of the proposed project that have not been identified or acknowledged; 2) feasible alternatives and/or mitigation actions that should be implemented to substantially lessen the significance of identified impacts; 3) remaining project inconsistencies with LCP policies and opportunities to improve project consistency with LCP policies with implementation of a proposed, feasible project alternative.

Staff's environmental analysis makes no reference to the significance level of project impacts. It is presumed that modifications to the proposed project described in the staff report have been made in an effort to reduce identified adverse impacts or render them benign in a similar manner as CEQA requires that the significant impacts of a proposed project must be avoided or reduced to a less than significant level where feasible. No discussion can be found regarding whether other project modifications or other mitigations were considered that could further lessen or even eliminate adverse impacts, but were rejected as being infeasible for some reason.

CCR Section 15364 defines "feasible" as:

Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors

1. INADEQUATE DISCUSSION OF PROJECT ALTERNATIVES

a) *Constraints/Impacts of Development in the Area North of the Blue-Line Stream – the Driver for Considering Project Alternatives*

Due to myriad environmental constraints associated with the proposed project site, especially constraints within the proposed development area north of the blue-line stream, pursuant to

direction from CCC staff, the Applicant was required to make changes to the original project description that was considered and approved by Marin County. Despite staff's finding that the appeal represented no substantial issues, the changes have been recommended to address significant adverse impacts of the proposed project that have been raised by the Appellant.

In short, developable areas within the proposed building envelope north of the stream are severely constrained, first and foremost by the complex, interrelated and overlapping ESHA areas located within it. LCP policies and Coastal Act regulations require protective buffers from ESHA. A letter prepared by Bill Goggin, EMC Planning Group's Senior Biologist, dated April 1, 2013 and entitled, "Comments to Final Revised Magee Property ESHA Setback Map, A-2-Mar-10-022 (Brader-Magee Project) Coastal Permit Appeal, West Marin County, California" includes a summary of the complex ESHA habitats that would be adversely affected by the proposed project and describes why such ESHA is especially valuable. The letter also includes recommendations for new and expanded ESHA buffers outside of which proposed development should be located to avoid significant impacts on ESHA and special-status species.

Topographic constraints also substantially reduce the availability of developable areas within the proposed building envelope and elsewhere on the north side of the on-site blue-line stream. Taken together, ESHA and topographic constraints have "forced" the farmhouse, equipment barn, distillery, and access road to the isolated, discontinuous locations in which they are proposed. There is little to no more flexibility in siting proposed structures or roads on the north side of the stream. This fact is illustrated in Figure 2, Proposed Development in the Northwest Corner of the Magee Property in Relation to Natural Resources, shown on page 126 of the staff report. Consequently, there is little to no further potential to substantially reduce the significance of project impacts by further adjusting the footprints of proposed improvements either individually, or as a whole within the area north of the stream. This fact has resulted in a project design that forces the Applicant to employ complex solutions to addressing environmental impacts, some of which have significant potential to create significant secondary impacts. Examples of such are as follows:

- To avoid newly defined ESHA (wetland), the project access road was relocated, but is now nearly 500 feet longer and more visible from Highway 1 than was the originally designed access road; the significance of a visual impact is increased in an effort to mitigate for a different constraint. Road visibility is also increased because the new road must now pass through an area of greater topographical relief, necessitating substantial cuts and fills and retaining walls (a total of nearly 900 linear feet of retaining walls for the entire project if average wall height is assumed to be five feet);
- Due to topographic constraints, ESHA constraints, and constrained soils/groundwater conditions, the proposed septic disposal leachfield must be located nearly 1,300 feet uphill of the nearest building (farmhouse) and approximately 1,600 feet uphill of the farthest

building (brandy distillery) at an elevation that is approximately 250 feet higher than the average elevation of the three buildings it is designed to serve. Consequently, effluent must be pumped uphill and the leachfield system specially designed and constantly monitored to detect potential for failure (with concomitant potential for causing surface and groundwater contamination as well as degradation of ESHA quality). System maintenance requirements are much higher than for a typical passive, gravity fed system and the system is likely much more likely to fail due to human and or mechanical error;

- A distillery is planned which produces hazardous/high strength wastewater and solids that require a complex pre-treatment system for which regular monitoring and maintenance are required to avoid failure and concomitant surface water quality contamination and contamination of wetland and riparian ESHA. The distillery is located at the edge of the buffer from such ESHA and was only moved away from highly sensitive biological resource habitat because more rigorous evaluation of biological resource constraints was required of the Applicant;
- The equipment barn and 25-foot tall residence will be highly visible from locations on Highway 1 and more distant viewpoint; they could not be further screened from view because no siting options existed outside of ESHA or steep slopes that would further lessen visual impacts. Partial mitigation is to require structures to be set into existing slopes to reduce their apparent scale, with the result that cut and fill requirements increase as do needs for visually unappealing retaining walls;
- Because structures are forced into a limited number of small, buildable areas that are separated from each other, project structures are distributed across a much larger area than would be necessary within a topographically and ESHA unconstrained or minimally constrained site. This increases development visibility, spreads activities into a broader area, and reduces area available for continued agricultural use. Greater direct and indirect potential impacts on biological resources, including special-status species such as CRLF that use upland habitat, are likely; and
- Though not adequately considered in the staff report, much of the proposed development area is within suitable upland habitat for the CRLF that should also be considered ESHA. This fact would place nearly most of the proposed development located north of the blue-line stream directly within ESHA, which is in direct conflict with the Coastal Act and LCP policies.

In light of the many complexities, constraints, and potential direct and indirect impacts of developing the proposed project in its planned location, identification of alternatives to the proposed project should be a basic component of the staff report analysis, but is not.

b) Legal Standards for Evaluation of Project Alternatives

PRC Section 21080.5d.2.A requires that the written staff report analysis must be functionally equivalent to an EIR and specifies that a project cannot be adopted as proposed if there are feasible alternatives that would substantially lessen a significant adverse effect the project may have on the environment.

Standards for adequate disclosure and discussion of project alternatives in an EIR are specified in CCR Section 15126.6. The standards should serve as a logical guide to the functionally equivalent analysis of alternatives contained in the staff report. Standards for an alternatives analysis in CCR Section 15126.6 include the following:

- An EIR must describe a range of reasonable alternatives, or to the location of the project which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.
- ...it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.
- The EIR should briefly describe the rationale for selecting the alternatives to be discussed and any alternatives considered by the lead agency but were rejected as infeasible and explain the reasons underlying the determination;
- The EIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.
- Factors to be considered when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency (or LCP consistency in this case) other plans or regulatory limitations, jurisdictional boundaries, and whether the Applicant can reasonably control or have access to the alternative site.
- Regarding alternative locations, key questions to be asked is whether any of the significant effects would be avoided or substantially lessened by putting the project in another location. Only locations which achieve this function should be considered. If the lead agency concludes that there are no feasible alternative locations, it must disclose the reasons for this conclusion.

A functionally equivalent methodology for analysis of project alternatives would: review/list the significant impacts of the proposed project (whether or not they are mitigated to less than significant by mitigation) with a focus on unavoidable impacts, identify potential feasible alternatives that could reduce or avoid one or more of the significant effects, then proceed to

evaluate in detail the comparative merits of the alternatives in substantially reducing the significant effects in comparison to the proposed project and to each other. Definition of an environmentally superior alternative would be the logical conclusion of the analysis.

A reasonable range of feasible alternatives which are standard in the professional practice of CEQA review is discussed in the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project*. However, CCC staff apparently elected not to use this information to meaningfully inform its analysis of feasible project alternatives. The alternatives included in the Draft IS consisted of: 1) project redesign; and 2) alternative development site. The alternatives analysis in the Draft IS would now and is different due to changes in the project description that have been made since the Draft IS was submitted. Those changes have been made in large part due to new information about the highly biologically sensitive nature of the site has come to light since the Draft IS was prepared in September of 2011. The new information includes presence of special status species such as breeding CRLF, western pond turtle (WPT), Marin Checker Lily, coastal terrace prairie grass, and presence of previously unidentified wetlands. With new project description information now available, the list of significant or potentially significant impacts of the proposed project as reported in the Draft IS would require modification. Nevertheless, the CCC is encouraged to review the Draft IS starting on page 72 of the Draft IS for a basic, but meaningful alternatives analysis, and to review Figure 1 on page 82 of the Draft EIR for reference to an alternative project site area. Also refer to Appendix A of this letter for a map of a conceptual alternative project site that is discussed throughout this letter.

c) *Staff Report Largely Disregards Obligation to Meaningfully Identify and Evaluate Project Alternatives*

The staff report substantially fails to identify and analyze project alternatives in a manner that meets the basic requirements of PRC 21080.5. The following is the sum total of the cursory review of project alternatives identified in the staff report:

The Appellants and others opposed to the current project development plan have suggested that the development currently proposed for the northwest corner might be better suited to the southwest corner of the property, further away from the riparian and wetland habitats in the northwest corner and further away from the Appellants' property, which is directly adjacent to this one. However, placing the three primary structures and the access driveway in the southwest corner would require construction of a new driveway intersection off of Highway 1, would defeat the goal of clustering and locating new development close to the existing driveway and the development on the adjacent northern property and the likely future development at Marconi Cove, and would

potentially be more visible to travelers on Highway 1; and would be inconsistent with the development and agricultural resource policies of the LUP and the development and design standards of the LCP (staff report pg. 34).

The Commission finds that as modified and conditioned by this permit, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA (staff report pg. 68)

Staff's summary dismissal of an alternative due to its perceived potential adverse effects is unsubstantiated for several reasons:

1. Construction of a new driveway on Highway 1 does not, in and of itself, represent a significant impact. No analysis of the effects of constructing access to Highway 1 has been provided by staff. Construction of a new driveway would not be inconsistent with existing LCP policies;
2. As described below, development of the alternative site would improve clustering by grouping proposed development in an envelope that could be up to 90 percent smaller than the proposed development area north of the blue-line stream. There are no existing LCP policies which require that proposed development be clustered close to an existing driveway or to existing or proposed development; and
3. Staff has provided no evidence that development within the alternative site area would be more visible than the proposed project.

The unsubstantiated dismissal of the alternative site results from the fact that the staff report fails to conduct a meaningful alternatives analysis consistent with basic accepted methodology and standards for such an analysis, which include:

- Identify a reasonable range of feasible alternatives;
- Include sufficient information about alternatives to allow meaningful evaluation and analysis;
- Identify the significant environmental impacts of the proposed project that would be avoided or substantially lessened with implementation of the alternatives;
- Provide substantial evidence for conclusions regarding significant impacts of the alternatives; and

- Meaningfully compare project alternatives to the proposed project to enable informed understanding of the comparative merits of each relative to the proposed project.

d) Feasible Alternative Project Site Location

At a minimum, the staff report must identify and fully evaluate a project alternative consisting of an alternative site unless there is substantial evidence provided which demonstrates that an alternative site is infeasible. The staff report contains no such information regarding infeasibility of an alternative site.

As described in the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project*, an obvious alternative site development area is available on the south side of the blue-line stream. This area is shown in the graphic entitled “Potential Alternative Development Sites” prepared by EMC Planning Group and included in [Appendix A](#). The total area is over 12 acres in size. However, within this area, several options exist for defining a much smaller alternative site development envelope location that would render this alternative more consistent with numerous LCP policies and Marin County Code regulations than the proposed project. The Potential Alternative Development Sites graphic contained in [Appendix A](#) shows the larger 12 acre area and one conceptual option for the location of a much smaller alternative development area site within this broader envelope.

The staff report at page 30 assumes that the footprint of acreage utilized by the proposed project is simply the total square-footage of the project structure footprints, rather than the broader development area in which they are located. Use of this broader area for structures that are not contiguous and are connected with a long, circuitous access road largely precludes other agricultural use of this area for activities such as grazing and spreads development over a larger area, with attendant increase in visual intrusion. The development area in which the proposed uses are set and in which agricultural uses are essentially precluded is approximately nine acres (about six percent of the gross acreage of the property). Figure 3, Agricultural Conservation Easement Area, shown on page 697 of the staff report, verifies that this area is not proposed for or being committed to agricultural use.

The alternative project site building envelope would be approximately one acre (less than one percent of the gross acreage of the property). One acre of the entire 150 acre site would be unavailable for continued agricultural use. Compared to the approximately nine acres that would be unavailable for agricultural use as part of the proposed project, the alternative results in loss of approximately eight fewer acres of agricultural production potential, a reduction of nearly 90 percent relative to the proposed project. The alternative project site building envelope has been sized to accommodate the Applicant’s proposed equipment barn and farmhouse, and to accommodate ancillary uses as needed, and/or accommodate the total square footage of the farmhouse at only one story in height versus three levels as currently proposed.

There is no evidence in the record or otherwise which demonstrates that the recommended alternative project site is economically, environmentally, socially, or technologically infeasible. General characteristics of the alternative project site which render it a feasible alternative to the proposed project include, but may not be limited to:

- Site is within the Applicant's property and is completely within the Applicant's control;
- There is no known available evidence in the record to demonstrate that development of the alternative site is economically prohibitive. In fact, reduced and/or eliminated access road length, cut and fill requirements, foundation design/installation requirements, retaining wall construction, and highly engineered septic disposal system requirements costs could be substantially lessened.
- Substantial evidence exists to support the statement that the alternative site has substantial beneficial environmental effects that include:
 - The site has minimal topographic relief with an average elevation of approximately 56 feet. Substantial benefits for reducing a range of project impacts resulting from topographic constraints on north side of blue-line stream, including visual impacts (structure visibility, reduced access road length and visibility, little to no retaining walls) and septic disposal/water quality impacts;
 - The site is located completely outside known ESHA sensitive habitat/special status species habitat setbacks and outside of suitable upland habitat for special status CRLF;
 - Substantially increased potential for clustering development within a single development footprint that is approximately 90 percent smaller than for the proposed project;
 - Minimal access to north side of blue-line stream is required, as the primary agricultural activities are located on the south side of the stream, as would be the project components that generate vehicle trip activity. Substantially lessened potential for take of CRLF or WPT due to substantially reduced frequency of vehicle trips required to cross the stream;
 - Site is directly adjacent to Highway 1. Access road length is absolutely minimized. A simple encroachment permit would required from Caltrans; and
 - The site has excellent sight distance for access onto and off of Highway 1.

For each relevant environmental topic that must be addressed in a functional equivalent environmental analysis, this comment letter identifies the advantage of the alternative project

site in terms of its potential to avoid or substantially reduce adverse impacts of the proposed project and/or to improve its consistency with LCP policies relative to the proposed project. A summary of this information is included in the “Alternative Project Site – Summary of Reduced Impacts and Improved LCP Policy Consistency” section located at the end of this comment letter. This information is critical to assuring that a fundamental component of an adequate alternatives analysis pursuant to CCR Section 15126.6 is addressed.

2. INADEQUATE DISCUSSION OF PROJECT IMPACTS, FEASIBLE MITIGATIONS, ALTERNATIVES AND LCP POLICY CONSISTENCY

This section of comments focuses on the adequacy of the staff report analysis of impacts, mitigation measures, and LCP policy consistency. Because the staff report contains no meaningful discussion of alternatives, the potential for development of the proposed alternative site discussed above which would avoid or substantially lessen significant environmental impacts of the proposed project and improve project consistency with LCP policies and Marin County standards is also discussed.

The primary basis for the following comments is information contained in the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project* and new information in the staff report. Where project impacts, mitigations, and/or policy consistency issues raised in the Draft IS have been addressed in the staff report, no further comments are provided unless new information in the staff report or new information generated by EMC Planning Group raises further substantial issues regarding project impacts, mitigations, and/or policy consistency issues.

a) ***Aesthetics/Visual Resources***

1) **Impacts not Adequately Addressed or Disclosed**

Modeling and disclosure of potential visual resource impacts. As far as is known, the Applicant has not complied with the standard County Zoning Code staking requirement; appropriate opportunity for the public to evaluate visibility of proposed structures has therefore not been afforded. The Applicant’s original visual analysis has not been updated to reflect the currently proposed project (e.g. relocated access road with accompanying cuts, fills, and retaining walls) and the text-based analysis provided in the staff report is insufficient to enable a reader to understand the true visual impacts of the revised project. Further, cumulative visual

impacts that consider the contribution of the proposed project and the proposed Marconi Cove recreation project have not been addressed. As a result, visual impacts have not been adequately evaluated.

Impacts of new access road. As stated on page 62 of the staff report:

The revised driveway route to the equipment barn and farmhouse now avoids the riparian corridor, wetlands, and their required setbacks by curving up the northwest hillside between the wetland buffer areas. While this route will be more visible from Highway 1 than the original alignment, it is necessary in order to avoid sensitive habitats and setbacks while still clustering the project buildings in the northwest corner of the property.

CCC staff acknowledges that due to the highly constrained nature of the proposed development area, the significance of a visual impact has intensified as a result of making design changes in an attempt to reduce ESHA impacts. The staff report does not identify the fact that the new road route will also increase the intensity of visual impacts by requiring substantially more grading, cutting and filling, and installation of retaining walls. This increased impact is dismissed and deemed acceptable because it was considered “necessary” to avoid a different significant impact on ESHA. The new road would not be necessary at the feasible alternative site.

The new access road is approximately 1,276 lineal feet in length which is 500 feet longer than the previously proposed access road. Yet the increased impacts of the change are not evaluated per se.

2) Recommended New Mitigation

Mitigation to substantially lessen visual impacts. The Applicant in collaboration with CCC staff has made an effort to reduce the visual impacts of new structures through typical approaches such as exterior treatment, landscaping, and architectural design. However, a fundamental mitigation/redesign action that would substantially reduce the visual impacts of the proposed farmhouse has not been considered – a limit on the height of the farmhouse structure. To avoid or reduce visual impacts, the following mitigation should be required:

- VIS-1. To substantially reduce the visual mass and visibility of the proposed three-level, 25-foot tall farmhouse, the height of the farmhouse shall be limited to no more than one story, or 15 feet at the roof peak.

