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Th 9c

ADDENDUM

April 10, 2013

TO: Coastal Commissioners and other Interested Parties

FROM: Dan Carl, North Central Coast District Deputy Director
Larry Simon, Federal Consistency Coordinator

SUBJECT: **Addendum to Item Th 9c**, Magee and Brader Farm Project, Marshall, Marin County, for Commission meeting of April 11, 2013

The following are changes to the March 22, 2013, staff report (deleted language indicated by ~~strike-through~~ and added language by underline):

Page 37, Modify the last line on the page as follows:

> . . . system and ~~5,400~~ 3,000 gallons of wastewater . . .
>
> Reason: The 5,400-gallon wastewater figure was an early estimate of wastewater volume; this was subsequently updated by the Applicant's consultant but incorrectly included in the staff report.

Page 55, Modify the second and third lines of the first paragraph as follows:

> . . . It is estimated that ~~8,000~~ 5,600 gallons of total waste would be generated annually by the brandy operation (2,600 gallons of solid wastes and ~~5,400~~ 3,000 gallons of liquid waste).
>
> Reason: The 5,400-gallon wastewater figure was an early estimate of wastewater volume; this was subsequently updated by the Applicant's consultant but incorrectly included in the staff report. The 5,600-gallon figure for total waste is the sum of the solid waste figure and the updated liquid waste figure.

Response to John Bridges letter of April 5, 2013, and Incorporation of Addendum and Exhibits into the Staff Report

On Friday, April 5, 2013, the Commission received from the Appellants a letter (with numerous attachments) providing comments on the proposed Magee Farm Project and the associated Commission staff report. (On April 5 this letter was attached to the staff report located on the Commission's April 11, 2013, agenda web page.) This section of the Addendum provides the Commission response to the substantive issues raised in the Appellants' letter. These additional findings are hereby incorporated into the staff report within the applicable sections addressing the specific topics. In addition, this addendum adds three exhibits to the staff report (**Exhibits 25, 26, and 27**) which are also hereby incorporated into the applicable sections of the staff report addressing the specific topics they address. Many of the issues raised in the letter and attachments are fully addressed in the staff report and require no further comment in this Addendum.

Distillery as Permissible Agricultural Operation

The Appellants (and other project opponents; see attached correspondence) argue that the Commission should delete the brandy distillery from the proposed project. The Appellants claim that the "net return (if any) [of the brandy distillery] would be de minimis at best," that "any purported economic necessity argued to justify the proposed brandy distillery is a false premise," and as a result conclude that the distillery "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" (underline in original). By this argument, a landowner in the C-APZ zone would not be able to secure approval of upgrades, improvements, and/or additions to existing agricultural operations (even if at a net economic cost to the landowner should that be his or her choice) because, in the Appellants' opinion, if there are existing agricultural operations on a property, one can simply continue those operations. The Appellants essentially argue that if a new proposed agricultural operation is not "appurtenant and necessary" to the continued and existing operation - whatever that might be - than it cannot be approved.

The Commission disagrees with this interpretation of the agricultural policies of the LCP which in fact permit "accessory structures or uses appurtenant and necessary to the operation of agricultural uses." The LCP does not state that accessory structures or uses must be appurtenant and necessary to "the continued agricultural use of the property," but rather it states that they must be "appurtenant and necessary to the operation of agricultural uses." The proposed brandy barn which would house the distillery is a permitted accessory structure and use, the distillery is a conditional use for processing agricultural products, and the limited retail sales in the brandy barn of brandy produced on-site is also a conditional use.

The Appellants state that no substantial evidence has been provided by the Applicants or the Commission to support the claims that the proposed development is necessary because agricultural use of the property is no longer feasible, that the Applicant faces financial hardship, that the proposed development would ease the Applicant's economic hardship, or that the

proposed distillery is necessary to the operation of continued agricultural uses on the property. This is correct, but this is because the Applicants have never asserted that the proposed project was designed for the purposes articulated (above) by the Appellants. Agricultural Resource Policy 4 is designed to ensure that neither land divisions nor non-agricultural development in the Agricultural Production Zone (APZ) conflict with agricultural uses. The proposed project is a mix of agricultural operations and does not, as the Appellants assert, include non-agricultural development elements to either ease financial burdens of the landowner or to introduce non-agricultural activities to financially subsidize agricultural operations. The proposed distillery would process grapes harvested from the on-site vineyard and is in direct support of a new agricultural operation proposed for the property.

Another project opponent (see April 9, 2013, letter from Tom Yarish) states that "*The question must 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 capitol-intensive industrial process that does little to support the historic agricultural lifestyles and activities of the area*" (emphasis in original). However, the Marin County LUP Agricultural Resource Policy 6 (Definitions and Uses) clearly states that for the purposes of the APZ, agricultural uses shall be defined as "uses of land to grow and/or produce agricultural commodities for commercial purposes," including field, fruit, nut, and vegetable crops. The proposed cultivation of grapes and hops is consistent with this policy. The question of whether the proposed distillery and brandy barn is an industrial activity or an agricultural activity under Chapter 22.37.033 of the LCP is also addressed in **Section E** of the staff report (Agriculture and Development).

The Appellants further state that nine acres (six percent of the property) in the northwest corner of the property (where the brandy barn, equipment barn, farmhouse, and driveway would be located) are precluded from agricultural use and that as a result the project is not consistent with Agricultural Resource Policy 5, which states that:

> *All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space.*

The Commission has determined that all of the proposed developments in the northwest corner are permitted uses in the APZ. In addition, the staff report documents that the footprint of all proposed structures across the entire property is approximately 0.30 acres, and the footprint of the driveway and parking areas is approximately 0.59 acres. The total of 0.89 acres is approximately 0.6% of the 150-acre parcel. The remaining 99.4% remains as agricultural production and open space. The non-developed areas in the northwest corner, while not proposed for inclusion in the agricultural conservation easement area or the habitat conservation deed restriction area, will nevertheless remain as open space.

Distillery Operations and Wastewater Treatment

The Appellants state that the proposed distillery should not be approved by the Commission in part because it would store "environmentally damaging waste products within and immediately adjacent to ESHA." The Commission staff independently reviewed the proposed distillery operation and wastewater treatment and disposal materials submitted by both the Applicants and the Appellants, spoke with representatives of the company which produces the wastewater treatment system proposed for use on the property, and spoke with the Applicant's wastewater treatment consultant. The staff report contains a detailed analysis undertaken by the Commission's water quality staff of all water quality issues associated with the proposed project, including those associated with distillery operations. Dr. Jack Gregg, the Commission's water quality unit supervisor, has prepared a memorandum (dated April 10, 2013) which responds to the concerns expressed by the Appellants. Dr. Gregg's memorandum is attached to this addendum (as **Exhibit 25** of the staff report). Based on the analysis contained within the staff report and its addendum, the Commission concludes that the proposed wastewater treatment and disposal system is designed to safely accommodate both domestic and distillery wastewater and will operate in a manner that will protect water quality on the property, in Tomales Bay and the adjacent environmentally sensitive habitats consistent with the requirements of the certified LCP. A project alternative without the distillery operation is not a less environmentally damaging alternative that would substantially lessen significant adverse effects of the project on coastal resources. There are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts to coastal resources that the approved distillery would have on the environment.

The Appellants state that the Commission staff "proposes, by condition, to address many of the water quality issues related to wastewater and septic discharge later, after the fact, through a future State Water Resources Quality Control Board permitting process." As further discussed in the staff report and the additional analysis provided by Jack Gregg in **Exhibit 25**, the San Francisco Regional Water Quality Control Board will take up the proposed project after the Commission has acted on the coastal development permit application and if the application is approved. The Regional Board will then evaluate the project under the Board's separate statutory authority. Special Condition 14 of the staff report states that "Prior to the start of construction of the brandy distillery, the Permittees shall submit written evidence to the Executive Director of approval by the San Francisco Regional Water Quality Control Board of the distillery wastewater system." The staff report findings supporting this special condition state that the purpose of this condition is to "further ensure that the proposed wastewater disposal system will not adversely affect the septic system and leach field, and water quality on the subject property or in Tomales Bay" (emphasis added). Dr. Jack Gregg, the Commission's water quality unit supervisor, has prepared a memorandum (dated April 9, 2013) which responds to the concerns expressed by the Appellants. Dr. Gregg's memorandum is attached to this addendum (as **Exhibit 25** of the staff report).

Wetlands/Streams/Environmentally Sensitive Habitat

The Appellants state that the proposed project (and as conditioned in the staff report) fails to avoid, protect, and preserve environmentally sensitive habitat areas (ESHA), and that feasible alternatives and mitigation measures exist that would reduce project impacts. Dr. John Dixon has prepared a memorandum (dated April 9, 2013) which responds to the concerns expressed by the Appellants, including: (1) possible violations that may have negatively impacted natural resources, (2) perceived short-comings of the biological studies that have been done by the applicant, (3) alleged unmapped upland Environmentally Sensitive Habitat Areas (ESHA), (4) perceived inadequacy of the size of the development set-backs (buffers) from wetlands and ESHA, and (5) the identification of the least environmentally damaging location for the type of development proposed by the applicant. Dr. Dixon's memorandum is attached to this addendum (as **Exhibit 26** of the staff report) and provides a thorough analysis of these issues.

ALTERNATIVES AND CEQA FINDINGS

The Appellants contend in their letter that relocation of all the proposed development from the northwest corner of the property to the southwest corner is a feasible and less environmentally damaging alternative. The Appellants state that relocating development to this alternate site would reduce visual resource impacts, reduce the building envelope, improve clustering of structures, reduce driveway length and grading volumes, expand the area available for agricultural uses, improve the septic system, reduce vehicle trips across the earthen dam on the blue-line stream, and avoids environmentally sensitive habitat.

As discussed above, the Commission finds that a project alternative without the distillery operation is not a less environmentally damaging alternative that would substantially lessen significant adverse effects of the project on coastal resources. There are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts to coastal resources that the approved distillery would have on the environment. The Commission further finds that the project has been redesigned by the applicant to include all necessary mitigation measures including an affirmative agricultural easement, clustering adjacent to an existing paved driveway, a split-level design set into the hillside and siting consistent with the buffer requirements recommended by Dr. Dixon. There are no further mitigation measures or alternatives that would substantially lessen any significant adverse impacts to coastal resources that the approved project would have on the environment. In addition, as discussed herein, the Appellants' proposed alternative development plan in the southwest corner of the property is not feasible or less environmentally damaging due to its resulting adverse visual impacts (See visual analysis provided herein and visual analysis provided by the Applicants) and the presence of coastal terrace prairie ESHA in this area.

In **Section E** of the staff report (Agriculture and Development), and in particular the subsection Development Constraints, Clustering, and Alternatives, the following points are made about the presence of coastal terrace prairie ESHA on the southern half of the property:

- Coastal terrace prairie, a rare and environmentally sensitive habitat, is not identified on the [Applicants'] constraints map but is present across certain areas on the southern half of the property.

- The Applicants proposed locating the three primary structures and access driveway in the northwest corner of the property, near the existing driveway off Highway 1, near existing development to the north on both sides of the highway, outside of coastal terrace prairie habitat on the hillsides south of the stream, and outside of mapped wetlands and riparian habitat on the property.

- The proposed development plan avoids all wetlands, stream and riparian habitats, and coastal terrace prairie habitat and their required buffers.

In **Section F** (Wetlands/Streams/Environmentally Sensitive Habitat) of the staff report there are also references to the presence of and the need to site proposed development outside of coastal terrace prairie ESHA:

- The hopyard expansion was dropped from the project due to uncertainties about the presence of coastal terrace prairie habitat in and adjacent to the expansion area.

- Additional fieldwork was undertaken by the Applicants and Commission staff to confirm that proposed structures on the southern half of the property are not located in coastal terrace prairie ESHA.

- The original location of the southwest sheep shelter was in an area of 35-50% native perennial grassland species.

Dr. John Dixon's February 5, 2013, Memorandum on the Magee Project states that:

> *There are still extensive stands of [coastal prairie] community type on the Magee property. South of the blue-line stream and riparian corridor, there are areas of coastal prairie that are remarkable for the unusually high cover (30% - 90%) of native grasses, with a significant admixture of other native herbaceous species in some areas (Table 1).*

Dr. Dixon's April 9, 2013, Memorandum on the Magee Project addresses the Appellants' proposed alternative development site in the southwest corner of the property. Dr. Dixon refers to his February 5, 2013, memorandum and states that:

> *. . . the area south of the blue-line stream is characterized by extensive, high quality stands of coastal prairie, a rare vegetation community. Although intermixed with non-native grasses, the coastal prairie exists in a mosaic pattern throughout the southern part of the property. For example, of the sample points closest to the area suggested by the opponents as an alternative development area, two were in non-native grassland and one was in coastal prairie. As discussed previously, rather than to attempt to map all coastal prairie, I directed the applicant's biologist to position any development proposed for the area south of the stream such that the development footprint and a 100-foot buffer*

around the footprint would not encroach upon coastal prairie. In order to accomplish this, both the sheep shelter shown in the suggested "Alternative Development Area" (Attachment 1 in Bridges 2013) and the Hopyard Shelter that is further to the east had to be shifted from their original locations because of the presence of patches of coastal prairie.

The Appellants' proposed alternative development plan in the southwest corner of the property is not feasible due to the presence of coastal terrace prairie ESHA in this area. This is documented in the staff report, in the Dixon memorandum attached to the staff report (**Appendix E**), and in the Dixon memorandum attached to this addendum. The Appellants state that there would be a significant reduction in project-related environmental impacts (e.g., visual impacts, ESHA impacts, size of development envelope, grading) should proposed development be relocated to the southwest corner of the property. In addition to the presence of coastal prairie ESHA on the southern half of the property (including in the Appellants' alternative site), the staff report also notes that this site is immediately adjacent to Highway 1, that development at this location would be visible from the highway and would be isolated from existing development adjacent to the northwest corner of the property, and that transferring development from the latter location would not result in the claimed reduction in visual resource impacts (which the staff report has previously determined to be less than significant). Protection of coastal prairie ESHA was a high priority of the Commission staff during its analysis of the proposed project, reflected in the relocation of the southwest sheep shelter and hopyard barn. Minimization of visual resource impacts from public viewing areas has been achieved with the design of the project and with proposed special conditions. Construction of barns and a farmhouse in the alternative southwest corner location would be inconsistent with the protection of ESHA and LCP protected views and with the Natural Resource and Visual Resource policies of the LCP.

PUBLIC VIEWS

The Appellants state that the proposed project is inconsistent with the Visual Resource Policies of the LCP due to the rejection of the alternate development site in the southwest corner of the property, the lack of clustering proposed development, the proposed driveway alignment and associated grading and retaining walls, and the location and design of the farmhouse. The Appellants' proposed alternate development site in the southwest corner is not an alternative that would lessen significant adverse impacts due to the presence of coastal terrace prairie habitat in this location and because the Appellants' alternative site is immediately adjacent to Highway 1 and would be visible from the highway and isolated from existing development adjacent to the northwest corner of the property. As documented above, the placement of buildings and roads in this type of ESHA is not permitted under the LCP Natural Resource policies. As noted in the staff report, the proposed locations of the southwest sheep shelter (adjacent to the Appellants' proposed development site) and the hopyard barn were adjusted by the Applicants after additional fieldwork and consultation with the Commission staff confirmed the presence of coastal terrace prairie habitat at those locations. The points raised by the Appellants to support their alternate development site in the southwest corner (e.g., minimal topographic relief, smaller development footprint, safer Highway 1 access, reduced grading and retaining walls) do not

overcome the fact that ESHA is present at this location which prevents it from serving as a site for development.

The proposed development plan tightly clusters the two proposed barns, the farmhouse, and the driveway outside of riparian and wetland habitats and their buffer areas in the northwest corner of the property (see **Figure 1** of **Appendix E** (Dixon Memo)). In addition, placing these project elements at this location allows for use of the existing paved driveway off Highway 1, which provides access to development adjacent to and north of the subject property. The currently-proposed driveway to the equipment barn and farmhouse requires more grading and retaining walls than the original alignment due to the need to avoid wetland and riparian buffer areas. As noted in the staff report, restoration of disturbed construction areas with native plant materials will return those areas to pre-disturbance conditions, and retaining walls will use natural-appearing construction materials and native vegetation screening to minimize their appearance. The equipment barn and the split-level farmhouse are set into the hillside to reduce their appearance and height above grade and are consistent with the height limitations in the LCP. The farmhouse, as located and designed, will not create a significant adverse impact on visual resources from adjacent and distant public viewing areas, and therefore the Appellants' request that it be limited to one story is not necessary in order to protect scenic views. As the staff report concludes, certain elements of the proposed agricultural development (as conditioned by the Commission) would be visible from certain public viewing areas, including from certain areas of Marconi Cove and sections of Highway 1. However, those development elements would not obstruct or impair existing coastal views from Highway 1 or obstruct significant views as seen from public viewing places inconsistent with the requirements of the certified LCP, and are compatible with the adjoining built environment to the north and the natural landscape to the south and east (See **Exhibit 27** of the staff report).

TRAFFIC

The Appellants state that the Applicants have not undertaken an adequate analysis of potential traffic impacts from the proposed project on Highway 1, including potential cumulative traffic impacts from potential public recreational development at Marconi Cove. The Appellants focus on possible circulation conflicts and hazards that might arise from both projects at the existing driveway intersection on Highway 1. The Appellants also state that a comprehensive traffic analysis should be prepared by the Applicants. Because the Appellants focus on possible circulation conflicts and safety standards, the Appellants' letter does not provide evidence that construction or operation of the proposed project would significantly adversely affect the public's ability to access the coast along this section of Highway 1, or that it would significantly adversely affect public access to and from Marconi Cove once this area is developed by the Department of Parks and Recreation. The Commission continues to find that based on the conclusions in the traffic analysis report submitted by the Applicants for the proposed project, the location of the subject property, and the agricultural operations proposed for the property, that the proposed project would not adversely affect the public's ability to access the coast in this area of Marin County.

FIRE SAFETY

The Appellants submitted a letter dated October 2012 from a retired Monterey Fire Department captain stating that the brandy barn and distillery should include a foam- type fire suppression system and an external containment system to capture brandy, water, and foam. This determination regarding a foam suppression system contrasts with that expressed by the Marin County Fire Marshall, who is directly familiar with the proposed project and who confirmed to Commission staff in February 2013 that a water sprinkler system installed within the barn would be an adequate fire suppression measure for the distillery operation. As noted in the staff report, the final suppression and containment plan for the structure and distillery will be reviewed and approved by the Fire Marshall during the Marin County building permit process.

VIOLATIONS

The Appellants state that numerous Coastal Act violations exist on the subject property which must be remedied and restored before any development on the property can proceed. The appellants go on to criticize the Commission and contend that the Commission is allowing an applicant to benefit from illegal activities. The Commission disagrees. This applicant, like many others, was given an opportunity to resolve confirmed violations through the processing of this appealed project application. Some of the unpermitted development could be permitted and some of the development could not be recommended for approval. (See Dr. Dixon's memorandum attached to this addendum (as **Exhibit 26** of the staff report.)

Accordingly, the applicant agreed to remove certain unpermitted development that could not be found consistent with the County's LCP as a part of the approved project. The applicant amended his project description and has agreed to remove the unpermitted pig enclosure and the drainage diversion device prior to commencement of any of the proposed development. The applicant has also agreed to thin trees planted without a CDP, and this too must be done prior to the commencement of any future development. The recommended conditions make clear that resolution of the cited unpermitted development must occur before any other contemplated development can proceed.

The appellants' most recent submittal has not offered any new allegations of unpermitted development. The Commission enforcement staff has reviewed all submitted allegations, and is prepared to conduct follow-up enforcement if necessary, should the applicant not comply with the permit as acted upon by the Commission. Just as in any after-the-fact permit action, the Commission reserves its right to pursue enforcement and compliance with the Coastal Act if necessary should the applicant not implement the project as conditioned by the Commission.

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MEMORANDUM

FROM: Jack H. Gregg, Ph.D., R.G.
Water Quality Program Supervisor

TO: Larry Simon

SUBJECT: Opponents response to CCC staff report on the Magee Project

DATE: April 10, 2013

Documents reviewed:

Bierman, A. 2013. February 4, 2013 Technical and Regulatory Memorandum Regarding Hydrogeologic Evaluation of Magee Ranch attachment to Letter report to J. Bridges (Fenton & Keller) dated April 1, 2013 regarding "Review of staff report TH9C, Magee distillery project (A-2-MAR-10-022)."

Bridges, J.S. 2013. Letter to California Coastal Commission dated April 4, 2013 regarding "Magee/Brader project (A-22-MAR-10-022; West Marine County)."

EMC Planning Group (EMC). 2013. Letter report to J. Bridges (Fenton & Keller) dated April 1, 2013 regarding "Review of staff report TH9C, Magee distillery project (A-2-MAR-10-022)."

Hecht, B. 2012. Balance Hydrologics, Inc. report dated November 2, 2012 on the hydrology of Magee Ranch, Marin County.

The representatives of the opponents to the Magee project have recently expressed concern regarding several issues relative to: (1) distillery wastewater impacts, (2) deferral of wastewater system review to another agency, (3) mitigation of polluted runoff, (4) impacts of future water quality mitigation measures on Environmentally Sensitive Habitat Areas (ESHA), (5) sufficiency of the wastewater system, (6) potential failure of the wastewater system, and (7) depletion of groundwater supplies. They have recommended a water quality permit condition, which is discussed below.

Distillery Wastewater Impacts

It is alleged by the appellant that the distillery process involves the discharge of boiling water (Bridges 2013 page 1). While boiling water is used in the distillation process, it will be cooled to ambient temperatures before it is treated and long before discharge to the environment.

The appellant describes the "high strength waste" generated by the distillation process as "environmentally damaging waste products" and infers that they are equivalent to hazardous materials that should not be stored onsite. The wastewater from the distillation process is "high strength" in the sense that it will have characteristics of biological oxygen demand (BOD) and total suspended solids (TSS) that are elevated compared to typical liquid effluent from a domestic onsite disposal (septic) system. The higher levels of BOD and suspended solids result in the need for an additional treatment step prior to discharge of the treated water to a septic system leach field. This additional step includes combining the distillery wastewater with domestic wastewater and then circulating the combined liquid through a "trickling filter system". Trickling filter systems circulate wastewater through a dense filter material that develops a coating of microorganisms that consume nutrients and break down organic materials. The treatment process uses biological and physical processes to reduce the BOD and suspended solids in order to ensure proper operation of the leach field and protection of the environment. The wastewater from the distillation process is not classed as a hazardous material or hazardous waste under any state or federal regulations. The distillery process wastewater will be temporarily store onsite each year during the distilling process and mixed with domestic wastewater over a period estimated to be 30 days past the end of the distillation operations.

The appellant states that "the applicant fails to define the characteristics of this "high strength waste"" and then cites an internet article from eHow.com (Characteristics of Wastewater in a Distillery) describing the characteristics of distillery wastewater. While the article is simplistic, not specific to the scale of the proposed project and has at least one significant error (calling calcium carbonate an "acidic component"), it does list some of the major features of distillery process wastewater. These include high temperature (during the distillation process), low pH, presence of putrescible[1] organics and suspended solids. As stated above, the wastewater is cooled before treatment and so the temperature of the process water during distillation is irrelevant. The proposed treatment system is designed to address other characteristics of the wastewater to prepare it for environmentally safe discharge to a septic system leach field. These processes include raising the pH to near neutral (necessary prior to the treatment with the trickling filter system) and use of the trickling filter system to reduce the putrescible

[1] Putrescible means capable of decaying, i.e., subject to breakdown by microorganisms. This is the characteristic measured by Biological Oxygen Demand (BOD).

organics (measured as biological oxygen demand or BOD) to less than 30 milligrams per liter (mg/L) and to reduce suspended solids to less than 30 mg/L.

The appellants note that the CCC staff report (pg. 55) mentions the opinion of the applicant that the BOD of the process wastewater (prior to dilution and treatment) will likely be close to 1000 mg/L BOD and much less than the 4000 mg/L used to design the wastewater treatment and discharge system. While the applicant does have considerable experience in this area, it should be noted that the system was designed using the more conservative value (4000 mg/L) and that the consequences of an error in this estimate would not result in an adverse impacts to the environment. If the 4000 mg/L is an underestimate, then the applicant would need to mix it with domestic wastewater over a longer period of time than planned in order to maintain effective treatment of the wastewater. The ultimate consequences of overloading the treatment system would be reduced effectiveness of the leach fields and rising water levels in the leach field monitoring wells. As noted in the staff report, water levels in the leach fields will be continuously monitored and so that if the water table rises to less than 36 inches below the leach field distribution pipe (which would be less than 54 inches below the ground surface), the effluent discharge can be switched to the second leach field. The applicant will have several adaptive management options to maintain the minimum separation distance including changes in the operation of the treatment equipment (e.g., extending the treatment time) or reduction in overall water usage on the site.

Deferral to the RWQCB

The appellant states that CCC staff is proposing to defer responsibility for review of the wastewater impacts to the State Water Resources Control Board. I have evaluated the proposed wastewater system in detail and if constructed and operated as proposed it will meet the standards of the LCP in protecting coastal resources[2]. The overall treatment and discharge system has been designed for the specific wastewater that will be generated by this project using conservative assumptions where there are uncertainties about the wastewater or site conditions. The wastewater treatment system has several process steps that can be modified to improve performance if necessary and other contingencies are available if the system does not operate as proposed (e.g., haul wastewater offsite). While the exact quality of the effluent cannot be predicted, the system as designed will be able to protect coastal resources, as well as meet the standards of Marin County and the San Francisco Bay Regional Water Quality Control Board.

[2] I reviewed the wastewater treatment and distribution system and the supporting documentation. My background in this area is a doctorate from UC Berkeley in Environmental Engineering and a master's degree in Geology from Texas A&M University. I am a California Registered Geologist and have been the supervisor of the Coastal Commission's Water Quality staff since 2000. Before joining the CCC staff, I worked at the San Francisco Bay Regional Water Quality Control Board for nine years, serving as an Associate Engineering Geologist for seven years.

While the appellant mentions the State Water Resources Control Board, it is primarily Marin County and the San Francisco Bay Regional Water Quality Control Board (RWQCB) that will regulate the installation and ongoing operation of the wastewater system and discharges from the distillation process. Marin County has an experienced staff of inspectors for septic systems and it has overseen installation and operation of similar wastewater systems adjacent to Tomales Bay. The lead RWQCB staff person for septic systems indicated in a September 13, 2012 email that their staff will review the project once the CCC has acted and will require a Report of Waste Discharge (ROWD). After review of the project and the ROWD, RWQCB staff will recommend one of the following regulatory actions: adopt project-specific Waste Discharge Requirements (WDRs), enroll the project under a General WDR Order, or waive WDRs. The RWQCB staff would recommend project-specific WDRs if they think site-specific effluent limits and monitoring are needed, use a General WDR if this site meets conditions for an existing generic WDR that is used for many projects with similar discharge conditions, or they could recommend a Waiver of WDRs, which still specifies conditions that must be met to protect water quality, but that can be applied without a RWQCB action on specific projects.

Mitigation of polluted runoff

The appellants assert that the staff report fails to "identify, discuss and/or mitigate other potential water quality impacts" such as runoff from the driveway into existing vegetation. Directing runoff from impervious surface into vegetation in a non-erosive manner is a common management practice that is appropriate in this rural setting. The driveway is outside of the buffers for wetlands and riparian habitat, which will keep the small amount of pollutants impacting the driveway from reaching sensitive habitat. In addition, the staff report includes a Special Condition for a Final Storm Water Pollution Prevention Plan, for review and approval of the Executive Director, which specifies final construction and post-construction best management practices based on the final design of the project.

Impacts of Future Water Quality Mitigation Measures on ESHA

The appellant asserts that any Water Quality mitigation measures defined after the CCC decision will have "significant secondary impacts to ESHA". On the contrary, any Water Quality mitigation measures proposed after the CCC acts that would entail additional impacts to ESHA would require a CCC permit amendment and such mitigation measures are not part of this proposal.

Sufficiency of the Wastewater System

The appellant asserts (EMC 2013 page 24) that the project is inconsistent with LCP policies/Marin County Code Regulations because it has not demonstrated that the wastewater treatment system is sufficient. The appellant asserts that the presence of monitoring wells in the dual leach fields, the requirement to observe changes in the groundwater level and the option to switch the discharge between the two fields is "atypical" and that the "capability of the system to adequately dispose of wastewater is highly conditional". On the contrary, similar systems have been installed at Nick's Cove and at least two other locations on the east side of Tomales Bay. Dual leach fields are a standard practice required for alternative septic systems in Marin County, in addition to requirements for system alarms and at least annual monitoring of the groundwater separation. The County will require at least quarterly monitoring by an independent inspector for this project to confirm proper operation and performance of the system[3]. While conditions that control the production, treatment and discharge of wastewater are variable, the standards that must be met (e.g., quality of water treated by the trickling filter system, quality of water discharged to the leach fields and separation distance from the leach field distribution pipes to the water table) are fixed.

As stated in the staff report, the septic system leach field was designed based on evidence in the field and Marin County regulations. It includes dual leach fields, each of which are each designed to be able to infiltrate the septic system effluent under typical conditions. The dual leach fields provide redundant protection so that short term changes to site hydrology (e.g., a period of unusually high rainfall) can be addressed well before effluent could back up the system or reach the ground surface. In practice for similar systems adjacent to Tomales Bay, Marin County staff members rarely see any groundwater in the monitoring wells. If the actual performance of the system is not able to meet standards for any reason (design, construction or operation) the project includes contingency plans that would be taken to protect the environment (e.g., redesign the system, haul effluent offsite).

There is no factual basis for the assertion of the appellant that the design of the wastewater system is atypical or that the presence of monitoring wells and contingency plans indicate an environmental problem.

Failure of the Wastewater System

The appellant asserts that the staff report acknowledges that" the system could fail due to site specific conditions" (EMC 2013 page 25). The staff report never said the septic system would fail. The term "septic system failure" generally means that the waste is being inadequately treated prior to moving offsite or discharging to the ground surface.

[3] Per phone conversation with Armando Alegria, Supervising Environmental Health Specialist for the County of Marin, Community Services - Septic Systems.

This can be easy to detect if septic effluent discharges to the ground surface, but may not be noticed if the water table is not monitored. The purpose of the leach field monitoring system is to have ongoing observation of this separation distance between the leach field distribution pipes and the water table, so that appropriate actions can be taken if that distance becomes less than 36 inches. The dual leach fields described in the staff report allow the system owner to switch to the unused field well before there is any risk of system failure.

The appellant asserts that that "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" (EMC 2013 page 25). I reviewed the proposed wastewater treatment system design and the supporting reports on site hydrogeology. I discussed the contents of those reports with the engineers and geologists who prepared them and the applicant. I conclude that the design of the wastewater system will adequately treat the wastes generated by the project, meet the requirements of the LCP and protect coastal resources. In addition, Marin County and the RWQCB have authority for setting effluent limits and for ongoing monitoring of the wastewater system that provide further oversight of the performance of the system.

Substantially deplete groundwater supplies

The appellant included a paragraph header "Substantially deplete groundwater supplies" on page 26 of the EMC (2013) submittal. The content of the paragraph reiterates the desire of one of the consultants to gather additional hydrogeologic information (see also Bierman 2013), but does not conclude that the project will "substantially deplete groundwater supplies". The response to the proposed permit condition seeking more hydrogeologic information can be found in the section below.

