

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
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Th13

NORTH CENTRAL COAST DISTRICT DEPUTY DIRECTOR'S REPORT

For the

August Meeting of the California Coastal Commission

MEMORANDUM

Date: August 15, 2013

TO: Commissioners and Interested Parties
FROM: Dan Carl, North Central Coast District Deputy Director
SUBJECT: *Deputy Director's Report*

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the North Central Coast District Office for the August 15, 2013 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

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

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

EMERGENCY PERMITS

1. 2-13-007-G Martin's Beach Llc, Attn: Steven R. Baugher; Albert Haro; C/O Antique Treasures, Attn: Allen Cunha
(Half Moon Bay, San Mateo County)

TOTAL OF 1 ITEM

DETAIL OF ATTACHED MATERIALS

REPORT OF EMERGENCY PERMITS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13142 of the California Code of Regulations because the development is necessary to protect life and public property or to maintain public services.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
2-13-007-G Martin's Beach Llc, Attn: Steven R. Baugher Albert Haro C/O Antique Treasures, Attn: Allen Cunha	Temporary emergency development of that portion of an approximately 960-foot long temporary rock rip-rap revetment that is located in the California Coastal Commission's retained coastal development permit (CDP) jurisdiction along the shoreline at Martin's Beach	22325 South Cabrillo Highway (Martins Beach Road), Half Moon Bay (San Mateo County)



California Coastal Commission

EMERGENCY COASTAL DEVELOPMENT PERMIT

Emergency CDP 2-13-007-G (Martin's Beach Revetment)

Issue Date: June 20, 2013

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This emergency coastal development permit (ECDP) authorizes temporary emergency development of that portion of an approximately 960-foot long temporary rock rip-rap revetment that is located in the California Coastal Commission's retained coastal development permit (CDP) jurisdiction along the shoreline at Martin's Beach at 22325 South Cabrillo Highway in San Mateo County (all as more specifically described in the Commission's ECDP file). San Mateo County has issued County ECDP PLN 2013-00002 for that portion of the temporary emergency development that is located inland of the Commission's retained CDP jurisdiction area (including for portions of the temporary revetment as well as minor temporary road and related work). Thus, the two ECDPs together authorize the overall temporary emergency development at this site.

ECDP Permittees (Allen Cunha and Martin's Beach 1 LLC) and the Permittees' representatives (i.e., John Kasunich, Mark Foxx, and David Ivester) submitted materials regarding the need and justification for the proposed temporary emergency development. Commission staff (including the Commission's senior coastal engineer, Lesley Ewing) have visited the site, have reviewed the relevant materials, and have concluded that it appears that the primary accessway to (and related underground utilities for) multiple residential and related structures is being eroded by wave forces, and that a stacked concrete wall supporting a driveway area that provides access to and underground utilities for three residential structures is near failure. In a significant storm event, it appears that the accessway, underground utilities, stacked concrete wall/driveway, and residential and related structures could be significantly damaged and/or destroyed if nothing is done to protect such development. Further, it appears that the proposed temporary revetment is the least environmentally damaging feasible alternative to protect such development based on the circumstances of the site, including because it can be most easily removed if not authorized through a regular CDP process. In short, the proposed emergency development is necessary to prevent the potential loss of and/or damage to such development at this site.

Therefore, the Commission's Executive Director hereby finds that: (a) an emergency exists that requires action more quickly than permitted by the procedures for regular CDPs; (b) that the proposed emergency development can and will be completed within 30 days (unless extended for good cause); and (c) public comment on the proposed emergency development has been reviewed to the degree time has allowed. The emergency development is hereby approved, subject to the conditions listed in this ECDP.

 6/20/2013

Dan Carl, North Central Coast District Director for Charles Lester, Executive Director

Emergency CDP 2-13-007-G (Martin's Beach Revetment)

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Conditions of Approval

1. The enclosed ECDP acceptance form must be signed by all Permittees and owners of property where the temporary emergency development authorized by this ECDP is located and returned to the California Coastal Commission's North Central Coast District Office within 15 days of the date of this permit (i.e., by July 5, 2013). This ECDP is not valid unless and until the acceptance form has been received in the North Central Coast District Office.
2. Only that temporary emergency development specifically described in this ECDP is authorized. Any additional and/or different emergency and/or other development requires separate authorization from the Executive Director and/or the Coastal Commission.
3. The temporary emergency development authorized by this ECDP must be completed within 30 days of the date of this permit (i.e., by July 20, 2013) unless extended for good cause by the Executive Director.
4. The temporary emergency development authorized by this ECDP is only temporary, and shall be removed if it is not authorized by a regular CDP.
 - a. By July 28, 2013, the Permittees shall submit a complete CDP application to the Commission's North Central Coast District Office to either (i) remove the temporary revetment and restore the affected area by July 28, 2014, (ii) retain the temporary revetment for a longer period of time, or (iii) replace the temporary revetment with some alternative development for a longer period of time (e.g., a semi-vertical contoured concrete seawall, as has been described as the Permittees' long-term objective) and restore the area adversely impacted by the temporary revetment and not covered by the alternative development. Such application shall provide all information and materials necessary to evaluate the proposed project for Coastal Act conformance, including, at a minimum, information and materials adequate to satisfy the requirements of Section 13053.5 of Title 14 of the California Code of Regulations. The temporary emergency development shall be removed in its entirety by July 28, 2014, unless before that time the Coastal Commission has issued a regular CDP allowing it to remain and/or be removed on a different schedule. The deadlines in this condition may be extended for good cause by the Executive Director.
 - b. Failure to submit such complete CDP application by July 28, 2013 or to remove the temporary emergency development by July 28, 2014 (or by the dates as may be extended by the Executive Director for good cause) shall constitute a knowing and intentional violation of the Coastal Act and may result in formal enforcement action by the Commission or the Executive Director. Such formal action could include recordation of a notice of violation on the property; issuance of a cease and desist order and/or a restoration order; and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this ECDP will constitute a knowing and intentional Coastal Act violation.
5. In exercising this ECDP, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from



California Coastal Commission

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the temporary emergency development project.

6. Prior to construction:
 - a. The Permittees shall submit three valid bids (from licensed bonded contractors with experience installing and/or removing revetments) to the Executive Director for review and approval that identify the cost to remove the temporary emergency development authorized by this ECDP and to restore the area to its pre-project condition or better. The average of the three valid bids approved by the Executive Director, plus a contingency of 10%, shall be identified as the removal and restoration cost.
 - b. The Permittees shall bond with San Mateo County (through a Faithful Performance Security or equivalent) for an amount equal to the removal and restoration cost. Such bond shall be used by San Mateo County to remove the temporary emergency development and restore the area if the Permittees have not met their obligations for removal and restoration pursuant to the terms of this ECDP.
 - c. The Permittees agree, on behalf of themselves and all successors in interest, to allow San Mateo County (or any agents of the County) all necessary access and any related measures to remove the temporary emergency development and restore the area as required pursuant to the terms of this ECDP should the Permittees not meet their obligations under this ECDP.
7. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., San Mateo County, California State Lands Commission, Monterey Bay National Marine Sanctuary, etc.) for the temporary emergency development. The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.
8. All temporary emergency development approved through this ECDP shall also conform to San Mateo County ECDP requirements. In the event of a conflict between the County's ECDP requirements and those of this ECDP, the requirements of this ECDP shall prevail in the Commission's jurisdiction.
9. The temporary emergency development shall be limited in scale and scope to that identified in the plans titled "Emergency Coastal Protection" dated prepared December 20, 2012 and dated received by the Coastal Commission May 17, 2013.
10. A licensed civil engineer with experience in coastal structures and processes shall oversee all construction activities and shall ensure that all temporary emergency development is limited to the least amount necessary to abate the emergency.
11. All emergency construction activities shall limit impacts to the beach and the Pacific Ocean to the maximum extent feasible including by, at a minimum, adhering to the following construction requirements, which may be adjusted by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources:
 - a. All work shall take place during daylight hours. Lighting of the beach area is prohibited.



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- b. Construction work and equipment operations shall not be conducted seaward of the highest tide line unless tidal waters have receded from the authorized work areas.
- c. Grading of intertidal areas is prohibited.
- d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
- e. All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions shall be for: (1) erosion and sediment controls (e.g., a silt fence at the base of the construction area) as necessary to contain rock and/or sediments in the construction area, where such controls are placed as far inland as possible, and are minimized in their extent; and (2) storage of larger materials beyond the reach of tidal waters for which moving the materials each day would be extremely difficult. Any larger materials intended to be left on the beach area overnight must be approved in advance by the Executive Director, and shall be subject to a contingency plan for moving said materials in the event of tidal/wave surge reaching them.
- f. All construction areas shall be minimized and demarked by temporary fencing designed to allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- g. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).
- h. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.
- i. All beach areas and all shoreline access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove all construction debris.
- j. All exposed slopes and soil surfaces in and/or adjacent to the construction area shall be stabilized with erosion control native seed mix, jute netting, straw mulch, or other applicable best management practices (for example, those identified in the California Storm Water Best Management Practice Handbooks (March, 1993)). The use of non-native invasive species (such as ice-plant) is prohibited.



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- k. All contractors shall insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean-up of foreign materials not properly contained and/or remediation to ensure compliance with this ECDP otherwise.
- l. The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office immediately upon completion of construction and required beach-area restoration activities. If planning staff should identify additional reasonable measures necessary to restore the beach and beach access points, such measures shall be implemented immediately.
12. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.
13. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
14. Within 30 days of completion of the construction authorized by this ECDP, the Permittee shall submit site plans and cross sections prepared by a licensed civil engineer with experience in coastal structures and processes clearly identifying all development completed under this emergency authorization (comparing any previously permitted condition to both the emergency condition and to the post-work condition), and a narrative description of all emergency development activities undertaken pursuant to this emergency authorization.
15. This ECDP shall not constitute a waiver of any public rights which may exist on the property. The Permittee shall not use this ECDP as evidence of a waiver of any public rights which may exist on the property.
16. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.
17. The issuance of this ECDP does not constitute admission as to the legality of any development undertaken on the subject site without a CDP and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in the conditions above, the temporary emergency development carried out under this ECDP is



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at the Permittees' risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the Permittees wish to have the temporary emergency development become a longer term development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's North Central Coast District Office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105, (415) 904-5260.



CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
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**EMERGENCY COASTAL DEVELOPMENT PERMIT ACCEPTANCE FORM**

To: California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Emergency Coastal Development Permit 2-13-007-G (Martin's Beach Revetment)
Issue Date: June 20, 2013

Instructions: After reading Emergency Coastal Development Permit 2-13-007-G, please sign this form and return to the North Central Coast Area Office by July 5, 2013.

I hereby understand all of the terms and conditions of Emergency Coastal Development Permit 2-13-007-G being issued to me and agree to abide by them.

Allen Cunha

Date

Martin's Beach I LLC

Date

CALIFORNIA COASTAL COMMISSION
 CENTRAL COAST AND NORTH CENTRAL COAST DISTRICT OFFICES
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
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Memorandum

August 14, 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**
Thursday, August 15, 2013

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th17a	2-10-039 Lands' End Associates, LLC	Email, David A. Goldberg	1-21
		Email, Anne Blemker	22
		Ex Parte Communication, Carole Groom	23
Th17b	2-12-004 Sonoma County Water Agency	Email, Dian Hardy	24-26
		Email, Norma Jellison	27-30
		Email, Dana Zimmerman	31-34
		Correspondence, Darrell B. Sukovitzten	35-36
		Correspondence, John Pearson	37-40
		Email, Richard Holmer	41-45
		Email, Cea Higgins	46-66
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		Email, Jessica Martini-Lamb	71-72
		Email, Richard Holmer	73-84
		Email, Norma Jellison	85-87
		Email, Carol Sklenicka/Richard Ryan	88
		Email, Cea Higgins	89-93
		Email, Cea Higgins & Norma Jellison	94-95
Email, Norma Jellison	96-97		
Email, Cea Higgins	98-99		
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Email, Dian Hardy	103-104		
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Email, Cea Higgins	112-115		

Email, Kate Fenton	116-117
Email, Stephen Bargsten	118
Emails, Norma Jellison	119-124
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Email, Brenda Adelman	153-155

ARMBRUSTER GOLDSMITH & DELVAC LLP
LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

Th17a

DAVID A. GOLDBERG
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August 9, 2013

VIA EMAIL AND FEDERAL EXPRESS

Chair Shallenberger and Honorable Commissioners
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Agenda Item Th17a

Re: No. 2-10-039 (Land's End Associates, LLC, 100-101 Esplanade Avenue, Pacifica)

Dear Chair Shallenberger and Honorable Commissioners:

We are writing on behalf of the Applicant, Land's End Associates, LLC ("Land's End"), in response to the Staff Report for the above-referenced coastal development permit application to authorize a seawall, grade beam and caisson buried wall system and public access improvements built under emergency permitting at the Land's End apartment complex at 100-101 Esplanade Avenue in the City of Pacifica. We appreciate the hard work of the Staff in analyzing the issues involved in the application. Land's End supports the Staff Report recommendation to grant the CDP, subject to one significant modification, and certain other minor clarifications, which are summarized below and discussed in further detail in Exhibit A.

Background

The 260-unit Land's End apartment complex was built in the early 1970's, set back from a 100-foot high coastal bluff. The property provides highly valued public access in perpetuity through a switch-back trail and stairway down the bluff to the beach, lateral shoreline access and a lateral blufftop trail, pursuant to an easement with the City. As with much of the Pacifica shoreline, the bluff has been subject to ongoing erosion and failure over the years. The stairway to the beach has been washed away several times since it was first built in the early 1970s. The Applicant purchased the property in 2005, the stairway collapsed in 2008, and in 2010 the bluff experienced severe erosion due to El Niño storm conditions that caused the City to issue a state of emergency. Land's End then began an emergency permit process with the Commission, which authorized the construction of the subject seawall and related armoring. Through close coordination with Commission Staff, the armoring system that was constructed represents the vanguard in shoreline protection by preserving more sandy beach than neighboring rock revetments, closely resembling the surrounding bluff landform, and allowing natural erosion of the upper bluff over time. Moreover, as part of the emergency permitting, Land's End has substantially improved public access to the beach and along the bluff, through safer and more accessible trails. Benches, outlooks, signage and a coastal information kiosk also will be provided.

Special Condition 9 Imposing a 20-year Term Should Not Be Adopted.

Land's End respectfully requests that the Commission not adopt Special Condition 9, which limits the CDP authorization for the shoreline protection to only twenty years and requires the removal of the armoring after that time unless a permit amendment is issued extending the term. A San Diego

These materials have been provided to the Coastal Commission Staff

ARMBRUSTER GOLDSMITH & DELVAC LLP
Chair Shallenberger and Honorable Commissioners
August 9, 2013
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Superior Court judge recently overturned the same twenty-year seawall permit expiration in another CDP, on the basis that the Commission lacked the authority to impose the term and that it constituted a regulatory taking. The Court ruled, and Land's End likewise believes, that the twenty-year term meets neither the constitutionally-required nexus nor proportionality requirements because it does not mitigate for any impacts not already addressed through other conditions of approval or which could not be addressed through a future reevaluation of the adequacy of mitigation. Special Condition 9 also should not be imposed due to the unique circumstances here, where the armoring is necessary to provide structural support for the highly valued public access improvements to the beach and blufftop trail across the site, which are already required to be provided in perpetuity.

Instead, Land's End requests that the term in Special Condition 9 be removed and replaced with a reevaluation of the mitigation fee and other mitigation imposed under the CDP after twenty years.

Special Condition 4.c.(1) Should Be Revised to Incorporate the Blufftop Easement Buffer Requirements of the City's Local Implementation Plan.

Special Condition 4.c.(1) requires that the blufftop lateral easement, which has been relocated across the property due to erosion, be ambulatory and move inland as the bluff continues to erode. Land's End requests a minor clarification to this condition to incorporate the Local Implementation Plan requirement that the inland extent of any adjustment not encroach within a 10-foot buffer of any existing occupied residential structure, thereby assuring that the conditions of this permit be consistent with the City of Pacifica's certified LCP.

Land's End respectfully requests that the Commission approve the CDP, subject to its requested modifications, and looks forward to presenting the project to the Coastal Commission on August 15, 2013. Please feel free to contact me at (310) 254-9027 if you have any questions regarding this matter.

Sincerely,



David A. Goldberg

Enclosures

cc: Dan Carl, California Coastal Commission
Karen Geister, California Coastal Commission
Douglas Rush, American Realty Advisors
Todd Stark, Redwood Construction
Susan McCabe, McCabe & Company
Anne Blemker, McCabe & Company

These materials have been provided to the Coastal Commission Staff

Exhibit A

EXHIBIT A
RESPONSE TO STAFF REPORT

I. SPECIAL CONDITION 9, WHICH IMPOSES A TWENTY-YEAR TERM ON THE CDP, SHOULD NOT BE ADOPTED.

The Staff Report recommends that the seawall and grade beam and caisson buried wall system be authorized for only twenty years and then be removed after that time unless a permit amendment is issued extending the term. While this recently has become a commonly imposed condition in CDPs for shoreline armoring, on April 24, 2013, a San Diego Superior Court judge overturned the same twenty-year seawall permit expiration in another CDP, on the basis that the Commission lacked the authority to impose the term and that the requirement was an arbitrary and capricious regulatory taking. In its judgment, the Court stated that the petitioners were “entitled to a CDP without an expiration date”, that the Commission “had a duty to grant the CDP for the seawall and was not authorized to impose an arbitrary expiration date,” and that the twenty-year term met neither the nexus nor proportionality requirements and therefore constituted a regulatory taking. (See Judgment and Minute Order at Exhibit C.)

Moreover, even if the twenty-year term were enforceable, which we believe it is not, it should not be imposed, given the unique circumstances here, where so much of the seawall is necessary to provide structural support for the highly valued vertical access path and staircase and the blufftop trail across the site, which are required to be provided in perpetuity.¹

Therefore, Land’s End requests that the Commission revise Special Condition 9 to remove the twenty-year term, as set forth in further detail below.

A. The Coastal Act does not authorize imposition of the twenty-year term.

Under Coastal Act Section 30235, an applicant is entitled to a CDP for a shoreline protection device where the Coastal Commission finds, as it has here, that shoreline protection is required to protect existing structures and its impacts have been mitigated. Coastal Act Section 30235 provides, in part, that shoreline protection devices “**shall be permitted** when required to serve coastal-dependent uses or **to protect existing structures** or public beaches in danger from erosion and **when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.**” (Emphasis added.) Under Coastal Act Section 30235, the Commission may only impose conditions that eliminate or mitigate significant seawall impacts. (*Ocean Harbor House HOA vs. California Coastal Commission* (2008) 163 Cal.App.4th 215, 242.) The Staff Report identifies the potential impacts from the Land’s End seawall and upper bluff system as those impacts related to shoreline sand supply, public access and recreation and public views.

¹ The property is subject to longstanding requirements to maintain these public access improvements, which are referenced in the City of Pacific Land Use Plan (at p. 30) and currently are memorialized in a Public Access Easement with the City of Pacifica, dated May 9, 2006.

EXHIBIT A
RESPONSE TO STAFF REPORT

1. Special Conditions of Approval related to shoreline sand supply, public access and recreation and public views mitigate for all of the impacts of the shoreline protection.

The Staff Report identifies the potential impacts of shoreline protection on natural shoreline processes as “(1) the loss of the beach area on which the structure is located; (2) the long-term loss of beach that will result when the back-beach location is fixed on an eroding shoreline; and (3) the amount of material that would have been supplied to the beach if the back-beach or bluff were to erode naturally.”² To mitigate for these impacts, the Staff Report recommends the imposition of a mitigation fee, based on the cost of delivering 34,493 cubic yards of beach quality sand – the estimated amount of sand that would have been deposited onto the beach were it not for the seawall. This mitigation payment is to be used “to provide beach nourishment at this location based on the cost to replace the amount of sand lost,” which “will offset such impacts.”³ The Staff Report concludes that, with the imposition of the mitigation fee, **“the project satisfies the Coastal Act Section 30235 requirements regarding mitigation for sand supply impacts, and thus also meets all Section 30235 tests for allowing such armoring.”** (Emphasis added.)⁴

The Staff Report also analyzed the impacts of the shoreline protection on public access and recreation. To mitigate for these impacts, the Staff Report recommends the imposition of a \$431,061 mitigation fee (originally a \$1,620,111 fee before granting credit for the value of public access improvements provided by Land’s End) to mitigate for the replacement of beach area lost due to the seawall from encroachment and passive erosion. The mitigation fee is to be used solely for “public beach recreational access acquisitions and/or improvements at beaches within Pacifica’s city limits (including potentially acquiring beachfront property, providing blufftop access trails both up and downcoast of the site, public access improvements, etc.).”⁵ The Staff Report concludes that with payment of the mitigation fee to mitigate sand supply impacts and the loss of beach area and by providing continued and enhanced vertical and lateral access within defined easements areas, the Project would mitigate impacts to public access and recreation consistent with Coastal Act requirements.⁶

In addition, the Staff Report analyzed the impacts of the shoreline protection on public views and recommends Special Conditions 10 and 1(g) to mitigate these impacts. Special Condition 10 requires a future CDP amendment should the grade beam and caisson buried wall system ever become visually exposed over time to address those visual impacts. Special Condition 1(g) requires native, non-invasive landscaping along the switchback and blufftop trails to offset visual impacts from the beach below and from the street. The Staff Report concludes

² Staff Report at p. 39.

³ Staff Report at p. 45.

⁴ Staff Report at p. 45.

⁵ Staff Report at p. 58.

⁶ Staff Report at p. 59.

EXHIBIT A
RESPONSE TO STAFF REPORT

that, with the imposition of these conditions, the Project is consistent with the Coastal Act's visual resources policies.⁷

2. The Staff Report does not cite to any impacts that a twenty-year term would address, which are not already mitigated through other conditions of approval.

The Staff Report does not identify any impacts to coastal resources that would not be mitigated through the mitigation fee, access requirements and viewshed conditions of approval, but which would be mitigated through the twenty-year term. The Staff Report cites a variety of reasons why it has imposed a twenty-year term, none of which could not be accomplished through a condition of approval requiring the evaluation of the need for additional mitigation in the future, without putting into question the authorization to maintain the armoring in place.

The Staff Report asserts that a twenty-year term is appropriate because, in its experience, shoreline armoring requires replacement or modification within "only a few decades".⁸ This conclusion is merely an anecdotal observation – which may or may not be correct – and is not based on any specific facts, scientific evidence or calculations regarding the anticipated design life of the Land's End seawall. In fact, Land's End designed the shoreline armoring with a design life of at least 100 years at the request of Commission Staff, at an expense of several million dollars more than seawalls designed with a twenty-year design life.⁹ The Staff Report also asserts the twenty-year term would give the Commission an opportunity to respond to potential changed circumstances from climate change and sea level rise, including exposing the seawall to more frequent wave attack. However, the seawall design already takes into account sea level rise at the approximate level identified by the Staff Report.¹⁰

The Staff Report further asserts that a twenty-year term is necessary because, since the natural bluff is subject to ongoing erosion and episodic failures, the seawall might too fail episodically, requiring a reassessment after twenty years of any public hazards created by resulting seawall debris.¹¹ First, the purpose of the seawall is to protect the bluff from ongoing erosion and such episodic failures. Second, Special Condition 7 and Special Condition 8 adequately mitigate for these potential impacts. Special Condition 7 imposes a comprehensive monitoring and reporting requirement, which requires the permittee to retain a licensed civil engineer with experience in coastal structures and processes to regularly monitor and provide

⁷ Staff Report at p. 64.

⁸ Staff Report at p. 37.

⁹ The structural engineer-certified design calculations for the Project's shoreline armoring, which Land's End has submitted into the record, demonstrates that the seawall has been designed with a design life of at least 100 years. ("The proposed seawall is anticipated to have a life expectancy in excess of 100 years assuming proposed maintenance and drainage is maintained.") RJR Engineering letter report regarding "Response to California Coastal Commission Review", dated April 18, 2011, at p. 12.

¹⁰ Id at p. 6.

¹¹ Staff Report at p. 38.

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RESPONSE TO STAFF REPORT

ongoing reports to the Commission regarding whether any significant weathering or damage has occurred to the armoring that would impact future performance and to identify any structural or other damage or wear and tear requiring repair to maintain the armoring in a structurally sound manner. Special Condition 8 authorizes the permittee to undertake required maintenance to the armoring, subject to stringent notification and coordination requirements with Commission Staff.

None of the reasons cited in the Staff Report for the twenty-year term are based on the premise that shoreline armoring might not be geologically necessary in twenty-years for the existing structures and public access improvements, but rather how the Commission might then choose to mitigate for new or different impacts of the armoring in the future. We believe, and a San Diego Superior Court judge now has determined, that to the extent the purpose of the twenty-year term is to allow the Commission the ability to deny authorization for the shoreline armoring upon that term's expiration, Condition 9 violates Section 30235. To the extent the purpose of the condition is to preserve the Commission's authority to evaluate whether additional or different mitigation might be necessary in the future, that same end can be accomplished simply by reevaluating mitigation in the future, without placing a term on Land's End's right to maintain the shoreline armoring, the need for which has already been established.

B. The twenty-year term would cause a regulatory taking.

In addition to being an impermissible condition of approval under Coastal Act Section 30235, imposition of the twenty-year term would constitute an "unconstitutional condition" that would result in a regulatory taking. The Staff Report does not establish how requiring the removal of the shoreline armoring after twenty years unless it is reapproved has any nexus to identified impacts or is proportional in nature and scope to any impacts, thus failing the constitutional requirements established under *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. (See also *Koontz v. St. Johns River Water Management District*, 500 U.S. __ (2013).)