3) Inconsistency with LCP Policies/Marin County Code Regulations

Applicable LCP Policies and Marin County Code Standards. Several LCP policies provide guidance for reducing visual resource impacts of new development. These include: Agricultural Resources Policy 4f regarding a required Master Plan finding that new development will have **no** (emphasis added) significant adverse impacts on a variety of resources, including scenic resources, and Policy 5a regarding conditions required of a Master Plan approval that development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural production and sited to minimize impacts on scenic resources; and 2) New Development and Land Use Policy 3, Visual Resources regarding design of new development to minimize visual resource impacts, and Policy 6, Watershed and Water Quality Protection/Grading regarding minimizing alteration of landforms through grading and cutting and filling. These policies are quoted starting on page 15 of the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project* and are included in appendices of the staff report.

Marin County Code Section 22.57.024I, Design Standards includes standards that require road and driveway construction and grading to be minimized with this accomplished through clustering and siting development to minimize road length, grading, and utility construction.

In general, these LCP Policies and County Code standards provide guidance to reduce visual impacts of new development by:

- clustering development to reduce the physical extent of development;
- locating new development close to existing roads;
- siting development to minimize impacts on visual resources;
- limiting the height, scale and design of new structures;
- locating development to follow natural contours and to avoid obstructing views from public viewing places;
- landscape screening;
- minimizing grading, cut and fill, and other site preparation; and
- preserving natural features and landforms.

The proposed project is inconsistent with these policies because it fails to: 1) cluster development to reduce its physical extent, thereby increasing the size of the overall area affected by development; 2) minimize visual impacts – siting for this purpose is constrained by topographical features which limit potential building site locations and which requires a 1,300-

foot long access road in direct conflict with policy/design standards to limit road lengths; 3) limit the height of structures, especially the farmhouse, which is 25 feet high partially as a result of limited buildable area on the north side of the blue-line stream; and 4) minimize grading, cut and fill, and other site preparation – substantial grading and cut and fill is required to “fit” the development to building sites that are constrained by topography.

4) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Implementation of the proposed project alternative would substantially reduce visual resource impacts of the proposed project and through so doing, substantially improve the consistency of the proposed project with related LCP Policies and Marin County Code standards. Impact reduction and improved policy consistency will result from:

- Because the alternative project site has little to no topographic constraints that limit the locations/adjacency of buildable areas as does the proposed development envelope, *the equipment barn and shed, farmhouse, and ancillary uses as needed, and access road can be co-located within a much tighter development footprint and clustered in a substantially smaller area of the property* as illustrated in [Appendix A](#), Potential Alternative Development Sites. This substantially reduces the total area affected by visual infringement of new development. Further, the alternative site building envelope is large enough to reduce the farmhouse to one story, but retain a similar total square footage.

As previously stated in the “Feasible Alternative Project Site Location” section of this comment letter, the development area in which the proposed uses are set and in which agricultural uses are essentially precluded is approximately 400,000 square feet, or about nine acres (about six percent of the gross acreage of the property). *The total area devoted to development in the alternative project site envelop would be approximately one acre (about 0.8 percent of the gross acreage of the property), a reduction of approximately eight acres or nearly 90 percent of development footprint relative to the proposed project.* The location or size of the alternative site envelope could be adjusted as needed while still substantially reducing the total development footprint.

- The alternative project site is located directly adjacent to Highway 1 – *an access road of no more than 100 feet would likely be required* to access the highly clustered development site. Contrast this with the proposed nearly 1,300-foot long access road to the proposed farm house. *Visibility of an access road would be substantially reduced relative to the proposed project.*

- Development on a site with minimal topographic relief *eliminates the highly visible proposed access road* described in the staff report starting at page 62;
- Development on a site with minimal topographic relief *eliminates the need to locate the proposed equipment barn and farmhouse at elevations that substantially increase their visibility from Tomales Bay and the eastern shore of Tomales Bay and other public viewpoints*;
- Development on a site with minimal topographic relief *nearly eliminates 15,000 cubic yards of cut and fill volume* required to implement the proposed project as stated in the staff report and *substantially reduces landform alteration*; and
- Development on a site with minimal topographic relief likely *eliminates need for up to approximate 1,000 linear feet of proposed retaining walls* needed for the proposed access road and to cut buildings into sloped hills (wall height assumed to average five feet).

Clearly, the feasible project alternative is far superior to the proposed project in terms of avoiding or substantially lessening adverse visual resource impacts of the proposed project. Consequently, the CCC cannot find that project Master Plan is consistent with Agricultural Resources Policy 5a or PRC 21080.5 because the project design results in significantly greater impacts on resources than would otherwise occur if the Master Plan focused development at the alternative project site.

Staff suggests on page 34 of the staff report that the alternative development site would “defeat the goal of clustering and locating new development close to the existing driveway and the development on the adjacent parcel to the north...”. There is no LCP policy requirement that new development be clustered close to existing development per se, but rather that pursuant to LCP Agricultural Resources Policy 5a and design standards contained in Marin County Code Chapter 22.57.024, Design Standards, it be clustered on individual parcels to maximize the availability of land for agricultural use and to “keep road and driveway construction, grading and utility extensions to a minimum. This shall be accomplished through clustering and siting development so as to minimize roadway length and maximize the amount of undivided agricultural land.” The referenced goal appears to be that of staff and does not appear to be based on explicit LCP Policy.

Furthermore, rural residential/agricultural developments are distributed along the entire Tomales Bay coastline. For example, there are four homes located approximately 500 feet to the south of the Applicant’s southern property line. Development of the alternative site would not be inconsistent with the existing pattern of development along the coastline.

b) Agriculture Resources

1) Impacts not Adequately Addressed or Disclosed

Potential agricultural resource issues for the project are not generally related to impacts on agricultural resources, but rather related to whether or not findings can be made to support consistency of the Applicant's Master Plan with guidance provided in LCP policies and County Code standards. Potential impacts resulting from uses proposed by the Applicant to support the continued agricultural use of the site are discussed in other sections of this comment letter.

2) Recommended New Mitigation

No new mitigations proposed.

3) Inconsistency with LCP Policies/Marin County Code Regulations

Inconsistency with Required Master Plan Findings. We continue to find no evidence that the CCC staff is able to make findings as required in LCP Agricultural Resources Policy 4, findings 4b, 4c, 4d, 4e, and 4f regarding findings for adequacy of a Master Plan. Please refer to the discussion starting on page 27 of the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project*.

Regarding finding 4b, to date, neither the Master Plan content nor any other information known to have been submitted to by the applicant or contained in the staff report provide substantial evidence that development is necessary because agricultural use of the property is no longer feasible. No substantial evidence has been provided that the landowner (Mr. Magee) faces economic hardship. There is no substantial evidence in the record which demonstrates that development of the property as proposed would ease economic hardship if economic hardship could first be defensibly demonstrated. There is no evidence in the record that the proposed distillery is a principal permitted use or an accessory structure or use that is necessary to the operation of continued agricultural uses on the property (pursuant to Marin County Code Section 22.57.031I). In summary, there is no substantial evidence in the record to support the required Policy 4b finding.

Regarding finding 4c, evidence discussed below suggests that development and use of the proposed new northern well has potential to impact the viability of an agricultural well located on the adjacent parcel to the north. If so, the proposed project would conflict with the continuation of agriculture on the adjacent parcel. Finding 4c explicitly describes that such conflicts must not occur if development is to be permitted.

The Appellant has provided new information on water supply and quality from Aaron Bierman of Hydrogeologic in a letter dated February 4, 2013 with the subject "Technical & Regulatory Memorandum Regarding: Hydrogeologic Evaluation of Magee Ranch, 17990 State Route 1, Marshall, California. The information addresses the potential inability of the new northern well to provide sufficient water supply, and to avoid indirect impacts on ESHA and the adjacent agricultural well on the property to the north of the project site. The information clearly calls into question the ability to make Findings 4d and 4f.

The ability of CCC staff to make Findings 4d and 4e is also compromised due because the availability of adequate sewage disposal cannot yet be affirmatively confirmed. While the staff report now includes more detailed information on the proposed wastewater disposal system design, the technical adequacy of the system has not yet been reviewed or approved by the RWQCB through the Report of Waste Discharge application review process. The potential for system failure is elevated due to its complexity, which has been increased in part due to the new inclusion of a pretreatment system for distillery waste. Failure of the system has potential to significantly impact ESHA and water quality. A complex system is needed due to multiple physical constraints associated with development north of the blue-line creek which result in the need to pump wastewater to a leachfield that is 1,300 feet away from the nearest wastewater source and approximately 250 higher in elevation than the average elevation of the proposed wastewater sources. Please refer to Section "d", Geology and Soils, for more information.

The ability to make Finding 4d regarding availability of adequate fire protection services is also further called into question based on information provided by the Appellant in a letter from Fire Captain Chris Miller dated October 12, 2013. The letter includes a review of fire hazards associated with the proposed distillery. Elevated fire hazards associated with the distillery could result in an increase in demand for fire service response. However, fire service response time is outside acceptable standards as described Captain Miller's letter.

Finding 4f cannot be made for a number of other reasons including significant impacts on ESHA/special status species, as described Section "c", Biological Resources, of this comment letter and in the letter from Bill Goggin, EMC Planning Group, dated April 1, 2013.

4) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

The inability of CCC staff to defensibly make Findings 4d and 4f per LCP Agriculture Resources Policy 4 and similar findings contained in Zoning Code Section 22.37.036 would likely be rendered moot if the alternative project site were developed instead of the proposed development area. Further, development of the alternative site would substantially improve the ability of CCC staff to make findings that the project is consistent with conditions contained in LCP Agricultural Policy 5a. This is true for the following reasons:

- Due to the absence of topographical constraints within the alternative site building envelope, it is probable that a simple, gravity based septic disposal system could be installed in-lieu of the complex system proposed and required in part due to constraints at the leachfield site. *It is probable that potential water quality and ESHA impacts from potential failure of the system would be substantially lessened at the alternative site.* Further, the likelihood that the RWQCB would have issue with a standard gravity fed combined septic system would be substantially lessened;
- The staff report confirms that the well on the south side of the blue-line stream has sufficient capacity to meet the water demands of the entire proposed project. *By moving all but the vineyard component of the proposed project to the alternative project site, demand for groundwater extraction from the new well on the north side could be substantially lessened. Potential groundwater depletion impacts and potential indirect impacts on ESHA from groundwater extraction would be substantially lessened;*
- As described in Section “c”, Biological Resources, the alternative project site is located completely outside the complex, interrelated system of ESHA and ESHA setbacks and outside areas of topographic constraints located on the north side of the blue-line stream. *Implementation of the alternative would substantially lessen the significance of potential impacts on protected ESHA and special status species; and*
- In addition to the above factors, findings for project consistency with a Master Plan can only be made if the condition in Agricultural Resources Policy 5a can be met. This condition stipulates that:

All development must be clustered to maximize amount of land in agricultural production or available for agricultural use.

As previously described, the proposed development area within which agricultural use would be precluded is approximately 400,000 square feet, or about nine acres (about six percent of the gross acreage of the property). Figure 3, Agricultural Conservation Easement Area, shown on page 697 of the staff report, verifies that this area is not included in a permanent agricultural easement.

The total area devoted to development in the alternative project site building envelope would be approximately one acre (less than one percent of the gross acreage of the property), a reduction of approximately eight acres or nearly 90 percent of the proposed project development footprint.

Clearly, development of the project site would leave more land available for agricultural use than would the proposed project.

c) **Biological Resources**

1) **Impacts not Adequately Addressed or Disclosed**

Direct and Indirect Impacts to CRLF and WPT from Development within Unrecognized Upland ESHA. As described in the letter from Bill Goggin, EMC Planning Group Senior Biologist dated April 1, 2013, the development area north of the creek contains suitable upland, dispersal/movement corridor habitat for protected CRLF and WPT that has not been recognized to date. This area should be included in a minimum 300-foot wide ESHA buffer area within which no development should be permitted. Several components of the project are located within this area including buildings, the access road, and associated infrastructure. Direct and indirect impacts to CRLF and WPT from risk of take (during construction and from use of vehicles and other activities), habitat degradation/fragmentation (e.g. reduction in available aestivation/denning sites and loss/reduction of foraging opportunities), disturbance, and barriers to movement (e.g. buildings, access road, retaining walls, etc.) within this upland habitat are likely. By concentrating development in areas that the two species can be expected to use, the development has the potential to significantly impact CRLF/WPT habitat functions and values. Failure to adequately identify, characterize, and protect this ESHA habitat would be inconsistent with the Coastal Act and with LCP policies.

Direct and Indirect Impacts on CRLF and WPT from Vehicle Use Inside Recognized ESHA. An existing unimproved access road traverses across the top of the earthen dam that retains the on-site pond. This pond is the primary on-site breeding habitat for CRLF and WPT. This road is within a recognized ESHA feature delineated by the Applicant. The proposed project would result in a substantial increase in daily vehicle crossings over this road (the existing daily baseline number of crossings is near zero) because most proposed agricultural activities are located on the opposite side of the blue-line stream from buildings where vehicles will be stored/parked. Consequently, the proposed project would substantially increase the potential for inadvertent take of these two protected species resulting from vehicle strike.

Direct and Indirect Impacts to Habitat for Protected Special-Status Purple Martin. There is available, suitable nesting habitat for the state protected purple martin (*Progne subis*) within several large snags found within the proposed footprint of the brandy distillery. Direct removal of this habitat or disturbance within or adjacent to it that increases potential for nest failure and/or abandonment would be a significant impact that has not been identified to date.

2) **Recommended New Mitigation**

Mitigation Measures for Impacts to Suitable CRLF Upland Dispersal/Movement Corridor ESHA. Implementation of the following mitigation measures would reduce significant impacts

on CRLF/WPT and ESHA within the development area located north of the blue-line stream. The mitigations should be added as Special Conditions as reported in the staff report (staff report pg. 6):

- BIO-1. Delineate a new CRLF/WPT upland dispersal/movement corridor (ESHA) as described in the letter from Bill Goggin, EMC Planning Group Senior Biologist, dated April 1, 2013. Prohibit development within the dispersal/movement corridor ESHA;
- BIO-2. Due to the especially valuable complex of ESHA located within the proposed development area north of the blue-line stream, increase the size of wetland and riparian buffers as described in the letter from Bill Goggin, EMC Planning Group Senior Biologist, dated April 1, 2013, and eliminate development within the expanded buffer areas;
- BIO-3. Require the Applicant to consult with CDFW on developing and implementing a WPT Protection Plan prior to commencement of work;
- BIO-4. Require that the Applicant close the dam top road to all but very limited ATV crossings; and
- BIO-5. If the mitigation requiring establishment of a CRLF/WPT dispersal/movement corridor and/or the mitigation requiring limited use of the dam-top access road are omitted as project conditions, require the Applicant to initiate consultation with the USFWS to gain incidental take coverage under Section 10 of the Endangered Species Act and prepare a Habitat Conservation Plan prior to project implementation.

Mitigation for Potential Impacts to Habitat (ESHA) for Purple Martin. Implementation of the following mitigation measure would reduce potential impacts on the protected Purple Martin:

- BIO-6. Require the Applicant to address the presence of suitable nesting habitat for purple martin within snag habitat found within the brandy distillery footprint by performing at least two presence/absence surveys for this species timed to occur during the peak of the its breeding period (late April through early June) and submit the findings of these surveys to CDFW prior to permit approval. Develop and implement habitat preservation and avoidance measures if nesting purple martin are found to be present.

3) Inconsistency with LCP Policies/Marin County Code Regulations

Inconsistencies with LCP Natural Resources Policy 5. The proposed project remains inconsistent with this policy, which requires that development within habitats of rare or endangered species and unique plant communities be permitted only when the use depends on

resources of the habitat area and that development adjacent to such areas be set back to minimize impacts on the habitat area. As previously described herein and reviewed in the letter from Bill Goggin, EMC Planning Group Senior Biologist, dated April 1, 2013, the project as proposed does not address potential impacts on suitable upland habitat for CRLF/WPT, impacts on these species from vehicle crossings within their core breeding habitat, potential presence of protected purple martin, or the highly valuable complex of ESHA that would be impacted without enhanced buffers. For these reasons, the proposed project remains inconsistent with this policy.

4) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Implementation of the proposed project alternative would substantially lessen biological resource impacts of the proposed project and through so doing, substantially improve the consistency of the proposed project with related LCP Policies and Marin County Code standards.

In summary, the proposed project is located within a highly complex, interconnected series of ESHA habitats and setbacks and impacts on critical CRLF upland habitat have not been adequately addressed. CCC staff's request for additional extensive biological resource investigations is evidence of its concern about project impacts on ESHA, within which no development is permitted. CDFW's comments as summarized in the staff report are also an indication of concern about potentially significant project impacts on ESHA and the special-status CRLF. The proposed project would impact ESHA and special status species in a multitude of ways. *The proposed alternative substantially lessens adverse impacts on biological resources/ESHA because:*

- *The alternative project building envelope is completely outside the complex web of ESHA habitats and setbacks located on the north side of the blue-line stream;*
- The footprint of the entire development, including access roads, would be reduced by approximately eight acres, *thereby substantially lessening potential for:*
 - *Direct adverse impacts on ESHA from construction, human activity, vehicle use, etc.*
 - *Indirect adverse impacts on ESHA from water quality degradation* (reduced urban pollutants in surface runoff, reduced impervious/limited pervious area due to smaller development footprint, and substantially improved buffering from adverse impacts in the event of failure of the distillery wastewater pre-treatment system)
- Nearly all agricultural and human activities would be located on the south side of the blue-line stream, thereby substantially lessening the number of vehicle crossings of the road that

traverses the earth dam located directly within CRLF breeding habitat ESHA. This is the only on-site access from one side of the stream to the other. *Potential for take of CRLF and WPT would be substantially lessened.*

- *Substantially lessening potential water quality impacts and impacts related impacts on ESHA from potential failure of the proposed highly engineered septic disposal system.* The alternative site building envelope is unconstrained in terms of siting a traditional septic disposal leachfield that does not require pumping of effluent 1,300 feet away to a leachfield located about 250 feet higher than the average elevation of the three project buildings it would service; and

Also note that the alternative site building envelope is not known to contain coastal prairie grassland or other sensitive or protected plant species or communities.

d) Geology and Soils

1) Inconsistency with LCP Policies/Marin County Code Regulations

Inconsistency with required Master Plan findings. As described in Section “b”, Agricultural Resources, we continue to find no evidence that the CCC staff is able to make findings as required in LCP Agricultural Resources Policy 4, findings 4d and 4f, and Zoning Code Section 22.37.036, both regarding findings for adequacy of a Master Plan. Please refer to the discussion starting on page 27 of the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project*.