The applicant's hydrologic report (Hecht, 2013) does address concerns that the project uses of groundwater may adversely impact the surfaces waters on or adjacent to the project site. At least three lines of evidence, presented by the applicant's hydrogeologist, are strongly suggestive that increased withdrawals from the well will not affect the identified wetlands:

1. The specific conductance (proportional to the amount of total dissolved solids) of waters from the spring is significantly higher than that of water from the well, strongly suggesting that they are drawing from different aquifers.

2. The base of the well is over 200 feet above the stream at its closest point, making it impossible for it to directly draw from the stream.

3. Making reasonable assumptions concerning the hydrogeologic parameters of the bedrock aquifer, modeling of the extent of the cone of influence around the well shows that it does not intersect the stream at the presumed pumping rate.

In addition, the pump test on the new well on the north side of the property showed a sustained yield of ten (10) gallons per minute which is more than sufficient to for maximum water demand (dry season) for activities reliant on the north well (residential uses, barn and restroom, distillery and vineyard).

Appellant Recommended Condition for Water Quality

The appellant recommends the following condition be added to the permit to better evaluate the potential impacts of the project on water quality:

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 (sic) water demand including 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 (sic) 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 much (sic) ensure avoidance of any potential impact to ESHA. The Comprehensive Hydrological (sic) Evaluation must provide enough sufficient evidence of any potential impacts of the proposed project regarding these primary issues."

The requirement for a Comprehensive Hydrogeologic Evaluation (CHE), especially as described in the proposed Special Condition, is out of proportion with the information needed to assess whether this project is meeting the requirements of the LCP to protect coastal resources. The scope of information listed in the proposed Special Condition goes beyond the information needed for a project of this type. In fact, all results from an internet search of the term "Comprehensive Hydrogeological Evaluation" produced results that were primarily for development or assessment of well fields for municipal drinking water systems. These types of evaluations have been used to consider initial development or expansion of public community water sources. Aspects of a CHE, as proposed by the appellants, are typically required when the cost of the water supply

development and the risks of inadequate supply affect a major infrastructure investment. For example, vertical and horizontal delineation of the aquifer would require multiple borings through and surrounding the aquifer, in addition to geophysical data and boring logs from nearby wells.

The supporting memo for this recommendation (Bierman 2013) suggests that this project would be classified as a Transient, Non-Community Water System. If this project was creating a public water works of this class, it would be regulated by the California Department of Public Health (DPH), but the DPH classification (Attachment 1) does not exceed the threshold (25 people using the system at least 60 days per year) of a public waterworks. The information provided by the applicant is adequate to show no significant risk of adverse impacts to coastal resources.

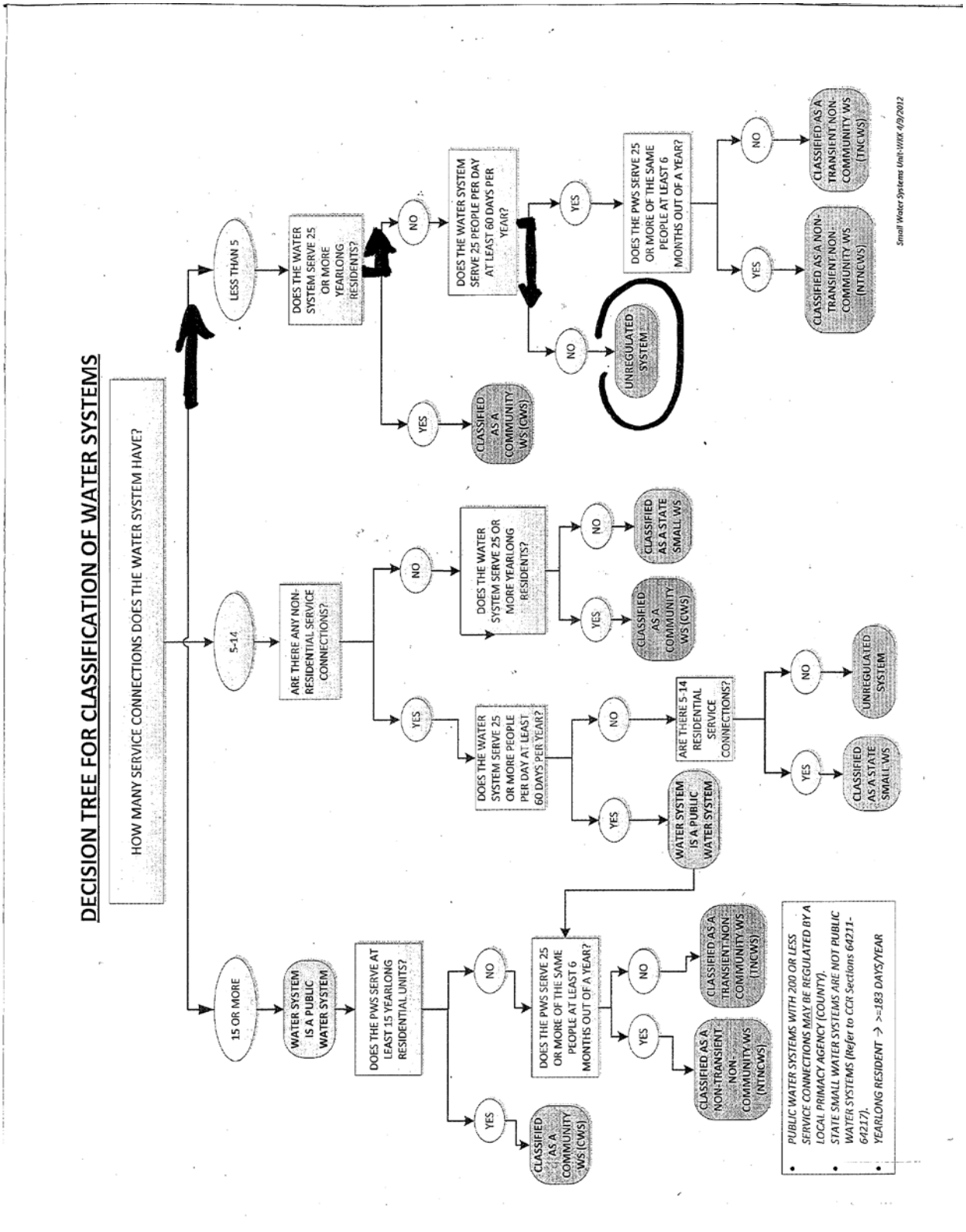
Conclusion

The representatives of the opponents to the Magee project have recently expressed concern regarding several issues relative to: (1) distillery wastewater impacts, (2) deferral of wastewater system review to another agency, (3) mitigation of polluted runoff, (4) impacts of future water quality mitigation measures on Environmentally Sensitive Habitat Areas (ESHA), (5) sufficiency of the wastewater system, (6) potential failure of the wastewater system, and (7) depletion of groundwater supplies. They have recommended a water quality permit condition that would require additional hydrogeologic information.

In this memorandum, I have presented the reasons for rejecting the allegation that this project will discharge boiling water to the environment and that the wastewater from the distillation process is an environmentally damaging waste product or hazardous material. I have described how this wastewater has higher BOD and TSS than domestic wastewater and because of that the applicant has proposed a site-specific system designed to provide an additional treatment step in order to meet state and local standards prior to discharge to septic system leach fields. I have explained how CCC staff with expertise in water quality and wastewater treatment has reviewed the proposed wastewater system and the additional oversight that will be provided by Marin County and RWQCB staff. I have reiterated the staff report condition that will require a Storm Water Pollution Prevention Plan that will address construction and post-construction runoff. I have explained that if any additional water quality mitigation measures are proposed in the future, they will be subject to review to determine if there is a threat to coastal resources and that will determine whether a new or amended permit is required. I explained how the safeguards for this wastewater treatment system are not “atypical” in Marin County and that they add several layers of actions that can be taken to ensure that the treatment system achieves state and local water quality standards. I rejected the statement that the staff report acknowledges that” the system could fail due to site specific conditions”, explained what failure of a septic system

means and how the proposed system is designed to track system performance and make any needed changes well before system failure is possible. I clarified that the paragraph header “Substantially deplete groundwater supplies” is misleading and that the paragraph actually focuses on a request for more hydrogeologic information. I conclude with arguments to reject the appellant’s proposed permit condition, that would require a much wider scope of hydrogeologic studies that would be more suitable for a major infrastructure development providing for a municipal water supply.

Attachment 1 Decision Tree for Classification of Water Systems from California Department of Public Health Public Drinking Water Systems webpage:
http://www.cdph.ca.gov/certlic/drinkingwater/Pages/default.aspx



CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT
710 "E" STREET, SUITE 200
EUREKA, CA 95501
(707) 445-7873

MEMORANDUM

FROM: John D. Dixon, Ph.D.
Ecologist

TO: Larry Simon

SUBJECT: Opponents response to CCC staff report on the Magee Project

DATE: April 9, 2013

Documents reviewed:

Bridges, J.S. 2013. Letter to California Coastal Commission dated April 4, 2013 regarding "Magee/Brader project (A-22-MAR-10-022; West Marin County)."

Goggin, W. (EMC). 2013. Letter report to J. Bridges (Fenton & Keller) dated April 1, 2013 regarding "Comments to final revised Magee property ESHA setback map, A-2-Mar-10-022 (Brader-Magee Project) Coastal Permit Appeal, West Marin County, California

Jennings, M. (Rana Resources). 2011. Ocular surveys and habitat assessment for the California red-legged frog (*Rana draytonii*), foothill yellow-legged frog (*R. boylii*), and western pond turtle (*Actinemys marmorata*) on the Magee farm project site, Marin County, California. A report prepared for Leslie Zander (Zander Associates) dated September 7, 2011.

Jennings, M.R. (Rana Resources). 2012. Letter dated November 15, 2012 to L. Zander (Zander Associates) regarding assertions by EMC Planning Group that the northwest corner of the Magee property is an important dispersal corridor for California red-legged frogs and western pond turtles.

Kennings, L. (LAK Associates). 2013. Email dated April 9, 2013 to L. Simon (CCC) regarding use of the top of dam road on the Magee property.

Sissem, R. (EMC). 2013. Letter report to J. Bridges (Fenton & Keller) dated April 1, 2013 regarding "Review of staff report TH9C, Magee distillery project (A-2-MAR-10-022)."

Zander, L. (Zander Associates). 2013. Email dated April 8, 2013 to J. Dixon regarding rare plant surveys and presence of coastal prairie in the southwest portion of the Magee property.

The representatives of the opponents to the Magee project have recently expressed concern regarding several issues relative to: (1) possible violations that may have negatively impacted natural resources, (2) perceived short-comings of the biological studies that have been done by the applicant, (3) alleged unmapped upland Environmentally Sensitive Habitat Areas (ESHA), (4) perceived inadequacy of the size of the development set-backs (buffers) from wetlands and ESHA, and (5) the identification of the least environmentally damaging location for the type of development proposed by the applicant.

Possible Violations

It is alleged that "a wetland to the immediate south of the proposed development area was illegally filled by the applicant's predecessor" (Bridges 2013). On May 24, 2011, I visited this area with a group that included William Goggin, the opponents' biological consultant. There was obvious imported rock that formed the base for a roadway. However, it was not apparent that the road was constructed over wetlands. I saw no evidence of ongoing impacts to the nearby wetlands. I dug a hole next to the existing riparian vegetation and there was no sign of fill materials at that location. On March 7, 2012, the Army Corps of Engineers conducted a site visit to investigate allegations of "importation and placement of fill material into [the] onsite creek channel" and reported that "no evidence of unauthorized fill into jurisdictional waters of the U.S. was observed during the visit."[1] The term of art "waters of the U.S." includes wetlands.[2]

It is also alleged (Bridges 2013) that a labyrinth of roads was illegally developed and vegetation was illegally removed for the road development between August 2006 and June 2007. The evidence for this allegation[3] consists of Google Earth aerial images from August 29, 2006 and June 29, 2007. Few roads or farm tracks are apparent in the 2006 image, whereas many farm tracks are obvious in the 2007 image (Figure 1). However, most of these farm tracks are not apparent in later Google Earth images from September 15, 2010[4] and May 6, 2012 (Figure 2). This is not evidence that the farm tracks are no longer present (many can be seen in a March 1, 2012 image), but rather that some photographs show them and some do not. The Google Earth images do not enable one to determine when the farm tracks were actually created, only when they were apparent in a small sample of aerial images. Strong inferences cannot be drawn from a casual examination of images of varying quality opportunistically chosen for

[1] Hicks, J. (U.S. Army Corps of Engineers). 2012. Letter to T. Magee dated May 03, 2012 regarding possible wetland fill and approval of a jurisdictional wetland delineation at 17900 Shoreline Highway, Marshall, CA.
[2] U. S. Army Corps of Engineers Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. Waterways Experiment Station, Vicksburg, Mississippi.
[3] Also in: Sissem, R. (EMC). 2011b. Letter report to S. Kivel dated May 5, 2011 regarding "Supplemental information regarding additional Coastal Act and Marin County Local Coastal Program/Development Standard violations at 17990 Shoreline Highway (State Route 1), Marshall, Marin County, CA.
[4] Presented in another context as: Figure 2 in Sissem, R. (EMC). 2011a. Letter report to S. Kivel dated April 22, 2011 regarding "Supplemental information regarding to Coastal Act and responsible agency permit violations at 17990 Shoreline Highway (State Route 1), Marshall, Marin County, CA.

inclusion in their data base by Google Earth. Although it is possible that the tracks were created in 2006 or 2007, no convincing evidence of that hypothesis has been presented.

In a footnote, Bridges (2013) suggests that an unpermitted water diversion constructed by the applicant in January 2011 to redirect water coming from the opponents' property to a driveway may have resulted in wetland conditions being absent in the area proposed for a brandy distillery. Three lines of evidence indicate that this hypothesis is false[5]. First, the wetland delineation in this area was also done in January 2011 and I surveyed the area in May 2011 and verified the lack of wetland conditions. There was not enough time for any changes in hydrology to have had an effect on wetland characteristics. Second, the topography is such that in the absence of the diversion structure, most of the water coming from the swale to the north would flow diagonally toward the western property line or be infiltrated before reaching the area of the proposed brandy distillery to the south. Finally, in December 2010 prior to the placement of the water diversion, the area was examined one day after two inches of rainfall and there was no shallow soil saturation or standing water, suggesting a lack of wetland characteristics.

Applicants' Biological Studies

Bridges (2013) alleges that seasonally appropriate rare plant surveys have not been conducted in areas proposed for ground disturbance for the installation of wells, sewer lines, leach field, power lines, and water/wastewater tanks, and specifically notes that the surveys conducted in October 2011 and November 2012 that were described in the staff report were not appropriate. The latter surveys, as explicitly stated in the staff report, were for the purpose of mapping and characterizing grasslands, not rare plants. Rare plant surveys were conducted in May and September 2008, in March and June 2009 and in February, May, June, and July 2011[6]. These seasonally appropriate surveys included the area between the northern property boundary and the main stream channel, and between the western property boundary and about the 200-foot elevation to the east.[7] The survey areas include the final locations proposed for the vineyard, leach field, wells, and other infrastructure[8].

Bridges (2013) and Sissen (2013) suggest that the proposed project could potentially impact purple martins, *Pogne subis*, (California Special Concern Species) that might be nesting in tree snags near the area proposed for a brandy distillery. The purple martin is a cavity-nesting swallow and tree snags with cavities could be used for nesting, although the preferred habitat in central western California consists of large[9] dead

[5] J. Dixon. 2013. Memorandum to L. Simon dated February 5, 2013 regarding the Magee project.
[6] Ibid. Appendix A: Summary of biological surveys conducted on the Magee property during the period of March 19, 2008 through November 12, 2012.
[7] Ibid.
[8] Zander 2013 and L. Zander personal communication to J. Dixon on April 8, 2013.
[9] Average diameter at breast height: 47 inches.

snags in open areas within coniferous forest along ridge lines[10]. However, no records of this species were found from searches of the California Department of Fish and Wildlife's Natural Diversity Database and the species was not observed during the many site visits by the applicant's biologists, site visits that included the nesting season in 2008, 2009, and 2011. Swallows, such as the purple martin, are aerial insectivores and quite conspicuous when present. It is reasonable to conclude from the evidence that they have not been present in recent years and this uncommon species is not likely to be present. I do not recommend that addition surveys be required.

Alleged Unmapped ESHA

The crux of the biological arguments put forth by the opponents' consultants is that "…the development area north of the creek contains suitable upland, dispersal/movement corridor habitat for protected CRLF and WPT[11] that has not been recognized to date." (Sissen 2013). Goggins (2013) goes further. He asserts that short of demonstrating that red-legged frogs do not use the area proposed for development[12] "…it must be assumed the upland areas provide suitable CRLF movement/dispersal habitat that constitutes ESHA."

These upland areas have not gone unrecognized as potential habitat for red-legged frogs. In my previous memorandum[13] I pointed out that "[t]he various seasonal wetlands on the property meet the definition of non-breeding aquatic habitat and have the potential to be used by dispersing frogs. California red-legged frogs may migrate up to about two miles from breeding habitat in a single season and this movement can occur in straight lines across considerable expanses of uplands." Although not explicitly discussed previously, I readily acknowledge the possibility that pond turtles could also disperse through the upland areas on the property, including the area proposed for development. Indeed, most of the Magee property and the opponents' property and the property to the south have the potential to be used by dispersing red-legged frogs or western pond turtles. However, in my professional opinion this potential does not demonstrate that those areas are each especially valuable for their role in the ecosystem and, therefore, ESHA.

The assertion (e.g., Goggin 2013) that the potential dispersal path (Figure 3) that includes most of the proposed development area is especially important is merely speculative. There is no factual basis to distinguish that potential upland route from the many others that exist, including those that would similarly include seasonal wetlands. However, Goggin[14] has suggested that a western pond turtle observed near a residence

[10] Williams, B.D.C. 1998. Distribution, habitat associations, and conservation of purple martins breeding in California. M.S. thesis. California State University, Sacramento, California.
[11] Abbreviations for California Red-Legged Frog and Western Pond Turtle.
[12] Proving a negative is notoriously difficult, if not impossible, and would, therefore, be a considerable burden.
[13] Dixon, op. cit., p.10.
[14] Goggin, W. (EMC). Memorandum to J. Bridges (Fenton & Keller) dated April 4, 2012 regarding "Identification of western pond turtle on adjacent property and habitat connectivity issues, Local Coastal Program permit application, A-2-Mar-10-022 (Magee Project), West Marin County, California."; Goggin, W. (EMC). Letter to J.

north of the opponents' property and reportedly moving in a "southerly direction" had as a "likely destination" the dammed pond on the Magee property. Mr. Goggin drew a line from the turtle to the pond, which passes through the proposed development area on the Magee property, and labeled it "Hypothetical dispersal pathway traveled by Western Pond Turtle" (which suggests the turtle also originated at the pond). Dr. Mark Jennings[15] commented that "…it is purely conjecture to conclude specific overland corridors based on a single observation, particularly the straight line corridor that EMC illustrates…. It is just as likely that the WPT observed on the neighboring property originated from the larger aquatic habitat to the north." Besides the agricultural pond on the Magee property, there is a stock pond 0.7 miles to the northwest and another is 1.2 miles to the southeast; a straight line path to either would not go through the proposed development area. The point is that there are many hypothetical paths that dispersing frogs or turtles could take and there is no factual basis for identifying any one as especially important.

The proposed development area is also characterized as being part of a "labyrinth" of sensitive resources and, therefore, nearly all ESHA (Bridges 2013). The resources said to be "converging" in the proposed development area include "…a blue line stream …, 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…." This description could be applied to much of the property, depending on how close the pond must be other habitats to constitute a "convergence." However, the only sensitive habitats that actually occur in the northwest area encompassing the proposed development are two small federally-delineated seasonal wetlands. The dominant habitat present is non-native grassland. In fact, it is the overwhelming dominance of non-native species and the absence of native coastal prairie that leads me to conclude that such areas north of the pond, stream and riparian corridor are the least biologically sensitive on the Magee property. The turtle and frog pond is 300 to 600 feet from the development footprints and the riparian habitat is 100 to 350 feet distant. The alternative development site proposed by the opponents is more distant, about 1200 feet from the pond and riparian habitat, but coastal prairie and very extensive wetlands are within or adjacent to that site.

Size of Habitat Buffers

The opponents' biological consultant (Goggin 2013) asserts that the setbacks and buffers required by staff and proposed by the applicant provide only "minimum

Dixon (California Coastal Commission) dated September 12, 2012 regarding "Summary of biological concerns, Local Coastal Program Permit Application, A-2-Mar-10-022 (Magee Project), West Marin County, California."

[15] Dr. Jennings is a specialist in the biology of reptiles and amphibians and wrote the treatment upon which the California Department of Fish and Wildlife based their designations of species of special concern: Jennings, M.R. and M.P. Hayes. 1994. Amphibian and reptile species of special concern in California. (http://www.dfg.ca.gov/habcon/info/herp_ssc.pdf).

protection."[16] I disagree. The 300-foot setback from the dammed agricultural pond is very protective, as large as the Commission has ever required, and larger than current U. S. Fish and Wildlife guidelines (which are now based on professional judgment) would likely require. The Commission generally requires 50- to 100-foot setbacks from riparian habitat or streams. At staff's suggestion, the applicant proposes 100-foot setbacks from riparian habitat and 150-foot setbacks from the stream bank, whichever is larger. The actual distance from development to these features is generally much greater. The setback from seasonal wetlands is at least 100 feet, which is the distance the Commission generally finds protective. In this setting, these setbacks provide ample, not "minimum" protection, and are generally greater than the minimum setbacks required in Marin County's certified Local Coastal Program. As documented in the staff report, Dr. Jennings (2011, 2012) concurs that the siting of development and the size of the proposed development setbacks protect breeding and nesting habitat and enables frogs and turtles to move unhindered between adjacent aquatic habitats and between upland and adjacent aquatic habitats.

Preferred Alternative Development Site

The opponents to the proposed Magee project contend that the least damaging location for the proposed development is the southwest corner of the property. In the context of natural resources, this contention is based on the notion that the northwestern corner of the property where development is currently proposed is the most sensitive area and that the southeast corner is the least sensitive location where development is feasible. This is partly based on the assumption (Sissen 2013) that "the alternative site building envelope is not known to contain coastal prairie grassland or other sensitive or protected plant species or communities." As I pointed out in an earlier memo,[17] the area south of the blue-line stream is characterized by extensive, remarkably high quality stands of coastal prairie, a rare vegetation community. Although intermixed with non-native grasses, the coastal prairie exists in a mosaic pattern throughout the southern part of the property. For example, of the formal sample points closest to the area suggested by the opponents as an alternative development area, two were in non-native grassland and one was in coastal prairie. As discussed previously[18], rather than to attempt to map all coastal prairie, I directed the applicant's biologist to position any development proposed for the area south of the stream such that the development footprint and a 100-foot buffer around the footprint would not encroach upon coastal prairie. In order to accomplish this, both the sheep shelter shown in the suggested

[16] Bridges (2013) suggests that Goggin's recommendations for wider buffers are "consistent" with the Commission's determination that at Pacific Ridge in Half Moon Bay (A-1-HMB-1-022) a "150-foot setback from CRLF corridors" was not sufficient. The 150-foot setback was not from a delineated movement corridor, but rather from a stock pond that was potential breeding habitat. At Pacific Ridge besides an existing stock pond there were nearby streams with riparian habitat that provided probable dispersal corridors to other ponds nearby. In a biological opinion, the U.S. Fish and Wildlife Service recommended a 150-foot set back from the stock pond, but acknowledged that red-legged frog habitat within 300 feet would be impacted by the project. The Commission required a 300-foot setback from the stock pond to protect breeding, foraging, and probable dispersal habitat.
[17] Dixon, op. cit., p. 6.
[18] Ibid.

"Alternative Development Area" (Attachment 1 in Bridges 2013) and the Hopyard Shelter that is further to the east had to be shifted from their original locations because of the presence of patches of coastal prairie[19]. I asked Ms. Zander if she had recorded notes when she sited those structures. She responded (Zander 2013) that, "[w]ith respect to the grasslands in the southwest corner of the property, I have field notes from my September 24, 2012 site visit where I was tasked with relocating Sheep Shelter #2. This relocation was necessary because the first site was within grassland dominated by native species: a fact documented in my September 27, 2011 letter to Larry Simon. My field notes indicate that native grasslands are more common in the southwest portion of the property because the habitat generally appears drier. Sheep Shelter #2 was relocated to a patch of non-native grassland occurring in a broad swale, which likely has a moister microclimate."

Sissen (2013) suggests that requests for data by Commission staff and CDFW's comments are an indication of concern about potential impacts to ESHA and to the California red-legged frog. That perception is correct. However, those concerns are not confined to the currently proposed type and location of development. In the case of the currently proposed development, CCC staff and CDFG concluded that the proposed development would not have significant adverse impacts on sensitive resources. This is because the development is proposed for an area that is dominated by non-native vegetation that is not sensitive and it is adequately set back from the several habitats that are sensitive. The suggested alternative development site is more distant from some sensitive habitats, but it is adjacent to or encompasses others.

Conclusion

Based largely on the various arguments discussed above, Sissen (2013) makes six biological recommendations. These are (1) Designate the hypothetical movement corridor shown in Figure 3 of this memo as ESHA, (2) Increase the size of wetland and riparian setbacks, (3) Develop a WPT protection plan prior to construction, (4) Close the dam top road except to occasional ATV use, (5) If the prior recommendations are not followed, get an incidental take permit from the U.S. Fish and Wildlife Service (presumably for California red-legged frogs) and prepare a Habitat Conservation Plan, and (6) Perform purple martin surveys.

In this memorandum, I have discussed and presented the reasons for rejecting the notions that: (1) the hypothetical movement corridor for frogs and turtles is ESHA, (2) the proposed setbacks are not adequate, and (6) purple martin surveys are needed. It is not clear what is meant by (3) a western pond turtle protection plan. However, since it is related to construction timing, I assume that it refers to protection from construction activities. This is required by Special Condition 9C in the staff report. Vehicle traffic on the dam top road could pose a threat to frogs and turtles, which is the rationale for (4) closing the road to vehicles. According to the applicants representative (Kennings 2013), "In addition to storing and drying hops, the hop shed will be used to store

[19] L. Zander personal communication to J. Dixon on April 5, 2013.

agricultural maintenance vehicles and equipment that will be used on the south portion of the property. No vehicles will use the path across the earthen dam from the equipment barn on the north side." Finally, the only reason for (5) pursuing an incidental take permit and an HCP, is if there is a significant risk of take of the federally listed California red-legged frog. However, the proposed development has been specifically sited and designed to avoid such take and the U.S. Fish and Wildlife Service has been informed of the project and has shown no interest in directing the applicant to pursue such a course of action.

Figure 1. Google Earth images used to draw inferences regarding the creation of farm tracks on the Magee property (Bridges 2013). Red polygon for reference.

A. Image dated August 29, 2006

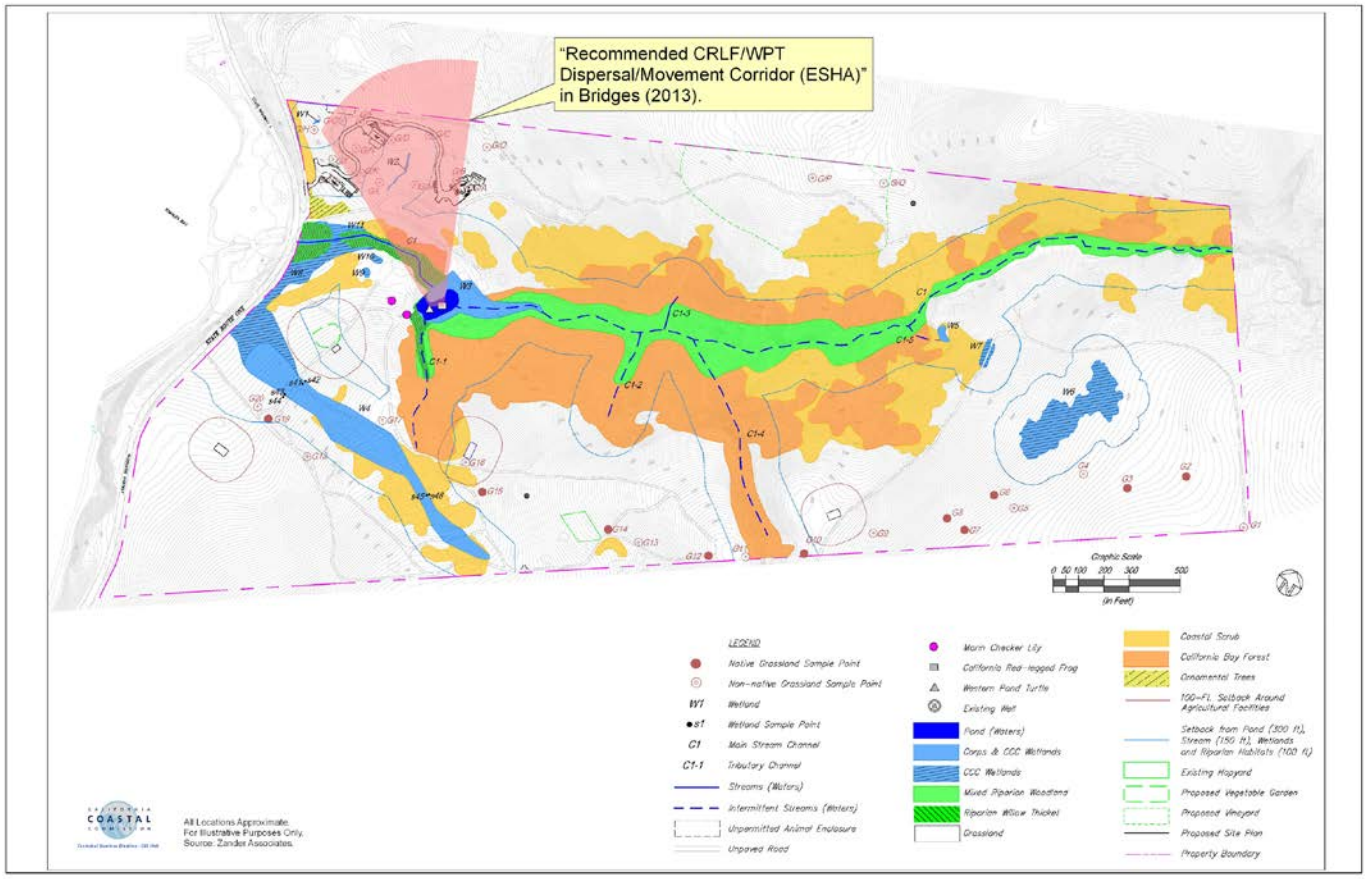
B. Image dated June 29, 2007

Figure 2. Google Earth images from 2010 and 2012 where a labyrinth of farm tracks is not apparent. Red polygon for reference.

A. Image dated September 15, 2010.

B. Image dated May 6, 2012

Figure 3. Area (in pink) proposed by consultants for the project opponents to be designated as an important dispersal corridor for California red-legged frogs and western pond turtles and as an Environmentally Sensitive Habitat Area under the Coastal Act. The dark blue polygon is the dammed agricultural pond; the other blue areas are wetlands.