As discussed above, the Staff Report does not identify any impacts to coastal resources that would not be mitigated through the mitigation fee, public access requirements or viewshed conditions of approval, but which would be mitigated through the twenty-year term. The Staff Report also provides no evidence to support its underlying rationale that perhaps the shoreline armoring might not be necessary in twenty years to protect the existing structures. To the contrary, expert reports prepared by RJR Engineering and Terra Costa Consulting Group, which have been submitted into the record, demonstrate why this portion of the California coast is particularly susceptible to erosion requiring the need for shoreline protection. Moreover, as discussed further below, armoring is necessary to provide geologic and structural support for vertical and lateral access across the property, which are required to be provided in perpetuity.

Special Condition 9 would place a significant cloud on the marketability and valuation of the property by creating uncertainty as to whether Land's End or a future owner will be permitted to keep the shoreline protection necessary to maintain the existing 260-unit apartment complex in a safe, structurally sound and habitable condition or be subject to substantial future costs to remove the armoring and be left with an unprotected property. Adoption of the twenty-year term therefore would impose an impermissible use restriction, which would substantially diminish the value of Land's End property and infringe upon its constitutional right to protect its

EXHIBIT A
RESPONSE TO STAFF REPORT

property and maintain safety through necessary shoreline armoring.

C. **Shoreline protection is necessary to preserve highly valued vertical and lateral access, which are required to be provided in perpetuity.**

The Commission also should not impose the twenty-year term because the seawall and upper bluff retaining wall system are necessary to preserve highly valued public access improvements, which are required to be provided perpetuity. An earlier version of the Staff Report released for public review on June 1, 2012 acknowledged that only the seawall alternative would provide the necessary protection for the stairs to the beach and the blufftop trail:

The 'no-project, remove the seawall' alternative would not provide any protection to the endangered apartments **or the blufftop walkway and stairway that provides public access to the beach**, and cannot alone suffice as the approvable alternative in this case . . . Outright removal would serve to abate the danger for a short period of time, but would not eliminate the need for shoreline protection. **Also, removal of the stairway would preclude access to the beach at this site.** Therefore, in this case, based on the site constraints and the existing development present on site and infeasibility to abate the danger for an extended period of time through removal or relocation, an abandonment or relocation option is not a feasible alternative for protecting the existing endangered apartments.

(Emphasis added.)¹² The Staff Report further states that the “stairway at this location is critical” because “many of the surrounding beaches are extremely difficult to access” and because the nearest formal public access to the beach is either 5 miles to the north or 1.5 miles to the south.¹³

In addition to providing protection for vertical access, the seawall and grade beam and caisson buried wall system provide additional protection to the blufftop lateral access path. As stated in the Staff Report, “[t]he proposed blufftop lateral access, although relocated inland, would be 5-foot wide, **and is supported by an upper bluff retaining wall system, which will ensure its stability over time.**” (Emphasis added.)¹⁴

The staircase to the beach has been washed away several times since it was first built in the early 1970s, including most recently in 2008. During the emergency permitting process for the property in 2010, Commission Staff and Land’s End agreed that much of the seawall would be necessary to provide long-term structural support and protection of the bluff to ensure preservation of vertical access across the property.¹⁵ As Land’s End would continue to be

¹² June 2012 Staff Report at p. 17.

¹³ Staff Report at p. 51.

¹⁴ Staff Report at p. 55.

¹⁵ We understand this determination was based on several factors supporting the conclusion that, unless the bluff was armored, it would eventually become infeasible to maintain vertical access from the bluff to the beach. Of

EXHIBIT A
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required to maintain these public access improvements in perpetuity under the Amended Public Access Easement required under Special Condition 4 and the geologic need for the armoring to support this public access has been established, authorization for the seawall should not be term limited.

D. Land's End requests that Special Condition 9 be revised to replace the twenty-year term with a requirement to reevaluate mitigation in the future.

Based on the foregoing, Land's End requests that Special Condition 9 be revised to replace the twenty-year term on the CDP with a requirement for the reevaluation of the mitigation fee and other mitigation imposed under the CDP after twenty years. This requested modification, which is set forth in Exhibit B, would preserve the Commission's ability to ensure that impacts of the armoring over time are adequately mitigated.

II. SPECIAL CONDITION 4.C.(1) SHOULD BE REVISED TO INCORPORATE THE BLUFFTOP EASEMENT BUFFER REQUIREMENTS OF THE CITY'S LOCAL IMPLEMENTATION PLAN.

Special Condition 4.c.(1) requires that the blufftop lateral easement across the property be ambulatory and move inland as the bluff erodes to retain a continuous and connected lateral accessway along the length of the property. While Land's End fully supports its existing easement obligation to provide this lateral access, it requests that this condition be modified to incorporate the lateral blufftop easement buffer requirements of the City's Local Implementation Plan to avoid potential future conflicts with the existing occupied residential buildings on the property and to ensure consistency with the City's certified LCP. City of Pacifica LIP Section 9-4.4407(b)(7) provides:

With respect to lateral bluff top access, the easement shall be adjusted inland from the current bluff edge if it recedes inland, **but in no event shall the trail be closer than ten (10') feet to an occupied or proposed residence. Such an inland adjustment shall not occur in the event it would prohibit private use of a site or would render use or development of the site economically infeasible.**

(Emphasis added.) Land's End therefore requests that Special Condition 4.c.(1) be revised to incorporate the LIP's 10-foot buffer requirement, as set forth in Exhibit B.

primary importance among these factors was that the combination of continued erosion and the height of the bluff (at approximately 100 feet) would force the trail to become steeper and steeper – eventually to unsafe and unusable grades – and that due to the close proximity of the adjacent apartment complex to the south (310 Esplanade) and Esplanade Avenue to the east, relocating the switch back trail over time either further to the south or to the north to escape the erosion were not feasible options.

EXHIBIT A
RESPONSE TO STAFF REPORT

III. REQUESTED CLARIFICATION TO SPECIAL CONDITION 1(E).

As drafted, Special Condition 1(e) could be read to require the Permittee to remove concrete and other debris placed or allowed to migrate onto the beach by others, much of which was deposited by the railroad companies in the early 1900s and/or is seaward of the mean high tide line. During construction of the armoring system in 2011, Land's End became aware of previously deposited rock and construction remnants that are unrelated to Land's End activities.

Land's End is committed to restoring the beach to the condition that existed prior to the work undertaken to construct the seawall and public access improvements, and requests that Special Condition 1(e) be clarified accordingly, as set forth in Exhibit B.

Exhibit B

EXHIBIT B
REQUESTED MODIFICATIONS TO STAFF REPORT'S RECOMMENDED SPECIAL CONDITIONS

Land's End requests that the Coastal Commission incorporate the below modifications to the Staff Report's recommended Special Conditions.

Special Condition 1.e.

Modify Special Condition 1.e. to clarify the concrete and other debris required to be removed by the Permittee, as shown below in **underline** and **~~strikeout~~**:

Rock, Concrete, and Debris Removal. Other than the minimum amount of rock riprap at the upcoast and downcoast edges of the seawall needed to conform the edges of the seawall to the coastal bluff and the rock riprap permitted to be relocated from the trench to the base of the seawall for toe protection, all other rock riprap and concrete debris (~~e.g.,~~ **except the abandoned concrete drain pipe, debris not placed by Permittee that is seaward of the mean high tide line and debris that pre-dates the enactment of the 1976 Coastal Act, concrete debris, etc.**) in the area seaward of the approved seawall, including rock remaining in the trench (after rock has been moved for toe protection) located in the area seaward of the approved seawall, and/or placed in the nearby area by the Permittee, shall be removed and properly disposed of at an inland location approved by the Executive Director.

Special Condition 4.c.(1).

Modify Special Condition 4.c.(1) to incorporate the requirement from Section 9-4.4407(b)(7) of the City's Local Implementation Plan that inland adjustments to blufftop lateral easements resulting from bluff erosion respect a ten foot minimum buffer from occupied residential structures, as shown below in **underline**:

Blufftop Lateral. The blufftop lateral portion of the Amended Easement Area shall be described to include the 5-foot walkway along the length of the property and connecting to the public access path at the northern property boundary, and south to Esplanade Avenue, and shall be ambulatory so that it moves inland as the bluff erodes in order to retain continuous and connected (to up and down coast public accessways and to inland public streets) public access. If, as a result of bluff erosion, it becomes infeasible at any time to maintain any portion of the public access path atop the bluff at five feet in width or in such continuous and connected alignment, **while maintaining a 10-foot buffer from any existing occupied residential structure**, the Permittee shall be required to apply for an amendment to this Coastal Development Permit to modify the location and/or reduce the width of the blufftop lateral portion of the Easement Area to provide alternative lateral blufftop access that complies with this CDP, CDP 3-83-015, CDP 239-03 and the 2006 Easement.

Special Conditions 9 and 8(h).

1. Modify Special Condition 9 to replace the twenty-year term with a requirement to apply for a CDP amendment after 20 years for a review of mitigation that may be required at that time for the continued impacts of the shoreline armoring after 20 years, as shown below in **underline** and **~~strikeout~~**:

9. Twenty-Year Armoring Approval. Mitigation Review.

a. ~~Authorization Expiration. Mitigation Period.~~ This CDP ~~authorizes~~ **mitigates for the impacts of the seawall, riprap toe protection, riprap wedges (at the upcoast**

EXHIBIT B
REQUESTED MODIFICATIONS TO STAFF REPORT'S RECOMMENDED SPECIAL CONDITIONS

and downcoast edges of the seawall), and the grade beam and caisson buried wall system for twenty years from the date of this CDP approval (i.e., until August 15, 2033) or until the time when the currently existing structures warranting armoring are no longer present and/or no longer require armoring for such protection, whichever occurs first.

b. ~~Modifications within 20 Years.~~ If, ~~within the 20-year authorization~~ **mitigation period**, the Permittee applies for a CDP or an amendment to this permit to enlarge the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and/or the grade beam and caisson buried wall system, or to perform repair work affecting more than 50 percent of those approved structures, the Permittee shall provide additional mitigation for the effects of the enlarged or reconstructed seawall and/or grade beam and caisson buried wall system on public access and recreation and other coastal resources that have not already been mitigated through this permit.

c. ~~Amendment Required to Retain Mitigation After Past 20 Years.~~ If the Permittee intends to keep the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system in place after August 15, 2033, the Permittee must apply for a CDP amendment prior to August 15, 2033 **for a review of only whether additional mitigation is required to maintain the armoring beyond that date** ~~in order to extend the length of development authorization~~ (including, as applicable, any potential modifications to the approved project desired by the Permittee). Such amendment application shall, ~~at a minimum~~, include:

~~(1) **Alternatives.** Information concerning alternatives to shoreline armoring that eliminate and/or reduce impacts to public views, public recreational access, and shoreline processes, and other coastal resources as applicable. Alternatives evaluated shall include but not be limited to: relocation of all or portions of principal structures that are threatened, structural underpinning, and other remedial measures capable of protecting principal structures and providing reasonable use of the property without shoreline armoring. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion.~~

~~(2) **Mitigation.** mMitigation for the effects of the seawall, riprap toe protection, riprap wedges (at the upcoast and downcoast edges of the seawall), and the grade beam and caisson buried wall system, including as modified if proposed modifications are part of the amendment application, on public access and recreation and other coastal resources for the additional term proposed.~~

2. In addition, delete the following phrase from Special Condition 8(h):

“throughout the 20-year period of development authorization (see Special Condition 9)”

Exhibit C

EXHIBIT C

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY**

MINUTE ORDER [X] Amended on 03/07/2013

DATE: 03/07/2013

TIME: 01:30:00 PM

DEPT: N-28

JUDICIAL OFFICER PRESIDING: Earl H. Maas, III

CLERK: Noreen McKinley

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2011-00058666-CU-WM-NC** CASE INIT.DATE: 10/07/2011

CASE TITLE: **Lynch vs. California Coastal Commission**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 03/07/13 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioners' motion for judgment is granted. A writ of mandate shall issue directing Respondent California Coastal Commission to remove from the Coastal Development Permit Amendment conditions 1(a), 2 and 3 for removal of the lower private access stairway and the 20-year expiration date.

This case involves a petition for writ of mandate/complaint filed 10/7/11 arising out of a dispute over conditions imposed by the California Coastal Commission on a Coastal Development Permit ("CDP") on Petitioners' seawall and staircase that was destroyed by heavy rains. The Commission approved Petitioners' permit to allow for repairs with several conditions, including (1) a 20 year limit on the seawall permit and (2) removal of the staircase.

Petitioners Barbara Lynch and Thomas Frick own adjacent residential properties. The easterly and westerly property lines for Petitioners' homes are Neptune Avenue and the mean high tide line of the Pacific Ocean in Encinitas. Petitioners' stairway was built more than 40 years ago, prior to the enactment of the Coastal Act of 1976. In 1973, the stairway partially collapsed and was reconstructed under a permit issued by the County following certification by the Commission's predecessor agency that its reconstruction was exempt from state permit requirements.

The staircase has been regularly maintained and is the only direct access to the beach portion of Petitioners' property. In 1986, Petitioners constructed a beach level seawall and mid-bluff bluff retention structure. In 1989, the Commission determined that these structures, and the beach stairway, were consistent with the Coastal Act and issued a CDP authorizing them to remain in perpetuity.

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These materials have been provided to the Coastal Commission Staff

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CASE TITLE: Lynch vs. California Coastal Commission

CASE NO: 37-2011-00058666-CU-WM-NC

In 2002, Petitioners applied to the Commission for a CDP to rebuild and reinforce its sea wall and to reconstruct the staircase. In December 2010, while the application was pending, the area was hit by heavy rains. To protect their homes and regain access to the beach portion of their properties, Petitioners immediately submitted an application to the City for permission to re-build the seawall and repair the lower half of the staircase without enlargement or expansion. The City approved both the seawall and the staircase repair. The approval contained the standard condition that Petitioners also obtain a parallel approval by the Commission before the City would issue a building permit. Petitioners applied for the CDP.

The first cause of action alleges that under the Coastal Act, the Commission was required to grant the permit without an expiration date. Pursuant to Public Resources Code § 30235, the Commission is required to permit seawalls when required to protect existing structures as long as the seawall is required to protect an existing structure. When a seawall is required to protect an existing structure, the Commission does not have the power to deny the permit and may only impose those conditions that are statutorily enumerated.

The second cause of action alleges that the Commission's denial of the staircase repair was improper because, pursuant to Public Resources Code § 30610, certain activities do not require a CDP and may proceed without Commission approval. One such activity is "repair and maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities..." Public Resources Code § 30610(d). Another such activity is the "replacement of any structure...destroyed by a disaster". Public Resources Code § 30610(g). "Disaster" is defined in Public Resources Code § 30610(g) (2) as "any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner".

1. Private access stairway:

Condition 1(a) provides: "Reconstruction of the private access stairway below the existing landing that remains shall be deleted from the plans. AR 1786.

As set forth in the July 2011 staff report and as approved by the Commission on 8/10/11, in requiring the removal of the stairway, it was determined that "the City's certified LCP [Local Coastal Program] includes provisions that not only prohibit the construction of private stairways on the bluff but also provide for the phase-out of existing private access stairs", citing to Policy 1.6 of the Public Safety Element of the City's Land Use Plan and Circulation Policy 6.7. AR 1716-1717.

Specifically, the report states that the subject stairway constituted a "structural nonconformity" within the meaning of Encinitas Municipal Code ("EMC") § 30.76.020 and there was no authority that allowed for the replacement of a "structural nonconformity". The Commission staff cited to EMC § 30.76.50 allowing for the replacement of a "nonconforming use" with the same use but only allowing the repair and maintenance of a "structural nonconformity". The Commission staff then concluded that to the extent Petitioners were relying on the provisions of EMC § 30.76.050(B) to replace their stairway, this provision only applied to a nonconforming use. AR 1718.

The report further stated that Petitioners could not rely on the provisions of EMC § 30.80.050 which exempts certain types of development from the requirement of a Coastal Development Permit ("CDP"). Pursuant to this provision, the replacement of any structure other than a public works facility destroyed by a disaster is exempt from the requirement for a CDP "when in conformance with all other provisions

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CASE TITLE: Lynch vs. California Coastal Commission CASE NO: 37-2011-00058666-CU-WM-NC

of the Municipal Code". EMC § 30.80.050(E).

In finding that subsection (E) did not apply, the Commission relied on an internet dictionary definition of "disaster". AR 1719. The report further stated:

"Even assuming the collapse did not constitute a natural disaster consistent with the relevant LCP provision, which it is not, the stairs cannot be replaced consistent with applicable zoning requirements. The City's regulations do not allow for structural non-conformities to be removed and replaced. Structures replaced after a disaster must still comply with zoning requirements, which must be consistent with the land use policies of the LCP. These policies cited above clearly prohibit new private accessways. The Commission did permit after-the-fact construction of the stairway pursuant to CDP 6-88-464, when it was documented that it could not be removed without compromising the existing shoreline protective structures, and before the City's LCP had been certified. However, today, the stairway cannot be reconstructed because the LCP does not allow private access stairs on the bluff face, the non-conforming regulations do not allow for structural non-conformities to be removed and replaced and, if it is not a disaster replacement because it was not destroyed by a natural disaster and because it cannot be reconstructed consistent with the existing zoning code." AR 1719-1720.

Petitioners are correct and the Commission failed to proceed in the manner required by law in applying an erroneous definition of "disaster" for purposes of subsection (E).

Although the Commission improperly cited to the internet dictionary definition of disaster, Petitioners must also address the additional requirement that "the replacement structure shall conform to applicable zoning and development requirements of the City". As noted above, the Commission determined that the stairs cannot be replaced consistent with applicable zoning requirements, citing the City's regulations which do not allow for structural non-conformities to be removed and replaced and land use policies which prohibit new private accessways.

It would appear that Petitioners are not "replacing" the stairway structure but are, instead, "repairing" it. The third staff report describes the project as follows:

"The upper portions and landing of the existing private access stairway that serve both lots remains and will be retained. The lower portion of the destroyed/removed private access stairway is proposed to be reconstructed in its same location and design, and tied into the new seawall." AR 1677.

Further, although the term "replace" is not defined in § 30.076.050, for purposes of Public Resources Code § 30610(d), "replace" as opposed to "repair and maintenance" is defined elsewhere as "the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure". Cal. Code Regs. tit. 14, § 13252.

The court's inquiry does not end here. Even assuming that the proposed stairway meets City regulations regarding structural non-conformities, the court must determine whether the stairway can be repaired consistent with the City's land use policies, specifically, Policy 1.6 of the Public Safety Land Use Element and Circulation Policy 6.7.

Policy 1.6 of the Public Safety Element of the City's Land Use Plan provides:

"The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by: (a) Only permitting public access stairways and no private stairways, and otherwise

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CASE NO: 37-2011-00058666-CU-WM-NC

discouraging climbing upon and defacement of the bluff face...(f) Requiring new structures and improvements to be set back...40 feet from coastal blufftop edge with exception to allow a minimum coastal blufftop edge of no less than 25 feet...No structures, including walkways, patios...and similar structures shall be allowed within five feet from the bluff top edge.

Circulation Policy 6.7 provides: "Discourage and phase out private access to the beach over the bluffs. New private accessways shall be prohibited."

Both policies refer to "new" structures and private accessways. Such is not the case here. If Petitioners were attempting to install a new stairway or completely replace a stairway, such policies would bar their application. However, here, Petitioners simply seek to repair a portion of a stairway. Further, Policy 1.6 refers back to the Zoning Code which does not ban the repair of the stairway. The Commission's finding that the stairway is not exempt from the CDP requirement pursuant to EMC § 30.80.050(E) is not supported by substantial evidence.

2. Twenty year expiration date

Condition 2 provides in part: "This coastal development permit authorizes the proposed seawall for twenty years from the date of approval (i.e., until August 10, 2031). No modification or expansion of approved seawall, or additional bluff or shoreline protective structures shall be constructed, without approval of an amendment to this coastal development permit by the Coastal Commission..." AR 1787.

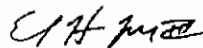
Condition 3 provides in part:

"Prior to the expiration of the twenty year authorization period for the permitted seawall, the property owners shall submit to the Commission an application for a coastal development permit amendment to either remove the seawall in its entirety, change or reduce its size or configuration, or extend the length of time the seawall is authorized...: AR 1787.

The findings in support of the Commission's decision to impose a twenty year expiration date on the CDP are not supported by substantial evidence. AR 1709-1710.

Further, Petitioner's arguments that the power to impose a condition presumes the power to deny the request, is at least partially persuasive. The Coastal Commission did not have the power, under the facts presented here, to deny a permit for the protective wall. During an earlier argument, the Coastal Commission argued that the 20 year limit was simply a way to make sure the seawall was still safe as further sand erosion and bluff changes might undercut the support system. Respondent returned to that argument, and included the possibility that future "coast wide" work, such as an artificial reef or barrier, might make the continued existence of a seawall unnecessary.

Neither argument is persuasive. First, the government always has the power to force repair or change should the seawall become unsafe. It may proceed by code enforcement, inverse condemnation, or many other legal practices to protect against a dangerous condition. Second, even counsel for Respondent concedes that the probability of a "coast wide" barrier being designed, approved, processed through and litigated in the next 20 years is remote. Instead, Petitioner's expectation that the 20 year limit is simply a power grab designed to obtain further concessions in 20 years, or force the removal of seawalls at a later time is persuasive.



Judge Earl H. Maas, III

DATE: 03/07/2013

MINUTE ORDER

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Calendar No.

FILED
Clerk of the Superior Court

APR 24 2013

BY Noreen McKinley, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

BARBARA LYNCH and THOMAS FRICK
Petitioners and Plaintiffs,

v.

CALIFORNIA COASTAL COMMISSION,
an agency of the State of California, and
DOES 1 through 20, inclusive,
Respondents and Defendants.

CASE NO. 37-2011-00058666 CU-WM-NC

~~PROPOSED~~ JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE

Dept: N-28
Judge: The Honorable Earl H. Maas, III

Petitioners' Motion for Judgment came on regularly for hearing before this Court on March 7, 2013, in Department N-28, the Honorable Earl H. Maas, III presiding, pursuant to the Petition for Writ of Mandate filed and served by Petitioners Barbara Lynch and Thomas Frick on Respondent California Coastal Commission in the manner required by law. Petitioners and Respondent have submitted memoranda of points and authorities in support of their respective contentions. Jon Corn and Vincent Axelson, Axelson & Corn, P.C., appeared as attorneys for Petitioners and Hayley Peterson, Deputy Attorney General, appeared for the Respondent. Arguments were presented and the cause was submitted for decision.

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1 This case concerns a petition for a writ of mandate arising out of a dispute over three special
2 conditions imposed by Respondent on Petitioners' Coastal Development Permit No. 6-88-464-A2
3 ("CDP"). Special Condition 1.a. required Petitioners to remove from their building plans the
4 reconstruction of their permitted beach stairway that was partially destroyed in a December 2010 bluff
5 collapse. Special Conditions 2 and 3 imposed a 20-year expiration date on Petitioners' CDP and a
6 requirement to apply for a new CDP prior to the expiration date, respectively. All 3 conditions are
7 invalid and the motion was granted.

8 Petitioners are entitled to reconstruct their beach stairway pursuant to Encinitas Municipal Code
9 and the state Coastal Act. Special Condition 1(a) impermissibly required Petitioners to delete the
10 stairway reconstruction from their building plans before Respondent would issue a CDP for the
11 construction of a seawall. This condition was invalid as the Encinitas Municipal Code and Local
12 Coastal Program allow Petitioners to reconstruct their stairway which was destroyed by a "disaster" as
13 that term is defined in Public Resources Code §30610(g). In imposing Special Condition 1(a),
14 Respondent did not proceed in the manner required by law and its decision was not supported by
15 substantial evidence.

16 Petitioners are also entitled to a CDP without an expiration date, and the re-application
17 requirement, imposed through Special Conditions 2 and 3. Respondent had a duty to grant the CDP for
18 the seawall and was not authorized to impose an arbitrary expiration date. Public Resources Code
19 §30235 requires Respondent to grant a CDP to protect existing structures in danger from erosion. In
20 discharging this affirmative duty, Respondent may not impose arbitrary and unreasonable conditions;
21 only conditions that have a nexus (i.e., logical link) to a specified adverse impact, and then only when
22 such conditions are proportional to the impact, may be lawfully and constitutionally imposed. Special
23 Conditions 2 and 3 do not meet these criteria and are regulatory takings. By imposing Conditions 2 and
24 3, Respondent failed to proceed in the manner required by law and its findings were not supported by
25 substantial evidence.

26 ///

27 ///

EXHIBIT C

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 2 1. A peremptory writ of mandate shall issue under seal of this Court commanding
3 Respondent to remove from Petitioners' Coastal Development Permit, Permit No. 6-88-
4 464-A2, Special Conditions 1(a), 2 and 3.
- 5 2. Petitioners shall receive their costs in this action in the amount of \$ _____ from
6 Respondent.
- 7 3. Petitioners shall receive their attorneys fees in this action in the amount of \$ _____
8 from Respondent.

9
10 APR 24 2013

Earl H. Maas III

11 Judge Earl H. Maas, III
12 Superior Court of California,
13 County of San Diego

Th17a

From: Anne Blemker [<mailto:ablemker@mccabeandcompany.net>]
Sent: Friday, August 09, 2013 3:17 PM
To: Geisler, Karen@Coastal; Cavalieri, Madeline@Coastal; Carl, Dan@Coastal
Cc: David Goldberg; Todd Stark
Subject: Response to Staff Report (Lands End,Th17a)

Good Afternoon,

Attached please find our written response to the staff report addressing the few outstanding issues that we discussed with you this morning. We'll be providing this to Commissioners via e-mail with hard copies going to your office in Santa Cruz. How many copies would you like?