Regarding geology and soils, the key inconsistency is in demonstrated sufficiency of the wastewater treatment system, particularly the adequacy of soils in the leachfield location to support wastewater disposal. The staff report provides new information on the design of the wastewater treatment system starting on page 54. The following information is provided as part of the staff report discussion:

At least six monitoring wells would be distributed through leach field to detect if the water table rises to less than 54 inches below the ground surface. If ground water rises to that level, then the effluent would be switched to the second distribution system. *If ground water rises to within 54 inches of the surface in both fields or on a regular basis, the system would need to be redesigned, the waste hauled off site to a licensed treatment system or the distillation process halted to address the problem (staff report pg. 56)(emphasis added)*

It appears clear from the conditions under which the system would operate that the capability of the system to adequately dispose of wastewater is highly conditional. Clearly there is significant concern about the potential lack of separation between the system and groundwater level. The system is intensively engineered in an effort to address this concern; the design includes six groundwater monitoring wells and a requirement for constant monitoring of groundwater level needed to determine if a switch to a second system is needed in the event that the main system fails (who monitors and how is the switch ensured?). This system design is atypical of design for conditions that are suitable for septic disposal of wastewater. The acknowledgement that the system could fail due to site specific conditions and require a system redesign is testimony to the fact that the system is being forced into a set of conditions that are not reliably suitable for septic disposal. Exhibit 24, Letter from Orenco Systems Inc., provides additional information on the specifications of the wastewater disposal system in terms of its adequacy to meet water quality treatment requirements given the presume type, quality, and volume of wastewater inputs from the distillery. However, it does not address physical disposal conditions (i.e. soil and groundwater characteristics) necessary to ensure that the treated effluent can be discharged without causing water quality impacts. Therefore, it cannot be demonstrated that the project can be adequately served with sewage disposal service as required for making the Policy 4d Finding.

In addition, the system as designed has not been reviewed or approved by the RWQCB. This fact is reflected in Special Condition #14, which requires RWQCB approval of the system prior to construction of the brandy distillery. Without the RWQCB's prior approval, it cannot be demonstrated that adequate sewage disposal service is available for the project nor can secondary impacts from potential wastewater mitigations be defined and remedied.

Inconsistency with Public Services Policies. LCP Public Services Policies 1 and 3 require that the County find that adequate sewage disposal services are available to serve the proposed development and that all septic systems meet RWQCB standards. For the reasons noted above, a finding cannot be made prior to issuance of a Coastal Development Permit that the proposed disposal system is and will continue to be adequate or that the system meets RWQCB standards.

2) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Implementation of the proposed project alternative would substantially reduce geologic and soils impacts of the proposed project and through so doing, substantially improve the consistency of the proposed project with related LCP Policies and Marin County Code standards in the following ways:

- As described in Section "b", Agricultural Resources, the *alternative project site offers substantially more flexibility in siting a wastewater system that involves little to none of the*

complexity and likely substantially lessened potential for failure of the wastewater disposal system due to the site specific constraints present at the proposed leachfield site. The “forced” substandard location of the leachfield site is another example of why constraints on the north side of the blue-line stream require suboptimal development siting with attendant increases in potentially adverse environmental effects.

e. Hydrology and Water Quality

1) Impacts not Adequately Addressed or Disclosed

Violate water quality discharge or waste discharge requirements. As described in Section “b”, Agricultural Resources, and in Section “d”, Geology and Soils, the proposed wastewater disposal system has not been approved by the RWQCB for its sufficiency and reliability to meet RWQCB Waste Discharge Requirements. As described in Section “d”, Geology and Soils, the staff report clearly reflects that the septic system leachfield site conditions are constrained in terms of potential for the system to adequately dispose of wastewater from the distillery and other uses. Potential failure of the system due to inadequate design is acknowledged. Groundwater and surface waters, including ESHA, could be degraded in the event the system fails.

Substantially deplete groundwater supplies. As described in the letter from Hydrogeologic dated February 4, 2013, Aaron Bierman has evaluated the potential for the proposed project to deplete groundwater due to increased demand for this resource. Information submitted by the Applicant to support a determination that sufficient water resources are available is considered to be incomplete and inconclusive; substantial evidence has not been provided to demonstrate that no significant impact would occur.

2) Recommended New Mitigation

Mitigation to assess impacts on groundwater depletion. To adequately address the significance of potential impacts on groundwater depletion, the sufficiency of available water groundwater supply to meet project demand, and demonstrate that the proposed northern well would not impact groundwater availability for the well located on the adjacent property to the north, the following mitigation should be added as a Special Condition as reported in the staff report (staff report pg. 6):

HYD-1. A detailed Comprehensive Hydrogeologic Evaluation shall be prepared for the project site. The evaluation shall include a water balance of the watershed, shall define and quantify the projects water demand, including the average annual demand, dry season demand and maximum day demand including updated groundwater quality data to

quantify system and treatment losses associated with treating the groundwater for domestic use. The Comprehensive Hydrogeologic Evaluation shall also include a detailed analysis of the aquifer (delineated horizontally and vertically) for which the wells are perforated, including updated pumping tests to determine aquifer parameters and to demonstrate the well(s) have an adequate supply of groundwater to meet the project demand and whether or not the project wells have any significant impact to neighboring wells or Sensitive Environmental Receptors (blue-line creek, springs and seeps which constitute ESHA). The Comprehensive Hydrological Evaluation shall also include mitigation measures if there is any evidence showing there may be potential impacts to the aquifer system or Sensitive Environmental Receptors. Mitigations must ensure avoidance of any potential impact to ESHA. The Comprehensive Hydrological Evaluation must provide enough sufficient evidence of any potential impacts of the proposed project regarding these primary issues.

3) Inconsistency with LCP Policies/Marin County Code Regulations

Inconsistency with Public Services Policies 1 and 2. Policy 1 requires that a finding be made, prior to issuance of a Coastal Development Permit, that adequate water supply is available to serve the proposed development. Policy 2e(2) requires demonstrated minimum sustained yield of groundwater for new development.

Based on the incomplete information available to demonstrate sufficiency of groundwater to meet project demand without impacting ESHA or the production of water from the adjacent well to the north, it is clear that the required Policy 1 finding cannot be made. For the same reason, it cannot yet be demonstrated that the proposed northern well will produce a sustained yield sufficient to meet the projected demand of the proposed project.

Inconsistency with Agricultural Resources Policy 4c, 4d, and 4f and related Marin County Code Section 22.57.036I. The project is inconsistent because it cannot be reliably demonstrated with substantial evidence that groundwater extraction from the proposed north well:

- avoid impact productivity of the agricultural well located on the property to the north (Policy 4c);
- provide a sustained yield sufficient to meet the water demand needs of the project (Policy 4d); and
- avoid impacting the blue-line stream, springs, and seeps on the site that provide habitat and are considered ESHA.

4) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Implementation of the proposed project alternative would substantially reduce hydrology and water quality impacts of the proposed project and through so doing, substantially improve the consistency of the proposed project with related LCP Policies and Marin County Code standards in the following ways:

- Refer back to Section “d”, Geology and Soils, regarding *substantial lessening of potentially significant water quality impacts from the proposed septic disposal system* by locating septic disposal within the alternative development area; and
- As described in Section “b”, Agricultural Resources, the staff report confirms that the well on the south side of the blue-line stream has sufficient capacity to meet the water demands of the entire proposed project. By moving all but the vineyard component of the proposed project to the alternative project site, demand for groundwater extraction from the new well on the north side would be substantially reduced. *Potential groundwater depletion impacts, potential impacts on the adjacent agricultural well, and potential indirect impacts on ESHA from groundwater extraction could be substantially reduced.*

f. Land Use and Planning

Land use and planning issues relate primarily to project consistency with a full range of LCP policies that in total, guide land use within the Marin County coastal zone. Assessment of project consistency with LCP policies is provided in the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project* and refined in the discussion of individual environmental topics in this comment letter.

New mitigation measures are described in other sections that would improve project consistency with LCP policies. As or more importantly, a discussion of the potential for implementation of the recommended project alternative to avoid or substantially reduce adverse impacts of the proposed project and to improve consistency of the proposed project with LCP policies is also provided in each environmental topic discussion

1) Inconsistency with LCP Policies/Marin County Code Regulations

Inconsistency with New Development and Land Use Policy 8f(3). Consistency of the proposed project with this policy is not discussed in other sections of this comment letter. The policy requires that a finding be made that new development shall meet all other LCP policies including, but not limited to those on wetland protection, public services, and visual resources.

As discussed in other sections of this comment letter, the proposed project remains inconsistent with a range of LCP policies that address these and other issues. Consequently, the finding required in Policy 8f(3) cannot be made.

2) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Please refer to the discussions of other environmental topic areas for evaluation of how implementation of the project alternative would reduce the significance of project impacts and improve consistency of the project with LCP policies. Implementation of the project site alternative would avoid or substantially lessen adverse impacts associated with aesthetic/visual resources, biological resources, water quality, water supply, septic disposal, and circulation conflicts.

Implementation of the project site alternative would improve project consistency with most, if not all of the LCP policies for which it has been found to be inconsistent as described in the discussions of other environmental topics.

g. Public Services

1) Impacts not Adequately Addressed or Disclosed

It is not anticipated that the proposed project will generate a sufficient incremental increase in demand for public services such that new or altered facilities are needed to meet that demand. However, as described below, the proposed project could be inconsistent with public services related LCP policies. Further, based on information submitted in the letter from Captain Chris Miller dated October 2012, the proposed distillery represents an elevated fire risk for which special fire suppression technology is needed and for which potential impacts to ESHA and adequate response time are in question due to the rural nature of the site and the type of fire suppression required (foam).

2) Recommended New Mitigation

Mitigation to reduce fire hazard and impacts to ESHA. Page 36 of the staff report includes statements from the Applicant about how the brandy distillery will operate and function. One of these statements suggests that the brandy distillery will be constructed to have secondary containment to protect against impacts of a spill containing grape juice, sanitizing agents or distillery products that could contaminate ESHA. In the event of a fire that requires use of a foam suppression material, containment is critical to further protect against impacts to ESHA. However, there is no clear condition included in the staff report which requires incorporation of

secondary containment as part of the project building permit process. The letter from Captain Miller suggests that internal or external containment is needed to contain foam fire suppressants. For this reason, the following mitigation should be added as a Special Condition as reported in the staff report (staff report pg. 6):

PS-1. The final design of the brandy distillery shall incorporate either internal or external secondary containment features to protect against contamination of ESHA in the event of a spill or use of foam fire suppression material.

3) Inconsistency with LCP Policies/Marin County Code Regulations

Public Services Policies 1, 2e(1) and 3a(1) and Agricultural Resources Policy 4d and 4f. As discussed in other sections including Section “b”, Agricultural Resources, Section “d”, Geology and Soils, and Section “e”, Hydrology and Water Quality, findings cannot be made pursuant to these policies that adequate water supply and adequate sewage disposal resources are available to serve the proposed development. An sufficient supply of groundwater cannot be demonstrated to available to meet the needs of the proposed project without substantially depleting groundwater, potentially impacting ESHA, and/or potential impacting the agricultural well located on the adjacent property to the north. As acknowledged in the staff report, conditions at the septic leachfield site may be inadequate to enable the system to function as designed; it is acknowledged that the system may need to be redesigned. Further, the RWQCB has not reviewed the proposed septic disposal system and potential exists that through such review, the complex system may not meet standards for issuance of Waste Discharge Requirements by the RWQCB. Adequacy of these services must be demonstrated prior to issuance of a Coastal Development Permit.

In addition, the sufficiency of fire response services in terms of response time and fire suppression capacity (e.g. ATC) is in question.

4) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Please refer to the discussions of other environmental topic areas for evaluation of how implementation of the project alternative would reduce the significance of project impacts and improve consistency of the project with LCP policies. Implementation of the project site alternative would avoid or substantially lessen adverse impacts associated with aesthetic/visual resources, biological resources, water quality, water supply, septic disposal, and circulation conflicts.

Implementation of the project site alternative would improve project consistency with most, if not all of the LCP policies for which it has been found to be inconsistent as described in the discussions of other environmental topics.

h. Traffic/Transportation

1) Impacts not Adequately Addressed or Disclosed

Traffic generation and potential circulation conflicts. Special Condition #7 on page 11 of the staff report clarifies that a maximum of three brandy distillery tours of eight people each are permitting only on Saturdays between the hours of 11:00 AM and 3:00 PM. No vans or buses are allowed to transport tour participants.

The Applicant's traffic report, prepared by TCE in April 2009 assumes only two vehicle trips would be generated per each distillery tour, or a total of 12 trips in and out of the site on Saturdays. In a worst-case situation where each tour participant drives to the site, at eight persons per tour and three tours per day, up to 48 one-way vehicle trips in and out of the site could occur over four hours. This compares to a total of 12 one-way trips assumed in the traffic report. With this increased volume of trips and turning movements into and out of the project access road on Highway 1, the potential for circulation conflicts and circulation hazards at this location would dramatically increase, especially during summer months when traffic volumes on Highway 1 also dramatically increase.

In this context, neither the traffic report, nor the staff report provide an assessment of cumulative traffic conditions at the project entrance on Highway 1 in light of the future California State Parks Marconi Cove Unit project on the coast side of this entrance. Pursuant to CCR Section 15130(b)(1)(A), which serves as a model for how a functional equivalent analysis of cumulative impacts should be conducted, a standard approach for to assessing cumulative impacts includes consideration of:

A list of past, present, and **probable future projects** producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency (emphasis added)

The staff report states that complete plans for the Marconi Cove Unit have been prepared and that partial funding for the project is being provided by Caltrans (staff report pg. 34). A project in a similar circumstance is commonly included in cumulative impact analyses conducted by professional CEQA practitioners – “probable” as described in CCR Section 15130(b)(1)(A) does not mean “certain”. The staff report assumption that the Marconi Cove project does not merit inclusion in assessment of cumulative traffic impacts because a Coastal Development Permit

approval has not been approved is faulty. The Marconi Cove project must be considered a “probable” project given its plan status and partial funding. Further, at page 62, the staff report acknowledges that CCC has approved the Marconi Cove project in concept. A cumulative traffic analysis must also consider other cumulative projects (and/or traffic volume projections contained in an applicable plan such as the Marin County General Plan) with potential to contribute traffic to the segment of Highway 1.

The staff report states that a Caltrans representative familiar with the Marconi Cove project was contacted for comments on the proposed project, but that Caltrans did not respond (staff report pg. 34); this is not uncommon. The lack of a response does not excuse the need for staff to adequately assess cumulative impacts as part of a functionally equivalent environmental analysis process.

The Applicant’s traffic analysis is also faulty because it is based on traffic counts taken in March 2009. Not only are the counts outdated, but as described in page 65 of the *Draft Environmental Initial Study/Policy Consistency Analysis, Magee Distillery Project*, where a traffic facility clearly shows substantial variation in traffic volumes on a daily, weekly, or seasonal basis, traffic counts taken outside of the high range of traffic volume are not typically considered representative of existing conditions. Traffic engineers commonly use an adjustment factor to upwardly adjust traffic volumes when traffic counts were taken in a recognized off- or low-season condition.

In short, the traffic analysis prepared for the project is inadequate. Preparation of a new traffic analysis is required that considers cumulative impacts and recommends mitigation for traffic conflicts at the project entrance road on Highway 1. Note that the existing traffic analysis concludes that no improvements (e.g. turn lanes) are needed at the project entrance on Highway 1. It is possible that such improvements may be needed in light of the cumulative traffic impact scenario that must be addressed. Secondary impacts of such improvements must also be defined and remedied.

It should also be noted that one of staff’s points for rebutting consideration of an alternative site on the south side of the creek is a new access onto Highway 1 would be required. This is a simple encroachment permit process with Caltrans. As has been previously noted, sight distance at the alternative site is substantially better than at the existing access road on Highway 1 and will likely be much safer in the future with the development of the Marconi Cove project. Also note that the Applicant has constructed at least one unpermitted access gate onto Highway 1 at the southern boundary of the property with no Caltrans approval, as has been described in previous submittals to staff.

2) Recommended New Mitigation

Mitigation required preparation of an adequate traffic impact analysis. Based on discussion above, the environmental analysis of traffic impacts contained in the staff report is inadequate. Implementation of the following mitigation is required to adequately identify and mitigation the project-specific and cumulative impacts of the proposed project. The mitigation should be added to the Special Conditions found in the staff report (staff report pg. 6):

CIRC-1. Prior to approval of the proposed project, the Applicant shall prepare a comprehensive traffic impact analysis which reflects the current project description and modifies trip generation volumes accordingly. The analysis shall include a comprehensive analysis of cumulative impacts of the proposed project when considered together with probable future development at the Marconi Cove Unit and cumulative traffic volumes on Highway 1. The traffic impact analysis shall provide mitigation recommendations as needed to reduce potential traffic and circulation impacts to less than significant.

3) Inconsistency with LCP Policies/Marin County Code Regulations

There are no LCP policies that directly address traffic and transportation in the context of individual development projects.