CALIFORNIA COASTAL COMMISSION
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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***

Agenda Item	Applicant	Description
Th9c	**Magee & Brader, Marin Co.**	**Correspondence,**

Th 9c

Attention: Jeff Staben

RECEIVED
MAR 0 5 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."

thankyou
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

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 volitile 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 theApplicant'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 theApplicant'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

Agenda Item No. Th9c (Magee/Brader, Marin County)
Appellant: Kivel/Lund

Th9c

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April 4, 2013

VIA OVERNIGHT MAIL AND EMAIL

California Coastal Commission
Attn: Larry Simon
45 Fremont Street, Suite 2000
San Francisco, CA 94105

California Coastal Commission
c/o Jeff Staben
45 Fremont Street, Suite 2000
San Francisco, CA 94105

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).

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.A[4]). 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.

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[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 description[5], 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 predecessor[16] 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

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.

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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 duration[26] 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 in[30] 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;[28] 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.

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[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 property[37]; 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.

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.

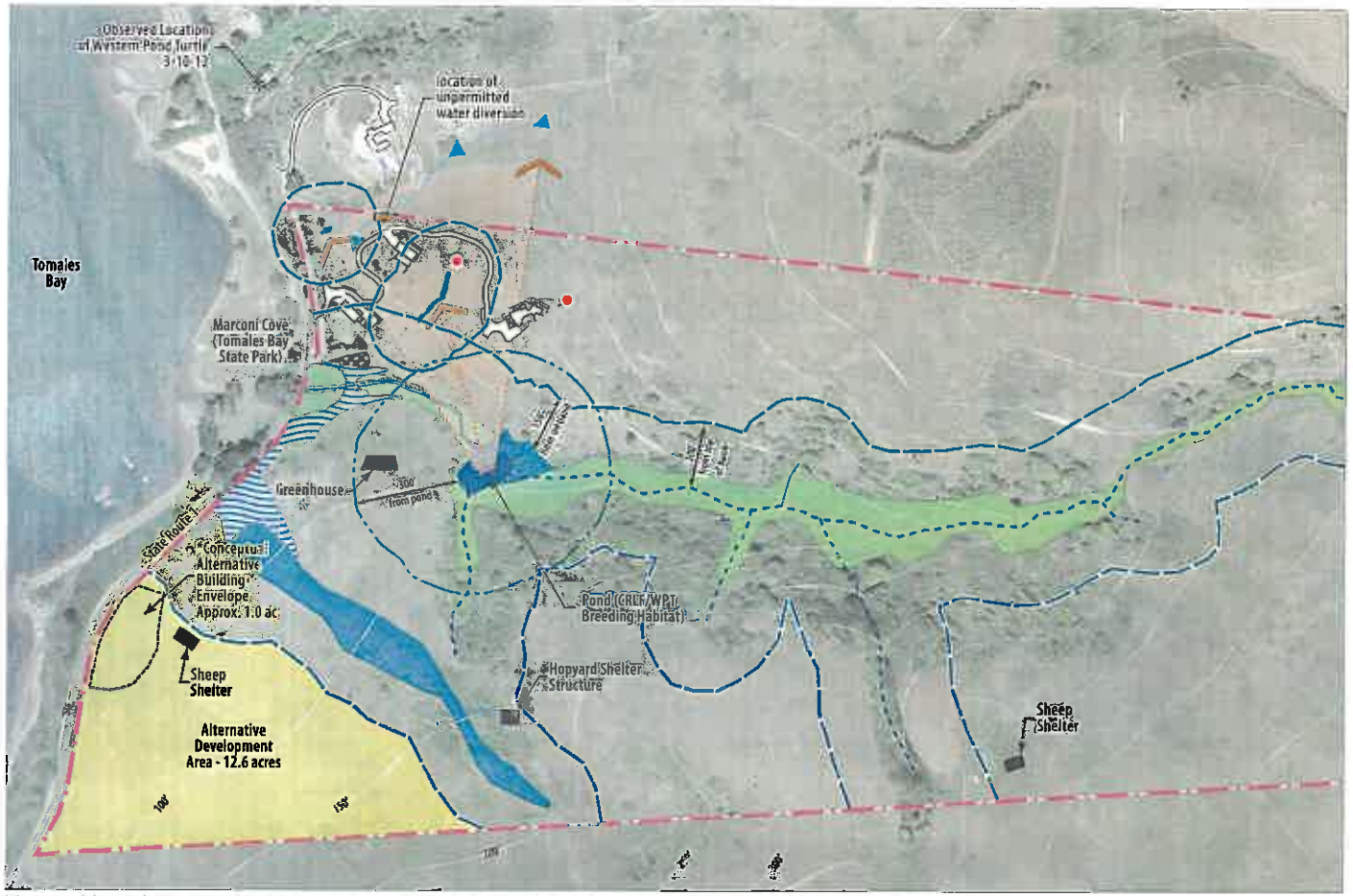
Very truly yours,

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



*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.

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 150' & 200' Wetland/Riparian Buffer (150' from edge of wetlands/riparian, 200' from top of stream bank, whichever is greater)
- 300' Pond Buffer
- Recommended CRLF/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

0 400 feet

Source: Zander 2012, EMC Planning Group 2013

ATTACHMENT 1

Potential Alternative Development Sites

17990 Shoreline Highway Coastal Development Permit Appeal Project

ATTACHMENT 2

BILL GOGGIN LETTER

E M C

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

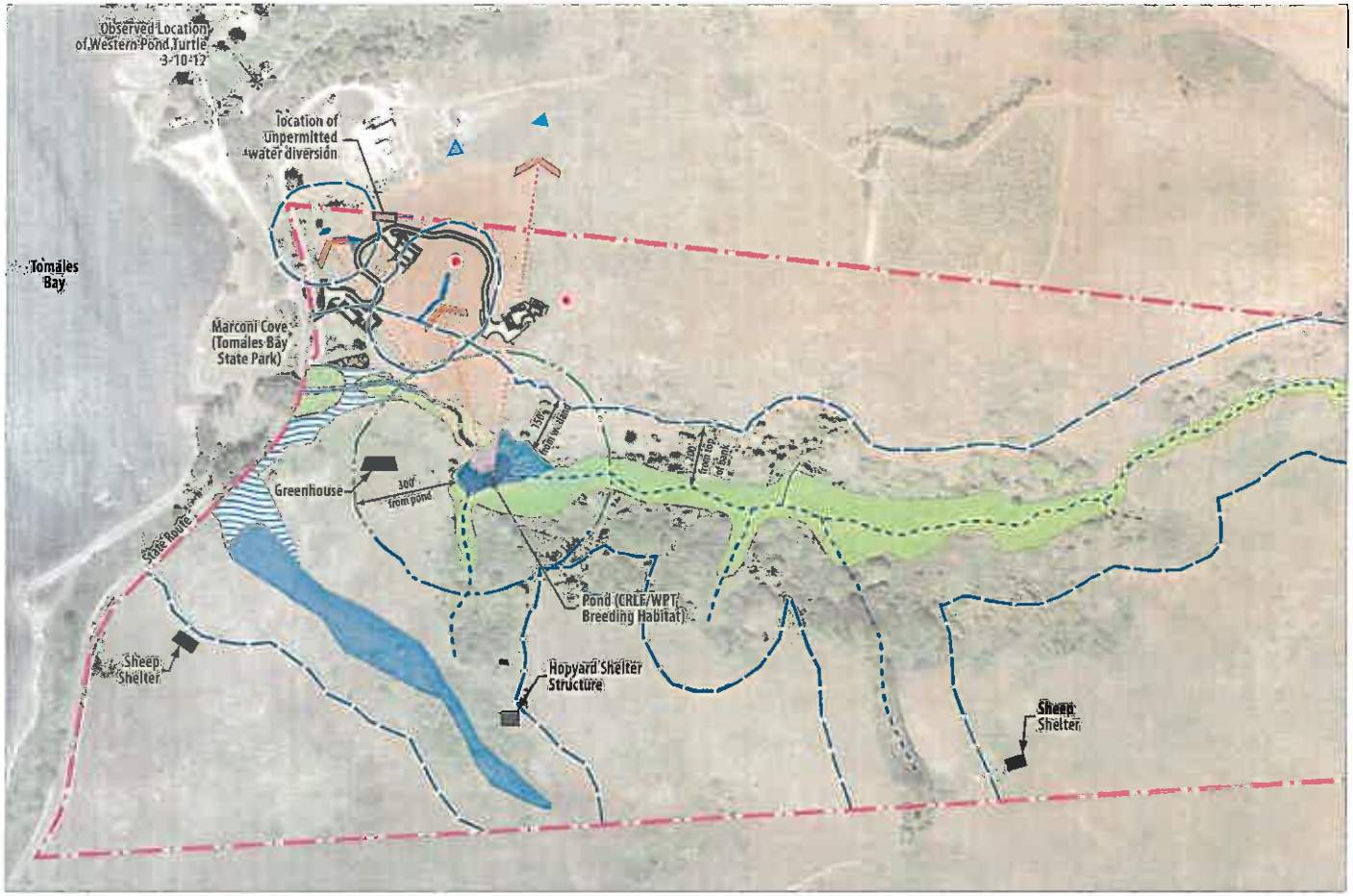
dispersal/movement corridor habitat, or 2) all development proposed on the north side of the blue-line stream be relocated to a different portion of the property where no ESHA constraints are known to exist.

Sincerely,

Bill Goggin
Senior Biologist
EMC Planning Group

Attachments:

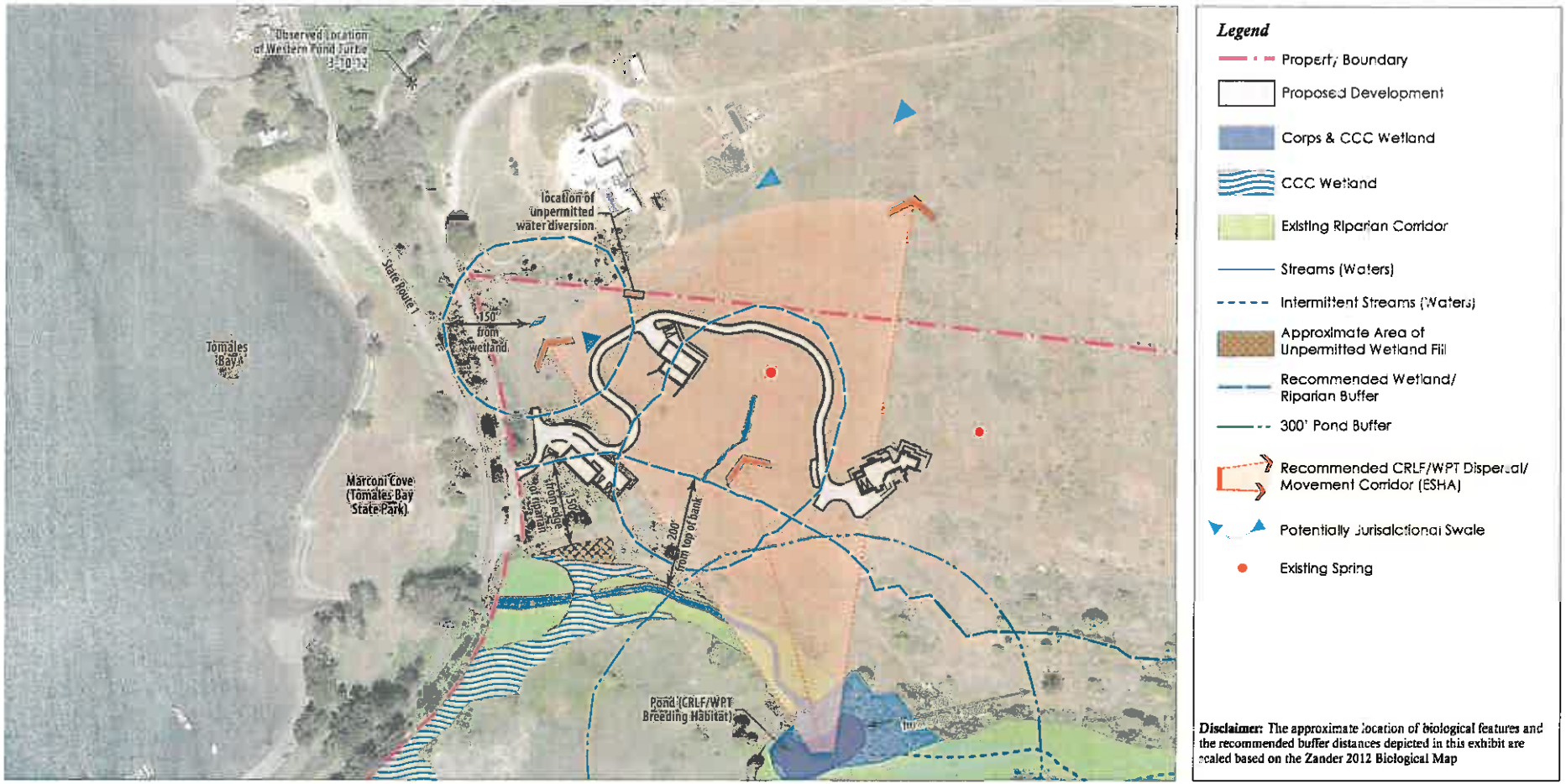
Recommended Environmentally Sensitive Habitat Areas Map (large scale)
Recommended Environmentally Sensitive Habitat Areas Map (small scale)



Source: Zander 2012, EMC Planning Group 2013

Recommended Environmentally Sensitive Habitat Areas

17990 Shoreline Highway Coastal Development Permit Appeal Project



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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Appendices

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, discontiguous 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 conducted 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 much 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

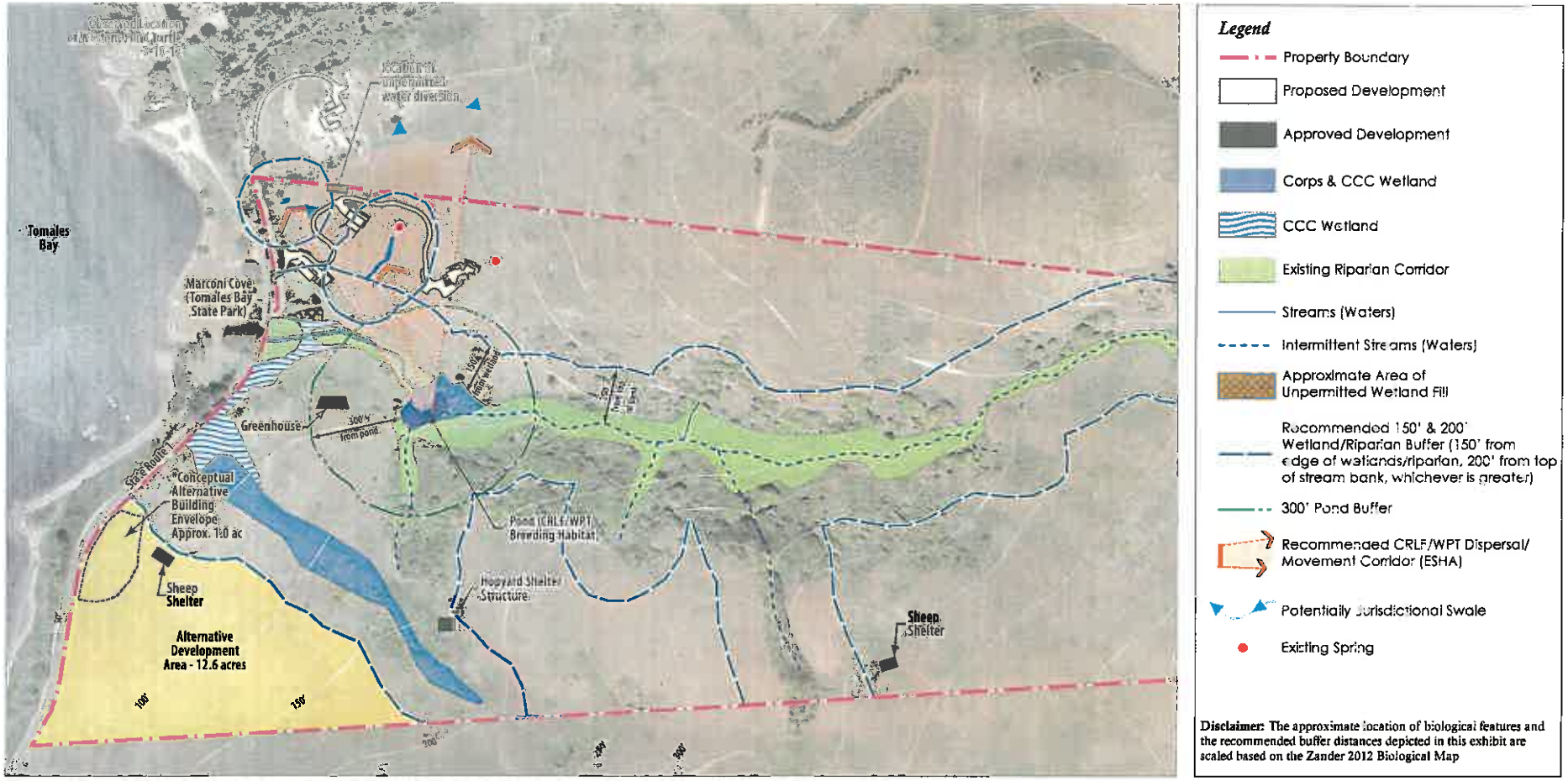
Cc: Scott Kivel, Lia Lund

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

ATTACHMENT 3

BIERMAN
Hydrogeologic
A Professional Company
Hydrogeologic Consulting & Water Resource Management
Office:(831-688 8880 Cell:(831-334 2237) E-Mail:abierman@comcast.net
3153 Redwood Drive, Aptos, CA. 95003

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 report[1],
- Anderson Pump Company, Pump Test Report[2],
- Rich Lincoln & Sons letter report[3],
- Rich Lincoln & Sons Sewage Disposal System Design[4],
- EMC Planning Group 'Environmentally Sensitive Habitat Areas' Map[5],
- EMC Planning Group 'Property Roads Aerials' Map[6],
- Marin County Code Section 7.28[7] Domestic Water System Requirements and,
- California Waterworks Standards, Chapter 15, Article 2-General Requirements, Section 64551.10 through Article 4-Design Standards, Section 64658[8].

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

- Herzog Geotechnical report[9],
- ILS Associates, Inc, report[10],
- Fall Creek Engineering, Inc. letter report[11],

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 greenhouse [13] which is to be served by the two existing wells on the property.

BHgls' 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 <u>one</u> 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 Regulations[14], 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 <u>would not</u> 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, their remains insufficient data at this time to confirm no cumulative significant impacts to the aquifer and SERs.

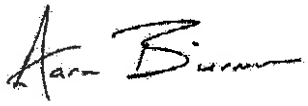
LIMITATIONS

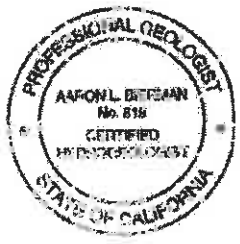
This report consists of professional opinions and recommendations based on the reports and data reviewed and field-testing which are necessarily limited. *Bierman Hydrogeologic P.C.* bases the conclusions on the reports, data and tests reviewed using accepted hydrogeologic principles and practices of 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.

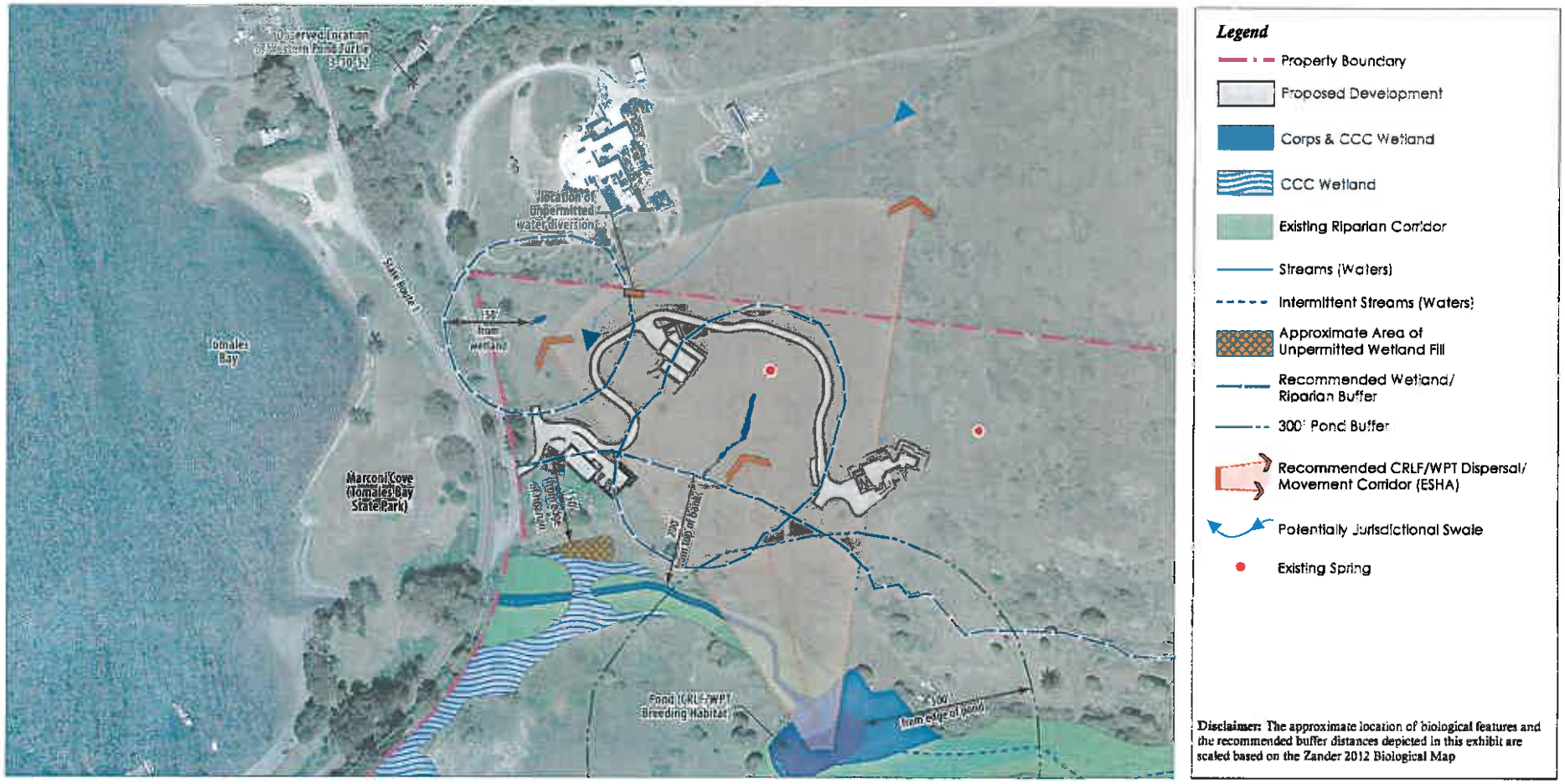
In accepting this report, the client releases and holds *Bierman Hydrogeologic, P.C.* harmless from liability for consequential or incidental damages arising from any different future pumping rate, calculated well yield or water quality that was expressed herein. Our report is not a guarantee of any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

Respectfully submitted,





Aaron Bierman
Consulting Hydrogeologist
PG#7490, CHg#819



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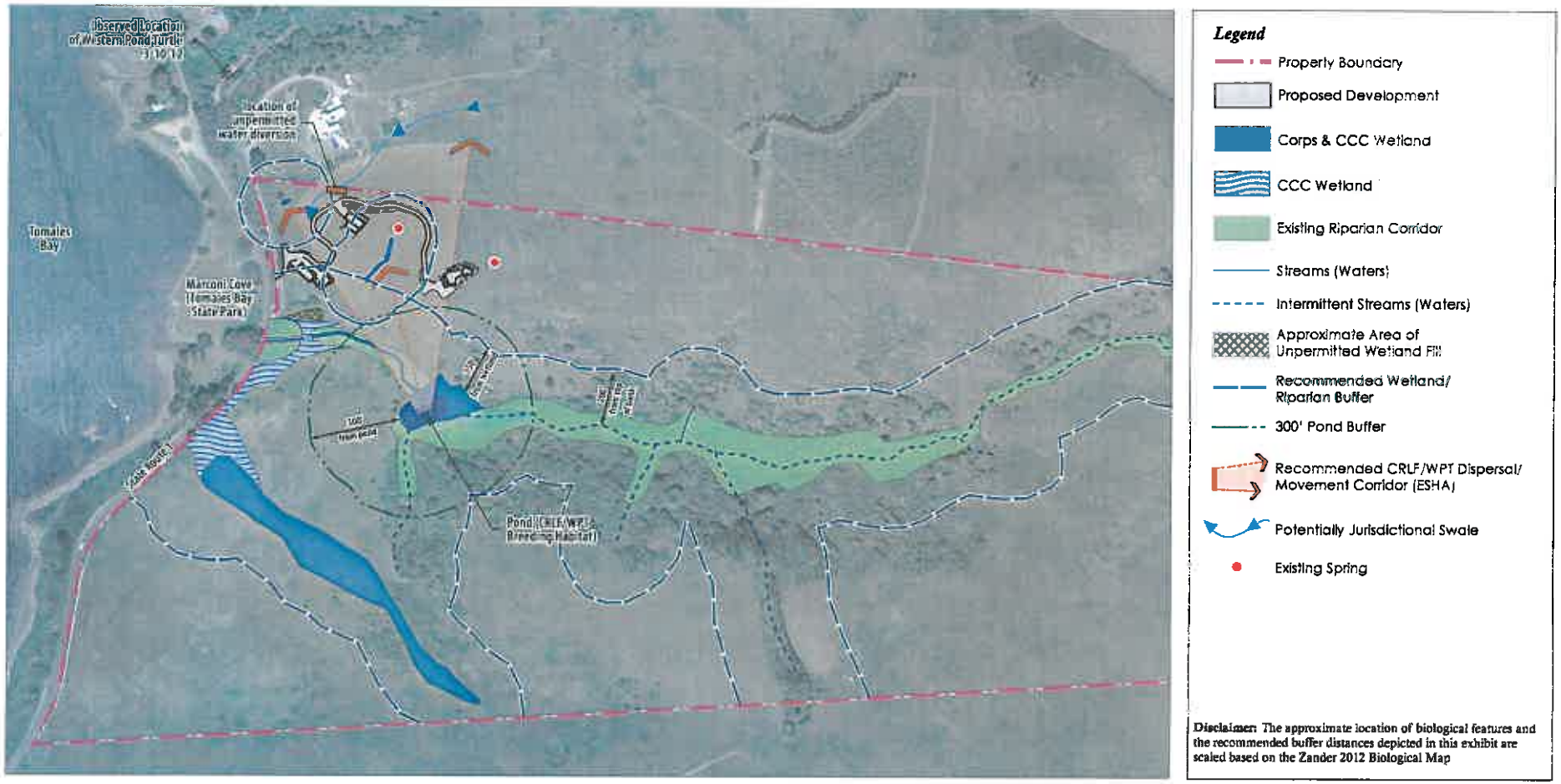
Source: Zander 2012, EMC Planning Group 2013

Recommended Environmentally Sensitive Habitat Areas

17990 Shoreline Highway Coastal Development Permit Appeal Project



Source: Zander 2012, EMC Planning Group 2013

EMC

Recommended Environmentally Sensitive Habitat Areas

17990 Shoreline Highway Coastal Development Permit Appeal Project

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 (Tomales or Point Reyes) have ATC suppression capability or training.