Please let us know if you have any questions or need additional information.

Thanks,
Anne

Anne Blemker
McCabe & Company
Phone: 310-463-9888
10520 Oakbend Drive
San Diego, CA 92131

TH17a

DISCLOSURE OF EX PARTE COMMUNICATIONS

August 7, 2013
1:00 pm
Telephone

Todd Stark
David Goldberg
Anne Blemker
Susan McCabe

Application No. 2-10-039 (Lands' End Associates, LLC, Pacifica)
Copy of power point presentation Land's End Associates. 100 & 101 Esplanade Avenue, Pacifica

Previously existing stairway to beach washed away in 2008.
Proposal includes emergency work to stabilize bluff/protect existing apartments and public access. Work includes tie back sea wall, buried caisson and grade beam retaining wall system, updated and enhanced vertical and lateral access easements and drainage, landscaping and public access improvements.

Applicants would like condition 9 removed and condition 4 add a 1-ft buffer for bluftop.

Carole Groom

From: Dian Hardy [mailto:themis@sonic.net]

Sent: Sunday, August 11, 2013 9:07 PM

To: Staben, Jeff@Coastal

Cc: Lester, Charles@Coastal; Dian Hardy

Subject: Application No. 2-12-004 Russian River Estuary Management Project North Central Coast District -Agenda Item 17b on Thursday August 15, 2013

*When we try to pick anything out by itself, we find it
hitched to everything else in the universe.*

- John Muir



DIAN HARDY
7777 Bodega Avenue
R304
Sebastopol, CA 95472
themis@sonic.net

Th17b

Subject: Application No. 2-12-004 Russian River Estuary Management Project North Central Coast District -Agenda Item 17b on Thursday August 15, 2013

Chair Shallenberger and Commissioners -

I write as a near 40 year resident of Sonoma County, long active in environmental and animal advocacy. In 1985, following an illegal spill of 800 million gallons of secondarily treated wastewater into the Russian, I founded the Sealwatch program, committed to safeguarding the harbor seals at their haulout and nursery. Sealwatch was the impetus for the formation of Stewards of Slavianka, now known as Stewards of the Coast and Redwoods, working in cooperation with State Parks.

"We understand and appreciate the concerns expressed but note that, while natural resource management often requires difficult choices, there is no evidence to date that the incidental harassment of harbor seals described herein will result in long-term displacement from the haul-out." (CDP Application, page 57, July 2012)

Having observed the harbor seal haulout and nursery over many years and all seasons, I must disagree with the statement above. While harbor seals at this haulout are nocturnal predators, faced with a lagoon filled with young salmonids, why would these opportunistic predators ignore such a feast? And if their presence does impact the salmonids why would the same agencies who have begun this work ignore this impediment to their plan?

Sea lions at Ballard Docks in Oregon are now being killed for taking salmon and next year barred owls will be killed in order to save spotted owls. Between 2000 and 2006, golden eagles were captured and removed from the Channel Islands to protect the island fox. Five thousand feral pigs were killed in an attempt to restore Santa Cruz island's ecosystem. Killing one species to save another is an accepted technique in wildlife management. If management activities at the mouth of the Russian do not cause abandonment of the site, harbor seal predation may demand such extreme measures.

"In the future, any requests from SCWA for incidental take authorization will continue to be evaluated on the basis of the most up-to-date information available."

Thus it would seem appropriate that any such requests from SCWA for IHAs be done each year rather than in three years.

I append a letter I sent to the Press Democrat in December 2012, in pertinent part, to again express my concerns:

Here we go again, folks. What I'm learning to call the Humpty-Dumpty School of Resource Management is in full spate; in order to save three endangered salmonid runs, agencies - federal, state and county - appear willing to overlook the totality of the ecology found at the mouth of the Russian: the harbor seal haulout, a resting and foraging site for migratory birds and a fishery that includes Dungeness crabs, amongst other species.

I do not understand this almost willful failure of agencies to carry forward an ecological perspective as called for, one would assume, in the enabling language for the Endangered Species Act. If such a vision is not part of the ESA, I submit that we need a Department of the Ecology, capable of seeing the forest AND the trees, the ocean AND the river, the seals AND the salmon and lest any of my two-legged comrades despair of me completely, the people who reside and recreate at the coast, river and ocean.

A holistic perspective would consider the human impact on our planet's natural systems of primary concern. In the present case, Warm Springs Dam had a huge impact on the native fishery, essentially destroying it and replacing it with a mechanistic model. The dam allowed enormous population growth in Sonoma County and the resulting inputs from agriculture, forestry, gravel mining and residential and commercial development further decimated the salmon. Native American gathering lands and a way of life that was sustainable fell to the dam's construction.

I say it's time we start demanding that agencies responsible for policy decisions make them based on a holistic understanding of what an ecosystem is. I remember one winter when a series of storm washed out the road to Goat Rock and the hundreds and hundreds of birds and seals who gathered there for weeks, unmolested by even our curiosity, benevolent though it may be.

I appreciate your consideration of the concerns expressed.

Dian Hardy

Th176

From: NORMA JELLISON [mailto:normalj@sonic.net]
Sent: Saturday, August 10, 2013 7:23 PM
To: Staben, Jeff@Coastal
Cc: Lester, Charles@Coastal
Subject: Application No. 2-12-004 Russian River Estuary Management Project North Central Coast District -Agenda Item 17b on Thursday August 15, 2013
Importance: High

Chair Shallenberger and Commissioners -

I write to you as a coastal resident, advocate and long time Seal Watch volunteer at the Harbor Seal colony at the mouth of the Russian River.

I focus my comments on several vital aspects of the Coastal Act impacted by this CDP application by the Sonoma County Water Agency (SCWA), w/ selected applicable, tho' by no means all inclusive, sections of the Act cited.

I believe it is premature to allow this project to proceed for 3 Yrs + 3 Yr renewal. NO EXTENSION should be allowed until initial impacts of the implementation of the project are identified and assessed - based on practical observed & monitored results AND critical information/impacts associated with the lowered river flows and the national marine sanctuary expansion are available from the respective pending EIR and the EIS to factor into the analysis.

Sec 30210 -

I request a 1 Yr permit in keeping with 1Yr permits given to SCWA by State Parks - in furtherance of their jurisdiction under Article X of CA Constitution. The Estuary Management Project (EMP) is to be constructed on State Park land - Goat Rock State Beach - where a majority of the impacts will be borne.

A 1 Yr permit is also consistent with the 4 separate 1 Yr Incidental Harassment Authorizations (IHA) given by NMFS, associated with the Harbor Seal Colony.

Both public resource agencies, one State and one Federal, obviously considered the merits of identifying the impacts of the project critical before giving the SCWA approval to operate the project for any longer duration.

Sec 30210/30211/30220et seq - Despite assertions that impacts to Public Access are minimal and will be managed by applicant, the EMP significantly impairs Public Access. The Biological Opinion/SCWA in carrying out the EMP, treats the Public's land and waters as an experiment/an experimental construction site. There is no proof that this outlet channel will succeed. In fact, attempts to implement in 2011 failed, due to the forces of nature.

Prior breaching activities, done solely for flood control, took place for a couple of

hours on 1 day. References to "no difference from past activities; no impacts associated with prior activities translates to current proposal" are false.

By implementing the EMP, Public Access will be eliminated/impaired/reduced for many consecutive days/weeks/months/years as this experiment is conducted. Construction equipment carving the outlet channel, installing wells, weekly well monitoring, equipment removal, fencing off sections of the beach - all will reduce or impair Public Access to large portions of the beach/river/ocean at those times.

Up to 2,000 cu yds of sand will be moved at each of 18 outlet construction events!

Clearly this is not the same as past practices of merely breaching - opening up - the sandbar one day.

Why treat a Public Beach as a construction site and suggest that a Public Access Management Plan could mitigate? Public Access should not have to be managed to avoid negative impacts to State Park/Beach visitors. Public Access should not be compromised in the first place in order to carry out an experiment. NMFS admits this is an experiment - the current term is "adaptive management."

Impacts to Public Recreation - families with children use the river side of Goat Rock State Beach extensively as a safer environment (than the ocean) for wading and swimming and picnicking. Construction & monitoring activities will reduce Public Access. Public Access should not be compromised. A Public Access Management Plan should not be necessary to manage Public Access to a Public Beach!

Impacts to Public Access - surfing - could be impaired by the sedimentation released when the outlet lagoon is eliminated each year by winter water levels that will naturally breach the sandbar or prior if river levels threaten flooding of several buildings. Staff dismissal that potential impacts are minimal as this is "just a local surfing spot" misses the fact that all surfing spots are local. Just because this is not Maverick's doesn't make it any less important a surfing locale.

Sec 30230/31/30240 - Impacts to sensitive species are minimized by comparing past activities and lack of impacts to proposed actions.

The SCWA has received four **1 Yr** Incidental Harassment Authorizations (2010, 2011, 2012, 2013) from NMFS for incidental takes of marine mammals, primarily Harbor Seals of the colony at the mouth of the Russian River on the outlet channel beach & adjacent to the jetty at Goat Rock State Beach.

The 30+-year old Harbor Seal colony are protected species under the Marine Mammal Protection Act. Regardless of IHA mitigations required, these sensitive species at the EMP construction site are potentially at risk of harassment from proposed construction and maintenance activities of the EMP and the invasive geotechnical activities of the associated jetty study.

Previous breaching activities are in no way similar to proposed EMP activities.

Prior sandbar breaching took place during a couple of hours on 1 day; in some years, e.g. this year and last, not at all. EMP activities proposed would take place over a number of consecutive days over a number of weeks/months/years.

Thus all references to "no difference from past activities; no impacts associated with prior activities translates to current proposal" are false.

The unknown impacts to this Harbor Seal colony are the reason that the IHAs have been issued for only 1 Yr in duration and not the potential longer term IHA that might be issued once impacts of the construction and maintenance of the outlet channel/EMP are monitored and known.

Impacts to other sensitive estuary species e.g. the estuary is a Dungeness crab nursery and home to many other species of fish - are unstudied & unknown.

Water Quality impacts: Influences/impacts of Russian River lowered flows remain to be assessed in an EIR to be published in 2014. Impacts to aquatic species/marine species; recreational users associated w/concentrations of contaminants in water contained by the sandbar in the lagoon are unknown. No study plan or monitoring for these specific WQ impacts to body contact sports or to the ocean environment is proposed for this CDP.

Lowering the flows in the river is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating. Lowering the flows in the river will impact water quality. Water quality impacts of lowered flows in the estuary (*elevated bacterial levels; nutrients; dissolved oxygen conditions*) will surely impact wading and swimming on the river side of the State Beach and at nearby upstream beaches, as well as kayaking, canoeing, and the many waterfowl, river and marine mammals and fish that live in and use the estuary. As an oddity, the BO acknowledges that some die off/take of salmonids may be associated with the perched lagoon of the EMP.

The pending EIS for National Marine Sanctuary (S) expansion adjacent to Russian River mouth will provide critical information about the ocean environment, including WQ. Sanctuary jurisdiction is over all submerged lands, water & associated marine resources therein from the MHW line; alteration of stream & river drainage & surface water runoff into The Sanctuary (S).

Impacts from "first flush", either emergency (based on WQ or flood danger) planned breaches, or natural breaches from winter storm river water levels or ocean conditions, releasing lagoon waters into nearshore ocean waters are unstudied and unknown, as are released sediment impacts.

When the retained waters behind the sandbar/outlet channel are released into the ocean environment, the concentrated contaminants and sediment built up behind the sandbar for sustained periods, up to 5 months, will have potentially significant impacts to the nearshore beaches and marine life. These all could be significant impacts, yet

remain unknown; unstudied and are not addressed in any proposed monitoring.

Again, it is simply premature to allow this project to proceed for 3 Yrs + 3 Yr renewal. NO EXTENSION should be allowed until impacts of the implementation of the project are identified and assessed - based on practical observed & monitored results AND critical information/impacts associated with the lowered river flows and the marine sanctuary expansion are available from the respective pending EIR and the EIS to factor into the analysis.

Thank you for your consideration of my comments

Norma Jellison
PO Box 1636
Bodega Bay 94923



A new ethic for the ocean where the ocean is not seen as a commodity we own but as a community of which we are a part.

The sea is worth saving for its own sake. Bill Ballantine NZ
And take this to the land as well.

Th 17b

August 9, 2013
California Coastal Commission

Please distribute the following comments to staff and all Commissioners prior to the hearing.

Re: Application No. 2-12-004 Russian River Estuary Management Project North Central Coast District -Agenda Item 17b on Thursday August 15, 2013

These comments advocate the issuance of a permit with a tenure of one year for the Russian River Estuary Management Project which follows the permit tenure granted by State Parks.

The estuary, as proposed, affects dam releases and the flow in the lower Russian River. The goal for flow in the lower Russian River should remain at 125 cfs. The estuary should be designed to accommodate a flow of 125 cfs.

The height of the water in the estuary can be controlled shutting off the water or by opening a drain set at the desired level of water in the estuary. A bathtub or sink is designed on that bases. The water may be shut off at the faucet or the excess water may blow down a high drain so that it doesn't flow over the top edge of the tub or sink.

The height of the water in the estuary should be controlled using tub/sink technology and not by decreasing water flow in the Russian River that would affect the recreational use of the river.

The Estuary Management Project proposes a construction project on a State Park/State Beach and in State waters w/ significant negative impacts to public access and potential negative water quality impacts to public recreation - swimming, boating, fishing and biological resources in the estuary and the near shore ocean environment.

Coastal Act Provisins Sections:30006 & 3006.5 provide for maximum public input and scientific data in Commission decisions

Two pending environmental documents - the Russian River Low Flow EIR (due 2014) and EIS for National Marine Sanctuary(S) Expansion (due 2014) w/jurisdiction here will provide critical data and information that would better inform CCC decisions on this project/CDP and argue for a shortened permit duration.

The permit should be issued with a tenure of one year to allow this information to be considered in any estuary decision.

Influences of changes to flows of the Russian River have been acknowledged by the applicant and the Biological Opinion (references below) and should therefore be included and considered as soon as available rather than waiting for three years. A Coastal Commission permit with tenure of one year would allow the maximum opportunity for public input and results of the

DEIR on the Low Flow to be considered before extension of the permit so that the Commission can determine the extent of the impacts to habitat, water quality and other coastal, estuary, and lower Russian River resources.

“NMFS biologists believe that reducing summertime flows in the Russian River and Dry Creek would provide better fishery habitat by reducing velocity, minimizing the need to artificially breach the sandbar at the river mouth, and potentially improving estuary conditions for steelhead by allowing the formation of a freshwater lagoon.

“Also, minimum instream flows lower than those required by Decision 1610 could encourage formation of a closed or perched lagoon at the mouth of the Russian River and therefore noticeably enhance the salmonid estuarine rearing habitat while preventing flooding of adjacent properties.

The "low flow" caused by turning off the water supply for the river advocated by NMFS would cause significant changes in the recreational use of the Russian River. Solving the breaching problem would not decrease recreational use.

Solving the breaching problem would involve understanding the impact of the flow in the National Marine Sanctuary.

Pending EIS for National Marine Sanctuary expansion (also available in early 2014) which will expand jurisdiction to include the Russian River mouth will provide critical information about the ocean environment, including Water Quality. Sanctuary jurisdiction is over all submerged lands, water & associated marine resources therein from the mean high water line; alteration of stream & river drainage & surface water runoff into The Sanctuary.

Coastal Act Provisions Sections: 30230, 30231, and 30240 afford protection of marine and biological resources and their productivity, Coastal Act Provisions Section 30220 & 30213 protect public access and public recreational facilities.

Lowering the flows in the river (in lieu of solving the breaching problem) is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating.

“The Russian River has been declared a navigable river. Hitchings v. Del Rio Woods Recreation and Parks District, 55 Cal. App. 3d 560, 567 (1976). There simply is no line where the Estuary stops and the river begins in so far as recreation goes. In 2004 & 2007 the SWRCB approved Temporary Urgency Change Petitions on behalf of Sonoma County Water Agency to reduce minimum flows to 85 cubic feet per second at the Hacienda Bridge USGS gauging station.

The impacts from low flow on recreation are profound. At flows of less than 90 cfs as measured at Hacienda Bridge, Russian Riverkeeper received dozens of reports from boaters concerned that navigation in the free flowing portion of the lower Russian River was being impeded, resulting in more perilous conditions for boaters. As flows were reduced, areas below riffles were narrower and often boaters were swept dangerously into overhanging vegetation resulting in over-turned watercraft. Russian Riverkeeper has numerous pictures of boaters (including the Sonoma County Sheriff's Water

Safety Patrol boat) having to push their boats through shallows, and other river users were forced to walk due to shallow water, resulting in serious impediments to navigation. Several canoe and kayak rental outfitters, principally Burke's Canoe Trips, and the Monte Rio Park and Recreation District, have been impacted by previous Temporary Urgency Change Petitions issued to Sonoma County Water Agency (SCWA) by the SWRCB in 2004 and 2007 that impeded the navigability of the Russian River. The owners of Burke's and River's Edge have received numerous complaints and that many regular customers did not return in successive years due to lower flows.

These realities sharply contrast with the blithe assertion in the RRBO (see pp. 264-265 of Russian River Biological Opinion) that recreation would not be impacted at 70-85 cfs. Additionally, when the temperatures spike during the summer diversions from the river (for both municipal and agricultural uses), the operating margin of 10-15 cfs is depressed at the same time as record crowds go to the River to cool off and canoe. Sonoma County residents regularly canoe and kayak the Russian River and the Estuary for exercise, recreation and fishing and there have been several dozen complaints about navigation being impeded by previous temporary urgency change petitions that reduced flows below 90 cfs in the lower Russian River."

The impacts of lowering the flow in the river and failure to maintain an open estuary creates impacts to recreational boating that need to be considered in any analysis of this project.

Water Quality (30230, 30231) may be drastically affected by decreased river flow. Lowering the flows in the river and closing the estuary creates impacts to water quality that require further study. The project contains no performance standards with regards to when corrective measures should occur.
RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 43

9.3.2 Decline in Water Quality

Declines in water quality could have impacts to salmonids rearing in the estuary, other species which reside in the estuary and the public. Potential water quality concerns include, but are not limited to:

- Dissolved oxygen conditions becoming dangerously low to fish and other species;*
- Elevated salinity levels in domestic water wells; and*
- Elevated bacterial levels.*

FEIR 2-14 Nutrients and Bacteria

Potential significant and unavoidable impacts to water quality associated with nutrient and bacteria levels are acknowledged and analyzed in Draft EIR Section 4.3, Water Quality. As noted on Draft EIR pages 4.3-7 and 4.3-12, there are currently no specific limits on nutrient and bacteria levels for estuarine systems, only freshwater. As discussed in the Draft EIR (page 4.3-24), the precise response of the Estuary to the Estuary Management Project cannot be predicted with certainty. As discussed in Draft EIR Section 4.3, it is anticipated that nutrient and bacteria conditions would remain within the range of those experienced within the Estuary over the past 15 years, but that the duration of those conditions would likely increase as a result of the project. Therefore, based upon the best available information, this to bacterial and nutrient levels in the EsEIR concludes that the proposed project would have the potential to result in significant and unavoidable impacts to water quality related tuary.

The Coastal Commission should issue a permit with tenure of one year to allow the maximum opportunity for public input and the conclusion of important related research projects.

Sincerely,

Dana Zimmerman

Chairman
Russian River Recreation and Park District
Guerneville, CA

Darrell B. Sukovitzien
P.O. Box 849
Guerneville, CA 95446
(707) 887-1017

Re: 12-12-004

Agenda No. Th17b

LK
Th17b

RECEIVED

AUG 09 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

May 23, 2010

SCWA vs. Harbor Seal Pups: The Water Grab

Once again the Sonoma County Water Agency has come up with a boondoggle of a venture that entails harassment and perhaps "incidental" kills of harbor seals at the mouth of the Russian River. The impetus for this proposal is a mandate called the Biological Opinion produced by the National Marine Fisheries Service. The project is intended to create a rearing grounds in the estuary for threatened salmonid species. It involves dramatically dropping the river flow in summer to create a millpond of the estuary; heavy equipment on the beach (chasing the seals away) will create a sandbar with a small V-shaped outlet for overspill. According to Bill Hearn, primary author of the Biological Opinion, "We expect some toxic waters to form." Does this mean that a "take" permit must also be required for steelhead die-off as it has been for harassment and take of marine mammals and their pups?

The proposal completely overlooks the rest of the estuary's forms of life. According to Dian Hardy, founder of SealWatch, "In what I'm learning to call the Humpty Dumpty School of Resource Management, in order to save three salmonid runs, agencies—federal, state and county—appear willing to overlook the totality of the ecology found at the mouth of the Russian: the harbor seal haul out, a resting and foraging site for migratory birds and a fishery that includes Dungeness crabs, amongst other species."

It is interesting to me that the data collected from the \$90,000 contract between SCWA and Stewards of the Coast & Redwoods for monitoring the seals will not be available for public review in time for comment during the EIR process. Also in this contract, it is stated that in the event of disturbance or harm to harbor seals or pups during heavy equipment use on the beach, Stewards is only to report in writing to SCWA, who in turn will report in writing to NOAA, for input on what to do. This is not a satisfactory method of dealing with what could be urgent situations.

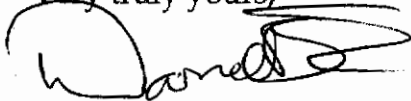
Some of the real causes of salmonid demise are decidedly not being addressed by this Biological Opinion, such as vineyard production next to streams, tributaries and the main stem of the river and the silt runoff, habitat loss and drift, and runoff from pesticides, herbicides and fungicides that result. Many of the chemicals used in vineyard production clearly state in their risk assessment labels and material safety

data that they are toxic to fish and should not be used where drift and/or runoff would cause them to enter any stream. Sewage releases include pharmaceuticals and hazardous chemicals. Generations of improper logging operations have caused massive siltation issues; and there has been inflated development adjacent to these streams and tributaries, which in any case are currently too impaired to become salmon runs again. To focus on restoration of these waterways would be a better approach to bringing back to salmon.

At a recent scoping session in Jenner sponsored by SCWA, 5th District Supervisor Efren Carrillo seemed reluctant to discuss the question of what happens to the water that will NOT be going down the Russian River during the summer once the permanent low flow is established. The answer, of course, is that SCWA has oversold its contractual allotments for water to the cities and northern Marin. In turn the cities have issued building permits based on these assumptions.

One could extrapolate that endangering the harbor seals and their pups is good for business for SCWA, allowing them to sell yet more water.

Very truly yours,



Darrell B. Sukovitz
Award-Winning Environmentalist

darrell5@sonic.net

RECEIVED

AUG 09 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

TH17B^{HK}

AGENDA #: TH17B

APPLIC. #: 2-12-004

John Pearson, RCE

Not For Flooding Jenner

California Coastal Commission
District Offices
725 Front St., Suite 300
Santa Cruz, CA 95060

The attached photos show the water levels reached on my property when the river mouth is not managed. For over 50 years (and many more) the mouth has been managed (opened) by Cal Trans and the County to prevent flooding of the lower properties.

And in the 60's and 70's, fish life and my fishing was great in this river. If the SCWA knew what was best for the fish and river, I would be behind their proposal, but their proposals seem to be a guess at best (a prior County study 10 years ago+ concluded the managed opening of the mouth was best for the fish life, etc..). Now it's better to keep it closed??

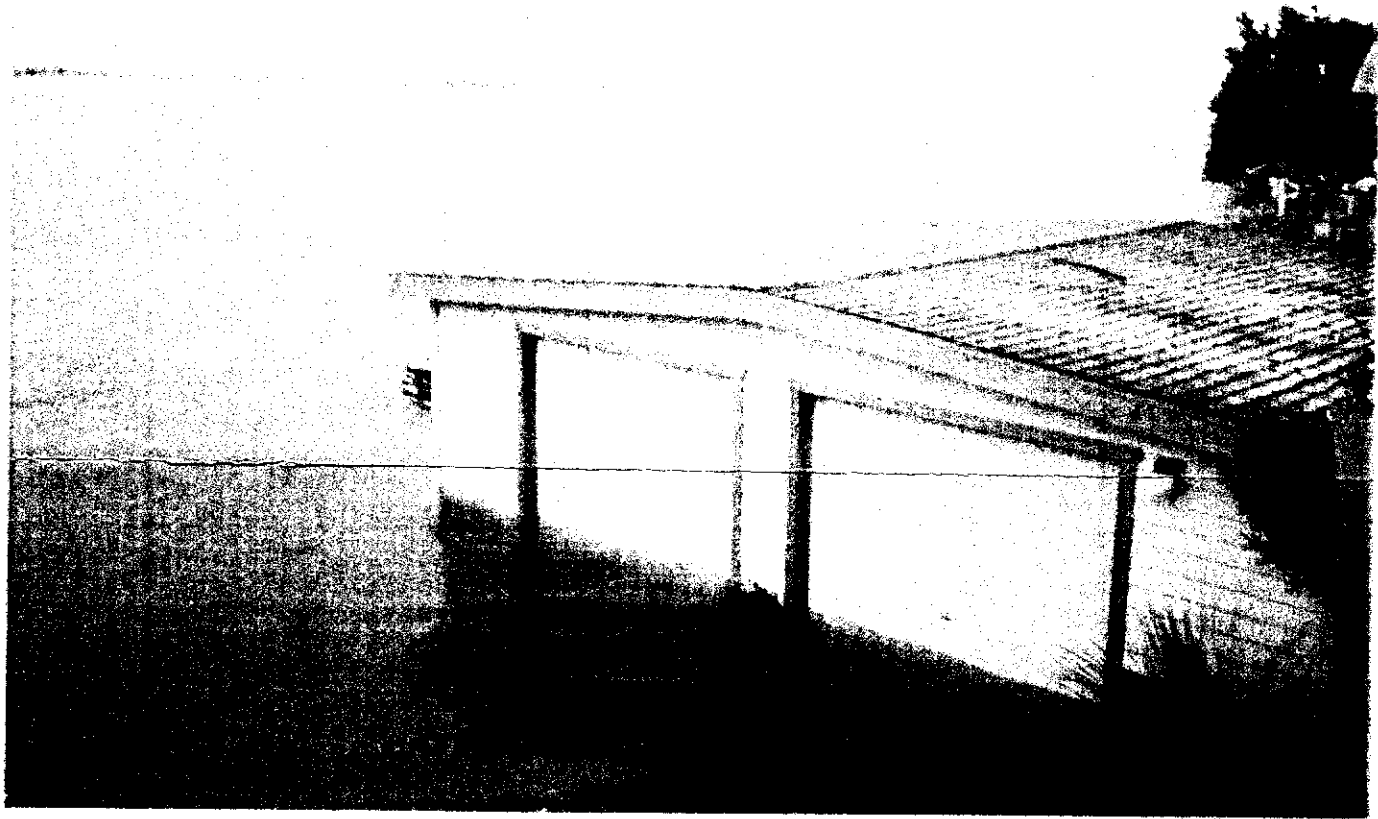
THE BOTTOM LINE IS I'M NOT FOR THE FLOODING OF MY PROPERTY!!