4) Impacts Substantially Reduced and Improved LCP Policy/Marin County Code Consistency Achieved with Implementation of Project Alternative

Implementation of the proposed project site alternative could substantially reduce traffic and transportation impacts of the proposed project for the following reasons:

- *Contrary to the statement in the staff report that the alternative project site would cause increased indirect traffic impacts from requiring direct access onto Highway 1, the project alternative could reduce potential traffic circulation impacts.* The required new traffic impact analysis may find the potential for significant traffic safety impacts from turning movements at the project driveway on Highway 1. If so, *placing a new ingress/egress point on Highway 1 to serve the alternative site would remove project turning movements from a location that has limited sight distance and substantially higher cumulative turning movements to a location with excellent sight distance and no cumulative development turning movements.* It is unlikely that improvements to Highway 1 to accommodate project ingress and egress movements at this location would be needed. *The simple need to develop a new access point onto Highway 1 is not inconsistent with LCP policies or a constraint to developing the project site.*

IV. ALTERNATIVE PROJECT SITE – SUMMARY OF SUBSTANTIALLY REDUCED IMPACTS AND IMPROVED LCP POLICY CONSISTENCY

As has been summarized throughout this comment, development of structures now proposed north of the blue-line stream within a feasible alternative site building envelope recommended on the south side of the stream would substantially reduce project impacts and improve its consistency with LCP policies. This section includes a summary of proposed project impacts and LCP policy inconsistencies that would be substantially reduced with development of the alternative project site.

1) *Summary of Substantially Reduced Impacts Resulting from Development at Alternative Site*

Substantially reduced impacts resulting from development of the alternative project site relative to development north of the blue-line stream are summarized as follows.

Visual Impacts

- Development clustered within one acre instead of about nine acres – area of physical intrusion is substantially lessened;
- Elevation of development is lower than proposed – reduced visibility from points west including Tomales Bay and western shore of Tomales Bay
- Access road length reduced by over 1,000 feet – substantially lessened visibility;
- Cut and fill/grading of 14,000 cubic yards for proposed project is substantially reduced as alternative site is relative level and little to no cut and fill/grading is required – visual intrusion substantially lessened;
- Need for nearly 1,000 feet of retaining walls is eliminated – reduced visual intrusion; and
- Potential to reduce farmhouse from three levels to one story reduces its massing and visual intrusion.

Agricultural Resource Impacts

- Through substantially improved development clustering, the area of the Applicant's property available for continued agricultural use is increased by approximately eight acres, or 90 percent relative to the approximately nine acres of the proposed development area north of the stream over which proposed development would be spread.

Biological Resource Impacts

- Alternative project site is located completely outside the complex, interrelated system of ESHA and ESHA setbacks and outside areas of topographic constraints located on the north side of the blue-line stream. Significance of potential impacts on protected ESHA and special status species is substantially lessened;
- Potential groundwater depletion impacts and potential indirect impacts on ESHA from groundwater extraction from the proposed northern well are substantially lessened;
- Potential for direct and indirect take of CRLF and WPT is substantially lessened because human activities are significant further from critical CRLF and WPT habitat;
- Potential impacts on ESHA from failure of the proposed highly engineered septic disposal system are substantially lessened; and
- Adverse impacts on ESHA from water quality degradation cause by urban pollutants is substantially lessened (reduced impervious/limited pervious area and improved buffering from sensitive habitats).

Hydrology and Water Quality Impacts

- Substantially lessened potential for septic system failure due to substantial increase in feasible septic leachfield area and reduced septic system complexity/monitoring requirements;
- Substantially smaller development cluster reduces impervious/semi-pervious area, thereby substantially reducing area affected by urban pollutants carried in storm water runoff; and
- Reduced demand for groundwater extraction from proposed northern well substantially lessens potential for groundwater depletion impacts.

Traffic and Circulation Impacts

- Potential for alternative to substantially lessen potential traffic circulation impacts if the required new traffic impact analysis find the potential for significant cumulative traffic safety impacts from turning movements at the project driveway on Highway 1.

2) *Summary of LCP Policy/Marin County Code Inconsistencies and Improved LCP/Code Consistency*

The proposed project remains inconsistent with a range of LCP policies and Marin County Code regulations as describe in this comment letter. Due to a lack of substantial evidence, the

proposed project cannot be demonstrated to be consistent with several other LCP policies and code regulations. Consistency with these policies/standards could be achieved or improved with development of the alternative project site. The relevant policies and code regulations are as follows:

- Agricultural Resources Policy 4f (Development Standards and Regulations)
- Agricultural Resources Policy 5a (Agricultural Development Conditions)
- New Development and Land Use Policy 3 (Visual Resources)
- New Development and Land Use Policy 6 (Watershed and Water Quality Protection)
- Agricultural Resources Policy 4b, 4c, 4d, 4e and 4f (Development Standards and Regulations)
- Natural Resources Policy 5 (Coastal Dunes and other Sensitive Habitats)
- Public Services Policy 1 (General Policy)
- Public Services Policy 3 (Sewage Disposal)
- Public Services Policy 2 (Water Supply)
- New Development and Land Use Policy 8f(3) (Location and Density of New Development)
- Marin County Code Section 22.57.024I
- Marin County Code Section 22.57.036I
- Marin County Code Section 22.57.031I

Sincerely,



Ron Sissem
Principal Planner

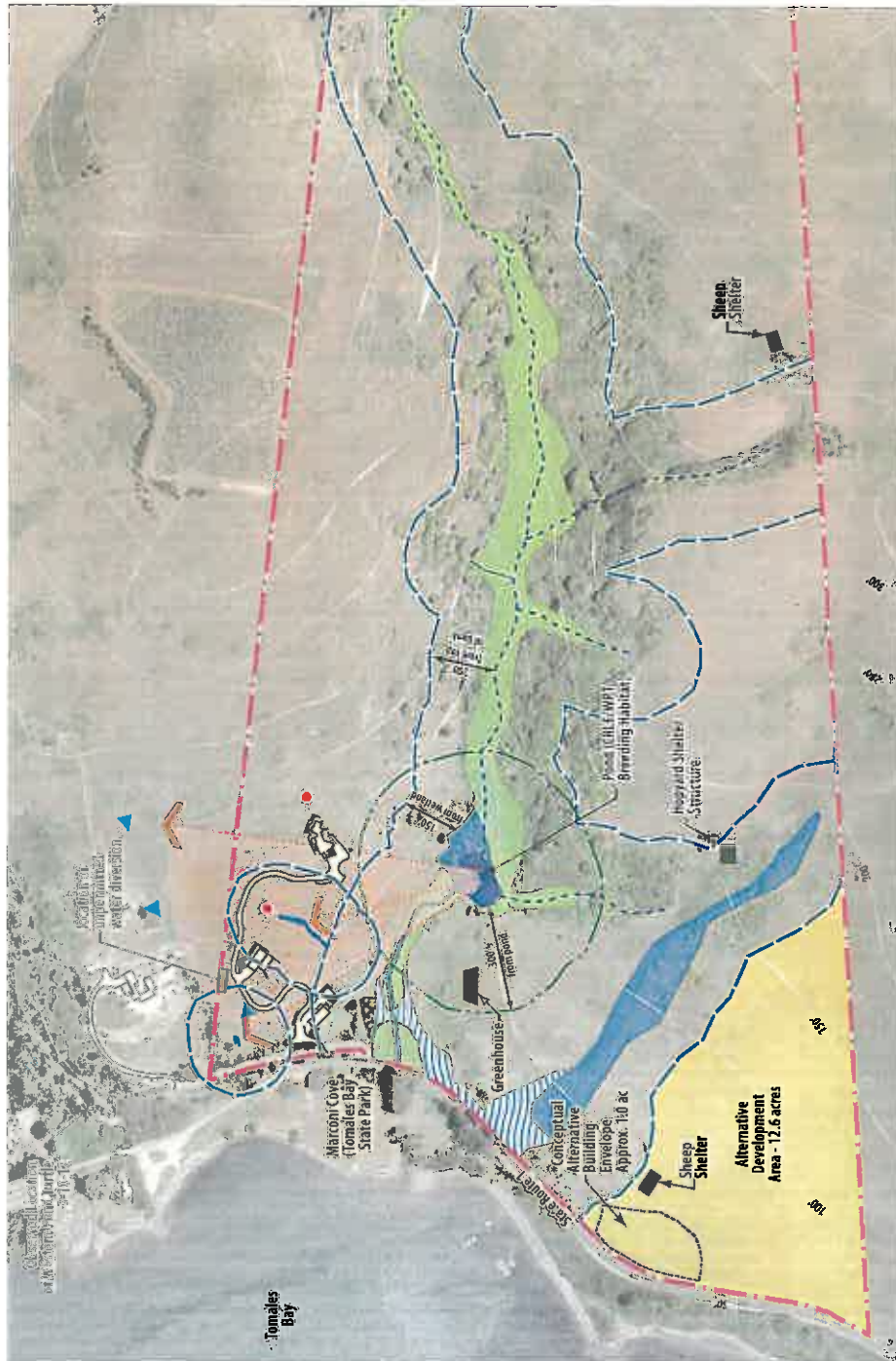
Cc: Scott Kivel, Lia Lund

Appendices

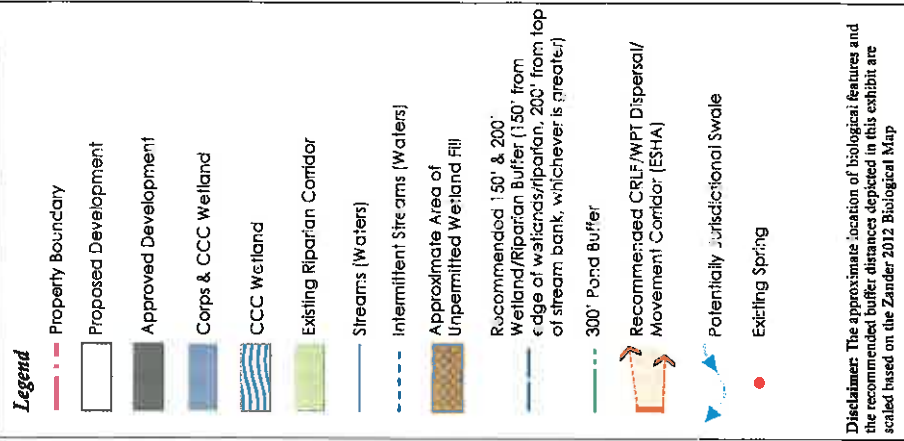
Appendix A – Potential Alternative Development Sites (graphic)

APPENDIX A

POTENTIAL ALTERNATIVE DEVELOPMENT SITES



*The conceptual alternative building envelope is based on placement of proposed buildings in a feasible cluster. Precise location of conceptual alternative building envelope is subject to site constraints analysis.



Source: Zander 2012, EMC Planning Group 2013

Potential Alternative Development Sites

17990 Shoreline Highway Coastal Development Permit Appeal Project



Hydrogeologic Consulting & Water Resource Management
Office: (831) 888 8888 Cell: (831) 334 8887 E-Mail: abierman@comcast.net
3153 Redwood Drive, Aptos, CA. 95009

February 4, 2013

Fenton & Keller
c/o: John Bridges
2801 Monterey – Salinas Highway
Monterey, Ca 93942

**Subject: Technical & Regulatory Memorandum Regarding: Hydrogeologic Evaluation of Magee Ranch,
17990 State Route 1, Marshall, California**

Bierman Hydro-Geo-Logic (BHgl) has completed this technical & regulatory memorandum following review of;

- Balance Hydrologics Inc, letter report¹,
- Anderson Pump Company, Pump Test Report²,
- Rich Lincoln & Sons letter report³,
- Rich Lincoln & Sons Sewage Disposal System Design⁴,
- EMC Planning Group 'Environmentally Sensitive Habitat Areas' Map⁵,
- EMC Planning Group 'Property Roads Aerials' Map⁶,
- Marin County Code Section 7.28⁷ Domestic Water System Requirements and,
- California Waterworks Standards, Chapter 15, Article 2-General Requirements, Section 64551.10 through Article 4-Design Standards, Section 64658⁸.

In addition, and although not particularly pertinent to this hydrogeologic evaluation, we reviewed;

- Herzog Geotechnical report⁹,
- ILS Associates, Inc, report¹⁰,
- Fall Creek Engineering, Inc. letter report¹¹,

It should be noted that our technical & regulatory review focused primarily on whether these specific reports/data^{1,2,4,5,6} reviewed supported the geomorphic and hydrogeologic properties of the water resources on Magee Ranch, and whether the reports/data followed County and State Guidelines for approving a water system to show there would be no significant impacts to the surface and groundwater resources on or offsite. *It should be noted that Balance Hydrologics Inc. (BHI) may have not been contracted to complete a Comprehensive Hydrogeologic Evaluation, which would explain the lack of substantial information in their report necessary to ensure no significant impacts to the sites hydrogeology, including impacts to sensitive environmental receptors (SERs): species habitats, creeks, streams, springs and other offsite neighboring wells.*

Due to the hydrogeologic complexities of the site, including the potential interaction between the surface and groundwater resources which has not been adequately defined, BHgl concludes that there could be potentially significant effects on the onsite well-field not being able to meet the projects water demand, including potential impacts to SERs and offsite neighboring wells (Kivel Well)¹².

Therefore, it is BHgl's professional opinion, that the reports/data reviewed do not sufficiently demonstrate that there would be no significant impacts, and therefore, additional hydrogeologic characterization is needed. And even if the conclusions of additional hydrogeologic characterization were to indicate no potential hydrogeologic

¹ Balance Hydrologics, Inc., letter report dated November 2, 2012 Re: Magee Ranch, APN 106-220-20.

² Anderson Pump Company, Pumping Test Report on Magee – Marconi Cove Property, dated, 11/30– 12/3/2010.

³ Rich Lincoln & Sons letter report dated November 14, 2012 Re: Soil Percolation Test and Revised Sewage Disposal System Design, Brader-Magee Farm, 17990, SR1, Marshall, Ca.

⁴ Rich Lincoln & Sons letter Sewage Disposal System Design for Brader-Magee Farm, 17990 State Route 1, Marshall, dated February 19, 2009 Revised 11/8/12, sheets 3 of 3.

⁵ EMC Planning Group – Figure 1 – 'Sensitive Environmentally Sensitive Habitat Areas', 7/1/2012 – Source: EMC 2012, Zander 2011, WRA 2011, Google Earth 2009, Rich Lincoln & Sons 2009.

⁶ EMC Planning Group – Figure 1 – 'Property Roads Aerials', Coastal Act Violation Letter 2 Supplemental Information - showing "Approximate location of Kivel Well".

⁷ Marin County Code Section 7.28 Re: Rules and Regulations for Establishing Minimum Domestic Water System Requirements.

⁸ California Code of Regulations, California Waterworks Standards, Chapter 15, March, 2008.

⁹ Herzog Geotechnical report dated October 31, 2008 Re: Preliminary Geotechnical Investigation, 17990, SR1, Marshall, Ca.

¹⁰ ILS Associates, Inc., report dated May 13, 2009 Re: Drainage Study for 17990, State Route 1, Marshall, Ca., Brader-Magee Farm

¹¹ Fall Creek Engineering, Inc. letter report dated March 9, 2012 Re: Technical and Regulatory Review of Onsite Wastewater Systems, Brader-Magee Farm, 17990 State Route One, Marshall, Ca.

¹² EMC Planning Group – Figure 1 – 'Property Roads Aerials', Coastal Act Violation Letter 2 Supplemental Information - showing "Approximate location of Kivel Well".

impacts, their remains insufficient data at this time to confirm no cumulative significant impacts to the aquifer and SERs.

PROJECT SCOPE:

It is BHgl understanding, the applicants of APN: 106-220-20 (Magee Ranch) are proposing to add a residence and expand the agricultural operations on the site to include; construction of a 3,200sq.ft single family dwelling (SFD) and 1,800sq.ft barn, and 800sq.ft shed, a 1,800 sq.ft hop storage barn, a 1,800sq.ft brandy distillery, three-1,500 sq.ft sheep shelters with grazing areas, a 6-acre vineyard, a vegetable garden (estimated at 4,800 sq.ft) and associated 600sq.ft greenhouse¹³ which is to be served by the two existing wells on the property.

BHgl's scope of work was to evaluate whether the reports/data prepared were adequate to support a finding that the project would not cause potential adverse significant impacts to the aquifer and SERs.

Below is a detailed analysis of our findings.

TECHNICAL AND REGULATORY REVIEW:

Although Balance Hydrologics Inc (BHI) report provides a simplistic assessment of the hydrologic conditions of the site, the site hydrogeology (surface water/groundwater interactions), aquifer characteristics and a sustainable calculated well yield have not been adequately defined/delineated and therefore there may be potentially significant impacts to the hydrogeologic system that have not been adequately addressed.

The County of Marin has Rules and Regulations for Establishing Minimum Domestic Water System Requirements pursuant to Marin County Code Section 7.28. In addition, the State of California has Waterworks Standards, such that a Public Water System – specifically, a Transient, Non-Community Water System (TNCWS) which this application will be processed, and is served by groundwater wells, is required to have specific hydrogeologic information for obtaining a domestic water system permit.

Based on aforementioned County and State guidelines, the data/reports reviewed lack the following hydrogeologic information necessary to meet County and State Guidelines:

- There was no site hydrogeologic conceptual model. The aquifer has not been fully delineated in the vertical or horizontal extent and it is unclear how the springs/creeks below the aquifer may receive recharge and/or baseflow from the aquifer, especially if the springs/creeks are at an elevation below the aquifer in question and are already lying on a thin soil profile of alluvial or colluvium atop bedrock.
- There was no spring flow assessment (other than instantaneous spot checks on spring flow) quantifying drought, average and peak spring flow conditions and how spring flow is related to precipitation frequency and intensity. There was no discussion on spring outcrop lithology (alluvium, colluvium, bedrock) or any spring to spring comparison (spring elevation, flow rate, lot/lag; structural observations) nor was there any significant discussion of spring recharge zones.
- There was no catchment or regional water balance completed for the source wells or springs.
- There was no calculated project water demand. Project water demand should include an interior and exterior demand, an average annual demand, dry season demand, maximum day demand and peak hourly demand, as well as account for system and treatment losses. The proposed water demand for the residences, barns, vineyards, distillery and goats should be quantified, including methods, assumptions and calculations documented. Once the water demand is determined, assess whether the well or combination of the site wells

¹³ Rich Lincoln & Sons letter Sewage Disposal System Design for Brader-Magee Farm, 17990 State Route 1, Marshall, dated February 19, 2009 Revised 11/8/12, sheets 3 of 3.

exceeds the project water demand. The project should also document the operation pumping cycles of the well(s) and what the storage capacity for the system will be, including fire retention/storage.