Factors in Fire Suppression Success

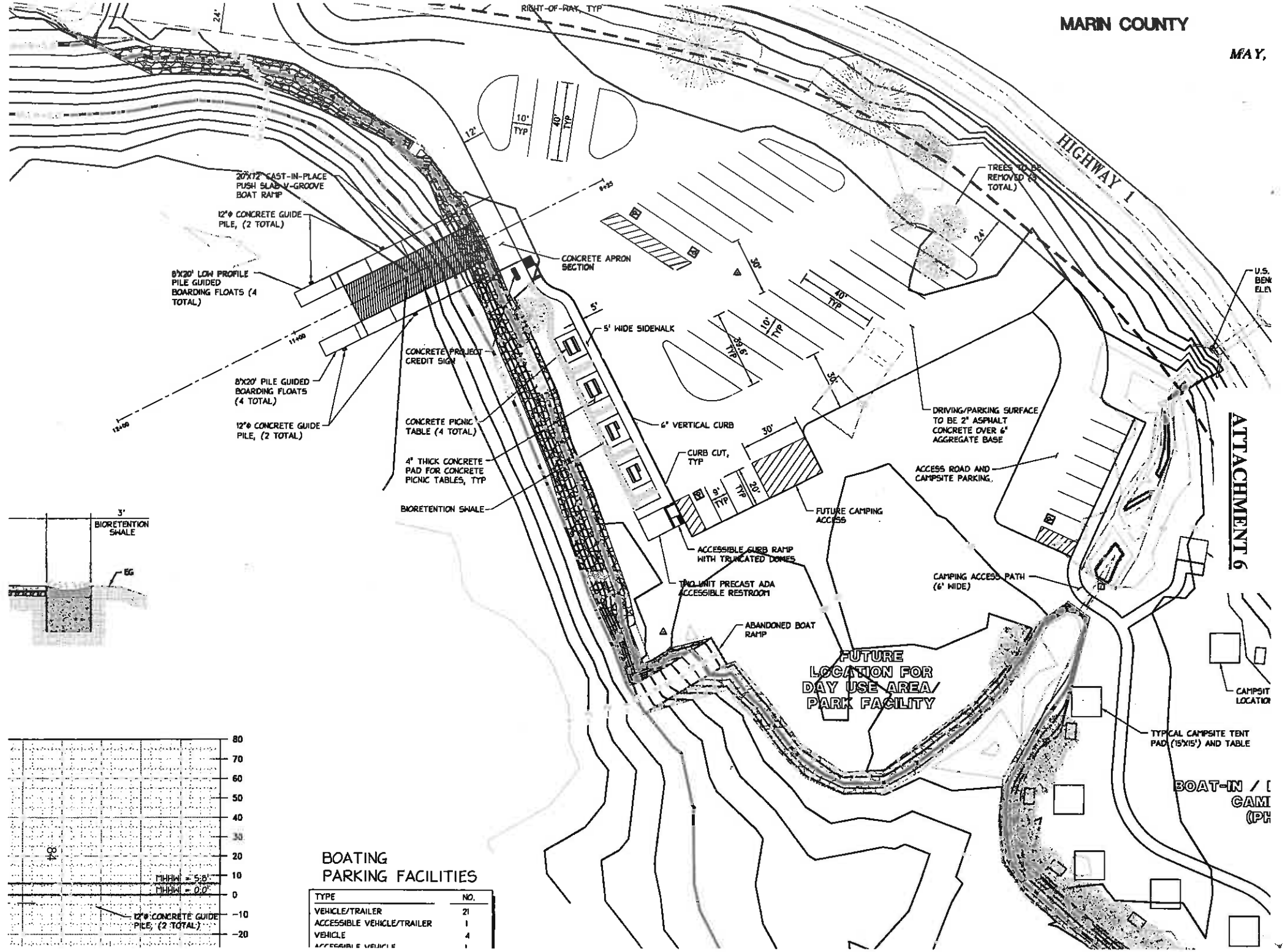
The project proposes a distillery producing a flammable liquid in a H-2 occupancy. Usually a business of this type would be located in a commercial or industrial zoned area where similar business uses are also located. Clustering of such uses usually ensures adequate water flow from city water mains 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 Tomales 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

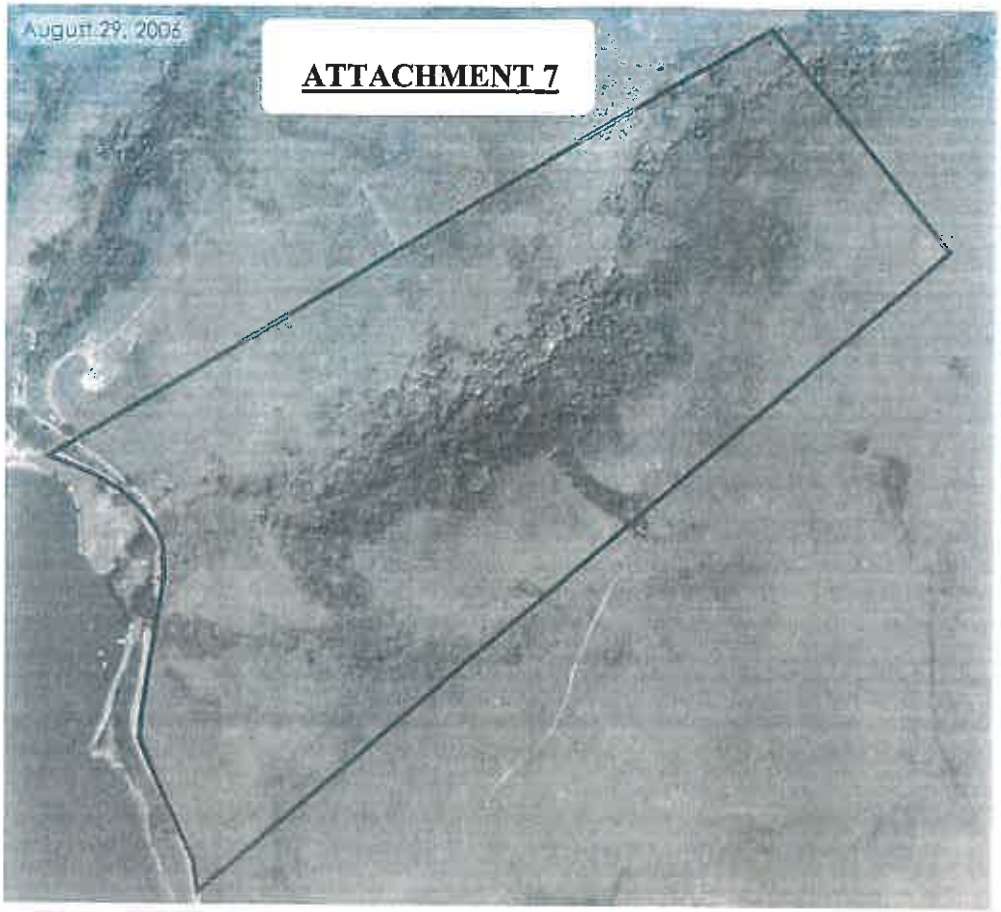
Date: 10/12/2012

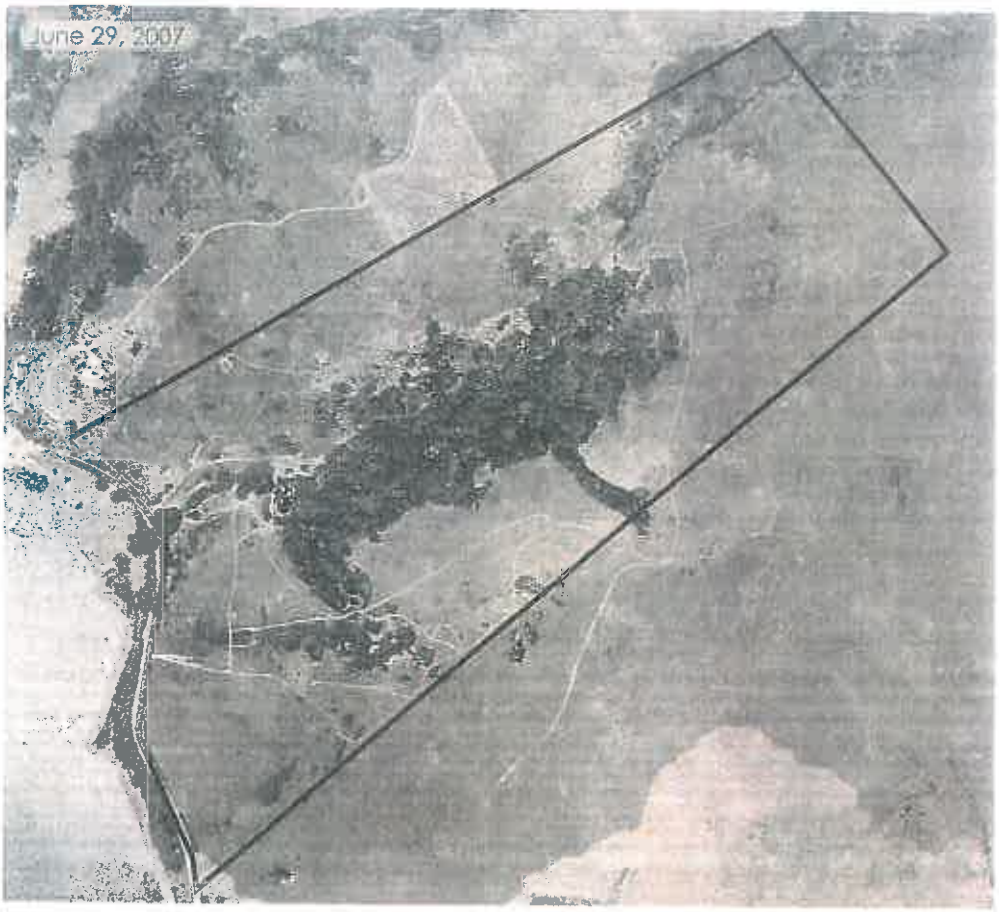


BOATING PARKING FACILITIES

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

ATTACHMENT 7





Source:
Google Earth

Figure 1

Property Roads Aerials

Coastal Act Violocation Letter 2 Supplemental Information

ZANDER ASSOCIATES

Environmental Consultants

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

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San Rafael, CA 94903 *fax: (415) 814-4125*

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 Jennings[1]) 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 map[3] 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,

Leslie Zander
Principal Biologist

RANA RESOURCES
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(530) 753-2727
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 water[1]; 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,

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 groujndwater 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 treatent 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 wastewaer 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

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

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

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
FOUNDED 1892

Sierra Club
P.O Box 3058, San Rafael, CA 9491
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

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 volitile 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 theApplicant'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 theApplicant'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.

Wyliam Holder

Regards, Wyliam Holder

Former Resident of Marshall California

4/5/13 in S.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

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Th 9c

Filed:	6/1/2010
49th Day:	Waived
S.I. Found:	9/15/2010
Staff:	L. Simon-SF
Staff Report:	3/22/2013
Hearing Date:	4/11/2013

STAFF REPORT: COASTAL DEVELOPMENT PERMIT APPLICATION

APPEAL NO.: **A-2-MAR-10-022**

APPLICANT: **Tony Magee and Carissa Brader**

AGENT: Larry Kennings and Associates

LOCATION: 17990 Shoreline Highway, Marshall, Marin County (APN 106-220-20) (**Exhibit 1**)

PROJECT DESCRIPTION: Agricultural operations on 150-acre parcel zoned C-APZ-60 (coastal agricultural production zone) consisting of sheep grazing, vegetable and fruit production, and a vineyard to supply on-site brandy distillery; construction of a brandy barn and equipment barn with attached shed, an open-sided hopyard shelter, two open-sided sheep shelters, and a greenhouse; a 3,165 sq.ft. farmhouse with attached 648 sq.ft. garage; infrastructure including five water tanks, a water well, septic system and leach field, fire hydrants, propane tanks, and sewer, water, and power lines; and conveyance of an affirmative agricultural conservation easement. Applicant also proposes to retain or remove unpermitted development and to restore areas in which unpermitted development was removed to their pre-development status.

STAFF RECOMMENDATION: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicants, Tony Magee and Carissa Brader, propose agricultural operations on a 150-acre property on the inland side of Highway 1 south of Marshall in the Marin County coastal agricultural production zone. Proposed development includes vegetable and fruit production, a greenhouse, a vineyard to supply an on-site brandy distillery, equipment and brandy barns, hopyard shelter, two sheep shelters, a farmhouse, utility infrastructure (water, power, and sewer), and an affirmative agricultural conservation easement. The Applicants also propose to remove unpermitted development and restore such areas to their pre-development status. The standard of review for the project is the Marin County Unit II Local Coastal Program (LCP). The key LCP issues raised by the project are the protection of agriculture, wetlands, streams and riparian habitat, upland environmentally sensitive habitat, water quality, and visual resources.

The project has undergone significant revisions subsequent to the Commission finding in September 2010 that a substantial issue was raised by the appeal of the Marin County approval of the project. In response to concerns expressed by the Commission and project opponents, the Commission staff obtained more detailed information on the proposed agricultural operations, the distribution of sensitive habitats, and the potential adverse effects from proposed development on agriculture, habitat, rare species, water quality, and visual resources. As a result of additional biological resources inventory and analysis undertaken by the Applicants in consultation with Commission staff, the locations of the driveway, several structures, and agricultural fields were modified to avoid sensitive habitat and buffer areas. New wetland areas were identified and known coastal terrace prairie habitat was protected from development. Setbacks from the stream, pond, and riparian corridors were increased consistent with or exceeding LCP requirements. As approved, an Agricultural Conservation Easement and a Habitat Protection Deed Restriction will permanently protect the vast majority of the property from future development, consistent with the agricultural and natural resource policies of the LCP.

The modifications to the project development plan made by the Applicants, and the additional conditions attached to this permit, will ensure that the proposed project avoids significant adverse impacts on sensitive habitat and species, protects the property for continued agricultural operations, and protects significant public views consistent with the requirements of the LCP. The evidence accumulated by the Commission addresses the issues raised by project opponents regarding the project's consistency with the Marin County LCP. Therefore, the Commission staff recommends approval of coastal development permit application A-2-MAR-10-022, as conditioned. The motion to implement this recommendation can be found on page 5 below.

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APPENDICES

Appendix K – Comment letters Submitted after Publication of the Commission's February 21, 2013, staff report

EXHIBITS (For color versions of Exhibits 7 and 13-23, see the staff report on the Commission's web site)

Exhibit 1 – Location Map
Exhibit 2 – Project Site Plans
Exhibit 3 – Agricultural Conservation Easement Area
Exhibit 4 – Habitat Conservation Deed Restriction Area
Exhibit 5 – Building Envelope Area
Exhibit 6 – Habitat and Buffer Area
Exhibit 7 – Site Photographs
Exhibit 8 – Sheep Grazing Pastures
Exhibit 9 – Building and Structure Plans and Elevations
Exhibit 10 – Livestock Enclosure and Water Diversion Works
Exhibit 11 – Alternate Driveway Route
Exhibit 12 – Craft Brandy Making Process
Exhibit 13 – Photographs Along Highway 1 North of Point Reyes Station
Exhibit 14 – Photographs Along Highway 1 Between Point Reyes Station and Marshall
Exhibit 15 – Photographs From Highway 1 Northbound Approaching the Magee Property
Exhibit 16 – Photograph From Highway 1 Northbound of Tomales Bay
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Exhibit 19 – Photographs From Marconi Cove Towards Magee Property
Exhibit 20 – Brader-Magee Visual Simulation, 2010
Exhibit 21 – Photograph of Livestock Enclosure, Excavated Pit, and Water Diversion Pipe
Exhibit 22 – Photograph of Planted Trees Along Highway 1
Exhibit 23 – Photograph of Alleged Wetland Fill
Exhibit 24 – March 13, 2013, Letter from Orenco Systems, Inc. to Rich Lincoln & Sons regarding proposed wastewater collection and treatment system

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. A-2-MAR-10-022 subject to the conditions set forth in the staff recommendation, and I recommend a yes vote.*

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

Resolution:

The Commission hereby approves coastal development permit A-2-MAR-10-022 and adopts the findings set forth below on the grounds that the development as conditioned will be in conformity with the policies of the certified Marin County LCP. Approval of the permit complies with the California Environmental Quality Act because either (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgement.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent and interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Revised Project Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit two full-size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the proposed project plans dated October 31, 2012, received on November 14, 2012, and titled "Brader-Magee Farm"(see **Exhibits 2 and 9**) except that they shall be revised and supplemented to comply with the following requirements:

A. **Project Design.** The design and appearance of all above ground and visible development shall reflect a rural agricultural theme (i.e., simple and utilitarian lines and natural materials, including use of boards and bats, corrugated metal, muted earth tone clors, Corten steel, etc.). The plans shall clearly identify all measures that ensure that the project design, including all structures and other project elements (e.g., driveway, fencing, lighting, landscaping) reflects this theme and that it limits the appearance of bulk and mass and blends with the surrounding environment. Exterior materials shall appear natural and non-reflective, including through the use of wood, stone, brick, and earth-tone colors. All exterior lights, including any lights attached to the outside of the farmhouse, shall be the minimum necessary for safe ingress and egress, and shall be low-wattage, non-reflective, shielded, and directed downward. Plans shall clearly identify all structural elements, materials, and finishes (including through site plans, elevations, materials palettes and representative photos, product brochures, etc.).

B. **Utilities.** All utilities shall be installed underground, except for the extension of the existing aerial power line to the farmhouse, and the placement of flexible hose water lines connecting the water well, water tanks, livestock watering troughs, and the vegetable garden and existing hopyard on the southern half of the property.

C. **Disturbed Areas Restored.** All areas on the property temporarily disturbed through construction activities, including areas where development is to be located underground (e.g., utility lines, wastewater system components), shall be restored to pre-project conditions to the maximum extent feasible, including through recontouring and relandscaping.

D. **Brandy Barn Parking Area.** No portion of the brandy barn parking area shall be located within the 150-foot stream setback area required by **Special Condition 10** and generally depicted on **Exhibit 6** and on Figure 2 of **Appendix E**.

E. **Livestock Enclosure and Water Diversion.** The plans shall indicate the removal of the existing fenced livestock enclosure structure, the adjacent excavated basin, and the water diversion and conveyance works located in the northwest corner of the property. The plans shall include a restoration plan for these areas, including restoration to original grade and landscaping with vegetation similar to that of the adjacent non-disturbed areas of the property. The plans shall indicate that removal of the enclosure, filling of the basin, removal of the diversion works, and restoration of these areas shall be completed prior to the start of any other development authorized under this permit, except for the tree thinning required under **Special Condition 15**.

F. **Landscaping.** The plans shall include landscape and irrigation parameters that shall identify all plant materials (size, species, quantity), all irrigation systems, and all proposed maintenance measures for the entire property, including measures for maintaining areas outside of the building and driveway footprint area (e.g., for fire safety, etc.). All plant materials shall be native and non-invasive species selected to be complimentary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, avoid contamination of the local native plant community gene pool, and appropriately address fire risk. Landscaping (at maturity) shall also be capable of partial/mottled screening and of minimizing the appearance of development (e.g., the brandy barn, equipment barn, and farmhouse) as seen from Highway 1 and the Marconi Cove area west of the property. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.

G. **Hopyard Expansion Eliminated.** The plans shall indicate that the proposed hopyard expansion adjacent to the existing hopyard area is eliminated.

H. **Agricultural Conservation Easement Mapped.** The plans shall identify the location of all areas on the property that are to be included in the affirmative agricultural conservation easement being dedicated by the Applicants consistent with S**pecial Condition 3** and as generally depicted on **Exhibit 3**.

I. **Habitat Protection Deed Restriction.** The plans shall identify the location of all areas on the property that are to be included in the Habitat Protection Deed Restriction Area, including required buffer setback areas, consistent with the requirements of **Special Condition 10** and as generally depicted on **Exhibit 4**.

J. **Relocation of Water Supply Hoses.** The water supply hoses between the southern water well and the southeastern water tank shall follow the existing farm road to avoid any portion of the Habitat Protection Deed Restriction Area required by **Special Condition 10** and generally depicted on **Exhibit 4**.

All requirements above and all requirements of the approved Revised Project Plans shall be enforceable terms of this coastal development permit. The Permittee shall undertake development in accordance with the approved Revised Project Plans and all requirements of this coastal development permit.

2. **Agricultural Uses Conform to the Brader-Magee Farm Master Plan.** Consistent with the Applicant's proposal, all agricultural activities on the subject property shall conform to the Brader-Magee Farm Master Plan as modified by the conditions of this coastal development permit, including the requirements that habitat setback areas be provided consistent with the requirements of **Special Condition 10** and the hopyard expansion outlined in the Plan be eliminated. Any proposed changes to the buffer setback requirements or expansion of the existing hopyard requires approval of an amendment to this permit.

3. **Affirmative Agricultural Conservation Easement.** Consistent with the Applicant's proposal:
   A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the Agricultural Resource areas depicted on **Exhibit 3** except for the Agricultural Uses defined in Subparagraphs B1 and B2 and:

      1. The following development as authorized by this coastal development permit north of the riparian corridor as generally depicted on **Exhibit 2**:
         a. Vineyard and drip irrigation system
         b. Compost pile or pit adjacent to the vineyard
         c. Buried wastewater/septic system disposal pipeline
         d. Underground septic system leach field
         e. Water well, pump, and portable generator
         f. Buried water lines between the well and the farmhouse
         g. Surface irrigation hoses between the water well and the vineyard
         h. Two 4,950-gallon water tanks
         i. Aerial power line between the existing power pole adjacent to the pond and the farmhouse
         j. Restoration, protection, or enhancement of native habitat and/or sensitive species
         k. Drainage and erosion control measures as required by **Special Conditions 11 and 12**
         l. Landscaping required by **Special Condition 1**

      2. The following development as authorized by this coastal development permit south of the riparian corridor and generally depicted on **Exhibit 2**:
         a. Sheep grazing in fenced pastures
         b. Permanent and temporary/portable livestock fencing and gates
         c. Two 4,950-gallon water tanks
         d. Two 1,500 sq.ft. sheep shelters
         e. One 1,800 sq.ft. hopyard shelter
         f. Surface water lines and irrigation hoses connecting the water well, water tanks, livestock watering troughs, and the existing hopyard

g. Drainage and erosion control measures as required by **Special Conditions 11 and 12**
h. Landscaping required by **Special Condition 1**

3. Repair and maintenance, if authorized by coastal development amendment, of the development listed in A.1. and A.2., above, and of the following existing development in the Agricultural Resource areas:
   a. Farm track road north of the riparian corridor
   b. Farm track roads south of the riparian corridor
   c. Hopyard
   d. Water well, pump, and portable generator
   e. 4,950-gallon water tank
   f. Surface irrigation hoses and water lines between the water tanks, wells, and hopyard
   g. Livestock fencing and gates

4. Any future agricultural use as defined in Subparagraphs B.1. and B.2. below, if authorized by a coastal development permit amendment.

B. All portions of the property generally depicted in **Exhibit 3** shall remain in active agricultural use as defined in subparagraphs 1 and 2 below except for the areas on or in the existing farm roads, and on or in the existing or approved septic system leach field, water wells, tanks, landscaping, and water lines and hoses generally depicted on **Exhibit 2.**

   1. Agricultural production activities defined as activities that are directly related to the cultivation of agricultural commodities for sale. Agricultural commodities are limited to food and fiber in their raw unprocessed state, and ornamental plant material. Such activities include the continuing grazing operations identified in the *Agricultural Production and Stewardship Plan* dated May 2009, as modified by the **Special Condition No. 13**.

   2. Agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken on the site, such as agricultural barns, fences, and agricultural ponds.

C. All portions of the property identified as the Agricultural Conservation Area on **Exhibit 3** shall at all times be maintained in active agricultural use. Active agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes. The Permittees may satisfy this requirement either by engaging in good faith in agriculture at a commercial scale and/or by leasing the Agricultural Conservation Area, in whole or in part, to a farm operator for commercial agricultural use consistent with the requirements of this CDP. The terms of any lease agreement for purposes of this condition shall be based at or below the current market rate for comparable agricultural land in the region and shall reflect a good faith effort on the part of the Permittees to maintain continued agricultural use of the property. The Permittees

shall be responsible for ensuring that an adequate water supply and other necessary infrastructure and improvements are available for the life of the approved development to sustain the agricultural viability of the property.

D. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and after approval of the Revised Project Plans required by **Special Condition 1**, the Applicants shall dedicate an agricultural conservation easement to the County of Marin, or another public agency or private association approved by the Executive Director (hereinafter referred to as the "Grantee"). The agricultural conservation easement shall be for the purposes of implementing the requirements of Paragraphs A, B, and C above and shall be in a form acceptable to the Executive Director. Such easement shall be located over the portions of the property to be used for agriculture as generally depicted on **Exhibit 3**. After acceptance, this easement may be transferred to and held by any entity that qualifies as a Grantee under the criteria herein stated. The easement shall be subject to a covenant that runs with the land providing that the Grantee may not abandon the easement until such time as Grantee effectively transfers the easement to an entity that qualifies as a Grantee under the criteria stated herein.

E. In the event that an acceptable Grantee cannot be identified, the Permittees may in the alternative, prior to issuance of the CDP, execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an agricultural conservation easement consistent with the purposes and requirements described above.

F. The recorded document required pursuant to this special condition, whether it is an Agricultural Conservation Easement Deed or an Irrevocable Offer to Dedicate an Agricultural Conservation Easement Deed, shall include legal descriptions of both the Applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition. The document shall be recorded free of prior liens, and encumbrances that the Executive Director determines may affect the interest being conveyed. The easement document shall run with the land in favor of the People of the State of California, binding all successors and assignees, in perpetuity, and if an Irrevocable Offer to Dedicate an Agricultural Conservation Easement is recorded, that document shall be irrevocable for a period of 21 years, such period running from the date of recording.

G. The landowners shall submit to the Executive Director and/or Grantee such information as may reasonably be required to monitor the landowners' compliance with the terms of this condition. Such information may include a written report describing current uses and changes in uses (including residential uses). The written report and any other required information shall be provided as needed upon the request of the Executive Director and/or Grantee, in a form as shall be reasonably required by same. If the landowner enters into a lease agreement with a farm operator for any portion of the property, a copy of the lease agreement may also be required as further documentation of compliance with this condition.

H. If circumstances arise in the future beyond the control of the landowner or operator that

render continued agricultural production on the property infeasible, the easement may be converted to an open space and conservation easement upon: (1) Commission certification of an amendment to the Local Coastal Program changing the land use designation of the property to Open Space and Conservation in accordance with all applicable policies of the certified LUP and the Coastal Act; and (2) Commission approval of an amendment to this coastal development permit extinguishing the requirements of this condition.

I. By acceptance of this permit, the Permittees acknowledge and agree: (1) that the permitted residential development is located on and adjacent to land used for agricultural purposes; (2) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (3) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (4) to assume the risks to the Permittees and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (5) to indemnify and hold harmless the owners, lessees, and agricultural operators associated with adjacent agricultural operations against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are or in any way related to the property that is the subject of this permit.

4. **Grazing Limitations.** Consistent with the Applicant's proposal, no grazing of sheep or other livestock is allowed to occur in any of the wetlands, stream and riparian corridors, or their respective setback areas, as generally depicted on **Exhibit 6** of this report.

5. **Livestock Fencing.** Consistent with the Applicant's proposal, all fencing shall be installed on the property outside the habitat conservation deed restriction area required by **Special Condition 10** and generally depicted on **Exhibit 4** and shall be wildlife friendly to allow for the continued movement of wildlife through and across the property, including to the blue-line stream. All wetlands, riparian areas, and their buffer areas south of the blue-line stream depicted on **Exhibits 2 (page 1) and 4** that are located adjacent to the proposed sheep grazing pastures shall be protected by livestock fencing. The height and wire-grid spacing of the fence will prohibit sheep in the grazing pastures from entering these areas while allowing deer and other animals to move over or under such fences.

6. **Grazing Monitoring.** Consistent with the Applicant's proposal, the Permittees shall submit an annual report to the Executive Director, for his review and approval, demonstrating that grazing operations on the southern half of the property will occur consistent with the proposed *Agricultural Production and Stewardship Plan,* dated May 2009, as modified by **Special Condition 13,** and utilizing a rotational grazing system of the sheep pastures based on available forage to ensure long-term protection of the grasslands to be grazed.

7. **Brandy Barn Operations.** Consistent with the Applicant's proposal, Brandy Barn Operations are confined to the development envelope generally depicted on **Exhibit 5**.

Brandy which is distilled, aged, and bottled on-site, using grapes harvested only from the vineyard on the property, may be sold in the brandy barn. Limited, reservation-only public tours of the brandy barn may be conducted. No tasting, vans or buses, or exterior signage at the farm entrance or along the Shoreline Highway shall be allowed. The appointment-only tours shall be restricted to Saturday only, between the hours of 11:00 AM to 3:00 PM. The tours would be restricted to adults (21 and over) only. The sampling would be olfactory only (sniffing), no on-site consumption would be allowed. On-site sales would be allowed only during the limited tours.

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. Should the distillery operation not be constructed or operations be terminated at a future date, the brandy barn may only be used to produce a jam/jelly product using fruits and berries grown on the subject property. Other uses of the brandy barn shall require an amendment to this permit.

9. **Protection of Sensitive Species.**

   A. **Birds of Prey.** As foraging habitat for birds of prey exists on the property, construction during the February 1 – August 15 nesting season should occur no closer than 500 feet from active raptor nests, which shall be identified by a qualified biologist through a focused survey within 15 days prior to the start of construction. Interior work that does not result in loud noises capable of disturbing nesting raptors could continue during this period.

   B. **American Badgers.** Grassland habitat in this part of Marin County is suitable badger habitat and may be periodically occupied, and potential burrows have been observed in the eastern portion of the property. Therefore, before any ground disturbing activities take place a qualified biologist shall ensure that badgers are not present.

   C. **California Red-Legged Frogs and Western Pond Turtles.** California red-legged frogs, a federally threatened species and a California Species of Special Concern, and Western pond turtles, a California Species of Special Concern, have been documented on the subject property. To reduce the potential for adverse impacts from project construction on these species, the following protective measures are required:

      1. A qualified biologist shall be on-site once each day prior to the start of construction activity to survey the current work sites, including material and vehicle storage areas and the protective barriers installed around construction and storage areas. If California red-legged frogs are found within work areas, all development within the affected area shall cease and the biologist shall contact the U.S. Fish and Wildlife Service and consult as to the required course of action. If Western pond turtles are found within work areas, all development within the affected area shall cease until

after the biologist contacts the California Department of Fish and Wildlife and consults as to the required course of action.

2. All construction work areas and material and vehicle storage areas shall be surrounded with a plastic barrier (or similar barrier of other material) capable of preventing entry into these areas by California red-legged frogs and Western pond turtles.
3. Before any construction activities begin, a qualified biologist shall conduct a training session for all construction personnel. At a minimum, the training shall include photographs of California red-legged frogs and Western pond turtles, a description of both species and their habitats, the importance of both species and their habitats, the general measures that are being implemented to protect both species as they relate to the project, and the parameters within which the project may be accomplished. Personnel shall also be instructed on the penalties for not complying with avoidance and minimization measures. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.
4. During project activities, all trash that may attract predators shall be properly contained, removed from the work site, and disposed of regularly. Following construction, all trash and construction debris shall be removed from work areas.
5. All construction-related holes shall be covered to prevent entrapment of California red-legged frogs and Western pond turtles.
6. Plastic mono-filament netting or similar material shall not be used at the project site because California red-legged frogs and Western pond turtles may become entangled or trapped in it. Acceptable substitutes include coconut coir matting or tackified hydro-seeding compounds.

10. Habitat Conservation Deed Restriction Area

A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the Habitat Conservation areas identified below and generally depicted on **Exhibit 4** except for:

1. The following development, as authorized by this coastal development permit:
   a. An extension of an aerial power line from the existing power pole at the north side of the pond to the farmhouse
   b. A 600 sq.ft. greenhouse with portable generator and a one-quarter-acre vegetable garden, all of which are located outside the required buffer areas set forth below
   c. Surface flexible irrigation hoses placed on the existing farm track providing access to the greenhouse and vegetable garden area
   d. Drainage and erosion control measures consistent with the requirements of **Special Conditions 11 and 12**

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
   b. Power poles and aerial power line
   c. Pump shed (housing an electrical panel and meter, water pump, and pressure tank) on northern side of pond
   d. Water tank at northern side of pond
   e. Farm road providing access to greenhouse/vegetable garden site
   f. Fencing and gates

3. Future development authorized by a coastal development permit or an amendment to this permit.

B. The habitat conservation area, generally depicted on **Exhibit 4**, shall encompass all wetlands, streams, riparian corridor, and sensitive habitat areas identified in: (1) the *Wetland Delineation Report*, dated October 2012; and (2)**Appendix E** of this staff report (Dr. John Dixon's February 5, 2013, Memorandum on the Magee Project, including Figures 1 and 2), and shall also include a 100-foot buffer from wetlands and riparian habitats, a 150-foot buffer from the blue-line stream, and a 300-foot buffer from the stock pond, all as generally depicted on **Exhibit 6**. For riparian areas, the buffer shall be measured from the limit of riparian vegetation or the high water point if no riparian vegetation exists. For wetlands, the buffer shall be measured from the outermost line of wetland vegetation.

C. PRIOR TO ISSUANCE OF THIS CDP, and following approval of the revised plans required by **Special Condition 1**, the Applicant shall execute and record a document restricting the habitat conservation area identified in subsection B in a form and content acceptable to the Executive Director. The recorded deed restriction shall include (1) a formal legal description and graphic depiction of the entirety of the property known as APN 106-220-20 and (2) a metes and bounds legal description and corresponding graphic depiction prepared by a licensed surveyor and drawn to scale, of the portion of the subject property identified in Subsection B. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction and shall run with the land in perpetuity.

11. Construction Responsibilities and Standards. The authorized work shall comply with the following construction responsibilities and standards:

A. Prior to the commencement of any development authorized under this CDP, the Permittees shall ensure that all on-site workers and contractors understand and agree to observe the standards for work outlined in this permit and in the detailed project description included as part of the application submittal and as revised by these conditions.

B. Prior to commencement of ground-disturbing activities, appropriate erosion, sediment, and runoff control measures shall be deployed in accordance with the final Storm Water Pollution Prevention Plan approved pursuant to **Special Condition 12**, and all measures shall be properly maintained throughout the duration of construction activities.

C. Prior to the commencement of construction, the limits of the work areas and staging areas shall be delineated in consultation with a qualified biologist, limiting the potential area affected by construction in such a manner as to best protect the habitat resources identified on **Exhibit 2 (page 1)** and ensuring that all such agricultural lands, wetlands, and other environmentally sensitive habitats adjacent to construction areas are avoided during construction. All vehicles and equipment shall be restricted to established work areas and haul routes and to established or designated staging areas.