John Pearson
Box 58
Forestville, Cal. 95436



THE ATTACHED IS MY PROPERTY WITH THE MOUTH NOT BEING OPENED OR MANAGED.

WOULD YOU VOTE FOR THIS?? I WOULDN'T!!



One for the books.



Close

Next

Previous

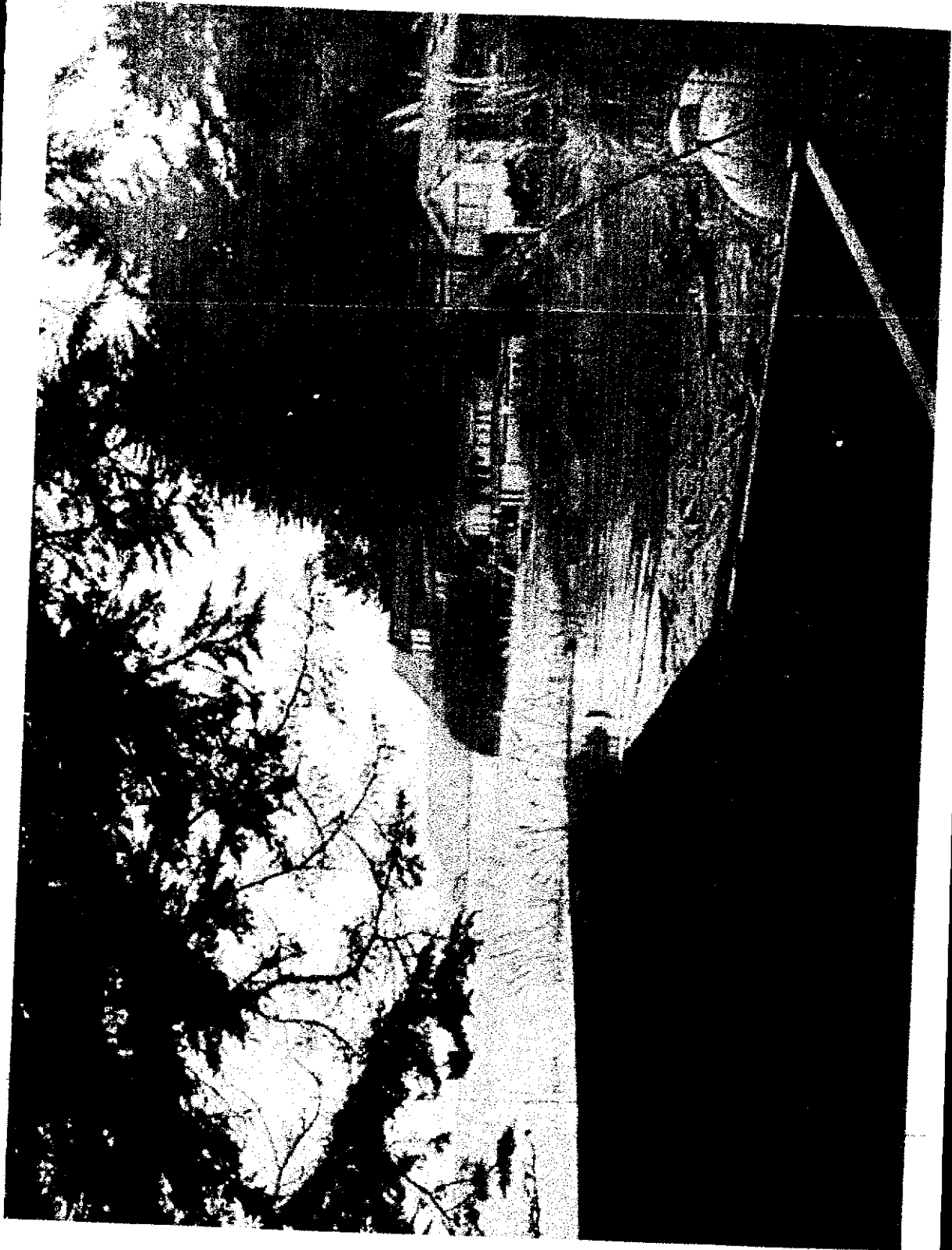
Delete

Forward

Reply All

Reply

Move To (Move to Selected Folder)



Th17b

From: richandwanda@sbcglobal.net [mailto:richandwanda@sbcglobal.net]

Sent: Thursday, August 08, 2013 6:17 PM

To: Kellner, Laurel@Coastal

Cc: greg sampson; Kyra Wink; Roberto Esteves; Rich and Wanda Holmer; Wackerman, Tom; Wikle, Ken; Kyla Brooke; Victoria Wikle; Craig, Susan@Coastal

Subject: Comments on item 2-12-004 for the August 15 Coastal Commission meeting

Dear Laurel:

Attached are comments by the Friends of Villa Grande regarding the subject project. We will make every attempt to have representation at the meeting but this may be difficult due to the short notice and the location of the meeting.

We would appreciate you making sure that our comments are presented to the Commission. We feel that this is a very serious issue that needs careful deliberation.

Thank you for your assistance.

Richard Holmer, President of Board of Directors, Friends of Villa Grande

August 8, 2013

California Coastal Commission
Attn: Laurel Kellner
725 Front St., Suite 300
Santa Cruz, CA 95060

Dear Ms. Kellner:

Subject: August 15, 2013 hearing on item 2-12-004, Sonoma County Water Agency

The Friends of Villa Grande (FOVG) a public-benefit 501 (c)(3) owns and operates a public access point to the Russian River and a biotic preserve (Patterson Point Preserve) located in the community of Villa Grande. The Patterson Point Preserve and the two associated beaches were purchased by the FOVG in 2007 with partial funding from the Sonoma County Agricultural Preservation and Open Space District. There is a permanent easement across the preserve for public access to the Russian River.

The proposed project will create significant adverse impacts to Patterson Point Preserve's beaches as well as to recreational beaches in the surrounding community. The project has been hastily put together in response to pressure from NOAA and is based upon questionable science which is not directly related to the Russian River. Instead, the Sonoma County Water Agency plans to use adaptive management as new information is discovered, which will result in impacts occurring which may or may not be able to be corrected. In addition, the impact analysis that was conducted focused onto the estuary area and gave only cursory analysis to impacts upstream from the estuary. The FOVG would like to see modifications to the project to address the following concerns:

WATER QUALITY

The project proposes maintaining a barrier at the mouth of the Russian River in order to cause an estuary depth of 7 feet to 9 feet as measured at Jenner. Although this condition occurs naturally, it normally only occurs for a few brief periods each summer. The project proposes maintaining these water levels all summer. At the proposed water level in Jenner, the Russian River will backwater approximately 12 miles upstream as far as the community of Vacation Beach near Guerneville. All recreational areas along this stretch will become fully to partially inundated and this condition will be artificially maintained throughout the entire summer.

During mouth closures, this 12 mile long pool of water becomes stagnant with minimal flow of current. Contaminants migrating downstream or originating in the area are trapped and are not flushed out as normally occurs when the river is flowing to the ocean. The pool of water concentrates bacteria, nutrients, algae and floating scum. It becomes unsuitable for the historic recreational activities and presents a danger to public health. The bulk of the area affected by the proposed project is heavily developed and is not served by a public sewer system. Contaminants from individual septic systems leach toward the river and will not be dispersed.

The stagnant pool also creates warm water conditions which are favorable for algae growth and growth of Ludwigia. Ludwigia is an invasive, non-native noxious aquatic weed which is currently creating extensive problems throughout the watershed and in the area of the proposed project.

Concerns for Recreational Water Quality

The mouth of the river closed naturally this June and did not reopen until July 3. During this time, the County of Sonoma conducted bacteriological monitoring at Monte Rio beach, one mile upstream of Patterson Point Preserve. The results of this monitoring showed that the State of California draft guidelines for fresh water bathing places were exceeded on June 25 for both total coliforms and for E. coli and were exceeded again on June 27 for E. coli. Since the river mouth reopened, the Monte Rio beach has been sampled 4 times by the County with no exceedances of the state standards. In addition, the 30 day geometric mean level of E. coli levels while the mouth was closed exceeded 126 colonies per 100 ml. At this level of contamination, the standards recommend a sanitary survey to identify sources of contamination and increased levels of monitoring.

The Sonoma County Water Agency did not respond to these documented levels of gross contamination of public recreational areas. The mouth of the river reopened naturally, at which point, the contamination problems were resolved.

The proposed project will perpetuate these contamination problems over the entire summer and will expose bathers at all of the recreational beaches along this 12 mile stretch of the Russian River to potential public health risks. In addition, the water supply wells for the public water system which serves Monte Rio are located downstream of the Monte Rio Beach. The wells draw partially from the underflow of the river and will be subjected to these increased levels of contamination.

Impact upon Wildlife:

The project may displace and even kill seal pups. The elevated water levels have already destroyed duck nests in Villa Grande. The effect on plant and animal life upstream is unknown and may impact the salmonids and other marine life as the water quality degrades. Visitors to Goat Rock will be impacted, and the elevated pathogens may also impact wildlife and livestock.

While the mandate to implement measures to reduce or avoid impacts on the Salmonids (Russian River Biological Opinion 2008) is important, the impact this project has on the salmon and steelhead remains unclear and unjustified. Patterson Point Preserve plants, animals and people may be jeopardized by the amount of rising water. We request that further study and better science be implemented prior to beginning this project. We advocate the "No Project" Or a "Reduced Alternative of five feet with a Maximum of 6 feet or less" be implemented until environmental impacts are fully defined.

RECREATIONAL IMPACTS

California Coastal Act

Among the primary objectives of the California Coastal Act is the protection of public access and recreational opportunities of the California coast and it related lands and tributaries.

Patterson Point Preserve

In 2009, the citizens of Villa Grande joined together to purchase property on the lower Russian River in order to restore the land to its native riparian state and to ensure ongoing recreational opportunities that had been available to the townspeople for over a hundred years. This property, now known as Patterson Point Preserve, is two miles upriver from Duncans Mills, and is frequently visited by seals and other ocean-identified species. With cooperation of the Sonoma Agricultural Preservation and Open Space District, Patterson Point Preserve

FRIENDS *of* VILLA GRANDE

has not only a Conservation Easement in place, but also a Recreational Covenant that guarantees ongoing beach access and water-related recreational opportunities.

Impacts of the Estuary Management Project

Despite the claim of the report that “there will be minimum disruption to public access and recreation during the construction and life of the project” (page 34), we have already experienced the effect of a 7 foot flood level during the summer period. During this past July, the river naturally rose to 7.6 feet and virtually eliminated both beaches at Patterson Point Preserve. The river self-breached on July 3rd, bringing the level to its normal 3-4 foot level. Maintaining an estuary depth between 7 and 9 feet will virtually eliminate the recreational use of Patterson Point Preserve, destroying a century of historic public access to the Russian River by the town, tourists, and other visitors.

The summary states that a goal will be to “maintain the water elevation in the estuary at a **slightly** higher elevation than has typically been the case in the past” (Summary, page 2). The raising of the estuary to an elevation of 7-9 feet is more than twice the normal elevation and cannot be considered “slight” by any measure of judgment. **We respectfully request the level of the estuary be maintained at a level of five feet with a maximum level not to exceed six feet.**



Below is a side-by-side view of Patterson Point Preserve. One taken circa 1910, the other is contemporary (2009) at approximately 5 foot

elevation. Both are summertime photos and demonstrate the normal elevation of the river in the past.



FRIENDS of
VILLA GRANDE

RECOMMENDATIONS:

- The FOVG requests that the project be modified to maintain a water level of 5 feet as measured at Jenner with a maximum water height of 6 feet. At these water levels, the beach areas along the river are less impacted and the water flow in the river is increased which will provide better dispersal of contaminants.
- We also request that the Sonoma County Water Agency be ordered to increase the river monitoring program including weekly bacteriological monitoring at Patterson Point Preserve.
- Finally, we request that the Sonoma County Water Agency be directed to take action to open the mouth of the river if unacceptable bacterial levels are measured in the Russian River.

Thank you for your attention to our concerns.

Sincerely,

The Friends of Villa Grande Estuary Committee and the Board of Directors of the Friends of Villa Grande

Rich Holmer, President FOVG Board of Directors
Kyla Brooke
Roberto Esteves
Greg Sampson
Ken Wikle
Kyra Wink
Victoria Wikle
Tom Wackerman

cc: Supervisor Efrén Carrillo
SCWA
North Coast Regional Water Quality Control Board
Sonoma County Agricultural Preservation and Open Space District.

Th17b

1



**SURFRIDER
FOUNDATION**

SONOMA COAST CHAPTER

The Surfrider Foundation is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches. The Surfrider Foundation now maintains over 100,000 members and 90 chapters worldwide.

**Re: Application No. 2-12-004 Russian River Estuary Management Project
North Central Coast Agenda Item 17b on Thursday August 15, 2013**

The Sonoma Coast Surfrider Foundation, as a long-term stakeholder in the Russian River Estuary Management Project, requests that any permit approved by the commission follow the permit tenure of California State Parks (who owns and operates the land around the project) and only be granted for a maximum of one year initially due to the necessity to evaluate the significant impacts of the proposed project, the failure of the applicant to include study of impacts to the marine environment, and also to allow the pending data required for a more thorough analysis of estuary management practices and influences to be completed.

Sonoma Coast Surfrider continues to advocate for:

1. The inclusion of ocean water quality data monitoring plan.
2. The study of the effects of the EMP on sandbar formation at the Russian River Mouth and Goat Rock State Beach Surf zones.
3. Shortening the tenure of the permit to allow for the results and determinations of the jetty study on outlet channel/perched lagoon formation before the possibility of renewal or Executive Director extension of the approval for another year.
4. Shortening the tenure of the permit to allow for results and determinations of the DEIR for the Russian River Low Flow due in early 2014 (reducing flows of the Russian River by ½ the current flow mandated by the same Biological Opinion that is driving the current application before the Commission) and prior to extension of the permit for a second year.
5. Review of Federal Consistency in consideration of the Gulf of the Farallones Northern Boundary Expansion EIS which includes the mouth of the Russian River prior to issuing CCC permits for more than one year or allowing extension of the permit for a second year.

Sonoma Coast Surfrider has commented extensively over a four year period regarding the Estuary Management Project with commission staff via official comment letters, public comment at CCC hearings, emails, and numerous phone conversations with staff yet acknowledgement and consideration of comments and concerns were excluded from the staff report.

1. Marine Environment & Ocean Water Quality Data

MARINE AND BIOLOGICAL RESOURCES

Coastal Act Sections 30230, 30231, and 30240 afford protection of marine resources and their associated biological productivity and state:

Section 30230: *“Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.”*

Section 30231: *“The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.”*

Section 30240(b) *“requires development in areas adjacent to environmentally sensitive habitat areas to prevent impacts that would degrade those areas. It states: Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas”*

“The Adaptive Management Plan (PWA, 2011) provides for breaching (of the estuary into the ocean) in the event significant adverse water quality conditions are observed”

Final Environmental Impact Report 2-18 & Staff report 2-12-004 p. 31

The Russian River Estuary Management Project as proposed allocates that the applicant artificially breach the lagoon if water quality declines below acceptable thresholds after formation of the perched lagoon utilizing the outlet channel construction.

In essence, this plan mandates that the solution to an impaired estuary created by long term closure is the sudden flushing and releasing of impaired water into the immediate ocean environment and inter tidal zone.

Sonoma Coast Surfrider advocates that study of ocean water quality be implemented prior to formation of the outlet channel to establish a baseline and be continued throughout the management period and following any emergency breaching so that impacts to the marine environment can be monitored.

2. Recreational opportunities:



Photos of the fan created by the Russian River outflow of gravel and sediment reveal the expansive area that is influenced.

Section 30220. *“Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.”*

Section 30213. *“Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.”*

Staff Report page 33:

“First, as regards surfing, compared to the artificial breach that has historically occurred, the proposed project would result in more frequent closed channel conditions and thus wave conditions less preferable for surfing at this particular location.”

The Surfrider organization and supporters are particularly protective of surfing locations on the Sonoma Coast, especially the high quality ones, as they are available to the public in very limited supply. Surfrider wishes to express our continued concern on the impact to surfing at the Russian River Mouth as well as surfing areas south of the river including North Side Goat Rock, South Goat, Blind Beach, and the Far Cove that will be the result of the Estuary Management Project. These premier Sonoma County surf recreation areas depend greatly on the influx of new sand and gravel. The combination of modifying breaching practices and lower flows will reduce the possibility of surfing these areas.

Surfrider believes that the mouth of the Russian River is a high quality surfing location that should be legally protected under the California Coastal Act.

Staff Report page 33:

These closed conditions are currently experienced by the local surf community and will continue to naturally occur irrespective of the proposed project (FEIR 2011).

Except for extreme drought years, the mouth has usually been open during the summer over the last 100 years. The SCWA Estuary Management events from 1996-2010 have averaged about 3 breachings during the May 15th-Oct. 15th time period. Therefore the mouth is open almost all of the 150 days of that period and allows for formation of sandbars which combined with swell create surf for residents to enjoy. Closing the mouth of the river and preventing the movement of sand and gravel will result in the loss of surf at the River Mouth as well as surfing at Goat Rock State Beach which also depends on this influx.

Staff Report page 33:

Artificially breaching the river mouth results in a minor, transitory sand bar forming off of the coast. This minor sand bar temporarily creates favorable conditions for surfing, but because it dissipates quickly and is artificially created, it is not a long-term public access resource. In addition, the project site is located in a relatively remote area, and because the sand bar is so short-lived, it is generally used only by local surfers.

While it is true that breaching creates a unique type of wave condition that attracts highly experienced surfers due to the rapid wave velocity and height, wave conditions exist through-out the open mouth period and designated management period. **There are over 10 films and scores of photographic evidence to document the history of surfing at this location.**

The quality of a surf area is not determined by who surfs the area and the term "local" is being used as a term of reference to marginalize the individuals who surf the Russian River mouth. Every surf area is surfed by locals and the classification of the Russian River mouth as a world class surf zone is due to the geographic beauty, presence of wildlife, remote location, and water quality.

Staff Report page 33:

Furthermore, there is no substantial evidence to demonstrate that the other surfing areas south of the river, including North Side Goat Rock, South Goat, Blind Beach, and the Far Cove, would be affected by the Estuary Management Project (FEIR 2011).

There is also no evidence or attempt to gather evidence by the applicant to demonstrate that there is not an impact. There is evidence that the current placement of the parking area has contributed to the lack of sediment flow which is deteriorating both the surf zones in the above listed areas and erosion of the shoreline. It is natural to presume that further manipulation of the gravel outflow from the mouth would only exacerbate this existing deterioration and that monitoring methods of shoreline erosion and reduced sandbar formation should be included in the management practices.

The recent Coastal Commission denial of the **Sand Replenishment Project proposed for Encinitas and Solana Beach** acknowledges that the influx of sand could hurt the wave quality at surfing breaks and negatively impact a marine protected area. The reduced outflow of sand and gravel should also be considered when evaluating impacts to sand bars and marine environments. The lessons learned from the **Malibu Lagoon Restoration and Enhancement Project** should be considered as well.

3. Low Flow Connection

Section 30006: *“Legislative findings and declarations; public participation*

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.”

Section 30006.5 *“Legislative findings and declarations; technical advice and recommendations*

The Legislature further finds and declares that sound and timely scientific recommendations are necessary for many coastal planning, conservation, and development decisions and that the commission should, in addition to developing its own expertise in significant applicable fields of science, interact with members of the scientific and academic communities in the social, physical, and natural sciences so that the commission may receive technical advice and recommendations with regard to its decision making, especially with regard to issues such as coastal erosion and geology, marine biodiversity, wetland restoration, the question of sea level rise, desalination plants, and the cumulative impact of coastal zone developments.”

Influences of changes to flows of the Russian River have been acknowledged by the applicant and the Biological Opinion (references below) and should therefore be included and considered as soon as available rather than waiting for three years. A Coastal Commission permit with tenure of one year would allow the maximum opportunity for public input and results of the DEIR on the Low Flow to be considered before extension of the permit so that the Commission can determine the extent of the impacts to habitat, water quality and other coastal resources.

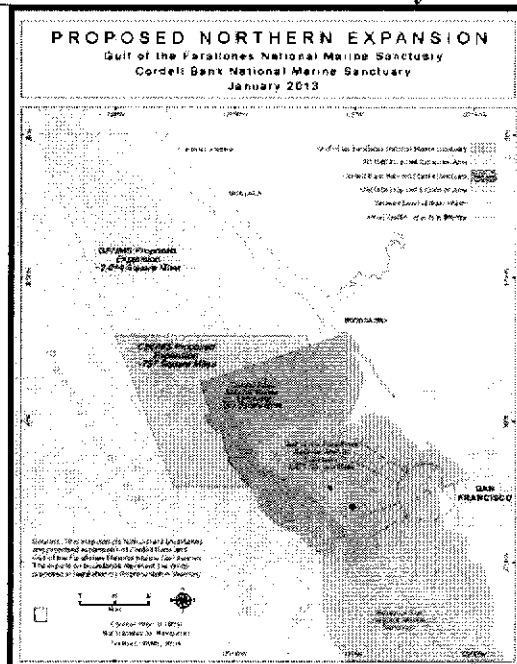
“NMFS biologists believe that reducing summertime flows in the Russian River and Dry Creek would provide better fishery habitat by reducing velocity, minimizing the need to artificially breach the sandbar at the river mouth, and potentially improving estuary conditions for steelhead by allowing the formation of a freshwater lagoon.

“Also, minimum instream flows lower than those required by Decision 1610 could encourage formation of a closed or perched lagoon at the mouth of the Russian River and therefore noticeably enhance the salmonid estuarine rearing habitat while preventing flooding of adjacent properties

4. Sanctuary Expansion & Jurisdiction

- Section 307 of the Coastal Zone Management Act
- Federal Consistency and the National Interest (Chapter 11 from the California Combined Coastal Management Program/Final Environmental Impact Statement)

**Expansion of Gulf of the Farallones Sanctuary
boundary will include jurisdiction in the
Russian River Estuary**



The Gulf of the Farallones National Marine Sanctuary Boundary Expansion currently in the EIS process will include jurisdiction in the Russian River Mouth and will apply existing regulations in expanded areas. Coastal Commission Federal Consistency Regulations should be adjusted and reviewed to include considerations, goals, and management of the new Sanctuary borders.

Gulf of the Farallones MANAGEMENT PLANS AND REGULATIONS (Sections 5 & 7).

(1) Application of Existing Regulations.--The regulations for the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary shall apply to the areas added to each Sanctuary,

(a) Gulf of the Farallones.--

(1) Boundary adjustment- areas added to the existing Gulf of the Farallones National include--

(i) All submerged lands and waters, including living marine and other resources within and on those lands and waters, from the mean high water line to the sanctuary boundary

(2) Regulation of specific activities-the Secretary shall consider appropriate regulations for the following activities:

(B) The alteration of stream and river drainage into the Sanctuaries.

with the primary objective of sanctuary resource protection;

(A) establish temporal and geographical zoning if necessary to ensure protection of sanctuary resources;

(3) identify priority needs for research that will--

(A) improve management of the Sanctuaries;

(B) diminish threats to the health of the ecosystems in the Sanctuaries; or

(C) fulfill both of subparagraphs (A) and (B);

(4) establish a long-term ecological monitoring program and database, including the development and implementation of a resource information system to disseminate information on the Sanctuaries' ecosystem, history, culture, and management;

(6) ensure coordination and cooperation between sanctuary superintendents and other Federal, State, and local authorities with jurisdiction over areas within or adjacent to the Sanctuaries to deal with issues affecting the Sanctuaries, including surface water run-off, stream and river drainages, and navigation.

C A T A L O G

Construction Management Issues & Actual Impacts to Public Access & Marine Resources



Construction events involve movement of up to 2000 cubic yards of sand and duration of construction and schedule of maintenance has not been quantified.

The potential failure of the Estuary Management Project is acknowledged in the EIR Conclusion 4.6-22

"It remains unclear whether the proposed project would result in a highly productive freshwater lagoon system during the lagoon management period, or whether the less productive and potentially adverse conditions characteristic of a partially converted stratified lagoon would predominantly occur."