- Although the wells and their general construction was discussed in the BHI report, there was no Department of Water Resource (DWR) Well Completion Reports included within the report, and therefore, the well lithology (alluvial or hardrock), perforated interval, completion depth, gravel pack gradation, depth and type of sanitary seal, and minimum required surface completion and apparatus (check valves, vents, meters, etc) is unknown.
- No pumping tests reports/data was provided in the BHI report. The report should have included a groundwater drawdown and recovery curve in order to accurately assess; the well/aquifer interaction, aquifer parameters (transmissivity, hydraulic conductivity, storage coefficient) aquifer boundary conditions, zone of influence and zone of potential recharge, offsite impacts analysis to neighboring wells and, a sustainable calculated safe-yield of the well/aquifer.
- Although no pumping test data was provided in the BHI report, a copy of one of the pumping test reports was provided by Coastal Commission Staff. This pumping testing report (dated December, 2010) does not indicate which well was tested (north or south well) and, there was no pumping test report for the 'other' well. It is also our understanding that the pump test report reviewed pertains to a well that has since been abandoned and was replaced by either the north or south well. To our knowledge, there has not been a pumping test on either the north or south wells (newest wells) which, to our understanding, are to serve the project.

The well pumping test that was reviewed does show that the 3-day yield of one of the wells was 2,700 gallons. And although it appears the test was completed as per Marin County Rules and Regulations¹⁴, the regulations also require that the 3-day yield should be greater than the projects water demand. Although there was no project water demand supplied, based on the project scope (1 SFD, Barn, a hop storage barn, a brandy distillery, 3-sheep shelters with grazing, a 6-acre vineyard, and vegetable garden) it appears that the source capacity 3-day yield of 2,700 would not be sufficient to meet the water demand for a project of this size. More specifically, MCEHD requires 1 SFD to show a 3-day yield of 2,100 gal. Therefore, by deduction, 600 gallons would be the water capacity available for the remainder of the project build-out which is low based on the size of vineyard and brandy distillery. *It should also be noted that the State Waterworks Standards (February, 2008) for public water system require pumping test in an alluvial aquifer to be a minimum of 8-hours. Longer duration tests may be required to assess hydrogeologic connectivity with springs, seeps, creeks, perennial/ephemeral streams.*

- MCEHD requires pumping test be completed between July 15 and October 1st of any given year, however 'extensions' to complete pumping tests outside of this time-frame can be granted, if approved. The pumping test reviewed was completed on 11/30/2012, outside of the pumping test period, and there was no documentation indicating that the test was allowed to be performed outside of the pumping test period. *It should also be noted that the State Waterworks Standards (February, 2008) require wells perforated in fractured rock be pump tested between August 1 – October 31st of any given year. Although the well is inferred to be perforated in alluvium, there was no well log to verify these findings.*
- No groundwater quality analysis (other than specific conductance) of the source water was discussed or supplied within BHI report. At a minimum, the groundwater quality analysis should include; Bacteriological Scan (presence/absence) General Minerals, Physical Mineral, Inorganic Constituents and Primary Organic Constituents (Volatile Organic Compounds and/or Synthetic Volatile Organic Compounds) if contamination in the vicinity is suspected. In addition, stiff diagrams (finger-prints) of groundwater and spring water should be assessed to determine similarities and differences of these waters to help clarify their relationship, if any.

¹⁴ Marin County Code Section 7.28 Re: Rules and Regulations for Establishing Minimum Domestic Water System Requirements.

- As per Marin County Code, a residential building shall be provided with an adequate supply of potable water pursuant to section 601.1 of the Uniform Plumbing Code. If water quality results indicate that the water in the well(s) exceeds a primary drinking water standard, a Point-of-Entry (POE) treatment system shall be designed, submitted for approval and installed before the building(s) is/are occupied. MCEHD could require the applicant to record a deed notification indicating that treatment is necessary for the water in the well to meet Title 22 CCR primary drinking water standards.

SUMMARY:

In summary, due to the hydrogeologic complexities of the site, including the potential interaction between the surface and groundwater resources, which has not been adequately defined, BHgl concludes that there could be potentially significant effects on: the onsite well field not being able to meet the project water demand and on SERs.

It is our opinion, that the data/reports reviewed do not sufficiently demonstrate that there would be no significant impacts to the aquifer and SERs and that additional hydrogeologic characterization is needed.

And even if the conclusions of additional hydrogeologic characterization may indicate no project specific potential hydrogeologic impacts, there remains insufficient data at this time to confirm no cumulative significant impacts to the aquifer and SERs.

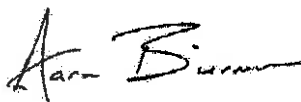
LIMITATIONS

This report consists of professional opinions and recommendations based on the reports and data reviewed and field-testing which are necessarily limited. *Bierman Hydrogeologic P.C.* bases the conclusions on the reports, data and tests reviewed using accepted hydrogeologic principles and practices of the groundwater industry including comparison of the reports and data reviewed to regulatory guidelines. Additional data from future work may lead to modification of the opinions expressed herein.

The conclusions included within this report are valid only as of the date and within the observational limitations of the reports and data reviewed. Our conclusions are intended for general comparison of the well and/or aquifer in its present condition against known water well standards and/or guidelines.

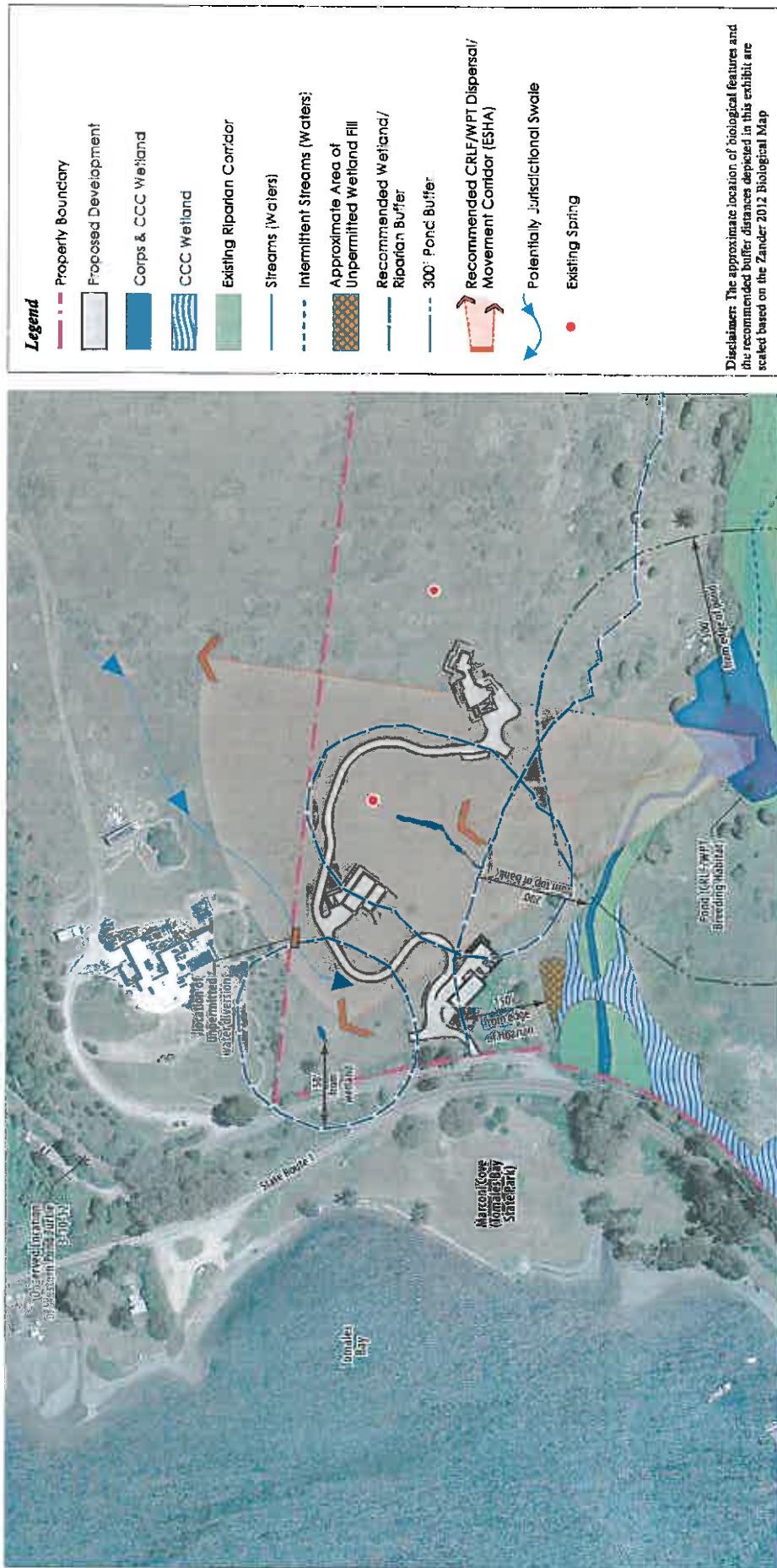
In accepting this report, the client releases and holds *Bierman Hydrogeologic, P.C.* harmless from liability for consequential or incidental damages arising from any different future pumping rate, calculated well yield or water quality that was expressed herein. Our report is not a guarantee of any water production rate, yield or water quality.

Respectfully submitted,



Aaron Bierman
Consulting Hydrogeologist
PG#7490, CHg#819





Source: Zander 2012, EMC Planning Group 2013

Recommended Environmentally Sensitive Habitat Areas

ATTACHMENT 5

**Report on Fire Suppression
Magee Brandy Distillery**

**Prepared by:
Chris Miller**

October 2012

Qualifications

Christopher L. Miller
Fire Captain/Retired
Monterey Fire Department

The following is a brief description of my career in the Fire Service over almost 30 years.

Carmel Mid-Valley Fire Protection District (now Carmel Regional)
1.5 years service as Firefighter/Engineer

Monterey Fire Department
28 years service as Firefighter, Engineer, Captain. Was a Captain or Station Supervisors for 18 years until my retirement in 2004.

Working for the Monterey Fire Department each station conducted inspections in all types of occupancies in their district. In addition to the Company inspections I was responsible for the Public Assembly Inspections in the City of Monterey including commercial and industrial buildings. I applied both the Uniform Building and Fire code while doing the inspection program. (3.5 years)

California State Fire Academy certified Fire Prevention 1A and 1B
Numerous other certifications and classes during 30 year career.

Introduction

When one looks at the proposed Magee project in Marin County there are many fire safety issues that must be addressed because of the nature of the proposed building use and its location. These issues include building location, use and proximity to fire response personnel, and on-site fire suppression and design.

In this brief report I will focus on fire suppression and design issues of the project. Code references will be to accepted statewide standards for both Building Construction (2007 CA Building Code) and Fire Suppression (CA Fire Code).

The fire suppression aspects of this project will be discussed in terms of:

1. Occupancy class
2. Fire suppression requirements
3. Factors in fire suppression effectiveness
4. Practical consequences

Occupancy Class

Occupancy Class is defined by the use of a building. The brandy distillery should be classified H-2 occupancy (hazardous).

California Building Code Section 307

The brandy produced is a flammable liquid (closed cup flash point below 100F 38C) similar to ethanol. Class 1B (flash point below 73F (23C) and boiling point at or above 100F (38C)).

Because hazardous flammable liquids with a classification of 1B will be produced and stored in quantities during production, fermentation, and bottling the Brandy building would be a H-2 occupancy.¹

Fire Suppression Requirements

UFC Chapter 34

Flammable and Combustible Liquids

3401.1 Scope and application. Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and combustible liquids shall be in accordance with Chapter 27 and this Chapter.

¹ UBC (F)307.4 high hazard group H-2. Building and structures containing materials that pose a deflagration hazard or a hazard from accelerated burning shall be classified as Group H-2. Such materials shall include, but not be limited to the following: Class I, II, IIIA flammable liquids which are used or stored in normally open containers or systems or in closed containers or systems pressurized at more than 15 psi. Storage of product on site will increase the number of flammable units over time.

Section 3404.2.9.1.1 requires foam fire protection systems for certain above ground tanks used for storage of Class I or II liquids or when located within 100 feet of a fired still, heater, related fractioning or processing apparatus or similar device at a processing plant.

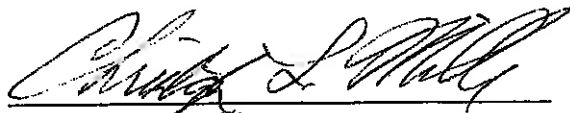
ATC foam (Alcohol Type Concentrate) is recommended to suppress a fire at a brandy distillery. Water suppression only can result in increasing temperatures thus exacerbating fire danger. Due to the rural location it is highly unlikely that either of the local fire stations (Tomaes or Point Reyes) have ATC suppression capability or training.

Factors in Fire Suppression Success

The project proposes a distillery producing a flammable liquid in a H-2 occupancy. Usually a business of this type would be located in a commercial or industrial zoned area where similar business uses are also located. Clustering of such uses usually ensures adequate water flow from city water mains and quick response time due to proximity to fire stations. The project location is rural and somewhat remote which conflicts with optimal Emergency-Code 3 response times. In addition, limited staffing at the Tomaes Bay Fire Station would further negatively impact response times. Accordingly, it would be prudent in my opinion given the type of occupancy, response times, and considerations related to an alcohol based fire, to apply the most stringent fire suppression standards. A foam type fire suppression system would give first responders a better chance at success should a fire occur.

Practical Consequences

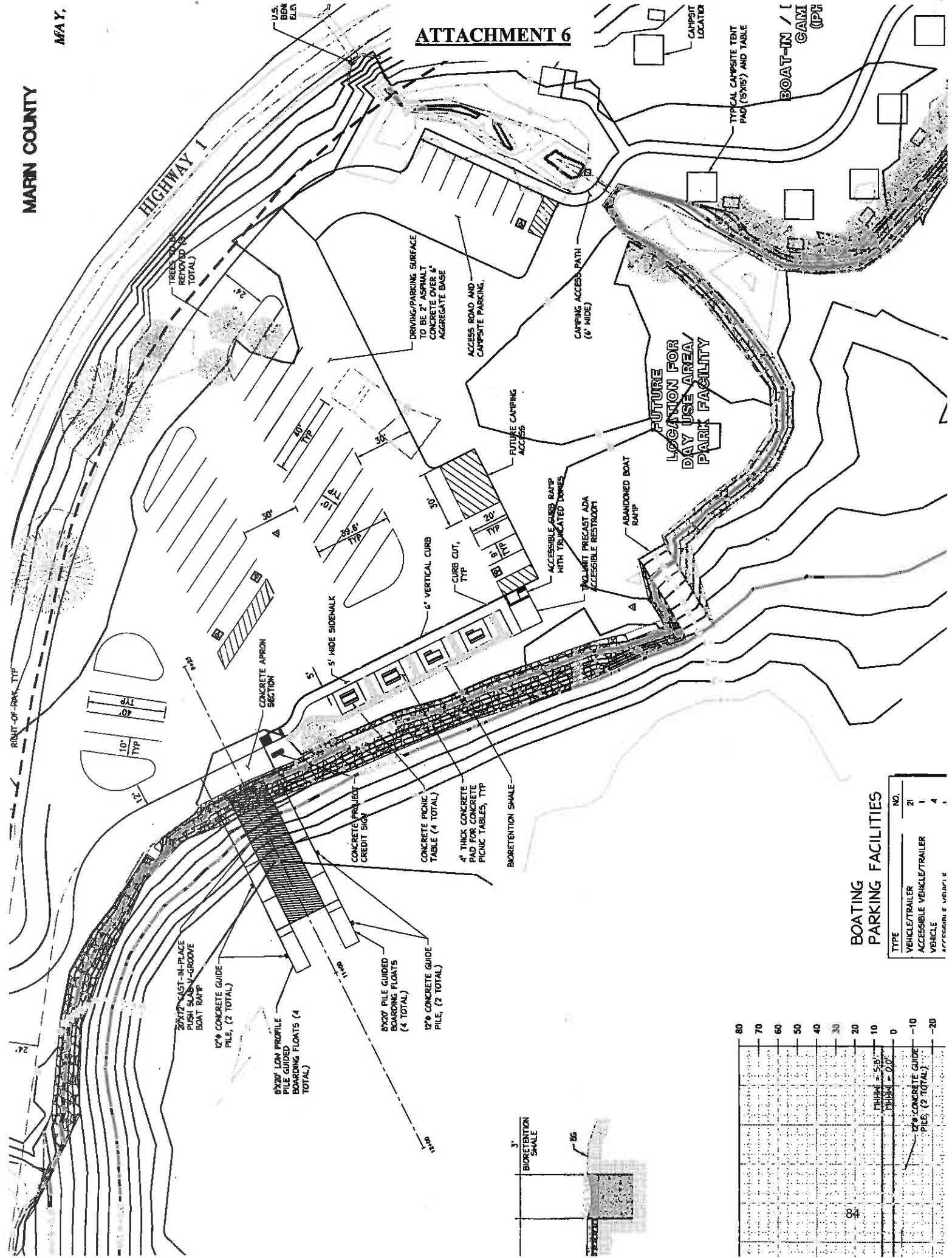
The proximity of sensitive resources immediately adjacent to the proposed brandy distillery and local earthquake fault conditions require special consideration of containment of fire suppression materials (e.g., water, foam) in the event of an incident. Unless the distillery is designed with a comprehensive internal containment system (which seems unlikely given its size), external containment will be necessary to capture spill and runoff of fire suppression chemicals. The containment system must be designed and sized to capture 100% of all suppression contaminant materials (i.e., brandy, water and foam) and strategically located beyond the edge of the development area (i.e., building and pavement) yet not encroaching into sensitive resource areas. A Hazardous Materials Management Plan must also be prepared.