D. During construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid habitat impacts during construction activities. Any debris inadvertently discharged into coastal waters shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit.

E. During construction, when topsoil is removed by grading operations, it shall be stockpiled for reuse and shall be protected from compaction and wind or erosion during stockpiling.

F. The following seasonal restrictions shall apply to the authorized construction work:

   1. Grading, excavation, and other earth-moving activities shall only be conducted between June 1 and October 15 except as provided below. If rainfall is forecast during the time construction activities are being performed, BMPs shall be implemented in conformance with the final SWPPP approved pursuant to **Special Condition 12.** Any grading, excavation, and other earth-moving activities that cannot feasibly be conducted within the June 1 through October 15 time period may be conducted between April 15 and May 31 and/or between October 16 and November 30 subject to the following conditions:

      a. All work shall cease upon the onset of measurable precipitation at the project site and shall not recommence until the predicted chance of rain is less than 40 percent for the Marshall area;

      b. The work site shall be winterized between work cessation periods, including by installing stormwater runoff and erosion control barriers around the perimeter of each construction work area to prevent the delivery of sediment into coastal waters; and

      c. Adequate stocks of stormwater runoff and erosion control barrier materials shall be kept onsite and available for immediate use.

G. Excess ground water shall not be pumped or discharged into wetland areas on surrounding fields outside of the project area footprint to prevent sediment-laden water from entering coastal waters or wetlands.

H. Equipment staging and materials stockpiling areas shall be limited to the locations and sizes specified in the approved Revised Project Plans. Construction vehicles shall be

restricted to designated haul routes. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the approved Revised Project Plans.

I. Any fueling and maintenance of construction equipment shall occur outside of environmentally sensitive habitat areas and their buffers, and within designated areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of coastal waters.

J. Fuels, lubricants, and solvents shall not be allowed to enter coastal waters or wetlands. Hazardous materials management equipment, including oil containment booms and absorbent pads, shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up.

12. Final Storm Water Pollution Prevention Plan.

A. PRIOR TO COMMENCEMENT OF ANY DEVELOPMENT, the Permittee shall submit, for the review and approval of the Executive Director, two copies of a final Storm Water Pollution Prevention Plan (SWPPP). The final SWPPP shall include provisions for all of the following:

1. Runoff from the project site shall not increase sedimentation in coastal waters or wetlands post-construction. During construction, runoff from the project site shall not increase sedimentation in coastal waters beyond what's allowable under the final Water Quality Certification approved for the project by the San Francisco Regional Water Quality Control Board.

2. Runoff from the project site shall not result in other pollutants entering coastal waters or wetlands during construction or post-construction.

3. Best Management Practices (BMPs) shall be used to prevent the entry of polluted stormwater runoff into coastal waters and wetlands during construction and post-construction, including use of relevant BMPs as detailed in the current California Storm Water Quality Best Management Handbooks (http://www.cabmphandbooks.com).

4. An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials, and to stop such materials from entering coastal waters or wetlands.

5. A schedule for installation and maintenance of appropriate construction source-control BMPs to prevent entry of stormwater runoff into the construction site and the delivery of excavated materials into runoff leaving the construction site.

6. The SWPPP shall be consistent with the provisions of all other terms and conditions of Coastal Development Permit No. A-2-MAR-10-022.

B. The Permittees shall undertake development in accordance with the approved final storm water pollution prevention plans. Any proposed changes to the approved final storm water pollution prevention plans shall be reported to the Executive Director. No changes to the approved final storm water pollution prevention plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required

13. Revised Agricultural Production and Stewardship Plan. Prior to the construction of either the vineyard or the vegetable garden, the Permittees shall submit a revised *Agricultural Production and Stewardship Plan* to the Executive Director for review and approval including the following elements: (a) construction BMPs pursuant to **Special Condition 11;** (b) inclusion of structural erosion control systems to intercept and diffuse water flow and encourage infiltration into the vineyard such as drop inlets with sediment traps, outlets to vegetated swales, energy dissipaters, sediment basins, cover crops, or filter strips; and (c) a manure management and fertilizer control plan.

14. RWQCB Approval. Prior to the start of construction of the brandy distillery, the Permittees shall submit written evidence to the Executive Director of approval by the San Francisco Regional Water Quality Control Board of the distillery wastewater disposal system.

15. Tree Thinning Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit two copies of a plan for the review and approval of the Executive Director for the removal and retention of certain cypress trees previously planted by the Permittees along the western border of the property adjacent to the Highway 1 shoulder. This plan shall ensure that significant public views from Highway 1 across the subject property are not obstructed or impaired by the height and width of the trees when they reach maturity. The plan shall meet the following criteria: (1) trees planted between the southwest corner of the property up to that location where Highway 1 begins a right-hand curve and begins to dip below the right shoulder embankment shall be removed to preserve unobstructed views of coastal hillsides to the east; and (2) trees planted north of this removal location may be retained as they are in a location that will not obstruct views to the east. Implementation of the thinning program shall be completed prior to the start of any other development authorized under this permit, excluding the livestock enclosure and water diversion restoration work required under Special Condition 1(e).

16. Changes Require Coastal Development Permit Amendment. Changes to the development approved under this permit, and/or any new development not approved under this permit, shall only be allowed if the Permittees obtain an amendment to this permit.

17. Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit to the Executive Director for review and approval documentation demonstrating that the Permittees have executed and recorded against the property governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and

conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the property governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.

18. **Liability for Attorneys Fees.** The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees, including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permitees against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement or permit conditions, or any other matter related to this permit. The Permittees shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

19. **County Conditions.** All conditions of approval of Marin County Permit CP-09-39 imposed on the project by Marin County pursuant to an authority other than the California Coastal Act remain in effect, but do not alter the Permittee's responsibility to satisfy all conditions of approval as specified herein. The Permittees shall be responsible for satisfying all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local conditions.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND SITE DESCRIPTION

The subject 150-acre property is located on the east side of State Highway 1 and overlooks the east shore of Tomales Bay, at the southern extent of the unincorporated community of Marshall in Marin County. The area between the small communities of Point Reyes Station (to the south) and Tomales (to the north) is largely rural and comprised of ranches, some limited residential development, public lands, and open space, and also supports commercial visitor-serving amenities such as restaurants and boating facilities. The subject property is mostly undeveloped agricultural land which has supported cattle grazing at least prior to 1965, based on representations by a previous landowner made to the Applicant, and prior to 1972 based on aerial photographs of the subject property (which identify the stock pond located on the lower reach of the blus-line stream) taken in 1972 and 1979. The Applicants began leasing the property in January 2008, purchased the property in October 2010, and initially applied to the County for the subject CDP in or around 2008. The CDP proposes to continue livestock grazing as discussed herein. The Applicants have maintained their interest in continuing livestock grazing during the pendency of various permit applications.

Development on the property currently consists of numerous unpaved, two-track farm roads accessing all portions of the property; a partially silted-in stock pond behind an earthen dam on the lower reach of the blue-line stream that flows across the property from east to west; perimeter and interior livestock fencing and gates; a one-quarter acre hops cultivation field, water well with portable generator, water tank, and flexible above-ground irrigation lines on the south side of the parcel; four empty water tanks stored in the southeast corner, southwest corner, and the northern side of the property; an aerial power line extending from the aerial power line which parallels Highway 1; a pump shed (housing an electrical panel and meter, water pump, and pressure tank associated with the stock pond) and water tank on the northern edge of the stock pond; and a water well in the northeast corner of the property. Except for the hops field, the adjacent water tank and irrigation lines, the empty water tanks, the water well on the northern side of the property, and repairs to livestock fencing and gates, all the existing development on the property occurred prior to the permit Applicants taking ownership of the property in October 2010 and is associated with historic livestock operations by previous owners.

The property is zoned C-APZ-60 (Coastal Agricultural Production Zone, Planned District, one primary dwelling unit per 60 acres maximum density); there are no dwelling units currently on-site. The adjacent properties to the south and east are undeveloped agricultural lands. The adjacent property to the north includes a single-family residence, several out-buildings, and a swimming pool in the southwest corner of the parcel; an olive tree grove is located further east on that parcel. To the west of the property between Highway 1 and Tomales Bay is the undeveloped Marconi Cove unit of Tomales Bay State Park. Portions of the subject property are visible from Highway 1, the adjacent state park property on the shore of Tomales Bay, and from the west shore of Tomales Bay, approximately one-mile distant.

The dominant vegetation on the subject parcel is native and non-native grassland, coastal scrub, and mixed-evergreen riparian forest. A blue-line stream bordered by riparian forest runs through the central portion of the property and flows into Tomales Bay. Two intermittent water courses in the southern half of the parcel are tributary to the blue-line stream. The area adjacent to the stock pond and several other areas on the parcel show evidence of aquatic and emergent wetland plant communities. Elevations range from 490 feet in the northeast corner of the property to 20 feet at the Highway 1 frontage. The area proposed for the equipment barn, brandy barn, and farmhouse is free of landslide potential and does not include unstable soils. No known active, potentially active, or inactive fault traces exist within the subject property, and the nearest active fault is the San Andreas Fault zone in Tomales Bay, approximately 0.4 miles west of the property. An archaeological resource is located on the south side of the blue-line stream just below the stock pond dam, and is completely within an area off-limits to any proposed development.

B. PROJECT DESCRIPTION

The proposed project is comprised of agricultural operations, construction of a farmhouse, barns, and livestock shelters, and construction of infrastructure to support agricultural operations.

The proposed agricultural development includes the following elements:

- Continued livestock grazing on 50 acres south of the blue-line stream with sales targeted to local and regional markets. Approximately 25-35 ewe/lamb pairs would ultimately be raised; sheep numbers would be adjusted annually depending on forage availability and carrying capacity in three fenced pastures. Grazing would occur year-round using a structured grazing rotation plan and permanent and temporary fencing; pasture irrigation and hay supplements would be used in extremely dry seasons. The southern water well and tanks would supply water for sheep and pastures via flexible hoses placed on the ground. Two predator-proof sheep shelters, for overnight bedding and sun and rain protection, would be constructed, and locally-raised guard dogs may also be employed for predator protection. No livestock crossing of, or grazing within, stream and riparian corridors or wetland areas would occur.

- A vegetable and fruit garden would be planted on one-quarter acre of land located approximately half-way between the southern edge of the stock pond and Highway 1. The garden and the greenhouse would be accessed via existing dirt farm tracks which cross a habitat and buffer area to the south. A tube-frame, poly-film covered greenhouse would be constructed at this location. The southern water well and tank would supply water via flexible hoses placed on the ground and electricity supplied by a small mobile generator. Harvested products would be sold in local and farmer's markets.

- A six-acre vineyard growing English dessert wine grapes (600 vines/acre) would be planted in the wind shadow of the ridge line near the northern property boundary. A drip irrigation system supplied by the northern water well and tank would be installed in the vineyard, located approximately 1,500 feet east of Highway 1 at an elevation ranging between 300-360 feet.

- 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. In addition, the proposed project includes public tours on Saturdays between 11:00 am and 3:00 pm; the tours would be limited to three per day for adults over the age of 21, a maximum of eight adults per tour, no tasting (only sniffing), and tours only by advanced reservation. On-site brandy sales in the 140 sq.ft. retail space within the barn would only occur during tour hours, and no exterior signage or advertising of any type on the property would be permitted, nor would busses or vans be allowed to bring tour participants to the barn.

- Agricultural Structures:

  Equipment Barn. This is a 1,788 sq.ft. (27.5' x 65'), 12.5-foot-high structure, with the finished floor at an elevation of 90 feet above sea level. Vehicle access and two parking spaces are via the main driveway. To set this structure (and the attached shed) into the hillside would require 360 cu.yds. of cut and 500 cu.yds. of fill.

  Equipment Barn Shed. This is a 950 sq.ft. (20' x 47.5') three-sided structure attached to the southern side of the Equipment Barn, with the finished floor elevation ranging

from 90 to 79 feet, and a height ranging from 13 to 8 feet. To set this structure into the hillside would require 500 cu.yds. of cut and 300 cu.yds. of fill. This structure would also provide shelter for several horses and a chicken coop.

Brandy Barn. This is a 1,456 sq.ft. L-shaped building (27.5' x 65' maximum dimension) with two covered porch areas totaling 496 sq.ft. The building floor is at an elevation of 33 feet and reaches a height of 15 feet. Vehicle access and five parking spaces would occur via the main driveway.

Hopyard Shelter. This is a 1,788 sq.ft. (27.5' x 65') open-sided structure. The western half of the structure is at an elevation of 167 feet and a height ranging from 18 to 10 feet; the eastern half floor sits at 173 feet and the height ranges from 12 to 10 feet. All terrain vehicle (ATV) access to this portion of the site would use existing two-track, dirt farm roads. To set this structure into the hillside would require 25 cu.yds. each of cut and fill. This structure would also store equipment used to support agricultural operations on the southern side of the property.

Sheep Shelter #1. This is a 1,500 sq.ft. (30' x 50') chain-link-fencing-sided structure, with the finished floor elevation at 358 feet and a height ranging from 6 to 3.5 feet. ATV access to this site would use existing two-track, dirt farm roads. To set this structure into the hillside would require 12 cu.yds. each of cut and fill.

Sheep Shelter #2. This is a 1,500 sq.ft. (30' x 50') chain-link-fencing-sided structure, with the finished floor at an elevation of 50 feet and a height ranging from 6 to 3.5 feet. ATV access to this site would use existing two-track, dirt farm roads. To set this structure into the hillside would require 12 cu.yds. each of cut and fill.

Greenhouse. This is a 600 sq.ft. (20' x 30') pre-fabricated hoop and poly-film structure, with the finished floor at an elevation of 64 feet and a height ranging from 8.5 to 4 feet. ATV access to this site would use existing two-track, dirt farm roads. To set this structure into the hillside would require 25 cu.yds. each of cut and fill.

Fencing. Wetlands, riparian areas, and their buffer areas south of the blue-line stream adjacent to the proposed sheep grazing pastures would be protected by livestock fencing. The height and wire-grid spacing of the fence would prohibit sheep in the grazing pastures from entering these areas while allowing deer and other animals to move over or under fences. The project also includes installation of a replacement agricultural gate along the perimeter fence line at the southwest corner of the property, outside of sensitive habitat and setbacks, to facilitate agricultural use of the property.

- The *Brader-Magee Farm Master Plan* was completed (and submitted to Marin County) in May 2009. The document includes the following elements: project location, existing and adjacent land uses, project goals and objectives, crop production without the use of herbicides and pesticides, site characteristics, compliance with County plans and ordinances, geotechnical analysis, biological report, traffic analysis, visual simulation,

agricultural production and stewardship plan, landscape plan, grading plan, drainage plan, septic system plan, site plans, and building floor plans and elevations.

- The proposed project includes the Applicant's proposal to grant an affirmative Agricultural Conservation Easement to the County of Marin over all portions of the property proposed for agricultural use. The purpose of the Easement is to maintain the agriculturally related portions of the property (outside the building envelope and the habitat conservation area) in agricultural production in perpetuity. The easement would also extinguish any additional residential and/or subdivision development potential that might exist.

The proposed farmhouse is a three-level structure cut into the existing slope with a maximum height above grade of 25 feet. The building is comprised of 3,028 sq.ft. of living space, a 648 sq.ft. attached two-car garage, an exterior entry stairway and court, decking, a metal roof and board/batten exterior siding, "green" building design features, earth-tone exterior colors, two exterior parking spaces and a fire truck turnaround, retaining walls along the north and west sides of the building pad, and native drought-resistant landscaping with no lawn/turf areas. To set this structure into the hillside requires 850 cu.yds. of cut and 200 cu.yds. of fill.

Two primary, unimproved two-track farm roads run east-west across the property, one on the northern half of the parcel from the shared paved driveway to the proposed vineyard site and northern water well, and a second extending from a gate at Highway 1 generally eastward along the southern boundary of the property to the proposed agricultural structures and operations south of the blue-line stream. (The Applicant has an agreement with the adjacent property owner to the south to use a short section of the existing southern property line farm road that crosses onto the adjacent property in order to loop south around the head of the intermittent stream corridor east of the existing hopyard). These farm tracks would not be improved and would only be maintained for fire safety. Other existing two-track, dirt farm roads on the property would rarely be used and not maintained. The proposed driveway does not cross the blue-line stream and does not enter riparian corridors or wetlands, or their buffer areas; no construction of new farm roads is proposed.

The proposed project includes the following infrastructure support elements:

- Driveway/parking areas and surface materials. A proposed 1,276-foot-long, all-weather, pervious-surface driveway would take off from an existing paved driveway (which provides access from Highway 1 to the subject property and several other private properties and residences to the north), switchback up the hillside, and provide access to the proposed brandy barn, equipment barn, and farmhouse; the latter would be located 600 feet east of Highway 1. The driveway would be constructed of a minimum six-inch-thick, aggregate base placed on excavated and recompacted earthen base; approximately 5,500 cu.yds. of soil would be excavated and replaced within the driveway corridor to create a stable base for the pervious aggregate surface. An additional 520 cu.yds. of cut and 750 cu.yds. of fill, with retaining walls at certain locations to support the cut and fill areas, are required to construct the driveway.

- Retaining walls would be constructed at several locations along the driveway route, at the uphill edge of the brandy barn parking area, the uphill side of the equipment barn parking area, and along the uphill and downhill sides of the single family residence. Downhill-side retaining walls (approximately 2,015 sq.ft.) would be constructed using modular block-keystone materials, and uphill-side walls (approximately 2,440 sq.ft.) would use wood lagged walls and steel beam soldier piers.

- One water well located near the northeast corner of the property (drilled in October 2010 with authorization from Marin County), a portable generator to pump water from this well, six water tanks, and underground and surface distribution lines connecting the wells with the water tanks and the tanks with the single family residence, equipment and brandy barns, livestock watering troughs, and the vineyard and greenhouse/ vegetable garden areas would be installed. No water lines will cross the blue-line stream. Both water wells produce adequate volumes to serve the proposed agricultural operations and domestic uses in the two barns and farmhouse. The County previously determined that well yield data for the historic southern well confirmed that it could supply all proposed uses and meet fire and safety requirements. The new northern well was calculated to have a sustained yield of 10 gallons per minute, more than adequate to serve the water requirements for proposed development on the northern half of the property.

- Septic system, pumps, and leach field. Domestic wastewater from the farmhouse and the equipment and brandy barns, and seasonal wastewater from the brandy distillery, would be pumped through a buried sanitary sewer line uphill and discharged into a leach field located approximately 1,270 feet east of the farmhouse at an elevation ranging between 346 and 358 feet. The proposed leach filed would be situated on the northern side of the proposed vineyard and would be set back from the vineyard by 40 feet on the west side and 20 feet on the south and east sides.

- Electrical power would be provided to the farmhouse and equipment and brandy barns through underground and/or aerial lines connected to the existing overhead power line that runs from Highway 1 to the existing electrical panel in the pump shed adjacent to the stock pond. Underground water lines would connect the northern water well to the farmhouse and the brandy and equipment barns. Water, sewer, and electrical lines would be buried in a trench connecting the brandy and equipment barns, and would be buried underneath the driveway between the equipment barn and the farmhouse. A water line would be buried in a trench connecting the northern water well and the farmhouse. Fire hydrants and 250-gallon propane storage tanks would be located at the farmhouse, equipment barn, and brandy barn.

The proposed project includes removal of an unused livestock enclosure pen in the extreme northwest corner of the property, restoration of this area to pre-development conditions, and removal of a surface water flow capture/diversion device and a connected PVC pipeline conveying diverted water westward along the northwest property boundary to the existing paved driveway. These structures were constructed in August 2010 and January 2011, respectively. **Special Condition 1** of this permit states that prior to issuance of the coastal development

permit, the Permittees shall submit revised project plans that, in part, indicate removal of the livestock enclosure, the excavated basin, and the water diversion works, and which indicate that this removal work shall be completed prior to the start of any other development authorized under this permit, except for the tree thinning project required under **Special Condition 14**.

The proposed project includes the preparation of a tree thinning plan for the unpermitted ornamental trees previously planted by the Applicant along the western property line adjacent to State Highway 1, in order to ensure that significant scenic views from the highway are not obstructed or impaired as these trees reach their mature height and width. **Special Condition 14** of this permit states that prior to issuance of the coastal development permit, the Permittees shall submit a plan for the tree thinning and/or removal of the cypress trees that meets the following criteria: (1) trees planted between the southwest corner of the property up to that location where Highway 1 begins a right-hand curve and begins to dip below the right shoulder embankment shall be removed to preserve unobstructed views of coastal hillsides to the east; and (2) only trees planted north of this removal location may be retained as they are in a location that will not obstruct views to the east. Implementation of the thinning plan shall be completed prior to the start of any other construction authorized by this permit, except for the removal of the animal enclosure and water diversion works proposed by the Applicant and required under **Special 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.

As a result of additional biological resources inventory and analysis undertaken by the Applicants in consultation with Commission staff, the following modifications to proposed structures were made by the Applicants: (1) the driveway was relocated to the east to avoid a wetland buffer area in the northwest corner of the property; (2) the equipment barn footprint was moved to avoid a wetland buffer area to the east; (3) the brandy barn footprint was moved to avoid a riparian corridor buffer area; (4) the vegetable garden area was reduced in size and the garden and adjoining greenhouse were relocated to the west to avoid a western pond turtle buffer area; (5) sheep shelter #2 was moved to avoid coastal terrace prairie habitat; (6) the hopyard shelter was moved to avoid coastal terrace prairie habitat; and (7) the hopyard expansion was eliminated due to uncertainties regarding the presence of coastal terrace prairie habitat within and immediately adjacent to the expansion footprint. **Special Condition 1** of this permit requires that revised project plans be submitted that reflect the aforementioned modifications to the project so that all development proceeds consistent with the revised project proposed by the Applicant and as modified by the conditions of this permit.

C. LOCAL GOVERNMENT ACTION

On May 10, 2010, the Marin County Board of Supervisors conditionally approved a coastal development permit application (CP-09-39) submitted by Tony Magee and Carissa Brader for establishment of an agricultural operation at 17990 Shoreline Highway (State Highway 1), south of Marshall in Marin County[1]. The approved development included livestock (sheep) production

[1] At the same time the County also: (1) approved a Design Review and Use Permit for the project; and (2) found that the project was categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines, which allows for the construction of small facilities or structures, and their associated equipment, including single-family residences and accessory structures,

over 50 acres of land, hop cultivation over six areas of land, production of fruit and vegetable crops for sale at local farmers' markets on 2.3 acres of land, a six-acre vineyard for brandy production, three barns (1,792 sq.ft., 15-ft-high equipment barn; 896 sq.ft., 15-ft.-high open-sided hop barn; and 1,456 sq.ft., 15-ft.-high brandy barn), a 960-sq.ft. shed adjacent to the equipment barn, a 3,165 sq.ft., 22-ft-high farmhouse with attached 648 sq.ft. garage, two open-sided 7-ft.-high sheep shelters, an 8.5-ft.-high greenhouse, five 4,950-gallon water tanks, a septic system leach field, a new water well, and an 850-foot-long driveway constructed from an existing private driveway that parallels Highway 1 in order to provide access to the brandy barn, equipment barn, and farmhouse. The County also approved the Applicants' conveyance to the County of an "Affirmative Agricultural Conservation Easement and Declaration of Restrictions." The County approved the coastal permit subject to 41 special conditions dealing with development, agricultural operations, inspections, building permits, and other issues. The County also imposed these 41 conditions as requirements of the local design review and use permits. This CDP replaces the coastal development permit conditions imposed by the County, as indicated in Special Condition 19. However, this CDP has no effect on local conditions imposed pursuant to an authority other than the Coastal Act.

D. APPEAL HISTORY

Pursuant to Coastal Act Section 30603(a)(4), the County's approval was appealable to the Commission because the approved project involves development approved by a coastal county (i.e., the proposed farmhouse) that is not designated as the principal permitted use in the Coastal, Agricultural Production Zone (C-APZ-60) in the certified zoning ordinance. The County's permit approval was subsequently appealed to the Commission on June 1, 2010, by Scott Kivel and Lia Lund, the owners and residents of the adjacent property to the north of the subject property. The permit Applicants signed a 49-Day Waiver on June 7, 2010 (waiving their right to a hearing within 49 days of the appeal having been filed), and on September 15, 2010, the Commission conducted a public hearing on the six substantial issue questions raised in the appeal: project impacts on environmentally sensitive habitat areas (ESHA), public views, and Highway 1 traffic, adequacy of water supply, the County's waiver of an agricultural master plan, and inadequate CEQA review by the County.

After conclusion of the substantial issue portion of the appeal hearing, the Commission determined that the appeal of the Marin County-approved coastal permit CP-09-39 raised a substantial issue with respect to the policies of the certified Unit II Local Coastal Program (in particular, potential project impacts on ESHA and public views, and the County's waiver of the agricultural master plan requirement), that the County's approval of coastal permit CP-09-39 no longer governed (and the Commission took jurisdiction over the CDP application), and that the Commission would consider the consistency of the proposed project with the certified LCP *de novo* at a later date. This April hearing is that later date, and during the *de novo* portion of the appeal hearing the Commission may approve, approve with conditions (including conditions in addition to or different than those imposed by the County), or deny the application. Since the

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provided that their construction would not result in significant amounts of grading and vegetation removal that could result in potentially significant impacts on the environment. The Board also determined that the residence and agricultural structures were accessory to the agricultural use of the property, and that the project was "minor and incidental in nature."

proposed project is within an area for which the Commission has certified an LCP, the applicable standard of review for the Commission to consider is whether the development is consistent with Marin County's certified Unit II LCP. Testimony may be heard from all interested parties at the *de novo* portion of the appeal hearing.

E. AGRICULTURE AND DEVELOPMENT

The Marin County LUP Agriculture and Resource Development policies and the associated LCP zoning measures applicable to the proposed project are found in **Appendix B** of this staff report. A brief summary is provided here. The LUP policies state that Marin County intends to protect and preserve the existing and future viability of agricultural land in the coastal zone, foster agricultural development, assure that non-agricultural development does not conflict with agricultural uses, concentrate development in suitable locations, and protect coastal wildlife, habitat, and scenic resources. The LCP established a planned district zone known as the Agricultural Production Zone (APZ) with a maximum (but not guaranteed) density of one unit per sixty acres; the subject 150-acre property is within the C-APZ-60 coastal agricultural production zone.

The LCP states that all development in the APZ shall be accessory, incidental, or in support of agricultural land uses, and shall conform to the development standards, requirements, and conditions articulated in the LUP's Agricultural Resource policies. These policies include measures to protect and enhance agricultural use, contribute to agricultural viability, avoid significant adverse impacts on natural habitats and scenic resources, cluster development to retain maximum amount of land for agricultural use, locate development close to existing roads, and require permanent conservation easements over land not used for physical development. The LUP also includes public services policies governing water supply (including individual water wells), fire protection, and on-site sewage disposal. The applicable LCP zoning code sections address agricultural master plans, project design standards (including clustering, roads and driveways, and agricultural and open space uses), principally permitted uses, conditional uses, density, development standards and requirements, conservation easements, and required findings and conditions for approved development.

The analysis of the proposed project's conformance with the agriculture and development policies of the Marin County LCP is organized under the following three subjects: (1) agricultural protection and master plan requirements; (2) development constraints, clustering, and alternatives; and (3) the brandy distillery.

Agricultural Protection and Master Plan Requirements. LUP Agricultural Policy No. 4 states that all land divisions (not applicable to the proposed development) and developments in the APZ shall require an approved master plan showing how the proposed land division or development would affect the subject property, and requires a set of findings to be made and conditions to be required during the review and approval of the master plan. Chapter 22.045.040 of the zoning ordinances states that the following items must be included in a master plan submittal: preliminary conceptual grading plans, description of the existing use of the property, preliminary landscaping plan, proposed site plan, description of the proposed development, conceptual drainage and flood control plan, and a preliminary geological reconnaissance report.

Conformity With Master Plan Submittal Requirements
As noted in **Section B** (Project Description) above, the Applicants submitted the *Brader-Magee Farm Master Plan* (Master Plan) for development of the subject property to Marin County in May 2009 and that document is included as an element of the subject coastal development permit application. In 2010 the County waived the requirement for submittal and review of a Master Plan for the proposed project, finding in part that the project established:

> *. . . a comprehensive plan for development of the property that complies with the Local Coastal Program and all development standards pertinent to the C-APZ zoning district under Marin County Code Section 22.57.030. The application has provided information that, in many instances, is more detailed than the submission requirements for a Master Plan under Marin County Code Section 22.45.040.* [May 8, 2012, letter from Thomas Lai, Assistant Director, Planning Division, Community Development Agency, County of Marin, to California Coastal Commission.]

The County also determined that a waiver of the Master Plan requirement was consistent with the LCP zoning regulations (Sections 22.56.026.A and C.) for the C-APZ zoning district.

However, rather than waiving this requirement, the Commission is instead reviewing the submitted *Brader-Magee Farm Master Plan* for conformance with applicable LCP requirements. At the outset, the Commission finds that the *Master Plan* document conforms to the submittal requirements of Chapter 22.045.040 because it includes the following elements: project location, existing and adjacent land uses, project goals and objectives, site characteristics, compliance with County plans and ordinances, geotechnical analysis, biological report, traffic analysis, visual simulation, agricultural production and stewardship plan, landscape plan, grading plan, drainage plan, septic system plan, site plans, and building floor plans and elevations.

Conformity With Required Master Plan Findings
Under LUP Agriculture Resource Policy No. 4 and LCP Zoning Code Chapter 22.37.036, the Commission is required to review the Master Plan and make the following findings:

> *a. The development would protect and enhance continued agricultural use and contribute to agricultural viability.*
>
> *b. The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.*
>
> *c. The land division or development would not conflict with the continuation of agriculture on that portion of the property which is not developed, on adjacent parcels, or those within one mile of the perimeter of the proposed development.*
>
> *d. Adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed*

development shall not adversely impact stream habitats or significantly reduce freshwater inflows to Tomales Bay, either individually or cumulatively.

e. Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development.

f. The proposed land division and/or development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met.

g. Development consists of permitted and conditional uses as authorized in the APZ.

The Master Plan for the subject property proposes grazing and production, a vineyard, hop field, vegetable garden, barns, fences, utilities, other accessory structures, and one farmhouse, all of which are principally permitted uses. (The existing one-quarter-acre hopyard would remain but its proposed expansion is no longer an element of this application.) The Master Plan also proposes a greenhouse (for growing fruits and vegetables), a brandy distillery for processing grapes grown on the property, and a small, 140 sq.ft. retail space in the brandy barn for appointment-only sales of the brandy product bottled on-site, all of which are conditional uses.

The Master Plan proposes only principally permitted and conditional uses allowed in the C-APZ zoning district. LUP Agricultural Resource Policy No. 6 and LCP Zoning Code Chapter 22.57.032 state that the principally permitted uses allowed on the subject property include the following:

- Agricultural uses (livestock and poultry; livestock and poultry products; field, fruit, nut and vegetable crops; nursery products).

- One single-family dwelling per parcel.

- Accessory structures or uses appurtenant and necessary to the operation of agricultural uses, other than dwelling units of any kind, but including barns, fences, stables, corrals, coops and pens, and utility facilities.