It goes on:

"A partially converted lagoon could potentially impact resident fish species, especially rearing steelhead, due to a reduction of water quality and habitat function, leading to increased stress or mortality as a result of increased water temperatures, reduced dissolved oxygen levels, or reduced foraging potential due to loss of estuarine productivity. A reduction in productivity or habitat function within the Estuary could result in a further potential indirect impact related to increased competition in unaffected areas where suitable habitat persists. Additionally, stratification could result in a reduction in the total area of available suitable habitat for a range of fish species due to adverse water quality conditions in the lower water column."

And acknowledged in the Adaptive Management Plan:

RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 38

"Actual feasibility with regards to the full range of dynamic conditions has not been determined. Risks associated with outlet channel failure have not been quantified. In addition to the channel's performance criteria, there are also water quality and ecological performance criteria for the perched lagoon. These additional criteria have not been evaluated as part of the outlet channel management plan."

RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 37

7.6 EXCAVATION FREQUENCY

"Creating and maintaining the outlet channel will probably employ one or two pieces of heavy machinery (e.g. excavator or bulldozer) to move sand on the beach. At the start of the management period (late spring or early summer), when configuring the outlet channel for the first time that year, conditions may require operating machinery for up to two consecutive days. The precise number of excavations would depend on uncontrollable variables such as seasonal ocean wave conditions (e.g. wave heights and lengths), river inflows, and the success of previous excavations (e.g. the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations."

The project is unspecific about the number of excavations and maintenance events resulting in beach closures; therefore the impact on public access cannot be fully evaluated.

The adaptive management mandated by the project simultaneously mandates more frequent review by the Commission to ensure preservation and adherence to Coastal Act provisions.

Th/7b

To:
California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention:
Charles Lester, Executive Director
Ruby Pap, District Supervisor
Daniel Robinson

From:
Sonoma Coast Chapter of Surfrider
PO Box 2280
Sebastopol, CA, 95473
sonomacoastsurfrider@comcast.net

The Surfrider Foundation is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches. The Surfrider Foundation now maintains over 80,000 members and 90 chapters worldwide.

Re: Russian River Estuary Management Project Permit 2-01-033-A2

The Sonoma County Water Agency has submitted an application to the California Coastal Commission for an amended permit for management of the Russian River Estuary at Goat Rock State Beach in Jenner to continue previous flood management practices during the months of Oct. 15th-May 15th and to implement a new Adaptive Management Plan (AMP) of the Russian River Estuary during the months of May -Oct. 15th. The implementation of the proposed new lagoon outlet channel raises many concerns in the areas of public access, economic viability, water quality, public recreation, and loss of species habitat that deserve the attention of the Commission. We believe the current permit application should not be accepted as an amended permit. If however, it is accepted, we recommend that it be denied. As detailed below, the current proposal is inconsistent with numerous policies of the Coastal Act, including:

1. Water quality and rights (section 30231)
2. Marine resources (section 30230)
3. Environmentally sensitive habitat areas (section 30240)
4. Public access (section 30211)
5. Lower cost visitor and recreational facilities (30213)
6. Protection of certain water-oriented activities (30220)
7. Recreational boating use (30224)
8. Economic, commercial, and recreational importance of fishing (30234.5)
9. Wetlands (30233)

These numerous impacts cannot be balanced against the possible benefit to one listed species. The standard of review is the Coastal Act not the Endangered Species Act. Section 30007.5 mandates "that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources". Given the multitude of unmitigated and un-mitigatable impacts there is no way the present project can be considered to be most protective of significant coastal resources.

Public Access (30211)

The use of large equipment will result in partial closure of Goat Rock Beach and impacts to public access.

Each time the Russian River is breached or the proposed lagoon channel is created or maintained, SCWA operations will impact park visitor use through partial closure of Goat Rock Beach. The FEIR acknowledges that the proposed project will result in an increase in equipment use and subsequent beach closures and concludes that the impact is not significant, as the increase is not substantial. During the last 14 years SCWA has breached the estuary an average of 6.2 times/year. At least 2 of those breaches occurred during the months of January, February, November, and December (non-management period). Under the new management plan two days of initial construction would be required followed by maintenance activity (undetermined #) throughout the management period. In addition to the number of days required to implement and maintain the new outlet channel, NMFS estimates "that SCWA will need to artificially breach the lagoon using methods that do not create a perched lagoon twice per year between May 15th and October 15th.

¹ "There are 153 days in the management period (May 15 – October 15). The proposed project will restrict public access to Goat Rock Beach during the most heavily used time of the year. Goat Rock Beach is also one of the easiest beaches to access along the Sonoma Coast." The frequency and duration of beach closures will significantly increase, is substantial without limitation, and the subsequent limitations to coastal access ARE significant. There are no measure included in the plan regarding procedures that might be taken during these days to alleviate the impacts to public access.

The project is unspecific about the number of beach closures and therefore the impact on public access can not be fully evaluated.

RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 37

7.6 EXCAVATION FREQUENCY

"Creating and maintaining the outlet channel will probably employ one or two pieces of heavy machinery (e.g. excavator or bulldozer) to move sand on the beach. At the start of the management period (late spring or early summer), when configuring the outlet channel for the first time that year, conditions may require operating machinery for up to two consecutive days. The precise number of excavations would depend on uncontrollable variables such as seasonal ocean wave conditions (e.g. wave heights and lengths), river inflows, and the success of previous excavations (e.g. the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations."

Therefore the number of excavations and subsequent beach closures is also **uncontrollable**.

From July 1, 2009 through June 30, 2010, Sonoma Coast State Beach received almost 3 million day use visitors. Goat Rock Beach is the second most popular beach on the Sonoma Coast. It is reasonable to assume that a significant portion (10%) of park visitors visit this beach. The lagoon management period corresponds with the most impacted time of year for park visitors with approximately 66.5% of visits.

Public Recreation (30220, 30224)

The project will result in significant impacts to public recreation

According to the FEIR, the proposed project would result in significant impacts to public recreation.

Swimming

The impacts of the Adaptive Management Plan (AMP) on swimming at Goat Rock State Beach, specifically the river side beach area have not been assessed nor analyzed. This riverside beach area is heavily used especially by families with children.

² “Higher water levels in the estuary, up to 9’ in some locations, as posited in the FEIR will inundate riverside beaches for the long periods of time that the lagoon is in place – up to 5 months. The loss of river side wading/swimming opportunities at Goat Rock State Beach is a significant impact to the many families with children who use the riverside beach area at Goat Rock State Beach exclusively due to the dangers of the ocean side area and there can be no mitigation for this impact with the plan as proposed. . This river side beach area is arguably the only State Beach that is safe for children to wade and swim along the entire 10 mile length of the Sonoma Coast State Beach. All other State Beaches have only ocean side beach areas. Further, the FEIR fails to identify the existence of or assess the impacts of loss of the beaches below Rivers End used by Inn guests and residents of the houses on Burke Avenue. The inundation caused by the implementation of the outlet channel of these two prime riverside beach areas restricts access to these PUBLIC recreational sites.”

Surfing

Surfing locations are a prime example of low cost visitor and recreational opportunities and legally protected under the California Coastal Act (Section 30213). No baseline monitoring of surf conditions has been done by the Water Agency. As stated in the SCWA’s FEIR, impacts to surfing at the River Mouth as well as surfing areas south of the river including North Side Goat Rock, South Goat, Blind Beach, and the Far Cove will result with the implementation of the Estuary Management Project. These premier Sonoma County surf recreation areas depend greatly on the influx of new sand and gravel. The combination of modifying breaching practices and lower flows will remove the possibility of surfing these areas. Surfrider has determined that the mouth of the Russian River is a high quality surfing location.

To quote SCWA’s FEIR Impact 4.7.2: Eliminate or Modify an Existing Recreational Resource:

“The proposed project would likely reduce the occurrence of open channel tidal conditions conducive to surfing activities.” It goes on to say *“This potential impact may be inconsistent with*

the California Coastal Act, which protects water based recreation (Section 30220) and low costs recreational opportunities (Section 30213). The California Coastal Commission has jurisdiction and would be responsible for making a consistency determination of the project with these policies; however it is recognized that alteration of the opportunity for surfing may not be consistent.

..... yet no feasible mitigation measures are identified.

Surfing in Sonoma County can only be practiced in the ocean and never at inland areas. The Surfrider organization and supporters are particularly protective of surfing locations on the Sonoma Coast, especially the high quality ones, as they are available to the public in very limited supply. Sonoma County has only 9 surfing areas. As of today, out of those 9 areas, 3 are totally closed to public access, one is partially closed (Bodega Head) and access to Salmon Creek is greatly reduced (the Dunes & Bean Avenue Parking lot closures). There are also fees for ½ of these areas. Access to surfing is already limited to Sonoma County residents.

The loss of surfing at the River Mouth for half of the year due to the inlet channel and its construction efforts will now eliminate surfing at one of the only free surfing areas on the entire Sonoma Coast. In addition-the more northern surf areas and Bodega Head are less frequently used due to level of experience required or travel time, therefore, only 2 possible areas remain for surfing –primarily-Salmon Creek & the River Mouth. The Estuary Management project therefore reduces the potential surf areas by ½ in Sonoma County during the months proposed.

Except for extreme drought years, the mouth has usually been open during the summer over the last 100 years. The SCWA Estuary Management events from 1996-2010 have averaged about 3 breechings during the May 15th-Oct. 15th time period. Therefore the mouth is open almost all of the 150 days of that period and allows for formation of sandbars which combined with swell create surf for residents to enjoy. Closing the mouth of the river and preventing the movement of sand and gravel will result in the loss of surf at the River Mouth as well as surfing at Goat Rock State Beach which also depends on this influx. The loss of over 5 months of surf at two locations which are free and accessible to the residents of Sonoma County **IS** a significant impact to recreation for Sonoma County residents and should be unacceptable to the State.

As to date, no baseline quantification of the frequency and quality of waves at the Russian River exists; however, estimates can be made by reviewing; weather records, breaching records, hydrograph records, seal data notes, locally produced films and photography, and consultation from surfers who frequent the Russian River mouth. These need to be analyzed and included in any review of this project.

Recreational Boating

Lowering the flows in the river is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating.

³ “The Russian River has been declared a navigable river. *Hitchings v. Del Rio Woods Recreation and Parks District*, 55 Cal. App. 3d 560, 567 (1976). There simply is no line where the Estuary stops and the river begins in so far as recreation goes. In 2004 & 2007 the SWRCB approved

Temporary Urgency Change Petitions on behalf of Sonoma County Water Agency to reduce minimum flows to 85 cubic feet per second at the Hacienda Bridge USGS gauging station.

The impacts from low flow on recreation are profound. At flows of less than 90 cfs as measured at Hacienda Bridge, Russian Riverkeeper received dozens of reports from boaters concerned that navigation in the free flowing portion of the lower Russian River was being impeded, resulting in more perilous conditions for boaters. As flows were reduced, areas below riffles were narrower and often boaters were swept dangerously into overhanging vegetation resulting in over-turned watercraft. Russian Riverkeeper has numerous pictures of boaters (including the Sonoma County Sheriff's Water Safety Patrol boat) having to push their boats through shallows, and other river users were forced to walk due to shallow water, resulting in serious impediments to navigation. Several canoe and kayak rental outfitters, principally Burke's Canoe Trips, and the Monte Rio Park and Recreation District, have been impacted by previous Temporary Urgency Change Petitions issued to Sonoma County Water Agency (SCWA) by the SWRCB in 2004 and 2007 that impeded the navigability of the Russian River. The owners of Burke's and River's Edge have received numerous complaints and that many regular customers did not return in successive years due to lower flows.

These realities sharply contrast with the blithe assertion in the RRBO (see pp. 264-265 of Russian River Biological Opinion) that recreation would not be impacted at 70-85 cfs. Additionally, when the temperatures spike during the summer diversions from the river (for both municipal and agricultural uses), the operating margin of 10-15 cfs is depressed at the same time as record crowds go to the River to cool off and canoe. Sonoma County residents regularly canoe and kayak the Russian River and the Estuary for exercise, recreation and fishing and there have been several dozen complaints about navigation being impeded by previous temporary urgency change petitions that reduced flows below 90 cfs in the lower Russian River." The impacts of lowering the flow in the river and failure to maintain an open estuary creates impacts to recreational boating that need to be considered in any analysis of this project.

Water Quality (30230, 30231)

Lowering the flows in the river and closing the estuary creates impacts to water quality that require further study. The project contains no performance standards with regards to when corrective measures should occur.

RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 43

9.3.2 Decline in Water Quality

Declines in water quality could have impacts to salmonids rearing in the estuary, other species which reside in the estuary and the public. Potential water quality concerns include, but are not limited to:

- *Dissolved oxygen conditions becoming dangerously low to fish and other species;*
- *Elevated salinity levels in domestic water wells; and*
- *Elevated bacterial levels.*

FEIR 2-14 Nutrients and Bacteria

Potential significant and unavoidable impacts to water quality associated with nutrient and bacteria levels are acknowledged and analyzed in Draft EIR Section 4.3, Water Quality. As noted

on Draft EIR pages 4.3-7 and 4.3-12, there are currently no specific limits on nutrient and bacteria levels for estuarine systems, only freshwater. As discussed in the Draft EIR (page 4.3-24), the precise response of the Estuary to the Estuary Management Project cannot be predicted with certainty. As discussed in Draft EIR Section 4.3, it is anticipated that nutrient and bacteria conditions would remain within the range of those experienced within the Estuary over the past 15 years, but that the duration of those conditions would likely increase as a result of the project. Therefore, based upon the best available information, this EIR concludes that the proposed project would have the potential to result in significant and unavoidable impacts to water quality related to bacterial and nutrient levels in the Estuary.

The low flows and perched lagoon will create significant impacts to water quality yet there has been no data available to the public on bacteria, nutrients, and pathogens for the Lower Russian River and Russian River Estuary. Current County of Sonoma Department of Health data only tests and reports to the public the area of the Russian River from Alexander Valley to Monte Rio Beach for total coliform, escherichia coli, and enterococcus.

Water quality monitoring in the Adaptive Management Plan should require that this testing occur in the lower river and estuary, a baseline established, and data made available to the public before the water agency's experimental implementation of the perched lagoon and low flows is allowed. We are concerned that extended periods of low flow or stagnant lagoon conditions will result in increased bacteria levels with associated human health impacts for swimmers in the lagoon/river beach areas.

The Estuary Project and low flow (permanent changes to Decision 110) must be reviewed by California Coastal Commission together in order to fully understand the impacts.

Lowered flows are necessary for successful sustained mouth closure but the analysis provided does not deal with this issue because the lowering of the river is not included in the project considered in the EIR and therefore no analysis of the impacts is available to the Commission. The Commission cannot determine the extent of the impacts to habitat, water quality and other coastal resources without such analysis.

⁴ "The California Environmental Quality Act (CEQA) requires that the whole of a project be considered in one EIR. Bifurcation of the Estuary Management Plan and the Fish Flow Project avoids full examination of the environmental impacts that will result from the Estuary Project. Many, many people provided comments on this issue, as it is one of the most serious lapses in the FEIR, and one noted by almost every commenter. The FEIR gives numerous justifications in their Master Response (2.1) for separating these two projects. For instance, they insist that the BO prioritizes the Estuary Project before D1610 revisions because it will take much longer to process changes to D1610. What they don't mention however, is that the Temporary Urgency Change Petition process, which requires the same lowered Hacienda flows called for in the BO and the Fish Flow Project, mitigates for the delay. Conveniently, the TUCP does not require CEQA review. Furthermore, the BO was never subjected to environmental review either. An overarching criticism of the current analysis is that it is not comprehensive as to assessing the impacts of modifying Decision 1610 and the AMP." Segmenting is illegal under CEQA and this

bifurcating of the analysis of the two projects, which are intrinsically linked, is flawed and does not provide the CCC with the information needed to fully analyze the project and its impacts.

Impacts to Environmentally Sensitive Habitat Areas (ESHA) (30240)

The project has numerous impacts to species and their habitats.

Species Habitat Considerations

It is clear that with SCWA's efforts to promote conditions advantageous to one threatened species; they will impact, in some cases severely, other species. The Biological Opinion aimed at one listed species does not consider the impacts to other species, including other sensitive species. Even if we agreed with the BO, and we do not, the ESA (Endangered Species Act) is not the basis for approval of a project under the Coastal Act. To evaluate the impact of the AMP on ESHA and the wildlife it supports it is necessary to determine if it will have a substantial adverse effect, either directly or through habitat modifications, on any species identified, but not limited to candidates for listing, sensitive, or special-status species in local or regional plans, policies, or regulations or by the CDFG, USFWS, or NMFS. In this case it is clear that the project will cause significant disruption to the habitat values of ESHA and the numerous species that depend on it.

Pinnapeds, Specifically Harbor Seals

Impacts on the Harbor Seal colony are inadequately assessed and the CCC needs to take a closer look at this issue. The conclusion that the impacts are reduced to less than significant by virtue of the Incidental Harassment Authorization (IHA) permit and its protocols is disputed. The Jenner Harbor Seal colony has been established on Goat Rock Beach at the mouth of the Russian River since 1974 - 37 years. Of the 21+ Sonoma Coast Harbor Seal haul outs that constitute the Sonoma County Harbor Seal Census, the Jenner/Goat Rock haul out is the most significant. The Jenner colony is the largest and most significant Harbor Seal colony in Sonoma County and from Drakes Beach in Marin County to the mouth of the Eel River in Mendocino County.

Harbor Seals are colonial and have a large degree of site fidelity. Being diurnal, they haul out during the day. The haul out period is critical for metabolic processes (e.g. re-oxygenation) that allow them to dive in cold ocean waters when they feed at night, for bonding with pups, nursing pups and generally resting in a colony where there is safety in numbers. Harbor Seals are easily disturbed. Disturbances, whether natural by birds flushing or man-induced harassment whatever the source – boats, beach walkers approaching too close, mechanical equipment associated with the project - interfere with the needed biological processes, rest and restoration. The FEIR documents the short time frame after a harassment incident that the Harbor Seals will return to the haul out site. However, what has been observed over time is short term incidences of harassment for short periods of time. At no time over the years that breaching activities have been implemented has the river mouth been closed for more than one month maximum.

The protocols of the IHA permit are intended to mitigate the impacts of harassment associated with the mechanical breaching of the river and the construction associated with creating the lagoon. These protocols CAN NOT and DO NOT mitigate the impacts of 1) the vast increase in

the number of times/year the colony can/will be disrupted by these actions nor 2) the up to 5 month closure of the river mouth. Long term, chronic disturbances result in 1) reduced use of a site, 2) a shift to nocturnal rather than diurnal feeding, 3) reduced pup production and 4) site abandonment.

There is a lack of assessment of the effect on harbor seal colony from the multiple times the colony will be harassed and disrupted in any given year, year after year of the project life (undefined as to number of incidents or length anywhere in the FEIR document or AMP).

The Sonoma County Water Agency should also be required to do a full assessment of the long term impacts of a 5 month closed mouth on the seal colony. Creating a closed mouth for up to 5 months and the associated long barrier beach which will result in multiple ongoing disturbances/harassment associated with beach walkers approaching the colony – ignoring the signs warning them to maintain the statutory distance -when no Seal Watch volunteers are present to interpret and maintain the statutory distance is “having a substantial adverse effect, either directly or through habitat modifications” The protocols of the IHA Permit, intended for individual incidents of construction equipment and associated staff presence on the beach, cannot be used as the basis for declaring these substantial adverse effects which were not assessed as less than significant. Moreover, the harassment protocols for short term impacts cannot be used as mitigating the long term potential for loss of the colony associated with ongoing, continual, chronic disturbance/harassment of the colony and the likely resulting abandonment of the site.

A full cumulative assessment of the harassment needs to be required by the CCC. Additionally, there are no benchmarks to determine when review of the impacts should occur and no performance standards in the AMP with regard to when, if or what should happen, if the impacts are greater than those contemplated.

Dungeness Crab (section 30234.5)

⁵ “The Russian River Estuary is an important nursery area for juvenile Dungeness crab, which is an economically important species for the local fishing fleets. Several studies have documented the fact that juvenile Dungeness crab that are able to access coastal estuaries have accelerated growth rates due to warmer temperatures and better foraging opportunities (Stevens, Armstrong, 1984). According to studies completed by the University of Washington’s School of Aquatic and Fisheries Science (Stevens, Armstrong, 1984), adverse environmental effects on juvenile Dungeness crab nurseries directly impact adult populations. In the Russian River, Dungeness crab use of the estuary is well documented by SCWA seine netting performed in 2004, although no juveniles were trapped in 2005 this was also observed in the San Francisco Bay in 2005 and is likely due to ocean conditions.

The availability of the Russian River estuary to Dungeness crab could be a significant factor in their abundance on the Sonoma Coast (Pauley et al, 1989), but no studies have been conducted to determine the contribution Russian River estuary juvenile Dungeness make towards the total adult abundance in coastal waters.”

The CCC should require the analysis of the impact of the project on this species, including requiring studies to determine the importance of the estuary to the Dungeness Crab population.

Additionally, there should again be benchmarks to determine when additional reviews of the crab population should occur and specific remedial actions that should be taken if significant impacts occur.

Birds

⁶ “Impacts on birds are inadequately assessed. The beach at Goat Rock State Beach is a colonial site. Not only does it provide a resting place for Harbor Seals, it provides a resting place for birds. At any one time, hundreds of gulls, terns, Brown Pelicans and/or cormorants rest on this beach. This is a community haul out! There are few places like this along the coast – large sandy beach area with access to both the river and the ocean. As such it is a very important site for birds to rest and preen, giving them access to the river and to the ocean to swim and to feed. Gulls nest on Haystack Rock, cormorants congregate on it and on the smaller rocks disbursed in the river. As with Harbor Seals, birds are easily disturbed. The major disturbance for birds is beach walkers whose approach results in flushing the birds. There has been no assessment made of the impacts of prolonged closure of the river mouth on the flushing of birds which rest on the beach as a necessary part of their metabolic processes. Regardless of whether flushing the birds is considered a take under the Federal Migratory Bird Treaty Act, the fact that both equipment operation and beach alteration will increase flushing is an impact of the project on species that inhabit/use the beach and are a part of the ecosystem of the estuary.” and therefore inconsistent with 30240

Impacts of invasive species: Ludwigia

⁷ “In recent years the invasive non-native plant Ludwigia Hexapetla has rapidly colonized the lower Russian River resulting in lost beach and river access and unknown impacts to aquatic organisms in particular endangered Coho Salmon and Steelhead Trout. According to invasive plant experts at UC Davis and the Laguna Foundation one of the limiting factors for Ludwigia growth is depth, velocity and amount of shade. The flow reductions mandated by the RRBO could encourage the spread of ludwigia by slowing the river velocity and reducing the depth. In addition, the currently saline Russian River estuary if turned to a freshwater lagoon as envisioned in the RRBO, could encourage the spread of ludwigia to that portion of the river. Increases in plant growth in a freshwater system result in conditions that do not favor aquatic animals especially cold-water fish like Coho Salmon and Steelhead Trout.” The project does not contain remedial actions that should be mandated if an increase in the amount of Ludwigia Hexapetla occurs.

Section 30233

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The diking and filling contemplated in this project does not fall under one of the 7 allowable uses of Section 30233. Even if it were an allowable use it is not the least damaging feasible alternative required under Section 30233.

Consideration of Alternatives and Economic Viability

**RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN
(AMP) p. 38**

“Actual feasibility with regards to the full range of dynamic conditions has not been determined. Risks associated with outlet channel failure have not been quantified. In addition to the channel’s performance criteria, there are also water quality and ecological performance criteria for the perched lagoon. These additional criteria have not been evaluated as part of the outlet channel management plan.”

There has been no economic analysis for the project or any possible alternatives.

The economic viability of the SCWA’s proposed project is questionable. No cost analysis for the Estuary Management Project has been made available to the public. The Water Agency steadfastly claims that they must proceed with their project as designed because the Russian River Biological Opinion requires it. This is not true. The required outcome of improved fish habitat could be accomplished by other methods not chosen by the Water Agency, and cost comparisons should be a major consideration for the final project design.

No analysis of feasible alternatives resulting in un-necessary expense and environmental impacts.

According to SCWA, the Estuary Management Project has two fundamental objectives - enhance juvenile salmonid habitat by maintaining a seasonal freshwater lagoon and alleviate potential flooding of properties along the estuary as a result of higher estuary water levels. The former is required by the Russian River Biological Opinion (RRBO) but the later is not. Although the RRBO states that the goal is to benefit fish, the estuary is still controlled by flood control levels that have nothing to do with improving fishery habitat, so the goal is already compromised. This places non-fish centric constraints on any effort to improve estuarine conditions.

Natural estuary breaching would provide a deeper lagoon of freshwater for fish habitat. It should be noted that review of estuarine science and the RRBO and RRBA (Russian River Biological Assessment) suggests that either an always open or always closed estuary could produce the same benefit to listed fish species. If the low-lying structures were elevated or relocated, an always open sandbar regime could produce a benefit to the fish without the negative impacts to the Lower River community. The extremely dynamic nature of coastal areas such as the sandbar at the mouth of the Russian River have proven to be difficult to manage, as evidenced by past mechanical breaching events that were followed by wave action closing the sandbar within days. This shows that any attempt to control or manage the sandbar to achieve some desired condition is problematic and fraught with risk of failure to obtain desired conditions.