Christopher L. Miller
Fire Captain, Retired

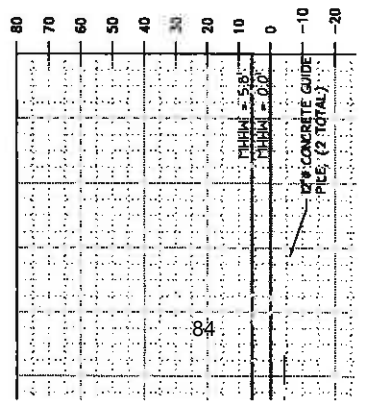
Date: 10/12/2012

ATTACHMENT 6



BOATING PARKING FACILITIES

TYPE	NO.
VEHICLE/TRAILER	21
ACCESSIBLE VEHICLE/TRAILER	1
VEHICLE	4
ACCESSIBLE VEHICLE	1

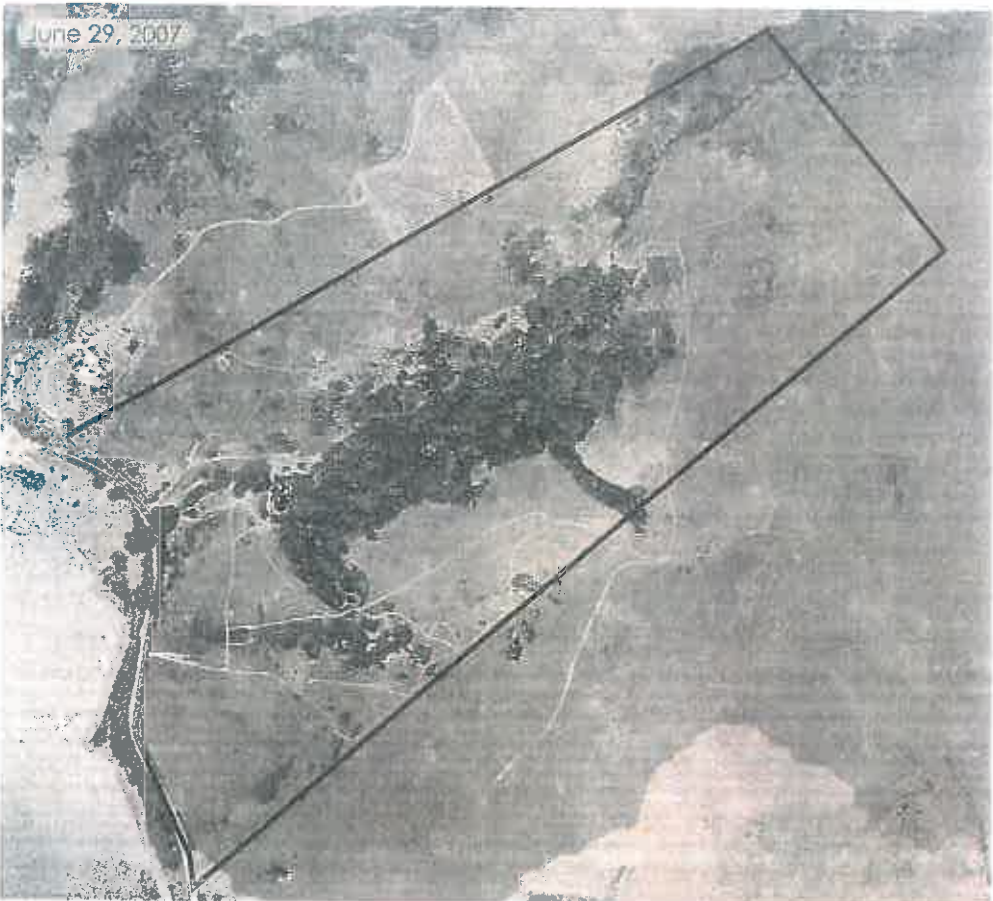


August 29, 2006

ATTACHMENT 7



June 29, 2007



Source:
Google Earth

Figure 1

Property Roads Aerials

Coastal Act Violocation Letter 2 Supplemental Information

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M

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February 10, 2012

Larry Kennings
LAK Associates
3030 Bridgeway Blvd., Suite 103
Sausalito, CA 94965

**Response to EMC Comments
Brader-Magee Project
17990 State Route 1
Marshall, California**

Dear Larry:

At your request, Zander Associates is providing this letter to address comments from EMC Planning Group, Inc. on our September 27, 2011 letter report that included additional biological resource information for the Magee property. Our report was produced as a result of observations and discussions in the field with Coastal Commission staff and others during a site visit on May 24, 2011, and in direct response to a specific list of supplemental items requested by Coastal Commission staff in an email message dated May 26, 2011.

The stated purpose of EMC's October 21, 2011 comment letter is to identify concerns that remain after reviewing the Zander Associates report. However, EMC's inaccurate and inappropriate use of regulations and standards relative to biological resources misrepresents the facts about the adequacy of our work and the potential impacts to special-status species, wetlands and other resources on the Magee property. Specific points are as follows:

California Red-legged Frog Critical Habitat

EMC represents that "all project development must be consistent with critical habitat designation rules promulgated by the U.S. Fish and Wildlife Service (2006; 71 FR 19244-19346)" and then proceeds to cite critical habitat definitions, procedures and standards from the 2006 publication as a basis for project evaluation.

First, the 2006 critical habitat designation rule for CRLF referenced by EMC is out of date. For the third time in nine years, the Fish and Wildlife Service revised the designation of critical habitat for CRLF in 2010 (75 Fed. Reg. 12,816, Mar. 17, 2010). The revised designation increased the amount of critical habitat by over one million acres from the 2006 critical habitat designation cited by EMC (The Magee property was not included in either the 2006 or the revised 2010 designation - see below). There were also substantial changes in methods for evaluating habitat for inclusion, in the definitions of primary constituent elements (PCEs), and in

other procedures that have a direct bearing on EMC's comments. In particular, the PCE describing upland habitat was substantially revised (see below).

Second, the final 2010 critical habitat rule did not include and does not apply to the Magee property; any implication that the Magee property should be considered critical habitat for CRLF is intentionally misleading. Under the federal Endangered Species Act (ESA), the **federal government** is required to designate critical habitat for any species it lists under the ESA. Critical habitat designations must be based on the best scientific information available, in an open public process, within specific timeframes. Critical habitat is not assumed just because CRLF may be present at a given location. Before designating critical habitat, careful consideration must be given to the economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. The Secretary of Commerce may exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless excluding the area will result in the extinction of the species concerned. The key points of designating critical habitat are the **requirements for formal federal government agency (e.g. USFWS, NOAA Fisheries, US Department of Commerce) designation/exclusion; an open, public process within specific timeframes; and careful consideration of economic impacts**. EMC is not qualified and cannot arbitrarily determine that the Magee property constitutes critical habitat for CRLF simply because it provides a convenient talking point to bolster EMC's position.

Third, EMC's use of (out of date and out of context) PCEs and other critical habitat standards as a basis for evaluating site suitability and potential impacts of the Magee project on CRLF is inappropriate. Instead, a site-specific habitat assessment, prepared by a qualified herpetologist, is the accepted professional standard. At the request of Coastal Commission staff, we retained such an expert (Dr. Mark Jennings¹) to conduct site surveys following USFWS guidelines and to prepare a site-specific habitat assessment for CRLF, western pond turtle and foothill yellow-legged frog (see below). Dr. Jennings concluded that the pond and associated riparian corridor on the site provide the primary breeding, dispersal, foraging and aestivation habitat for the small population of CRLF he identified on the Magee property. To suggest, as EMC does, that there are other areas of potential breeding habitat, undocumented freshwater seeps (see below), improper characterization of potential upland habitat, inadequate setbacks and potential adverse effects on dispersal corridors, is ill-informed and challenges Dr. Jennings' findings by application of incorrect PCE standards without a first hand understanding of site characteristics. For example, EMC references an arbitrary 200 foot setback as part of the PCE definition for CRLF upland habitat and then concludes that any development "within 200 feet of potentially suitable CRLF upland habitat features presents a conflict and legal inconsistency regarding sensitive species and ESHA protections...." However, in the final 2010 critical habitat rule, USFWS follows Fellers and Kleeman (2007) who discourage setting specific distances for upland buffer zones due to differences in biological or site-specific requirements, and state that any distances set for avoidance of upland habitat should be made on a case-by-case basis by a

¹ Dr. Jennings is a well-known and well-respected herpetologist with extensive experience surveying for and evaluating habitat conditions of California red-legged frog. He has published over 105 peer reviewed scientific papers in the fields of herpetology and fisheries and coauthored the definitive reference on amphibian and reptile species of special concern in California for the California Department of Fish and Game (Jennings and Hayes 1994).

herpetologist familiar with CRLF ecology. In his September 2011 site-specific habitat assessment, Dr. Jennings concludes that by limiting its total development footprint, siting all facilities well over 100 feet away from the edge of the central riparian corridor and not creating barriers to direct overland movements by CRLF, the Magee project provides a setback more than adequate for CRLF to move unhindered between adjacent aquatic habitats or between upland and adjacent aquatic habitats. Dr. Jennings' findings, rather than EMC's conjecture, provide a solid, professional basis for informed decision making relative to the occurrence of CRLF on the Magee project.

Wetlands

EMC represents that there may be additional (previously undisclosed) seeps and wet meadows on the site ("potential CRLF habitat features"); that the swale located at the northern property boundary must be delineated (and may constitute CRLF critical habitat [see above] by providing a dispersal corridor); that a Corps of Engineers wetland delineation must be completed (to establish boundaries and identify all potential CRLF habitat features); and that the project "must undergo a formal Section 7 consultation process with the USFWS in connection with a Section 404 Clean Water Act permitting process."

During our May 24th site visit, we evaluated site conditions and discussed the results of previous biological assessment work on the site with Dr. John Dixon, Coastal Commission Ecologist. Mr. Bill Goggin, the author of the October 21, 2011 EMC comment letter, was party to all of the discussions with Dr. Dixon, who actively included him in the site assessment and solicited his comments as we made field decisions and agreed on an approach for additional work. We specifically considered both our previously mapped and potentially new wetland features within the proposed development study area. We dug soil test pits and evaluated hydric characteristics, hydrophytic vegetation, and hydrology in the presence of both Dr. Dixon and Mr. Goggin.² We evaluated and revised the upland limits of the riparian corridor in collaboration with Dr. Dixon. We investigated putative wetland areas as suggested by Mr. Goggin (e.g. an isolated hillside blackberry patch, the swale at the northern property boundary) and agreed to follow up with further technical assessment. All potential wetlands within the study area, including seeps and wet meadows, were evaluated prior to, during and after our May 24th site visit. We do not believe that there are additional areas that would qualify as seeps or wet meadows ("potential CRLF habitat features") as Mr. Goggin recalls.

² In the EMC letter, Mr. Goggin questions our conclusions regarding wetlands and facultative plants, suggesting that facultative plants should be considered hydrophytes for the purpose of defining wetlands under the CCC "one parameter" standard. However, according to CCC Administrative Regulations (Section 13577 [b]), wetlands occur where hydrology is sufficient to support either hydrophytic vegetation or hydric soils, or both. Thus, facultative plants, which are equally observed in non-wetland as in wetland areas in coastal California, would need to be growing in wet areas (i.e. ponded or saturated at some time during the year) in order to be classified as hydrophytes; the presence of facultative plants does not necessarily indicate the presence of wetland hydrology. Consequently, facultative plants in foggy coastal environments are not reliable indicators of wetlands. See also: Wetland Statement of Findings, p.8, Final EIS, Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan, National Park Service GGNRA, March 2009. & Wetlands Delineation for Humboldt State University Proposed Corporation Yard Facility, p.5, Winzler & Kelly. August 2009.

No wetlands were identified in the swale at the northern property boundary where overland flow from the neighboring (Kivel) property enters the Magee property. There are no field indicators suggesting that water flows through the area consistently (as was confirmed with Dr. Dixon during the May 24, 2011 site visit). There is not a defined channel, no rilling or vegetation matting, nor is there a predominance of hydrophytes. The soil in all samples taken was similar; dry, and even in color and texture. No hydric soils field indicators were observed. Furthermore, in a geotechnical evaluation conducted in March 2011, Herzog Geotechnical Consulting Engineers concluded that runoff in the swale originates from a drain pipe installed near the swimming pool on the Kivel property.

The results of our delineation work, including a total of 38 wetland data sheets, a map³ and a technical assessment, were submitted to Coastal Commission staff.. Because Coastal Act wetlands are typically more extensive than federal (Section 404, Clean Water Act) wetlands, because we field-verified our work with Dr. Dixon, and because the proposed project will avoid all potentially jurisdictional wetlands (and potential CRLF habitat features) with more than adequate setbacks, further verification by the U.S. Army Corps of Engineers is unwarranted. Contrary to EMC's "simple fact" conclusion, no formal Section 7 consultation with the USFWS in connection with a Section 404 Clean Water Act permitting process is required.

Other Special Status Wildlife Species

EMC represents that additional surveys and site assessment are necessary in upland grasslands within the proposed development area to assure protection of western pond turtles and American badgers.

Dr. Jennings evaluated the potential for WPT aestivation and nesting habitat in the upland grasslands within the proposed development area in his September 2011 assessment. He concluded that the grasslands on the site do not provide suitable overwintering habitat for WPT because they lack canopy, duff and other cover necessary for aestivation and hibernation. In addition, he did not observe suitable nesting habitat (i.e. sparsely vegetated areas of well drained clay or sandy soils exposed to direct sunlight) within the dense thatch and robust growth of annual and perennial grasses in the proposed development area. To assure that WPT would be clearly excluded from project construction activities, Dr. Jennings recommended that standard silt/exclusion fencing be installed and maintained around the perimeter of all work areas prior to and during construction. He also recommended that clearing, grading and other construction activities be limited to the dry season (typically April 15th through October 15th). Dr. Jennings followed accepted professional standards in his site-specific assessment for WPT. We do not believe that additional site work or protection measures for WPT, beyond those already recommended by Dr. Jennings, are necessary.

From the onset of our work on the Magee property, we have assumed the potential for presence of the American badger. Indeed, there are anecdotal reports of badger sightings in the area from

³ The wetland delineation data were provided to the project engineers in digital format for purposes of site planning. Printed maps of any scale can be generated from these data upon request.

both Mr. Magee and EMC. However, we have not observed any sign of the animal or potential burrows within the proposed development area. Badgers have large home ranges, typically from about 395 to 2,100 acres, and are generally solitary aside from temporary family groups, transient mating bonds, and overlapping home ranges. Therefore, they are not likely present in large numbers in the area. The Magee project will result in the loss of less than one acre of grassland within the proposed development area and conversion of approximately six acres of existing grassland to vineyard. The majority of potentially suitable badger habitat on the Magee property (approximately 93 acres of open grasslands, in areas of low to moderate slope) will remain unaffected. Standard measures to avoid potential impacts to badgers in proposed development areas, including preconstruction surveys for active dens, passive relocation if active dens are found, and monitoring by a qualified biologist during site activities would assure adequate protection for this species on the site.

EMC calls for more comprehensive, seasonally-timed plant surveys and a site-wide vegetation map.

We conducted numerous field surveys in March, April, May, July and September of 2008 to characterize vegetation throughout the Magee property. We followed up with appropriately-timed, focused surveys for special status plants on March 12 and June 30, 2009 in the proposed development area, i.e., that portion of the property where the residence, barn/shed, brandy barn and access road are planned. In March, May and June 2011, we surveyed the areas of the proposed ancillary agricultural structures and vineyard. All of these plant surveys were performed by trained botanists with over 25 years experience in the flora of California following protocol developed by the California Department of Fish and Game (2009). No threatened, endangered, rare, or otherwise special status plants were found in the proposed development area or within areas where ancillary structures and the vineyard are proposed. We are confident that further plant surveys within the proposed development would not yield any different results. We provided a vegetation map of the entire site with our September 27, 2011 report.

EMC requests a revised, comprehensive biological resources map overlaid on an updated site plan. In addition, EMC believes that the entire development footprint should be precisely staked on the ground to confirm distances from special status resources.

We provided a complete biological resources map of the site with our September 27, 2011 report. The updated site plan was overlaid onto the maps delineating wetland and riparian areas (Figures 2 and 3). Appropriately-scaled electronic files of the mapping are available through the project engineer. The development footprint was generally staked during our site visit on May 24, 2011, with Coastal Commission staff and others (including Mr. Goggin). Mr. Magee is agreeable to additional staking/flagging within the proposed development footprint if necessary.

In conclusion, we believe that biological resources on the Magee property have been more than adequately characterized, surveyed, delineated and mapped to allow for informed decision-making on the proposed Magee project. Our work has been discussed and field-reviewed with Coastal Commission staff and others. At Dr. Dixon's request, we have conducted additional

assessments and provided supplemental information. For the reasons discussed above, we do not believe that there are unresolved issues or incomplete analyses that could have negative consequences on special status species, their habitats, wetlands or other sensitive biological resources as EMC represents.

If you require any further information or would like to discuss the comments provided herein, please don't hesitate to call me.

Sincerely,

A handwritten signature in blue ink that reads "Leslie Zander". The signature is written in a cursive, flowing style.

Leslie Zander
Principal Biologist

RANA RESOURCES
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RanaResources@aol.com

#16,408
November 15, 2012

Ms. Leslie J. Zander
Zander Associates
4460 Redwood Hwy, Suite 16-240
San Rafael, CA 94903

Dear Leslie:

I've had a chance to review the 06 April 2012 memo from EMC Planning Group, Inc., to their legal counsel (forwarded to Larry Simon), as well as their 21 October 2011 correspondence and your 10 February 2012 reply to Larry Kennings. My comments below refer to the 06 April 2012 letter and deal specifically with statements made regarding California red-legged frogs (*Rana draytonii*; CRLF) and western pond turtles (*Actinemys marmorata*; WPT).

The EMC memo refers to "important new information" regarding the presence of WPT on an adjacent property. This is not new information. Beginning in 2008, we assumed that WPT could be present in the pond on the Magee property and my directed surveys in 2011 merely confirmed that assumption. In my 2011 Habitat Assessment, I addressed the habitat elements for WPT on the Magee property as well as on adjacent properties; acknowledging that WPT could move to and from aquatic habitats on adjoining properties.