The conditional uses on the subject property allowed by the aforementioned Policy No. 6 and LCP Zoning Code Chapter 22.57.033 include "facilities for processing or retail sale of agricultural products" and "greenhouses."

Continued agricultural use of the property remains feasible and the proposal does not include a subdivision or non-agriculturally related development. Rather, the Applicant proposes to cultivate a mix of agricultural products on the property, to construct a single farmhouse clustered close to an existing paved driveway and other existing development on adjacent properties, and to install a brandy distillery located within the proposed brandy barn. The farmhouse (a principally permitted use on this property) would be occupied by the Applicants who would run and manage the proposed agricultural operations. The farmhouse is supportive of the continued agricultural use of this agricultural land because it allows the farmhouse owner to reduce costs by having direct access to the land being farmed. The distillery (a conditional use on this

property) would process dessert grapes harvested from the on-site vineyard designed to diversify agricultural production on the property. The developments, including the farmhouse and distillery, would therefore protect and enhance continued agricultural use, support new agricultural activities, and contribute to the agricultural viability of the subject property. These proposed developments would not conflict with existing agricultural operations (primarily livestock grazing) within one mile of the perimeter of the subject property. As is documented in this section and in other sections of this report, adequate public services are available for the proposed agricultural development and farmhouse and no provision of these services is necessary for other development as none is proposed in the *Master Plan*. As is documented in this section below and in other sections of this report, the Commission finds that the proposed project as conditioned will conform to LUP Agricultural Resource Policy No. 4 and LCP Zoning Code Chapter 22.37.036.

Under LUP Agriculture Resource Policy No. 5 and zoning code section 22.57.035, the Commission must also find that the following conditions have been met by the *Master Plan*:

> *a. All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations.*
>
> *b. Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands. Only agricultural uses shall be allowed under the easements. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that they are retained as a single unit and are not further subdivided.*
>
> *c. The creation of a homeowner's or other organization and/or the submission of agricultural management plans may be required to provide for the proper utilization of agricultural lands and their availability on a lease basis or for the maintenance of community roads or mutual water systems*

As noted in **Section B** (Project Description) above, the proposed driveway, brandy and equipment barns, and farmhouse are located in the northwest corner of the property, adjacent to an existing paved driveway off Highway 1. Other proposed development not in this location are agricultural operations (e.g., sheep pastures, vineyard, vegetable garden and greenhouse, sheep and hopyard shelters, water wells and tanks). The proposed septic system leachfield, which would serve the two agricultural barns and the farmhouse, is located adjacent to the proposed vineyard approximately 1,500 feet east of the barns and residence. The LCP states that no more than 5% of the gross acreage of an APZ parcel can be used for non-agricultural development. As discussed above, all of the proposed development on the subject property is agriculturally related. The footprint of all of the proposed structures, including the farmhouse, is

approximately 0.30 acres, and the footprint of the driveway and parking areas is approximately 0.59 acres. Therefore, all structural and paved portions of the proposed development are limited to 0.89 acres, or approximately 0.6% of the 150-acre parcel, well below even the 5% non-agricultural limit in the LCP. In addition, subtracting the 65.5-acre Habitat Conservation Deed Restriction Area from the 150-acre property figure yields 84.5 acres of land potentially available for agriculture. The aforementioned 0.89-acre footprint is approximately 1.05 % of the 84.5-acre figure, also well below the 5% limit in the LCP. Thus, the proposed development is clearly consistent with the LCP 5% maximum applicable to APZ land and maintains the maximum amount of agricultural land available for agricultural production consistent with the provisions of the certified LCP. Further, and as documented in other sections of this report, the proposed developments are sited and conditioned to minimize impacts on scenic resources, sensitive habitat, riparian corridors, and adjacent agricultural operations.

Proposed Affirmative Agricultural Easement
LCP Agricultural Policy 5(b) (Conditions) states that:

> *Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands. Only agricultural uses shall be allowed under the easements. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that they are retained as a single unit and are not further subdivided.*

An element of the *Master Plan*, and of this permit application, is the proposal by the Applicant to convey to Marin County an Affirmative Agricultural Conservation Easement and Declaration of Restrictions with provisions for a variety of perpetual uses and restrictions over the portion of the property proposed for agricultural use, outside of both the development envelope and the habitat protection areas, as summarized below:

- The terms of the Easement include the imposition of a perpetual obligation for the active conduct of agricultural production within a designated Agricultural Production Zone that would be delineated and recorded in accordance with the Agricultural Management Plan.

- The terms of the Easement establish a process whereby an outside agricultural operator may lease the subject property at reasonable rates in the event the owner of the property is unable or unwilling to continue active agricultural production on the property.

- The terms of the Easement establish permitted and prohibited uses, and practices to which the property owner would be bound to adhere to.

- Finally, the Easement would extinguish all residual zoning potential on the property.

Special Condition 3 of this permit governs agricultural uses on the subject property and further states that prior to issuance of the coastal development permit, the Applicants shall dedicate the proposed affirmative agricultural conservation easement to a public agency or private association approved by the Executive Director over the portion of the property outside of the development

area generally depicted in **Exhibit 5** and the habitat conservation area required by **Special Condition 10** and generally depicted on **Exhibit 4**.

The Applicant's *Agricultural Production and Stewardship Plan* (an element of the *Master Plan*) expressly proposes the Affirmative Agricultural Easement:

> *We also agree, as part of this Agricultural Production and Stewardship Plan, to grant an Agricultural Conservation Easement over the portion of the property proposed for agricultural use. This Agricultural Conservation Easement will extinguish the second A-60 based development right and will be in a form to be approved and held by the Marin County Board of Supervisors for the purpose of maintaining the agricultural related portion of the property in agriculture production.*

The proposed Affirmative Agricultural Easement conforms with the easement dedication requirements of LUP Agriculture Resource Policy 5b and LCP Zoning Code Chapter 22.57.035(3).

Agricultural Production and Stewardship Plan LCP Agricultural Policy 5(c) states in part that as part of the approval of a master plan, submission of agricultural management plans may be required to provide for the proper utilization of agricultural lands. The Applicant's *Agricultural Production and Stewardship Plan* meets that requirement and includes four principle components:

1) Expand the existing ½ acre hop yard cultivation area to 6 acres;

2) Continue historic grazing activities by placing approximately 25-35 ewe/lamb pairs on approximately 50 acres south of the blue-line stream; three fenced pastures will be grazed under a seasonal rotation plan. (The subject property is undeveloped agricultural land which has supported cattle grazing over several decades until around 2007, shortly before the Applicant leased and then purchased the property and initially applied to the County for the subject CDP in or around 2009. The CDP proposes to continue livestock grazing as discussed herein. The Applicant has maintained his interest in continuing livestock grazing during the pendency of various permit applications associated with the property.)

3) Develop a level portion of the north side/south facing area of the parcel in grape cultivation for use in small-scale on-site brandy production; and

4) Create a one-acre vegetable farming project for local sales.

However, and as noted previously in this report, the proposed hopyard expansion is no longer an element of this permit application.

The *Agricultural Production and Stewardship Plan* includes a statement of purpose, farm goals (agricultural production timeline, production without the use of herbicides and pesticides, quality of life goals, and natural resource and water quality goals), facilities inventory (buildings,

corrals, fences, pastures, fields, and water developments), natural resources inventory (soils, vegetation, climate, and wildlife), and the agriculture and production stewardship program (overview, sheep management (livestock and grazing operations, animal inventory, forage requirements, grazing system, and forage inventory), hopyard, vineyard and brandy barn, brandy barn waste facilities, and vegetable garden). As conditioned, the contents of the *Agricultural Production and Stewardship Plan* conform with the requirements of LUP Agriculture Resource Policy 5c and zoning code Chapter 22.57.024(1)(i). Policy 5c states that agricultural management plans may be required; the aforementioned zoning code states that agricultural uses shall be encouraged, usable agricultural land should be identified and efforts made to preserve and/or promote its use, and the nature and intensity of large scale agricultural uses should be described in the form of an agricultural management plan. Such plans should consider intensity of grazing, runoff protection, chemical and fertilizer use, and separation from existing or proposed residential uses. The proposed project, as described in the *Master Plan*, addresses all these requirements and preserves and promotes the subject property for productive, diverse, and viable agricultural uses, while concurrently protecting sensitive wetland, riparian, and upland habitats located on the property as required by LCP natural resource policies. **Special Conditions 2, 4, 5, and 6** of this permit state that all agricultural uses on the property must conform to the *Master Plan* except as modified by the conditions of the CDP, including but not limited to the requirement that: (a) no grazing of livestock occur in wetlands, riparian areas, or their buffer areas; (b) livestock fencing design and installation not block wildlife movement across the property; and (c) sheep grazing be monitored to ensure protection of coastal terrace prairies habitat and avoidance of soil erosion and water quality degradation.

In conclusion, for all of the above-stated reasons, the Commission finds that, as conditioned, the development described in the *Master Plan* conforms with the requirements of LUP Agriculture Resource Policies 4 and 5, and LCP Zoning Code Chapters 22.37.036, 22.45.040, 22.57.024, 22.57.032, 22.57.033, and 22.57.035. As is also documented in other sections of this report, the development described in the proposed *Master Plan,* as conditioned, will not adversely affect scenic visual resources and will conform to all LCP policies on the protection of streams, riparian habitats, wetlands, and other natural resources.

Development Constraints, Clustering, and Alternatives. The Applicants submitted a constraints map illustrating the sensitive biological resources found on the property that limited the potential locations for agricultural operations, buildings, and accessory structures. This map yielded the original development plan reviewed and approved by Marin County in 2010. Subsequent to the Commission's finding of substantial issue on the appeal of the County's coastal permit approval, and after additional biological resource survey and analysis work by the Applicants' consultants in consultation with Commission staff, a revised constraints map was developed and modifications were made to the proposed development plan (see **Special Conditions 1 and 2** of this permit). It is this modified development plan that is now before the Commission and not the plan that was approved by the County in 2010. The constraints map identified those areas of the property suitable for development, and the proposed agricultural operation was set into those suitable areas. The goal of the proposed development plan is to satisfy LCP requirements to cluster proposed development near existing roads and development, and avoid potential adverse impacts on sensitive habitat and significant views from public areas, thereby providing for a mix of existing and proposed agricultural operations on the property.

The constraints map illustrates both the natural habitats to be avoided by proposed development, existing development associated with historic livestock grazing operations, and proposed development elements. The subject property and its existing development were described previously in **Section A** of this report; a detailed description of the riparian, wetland, and sensitive upland habitats is provided below in **Section F** of this report. The constraints map shows that the dominant natural feature here is the blue-line stream (and associated riparian corridor) that essentially bisects the property into northern and southern halves. A silting-in stock pond is located behind an earthen dam on the lower end of the stream course. Large expanses of wetland habitat are located along the lower reach of the stream, along a corridor to the south of the stream, and in the upper southeast quadrant of the property. Smaller areas of wetland habitat are found adjacent to seeps in the northwest corner and south of the upper reaches of the stream. Coastal terrace prairie, a rare and environmentally sensitive habitat, is not identified on the constraints map but is present across certain areas on the southern half of the property. The northwest corner of the property was the subject of a detailed geotechnical investigation and found to be suitable for the development types proposed for that area. State Highway 1 runs along the western side of the property. An existing paved driveway intersects the highway just north of the stream crossing/culvert and provides vehicle access to the subject property and to several developed parcels to the north. The parcel bordering to the north is developed with a single family residence, outbuildings, swimming pool, driveway, and olive orchard. Moving north on Highway 1, there are residential structures on the bay side and a conference facility on the inland side of Highay 1, and this area essentially serves as the southern gateway to the community of Marshall.

Given the property's topography, natural resource constraints, and the LCP goals of clustering development to retain the maximum amount of land available for agricultural uses and to locate development close to existing roads, the Applicants proposed locating the three primary structures and access driveway in the northwest corner of the property, near the existing driveway off Highway 1, near existing development to the north on both sides of the highway, outside of coastal terrace prairie habitat on the hillsides south of the stream, and outside of mapped wetlands and riparian habitat on the property. The proposed vineyard, septic leach field, and northern water well are located on non-native, annual grasslands (and just to the south of an olive tree orchard on the parcel to the north), and accessed via an existing farm road that will intersect the driveway near the farmhouse. No proposed development (roads, utility lines, livestock movement) will cross the blue-line stream and riparian corridor. All the proposed agricultural structures and operations on the southern half of the property will be accessed via existing, unimproved, two-track farm roads, and equipment will be stored at the hopyard shelter to minimize the movement of ATVs between the two halves of the property. Utility lines (electricity, water, sewer) will be buried underground and are designed to avoid sensitive habitat areas. However, a 300-foot-long extension of the existing aerial power line that runs into the property from the main line along Highway 1 will run from its current terminus near the stock pond dam north to the farmhouse. Flexible hoses will be placed on the ground surface on existing dirt farm tracks to convey water from tanks to the proposed vegetable garden and sheep watering troughs on the southern half of the property. The proposed development plan avoids all

wetlands, stream and riparian habitats, and coastal terrace prairie habitat and their required buffers (see **Exhibits 1 and 6**).

As previously noted, vehicle access to the proposed brandy barn, equipment barn, and farmhouse will be via a pervious-surfaced driveway extending from the existing paved driveway which intersects Highway 1 at the northwest corner of the property, thereby avoiding the need to construct a new driveway intersection at Highway 1 on another section of the property's highway frontage. The Applicants' traffic analysis for the proposed development (Transpedia Consulting Engineers, April 28, 2009) evidences that the proposed project would have less-than-significant impacts on the operation of Highway 1, that the collision rate on Highway 1 in the vicinity of the existing driveway does not show any patterns that could indicate a safety issue at this location, the sight distance at the driveway intersection exceeds Caltrans' minimum sight distance standards, and that installation of a left-turn lane from southbound Highway 1 into the driveway is not warranted given peak hour traffic volumes, collision rate, and sight distance.

Commission staff also spoke with a Caltrans consultant analyzing traffic and circulation patterns associated with potential development plans proposed by California State Parks for its Marconi Cove Unit of Tomales Bay State Park, located directly across Highway 1 from the Applicants' property. The plans include a public boat launch, docks, picnic facilities, bay observation sites, a six-site campground, restroom, and parking lot, all consistent with the General Plan for Tomales Bay State Park (2004) and the Recreation Assessment for Tomales Bay State Park (State Parks February 2010). The Marconi Cove development project would be funded in-part by Caltrans as mitigation for public access impacts from Highway 1 rock slope protection north of Marconi Cove (approved by the Commission in September 2011 under CDP 2-11-011). However, the proposed State Parks project at Marconi Cove has not yet received coastal development permit approval. In November 2012, Commission staff provided the Caltrans consultant a copy of the proposed development site plan for the Applicants' property and the related 2009 traffic analysis; no questions about the analysis, the proposed development on the Magee property, or the latter's potential effect on the possible State Parks project were subsequently directed to the Commission staff.

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 the Applicant's property (see **Appendices I, J, and K**). 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, existing development on the adjacent northern property, and the likely future development at Marconi Cove; 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.

The Appellants have also suggested an alternative driveway route should the primary development envelope remain in the northwest corner (see **Appendices I, J, and K**). Initially, the Applicants' proposed driveway alignment headed north past the brandy barn up a slope

parallel to the existing private paved driveway off Highway 1, turned east just south of the northern property line, passed the equipment barn, and then curved southeast to the farmhouse. Additional biological survey work on the property in 2011 confirmed the presence of two small wetland areas in the northwest corner. This discovery made the initial driveway alignment inconsistent with the LCP wetland protection policies and resulted in the Applicants proposing a new driveway route that switchbacks up the slope between the brandy and equipment barns to avoid the buffer zones surrounding the two wetlands. The new driveway route then curves north around the eastern wetland buffer and terminates at the farmhouse. The alternative route suggested by the Appellants would have the driveway pass by the northern side of the brandy barn, intersect the route of an existing unimproved two-track farm road east of the barn, climb the slope up to the farmhouse, and then loop back around to the equipment barn. This route would avoid the need to switchback up the slope to the equipment barn. However, this proposed alternative is not feasible as it is inconsistent with the stream, riparian, and wetland buffer requirements of the LCP. Given the width of the stream and riparian buffer and the width of the wetland buffer associated with the small wetland located between the equipment barn and farmhouse, the buffer areas would overlap east of the brandy barn, effectively prohibiting any non-allowable uses in this area, including the construction of an improved access driveway from the brandy barn eastward to the farmhouse and equipment barn.

In conclusion, the Commission finds that the proposed project conforms with the requirements of LUP Agriculture Resource Policies 1 and 5, and LCP Zoning Code Chapters 22.57.024 and 22.57.035, including by providing a site plan that concentrates development in suitable locations, clusters proposed development to retain the maximum amount of land for agricultural use, is located close to existing roads, and is sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations.

Brandy Distillery. As described earlier, the proposed project also includes installation and operation of a small brandy distillery in the proposed brandy barn. At this barn, dessert wine grapes harvested from the vineyard on the property would be de-stemmed, crushed, fermented, distilled, and barrel-aged to produce brandy. The Applicants state that it will take four to five years after establishment of the vineyard for it to produce an adequate harvest of grapes suitable for brandy production. After distillation and a three- to four-year-long barrel aging process, the finished brandy is then bottled and made ready for sale. In the event of a highly productive vineyard, approximately 1,500 gallons of grape juice would be produced each season, and after fermentation and distillation the operation would annually yield up to 1,000 750-ml bottles, or 80-100 finished cases of brandy. By comparison, the largest brandy distiller in the United States produces three million cases per year, and craft and boutique distilleries typically see production levels in the thousands of cases per year.

Conformity of Brandy Distillery With Permissible Use and Agricultural Resource Policies
The proposed brandy distillery (using grapes produced on the subject property) and the limited sales of the finished brandy product – with both operations taking place in the proposed brandy barn – are activities provided for in the Marin County LCP. The small brandy distillery to be located in the proposed brandy barn is a permissible agricultural use as defined by LCP Agricultural Resource Policy 6, which states in part that "agricultural uses shall be defined as

uses of land to grow and/or produce agricultural commodities for commercial purposes," including livestock and poultry and their products; field, fruit, nut, and vegetable crops; and nursery products. Further, both Agricultural Resource Policy 6 and LCP Zoning Code Chapter 22.57.033 (Conditional Uses) also state that "facilities for processing or retail sales of agricultural products" are a conditional use allowed on Agricultural Production Zone property. Thus, the proposed distillery would process grapes (harvested solely from a proposed vineyard on the subject property) into a brandy product for retail sales, thereby qualifying the distillery as a conditional agricultural use on the subject APZ property.

Regarding the conformity of this permissible use with the Agricultural Resource Policies, the distillery would foster agricultural development on the subject property by supporting development of a small dessert grape vineyard, supporting diverse agricultural land uses, enhancing agricultural operations and viability, and not conflicting with other existing and proposed agricultural operations (including at the distillery site). The distillery would not adversely affect public services, not adversely affect wetlands, streams, riparian habitats, or freshwater inflows to Tomales Bay by its use of well water pumped on the property, and, as determined in Section F of this report, would be consistent with all stream and natural resource policies of the LCP. The distillery would be placed inside the brandy barn, which is located in the northwest corner of the property, clustered with other proposed buildings, utilities, existing paved access off Highway 1, and adjacent development in order to minimize potential project impacts on proposed agricultural operations and existing sensitive habitat and scenic resources. Therefore, the Commission finds that the proposed distillery is consistent with the Agricultural Resource policies of the LCP.

Brandy Barn Operating Restrictions

Once the vineyard grapes are harvested and processed over a one- to two-week period in late summer/early fall, the grape juice is transferred to a fermentation vessel where it is inoculated with a yeast strain and fermented for 30 to 45 days. The distillation process is contained entirely inside a closed unit and no noise or odors would emanate from the barn. The Applicants provided the following description of the distillation process that would occur in the brandy barn:

- *The resultant wine is transferred to the distillation unit, which consists of a wine boiler and low pressure external steam heating jacket. The wine is heated (172 degrees F) until the steam is driven upward to the fractionating column. The steam will be generated by a single two-horsepower low-pressure boiler powered by propane gas. A 500 gallon reserve propane container will be stored outside the brandy barn building.*

- *During the fractionating process, the steam vapors are separated into ethanol and other products. The lightest products rise to the top of the distillation column and are collected and cooled to 50 degrees F. The cooling condenser recycles the water in an integrated system using a one-horsepower water refrigeration compressor powered by electricity. No water is discharged from this closed loop system.*

- *The distillate is collected and immediately diluted from 90% alcohol to 50% alcohol by volume for barrel aging.*

- *The diluted brandy is aged in wood barrels for 36 to 120 months before being bottled in glass bottles and stored on site in the brandy barn. Both the barrels and glass bottles are trucked to the farm in small quantities. Six to ten barrels will be trucked in once a year. The wood barrels are replaced every three to ten years. The retired barrels will be sold to a brewery for beer aging.*

- *The energy used during the process will be 210 volts, 18 amps, 12 hours per day, seven days a week for three months.*

- *During the brandy making process, one full-time and two part-time employees will used.*

- *No significant adverse exterior noise or odors will be generated by the process. Tractor operation noise, typical of agricultural activities will be generated during the grape harvest and compost movement. The Marin County Code allows reasonable agricultural related noises and odors in West Marin.*

- *An overhead fire suppression sprinkler system will be installed in the brandy barn, as specified by the Marin County Fire Marshall.*

- *No hazardous materials will be used in the brandy making process. The building's concrete pad for the both the indoor and outdoor operations will be constructed in such a manner to provide a secondary containment and drainage system in the unlikely event of a spill of either raw grape juice, sanitizing agents, fermented wine, or distilled spirits.*

- *Limited, reservation-only public tours of the brandy barn may be conducted. No tasting will be allowed. No vans or buses will be allowed. No signage would be installed at the farm entrance or along the Shoreline Highway. The appointment-only tours would be restricted to Saturday only, between the hours of 11:00 AM to 3:00 PM. The infrequent tours would be restricted to adults (21 and over) only. The sampling would be olfactory only (sniffing), no on-site consumption would be allowed. On-site sales would be allowed only during the limited tours. One to two employees would be required to run the operation, depending on the tour size and frequency.*

Special Condition 7 of this permit includes operating restrictions for the brandy barn, as described above.

The brandy production process will generate waste products. The stems, skins, and leaves that remain after the stemming and crushing process, and the unrecovered fermented juice wine and other solid matter and liquid collected from the fermentation tank, would be collected during the harvest and fermentation period in the fall. This material would then be composted on-site and later applied as fertilizer at the vineyard and/or the vegetable garden. A liquid waste stream consisting of cleaning agents and rinse water from the distillery would move into floor drains and processed in the septic system. At maximum theoretical production, the project is estimated to generate the equivalent of 2,600 gallons of waste that would be diverted to the compost system and 5,400 gallons of wastewater diverted to the septic system. Further analysis of the

project's conformance with LCP water quality protection policies is provided in **Section G** (Water Quality) of this report.

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, it would be at least seven years after planting of the vineyard that the proposed limited public tours and sales at the brandy barn would commence. 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. Should distillation not occur or be terminated, the brandy barn would be used to produce a jam/jelly product using fruits and berries grown on-site. Other potential uses of the brandy barn would require an amendment to this permit. **Special Condition 8** of this permit includes the aforementioned restrictions on the importation of agricultural products to the subject property for processing in the distillery and alternate uses of the brandy barn.

The proposed brandy barn would be constructed on non-native grassland in the northwest corner of the property, approximately 75 feet east of the existing paved driveway. The structure is also set back at least 100 feet from riparian vegetation that borders the blue-line stream and is setback at least 150 feet from the stream bank itself. As discussed in Section F of this report, these setbacks are sufficient to prevent impacts that would degrade the blue-line stream and the adjacent riparian habitat. However, according to the most recent habitat maps of the property (Figure 2 in **Appendix E** of this staff report), the extreme southeast corner of the parking area adjacent to the brandy barn is slightly within the 150-foot stream setback area. **Special Condition 1** of this permit states that prior to issuance of the coastal development permit, the Permittees shall submit revised project plans that, in part, indicate that no part of the proposed parking area is located within the mapped 150-foot stream setback area.

The Appellants and others opposed to certain elements of the proposed project have raised questions about the proposed distillery and brandy barn, in particular, whether this is an appropriate use in this area of the coastal zone, the adequacy of fire suppression plans, the potential adverse effects of the operation of the distillery on the blue-line stream and Tomales Bay, and potential traffic impacts from public tours and potential off-site import of grapes to supply the distillery process (see **Appendices I, J, and K**). However, the Commission finds that these concerns have been adequately addressed in the design of the project. The proposed distillery is an allowable agricultural use under the LCP on this APZ-zoned property as a facility for processing agricultural products, and the proposed limited retail sales of the processed agricultural product (i.e., the bottled brandy) is also an allowable conditional use on this property under the LCP. The proposed project plans illustrate a fire hydrant and water tank located 60 feet and 100 feet, respectively, from the brandy barn. A sprinkler system will be installed within the barn, and a final fire suppression plan will be reviewed and approved by the Marin County Fire Marshall during the building permit process for the barn.[2] The design of the distillery, its

[2] On February 20, 2013, the Commission staff spoke with Mr. Scott Alber, the Marin County Fire Marshall, who confirmed that a water sprinkler system installed within the proposed brandy barn would be an adequate fire

containment within the barn, the very small production volume, the waste product management plan, and the setback from the stream corridor and riparian vegetation will together adequately protect sensitive habitat and water quality on and off the property. The project, both as proposed and as conditioned, will not import grapes or other agricultural products that could be used in the distillery or in other agricultural product process, and will limit public visits to the brandy barn (which as noted above would not likely commence until the year 2020, at the earliest) to the hours of 11:00 am to 3:00 pm on Saturdays with a maximum of 24 adults across that time period. As a result, private vehicle use associated with the project would not create a significant adverse effect on traffic patterns and coastal access on Highway 1, nor would the limited hours of public visitation to the brandy barn introduce a significant commercial operation and presence to this location.

Conclusion

In conclusion, the Commission finds that the proposed distillery and brandy barn elements of the project conform with the requirements of LUP Agriculture Resource Policy 6 and LCP Zoning Code Chapter 22.57.033 regarding conditional land uses, and that these project elements (as conditioned) are designed to avoid sensitive stream and riparian habitats and to protect water quality on and adjacent to the subject property. The Commission further finds that the *Brader-Magee Farm Master Plan* includes sufficient details on the proposed agricultural development plans, includes only principally permitted and conditional uses, and concentrates and clusters development to retain the maximum amount of land for agricultural use. As is documented in other sections of this report, the proposed development, as conditioned, will not adversely affect sensitive habitats, water quality, or visual resources. The proposed development, as outlined in the *Master Plan* and as conditioned herein, is therefore fully consistent with the Marin County LUP agricultural resource and development policies and the related LCP zoning measures.

F. WETLANDS/STREAMS/ENVIRONMENTALLY SENSITIVE HABITAT

The Marin County LUP Natural Resources policies state in part:

> 1. *<u>Streams and Riparian Habitats</u>. The policies contained in this section shall apply to all streams in the Unit II coastal zone, perennial or intermittent, which are mapped by the United States Geological Survey (U.S.G.S.) on the 7.5 minute quadrangle series.*
>
> . . .
>
> *c. <u>Stream Buffers</u>. Buffers to protect streams from the impacts of adjacent uses shall be established for each stream in Unit II. The stream buffer shall include the area covered by riparian vegetation on both sides of the stream and the area 50 feet landward from the edge of the riparian vegetation. In no case shall the stream buffer be less than 100 feet in width, on either side of the stream, as measured from the top of the stream banks.*

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suppression measure, and that the final suppression plan for the structure and distillery operation would be reviewed and approved by his office during the County building permit process.

d. Development in Stream Buffers. No construction, alteration of land forms or vegetation removal shall be permitted within such riparian protection area. Additionally, such project applications shall identify a stream buffer area which shall extend a minimum of 50 feet from the outer edge of riparian vegetation, but in no case less than 100 feet from the banks of a stream. Development shall not be located within this stream buffer area. When a parcel is located entirely within a stream buffer area, design review shall be required to identify and implement the mitigation measures necessary to protect water quality, riparian vegetation and the rate and volume of stream flows. The design process shall also address the impacts of erosion and runoff, and provide for restoration of disturbed areas by replacement landscaping with plant species found naturally on the site. Where a finding based on factual evidence is made that development outside a riparian protection or stream buffer area would be more environmentally damaging to the riparian habitat than development within the riparian protection or stream buffer area, development of principal permitted uses may occur within such area subject to design review and appropriate mitigation measures.

4. Wetlands. Wetlands in the Unit II coastal zone shall be preserved and maintained consistent with the policies in this section, as productive wildlife habitats, recreational open space, and water filtering and storage areas. Land uses in and adjacent to wetlands shall be evaluated as follows:

a. Diking, filling, and dredging of wetlands shall be permitted only in conformance with the policies contained in the LCP on this subject, presented on page 136. In conformance with these policies, filling of wetlands for the purposes of single-family residential development shall not be permitted.

b. Allowable resource-dependent activities in wetlands shall include fishing, recreational clamming, hiking, hunting, nature study, birdwatching and boating.

c. No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities.

d. A buffer strip 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Where appropriate, the required buffer strip may be wider based upon the findings of the supplemental report required in (e). Development activities and uses in the wetland buffer shall be limited to those specified in (a) and (b) above.

e. As part of the application for a coastal development permit on any parcel adjacent to Tomales Bay, except where there is no evidence of wetlands pursuant to the Coastal Commission's guidelines, the applicant shall be required to submit supplemental biological information prepared by a qualified ecologist at a scale

sufficient to identify the extent of the existing wetlands, based on Section 30121 of the Coastal Act and the area of the proposed buffer areas.

5. *Coastal Dunes and Other Sensitive Land Habitats. Development in or adjacent to sensitive habitats shall be subject to the following standards:*

   . . .

   b. Other Environmentally Sensitive Habitats. 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.

The associated LCP zoning measures applicable to the proposed project are found in **Appendix C** of this report. In summary, these measures address development requirements, standards, and conditions to protect streams, wetlands, and environmentally sensitive habitat, including identification of all stream, riparian and wetland areas, allowable use restrictions, prohibitions against construction or vegetation removal in riparian protection areas, buffer zones around stream, riparian, and wetland areas, and wildlife habitat and native plant community protection measures.

In analyzing the proposed development for conformance with the Marin County LCP Natural Resource Policies, the Commission will use Coastal Act wetland and ESHA definitions, also reiterated in the certified Marin County LCP, to evaluate project impacts to: (1) wetland habitat; (2) riparian habitat and native coastal terrace prairie grassland on the property; and (3) sensitive animal and plant species found on the property.

The original development site plan for the property followed mapping of the property's sensitive habitats, based on numerous site investigations between 2008 and 2010 undertaken by the Applicants' biological consultant. Following the Commission's substantial issue determination in September 2010, questions regarding the extent of wetlands and other sensitive habitat on the property, and the location of proposed development adjacent to these habitat types, were raised, and additional biologic survey work was completed by the Applicants' consultants, occasionally accompanied by Commission staff. As a result of the additional survey work, modifications to the proposed site plan discussed previously in this report (e.g., re-routing of the driveway, adjusting the footprint of several structures, elimination of the hopyard expansion) were made by the Applicants between 2010 and 2012 to reflect the additional sensitive habitats identified on the property and the development setbacks required by the Marin County LCP to protect those areas from potential impacts from proposed development.