The Water Agency made an initial project design decision to continue the historical estuary management practice of artificial breaching for flood protection. This concept remained in the project throughout the vetting process of environmental impact review without any cost analysis of alternate flood prevention methods. It is fact that only a few properties have structures threatened by water levels if the estuary is allowed to breach naturally. SCWA offers no cost comparison of natural breaching and requiring the small number of vulnerable properties to lift

structures above the flood zone vs. using heavy machinery every week between May and October for 15 years to artificially maintain a flat outlet channel in the sand.

It is noteworthy that most other property owners along the Russian River are required to follow FEMA guidelines and remove structures from the flood plain by means of lifting or relocation (as has been done for almost 150 homes in the Lower Russian River due to repetitive flooding). SCWA refuses to explain why this tactic was ignored or eliminated from their proposed project even though it appears to have cost advantages. The SCWA has flood control jurisdiction and could mandate the elevation of low lying structures via its flood control authority and reduce the impacts to the Lower River community. There is no explanation as to why this has not been considered.

SCWA's own environmental review determined that the estuary's water quality might deteriorate as a result of their proposed project. The term "adaptive management" is used by the Water Agency as a euphemism for "figure it out as they go" when desired outcomes are not realized. If water quality issues plague the fish habitat and "adaptive management" begins, the cost of their estuary management plan is completely unknown. This project, as designed, is fiscally irresponsible and should be called an expensive experiment.

The Estuary Management Project's EIR identified many "significant and unavoidable" impacts for which there are no "feasible" mitigation measures. At the same time, no back-up information with cost analysis is offered to support the claims that mitigation measures are unfeasible.

In closing, it must be stated that

This project is inconsistent with the Chapter 3 policies of the Coastal Act and must be denied. It is unacceptable to take and alter a public resource – Goat Rock State Beach – a part of the commons owned by the citizens of California, to alter a State owned Beach, interfere with multiple State owned and state protected resources, impact numerous species and their habitats, and alter the river and its recreational uses as well as access to the river for so many users who have few safe alternatives to enjoy the coast side environment.

This is a highly expensive and prolonged experiment with an important coastal and marine resource. It is an experiment that cannot be justified. Many of the impacts are permanent and the Coastal Commission must consider what condition the Estuary will be in at the end of the Adaptive Management period. Given the numerous permanent impacts and uncertain consequences of other aspects of this experiment it is fair to assume that it will be far worse than it is today, possibly making restoration impossible.

References

¹ Liz Burko, Russian River District Superintendent
State Parks Comments to SCWA in DEIR

² Norma Jellison, -comments on the Russian River Estuary Management Plan Draft EIR

³ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the **Sonoma County Water Agency**

⁴ Brenda Adleman, Russian River Water Protection Council Letter to Sonoma County Board of Supervisors

⁵ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the **Sonoma County Water Agency**

⁶ Norma Jellison, -comments on the Russian River Estuary Management Plan Draft EIR

⁷ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the **Sonoma County Water Agency**

Th/76

From: sonomacoastsurfrider@comcast.net [mailto:sonomacoastsurfrider@comcast.net]

Sent: Thursday, August 08, 2013 11:44 AM

To: Kellner, Laurel@Coastal

Cc: Lester, Charles@Coastal

Subject: re: Surfrider Historical Comments re Russian River Mouth Estuary Management Plan

Hello Laurel

Upon review of the staff report for the upcoming Russian River Mouth Estuary Management Plan, I do not see any reference to or inclusion of the comments and concerns that Sonoma Coast Surfrider has submitted over the last three years regarding this permit. We began commenting over 3 years ago when the applicant initially presented this to the Commission as an amendment (attached above-2-011-033-A2). We have continued to comment via email, submission of written comments, public comment at Coastal Commission Hearings, and phone conversations.

We would appreciate that the staff report more accurately reflect our level of involvement and include our concerns. I have also attached a copy of our most recent comments regarding the staff report for this permit.

We appreciate all the hard work that has been involved with this project and understand the pressure that the applicant faces; however, the Commission is governed by the provisions of the Coastal Act rather than the Endangered Species Act and must consider impacts to all marine resources, public access, and recreation in its decision. It is our hope that the comments that we have been submitted help to clarify those impacts.

Sincerely
Cea Higgins
Volunteer Coordinator & Environmental Campaign Manager
Sonoma Coast Surfrider

Th 17b

From: NORMA JELLISON [normalj@sonic.net]
Sent: Tuesday, August 06, 2013 11:55 AM
To: Kellner, Laurel@Coastal
Subject: Th 17b

Hi Laurel - I was rather surprised to see my EMs included in the staff report documents as Ex Partes and yet substantive comments previously forwarded in EMs, especially those from the Sonoma Coast Surfrider representative, not included. Further, I do not believe Cea received a public hearing notice. Some people in Jenner did receive the mailed notices, as did I. They will not be able to attend the public hearing, but will hopefully be able to submit written comments prior to the meeting.



*A new ethic for the ocean where the ocean is not seen as a commodity we own but as a community of which we are a part.
The sea is worth saving for its own sake. Bill Ballantine NZ
And take this to the land as well.*

Th176

From: richandwanda@sbcglobal.net [mailto:richandwanda@sbcglobal.net]
Sent: Monday, August 05, 2013 3:46 PM
To: Craig, Susan@Coastal
Cc: Roberto Esteves; Kellner, Laurel@Coastal
Subject: Application number 2-12-004, Sonoma County Water Agency

Dear Ms. Craig,

On behalf of Friends of Villa Grande, I am requesting that the hearing on this application be changed to a venue closer to Sonoma County. This project has severe impacts onto the recreational uses at the public access point to the Russian River at Villa Grande and these impacts have not been adequately considered in the project as proposed.

We only became aware of this hearing today and we feel it is imperative that we be able to attend and adequately present our case. Please change the hearing location on this project to a location where we can attend.

I have attached a letter that we sent to the Water Agency that explains our concerns.

Thank you for your consideration.

Richard Holmer
President, Friends of Villa Grande

Th 176

June 12, 2013

Jessica Martini-Lamb
Environmental Resources Coordinator
Sonoma County Water Agency
404 Aviation Blvd.
Santa Rosa, CA 95403

Dear Ms. Martini-Lamb

Subject: Russian River Estuary Management Project

The Friends of Villa Grande (FOVG) owns and operates a public river access and biotic preserve (Patterson Point Preserve) located in the community of Villa Grande. During the EIR process for the subject project, we requested information on the extent of inundation that would occur to our beaches as well as information on the expected water quality changes that may result from extended estuary closures. We never received a response to our question on the extent of inundation. The EIR did state that water quality monitoring would be performed and, during a community meeting on May 16, 2013, a slide was presented which showed a monitoring station at Villa Grande.

During the river mouth closure that occurred up to June 2, 2013, our beaches at Patterson Point Preserve were inundated to an extent that caused 2/3 of the beach areas to be under water. In addition, we totally lost a sand bar beach that was almost an acre in size. You informed me via a phone message that the water had reached an elevation of 6 ½ feet in Jenner before the mouth naturally reopened and the river returned to normal levels. It is our understanding that SCWA intends to maintain the river level at 4 to 9 feet at Jenner with an average of 7 feet during the summer months. This level will clearly cause significant degradation of the recreational value of our river beaches. We would like to note that the beaches at Villa Grande have been used for well over 100 years by the community and the general public and that the historic river levels have normally allowed ample area for beach usage.

The Patterson Point Preserve and the two associated beaches were purchased by the FOVG in 2007 with partial funding from the Sonoma County Agricultural Preservation and Open Space District. There is a permanent easement across the preserve for public access to the Russian River. It is a significant and unacceptable loss to the public to have these beaches inundated by the estuary project during the summer months. It should be possible for SCWA to enhance the estuary for fish breeding without raising river levels to heights that adversely impact recreational opportunities upstream.

During the recent river mouth closure, the water quality at Villa Grande became degraded. There was a loss of water clarity and the presence of floating scum. Given the potential sources of upstream contamination, it appears possible that the water quality may become unsuitable for swimming during the extended mouth closures proposed

under the estuary plan. I cannot find any record of water sampling at Villa Grande on your website. If there is a sampling station at Villa Grande, our organization would like to have access to the results. If there is not, we would like to see sampling instituted.

In addition, during the mouth closure, there were at least two duck nests lost at Villa Grande due to inundation. It is probable that the rising water caused significant loss of wild life habitat throughout the area that was inundated from the coast to Monte Rio.

We respectfully request that the estuary project be modified as follows:

- The FOVG requests that the water level at Jenner be maintained at an average level of 5 feet with a maximum level of 6 feet. This would protect our recreational areas and would help mitigate the wildlife impacts.
- The FOVG also requests that weekly water sampling be initiated at the Patterson Point Preserve beaches to determine the effects on water quality resulting from the mouth closures and to protect the health and safety of recreational river users.

Both of these requests are well within the parameters of the estuary project EIR and could be accomplished relatively easily.

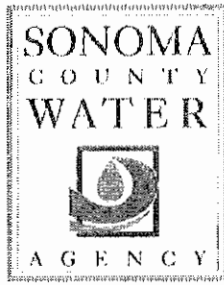
I can be contacted at richandwanda@sbcglobal.net or 7074-865-2998.

Thank you for your consideration.

Richard Holmer

President of the Board of Directors of FOVG

cc: Grant Davis, General Manager, SCWA
Supervisor Efren Carrillo



Th176

CF/45-5.1-2 RUSSIAN RIVER ESTUARY MANAGEMENT PROJECT
(ID 2544)

July 19, 2013

Richard Holmer – President of the Board of Directors
Friends of Villa Grande
P.O. Box 28
Villa Grande, CA 95486

RE: Russian River Estuary Management Project

Dear Mr. Holmer:

This letter is in response to your request for additional information on the Russian River Estuary Management Project (Estuary Project) with regards to the Patterson Point Preserve (Preserve) along the Russian River in Villa Grande. Your letter indicated that backwatering of the river from the June Russian River mouth closure was observed at the Preserve and expressed concern that the loss of beach area impacted recreational activities at the beach, water quality for swimmers, and wildlife habitat. This letter provides information on the purpose of the Estuary Project and addresses your concerns.

The National Marine Fisheries Service (NMFS) issued the Russian River Biological Opinion in 2008, following more than a decade of consultation and study under the federal Endangered Species Act. The Biological Opinion requires the Water Agency to implement the Estuary Project to enhance habitat for the threatened steelhead and endangered coho salmon to avoid jeopardizing these species populations and their critical habitat. The California Department of Fish and Wildlife issued a Consistency Determination in 2009. The Estuary Project is a habitat enhancement project that is aimed at improving summer rearing habitat for juvenile steelhead and salmon while continuing to minimize flood risk to low-lying structures in the Russian River Estuary. The Estuary Project involves managing water levels in the Estuary at a target of 7 feet elevation, as identified in the Biological Opinion, following formation of a barrier beach at the river mouth and implementation of an outlet channel to increase aquatic habitat for fish while minimizing flood risk to low-lying properties.

As part of the monitoring requirements of the Russian River Biological Opinion, the Water Agency conducts extensive water quality monitoring in the lower Russian River and Estuary. Water quality conditions (temperature, dissolved oxygen, pH, and salinity/conductivity) were monitored during 2011 and 2012 near Villa Grande at Sheridan Ranch. Also, the Water Agency conducts bacteria and nutrient sampling at Monte Rio and Casini Ranch among other sites in the area. The results of these studies are posted at the Water Agency's website at <http://www.scwa.ca.gov/>. A summary of water quality monitoring results can be found in the Russian River Biological Opinion Annual Report, chapter 4.1, at http://www.scwa.ca.gov/files/docs/projects/rri/fr/Final_BO_Report_2011_2012.pdf.

404 Aviation Boulevard - Santa Rosa, CA 95403-9019 • (707) 526-5370 - Fax (707) 544-6123 - www.sonomacountywater.org/

Richard Holmer – President of the Board of Directors
Friends of Villa Grande
July 19, 2013
Page 2 of 2

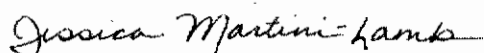
Also, tabular data of water quality can be found at <http://www.scwa.ca.gov/2012-tucp/>. Water quality from 2013 sampling will be posted at the Water Agency's website when available.

The Estuary Project contains an adaptive management process where new information is incorporated into the management of the Estuary. We understand a portion of the beach at Patterson Point Preserve was inundated during the June 2013 barrier beach formation/river mouth closures that resulted in water surface elevations reaching around 7 feet in elevation before self-breaching. Although there was no implementation of an outlet channel during the June closures, we will include your comments in the next review of the adaptive management plan and discussions with National Marine Fisheries Service and California Department of Fish and Wildlife.

The issue of the effects of backwatering on recreational beaches, wildlife, and other impacts were addressed and disclosed in the Estuary Project's Environmental Impact Report (EIR). A comment letter from Friends of Villa Grande, dated February 12, 2011, on the Draft EIR requested additional information on the impacts to recreation and wildlife at the Patterson Point Preserve. As disclosed in the Draft EIR, increased duration of elevated water levels may preclude use of riverfront beach areas. The Final EIR specifically acknowledges impacts to Patterson Point Preserve Area and does not change the conclusions presented in the Draft EIR. For additional information please refer to Master Response 2.4, Water Quality, in the Final EIR for a discussion regarding water quality and public health. Also, for a discussion of mitigation to avoid impacts to recreational and restoration uses refer to Master Response 2.6, Recreational Impacts, Socioeconomic Impacts and Mitigation Feasibility, in Chapter 2, Master Responses in the Final EIR. The Final EIR can be downloaded at <http://www.scwa.ca.gov/estuary-eir/>.

Thank you for your input on the Estuary Management Project. Please feel free to contact me at (707) 547-1903 with further questions or concerns.

Sincerely,



Jessica Martini-Lamb
Environmental Resources Coordinator

c William Hearn, National Marine Fisheries Service
Eric Larson, California Department of Fish and Wildlife
Efren Carrillo, Sonoma County Board of Supervisors
Susan Upchurch, Sonoma County Board of Supervisors
Grant Davis, Sonoma County Water Agency

Th 176

To:
California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention:

From: richandwanda@sbcglobal.net [mailto:richandwanda@sbcglobal.net]

Sent: Monday, August 05, 2013 3:46 PM

To: Craig, Susan@Coastal

Cc: Roberto Esteves; Kellner, Laurel@Coastal

Subject: Application number 2-12-004, Sonoma County Water Agency

Dear Ms. Craig,

On behalf of Friends of Villa Grande, I am requesting that the hearing on this application be changed to a venue closer to Sonoma County. This project has severe impacts onto the recreational uses at the public access point to the Russian River at Villa Grande and these impacts have not been adequately considered in the project as proposed.

We only became aware of this hearing today and we feel it is imperative that we be able to attend and adequately present our case. Please change the hearing location on this project to a location where we can attend.

I have attached a letter that we sent to the Water Agency that explains our concerns.

Thank you for your consideration.

Richard Holmer
President, Friends of Villa Grande
Charles Lester, Executive Director
Ruby Pap, District Supervisor
Daniel Robinson

From:
Sonoma Coast Chapter of Surfrider
PO Box 2280
Sebastopol, CA, 95473
sonomacoastsurfrider@comcast.net

The Surfrider Foundation is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches. The Surfrider Foundation now maintains over 80,000 members and 90 chapters worldwide.

Re: Russian River Estuary Management Project Permit 2-01-033-A2

The Sonoma County Water Agency has submitted an application to the California Coastal Commission for an amended permit for management of the Russian River Estuary at Goat Rock State Beach in Jenner to continue previous flood management practices during the months of Oct. 15th-May 15th and to implement a new Adaptive Management Plan (AMP) of the Russian River Estuary during the months of May -Oct. 15th. The implementation of the proposed new lagoon outlet channel raises many concerns in the areas of public access, economic viability, water quality, public recreation, and loss of species habitat that deserve the attention of the Commission. We believe the current permit application should not be accepted as an amended permit. If however, it is accepted, we recommend that it be denied. As detailed below, the current proposal is inconsistent with numerous policies of the Coastal Act, including:

1. Water quality and rights (section 30231)
2. Marine resources (section 30230)
3. Environmentally sensitive habitat areas (section 30240)
4. Public access (section 30211)
5. Lower cost visitor and recreational facilities (30213)
6. Protection of certain water-oriented activities (30220)
7. Recreational boating use (30224)
8. Economic, commercial, and recreational importance of fishing (30234.5)
9. Wetlands (30233)

These numerous impacts cannot be balanced against the possible benefit to one listed species. The standard of review is the Coastal Act not the Endangered Species Act. Section 30007.5 mandates "that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources". Given the multitude of unmitigated and un-mitigatable impacts there is no way the present project can be considered to be most protective of significant coastal resources.

Public Access (30211)

The use of large equipment will result in partial closure of Goat Rock Beach and impacts to public access.

Each time the Russian River is breached or the proposed lagoon channel is created or maintained, SCWA operations will impact park visitor use through partial closure of Goat Rock Beach. The FEIR acknowledges that the proposed project will result in an increase in equipment use and subsequent beach closures and concludes that the impact is not significant, as the increase is not substantial. During the last 14 years SCWA has breached the estuary an average of 6.2 times/year. At least 2 of those breaches occurred during the months of January, February, November, and December (non-management period). Under the new management plan two days of initial construction would be required followed by maintenance activity (undetermined #) throughout the management period. In addition to the number of days required to implement and maintain the new outlet channel, NMFS estimates "that SCWA will need to artificially breach the lagoon using methods that do not create a perched lagoon twice per year between May 15th and October 15th.

¹ "There are 153 days in the management period (May 15 – October 15). The proposed project will restrict public access to Goat Rock Beach during the most heavily used time of the year.

Goat Rock Beach is also one of the easiest beaches to access along the Sonoma Coast.” The frequency and duration of beach closures will significantly increase, is substantial without limitation, and the subsequent limitations to coastal access ARE significant. There are no measure included in the plan regarding procedures that might be taken during these days to alleviate the impacts to public access.

The project is unspecific about the number of beach closures and therefore the impact on public access can not be fully evaluated.

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7.6 EXCAVATION FREQUENCY

*“Creating and maintaining the outlet channel will probably employ one or two pieces of heavy machinery (e.g. excavator or bulldozer) to move sand on the beach. At the start of the management period (late spring or early summer), when configuring the outlet channel for the first time that year, conditions may require operating machinery for up to two consecutive days. **The precise number of excavations** would depend on **uncontrollable** variables such as seasonal ocean wave conditions (e.g. wave heights and lengths), river inflows, and the success of previous excavations (e.g. the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations.”*

Therefore the number of excavations and subsequent beach closures is also **uncontrollable**.

From July 1, 2009 through June 30, 2010, Sonoma Coast State Beach received almost 3 million day use visitors. Goat Rock Beach is the second most popular beach on the Sonoma Coast. It is reasonable to assume that a significant portion (10%) of park visitors visit this beach. The lagoon management period corresponds with the most impacted time of year for park visitors with approximately 66.5% of visits.

Public Recreation (30220, 30224)

The project will result in significant impacts to public recreation

According to the FEIR, the proposed project would result in significant impacts to public recreation.

Swimming

The impacts of the Adaptive Management Plan (AMP) on swimming at Goat Rock State Beach, specifically the river side beach area have not been assessed nor analyzed. This riverside beach area is heavily used especially by families with children.

² “Higher water levels in the estuary, up to 9' in some locations, as posited in the FEIR will inundate riverside beaches for the long periods of time that the lagoon is in place – up to 5 months. The loss of river side wading/swimming opportunities at Goat Rock State Beach is a significant impact to the many families with children who use the riverside beach area at Goat Rock State Beach exclusively due to the dangers of the ocean side area and there can be no mitigation for this impact with the plan as proposed. . This river side beach area is arguably the only State Beach that is safe for children to wade and swim along the entire 10 mile length of the Sonoma Coast State Beach. All other State Beaches have only ocean side beach areas. Further,

the FEIR fails to identify the existence of or assess the impacts of loss of the beaches below Rivers End used by Inn guests and residents of the houses on Burke Avenue. The inundation caused by the implementation of the outlet channel of these two prime riverside beach areas restricts access to these PUBLIC recreational sites.”

Surfing

Surfing locations are a prime example of low cost visitor and recreational opportunities and legally protected under the California Coastal Act (Section 30213). No baseline monitoring of surf conditions has been done by the Water Agency. As stated in the SCWA’s FEIR, impacts to surfing at the River Mouth as well as surfing areas south of the river including North Side Goat Rock, South Goat, Blind Beach, and the Far Cove will result with the implementation of the Estuary Management Project. These premier Sonoma County surf recreation areas depend greatly on the influx of new sand and gravel. The combination of modifying breaching practices and lower flows will remove the possibility of surfing these areas. Surf rider has determined that the mouth of the Russian River is a high quality surfing location.

To quote SCWA’s FEIR Impact 4.7.2: Eliminate or Modify an Existing Recreational Resource:

“The proposed project would likely reduce the occurrence of open channel tidal conditions conducive to surfing activities.” It goes on to say *“This potential impact may be inconsistent with the California Coastal Act, which protects water based recreation (Section 30220) and low costs recreational opportunities (Section 30213). The California Coastal Commission has jurisdiction and would be responsible for making a consistency determination of the project with these policies; however it is recognized that alteration of the opportunity for surfing may not be consistent.*

..... yet no feasible mitigation measures are identified.

Surfing in Sonoma County can only be practiced in the ocean and never at inland areas. The Surf rider organization and supporters are particularly protective of surfing locations on the Sonoma Coast, especially the high quality ones, as they are available to the public in very limited supply. Sonoma County has only 9 surfing areas. As of today, out of those 9 areas, 3 are totally closed to public access, one is partially closed (Bodega Head) and access to Salmon Creek is greatly reduced (the Dunes & Bean Avenue Parking lot closures). There are also fees for ½ of these areas. Access to surfing is already limited to Sonoma County residents.

The loss of surfing at the River Mouth for half of the year due to the inlet channel and its construction efforts will now eliminate surfing at one of the only free surfing areas on the entire Sonoma Coast. In addition-the more northern surf areas and Bodega Head are less frequently used due to level of experience required or travel time, therefore, only 2 possible areas remain for surfing –primarily-Salmon Creek & the River Mouth. The Estuary Management project therefore reduces the potential surf areas by ½ in Sonoma County during the months proposed.

Except for extreme drought years, the mouth has usually been open during the summer over the last 100 years. The SCWA Estuary Management events from 1996-2010 have averaged about 3

breachings during the May 15th-Oct. 15th time period. Therefore the mouth is open almost all of the 150 days of that period and allows for formation of sandbars which combined with swell create surf for residents to enjoy. Closing the mouth of the river and preventing the movement of sand and gravel will result in the loss of surf at the River Mouth as well as surfing at Goat Rock State Beach which also depends on this influx. The loss of over 5 months of surf at two locations which are free and accessible to the residents of Sonoma County IS a significant impact to recreation for Sonoma County residents and should be unacceptable to the State.

As to date, no baseline quantification of the frequency and quality of waves at the Russian River exists; however, estimates can be made by reviewing; weather records, breaching records, hydrograph records, seal data notes, locally produced films and photography, and consultation from surfers who frequent the Russian River mouth. These need to be analyzed and included in any review of this project.

Recreational Boating

Lowering the flows in the river is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating.

³ “The Russian River has been declared a navigable river. *Hitchings v. Del Rio Woods Recreation and Parks District*, 55 Cal. App. 3d 560, 567 (1976). There simply is no line where the Estuary stops and the river begins in so far as recreation goes. In 2004 & 2007 the SWRCB approved Temporary Urgency Change Petitions on behalf of Sonoma County Water Agency to reduce minimum flows to 85 cubic feet per second at the Hacienda Bridge USGS gauging station.

The impacts from low flow on recreation are profound. At flows of less than 90 cfs as measured at Hacienda Bridge, Russian Riverkeeper received dozens of reports from boaters concerned that navigation in the free flowing portion of the lower Russian River was being impeded, resulting in more perilous conditions for boaters. As flows were reduced, areas below riffles were narrower and often boaters were swept dangerously into overhanging vegetation resulting in over-turned watercraft. Russian Riverkeeper has numerous pictures of boaters (including the Sonoma County Sheriff's Water Safety Patrol boat) having to push their boats through shallows, and other river users were forced to walk due to shallow water, resulting in serious impediments to navigation. Several canoe and kayak rental outfitters, principally Burke's Canoe Trips, and the Monte Rio Park and Recreation District, have been impacted by previous Temporary Urgency Change Petitions issued to Sonoma County Water Agency (SCWA) by the SWRCB in 2004 and 2007 that impeded the navigability of the Russian River. The owners of Burke's and River's Edge have received numerous complaints and that many regular customers did not return in successive years due to lower flows.

These realities sharply contrast with the blithe assertion in the RRBO (see pp. 264-265 of Russian River Biological Opinion) that recreation would not be impacted at 70-85 cfs. Additionally, when the temperatures spike during the summer diversions from the river (for both municipal and agricultural uses), the operating margin of 10-15 cfs is depressed at the same time as record crowds go to the River to cool off and canoe. Sonoma County residents regularly canoe and kayak the Russian River and the Estuary for exercise, recreation and fishing and there have been several dozen complaints about navigation being impeded by previous temporary urgency change

petitions that reduced flows below 90 cfs in the lower Russian River.” The impacts of lowering the flow in the river and failure to maintain an open estuary creates impacts to recreational boating that need to be considered in any analysis of this project.

Water Quality (30230, 30231)

Lowering the flows in the river and closing the estuary creates impacts to water quality that require further study. The project contains no performance standards with regards to when corrective measures should occur.