Based on the observation of one adult turtle on a neighboring property, EMC concludes that this turtle came from the Magee property. This is scientifically unjustified and misleading. There is no supporting documentation to bolster this assertion (e.g., radio tracking of individuals or repeated observations of marked individual WPT between the two locations mentioned). Based on my first-hand experience (from 1992-1999) with radio tracking WPT in streams along the coast in northern San Luis Obispo County, WPT certainly can move overland between aquatic sites and also into adjacent riparian areas for various reasons such as nesting, estivation, avoidance of storm runoff, or food resources. However, some individuals may move considerable distances (i.e. thousands of feet) between streams and ponds and other individuals will move little or no distances whatsoever. Thus, it is purely conjecture to conclude specific overland corridors based on a single observation, particularly the straight line corridor that EMC illustrates on Figure 2 included with the memo. It is just as likely that the WPT observed on the neighboring property originated from the larger aquatic habitat to the north.

Following on the straight line corridor assumption, EMC speculates that the swale in the northwestern portion of the Magee property that continues up into the Lund-Kivel property provides critical dispersal habitat for WPT and possibly CRLF. They describe the swale as

small, seasonally inundated, and flowing in a southwesterly direction to within 200 feet of the pond; which they presume is the turtle's ultimate destination. The course of the swale is not indicated on the Biological Resources Map attached to the memo but the headwaters area is generally identified. Following the topography in a southwesterly direction from the identified headwaters area takes you further away from the pond, and nowhere near within 200 feet. Additionally, the swale is not a wetland or other water¹; it does not have a defined channel and does not support riparian habitat. It is situated within open grassland and is barely a discernible feature on the Magee property. Therefore, to conclude it represents a critical habitat element for WPT and CRLF is not supported.

EMC goes on to suggest that the swale constitutes critical habitat for CRLF as defined in the Federal Register. The Federal Register does define and designate critical habitat for CRLF (75 Fed. Reg. 12,816. Mar. 17, 2010) and the Magee property is not included in that designation. As you discuss in your letter to Larry Kennings dated 10 February 2012, designation of critical habitat is the responsibility of the federal government and must be based on the best scientific information available, in an open public process, within specific timeframes. It is not assumed just because CRLF may be present at a given location. Therefore, any implication that the Magee property should be considered critical habitat for CRLF is intentionally misleading.

Movement corridors for WPT and CRLF were addressed in the Habitat Assessment I completed for the Magee property in 2011. It is my opinion that the relatively small footprint and location of the proposed home site, barns and access road would still allow for unhindered movements of WPT and CRLF between known occupied aquatic habitats on the project site and to and from aquatic habitats on the adjoining properties. I do not believe that movement corridors are "at risk of being irretrievably lost," nor do I believe that the project "has a high potential to lead to adverse consequences to the local populations of WPT and CRLF" as EMC suggests. If in fact the WPT observed on the neighboring property travelled from the Magee pond along the corridor speculated by EMC, then it would have to have crossed two existing roads and maneuvered through disturbed areas around residential buildings; EMC makes no mention of these existing barriers.

Finally, I note another misleading statement in the first paragraph of page 2, where the CRLF is referred to as the "state Threatened California red-legged frog." Since the WPT is stated as a "State Species of Concern" in the same sentence, then the only logical conclusion is that EMC considers the CRLF to be listed as threatened by the State. This is incorrect. The CRLF is currently a State Species of Special Concern and is listed as Federally Threatened by the U.S. Fish and Wildlife Service.

In closing, I want to reiterate that my CRLF habitat assessment for the Magee property was conducted following the current USFWS protocol for this species. Because there are currently no official habitat assessment protocols for WPT, my conclusions with respect to WPT habitat were based on my extensive familiarity with the species and previous habitat assessment reports submitted to agencies during the past 25 years. Thus, I believe that my professional opinions on

¹ U.S. Army Corps of Engineers Jurisdictional Determination for Magee Property, March 2012; Wetland Delineation for Magee Property, October 2012

herpetological matters on the Magee property are based on the solid scientific evidence gathered in a manner consistent with agency requirements for these species.

Please feel free to contact me if you have any questions on the above.

Sincerely,

A handwritten signature in black ink, reading "Mark R. Jennings". The signature is written in a cursive style with a horizontal line underneath the name.

Mark R. Jennings
Herpetologist and Fisheries Biologist



Sierra Club

P.O Box 3058, San Rafael, CA 94912
<http://sanfranciscobay.sierraclub.org/marin/>

April 8, 2013

California Coastal Commissioners
c/o Charles Lester, Executive Director
45 Fremont Street #2000
San Francisco, CA 94105-2219
FAX: 415 904-5400
EMAIL: clester@coastal.ca.gov

RE: Application No. A-2-MAR-10-22 (Magee & Brader, Marin Co.)

Dear California Coastal Commissioners,

The Sierra Club would like to thank Coastal Commission for overturning the County of Marin's flawed permitting of the Magee Distillery Project, and calling for the De Novo hearing to achieve full disclosure of impacts to the Coast. We would like to commend Coastal Commission Staff for their tenacity and diligence on the Magee Distillery Project: gathering accurate information from the applicant has not come easily. We also appreciate the responsiveness Staff has shown to our environmental concerns and suggestions we have offered.

Below are our comments on the Staff report and remaining issues of concern.

THE USE IS INDUSTRIAL, NOT AGRICULTURAL

Sierra Club continues to assert that an industrial liquor distillery is an inappropriate use of agricultural land in our sensitive and precious coastal areas. It remains clear to Sierra Club that the distillery is the primary proposed use of the land, NOT the incidental farming of vegetables, goats, and a hobby vineyard.

The consistent attempts to manipulate this Project into a highly environmentally constrained parcel is unacceptable. Because of the extreme abundance of ESHA's, listed species of concern, downstream impacts to the already impaired Tomales Bay, and safety concerns for users of public lands and waters downstream, Sierra Club believes that 200-foot ESHA buffers are most appropriate for the conditions of the parcel.

There is an alternative site that is available, that is being overlooked, that may be a better option for the Project. If the Project is to be approved, it should be in the alternate location, without the distillery.

The project of 10,000 plus square feet of development on 149 acres of undeveloped habitat, with the primary focus being a brandy distillery, is not an agricultural use, but an industrial use.

The project's five water storage tanks, three propane tanks, brandy storage buildings, a brandy factory, a “smelling” room facility, six acres of grapes (indicating that grape growth is incidental to the distillery, rather than the other way around), and six acres of hops all clearly indicate that the primary use is industrial. Storage of flammable liquids used in production, as well as the storage of the brandy product itself, raises concerns for hazardous materials spills and leaks into the adjacent, sensitive coastal resources.

The Sierra Club regards industrial uses as inappropriate for the Coastal Zone in Marin County, which is principally comprised of high-value natural habitat and locally-owned agricultural businesses with very minimal processing facilities. Sierra Club concludes that this project should not be allowed in the Coastal Zone, but placed in a more urban/industrial setting, where it would be appropriate for hazardous industry.

WASTEWATER DISCHARGE / SEPTIC SYSTEM

There are multiple waste streams associated with the proposed Project: agricultural discharge, residential discharge and industrial discharge. The first two waste streams are fairly standard permits, conditions and requirements through the Regional Water Quality Control Board (RWQCB) Ag and Grazing division, and the County of Marin, respectively. The third waste stream, industrial solid and effluent waste from the distillery, require expert review, engineering, and permit conditions assigned by the RWQCB Staff, in order to protect the environment and the waters of the State. These permits have been delayed until after the Coastal Commission hearing, so there is inadequate information for the public to evaluate.

1. INADEQUATE DATA PROVIDED - The applicants and their engineers have offered some information to the Coastal Commission Staff on how they propose to handle the industrial strength effluent and solid waste, but no formal engineering plans or detailed data on distillery effluent has been submitted.

The general information that has been provided, with limited data, has been based on WINERY and BEER effluent components, not DISTILLERY effluent data. How are we to know if the three are equivalent in composition, if no data has been offered for distilleries? The applicant needs to provide the State and public with effluent discharge and composition data for the applicable land use, so experts may review the real data that will dictate waste discharge engineering.

2. PROPOSED “MIXING” OF RESIDENTIAL AND INDUSTRIAL WASTE STREAMS – By co-mingling the waste streams, this proposal basically turns a residential septic system into an industrial discharge to the waters of the state, requiring the RWQCB to permit the septic system. In order for this proposal to move forward, Sierra Club asserts that ACCURATE data from actual distillery effluent must be used in the calculations for engineering plans leading to appropriate waste discharge limits. The industrial strength effluent will have dilution requirements and mandated discharge limits of multiple water quality parameters, as issued by the RWQCB. More information and research on the Orenco unit proposed, and its history of application for the proposed use on this Project, is needed before a determination can be made as to efficacy of use in this situation.

MISCELLANEOUS CONCERNS

In our review of the latest staff report, we have a few remaining concerns and offer the following amendments to the conditional language:

Page 12, **Special Condition 8: No Importing of Grapes and Alternate Brandy Barn Use.**

“Consistent with the Applicant’s proposal, no grapes harvested off-site are allowed to be imported to the distillery operation in the brandy barn either during the time period before grapes are harvested from the on-site vineyard or in the event that the vineyard fails to produce a crop suitable in quality or volume to produce brandy.”

We suggest changing to: “no grapes **or grape products**” and to disallow importation of grape or grape products to the distillery **at any time**. As it reads now, it could potentially allow importation of grapes after a successful on-site harvest. Sierra Club does not feel this is the intent of the Staff, and suggests amending the language.

COMPLIANCE AND ENFORCEMENT OF CONDITIONS

Staff has done a commendable job, and gone to considerable effort, to apply a series of Conditions to the Project. While these “should” protect the environment and valuable resources of the Coastal area, Compliance and Enforcement of Project owners is an ever-present issue. Considering the sensitivity of the project, and previously reported (by neighbors), unapproved actions taken by the Applicant on the property, Sierra Club recommends that a staged, bond program be added as a Condition, to ensure enforcement of the Conditions of the Coastal Permit, if approved. However it is staged, Grading Bond, Septic Installation Bond, Construction Bond, it should be crafted to ensure maximum protection for Coastal resources that will be impacted by development.

SUMMATION

Sierra Club is grateful for the California Coastal Act, the Coastal Commissioner’s dedication and excellent Staff available to protect the coastline for all inhabitants and visitors alike. We definitely remain concerned about the Magee Distillery Project and it’s questionable placement in the Coastal area of Marin County.

- While a true agricultural use of the property is welcomed, turning an environmentally constrained parcel to an industrial use as a hard liquor processing plant is just not appropriate.
- ESHA’s should be 200-foot buffers on this particularly sensitive parcel.
- Appropriate distillery effluent data should be required for septic system review, along with detailed plans and calculations.
- A series of Bonds should be required, if the application is approved.

Thank you for your attention.

Sincerely,

Michele Barni

Chair, Sierra Club Marin Group

RICH LINCOLN & SONS

SOIL PERCOLATION TESTING
STANDARD AND ALTERNATIVE
SEWAGE DISPOSAL SYSTEM
DESIGN AND CONSULTATION
CAL. R.E.H.S. #3135

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(707) 874-2286

LAK Associates
Larry Kennings
300 Bridgeway, Ste. 103
Sausalito, CA 94965

April 9, 2013

Re: Brader-Magee Farm
Fenton & Keller 4/4/13 letter to
CCC-Larry Simon

Dear Larry:

As requested in your April 8, 2013 email, I have reviewed the letter from Bridges and appendices where my work is discussed and provide the following comments for your use:

The CCC staff has done a very thorough evaluation of the proposed wastewater treatment system and has concluded that the design submitted by this consultant is adequate. It will further be evaluated by the BARWQCB in its report of waste discharge required by the applicant. Any questions raised about the design will be addressed at that time and any changes required will become part of the design prior to their approval.

The proposed leach field is so far upslope of Tomales Bay and the adjoining watershed that the treated wastewater will be completely neutralized by the chemical and biological components of the soil before it enters the groundwater and surface waters of the watershed.

The appellants consultant is trying to alarm the commission with statements like "numerous septic tanks and lines will be placed in or leach into ESHA". The tanks are watertight as are the distribution lines; they will remain that way and be monitored to insure their integrity throughout the life of the system.

The appellants consultant also states that "the surface and groundwater quality could be adversely impacted by failure of a wastewater disposal system that may require redesign based on uncertainty regarding soils and groundwater conditions." This is not true; soils and groundwater conditions in the disposal area have been adequately documented. The disposal area (leachfield) is located in an excellent site for this purpose.

Marin County Environmental Health, the regulatory local agency for this area agrees that the disposal site and proposed treatment is adequate as designed. Prior to formal approval, they will be reviewing the project with BAWQCB personnel to determine whether the wastewater component will be permitted by both or either of the agencies. This review will establish monitoring requirements and maximum allowable wastewater characteristics from the distillery/wine processing component and final allowable limits prior to subsurface disposal.

The appellants consultant complains that "the potential for system failure is elevated due to its complexity" In fact, the system will be equipped with telemetry provided by Orenco Systems, Inc. that will allow access to monitor and adjust most of the treatment process components remotely. A service provider will be monitoring the system and correct any problems before they become significant. No problems are foreseen.

The system was designed to operate adequately and properly for its lifetime.

Sincerely,

Rich Lincoln

Rich Lincoln

*Susan Ristow
677 Peach Street
Novato Ca 94945
□
415 898 1185*

April 9, 2013

Via Email and USPS

To: California Coastal Commission
Attn: Jeff Staben & Larry Simon
45 Fremont Street
San Francisco California 94105
Cc: Charles Lester,
Executive Director, California Coastal Commission

RE: California Coastal Commission hearing, April 11, 2013
Magee Brader Project
Agenda Item Th 9C
Case Number A-2-MAR-10-022

As a thirty-two year resident of Marin County, I am writing to express my concerns regarding the Magee-Brader project. The comments in this letter are entirely my own, though I will note that I worked at Sierra Club National Headquarters for twenty years, previously served on Sierra Club Marin Group Executive Committee and Marin Audubon Society Board, am currently a member of Marin County Fish and Wildlife Commission and remain active with Marin Baylands Advocates.

In addition to specific concerns regarding the negative environmental impacts of the Magee-Brader project, I am also concerned about the overall inability to adequately address the project's cumulative impacts. During the California Coastal Commission's Substantial Issue determination process, previously undiscovered wetland areas have been revealed, along with sensitive species previously not disclosed. As the Commission is well aware, this project has morphed over time and continues to be in a state of flux with changes noted as recently as February 2013.

We understand that Marin County considered the project exempt from CEQA, and we greatly appreciate the Commission's efforts to review and disclose the many environmental impacts resulting from the project.

However, according to page 68 of the March 22, 2013 Coastal Commission's staff report:

"The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA."

As such it needs to meet the basic CEQA requirement of providing sufficient information for both the public and the regulatory agencies to make informed comments and decisions. This includes

johnristow@comcast.net

the ability to adequately assess and comment on cumulative impacts. Due to ongoing changes to, and incompleteness of, the available information, the Commission's review process fails to meet CEQA criteria, as required by the Secretary of Resources.

Ongoing unresolved issues include:

- Wastewater disposal.
Even though the distillery would involve high strength toxic wastes, the wastewater disposal system has been neither submitted to nor approved by the RWQCB.
- Buffer areas.
Although no development is intended within the riparian and stream buffer, a portion of the brandy barn parking area is shown on the project plans to intrude into the buffer. Page 45 of the Coastal Commission's March 22, 2013 staff report makes note of this fact and states that "The plans need to be corrected ..."
- Wetland delineation.
There is concern regarding whether the recent on site drainage diversion may have resulted in a misinterpretation of the new wetland delineation.

During the review process, many substantive issues regarding environmentally sensitive habitat have been discussed. These issues highlight the inappropriateness of the current project's footprint:

-Mr. Goggin, Senior Biologist EMC Planning Group, notes that portions of the development area are suitable dispersal and movement corridor habitat for California Red Legged Frog.

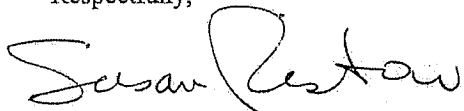
-Mr. Goggin also notes that the project site contains suitable habitat for the Protected Special Status Purple Martin. Removal or disturbance of this habitat could result in nest failure or other negative species impacts.

Given the environmental constraints of this site and the need for adequate information, time to review the information and provide input to the Commission, we urge the Commission to:

- Deny the distillery portion of the project. This operation could constitute a precedent setting industrial use of the property and therefore would not be consistent with agriculture uses appropriate within the Coastal Zone Area in which the project is located.
- Request that the applicant submit a revised proposal to relocate the balance of the project on the identified 12.6-acre alternate site. This could address many of the concerns regarding environmentally sensitive habitat areas and California Species of Special concern and other resident wildlife.

Thank you for your efforts to protect the valuable resources of the Coastal area and for the opportunity to provide these comments.

Respectfully,



Susan Ristow

johnristow@comcast.net

April 8, 2013

To: California Coastal Commission Staff
Fax (415) 904-5400

Dear California Coastal Commission Staff,

My name is Susan Moon and I am a liaison for ORCA (Organization of Regional Coastal Advocates).

I am sending ex parte communications via email regarding April 2013 California Coastal Commission meeting agenda items to Commissioners McClure, Garcia and Kinsey today April 8, 2013.

Per ex part rules I am hereby copying communications to staff at the same time.

Thank you,



Susan Moon
PO Box 1076
Point Arena, CA 95468

Attached: April 8, 2013 emails to commissioners McClure, Garcia and Kinsey

April 8, 2013 ex parte communication from ORCA (5 pages) sent
attached to above emails to commissioners McClure, Garcia and
Kinsey

Faxed including this page and ^{fax} cover page: 10 pages

April 8, 2013 ORCA Ex parte Th.9.c. / Approve w/ modified conditions

On the issue of item #Th.9.c. Application No. A-2-MAR-10-22 (Magee & Brader, Marin Co.) ORCA is speaking for Nancy Okada.