The *Wetland Delineation* report prepared for the subject property by Zander Associates (October 2012, **Appendix F**) commences by providing a description of all the natural habitats located on the property: grassland, coyote bush scrub, California bay forest, arroyo willow thicket, and riparian woodland. In addition, aquatic and emergent wetland communities are associated with the pond and other areas of the stream course, and seasonal wetlands are associated with hillside seeps and developed springs. The *Wetland Delineation* also includes a review of the vegetation, soil, and hydrologic survey methods used, and the statutory requirements followed, to identify and locate wetland and riparian areas on the property, including the additional field work on the property requested by and undertaken in cooperation with the Commission staff in 2011 and 2012. The report summarizes the wetland, stream, and riparian habitats located on the subject property and includes a map illustrating U.S. Army Corps of Engineers Section 404 jurisdictional wetlands and Coastal Commission/LCP jurisdiction wetlands.

In October 2011 and November 2012, the Applicants' biological consultant provided additional information requested by the Commission staff regarding upland plant communities and their proximity to proposed development on the property. This information included composition of grassland where structures are proposed for agricultural areas south of the blue-line stream, characterizations of the grassland along a meandering transect from the eastern to western ends of the property south of the blue-line stream, an updated plant communities map for the property, sampling of plant species between the equipment barn and farmhouse sites, and confirmation that proposed structures are not located within native grassland habitat. The two Zander Associates reports included the following:

- The composition of grassland, including native and non-native species and percent cover, at the proposed sites of the greenhouse, hopyard shelter, and both sheep shelters.

- Grassland along a transect from the southeast property corner in a southwesterly direction toward Highway 1 was characterized, including species composition, percent cover, and GPS location. There is a noticeable trend toward non-native grasslands at the lower elevations of the site.

- The 2008 Plant Communities Map was updated to reflect changes in the riparian border near the proposed brandy barn, boundaries of seeps south of the riparian corridor were remapped, the mapped mixed evergreen forest was divided into California bay forest and arroyo willow scrub, the springs identified north of the riparian corridor were mapped.

- Additional grassland survey work indicated that the original locations of the hopyard shelter and sheep shelter 2 were in areas with 35-50% cover of native perennial grassland species. As a result, these structures were relocated into nearby areas where the building footprint and an area 100 feet beyond were within non-native grasslands.

- The footprints of the farmhouse, brandy and equipment barns, vineyard, leach field, sheep shelter 1, greenhouse, driveway, water tanks, and utility line trenches were all determined to be located within non-native grassland.

Commission staff also requested updated information on the location and conditions of sensitive animal and plant species found on the property. Zander Associates (November 2012) reported that four special status species have been identified on the property: California red-legged frog (CRLF), western pond turtle (WPT), American badger and Marin checker lily. The report indicated that pond and associated riparian corridor on the site provide the primary breeding, dispersal, and foraging for CRLF and WPT, and that upland grassland areas on the site provide some potential dispersal and foraging habitat for the CRLF but none for WPT. The small development footprint and setbacks of the project coupled with appropriate timing and exclusion fencing during construction would avoid and minimize potential impacts on CRLF and WPT, consistent with LUP Natural Resource Policy 5.

There are anecdotal reports of badger sightings on the Applicants' property and potential burrows may be located in the dry grassland habitat in the southeast portion of property. No signs of badger burrow activity were observed within the proposed development area north of the main stream corridor. The majority of potentially suitable badger habitat on the Applicants' property (approximately 91 acres of open grasslands, in areas of low to moderate slope) would remain unaffected. A population of approximately 20 plants of Marin checker lily was identified in two locations near the pond on the lower reach of the blue-line stream. These plants are far removed from the proposed building sites and agricultural activities are not expected to be impacted by the project. Zander (November 2012) also noted that the original site of the proposed greenhouse was relocated at the suggestion of Commission staff to respect a 300-foot buffer around the existing farm pond on the lower reach of the blue-line stream, habitat for the California red-legged frog and western pond turtle.

As a result of the additional biological survey work completed on the property since September 2010 (when the Commission found substantial issue on the appeal of the project's Marin County-approved coastal development permit), work undertaken in close coordination with Commission staff, updated maps illustrating existing sensitive habitat on the property and proposed development locations were completed in February 2013 by Zander Associates. These maps confirm that all proposed structures and related development are located outside of wetlands, streams, riparian corridors, and native grasslands, and outside of the development setback areas required by the Marin County LCP to protect sensitive habitat.

Beginning in early 2011, the Commission's senior ecologist, Dr. John Dixon, has worked to identify and evaluate the biological resources on the subject property, and has studied the potential effects of the proposed development on those resources. This effort included reviewing the relevant project reports and literature, and conducting site visits to the property to understand the proposed development site plan and the distribution and type of wetlands, riparian habitat, native grassland, and rare animal and plant species on the property. Dr. Dixon prepared a memorandum summarizing his analysis, conclusions, and recommendations regarding the proposed development (**Appendix E**). The following are the significant conclusions from this memorandum:

- The Applicant's biologists have conducted biological surveys of the property on 29 separate occasions that included all seasons. The surveys conducted are sufficient in number, type, and quality to identify and locate the important resources on the site.

- There are three major resource categories of biological concern on the property: open coastal waters (a pond and stream) and wetlands, rare species, and rare vegetation communities.

- There are extensive stands of coastal terrace prairie ESHA on the property south of the blue-line stream. Dr. Dixon recommends that the four agricultural structures proposed south of the stream be located such that each footprint and the area within 100 feet of the footprint is clearly not native grassland or other ESHA. (This has been proposed by the Applicant.)

- The upland habitats north of the stream in the general area proposed for development are most appropriately characterized as either non-native grassland or ruderal and do not meet the definition of ESHA in the LCP and Coastal Act.

- The willow scrub and mixed riparian woodland along the blue-line stream and tributaries are ESHA. Dr. Dixon recommends that all development be set back a minimum of 100 feet from the drip line of the trees and shrubs that define these riparian habitats, consistent with the minimum requirements of the certified LCP.

- Protocol surveys were conducted for the California red-legged frog (present), the foothill yellow-legged frog (not present), and the western pond turtle (present). Dr. Dixon does not recommend that additional focused surveys for those rare species that have not been observed on the property be required.

- There is foraging habitat on the property for a variety of birds of prey. Although roosting or nesting near the areas proposed for development is unlikely, Dr. Dixon recommends that construction during the February 1 – August 15 nesting season occur no closer than 500 feet from active raptor nests.

- American badgers (a California Species of Special Concern) and their burrows have been observed in the eastern portion of the property. Dr. Dixon recommends that before any ground disturbing activities take place that a biologist ensure that badgers are not present.

- Focused surveys have demonstrated that the pond on the property is breeding habitat of the California red-legged frog, a federally threatened species and California Species of Special Concern, and is therefore ESHA. The Applicants propose no development within 300 feet of the documented breeding pond. Dr. Dixon agrees that this is appropriately and adequately protective of the California red-legged frogs that occupy the site and is sufficient to prevent impacts that would degrade the ESHA consistent with, or exceeding, the requirements of the certified LCP.

- The blue-line stream course and associated riparian corridor on the property is the most likely dispersal corridor for non-breeding habitat for the frogs. Dr. Dixon recommends that development be set back at least 100 feet from riparian vegetation or 150 feet from the stream bank, whichever distance is greater, consistent with the minimum requirements of the certified LCP. Such a setback would be adequately protective of the dispersal requirements of the California red-legged frog and is sufficient to prevent impacts that would degrade the ESHA consistent with, or exceeding, the requirements of the certified LCP.

- Although no development is intended within the riparian and stream buffer, the corner of the brandy barn parking area is shown on the project plans to intrude a few feet into the buffer. The plans need to be corrected prior to the start of project construction.

- Focused surveys of the project site conducted in 2011 documented the presence of western pond turtles, a California Species of Special Concern, in the pond on the blue-line stream. No development is proposed within this ESHA and the minimum development setback from the pond is 300 feet and from the stream is 150 feet. The proposed development is sited and designed to prevent impacts that would degrade the ESHA or negatively affect the western pond turtle consistent with, or exceeding, the requirements of the certified LCP.

- The threatened Marin checker lily is present in one location near the pond on the property and the habitat that supports this plant is ESHA. The distance from the lily population to the proposed greenhouse is over 200 feet and to the proposed brandy barn is over 400 feet. These developments therefore are sited and designed such that they will not significantly degrade and are compatible with the continuance of this ESHA consistent with, or exceeding, the requirements of the certified LCP.

- The wetland delineation on the property was appropriately conducted following the wetland definitions contained in the Coastal Act and the Commission's Regulations, and reiterated in the certified LCP. The mapped wetland boundaries on the property are accurate based on Dr. Dixon's review of the report and data sheets and on Dr. Dixon's field assessments in 2011 and 2012.

- A disturbed area proposed as the site for the brandy barn has been identified as potential wetlands by project opponents. Observations and comparisons of vegetation cover and soil characteristics of this potential wetland and of an adjacent upland grasslands site rebut the wetland presumption and demonstrate that at the proposed brandy barn site the wetland indicator plant species which are present are growing as upland plants.

- In January 2011 water diversion works were installed by the Applicants in the northwest corner of the property to capture runoff from the adjacent parcel and direct it into a PVC pipe running downhill to the west to the existing paved driveway. Project opponents suggest that this action may have modified a potential wetland downslope from the diversion, altered the composition of vegetation in this area, and reduced the size of

downslope wetlands. Vegetation sampling was undertaken in November 2012 at different locations at and adjacent to the diversion site to test whether the water diversion altered vegetation in this area. There was no difference in the wetland characteristics of the vegetation at either location. The construction of the water diversion structure did not have any short-term effects on the character of the vegetation and did not affect the accuracy of the wetland delineation. Even if, in the absence of the water diversion, there would have been a short-term increase in the area of saturated soils at wetland W1, the larger area of saturated soils would have occurred downslope; and, even if an additional downslope area were categorized as new wetland, the altered buffer zone would not affect any proposed development.

Dr. Dixon's memorandum concludes as follows:

> *Numerous and detailed biological surveys have been conducted on the Magee property. As a result, the wetlands, vegetation communities, and sensitive species that are on the property have been identified and their locations have been accurately mapped. The footprints of the proposed development have been adjusted so as to avoid all sensitive natural resources on the property and have been set back at least 100 feet from wetlands, riparian vegetation, and rare plants, 150 feet from streams, and 300 feet from the pond that supports California red-legged frogs and western pond turtles. I conclude that the proposed development has been sited and designed to prevent impacts that would degrade environmentally sensitive habitat areas and wetlands, and is compatible with the continuance of those habitats.*

Questions were asked by Commission staff, the Appellants, and others about potential adverse effects on stream flow, springs, riparian vegetation, and wetlands from pumping water out of the new northern water well to support project developments. The Applicants commissioned a reconnaissance level survey to assess whether, in light of the proposed project, "hydrologic support to the stream, wetlands, and seeps on the property can be protected." The northern well was drilled with the intent to supply irrigation water to the adjacent vineyard, the brandy barn and distillery operation, the equipment barn, and the farmhouse. (Agricultural operations south of the blue-line stream will be supplied with water from an existing well south of the stream.) The November 2012 Balance Hydrologics, Inc. report reviewed the Brader-Magee Farm Plan, the wetland delineation for the property, the project's geotechnical report, water well drillers' logs for both wells on the property, a drainage/runoff report for the property, and a comment letter from biological consultants representing the Appellants. The Balance Hydrologics report discusses the hydrologic environment, the technical approach to the survey, field work conducted, and groundwater occurrence; it then analyzes comparative groundwater quality, a well-pumping simulation for the northern well, and a water-budget surplus evaluation for the property. The report concludes that:

- The measured specific conductance of water in the northern well is substantially lower than values measured at the stream or in other wetlands on the property. This difference is attributed to the well being supplied by a different aquifer than the one supporting the stream, springs, and wetlands on the property. The measured differences in salinity are consistent with values observed elsewhere on the eastern side of Tomales Bay.

- Little or no hydrologic connection was observed between the well and the wetlands or springs during the habitat-significant periods of early and late summer.

- The bottom of the well is approximately 200 feet above the blue-line stream. Calculations were made to determine whether the well, if pumped continuously for 120 days with no recharge, would develop a cone of depression substantially reaching the stream channel. The simulated cone did not reach the channel, and little effect on the stream channel or associated wetlands is expected.

- Neither the springs nor the stream are likely to be impacted by pumping the well. The calculated radius of influence of the pumping well for a 120 day season is 189 feet. The shortest distance from the well to the stream is 370 feet and the distance from the well to the nearest mapped spring is 1,960 feet.

- The watershed appears to have a small water surplus; until this is offset, the stream and the wetlands along it are likely to be fully protected from water depletion.

Commission staff consulted with staff from the California Department of Fish and Wildlife (CDFW), U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service regarding potential project impacts on wetland and riparian habitats, and on environmentally sensitive habitat located on the upland portions of the property. An Environmental Scientist from the CDFW accompanied Commission staff and the Applicant's biological consultant on a site visit to the Applicants' property in February 2012. Project development footprints, wetlands, riparian habitat, potential raptor habitat, and upland areas were examined, and potential habitat and species protective measures were discussed. The CDFW submitted a memorandum to the Commission staff in January 2013 summarizing the Department's review of the proposed project and the measures it believes necessary to protect the fish and wildlife resources under its jurisdiction (see **Appendix H**). The Department concluded that:

- The project will not obstruct the natural flow of the blue-line stream, or change the bed, channel, or bank of the stream.

- The proposed buffer distances around the wetlands (100 feet), pond (300 feet), and riparian corridor (150 feet from the top of bank or 100 feet from the edge of the riparian corridor vegetation, whichever is greater) should be considered a minimum buffer.

- Protective measures are recommended for trees and snags that provide wildlife habitat.

- Protective measures are recommended for California red-legged frogs, Western pond turtles, American badgers, and rare plants and their habitats.

- Construction best management practices, low-impact design features, wildlife-friendly fencing, landscape plans, and revegetation of areas by construction should be included in the development project plans.

These recommendations are included in the proposed project and are also addressed in a number of special conditions attached to this permit, specifically, **Special Conditions 1** (Revised Project Plans), **4** (Grazing Limitations), **5** (Livestock Fencing), **6** (Monitor Grazing), **9** (Protection of Sensitive Species), **11** (Construction Responsibilities and Standards), **12** (Final Storm Water Pollution Prevention Plan) and **13** (Revised Agricultural Production and Stewardship Plan).

Regulatory staff from the Corps of Engineers San Francisco District visited the subject property in March 2012 to investigate importation and placement of fill material into an onsite creek channel and to undertake fieldwork to prepare an approved jurisdictional map depicting the location and extent of waters of the United States on the property. The Corps concluded in a May 3, 2012, letter (see **Appendix H**) to the project Applicant that:

> *Based on this visit, it is clear that rock material was imported for the maintenance of a ranch road and that various other activities were initiated for the preparation of construction on the site. However, no evidence of unauthorized fill into jurisdictional waters of the U.S. was observed during the visit.*

Accompanying this letter was a delineation map depicting the extent and location of wetlands and other waters of the U.S. on the subject property that are subject to Corps of Engineers regulatory authority under Section 404 of the Clean Water Act. However, as noted elsewhere in this report, no development is proposed in wetlands or other jurisdictional waters.

The Coastal Division in the U.S. Fish and Wildlife Service's (Service) regional office in Sacramento was contacted in February 2012 requesting information on whether the Service would be reviewing the proposed project, given the presence of federally threatened California red-legged frogs on the property, but notwithstanding that the property is not within an area designated by the Service as critical habitat for this species. The Service replied that if the project would result in a take of that species, the project proponent would need to pursue incidental take coverage under Section 10 of the Endangered Species Act, and the Service would be involved in that process. The alternative option would be to design the project so that the listed species is not affected. The reply concluded that to date they had not heard of or worked on the proposed project. A September 2012 request to the Service for an update on any involvement by that agency in reviewing the proposed project received no response. However, the project design and the special conditions attached to this permit require protection of California red-legged frogs and their breeding and dispersal habitats on the subject property to ensure no adverse effects on this listed species.

The Appellants and others opposed to the proposed development have raised a number of issues regarding potential adverse impacts from the project on wetlands, riparian habitat, the blue-line stream, sensitive upland habitat, and listed species (see **Appendices I, J, and K**). These issues include a lack of accurate and detailed habitat mapping on the property, a lack of documentation of the full extent of ESHA and rare species on the property, a complete accounting of potential adverse impacts on sensitive habitats and rare species from all elements of the project, inadequate setbacks and buffer areas from wetlands, streams, riparian corridors, and native grasslands, and impacts from existing development on the property (e.g., farm roads, the

northwest water diversion and livestock enclosure). In response to these concerns articulated over the last 30 months since the Commission's substantial issue determination in September 2010, and as the Commission staff confirmed the need to obtain more detailed information on sensitive habitats on the property and on the potential adverse effects from proposed development, the Commission staff periodically requested that the Applicants undertake additional biological survey and impact analysis work on the property, and that the Applicant's respond to both the staff's information requests and the questions raised by the Appellants. All information requests were provided to the Commission staff. All modifications to the project development plan requested by the Commission staff to avoid and/or minimize potential project impacts on sensitive habitat and species were made by the Applicants, including revisions to habitat buffer areas either consistent with or exceeding the minimum LCP setback requirements. The Commission finds that the concerns raised by the Appellants and others have been adequately addressed by the additional biological resources survey and analysis work undertaken since September 2010 by the Applicants' consultants, other state and federal resource agencies, and the Commission staff, and by the resulting modifications made to the project by the Applicants. The extensive project record indicates that the design and site plan of the proposed project was revised to address the substantive concerns raised by the Appellants and other project opponents (see **Appendices I, J, and K**) and to protect sensitive biological resources as new information on their geographical extent across the property was documented. All of the technical materials submitted by the Appellants and their consultants subsequent to the Commission's finding of substantial issue in September 2010, were reviewed and analyzed by the Commission staff to ensure that all sensitive biological resources located on the property were properly identified and given the protection required by the LCP. As documented in this section of the report and in **Appendices E and F**, the Commission has comprehensively addressed all the natural resource issues associated with the proposed development on the subject property, including those issues raised by the Appellants and other project opponents. As currently designed, and as further restricted by a number of special conditions to this permit, the project avoids all wetlands, the blue-line stream and its intermittent tributaries, riparian habitat, seeps and springs, native grassland habitat, and the required setbacks from these areas. As designed and conditioned, the Commission finds that the proposed project will not adversely affect sensitive habitat and species on the property, nor will it adversely affect adjacent sensitive habitat in Tomales Bay, consistent with the requirements of the certified LCP.

In conclusion, the Commission finds that the currently proposed project, as further conditioned by this permit, is designed to and will be undertaken in a manner that is consistent with: (a) the Marin County LUP Natural Resources Policies 1, 4, and 5 on streams and riparian habitats, wetlands, and other environmentally sensitive habitats; and (b) the related Marin County LCP zoning measures found in Chapters 22.56.130 and 22.57.024 on development requirements, standards, and conditions to protect streams, wetlands, and environmentally sensitive habitat, including identification of all stream, riparian and wetland areas, allowable use restrictions, prohibitions against construction or vegetation removal in riparian protection areas, buffer zones around stream, riparian, and wetland areas, and wildlife habitat and native plant community protection measures.

G. WATER QUALITY

LUP New Development and Land Use policies state in part:

> *6. Watershed and water quality protection/grading. In order to ensure the long-term preservation of water quality, protection of visual resources, and the prevention of hazards to life and property, the following policies shall apply to all construction and development, including grading and major vegetation removal, which involve the movement of earth in excess of 150 cubic yards.*
>
> *a. Development shall be designed to fit a site's topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading, cut and fill operations, and other site preparation are kept to an absolute minimum. Natural features, landforms, and native vegetation shall be preserved to the maximum extent feasible. Areas of a site which are not suited to development because of known soil, geologic, flood, erosion, or other hazards shall be kept in open space.*
>
> *b. For necessary grading operations, the smallest practicable area of land shall be exposed at any one time during development and the length of exposure shall be kept to the shortest practicable time. The clearing of land shall be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes shall be in place before the beginning of the rainy season.*
>
> *c. Sediment basins (including debris basins, desilting basins, or silt traps) shall be installed on the project site in conjunction with initial grading operations and maintained through the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.*
>
> *d. Temporary vegetation, seeding, mulching, or other suitable stabilization methods shall be used to protect soils which have been exposed during grading or development. Cut and fill slopes shall be stabilized immediately with plantings of native species, appropriate non-native plants, or with accepted landscaping practices.*
>
> *e. Where topsoil is removed by grading operations, it shall be stockpiled for reuse and shall be protected from compaction and wind or erosion during stockpiling.*
>
> *f. The extent of impervious surfaces shall be minimized to the greatest degree possible. Provisions shall be made to conduct surface water to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development. Grassed waterways are preferred to concrete storm drains, where feasible, for runoff conveyance. Water runoff beyond natural levels shall be retained on site whenever possible to facilitate groundwater recharge.*

The associated LCP zoning measures applicable to the proposed project are found in **Appendix D** of this report. In summary, these zoning measures address development requirements, standards, and conditions to protect water quality, including standards for and restrictions on

grading and excavation, avoidance of development in known hazardous areas, and implementation of soil erosion, drainage control, and revegetation measures.

As mentioned in the project description, the subject property contains a number of water features including a blue-line stream running through the central portion of the property, two intermittent water courses in the southern half of the property (tributaries to the blue-line stream), a farm pond, seasonal seeps, springs, and wetlands. The primary drainage on the parcel is into the blue-line stream that subsequently drains into Tomales Bay. As a result of this drainage pattern, any impacts to the water features on the property from the proposed development could potentially result in water quality impacts to Tomales Bay. The LCP specifically outlines the importance of improving and maintaining the water quality of Tomales Bay in the Natural Resource policies and states in part:

> *1.Water quality. The County encourages the Regional Water Quality Control Board, State Department of Health, and other responsible agencies to continue working on identifying sources of pollution in Tomales Bay and to take steps to eliminate them. LCP policies which address specific development-related water quality problems, such as septic system discharges, are contained in the LCP sections on Public Services and New Development. Other LCP policies on the location and concentration of development and protection of riparian habitats address water quality concerns from a broader perspective.*

Therefore, any new development or agricultural activities proposed must be analyzed for consistency with the watershed and water quality protection/grading LCP policies and zoning measures, as well as the aspects of water quality addressed in the Agriculture Resources and Public Services policies found in **Appendix B**.

New Development

The various elements of the proposed project have been located and designed to fit the site's topography, soils, geology, and hydrology, minimizing cut and fill operations. No known active, potentially active, or inactive fault traces exist within the subject property. The area proposed for the clustered development of the equipment barn, brandy barn, and farmhouse, is free from landslide potential and contains stable soils. No development has been proposed in the portion of the northwest corner of the property where erosion has occurred due to the uncontrolled drainage of a spring or in the numerous slide areas around the stream channel. Development of the driveway, brandy barn, equipment barn, equipment shed, farmhouse, greenhouse, sheep shelters, and hopyard shelter, and the over-excavation activities, would require 8,009-cubic-yards of cut and 7,529-cubic-yards of fill. All cut materials would be used to construct the improvements, leaving minor amounts of excess earth material on-site. The proposed farmhouse, brandy barn, equipment barn, and greenhouse would create new impervious surfaces that cover approximately 7,000 total square-feet. However, the 1,276-foot-long driveway would have a pervious, crushed gravel surface layer, as would all parking areas adjacent to the brandy barn, equipment barns, and residence. The other proposed structures (hopyard barn, two sheep shelters, and equipment shed) are open-sided, with ground surfaces partially exposed to the elements.

A drainage plan was prepared for the project that analyzed the increase in storm water runoff from the new development and designed management features that would collect and disperse the run-off on-site. This plan included a hydrology analysis based on Caltrans Rainfall Intensity-Duration-Frequency Analysis and Marin County's Hydrology Manual (Revised August 2, 2000). To manage the increased runoff from the impervious surfaces, the project would include appropriately placed ditches, drainage inlets, swales, and dissipaters. Storm drainage from the driveways would be filtered through existing vegetation, lined swales with permanent turf reinforcement mat, and bioretention swales and dissipaters. Any storm drainpipes installed would also be connected to the bioretention swales and dissipaters (see **Exhibit 2**). The drainage plan concluded that with these measures, there would not be a significant increase in site runoff and that the development would not affect the downstream drainage system. The project would also employ best management practices (BMPs) for grading operations and other construction activities including seasonal time of grading, use of erosion and sedimentation control features, and revegetation of disturbed areas. Erosion and siltation control measures (sediment traps, fiber rolls, and sandbags) would be installed at the time of construction.

The following siting, design, and construction elements for the portion of the project discussed above are consistent with the watershed and water quality protection/grading policies of the LCP:

- Siting of the project to fit the property's topography, geology, and soils, away from potential known erosion and slide hazards (Policy 6a).
- Minimization of cut and fill and the reuse of cut soils on-site (Policy 6a and 6e).
- Use of runoff control features to manage surface runoff, such as storm drains, bioretention swales, and dissipaters (Policy 6f).
- Minimization of impervious surfaces by using pervious driveways and open sided structures with exposed ground surfaces (Policy 6f).
- BMPs for construction (Polices 6b-6e)

However, since explicit details on construction and operation of the development are absent from the project materials, to ensure that these activities would be fully consistent with the water quality policies of the LCP, **Special Conditions 11 and 12** have been included**.** These special conditions outline more specific construction and operation BMPs relative to water quality protection, including development of a storm water pollution and prevention plan (SWPPP). With the addition of **Special Conditions 11 and 12**, the new development discussed above would be consistent with the watershed and water quality protection/grading policies of the LCP.

Agriculture

The new proposed agricultural uses for the property include a vineyard and vegetable garden. The sheep grazing operation continues livestock grazing that, based on representations made to the Applicants by previous owners and the presence of an agricultural pond on 1972 and 1979 aerial photographs of the property, has occurred since the mid 1960s, prior to the Applicants' lease and purchase of the property and subsequent permit applications. The Applicants' *Agricultural Production and Stewardship Plan* (discussed in **Section E**) acknowledges the potential for adverse impacts related to erosion control and livestock waste containment due to

the proximity to Tomales Bay and the site's drainage. General elements contained within this plan consistent with maintaining on-site water quality include:

- Maintaining 100-foot setbacks from riparian areas (no development, road grading, cultivation, or grazing allowed in these areas).
- Maintaining 100-foot setbacks for southern watercourses except for two livestock crossings. Crossings would be restricted to non-flow periods to minimize erosion.
- Implementing erosion control programs in areas of the creek prone to erosion including slope revegetation, water bar placement, and slope stabilization activities.
- Restoring control over a minor erosive area around an uncontrolled spring.
- Allowing unused farms roads to return to their natural state and implement erosion control practices during the transition period.

The proposed six-acre vineyard would be located on gently sloping (the steepest slope is 18%), south-facing land near the northern property line in rocky loam, well-drained soil. The proposed 2.3-acre vegetable garden would be located on the central western edge of the property in a grassland area (15% slope), south of the drainage channel and outside of the stream setback area. The vineyard and vegetable garden would be watered using drip irrigation and no pesticides or herbicides would be applied to these areas.

Locating the vineyard in an area consisting of rocky loam soil, with a grade of less than 30%, and using drip irrigation will reduce the potential for runoff and erosion, consistent with the watershed and water quality/grading policies of the LCP policies (Policy 6a). The erosion control programs, restoration of erosive areas, and implementation of erosion control for unused farm roads are also consistent with these Policies (Policies 6a and 6d). As discussed in **Section F**, the riparian vegetation on the property helps to maintain a high level of water quality by helping to filter sediment from surface runoff and stabilizing soil on adjacent stream banks. The designated setbacks from riparian areas would be consistent with maintaining the services and functions provided by these habitats and the water quality of the area, consistent with LCP Natural Resource Policies 1c and 1d.

Section E outlines the grazing plan detailed in the *Agricultural Production and Stewardship Plan*. The continued grazing of 50 acres that drain into Tomales Bay is subject to the requirements of the Resolution R2-2008-0054 of the San Francisco Bay Regional Water Quality Control Board (RWQCB) (Conditional Waiver Of Waste Discharge Requirements For Grazing Operations In The Tomales Bay Watershed (Tomales Bay, Lagunitas Creek, Walker Creek and Olema Creek) In The San Francisco Bay Region). The waiver conditions require submittal of a Ranch Water Quality Plan that shows how the landowner/operator would minimize delivery of sediment, pathogens, nutrients and mercury from ranching lands to surface waters. In addition, RWQCB waiver conditions require the landowner/operator to manage manure operations, grazing operations, animal use areas, road development and access of animals to surface waters in order to minimize discharges of pollutants to surface waters. The landowner/operator is also required to implement site-specific Management Practices (MPs) that reduce nonpoint source pollution due to grazing and protect water quality. The RWQCB waiver conditions also require the landowner/operator to conduct visual inspections of the ranch facility to verify that chosen

MPs are being implemented and that the waiver conditions are being met. **Special Condition 6** of this permit requires the Applicants to submit an annual monitoring report to the Executive Director summarizing the results of the monitoring program of sheep grazing operations, coastal terrace prairie habitat, and soil erosion. The requirements of this waiver, the grazing plan as designed in the *Agricultural Production and Stewardship Plan*, and the grazing monitoring condition are sufficient to ensure that continued grazing operations will ensure the long-term preservation of water quality, consistent with the requirements of the RWQCB and the certified LCP.

The construction and operation of the vineyard and vegetable garden could lead to water quality impacts from pesticides entering runoff, or from increased erosion, sedimentation, and slope instability. Because the Applicants will not be using pesticides or herbicides on these agricultural features, water quality impacts from these pollutants is not a concern. However, the information provided by the Applicants does not ensure that the construction and operation of the vineyard and vegetable garden would be fully consistent with the watershed and water quality protection/grading policies. Therefore, to ensure this portion of the project is consistent with the rest of the development's water quality protections, the Commission has included **Special Condition 13.** This condition requires the Applicants to revise their *Agricultural Production and Stewardship Plan* to implement construction BMPs pursuant to **Special Condition 11** and to implement structural erosion control systems for the vineyard and vegetable garden operation. With this condition, the construction and operation of the vineyard and vegetable garden would be consistent with the LCP water quality policies. In addition, **Special Condition 1** of this permit states that prior to issuance of the coastal development permit, the Permittees shall submit revised project plans that, in part, indicate that all areas on the subject property temporarily disturbed due to construction activities shall be restored to pre-project conditions to the maximum extent feasible. This condition will further ensure that post-construction water quality impacts are minimized. Lastly, since there would be sheep, a small number of horses, and a small chicken coup on the property, **Special Condition 13** also requires the Applicants to include a fertilizer and manure management plan within their Agricultural Production and Stewardship Plan.