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9.3.2 Decline in Water Quality

Declines in water quality could have impacts to salmonids rearing in the estuary, other species which reside in the estuary and the public. Potential water quality concerns include, but are not limited to:

- *Dissolved oxygen conditions becoming dangerously low to fish and other species;*
- *Elevated salinity levels in domestic water wells; and*
- *Elevated bacterial levels.*

FEIR 2-14 Nutrients and Bacteria

Potential significant and unavoidable impacts to water quality associated with nutrient and bacteria levels are acknowledged and analyzed in Draft EIR Section 4.3, Water Quality. As noted on Draft EIR pages 4.3-7 and 4.3-12, there are currently no specific limits on nutrient and bacteria levels for estuarine systems, only freshwater. As discussed in the Draft EIR (page 4.3-24), the precise response of the Estuary to the Estuary Management Project cannot be predicted with certainty. As discussed in Draft EIR Section 4.3, it is anticipated that nutrient and bacteria conditions would remain within the range of those experienced within the Estuary over the past 15 years, but that the duration of those conditions would likely increase as a result of the project. Therefore, based upon the best available information, this EIR concludes that the proposed project would have the potential to result in significant and unavoidable impacts to water quality related to bacterial and nutrient levels in the Estuary.

The low flows and perched lagoon will create significant impacts to water quality yet there has been no data available to the public on bacteria, nutrients, and pathogens for the Lower Russian River and Russian River Estuary. Current County of Sonoma Department of Health data only tests and reports to the public the area of the Russian River from Alexander Valley to Monte Rio Beach for total coliform, escherichia coli, and enterococcus.

Water quality monitoring in the Adaptive Management Plan should require that this testing occur in the lower river and estuary, a baseline established, and data made available to the public before the water agency's experimental implementation of the perched lagoon and low flows is allowed. We are concerned that extended periods of low flow or stagnant lagoon conditions will result in increased bacteria levels with associated human health impacts for swimmers in the lagoon/river beach areas.

The Estuary Project and low flow (permanent changes to Decision 110) must be reviewed by California Coastal Commission together in order to fully understand the impacts.

Lowered flows are necessary for successful sustained mouth closure but the analysis provided does not deal with this issue because the lowering of the river is not included in the project considered in the EIR and therefore no analysis of the impacts is available to the Commission. The Commission cannot determine the extent of the impacts to habitat, water quality and other coastal resources without such analysis.

⁴ “The California Environmental Quality Act (CEQA) requires that the whole of a project be considered in one EIR. Bifurcation of the Estuary Management Plan and the Fish Flow Project avoids full examination of the environmental impacts that will result from the Estuary Project. Many, many people provided comments on this issue, as it is one of the most serious lapses in the FEIR, and one noted by almost every commenter. The FEIR gives numerous justifications in their Master Response (2.1) for separating these two projects. For instance, they insist that the BO prioritizes the Estuary Project before D1610 revisions because it will take much longer to process changes to D1610. What they don’t mention however, is that the Temporary Urgency Change Petition process, which requires the same lowered Hacienda flows called for in the BO and the Fish Flow Project, mitigates for the delay. Conveniently, the TUCP does not require CEQA review. Furthermore, the BO was never subjected to environmental review either. An overarching criticism of the current analysis is that it is not comprehensive as to assessing the impacts of modifying Decision 1610 and the AMP.” Segmenting is illegal under CEQA and this bifurcating of the analysis of the two projects, which are intrinsically linked, is flawed and does not provide the CCC with the information needed to fully analyze the project and its impacts.

Impacts to Environmentally Sensitive Habitat Areas (ESHA) (30240)

The project has numerous impacts to species and their habitats.

Species Habitat Considerations

It is clear that with SCWA’s efforts to promote conditions advantageous to one threatened species; they will impact, in some cases severely, other species. The Biological Opinion aimed at one listed species does not consider the impacts to other species, including other sensitive species. Even if we agreed with the BO, and we do not, the ESA (Endangered Species Act) is not the basis for approval of a project under the Coastal Act. To evaluate the impact of the AMP on ESHA and the wildlife it supports it is necessary to determine if it will have a substantial adverse effect, either directly or through habitat modifications, on any species identified, but not limited to candidates for listing, sensitive, or special-status species in local or regional plans, policies, or regulations or by the CDFG, USFWS, or NMFS. In this case it is clear that the project will cause significant disruption to the habitat values of ESHA and the numerous species that depend on it.

Pinnapeds, Specifically Harbor Seals

Impacts on the Harbor Seal colony are inadequately assessed and the CCC needs to take a closer look at this issue. The conclusion that the impacts are reduced to less than significant by virtue of the Incidental Harassment Authorization (IHA) permit and its protocols is disputed. The Jenner

Harbor Seal colony has been established on Goat Rock Beach at the mouth of the Russian River since 1974 - 37 years. Of the 21+ Sonoma Coast Harbor Seal haul outs that constitute the Sonoma County Harbor Seal Census, the Jenner/Goat Rock haul out is the most significant. The Jenner colony is the largest and most significant Harbor Seal colony in Sonoma County and from Drakes Beach in Marin County to the mouth of the Eel River in Mendocino County.

Harbor Seals are colonial and have a large degree of site fidelity. Being diurnal, they haul out during the day. The haul out period is critical for metabolic processes (e.g. re-oxygenation) that allow them to dive in cold ocean waters when they feed at night, for bonding with pups, nursing pups and generally resting in a colony where there is safety in numbers. Harbor Seals are easily disturbed. Disturbances, whether natural by birds flushing or man-induced harassment whatever the source – boats, beach walkers approaching too close, mechanical equipment associated with the project - interfere with the needed biological processes, rest and restoration. The FEIR documents the short time frame after a harassment incident that the Harbor Seals will return to the haul out site. However, what has been observed over time is short term incidences of harassment for short periods of time. At no time over the years that breaching activities have been implemented has the river mouth been closed for more than one month maximum.

The protocols of the IHA permit are intended to mitigate the impacts of harassment associated with the mechanical breaching of the river and the construction associated with creating the lagoon. These protocols CAN NOT and DO NOT mitigate the impacts of 1) the vast increase in the number of times/year the colony can/will be disrupted by these actions nor 2) the up to 5 month closure of the river mouth. Long term, chronic disturbances result in 1) reduced use of a site, 2) a shift to nocturnal rather than diurnal feeding, 3) reduced pup production and 4) site abandonment.

There is a lack of assessment of the effect on harbor seal colony from the multiple times the colony will be harassed and disrupted in any given year, year after year of the project life (undefined as to number of incidents or length anywhere in the FEIR document or AMP).

The Sonoma County Water Agency should also be required to do a full assessment of the long term impacts of a 5 month closed mouth on the seal colony. Creating a closed mouth for up to 5 months and the associated long barrier beach which will result in multiple ongoing disturbances/harassment associated with beach walkers approaching the colony – ignoring the signs warning them to maintain the statutory distance -when no Seal Watch volunteers are present to interpret and maintain the statutory distance is “having a substantial adverse effect, either directly or through habitat modifications” The protocols of the IHA Permit, intended for individual incidents of construction equipment and associated staff presence on the beach, cannot be used as the basis for declaring these substantial adverse effects which were not assessed as less than significant. Moreover, the harassment protocols for short term impacts cannot be used as mitigating the long term potential for loss of the colony associated with ongoing, continual, chronic disturbance/harassment of the colony and the likely resulting abandonment of the site.

A full cumulative assessment of the harassment needs to be required by the CCC. Additionally, there are no benchmarks to determine when review of the impacts should occur and no

performance standards in the AMP with regard to when, if or what should happen, if the impacts are greater than those contemplated.

Dungeness Crab (section 30234.5)

⁵ “The Russian River Estuary is an important nursery area for juvenile Dungeness crab, which is an economically important species for the local fishing fleets. Several studies have documented the fact that juvenile Dungeness crab that are able to access coastal estuaries have accelerated growth rates due to warmer temperatures and better foraging opportunities (Stevens, Armstrong, 1984). According to studies completed by the University of Washington’s School of Aquatic and Fisheries Science (Stevens, Armstrong, 1984), adverse environmental effects on juvenile Dungeness crab nurseries directly impact adult populations. In the Russian River, Dungeness crab use of the estuary is well documented by SCWA seine netting performed in 2004, although no juveniles were trapped in 2005 this was also observed in the San Francisco Bay in 2005 and is likely due to ocean conditions.

The availability of the Russian River estuary to Dungeness crab could be a significant factor in their abundance on the Sonoma Coast (Pauley et al, 1989), but no studies have been conducted to determine the contribution Russian River estuary juvenile Dungeness make towards the total adult abundance in coastal waters.”

The CCC should require the analysis of the impact of the project on this species, including requiring studies to determine the importance of the estuary to the Dungeness Crab population. Additionally, there should again be benchmarks to determine when additional reviews of the crab population should occur and specific remedial actions that should be taken if significant impacts occur.

Birds

⁶ “Impacts on birds are inadequately assessed. The beach at Goat Rock State Beach is a colonial site. Not only does it provide a resting place for Harbor Seals, it provides a resting place for birds. At any one time, hundreds of gulls, terns, Brown Pelicans and/or cormorants rest on this beach. This is a community haul out! There are few places like this along the coast – large sandy beach area with access to both the river and the ocean. As such it is a very important site for birds to rest and preen, giving them access to the river and to the ocean to swim and to feed. Gulls nest on Haystack Rock, cormorants congregate on it and on the smaller rocks disbursed in the river. As with Harbor Seals, birds are easily disturbed. The major disturbance for birds is beach walkers whose approach results in flushing the birds. There has been no assessment made of the impacts of prolonged closure of the river mouth on the flushing of birds which rest on the beach as a necessary part of their metabolic processes. Regardless of whether flushing the birds is considered a take under the Federal Migratory Bird Treaty Act, the fact that both equipment operation and beach alteration will increase flushing is an impact of the project on species that inhabit/use the beach and are a part of the ecosystem of the estuary.” and therefore inconsistent with 30240

Impacts of invasive species: Ludwigia

⁷ “In recent years the invasive non-native plant *Ludwigia Hexapetla* has rapidly colonized the lower Russian River resulting in lost beach and river access and unknown impacts to aquatic organisms in particular endangered Coho Salmon and Steelhead Trout. According to invasive plant experts at UC Davis and the Laguna Foundation one of the limiting factors for *Ludwigia* growth is depth, velocity and amount of shade. The flow reductions mandated by the RRBO could encourage the spread of *Ludwigia* by slowing the river velocity and reducing the depth. In addition, the currently saline Russian River estuary if turned to a freshwater lagoon as envisioned in the RRBO, could encourage the spread of *Ludwigia* to that portion of the river. Increases in plant growth in a freshwater system result in conditions that do not favor aquatic animals especially cold-water fish like Coho Salmon and Steelhead Trout.” The project does not contain remedial actions that should be mandated if an increase in the amount of *Ludwigia Hexapetla* occurs.

Section 30233

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The diking and filling contemplated in this project does not fall under one of the 7 allowable uses of Section 30233. Even if it were an allowable use it is not the least damaging feasible alternative required under Section 30233.

Consideration of Alternatives and Economic Viability

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“Actual feasibility with regards to the full range of dynamic conditions has not been determined. Risks associated with outlet channel failure have not been quantified. In addition to the channel’s performance criteria, there are also water quality and ecological performance criteria for the perched lagoon. These additional criteria have not been evaluated as part of the outlet channel management plan.”

There has been no economic analysis for the project or any possible alternatives.

The economic viability of the SCWA’s proposed project is questionable. No cost analysis for the Estuary Management Project has been made available to the public. The Water Agency steadfastly claims that they must proceed with their project as designed because the Russian River Biological Opinion requires it. This is not true. The required outcome of improved fish habitat could be accomplished by other methods not chosen by the Water Agency, and cost comparisons should be a major consideration for the final project design.

No analysis of feasible alternatives resulting in un-necessary expense and environmental impacts.

According to SCWA, the Estuary Management Project has two fundamental objectives - enhance juvenile salmonid habitat by maintaining a seasonal freshwater lagoon and alleviate potential flooding of properties along the estuary as a result of higher estuary water levels. The former is required by the Russian River Biological Opinion (RRBO) but the later is not. Although the

RRBO states that the goal is to benefit fish, the estuary is still controlled by flood control levels that have nothing to do with improving fishery habitat, so the goal is already compromised. This places non-fish centric constraints on any effort to improve estuarine conditions.

Natural estuary breaching would provide a deeper lagoon of freshwater for fish habitat. It should be noted that review of estuarine science and the RRBO and RRBA (Russian River Biological Assessment) suggests that either an always open or always closed estuary could produce the same benefit to listed fish species. If the low-lying structures were elevated or relocated, an always open sandbar regime could produce a benefit to the fish without the negative impacts to the Lower River community. The extremely dynamic nature of coastal areas such as the sandbar at the mouth of the Russian River have proven to be difficult to manage, as evidenced by past mechanical breaching events that were followed by wave action closing the sandbar within days. This shows that any attempt to control or manage the sandbar to achieve some desired condition is problematic and fraught with risk of failure to obtain desired conditions.

The Water Agency made an initial project design decision to continue the historical estuary management practice of artificial breaching for flood protection. This concept remained in the project throughout the vetting process of environmental impact review without any cost analysis of alternate flood prevention methods. It is fact that only a few properties have structures threatened by water levels if the estuary is allowed to breach naturally. SCWA offers no cost comparison of natural breaching and requiring the small number of vulnerable properties to lift structures above the flood zone vs. using heavy machinery every week between May and October for 15 years to artificially maintain a flat outlet channel in the sand.

It is noteworthy that most other property owners along the Russian River are required to follow FEMA guidelines and remove structures from the flood plain by means of lifting or relocation (as has been done for almost 150 homes in the Lower Russian River due to repetitive flooding). SCWA refuses to explain why this tactic was ignored or eliminated from their proposed project even though it appears to have cost advantages. The SCWA has flood control jurisdiction and could mandate the elevation of low lying structures via its flood control authority and reduce the impacts to the Lower River community. There is no explanation as to why this has not been considered.

SCWA's own environmental review determined that the estuary's water quality might deteriorate as a result of their proposed project. The term "adaptive management" is used by the Water Agency as a euphemism for "figure it out as they go" when desired outcomes are not realized. If water quality issues plague the fish habitat and "adaptive management" begins, the cost of their estuary management plan is completely unknown. This project, as designed, is fiscally irresponsible and should be called an expensive experiment.

The Estuary Management Project's EIR identified many "significant and unavoidable" impacts for which there are no "feasible" mitigation measures. At the same time, no back-up information with cost analysis is offered to support the claims that mitigation measures are unfeasible.

In closing, it must be stated that

This project is inconsistent with the Chapter 3 policies of the Coastal Act and must be denied. It is unacceptable to take and alter a public resource – Goat Rock State Beach – a part of the commons owned by the citizens of California, to alter a State owned Beach, interfere with multiple State owned and state protected resources, impact numerous species and their habitats, and alter the river and its recreational uses as well as access to the river for so many users who have few safe alternatives to enjoy the coast side environment.

This is a highly expensive and prolonged experiment with an important coastal and marine resource. It is an experiment that cannot be justified. Many of the impacts are permanent and the Coastal Commission must consider what condition the Estuary will be in at the end of the Adaptive Management period. Given the numerous permanent impacts and uncertain consequences of other aspects of this experiment it is fair to assume that it will be far worse than it is today, possibly making restoration impossible.

References

¹ Liz Burko, Russian River District Superintendent
State Parks Comments to SCWA in DEIR

² Norma Jellison, -comments on the Russian River Estuary Management Plan Draft EIR

³ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the Sonoma County Water Agency

⁴ Brenda Adleman, Russian River Water Protection Council Letter to Sonoma County Board of Supervisors

⁵ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the Sonoma County Water Agency

⁶ Norma Jellison, -comments on the Russian River Estuary Management Plan Draft EIR

⁷ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the Sonoma County Water Agency

Th 17b

Chair Shallenberger and Commissioners -

I write to you as a coastal resident, advocate and long time Seal Watch volunteer at the Harbor Seal colony at the mouth of the Russian River.

I focus my comments on several vital aspects of the Coastal Act impacted by this CDP application by the Sonoma County Water Agency (SCWA), w/ selected applicable, tho' by no means all inclusive, sections of the Act cited.

I believe it is premature to allow this project to proceed for 3 Yrs + 3 Yr renewal. NO EXTENSION should be allowed until initial impacts of the implementation of the project are identified and assessed - based on practical observed & monitored results AND critical information/impacts associated with the lowered river flows and the national marine sanctuary expansion are available from the respective pending EIR and the EIS to factor into the analysis.

Sec 30210 -

I request a 1 Yr permit in keeping with 1Yr permits given to SCWA by State Parks - in furtherance of their jurisdiction under Article X of CA Constitution. The Estuary Management Project (EMP) is to be constructed on State Park land - Goat Rock State Beach - where a majority of the impacts will be borne.

A 1 Yr permit is also consistent with the 4 separate 1 Yr Incidental Harassment Authorizations (IHA) given by NMFS, associated with the Harbor Seal Colony .

Both public resource agencies, one State and one Federal, obviously considered the merits of identifying the impacts of the project critical before giving the SCWA approval to operate the project for any longer duration .

Sec 30210/30211/30220et seq - Despite assertions that impacts to Public Access are minimal and will be managed by applicant, the EMP significantly impairs Public Access. The Biological Opinion/SCWA in carrying out the EMP, treats the Public's land and waters as an experiment/an experimental construction site. There is no proof that this outlet channel will succeed. In fact, attempts to implement in 2011 failed, due to the forces of nature.

Prior breaching activities, done solely for flood control, took place for a couple of hours on 1 day. References to "no difference from past activities; no impacts associated with prior activities translates to current proposal" are false.

By implementing the EMP, Public Access will be eliminated/impaired/reduced for many consecutive days/weeks/months/years as this experiment is conducted. Construction equipment carving the outlet channel, installing wells, weekly well monitoring, equipment removal, fencing off sections of the beach - all will reduce or impair Public Access to large portions of the beach/river/ocean at those times.

Up to 2,000 cu yds of sand will be moved at each of 18 outlet construction events!

Clearly this is not the same as past practices of merely breaching - opening up - the sandbar one day.

Why treat a Public Beach as a construction site and suggest that a Public Access

Management Plan could mitigate? Public Access should not have to be managed to avoid negative impacts to State Park/Beach visitors. Public Access should not be compromised in the first place in order to carry out an experiment. NMFS admits this is an experiment - the current term is "adaptive management."

Impacts to Public Recreation - families with children use the river side of Goat Rock State Beach extensively as a safer environment (than the ocean) for wading and swimming and picnicking. Construction & monitoring activities will reduce Public Access. Public Access should not be compromised. A Public Access Management Plan should not be necessary to manage Public Access to a Public Beach!

Impacts to Public Access - surfing - could be impaired by the sedimentation released when the outlet lagoon is eliminated each year by winter water levels that will naturally breach the sandbar or prior if river levels threaten flooding of several buildings. Staff dismissal that potential impacts are minimal as this is "just a local surfing spot" misses the fact that all surfing spots are local. Just because this is not Maverick's doesn't make it any less important a surfing locale.

Sec 30230/31/30240 - Impacts to sensitive species are minimized by comparing past activities and lack of impacts to proposed actions.

The SCWA has received four 1 Yr Incidental Harassment Authorizations (2010, 2011, 2012, 2013) from NMFS for incidental takes of marine mammals, primarily Harbor Seals of the colony at the mouth of the Russian River on the outlet channel beach & adjacent to the jetty at Goat Rock State Beach.

The 30+-year old Harbor Seal colony are protected species under the Marine Mammal Protection Act. Regardless of IHA mitigations required, these sensitive species at the EMP construction site are potentially at risk of harassment from proposed construction and maintenance activities of the EMP and the invasive geotechnical activities of the associated jetty study.

Previous breaching activities are in no way similar to proposed EMP activities.

Prior sandbar breaching took place during a couple of hours on 1 day; in some years, e.g. this year and last, not at all. EMP activities proposed would take place over a number of consecutive days over a number of weeks/months/years.

Thus all references to "no difference from past activities; no impacts associated with prior activities translates to current proposal" are false.

The unknown impacts to this Harbor Seal colony are the reason that the IHAs have been issued for only 1 Yr in duration and not the potential longer term IHA that might be issued once impacts of the construction and maintenance of the outlet channel/EMP are monitored and known.

Impacts to other sensitive estuary species e.g. the estuary is a Dungeness crab nursery and home to many other species of fish - are unstudied & unknown.

Water Quality impacts: Influences/impacts of Russian River lowered flows remain to be assessed in an EIR to be published in 2014. Impacts to aquatic species/marine species; recreational users associated w/concentrations of contaminants in water contained by the sandbar in the lagoon are unknown. No study plan or monitoring for these specific

WQ impacts to body contact sports or to the ocean environment is proposed for this CDP.

Lowering the flows in the river is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating. Lowering the flows in the river will impact water quality. Water quality impacts of lowered flows in the estuary (*elevated bacterial levels; nutrients; dissolved oxygen conditions*) will surely impact wading and swimming on the river side of the State Beach and at nearby upstream beaches, as well as kayaking, canoeing, and the many waterfowl, river and marine mammals and fish that live in and use the estuary. As an oddity, the BO acknowledges that some die off/take of salmonids may be associated with the perched lagoon of the EMP.

The pending EIS for National Marine Sanctuary (S) expansion adjacent to Russian River mouth will provide critical information about the ocean environment, including WQ. Sanctuary jurisdiction is over all submerged lands, water & associated marine resources therein from the MHW line; alteration of stream & river drainage & surface water runoff into The Sanctuary (S).

Impacts from "first flush", either emergency (based on WQ or flood danger) planned breaches, or natural breaches from winter storm river water levels or ocean conditions, releasing lagoon waters into nearshore ocean waters are unstudied and unknown, as are released sediment impacts.

When the retained waters behind the sandbar/outlet channel are released into the ocean environment, the concentrated contaminants and sediment built up behind the sandbar for sustained periods, up to 5 months, will have potentially significant impacts to the nearshore beaches and marine life. These all could be significant impacts, yet remain unknown; unstudied and are not addressed in any proposed monitoring.

Again, it is simply premature to allow this project to proceed for 3 Yrs + 3 Yr renewal. NO EXTENSION should be allowed until impacts of the implementation of the project are identified and assessed - based on practical observed & monitored results AND critical information/impacts associated with the lowered river flows and the marine sanctuary expansion are available from the respective pending EIR and the EIS to factor into the analysis.

Thank you for your consideration of my comments

Norma Jellison
PO Box 1636
Bodega Bay 94923



Th17b

As a residents of the lower Russian River area (specifically we live near Goat Rock), I am particular concerned about the impacts of Lowered River Flow on our area. We are entirely reliant on a well for our domestic water. One of the many concerns about the Estuary Outlet Channel Adaptive Management Plan is DECLINE IN WATER QUALITY due to conditions listed below. Below is a brief exceptrt that I would like to bring to your attention:

***RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN
(AMP) p. 43***

9.3.2 Decline in Water Quality

Declines in water quality could have impacts to salmonids rearing in the estuary, other species which reside in the estuary and the public. Potential water quality concerns include, but are not limited to:

- *Dissolved oxygen conditions becoming dangerously low to fish and other species;*
- *Elevated salinity levels in domestic water wells; and*
- *Elevated bacterial levels.*

FEIR 2-14 Nutrients and Bacteria

Potential significant and unavoidable impacts to water quality associated with nutrient and bacteria levels are acknowledged and analyzed in Draft EIR Section 4.3, Water Quality. As noted on Draft EIR pages 4.3-7 and 4.3-12, there are currently no specific limits on nutrient and bacteria levels for estuarine systems, only freshwater. As discussed in the Draft EIR (page 4.3-24), the precise response of the Estuary to the Estuary Management Project cannot be predicted with certainty. As discussed in Draft EIR Section 4.3, it is anticipated that nutrient and bacteria conditions would remain within the range of those experienced within the Estuary over the past 15 years, but that the duration of those conditions would likely increase as a result of the project. Therefore, based upon the best available information, this EIR concludes that the proposed project would have the potential to result in significant and unavoidable impacts to water quality related to bacterial and nutrient levels in the Estuary.

WE STRONGLY URGE YOU TO DENY THE REQUEST OF SONOMA COUNTY WATER AGENCY (SCWA) FOR A 3-YEAR PERMIT.

AS A COMPROMISE WE URGE YOU TO JOIN STATE PARKS IN ISSUING ONLY A ONE-YEAR PERMIT.

THE EIR FOR IMPACT ON WATER QUALITY MUST BE COMPLETED BEFORE ANY LONGER TERM DECISIONS ARE MADE ABOUT THIS PROJECT.

Sincerely,

**CAROL SKLENICKA
RICHARD RYAN**

**P. O. Box 21
Duncans Mills
CA 95430-0021**

Th/7b

From: Cea Higgins [mailto:sonomacoastsurfrider@comcast.net]
Sent: Wednesday, October 31, 2012 11:05 PM
To: Kellner, Laurel@Coastal
Subject: Re: SCWA Russian River Jetty Study

Hello Laurel

Thank you for the opportunity to speak today about the proposed waiver for the Russian River Jetty Study. We sincerely appreciate that some modifications were made but continue to have concerns and are not comfortable that the study is moving forward as a waiver. To summarize the issues that we discussed today

1. Sonoma Coast Surfrider is one of many groups who have concerns regarding the activities that will be included in the study and a waiver denies all groups involved the opportunity to review the scope of the study and make public comment.
2. There is no opportunity to review the language in the waiver to be assured that other concerns are addressed such as accounting for the dynamic nature of the opening of the rivermouth and the accompanying shift in the harbor seal colony hub into the locations of the well sites and seismic testing areas.
3. We recognize the value of conducting the study as part of evaluating strategies for estuary management but Sonoma Coast Surfrider continues to advocate for a CDP which will not obstruct the opportunity to conduct the jetty study but will improve the possibilities to better understand the relationship between the Jetty Study and the Estuary Management Project and promote the best possible outcome for sensitive species in the area and the least impact to public access and recreation.