Staff is recommending approval with conditions.

We are asking that the distillery not be allowed because of impacts to coastal resources, and that the development be clustered on the southern part of the property to minimize impacts to ESHA and visual resources.

1. We commend staff, applicants and advocates for a much-improved project proposal that includes stronger protections for ESHA, wetlands and water quality for Marshall and Tomales Bay.

2. We strongly oppose any brandy distillery on subject parcel:

An industrial distillery violates neighborhood community character: no industrial facilities are currently located in Tomales Bay's watershed SWRCB has determined TB wetlands are currently impaired with nitrogen and pathogens. The Bay was selected in 2002 as a Wetland of International Significance by the 1971 Ramsar Convention, which recognizes 2100 fragile wetlands worldwide in danger of loss.

Distillery produces toxic wastewater and sludge that could debase Tomales Bay's fragile coastal and marine resources. The state Water Board has not as yet evaluated the possible harmful impacts of this commercial facility and waste stream for this industrial facility must be better specified (LCP 22.045.04).

A distillery (75 feet from Marconi Cove) will impact State Park camping facility directly across the highway.

Distillery alcohol-fed fires are massive and explosive: almost all 30+ distilleries in California are located for solid policy and safety reasons in urban areas (usually in industrial parks) with well-established urban water and sewer services. Flashpoint/ignition point for brandy ethanol is 78 degrees. Specialized foam is required immediately upon ignition of ethanol vapors. Foam is highly toxic to all living things and firefighters require special haz-mat suits. All fire services in Tomales Bay for Marshall are at least 20 minutes away down winding two-lane Highway One -- the Bay's only major access road in and out.

Removing the distillery from the project proposal in no way compromises current or future agricultural production potential on parcel. In fact removing this industrialization enhances ag production.

3. CCC should move all project buildings to 12 acre Alternative Site (southern portion of parcel) to fully avoid ESHA, blue-line stream and wetlands altogether including avoiding historic coursing water and drainage problems on remainder of property. The project as sited violates following Marin Unit II LCP chapters: 22.56.130 (Water Quality); 22.57.024 (Erosion Control); 22.56.130 (ESHA, Streams & Wetlands); 22.37.036 (Agricultural Productivity); 22.57.035 (Clustering Development); 22.57.033 (Conditional Uses); 22.57.035(1) (Existing Roads and Services); and finally 22.56.130 (Visual Resources).

Tom Yarish

5050 Gilchrist Road, Sebastopol, CA 95472
707-992-0463

April 9, 2013

California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105-2219

Re: Magee/Brader Project (A-2-Mar-10-022, West Marin County)

Dear Coastal Commissioners,

I have been active in environmental matters in Northern California coastal estuaries and sanctuaries for the past forty years. My commentary is based on concerns that all coastal and marine environmental resources are facing unprecedented challenges and changes. I urge you to constrain this project to the southern portion alternative sites and to limit its uses to conventional residential and agricultural practices consistent with the historical character of Marshall and the Tomales Bay watershed.

This project is planned on a hillside that drains directly into Tomales Bay. The advent of a distillery as an industrial/commercial facility poses potential direct threats to the water quality within the project boundaries and to the down-slope habitats and species from hazardous wastes and discharges from the distillery operations, without any compensating benefit to the adjacent public trust resources. Moreover, the project is situated near several residences and public facilities (Marconi Conference Center and the planned visitor campground down-slope at Marconi Cove Marina) that may well suffer from traffic and production noise, airborne pollutants and odors, and from traffic accidents on a high speed curve with limited visibility at the project entrance.

The question needs to be raised about the designation of grape and hop cultivation as legitimate "agriculture" when the end products are neither food nor fiber. Indeed, this looks like a capital-intensive industrial process that does little to support the historic agricultural lifestyles and activities of the area. The permitting of such an industrial process would indeed represent a change of existing use patterns and could well vest an unusual status in the property that would place its market value well-above established agricultural prices.

It is questionable that such a small scale distillery limited to local on-site production would ever become profitable, particularly when faced with the uncertainties of local and regional climate change that have already impacted local rainfall and growing seasons. And as I read the staff report and documents, it is not clear that there is a sustainable source water on the property to support all the described activities, particularly in dry rainfall years, such as the current year.

Therefore, I urge the commissioners to limit this project to residential and agricultural practices that are consistent with current local and coastal protection plans and policies.

Sincerely,

Tom Yarish

cc:

Charles Lester, Executive Director clester@coastal.ca.gov;

Jeff Staben Jeff.Staben@coastal.ca.gov

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

8th April 2013

Dear Coastal Commissioners

Agenda Item Th 9c.

I am a resident of Point Reyes Station and I am writing to oppose the Magee Distillery Project.

Point Reyes Station and the communities around Tomales Bay are evolving increasingly into a tourist destination and residential community.

2.3 million people visited in 2011 (NPS figures). The Tomales Bay itself is one of the six most biologically diverse areas in the country. It is not in any way appropriate to build a dangerous industrial facility with its associated wastes and traffic here.

The distillery, residence and equipment barn will be only 75 feet from the state park facilities at Marconi Cove. Building a distillery so close to the park makes no sense. The distillery isn't needed. A quiet, unspoiled place for lower income people to stop or stay at a reasonable cost along Tomales Bay is needed. Please don't compromise it.

The distillery will also be on a site 150 feet from a blue line stream and is an unacceptable risk to the California Red Legged Frogs, the wetlands on the property and to life in the Bay itself.

Please act in the best long term interests of our community, our environment and the visitors who come to enjoy it by turning down this development.

Thank you

Cornelia Durrant

PO Box 237
Point Reyes Station
CA 94956.



Sierra Club

P.O. Box 3058, San Rafael, CA 94911
<http://sanfranciscobay.sierraclub.org/marin/>

RECEIVED**APR 08 2013****CALIFORNIA
COASTAL COMMISSION**

April 8, 2013

California Coastal Commissioners
c/o Charles Lester, Executive Director
45 Fremont Street #2000
San Francisco, CA 94105-2219
FAX: 415 904-5400
EMAIL: clester@coastal.ca.gov

RE: Application No. A-2-MAR-10-22 (Magee & Brader, Marin Co.)

Dear California Coastal Commissioners,

The Sierra Club would like to thank Coastal Commission for overturning the County of Marin's flawed permitting of the Magee Distillery Project, and calling for the De Novo hearing to achieve full disclosure of impacts to the Coast. We would like to commend Coastal Commission Staff for their tenacity and diligence on the Magee Distillery Project: gathering accurate information from the applicant has not come easily. We also appreciate the responsiveness Staff has shown to our environmental concerns and suggestions we have offered.

Below are our comments on the Staff report and remaining issues of concern.

THE USE IS INDUSTRIAL, NOT AGRICULTURAL

Sierra Club continues to assert that an industrial liquor distillery is an inappropriate use of agricultural land in our sensitive and precious coastal areas. It remains clear to Sierra Club that the distillery is the primary proposed use of the land, NOT the incidental farming of vegetables, goats, and a hobby vineyard.

The consistent attempts to manipulate this Project into a highly environmentally constrained parcel is unacceptable. Because of the extreme abundance of ESHA's, listed species of concern, downstream impacts to the already impaired Tomales Bay, and safety concerns for users of public lands and waters downstream, Sierra Club believes that 200-foot ESHA buffers are most appropriate for the conditions of the parcel.

There is an alternative site that is available, that is being overlooked, that may be a better option for the Project. If the Project is to be approved, it should be in the alternate location, without the distillery.

The project of 10,000 plus square feet of development on 149 acres of undeveloped habitat, with the primary focus being a brandy distillery, is not an agricultural use, but an industrial use.

The project's five water storage tanks, three propane tanks, brandy storage buildings, a brandy factory, a "smelling" room facility, six acres of grapes (indicating that grape growth is incidental to the distillery, rather than the other way around), and six acres of hops all clearly indicate that the primary use is industrial. Storage of flammable liquids used in production, as well as the storage of the brandy product itself, raises concerns for hazardous materials spills and leaks into the adjacent, sensitive coastal resources.

The Sierra Club regards industrial uses as inappropriate for the Coastal Zone in Marin County, which is principally comprised of high-value natural habitat and locally-owned agricultural businesses with very minimal processing facilities. Sierra Club concludes that this project should not be allowed in the Coastal Zone, but placed in a more urban/industrial setting, where it would be appropriate for hazardous industry.

WASTEWATER DISCHARGE / SEPTIC SYSTEM

There are multiple waste streams associated with the proposed Project: agricultural discharge, residential discharge and industrial discharge. The first two waste streams are fairly standard permits, conditions and requirements through the Regional Water Quality Control Board (RWQCB) Ag and Grazing division, and the County of Marin, respectively. The third waste stream, industrial solid and effluent waste from the distillery, require expert review, engineering, and permit conditions assigned by the RWQCB Staff, in order to protect the environment and the waters of the State. These permits have been delayed until after the Coastal Commission hearing, so there is inadequate information for the public to evaluate.

1. INADEQUATE DATA PROVIDED - The applicants and their engineers have offered some information to the Coastal Commission Staff on how they propose to handle the industrial strength effluent and solid waste, but no formal engineering plans or detailed data on distillery effluent has been submitted.

The general information that has been provided, with limited data, has been based on WINERY and BEER effluent components, not DISTILLERY effluent data. How are we to know if the three are equivalent in composition, if no data has been offered for distilleries? The applicant needs to provide the State and public with effluent discharge and composition data for the applicable land use, so experts may review the real data that will dictate waste discharge engineering.

2. PROPOSED "MIXING" OF RESIDENTIAL AND INDUSTRIAL WASTE STREAMS - By co-mingling the waste streams, this proposal basically turns a residential septic system into an industrial discharge to the waters of the state, requiring the RWQCB to permit the septic system. In order for this proposal to move forward, Sierra Club asserts that ACCURATE data from actual distillery effluent must be used in the calculations for engineering plans leading to appropriate waste discharge limits. The industrial strength effluent will have dilution requirements and mandated discharge limits of multiple water quality parameters, as issued by the RWQCB. More information and research on the Orenco unit proposed, and its history of application for the proposed use on this Project, is needed before a determination can be made as to efficacy of use in this situation.

MISCELLANEOUS CONCERNS

In our review of the latest staff report, we have a few remaining concerns and offer the following amendments to the conditional language:

Page 12, Special Condition 8: No Importing of Grapes and Alternate Brandy Barn Use.

"Consistent with the Applicant's proposal, no grapes harvested off-site are allowed to be imported to the distillery operation in the brandy barn either during the time period before grapes are harvested from the on-site vineyard or in the event that the vineyard fails to produce a crop suitable in quality or volume to produce brandy."

We suggest changing to: "no grapes or grape products" and to disallow importation of grape or grape products to the distillery at any time. As it reads now, it could potentially allow importation of grapes after a successful on-site harvest. Sierra Club does not feel this is the intent of the Staff, and suggests amending the language.

COMPLIANCE AND ENFORCEMENT OF CONDITIONS

Staff has done a commendable job, and gone to considerable effort, to apply a series of Conditions to the Project. While these "should" protect the environment and valuable resources of the Coastal area, Compliance and Enforcement of Project owners is an ever-present issue. Considering the sensitivity of the project, and previously reported (by neighbors), unapproved actions taken by the Applicant on the property, Sierra Club recommends that a staged, bond program be added as a Condition, to ensure enforcement of the Conditions of the Coastal Permit, if approved. However it is staged, Grading Bond, Septic Installation Bond, Construction Bond, it should be crafted to ensure maximum protection for Coastal resources that will be impacted by development.

SUMMATION

Sierra Club is grateful for the California Coastal Act, the Coastal Commissioner's dedication and excellent Staff available to protect the coastline for all inhabitants and visitors alike. We definitely remain concerned about the Magee Distillery Project and its questionable placement in the Coastal area of Marin County.

- While a true agricultural use of the property is welcomed, turning an environmentally constrained parcel to an industrial use as a hard liquor processing plant is just not appropriate.
- ESHA's should be 200-foot buffers on this particularly sensitive parcel.
- Appropriate distillery effluent data should be required for septic system review, along with detailed plans and calculations.
- A series of Bonds should be required, if the application is approved.

Thank you for your attention.

Sincerely,

Michele Barni

Chair, Sierra Club Marin Group

From Wyliam Holder

4038 Green Valley School Rd

Sebastopol, CA 94572

415-755-8634

wyliamholder@gmail.com

To The California Coastal Commission

C/O Charles Lester, Executive Director

45 Fremont Street # 2000

San Francisco, CA 94105-2219

clester@coastal.ca.gov

cc: jstaben@coastal.ca.gov

April 1, 2013

RE: Magee Project No. A-2-MAR-10-22 (Item Th9c)

Formal Request to Deny this Project for Cause.

There are two reasons why I request that this project be denied. In addition, I request that a specific clause be re-written to remove a potential loophole which would allow the importation of grapes for distillation under some circumstances.

Reason for Denial 1.

The Project, as presented, clearly states the intention for the owner of the property to store in excess of 1000 gallons of highly volatile brandy on this property at peak production (280 gallons per year times at least 4 years). There is no mention anywhere in this report of the location at which this volatile liquid would be stored, nor of any preparation to avoid and/or suppress a fire should one break out. In the event of a fire, the first responders are at least 20 minutes away, and by the time they arrive, it is quite likely that

the entire area would be engulfed in flames.

This clear and present danger to the owner, the property, and the local community has gone completely un-addressed. Unless and/or until this serious threat to the community is addressed, this project should be denied.

Staff Report: Coastal Development Permit Application Appeal No.: A-2-
Mar-10-022

Page 20 Item 4

A distillery located in the brandy barn would process, bottle, and package the on-site grape harvest into brandy. At peak production, the vineyard harvest is estimated to annually produce 280 gallons of finished brandy, which equals approximately 80 to 100 cases (960-1200 bottles) of brandy per year.

Page 38 Paragraph 2

Given the four to five years required for the vineyard to produce a grape harvest suitable for use in the brandy distillery, and the three to four years of aging required before the finished brandy product is available for sale,

Reason for Denial 2.

The North and the South sides of the property are separated by a series of buffer zones to protect various endangered species and a local water shed.

This proposal contains a section which would allow the owner to drive directly through the protected zones across the Earthen dam at any time and to drive across all areas of the property on occasion. These uses of the land are inconsistent with the protection of the property and violate the commitment to protect the property by the use of buffer zones. I suggest that all access from the north

side of the property to the south side of the property should be denied without the issuance of a one time specific permit for any one time specific use.

Page 14 Top - Item 2

2. Repair and maintenance, if authorized by a coastal development permit, of the development listed in Section 1, above, and of the following existing development in the Habitat Conservation areas:
 - a. Earthen dam and farm road on crest

Page 24 end of paragraph 2

Condition 1. The proposed project also includes surveying, geotechnical site investigations, and septic system leach field investigation and percolation testing, including vehicle access across the property using existing, unimproved, two-track farm roads.

3. Request for the re-write of a specific clause to remove a potential loophole.

Another item, while not cause for a denial of permit should be cause for a re-write of the specific language of two portions of the permit which contain the same language. The intent of this language appears to be to deny the importation of grapes to the property for the purposes of distillation. What the language actually says is that grapes cannot be imported before grapes are harvested or if the vineyard fails.

If it is, as I believe, the intent of the Commission to prohibit the importation of grapes for the purpose of distillation under all conditions, then the wording can be changed to

"No Importing of Grapes and Alternate Brandy Barn Use.

Consistent with the Applicant's proposal, no grapes harvested off-site are allowed to be imported to the distillery

operation in the brandy barn."

The additional clause currently in use is both unnecessary and a potential loophole in the proposed intention.

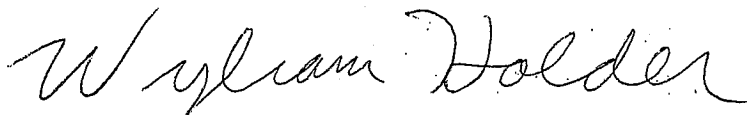
Page 12 Second Paragraph

8. No Importing of Grapes and Alternate Brandy Barn Use.
Consistent with the Applicant's proposal, no grapes harvested off-site are allowed to be imported to the distillery operation in the brandy barn, either during the time period before grapes are harvested from the on-site vineyard or in the event that the vineyard fails to produce a crop suitable in quality or volume to produce brandy.

Embedded in Paragraph 2 on page 38

The proposed distillery/brandy barn project includes a commitment by the Applicants that under no circumstances would grapes be imported to the property for use in the distillation process, either before grapes are harvested from the on-site vineyard or in the event that the vineyard fails to produce a crop suitable in quality or volume to produce brandy.

Thank you for your kind consideration.

A handwritten signature in cursive script that reads "Wyliam Holder". The signature is written in dark ink and is positioned above the typed name.

Regards, Wyliam Holder

Former Resident of Marshall California

4/5/13 12 J.F.

✓ Attention: Jeff Staben

RECEIVED

MAR 05 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 2, 2013

California Coastal Commission
North Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: A-2-MAR-10-022 Hearing (a proposed agriculture operation on Tomales Bay)

TO WHOM IT MAY CONCERN

Briefly, my ancestors settled in West Marin in 1851, after an unsuccessful effort to succeed in Mother Lode gold mining. My ranching family established summer cabins at Dillon Beach, commencing in 1912. All my life, I have explored and loved the Tomales Bay region. I contribute monthly to Malt and EAC and have written many articles about the area.

My concern about the proposed development in that beautiful and sensitive area is its extensive and remaining openness is subject to section by section encroachment. The operation in contention seems gigantic, with potential for erosion and agricultural run-off, that would pollute what was once the most pristine bay south of Alaska.

My family and I ask to go on record opposing this appeal, the size unnecessary.

Sincerely,

Kenneth S. Roe

Kenneth S. Roe
3325 Saint Moritz Court
Redding, CA 96002

✓ I wish to substitute
"development" in my
original letter, deleting
the word, "appeal."

Thank you

Kenneth S. Roe