Distillery Waste Water and Septic System

Domestic wastewater would be treated with an on-site disposal system, which includes a pretreatment process, and would eventually discharge to a leach field on the property. Toilet facilities are proposed for the main house, the equipment barn, and the brandy distillery barn. Wastes from the main house would initially go to a 1,500 gallon septic tank and then would be pumped uphill to a transitional tank before draining by gravity to a 2,000 gallon septic tank (Septic Tank A) adjacent to the brandy barn. Domestic wastes from toilets in the equipment barn and brandy barn would use the same pipe to drain to Septic Tank A. The purpose of septic tanks is to allow dense solids (sludge) to settle out and lighter than water materials (scum) to be collected. The residual water is called septic tank effluent (effluent) and domestic effluent can usually be applied to land in properly designed and located "leach fields" without further treatment. As described below, the effluent from Septic Tank A would be combined with effluent from the distillation process that has high levels of biodegradable materials and particulates and requires additional treatment ("pretreatment") before being discharged to a leach field.

In addition to domestic wastewater, this project would generate wastes associated with the production of brandy from grapes. It is estimated that 8,000 gallons of total waste would be generated annually by the brandy operation (2,600 gallons of solid wastes and 5,400 gallons of liquid waste). The solid wastes generated by brandy production are those generated by the stemming and crushing of grapes. The Applicants plan to store the solid wastes in grape tub(s) in the brandy barn as they crush and ferment grapes. Depending on the harvest and production schedules, they would transport the solids up to a lined compost pile or pit at the vineyard every few days. After the solids are successfully turned into compost, the compost would be spread on the vineyard as needed.

The liquid wastes from the distillery would be made up of residual liquid from the distillation process and water used to wash out tanks and distillation equipment. Although the distillery process water would only be generated during a short period each year (about 30 days), the liquid wastes have much higher Biochemical Oxygen Demand (BOD) and higher Total Suspended Solids (TSS) than effluent from domestic wastewater and require specialized treatment. BOD is caused by the presence of readily degradable organic materials that can stimulate natural bacteria in the environment and lead to low oxygen, stagnant water quality. High TSS in the discharge can transport bacteria and lead to clogging of the leach field. The Applicants propose to use the Advantex commercial wastewater system produced by Orenco, Inc. as pretreatment prior to discharging the waste water to the leach field. The Advantex system sprays effluent onto a filter media at low rates where bacteria metabolize organic compounds and bind particulate materials, in what is called a "trickling filter" system. The effluent drains to a recirculation tank and is passed through the media filters at least four times before being pumped to the leach field. In order for this system to adequately pretreat the combined domestic and distillery effluent, it must reduce the BOD below 30 milligrams per liter (mg/L) and TSS below 30 mg/L.

The sizing of the wastewater pretreatment system is based on information from other alcohol distillation operations used by the wine and beer industry in Northern California. This distillery is expected to generate an average of 100 gallons per day of high BOD wastewater over a 30 day production cycle. In order to avoid overloading the trickling filter system, the high BOD and TSS distillery effluent would be mixed with domestic effluent prior to pretreatment. The wastewater treatment consultant for the project has determined that the mixing of 50 gallons per day of distillery process waste with the domestic wastewater from the farm would create an effluent that is well within the treatment capacity of the proposed system. The system has been designed using conservative assumptions, such as assuming that the liquid wastes prior to mixing and pretreatment would have a BOD of 4000 mg/L. The Applicants believe, based on their experience with beer fermentation, that the process water would actually have less than 1,000 mg/L BOD.

The distillery process water would first be drained to a second 2,000 gallon septic tank (Septic Tank B) to allow removal of sludge and scum before the effluent is combined with domestic effluent. The septic tanks for both waste streams would be periodically pumped and the sludge would be hauled off-site to a licensed waste handling facility. During the 30 day brandy

production and distillation process, and for about 30 days after that, 50 gallons per day of distillery process wastewater would be mixed with 200 to 600 gallons per day of domestic wastewater for treatment with the Advantex system. Since the distillation process would be creating 100 gallons per day of wastewater over the 30 day annual production, the excess wastewater would be retained in the Septic Tank B until it can be mixed and treated. It is expected that all the wastewater from the distillery process would be treated over a 60 day period. The wastewater would be tested to ensure that influent to the pretreatment system is within operational limits for pH and alkalinity. After pretreatment the water discharged to the leach field would be tested for BOD, TSS, pH and coliform bacteria to be sure the pretreatment system is working properly. To further ensure that the proposed wastewater disposal system for distillery will not adversely affect the septic system and leach field, and water quality on the subject property or in Tomales Bay, **Special Condition 14** of this permit states that prior to the start of construction of the brandy distillery, the Permittees shall submit written evidence to the Executive Director of approval by the San Francisco Regional Water Quality Control Board of the distillery wastewater disposal system. Email communication from staff at the San Francisco Bay Regional Water Quality Control Board on September 13, 2012, stated that a Report of Waste Discharge (ROWD) will be submitted by the Applicants to the Regional Board after the Commission has acted on the subject permit application (see **Appendix H**). The Regional Board will then review and process the ROWD as appropriate (e.g., adopt project-specific Waste Discharge Requirements (WDRs), enroll the project under a General WDR Order if applicable, or waive WDRs).

The Applicants propose to place the leach field about 1,000 feet north of the main house and about 200 feet higher in elevation. Soil tests of the proposed area conducted in August of 2012 were used to develop the design of the leach field which would have two parallel distribution systems. Each of the systems can handle the full discharge of the wastewater system and the duplication is meant to provide a contingency in the case of an unusually wet year or unexpected system problems. The testing showed the soils to be clay loam and sandy clay in texture and to have average percolation rate of 1.2 minutes per inch at 18 to 30 inch depths. The soil tested showed 65 to 73% silt and clay, and the clays were tested to verify that they did not have excessive shrink-swell potential that might impede infiltration. Each of the two leach fields would have two pressure distribution pipes that are 75 feet long and the maximum loading rate would be 1.8 gallons per foot per day of the pretreated effluent. The pressure distribution pipes would be placed 30 inches deep on top of 15 inches of gravel and below 12 inches of soil cover. The leach field is proposed to be within the vineyard boundary with 20 feet of buffer from the vines uphill and to the side of the distributions lines and a buffer of 40 feet downhill from the distribution lines. 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.

Commission water quality staff has reviewed the proposed wastewater system as described in a letter and plans from the consultant (Rich Lincoln and Sons) dated November 14, 2012 and November 29, 2012 respectively and further discussed the system with the Applicants and their

consultants by phone on February 7 and 11, 2013. On March 18, 2013, the Commission staff received a separate analysis of the proposed wastewater collection and treatment system from Orenco Systems, Inc., the manufacturer of the AdvanTex Treatment System proposed for installation on the subject property. Orenco Systems, Inc. concluded that the proposed design of the wastewater treatment system for the subject property is compliant with the most current version of the AdvanTex Treatment System applicable design criteria (**Exhibit 24**). Commission water quality staff agrees that the wastewater system is adequate to support the operation as described.

The LCP Public Service Policies in **Appendix B** state that on-site sewage disposal must meet the standards of either the RWQCB or County's code 18.06. As analyzed above, the septic system meets the standards set forth in this code, has the appropriate setbacks from well, vineyard, and water resources on the property, and is in an area with low erosion potential. Therefore, as designed, the operation of the distillery would not impact water quality on the project site or surrounding area as there would be adequate sewage disposal systems to serve the operation consistent with the LCP Agriculture Policy 4d and Public Services Policy 3a.

Individuals opposed to elements of the proposed project have raised questions about potential adverse impacts to water quality on and adjacent to the property, in particular impacts from the disposal of domestic and distillery wastewater on groundwater, surface water (the blue-line stream), and Tomales Bay; whether a separate septic system and leach field are required for the distillery wastewater stream; and the potential erosion and sedimentation impacts on the blue-line stream and Tomales Bay from vineyard construction and operations (**see Appendices I, J, and K**). However, the analysis by the Commission staff in this section of the report of the proposed wastewater collection, management, treatment, and disposal systems for the project, including wastewater from domestic sources and from the proposed distillery operation, addresses all the significant concerns raised by the Appellants and other project opponents, and documents that the wastewater systems are designed, and will be implemented and monitored, to avoid adversely affecting groundwater and surface water on the property and in Tomales Bay. In addition, the future review of the proposed wastewater collection and treatment plan by the San Francisco Bay Regional Water Quality Control Board (through the Regional Board's requirement that the Applicants submit a Report of Waste Discharge for the project) will further ensure protection of water quality on and adjacent to the subject property.

As discussed in this section, the siting, design, and construction of the new development, with the addition of **Special Conditions 11 and 12** is consistent with the LCP Watershed and Water Quality Protection/Grading Policies. Elements contained within the Agricultural Production and Stewardship Plan and the siting of the vineyard and vegetable garden would further protect water resources on the site consistent with the LCP Watershed and Water Quality Protection/Grading Policies and Natural Resource Policies. **Special Condition 11** has been included to ensure the full suite of BMPs is applied to prevent water quality impacts from erosion and run-off as a result of the construction and operation of the vineyard and vegetable garden consistent with the LCP Water Shed and Water Quality Protection/Grading. The grazing operation as designed in the *Agricultural Production and Stewardship Plan* would continue consistent with RWQCB waiver reporting. The wetland and riparian setbacks from all project elements are consistent with

the LCP Natural Resource policies and would ensure the water quality functions and services provided by these habitats are not degraded. The brandy operation has sufficient on-site disposal mechanisms for its waste streams, and the septic system has been designed consistent with the standards set forth in the LCP Public Services and Agriculture Policies. To further safeguard coastal water quality, **Special Condition 14** is included to ensure that the SFRWQCB reviews and approves the wastewater disposal system for the proposed distillery operation. Therefore, the proposed project, as conditioned, is consistent with the water quality protection policies of the Marin County LCP.

H. VISUAL RESOURCES

LUP New Development and Land Use policies state in part:

> *3. Visual Resources*
>
> > *a. The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.*
> >
> > *b. Development shall be screened with appropriate landscaping; however such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged . . . .*

LUP Agriculture Resource Policy 5(b) states in part that:

> *Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations.*

The applicable LCP Zoning Code sections regarding visual resources state in part:

> *Chapter 22.56.130: DEVELOPMENT REQUIREMENTS, STANDARDS AND CONDITIONS*
>
> *O. Visual Resources and Community Character*
>
> > . . .
> >
> > *2. To the maximum extent feasible, new development shall be designed and sited so as not to impair or obstruct existing coastal views from Highway 1 or Panoramic Highway.*
> >
> > *3. The height, scale and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.*

4. Development shall be screened with appropriate landscaping; however, such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged.

. . . .

Chapter 22.57.024: DESIGN STANDARDS

The following requirements for project design, site preparation, and use shall be imposed through the Master Plan, Development Plan and/or Design review process, as necessary, to implement the goals and policies of the LCP, the Marin Countywide Plan and any applicable community plan.

1. Project Design:

(a) Clustering. Buildings shall be clustered or sited in the most accessible, least visually prominent portion or portions of the site. Clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides. In these areas, the prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography. In areas with wooded hillsides, a greater scattering of buildings may be preferable to save trees and minimize visual impacts. In areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses.

(b) Ridgelines. There shall be no construction permitted on top of within three hundred feet horizontally, or within one hundred feet vertically of visually prominent ridgelines, whichever is more restrictive, if other suitable locations are available on the site. If structures must be placed within this restricted area because of site size or similar constraints, they shall be on locations that are least visible from nearby highways and developed areas.

. . .

(d) Roads, Driveways and Utilities. . . . In areas with undeveloped agricultural land, efforts shall be made 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.

. . .

> *(g) Building Height. No part of a residential building shall exceed twenty-five (25) feet in height above natural grade, and no accessory structure, including water tanks, shall exceed fifteen feet in height above natural grade . . . .*
>
> *Chapter 22.57.035(1): DEVELOPMENT STANDARDS AND REQUIREMENTS*
>
> *1. . . . Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations.*
>
> *Chapter 22.57.036(6): REQUIRED FINDINGS*
>
> *The proposed land division and/or development will have no significant adverse impacts on . . . scenic resources.*

The Marin County LCP recognizes the scenic visual resources of the Tomales Bay region:

> *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.*

Location of Proposed Project

The proposed project is located on a 150-acre hillside property on the east side of Highway 1 above Tomales Bay, approximately eight miles north of Point Reyes Station and two miles south of Marshall (**Exhibit 7**). The property is currently mostly undeveloped agricultural land, save for a network of unimproved, two-track farm roads that supported historic cattle grazing, a partially silted-in farm pond behind an earthen dam on the lower reach of a blue-line stream, perimeter and interior livestock fencing and gates, two water wells, water tanks, an aerial power line to a pump shed near the pond dam, a quarter-acre hops cultivation field, and other minor agricultural improvements previously described in **Section A** of this report. The most visually-dominant element on the property is the riparian forest which borders the blue-line stream, extending from the northeast corner of the property down to Highway 1. The balance of the property north and south of this corridor is comprised primarily of open grassland.

The subject property is located at the southern reaches of the rural community of Marshall. The property is most easily and commonly viewed by the public from Highway 1, and in particular, by those traveling north. After leaving the rural residential area on the northern side of Point Reyes Station, one travels though a transitional area of development, passing through a moderately wooded landscape interspersed with small dairy farms, ranches, a winery, and limited residential structures (**Exhibit 13**). Buildings, barns, driveways, fences, and signs are common as one continues north on the highway, but ultimately open views of Tomales Bay, the

Point Reyes peninsula, and the grassland-dominated hills east of the bay begin to dominate the view several miles north of Point Reyes Station (**Exhibit 14**). The landscape is now one of little obvious development, save for livestock fencing, the occasional driveway and residential structure, and the Tomales Bay Oyster Company complex five miles north of town. At approximately 6.5 miles, the Appellants residential structure on the adjacent property to the north of the Applicants' property comes into view as does the lower portion of the Applicants' property (**Exhibit 15**). Soon after one sees the story poles and orange netting representing several of the proposed structures on the Applicants' property, but one is still drawn primarily to the view northwest towards Tomales Bay, including the Marconi Cove area and several structures on the shoreline side of Highway 1 north of the cove (**Exhibit 16**). Unobstructed views of rolling grassland hillsides are soon lost as the highway curves slightly to the right and begins its descent to Marconi Cove and the blue-line stream crossing. Prior to arriving at the intersection of Highway 1 and the paved driveway that provides access to the Applicants' property and the Appellants' residence, the view eastward is intermittently blocked by tall, mature trees along the highway shoulder and the raised highway embankment; the view westward to Tomales Bay remains dominant.

Driving north on Highway 1 at the 35 MPH speed limit, it is approximately 45 seconds between the time the Appellants' residence first comes into view until the driveway intersection is reached; it is a 20-second-long drive from the time one first sees the orange netting on the Applicants' story poles until the driveway intersection. Commencing at this location, essentially the southern gateway to the community of Marshall, the viewshed changes as the topography east of the highway steepens and is heavily vegetated, the view towards the bay dominates (**Exhibit 17**), and more development presents itself as you enter Marshall. If one reverses the direction of travel to the Applicants' property, and moves north to south along Highway 1, views of Tomales Bay towards the west dominate from south of Marshall and it is not until just north of the driveway intersection does a view (through the trees) of the Applicants' property appear, first towards the southeast and then after passing the embankment brief views up the hillside to the east (**Exhibit 18**).

Other public views of the property are from the undeveloped Marconi Cove unit of Tomales Bay State Park (directly across Highway 1 from the property, and discussed previously in **Section E** of this report), certain locations on Tomales Bay and its western shoreline, and from segments of the Meadow Trail on the grounds of the Marconi Conference Center State Historic Park, approximately one-half mile to the north.

It is useful at this point to examine the Marconi Cove development plans proposed by California State Parks, to better understand the geographical context in which the proposed Applicants' project sits. Marconi Cove is located across Highway 1 from the Applicants' property and was once the site of a private marina and boat docks, boat ramp, gas station, and parking area. The marina and boat docks no longer exist, the ramp is still present, and a deteriorating remnant wooden builing sits on the site. California State Parks obtained the property in 2002 but it remains closed to the public due to a lack of funding for redevelopment. In September 2011 the Commission approved a coastal development permit application from Caltrans (CDP 2-11-011) for installation of 115 linear feet of rock slope protection along the west side of Highway 1 at

Reynold's Cove (north of Marconi Cove). As a part of that action, the Commission approved Caltrans' proposal to mitigate for the public access impacts of the Highway 1 project by paying an in-lieu fee that would facilitate the improvement and opening of the Marconi Cove property to the public. The proposed improvements would include facilities for motorized and non-motorized boat launches, signage, parking, pedestrian pathways, picnic areas, an environmental campground, bathroom facilities, fencing, and lighting. However, approval of CDP 2-11-011 did not authorize construction of the Marconi Cove project at this time. This mitigation project will require future environmental and coastal development review, consistent with Marin County LCP and Coastal Act policies, which California State Parks and the Department of Boating and Waterways have committed to undertake.[3]

The relevance of this recent Commission action in support of visitor-serving recreational facilities at Marconi Cove to the immediately adjacent proposed Applicants' project is that this location on the east side of Tomales Bay is not a pristine, undeveloped landscape but rather is the point at which the southern reach of the rural community of Marshall begins to assert its presence along the Highway 1 corridor. The Commission's recent approval in concept of new public recreational activities and structures on the shoreline of Tomales Bay at Marconi Cove indicates that development at this southern gateway to Marshall need not be automatically avoided in order to maintain parcels free of all development activities. While development on the Applicants' property should be designed to take into account future public recreational activities at Marconi Cove, and not obstruct or impair coastal views from that location (albeit views eastward and away from Tomales Bay), the introduction of agricultural operations and related structures on the Applicants' property, consistent with LCP agricultural policies, does not necessarily imply that LCP protected visual resources will be impaired or obstructed.

Applicant's Proposed Mitigation Measures

The Applicants state that the proposed development was designed with a goal to minimize impacts on scenic coastal views from public areas to the maximum extent practicable. The site plan clusters the three major buildings in the northwest corner of the property, near existing structures on the adjacent property, near the existing power line line terminus at the farm pond, and near the existing paved driveway intersection at Highway 1. The equipment barn and farmhouse will be set into their hillside locations to minimize height above natural grade. Proposed agricultural structures south of the stream/riparian corridor (sheep shelters, hopyard shelter, and greenhouse) are smaller in size and height, and take advantage of topography and vegetation to minimize their visibility. All of the buildings and structures adhere to the height limitations in the LCP, and incorporate design features, building materials, and earth-tone colors to blend in with the natural landscape to the extent practicable. All exterior lighting will be the minimum necessary for safety and have a directional cast downward to eliminate excess glare. 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

[3] The Commission staff contacted staff at Point Reyes National Seashore and California State Parks to inquire if either agency had concerns about potential visual resource impacts on their jurisdictional lands (the National Seashore and Tomales Bay State Park, including the Marconi Cove unit, respectively) from the Applicants' proposed development project. Both agencies reported back (California State Parks in November 2012 and Point Reyes National Seashore in February 2013) that they had no comments on the proposed project (see **Appendix H**).

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. Restoration of disturbed construction areas will return those areas to pre-disturbance conditions, and will include revegetation with native plant materials. Retaining walls along the driveway and at other visible locations will use natural-appearing construction materials and native vegetation screening to minimize their appearance. **Special Condition 1** of this permit requires in part that the Applicants implement all proposed visual resource protection measures.

The Applicants first installed story poles and orange netting to represent the location, outline, and mass of the proposed structures during the Marin County coastal permit process (**Exhibit 20**). These remained in place through the Commission's substantial issue process in the summer and fall of 2010. Since that time, inclement weather removed or caused the Applicants to remove poles and netting, new poles were installed, and the locations of several of the proposed structures were slightly adjusted to reduce their visibility or to account for updated identification and mapping of sensitive habitat on the property. In late 2012, the Applicants re-installed story poles at the locations of all proposed structures in their currently proposed locations, painted the tops of the poles bright orange, and installed colored rope to represent building outlines and rooftop lines. In late January 2013, strips of orange netting were wrapped around the perimeter story poles at the brandy barn, equipment barn, and farmhouse sites to make these structures more visible from Highway 1 and Marconi Cove. This latest effort, combined with previous story pole and netting installations on the property and visual simulations of the proposed structures, are adequate to evaluate potential impacts to public views from the proposed development.

The proposed brandy barn, equipment barn, and farmhouse, even with post-construction screening vegetation and the numerous design features incorporated into the project to minimize their appearance on the property, will nevertheless be visible to some degree and from some locations along Highway 1 and Marconi Cove, and to a far lesser degree from distant public viewing areas on Tomales Bay and the Point Reyes Peninsula. The smaller agricultural shelters and the greenhouse will be much less visible, if at all, due to their size and locations across the southern half of the property.

Consistency With LCP

The Marin County LCP does not require that new development, agricultural or otherwise, be invisible from public viewing areas, but rather that it be:

- Sited so as not to obstruct significant views as seen from public viewing spaces.
- Designed and sited so as not to impair or obstruct existing coastal views from Highway 1.
- Clustered in the least visually prominant portion or portions of the site.
- Compatible with the character of the surrounding natural or built environment.
- Designed to follow the natural contours of the landscape.
- Kept off visually prominent ridgelines.

The proposed development, as conditioned, meets all of these criteria. The proposed project is located east of Highway 1. While the proposed structures would be visible from a 400-foot-long

segment of northbound Highway 1, from portions of the Marconi Cove property, and from more distant public viewing areas, the structures would clearly not obstruct significant public views or impair or obstruct existing coastal views from Highway 1. The structures are sited away from ridgelines and clustered near the existing and highly visible residential development on the parcel immediately adjacent to the north and are designed and conditioned by this permit to be agrarian in design and to blend into the landscape.The site plan also preserves nearly all of the open grasslands and all of the highly scenic riparian woodlands on the subject parcel. The structures are located over 3,500 feet from a visually prominent ridgeline, and the equipment barn and farmhouse are set into the hillside, thereby lowering the profile of each building. Highly scenic views towards Tomales Bay would remain unchanged by the project. Views eastward across grasslands and hillsides would not be obstructed or impaired but rather would be slightly affected from certain locations due to the placement of structures supporting new agricultural development.

The proposed project also includes the preparation of a tree thinning plan for the ornamental trees previously planted by the Applicants along the western property line adjacent to Highway 1, in order to ensure that significant scenic views eastward from the highway are not obstructed or impaired as these trees reach their mature height and width. **Special Condition 15** of this permit states that prior to issuance of the coastal development permit, the Permittees shall submit a plan for the thinning and/or removal of the cypress trees that meets the following criteria: (1) trees planted between the southwest corner of the property up to that location where Highway 1 begins a right-hand curve and begins to dip below the right shoulder embankment shall be removed to preserve unobstructed views of coastal hillsides to the east; and (2) trees planted north of this removal location may be retained as they are in a location that will not obstruct views to the east. **Special Condition 15** also requires that implementation of the tree thinning program shall be completed prior to the start of any other development authorized under this permit (excluding the livestock enclosure and water diversion restoration work required under **Special Condition 1(e)**).

The Appellants and others have expressed numerous concerns about the potential adverse impacts to visual resources from the proposed project (see **Appendices I, J, and K**). These concerns center on their observations about impacts to public views due to the location of buildings, structures, and the driveway; the adverse impacts on scenic hillside views; the lack of accurate story poles and netting to visualize building and structure locations and impacts; the absence of staking and flagging of all proposed development; and the need for more detailed and sophisticated visual simulation analysis of all proposed developments and of development alternatives. The Commission finds that these concerns have been adequately addressed in the preceeding analysis within this section of the report, and that there is substantial evidence in the project record and in this section of the report that the project is consistent with Marin County LCP visual resource policies. Therefore, the Commission finds that while the project as conditioned will introduce structures on the property that will be visible from various locations in the vicinity, that development will not obstruct or impair significant coastal views inconsistent with the requirements of the certified LCP.

Conclusion

In conclusion, the proposed development would introduce agricultural operations across a relatively undeveloped landscape. There will be changes to public views of the Applicants' property from what exists now. The project will introduce agriculture operations across the property, but in a way that minimizes public view impacts. This is a parcel zoned for agricultural production and the project will consist of a variety of agricultural activities, including barns and structures in support of those activities. The Commission determined in **Section E** of this report that these operations would be consistent with the agricultural protection provisions applicable to the property and would meet the LCP goals to protect and support agriculture in this region of the Marin County coastal zone. In this section, the Commission must determine whether these operations would also be consistent with LCP policies established to protect the visual resources that are present across those same agricultural lands. It has been established in this report that views of the lower portion of the property from Highway 1 and Marconi Cove will be affected due to the placement of three buildings and other agricultural structures, construction of an access driveway, but such development is clustered, conditioned to be agrarian in nature and sited and designed to limit perceived mass and bulk, and the planting of mottling/screening vegetation will reduce the visibility of those structures. Views of the property from Tomales Bay, the Marconi Conference Center State Historic Park's Meadow Trail, and from across the bay at locations in Point Reyes National Seashore will be affected only minimally by the introduction of the aforementioned development. A variety of agricultural operations are present along Highway 1 between Point Reyes Station and Marshall. The fact that the proposed project occurs at the southern gateway to Marshall rather than several miles south amidst a relatively undeveloped stretch of Highway 1 further ameliorates the effects on public views from project strcutures. In order to: (1) comply with clear LCP prohibitions on development in sensitive habitat and adjoining setback areas;(2) comply with LCP requirements for clustering new development near existing development and roads; and (3) preserve the vast majority of the property outside of protected habitat areas for agricultural uses, the Applicants have submitted a development site plan that meets those requirements while avoiding the obstruction and impairment of significant coastal views, and remaining compatible with the adjoining built environment to the north and the natural environment to the south and east. Therefore, the Commission determines that the proposed project, as conditioned, is consistent with Marin County LUP New Development and Land Use Policy 3 (Visual Resources) and the applicable LCP Zoning Code Sections (Chapters 22.56.130, 22.57.024, 22.57.035, and 22.57.036).

I. UNPERMITTED DEVELOPMENT

There are allegations of unpermitted development and/or violations of the Marin County LCP undertaken by the Applicants on the subject property. These individual allegations are classified into three categories: (1) development that will be removed and then followed-up with site restoration to pre-development conditions; (2) development that will be retained and approved under this permit; and (3) alleged violations without supporting evidence:

- **Development of a livestock enclosure**. In August 2010 the Applicants constructed an open-fenced livestock enclosure pen approximately, 30-feet by 120-feet in size, near the northern boundary and in the northwest corner of the property. In addition, the Applicants dug a 3-foot deep basin (15-feet by 15-feet), adjacent to and downslope of the

enclosure. This construction and the short-term (approximately several days) placement of several pigs within the enclosure resulted in trampling of grassland in the enclosure, and a depth profile change to the area where the basin was dug. The area affected does not contain any wetlands or environmentally sensitive habitats or species. Due to the short time that the animals inhabited the enclosure, it is unlikely that any significant disturbance to water quality resulted from the installation of the enclosure. Through this permit, the animal enclosure would be removed and the disturbed habitat revegetated and restored to its original condition, including pre-construction contours and elevation. Removal and restoration of the enclosure would occur prior to any new development authorized by this permit. **Special Condition 1(e)** of this permit enforces this requirement.

- **Installation of pipes to divert water.** In January 2011 the Applicants installed surface storm water diversion works, consisting of a six-inch diameter U-shaped plastic pipe and four-inch diameter closed PVC pipe, along the upslope edge of the animal enclosure in the northwest corner of the property. The pipes were used to divert surface water flows downslope and to the west to a paved swale and storm water drain on the existing paved driveway. This stormwater eventually discharges into the blue-line stream and Tomales Bay. Prior to the diversion, surface water would flow across and downslope through this part of the property. Through this permit, the storm water diversion works would be removed and the site would be restored to its original condition. Questions regarding potential impacts to wetlands on the property from the diversion works are addressed in **Section F** of this report. Removal of the diversion works would occur prior to any new development authorized by this permit. **Special Condition 1(e)** of this permit enforces this requirement.

- **Development of the northern water well**. The northern water well was approved in February 2010 by Marin County Environmental Health Services and was drilled by the Applicants in late 2010. The development, retention, and use of the northern well is included in this coastal development permit application and is addressed in **Sections B and E** of this report.

- **Planting of a cypress tree hedge.** The Applicants planted a row of approximately 100 cypress trees on the western edge of the property adjacent to Highway 1 in 2008. Prior to the plantings, this edge of the property was open grassland. The potential exists that these trees, as they reach their mature height and width, will block and/or adversely affect scenic views eastward across the property from Highway 1. The Applicants state that the trees were planted to mitigate for any visual impacts resulting from the planned development. Potential visual impacts from the cypress trees themselves are further analyzed in **Section H** of this report. As discussed in **Section H**, this permit application includes the submittal of a tree thinning plan to remove certain trees to address this matter and to ensure protection of visual resources. **Special Condition 15** of this permit enforces this requirement.

- **Installation of a metal gate.** The Applicants installed a metal gate within the property boundary fence at the southwest corner of the property. The new metal gate was to

replace an existing, deteriorating gate made of wire and poles. The replacement and retention of the gate is included in this coastal development permit application.

- **Development of new farm roads**. It has been alleged that the Applicants developed a number of new farm roads throughout the property. The Applicants state that the existing, unimproved, two-track farm roads were present on the property prior to his ownership, that they only used the farm roads necessary to access the property, and that they have not created any new roads. No evidence has been submitted to the Commission as of the date of this staff report that establishes that any new farm roads were created by the Applicants.

- **Fill of wetlands.** It has been alleged that the Applicants filled wetland habitat north of the blue-line stream near the western property border at Highway 1. Evidence available to the Commission indicates that a previous property owner placed gravel on an existing dirt farm road in this location. A site investigation conducted by the Army Corps of Engineers revealed no evidence that there had been unauthorized fill into Corps jurisdictional waters. Additional site investigations by Commission staff confirmed that there is no evidence that Coastal Act wetland habitat was filled or otherwise adversely affected by the placement of gravel at this location. Further, the section of dirt farm road in question is fenced-off and no longer in use, and this area has been restored with native vegetation.

- **Vegetation removal**. The Applicants maintained sections of existing, unimproved, two-track farm roads on the northern side of the property which run through non-native annual grasses, in order to provide vehicle access for surveying locations of project components, geotechnical investigations, water well drilling, and septic leach field investigation work. No native grassland ESHA or wetland habitat is located in the footprint of the existing farm roads and no sensitive habitat was disturbed by the maintenance of the farm roads.

Although allegations of development undertaken on the subject property without a coastal development permit and allegations of violations of the Marin County LCP exist, consideration of the permit application by the Commission has been based solely upon the policies of the Marin County LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implication of the legality of any development undertaken on the subject site without a coastal permit, or that all aspects of the violation have been fully resolved.

J. OTHER.

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition **17** requiring reimbursement for any costs and attorneys fees that the Commission

incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Marin County served as the lead agency for the project, in its processing of the Magee/Brader Coastal Permit, Design Review, and Use Permit (Application Number CP-09-39, DR 09-71, and UP 09-26). The County found the project to be categorically exempt from CEQA review pursuant to Section 15303, Class 3 of the CEQA Guidelines, which allows for the construction of small facilities or structures, and their associated equipment, including single-family residences and accessory structures, provided that their construction would not result in significant amounts of grading and vegetation removal that could result in potentially significant impacts on the environment.

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. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

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.