Best regards
Cea

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

From: Kellner, Laurel@Coastal
To: sonomacoastsurfrider@comcast.net
Cc: Cavaliere, Madeline@Coastal
Sent: Tuesday, October 30, 2012 11:56 AM
Subject: SCWA Russian River Jetty Study

Hi Cea-

We spoke to SCWA about your concerns with the timeframe of the work and the IHA and they accommodated both of your suggested modifications.

- 1) The SCWA indicated that they will extend the period in which they will not do any placement of instruments from April – June to April – July.
- 2) The SCWA will incorporate any new direction and operate under any new guidelines from the new IHA that may be released in 2013

Lastly, the SCWA clarified that the placement of the instruments and the seismic work cannot occur simultaneously, thus there will be an approximate ten-day (no longer than two-weeks) period in which these activities will occur, subject to the protections for sensitive species, public access, water quality and other coastal resources.

Please contact me with any feedback you may have at this time as we have a very short deadline. We are looking to proceed on this waiver for November.

Best-
Laurel

Laurel Kellner
Coastal Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5260 Phone
(415) 904-5400 Fax
laurel.kellner@coastal.ca.gov

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Version: 2012.0.2221 / Virus Database: 2441/5365

Th 176

From: sonomacoastsurfrider@comcast.net [mailto:sonomacoastsurfrider@comcast.net]
Sent: Thursday, September 27, 2012 12:03 PM
To: Kellner, Laurel@Coastal
Subject: Re: EMP date of completion

My only window is between 4:30-5. Tomorrow I have from 1-2:30
Sent via BlackBerry by AT&T

From: "Kellner, Laurel@Coastal" <Laurel.Kellner@coastal.ca.gov>
Date: Thu, 27 Sep 2012 18:54:56 +0000
To: 'Cea Higgins' <sonomacoastsurfrider@comcast.net>
Subject: RE: EMP date of completion

Hi Cea-

Thank you for your follow-up.
We typically do not send letters to the applicant when an application is considered complete.
We filed the Russian River EMP application as complete on July 6, 2012.

We have more information about the Jetty Study. I would like to speak with you today about
this.
415-904-5260.

Best-
Laurel

From: Cea Higgins [mailto:sonomacoastsurfrider@comcast.net]
Sent: Thursday, September 27, 2012 11:31 AM
To: Kellner, Laurel@Coastal
Cc: Cavalieri, Madeline@Coastal
Subject: re: EMP date of completion

Hello Laurel
Thank you for this information regarding the date of
completion of the Jetty Studies.
Could you also please provide the date of completion for
the Russian River EMP.
I am presuming, according to CCC regulations **Article 5**
§13056, that a letter was sent by you to the applicant
regarding completion of the prior requests made by
staff, Daniel Robinson on February 23, 2012 and notifying
applicant that the application was complete. Here is the
text of that request from Daniel Robinson.

**Subject: Coastal Development Permit (CDP) Application No. 2-12-004
for the Russian River Estuary Management Plan**

Dear Mr. Davis:

Thank you for submitting additional information in response to our application status letter dated October, 24, 2011 regarding the Sonoma County Water Agency's (SCWA) application proposing certain management activities at the mouth of the Russian River near Jenner (CDP 2-12-004). We have reviewed the CDP file along with the materials that you have submitted to date and are still in need of additional information to adequately analyze the proposed project for Coastal Act conformance. We are unable to file this application until the following is submitted:

1.

Definition of Flood Problem. Thank you for providing the additional information about the structures and properties that would be at risk during flooding. However, it is still not clear exactly which structures would be in danger at various flood elevations, or the degree of danger that such flooding would pose to each of the structures. Please provide a clear graphic that depicts, in site plan view and cross-sections, as appropriate, all at-risk structures in relation to base and expected flood elevations.

Alternatives. Thank you for providing the description of the alternatives to the proposed project that SCWA has considered, including as outlined in the Draft EIR and FEIR. As part of the requested information, the Coastal Commission requires additional detail over the same range of evaluation factors (including all expected costs and impacts to purchasing easements, raising structures, and general implementation of the alternatives, as well as degree of resource protection benefit provided) to allow a clearer feasibility comparison of the alternatives described.

Upstream Flows. Thank you for providing additional information about potential reduced instream flows. However, it is still unclear how the "Fish Flow Project" could improve or enhance various salmonid life stages in the Russian River to the point where it would become unnecessary to artificially manage the Estuary and Lagoon. Please provide any information on how the estuary management project proposes to adaptively manage its project based on the soon-forthcoming EIR and subsequent potential results of the Fish Flow Project, once implemented. In other words, how would the SCWA alter its flood-protection lagoon management activities to address expected changed circumstances that result from the Fish Flow Project, if at all?

State Lands Commission. It is our understanding that the State Lands Commission has recently approved a three-year lease for the proposed estuary management project. Please submit a copy of the SLC staff report and lease.

Aside from the above filing requirements, please submit two copies of the 2011-2012 Russian River Biological Opinion Status and Data Report (available in spring 2012), the renewed IHA when and if approved by NMFS, and two copies of the jetty study, as required by the Russian River Biological Opinion, when completed.

We will hold your application for three months from today's date (i.e., until May 23rd, 2012) pending receipt of material items #1-4 above. After all of the above-listed materials have been received, your client's application will again be reviewed and will be filed if all is in order (Government Code Section 65943(a)). Please submit all of the requested materials at the same time. Please note that there may be additional materials necessary for filing purposes depending upon the nature of the information provided pursuant to the above-listed materials. If all of the above-listed materials are not received within three months, the application will be considered withdrawn and will be returned to you. This submittal deadline may be extended for good cause if such request is made prior to May 23rd, 2012.

Could you please verify the date you sent a letter to the SCWA, determining that the application was complete and if no such letter was sent, the date staff received all the materials listed above as to deem the EMP application complete.

I realize and appreciate that you have suggested that I review the file in person at the San Francisco office. Please understand that this involves missing work and pay for me so I have asked you in repeated inquiries since April of 2012 for a confirmation that you received the additionally requested materials from the applicant before traveling to San Francisco. This seems a reasonable request especially in the light that you are making the determination that the application is complete-it would seem that this would involve the knowledge that the necessary documents to make that determination were submitted and reviewed. I look forward to your follow-up call.

Thank you
Cea Higgins
volunteer coordinator
Sonoma Coast Chapter of Surfrider

Th/7b

From: NORMA JELLISON [<mailto:normalj@monitor.net>]
Sent: Monday, September 24, 2012 9:02 AM
To: Cavaliere, Madeline@Coastal; Kellner, Laurel@Coastal
Cc: Cea; Lester, Charles@Coastal
Subject: Re: Russian River Jetty Study

Hi Laurel - I am resending this email sent after our call last Monday hoping for the promised reply regarding last sentence below.
We are also wondering about a date and time for the follow up call you and Madeline proposed.
Thanks,
Norma

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

From: NORMA JELLISON
Date: 9/17/2012 9:13:04 PM
To: madeline.cavaliere@coastal.ca.gov; laurel.kellner@coastal.ca.gov
Cc: Cea
Subject: Russian River Jetty Study

Re:SCWA CDP Waiver Jetty Study CDP 2-12-009-W

Madeline and Laurel -

Thank you for today's opportunity to discuss our concerns with the proposed Waiver of a CDP for the Jetty Study.

It is clear that we believe there are a number of questions and missing details regarding what is being proposed by the applicant with regards to methodologies, duration, location, and impacts.

As we stated, we do not believe there is sufficient knowledge about the many outstanding issues to have allowed staff to recommend a CDP Waiver in the first instance.

We further do not believe it possible for the Sonoma County Water Agency to adequately respond to the outstanding issues timely to 1) allow this matter to continue to be recommended as a CDP Waiver and 2) to move this matter forward to the October 2012 Commission meeting.

We look forward to follow up emails regarding dates that both the Jetty Study and Estuary Management Project application were deemed complete by staff and the

suggested status phone call next week.

Cea Higgins & Norma Jellison
Sonoma Coast Surfrider

Th176

From: NORMA JELLISON [mailto:normalj@sonic.net]
Sent: Tuesday, September 04, 2012 10:53 AM
To: mkshallenberger@gmail.com
Cc: Lester, Charles@Coastal; Kellner, Laurel@Coastal
Subject: CDP Waiver 2-12-009-W Applicant Sonoma County Water Agency

Commissioner and Chair Shallenberger:

I object to the proposed Coastal Development Permit Waiver 2-12-009-W for Sonoma County Water Agency (SCWA) to conduct a geophysical study of the existing rock and concrete jetty at the Russian River Mouth being imbedded in a Deputy Director's report.

It was my understanding that this waiver was to be taken up in the Deputy Director's Report (as was intended for the August Santa Cruz meeting) at the September meeting in Caspar.

I am now told it is "**likely**" not to be taken up in Caspar, but deferred to the October meeting.

I object to this CDP Waiver being imbedded in a Deputy Director's Report, favoring the matter being brought out in a manner that allows full public participation as guaranteed by the Coastal Act.. Imbedding a Waiver in a Deputy Director's Report does not provide an adequate opportunity for interested parties/stakeholders, of which I am only one, to participate and provide comment.

I challenge the Waiver. This Jetty Study should be processed as a CDP. Further, the Jetty Study should not be segmented as a CDP Waiver from the larger major pending permit CDP 2-12-004. The Estuary Management Project CDP 2-12-004 is pending processing by the Commission. This is piecemeal planning and does not comport with the intent of the Coastal Act.

I object to an inaccurate basis for the CDP Waiver " that no sensitive animal species exist in the area."

The SCWA has received 3 Incidental Harassment Authorizations from National Marine Fisheries Service, NOAA, for incidental takes of marine mammals, particularly Harbor Seals of the colony at this location on the beach adjacent to the jetty at and on Goat Rock State Beach at the mouth of the Russian River in Jenner, Sonoma County.

The Harbor Seals at this location are protected under the Marine Mammal Protection Act. Hence the need for the Incidental Harassment Authorization to conduct the Estuary Management Project activities, including the jetty studies, the latter of which involve invasive geotechnical activities.

Under separate cover to the staff and Commission last month, I provided photos showing the Harbor Seal colony and the haul out location immediately adjacent to and **in the area** of the jetty.

In addition to the Harbor Seal colony, Goat Rock Beach provides a resting place for large numbers of coastal birds: Brown Pelicans, numerous types of Gulls, Terns and Cormorants - all of which are sensitive to and

would be disrupted by the proposed activities on the beach.

At a minimum, I ask that the Commission postpone consideration of this item at the

September meeting for lack of adequate notice to interested parties.

Thank you for your consideration,

Norma Jellison

P O Box 1636

Bodega Bay CA 94923

Thl7b

From: sonomacoastsurfrider [mailto:sonomacoastsurfrider@comcast.net]
Sent: Tuesday, September 04, 2012 11:25 AM
To: Mary Shallenberger
Cc: Lester, Charles@Coastal; Kellner, Laurel@Coastal
Subject: re: CDP Waiver 2-12-009-W Applicant Sonoma County Water Agency

Commissioner and Chair Shallenberger:

Sonoma Coast Surfrider objects to the proposed Coastal Development Permit Waiver 2-12-009-W for Sonoma County Water Agency (SCWA) to conduct a geophysical study of the existing rock and concrete jetty at the Russian River Mouth being imbedded in a Deputy Director's report.

It was our understanding that this waiver was to be taken up in the Deputy Director's Report (as was intended for the August Santa Cruz meeting) at the September meeting in Caspar.

We are now told it is "likely" not to be taken up in Caspar, but deferred to the October meeting.

We object to this CDP Waiver being imbedded in a Deputy Director's Report, favoring the matter being brought out in a manner that allows full public participation as guaranteed by the Coastal Act.. Imbedding a Waiver in a Deputy Director's Report does not provide an adequate opportunity for interested parties/stakeholders, of which I am only one, to participate and provide comment.

I challenge the Waiver. This Jetty Study should be processed as a CDP. Further, the Jetty Study should not be segmented as a CDP Waiver from the larger major pending permit CDP 2-12-004. The Estuary Management Project CDP 2-12-004 is pending processing by the Commission. This is piecemeal planning and does not comport with the intent of the Coastal Act.

We object to an inaccurate basis for the CDP Waiver " that no sensitive animal species exist in the area."

The SCWA has received 3 Incidental Harassment Authorizations from National Marine Fisheries Service, NOAA, for incidental takes of marine mammals, particularly Harbor Seals of the colony at this location on the beach adjacent to the jetty at and on Goat Rock State Beach at the mouth of the Russian River in Jenner, Sonoma County.

The Harbor Seals at this location are protected under the Marine Mammal Protection Act. Hence the need for the Incidental Harassment Authorization to conduct the Estuary Management Project activities, including the jetty studies, the latter of which involve invasive geotechnical activities.

ESA/PWA who will be conducting the jetty studies have not specified which methodology will be used in the seismic sensing and have included the possibility of "hammer strikes" to make determinations in this study that will continue covering approximately 1400 ft. of coastline for up to a year in the proximity of the colony. Under separate cover to the staff and Commission last month, photos showing the Harbor Seal colony and the haul out location immediately adjacent to and **in the area** of the jetty were provided.

In addition to the Harbor Seal colony, Goat Rock Beach provides a resting place for large numbers of coastal birds: Brown Pelicans, numerous types of Gulls, Terns and Cormorants - all of which are sensitive to and would be disrupted by the proposed activities on the beach.

At a minimum, We ask that the Commission postpone consideration of this item at the September meeting for lack of adequate notice to interested parties.

Thank you for your consideration

Cea Higgins
Sonoma Coast Surfrider
P.O. Box 2280
Sebastopol, CA 95473

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TH176

From: NORMA JELLISON [mailto:normalj@sonic.net]
Sent: Tuesday, September 04, 2012 1:42 PM
To: Kellner, Laurel@Coastal
Cc: Cea; Lester, Charles@Coastal
Subject: SCWA CDP Waiver Jetty Study CDP 2-12-009-W

Hi Laurel -

I would appreciate it if you would notify Cea and I when you know for certain that this CDP Waiver will not be taken up under the Deputy Director's Report at the September CCC meeting in Caspar.

I also would point out that, unlike the staff of the Sonoma County Water Agency who would have their travel paid for by the County- SCWA, as members of the public, we would have to pay our own way to fly to southern California to attend a Coastal Commission meeting. It would be a financial hardship that would prevent our participation. Thus, we would hope the Commission would consider this item for a meeting closer to our residences, like the December meeting in San Francisco.

Norma

Th17b

From: Mary Shallenberger [mailto:mkshallenberger@gmail.com]
Sent: Wednesday, September 05, 2012 1:09 AM
To: NORMA JELLISON
Cc: Lester, Charles@Coastal; Kellner, Laurel@Coastal
Subject: Re: CDP Waiver 2-12-009-W Applicant Sonoma County Water Agency

I am out of the country for the month of September. I am forwarding your request to staff for their consideration.

Thank you,

Mary

On Tue, Sep 4, 2012 at 7:53 PM, NORMA JELLISON <normalj@sonic.net> wrote:

Commissioner and Chair Shallenberger:

I object to the proposed Coastal Development Permit Waiver 2-12-009-W for Sonoma County Water Agency (SCWA) to conduct a geophysical study of the existing rock and concrete jetty at the Russian River Mouth being imbedded in a Deputy Director's report.

It was my understanding that this waiver was to be taken up in the Deputy Director's Report (as was intended for the August Santa Cruz meeting) at the September meeting in Caspar.

I am now told it is "likely" not to be taken up in Caspar, but deferred to the October meeting.

I object to this CDP Waiver being imbedded in a Deputy Director's Report, favoring the matter being brought out in a manner that allows full public participation as guaranteed by the Coastal Act. Imbedding a Waiver in a Deputy Director's Report does not provide an adequate opportunity for interested parties/stakeholders, of which I am only one, to participate and provide comment.

I challenge the Waiver. This Jetty Study should be processed as a CDP. Further, the Jetty Study should not be segmented as a CDP Waiver from the larger major pending permit CDP 2-12-004. The Estuary Management Project CDP 2-12-004 is pending processing by the Commission. This is piecemeal planning and does not comport with the intent of the Coastal Act.

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The SCWA has received 3 Incidental Harassment Authorizations from National Marine Fisheries Service, NOAA, for incidental takes of marine mammals, particularly Harbor Seals of the colony at this location on the beach adjacent to the jetty at and on Goat

Rock State Beach at the mouth of the Russian River in Jenner, Sonoma County. The Harbor Seals at this location are protected under the Marine Mammal Protection Act. Hence the need for the Incidental Harassment Authorization to conduct the Estuary Management Project activities, including the jetty studies, the latter of which involve invasive geotechnical activities.

Under separate cover to the staff and Commission last month, I provided photos showing the Harbor Seal colony and the haul out location immediately adjacent to and **in the area** of the jetty.

In addition to the Harbor Seal colony, Goat Rock Beach provides a resting place for large numbers of coastal birds: Brown Pelicans, numerous types of Gulls, Terns and Cormorants - all of which are sensitive to and would be disrupted by the proposed activities on the beach.

At a minimum, I ask that the Commission postpone consideration of this item at the September meeting for lack of adequate notice to interested parties.

Thank you for your consideration,
Norma Jellison
P O Box 1636
Bodega Bay CA 94923

TH176

From: Dian Hardy [mailto:themis@sonic.net]
Sent: Wednesday, August 22, 2012 1:00 PM
To: Kellner, Laurel@Coastal
Subject: Re: Coastal Commission notification list

Thanks, Laurel.

Was wondering if Lynn Woolsey's proposed legislation to move MPAs up through Sonoma to Pt Arena will impact the work at the estuary? Norma said it's in federal waters so that may moot my inquiry.

Dian

On 8/22/2012 9:47 AM, Kellner, Laurel@Coastal wrote:
Hi Dian-
You are on the list for Russian River items.
Best-
Laurel

From: Dian Hardy [mailto:themis@sonic.net]
Sent: Tuesday, August 21, 2012 8:14 PM
To: Kellner, Laurel@Coastal
Cc: NORMA JELLISON; Dian Hardy
Subject: Re: Coastal Commission notification list

Hi, Laurel.

Please add me to the notifications list for any hearings relating to the Russian, its tributaries and the mouth, if not already done.

Thanks, Norma, for the connect to Laurel.

Dian Hardy
7777 Bodega Avenue
R304
Sebastopol, CA 95472
707.824.8405

On 8/21/2012 7:35 PM, NORMA JELLISON wrote:
Dian - Laurel is the contact person. The same person who sent you the email saying the item was continued.

laurel.kellner@coastal.ca.gov;

I believe that you are now on the EM list for this item.

I don't think you want to be on the email list to receive all CCC meeting notices. If so,

that is arranged on the CCC website.

Norma

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

From: Dian Hardy

Date: 8/21/2012 5:15:51 PM

To: Norma Jellison

Subject: Coastal Commission notification list

Went to the CCC website, found the appropriate district office, no email to request to be on their notifications list. Do you have an email contact for them? Trying to avoid a long distance call to SF.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.1913 / Virus Database: 2437/5213 - Release Date: 08/21/12

Th/7b

From: NORMA JELLISON [mailto:normalj@sonic.net]
Sent: Saturday, August 10, 2013 7:23 PM
To: Staben, Jeff@Coastal
Cc: Lester, Charles@Coastal
Subject: Application No. 2-12-004 Russian River Estuary Management Project North Central Coast District -Agenda Item 17b on Thursday August 15, 2013
Importance: High

Chair Shallenberger and Commissioners -

I write to you as a coastal resident, advocate and long time Seal Watch volunteer at the Harbor Seal colony at the mouth of the Russian River.

I focus my comments on several vital aspects of the Coastal Act impacted by this CDP application by the Sonoma County Water Agency (SCWA), w/ selected applicable, tho' by no means all inclusive, sections of the Act cited.

I believe it is premature to allow this project to proceed for 3 Yrs + 3 Yr renewal. NO EXTENSION should be allowed until initial impacts of the implementation of the project are identified and assessed - based on practical observed & monitored results AND critical information/impacts associated with the lowered river flows and the national marine sanctuary expansion are available from the respective pending EIR and the EIS to factor into the analysis.

Sec 30210 -

I request a 1 Yr permit in keeping with 1Yr permits given to SCWA by State Parks - in furtherance of their jurisdiction under Article X of CA Constitution. The Estuary Management Project (EMP) is to be constructed on State Park land - Goat Rock State Beach - where a majority of the impacts will be borne.

A 1 Yr permit is also consistent with the 4 separate 1 Yr Incidental Harassment Authorizations (IHA) given by NMFS, associated with the Harbor Seal Colony.

Both public resource agencies, one State and one Federal, obviously considered the merits of identifying the impacts of the project critical before giving the SCWA approval to operate the project for any longer duration.

Sec 30210/30211/30220et seq - Despite assertions that impacts to Public Access are minimal and will be managed by applicant, the EMP significantly impairs Public Access. The Biological Opinion/SCWA in carrying out the EMP, treats the Public's land and waters as an experiment/an experimental construction site. There is no proof that this outlet channel will succeed. In fact, attempts to implement in 2011 failed, due to the forces of nature.

Prior breaching activities, done solely for flood control, took place for a couple of

hours on 1 day. References to "no difference from past activities; no impacts associated with prior activities translates to current proposal" are false.

By implementing the EMP, Public Access will be eliminated/impaired/reduced for many consecutive days/weeks/months/years as this experiment is conducted. Construction equipment carving the outlet channel, installing wells, weekly well monitoring, equipment removal, fencing off sections of the beach - all will reduce or impair Public Access to large portions of the beach/river/ocean at those times.

Up to 2,000 cu yds of sand will be moved at each of 18 outlet construction events!

Clearly this is not the same as past practices of merely breaching - opening up - the sandbar one day.

Why treat a Public Beach as a construction site and suggest that a Public Access Management Plan could mitigate? Public Access should not have to be managed to avoid negative impacts to State Park/Beach visitors. Public Access should not be compromised in the first place in order to carry out an experiment. NMFS admits this is an experiment - the current term is "adaptive management."

Impacts to Public Recreation - families with children use the river side of Goat Rock State Beach extensively as a safer environment (than the ocean) for wading and swimming and picnicking. Construction & monitoring activities will reduce Public Access. Public Access should not be compromised. A Public Access Management Plan should not be necessary to manage Public Access to a Public Beach!

Impacts to Public Access - surfing - could be impaired by the sedimentation released when the outlet lagoon is eliminated each year by winter water levels that will naturally breach the sandbar or prior if river levels threaten flooding of several buildings. Staff dismissal that potential impacts are minimal as this is "just a local surfing spot" misses the fact that all surfing spots are local. Just because this is not Maverick's doesn't make it any less important a surfing locale.

Sec 30230/31/30240 - Impacts to sensitive species are minimized by comparing past activities and lack of impacts to proposed actions.

The SCWA has received four **1 Yr** Incidental Harassment Authorizations (2010, 2011, 2012, 2013) from NMFS for incidental takes of marine mammals, primarily Harbor Seals of the colony at the mouth of the Russian River on the outlet channel beach & adjacent to the jetty at Goat Rock State Beach.

The 30+-year old Harbor Seal colony are protected species under the Marine Mammal Protection Act. Regardless of IHA mitigations required, these sensitive species at the EMP construction site are potentially at risk of harassment from proposed construction and maintenance activities of the EMP and the invasive geotechnical activities of the associated jetty study.

Previous breaching activities are in no way similar to proposed EMP activities.

Prior sandbar breaching took place during a couple of hours on 1 day; in some years, e.g. this year and last, not at all. EMP activities proposed would take place over a number of consecutive days over a number of weeks/months/years.

Thus all references to "no difference from past activities; no impacts associated with prior activities translates to current proposal" are false.

The unknown impacts to this Harbor Seal colony are the reason that the IHAs have been issued for only 1 Yr in duration and not the potential longer term IHA that might be issued once impacts of the construction and maintenance of the outlet channel/EMP are monitored and known.

Impacts to other sensitive estuary species e.g. the estuary is a Dungeness crab nursery and home to many other species of fish - are unstudied & unknown.

Water Quality impacts: Influences/impacts of Russian River lowered flows remain to be assessed in an EIR to be published in 2014. Impacts to aquatic species/marine species; recreational users associated w/concentrations of contaminants in water contained by the sandbar in the lagoon are unknown. No study plan or monitoring for these specific WQ impacts to body contact sports or to the ocean environment is proposed for this CDP.

Lowering the flows in the river is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating. Lowering the flows in the river will impact water quality. Water quality impacts of lowered flows in the estuary (*elevated bacterial levels; nutrients; dissolved oxygen conditions*) will surely impact wading and swimming on the river side of the State Beach and at nearby upstream beaches, as well as kayaking, canoeing, and the many waterfowl, river and marine mammals and fish that live in and use the estuary. As an oddity, the BO acknowledges that some die off/take of salmonids may be associated with the perched lagoon of the EMP.

The pending EIS for National Marine Sanctuary (S) expansion adjacent to Russian River mouth will provide critical information about the ocean environment, including WQ. Sanctuary jurisdiction is over all submerged lands, water & associated marine resources therein from the MHW line; alteration of stream & river drainage & surface water runoff into The Sanctuary (S).

Impacts from "first flush", either emergency (based on WQ or flood danger) planned breaches, or natural breaches from winter storm river water levels or ocean conditions, releasing lagoon waters into nearshore ocean waters are unstudied and unknown, as are released sediment impacts.

When the retained waters behind the sandbar/outlet channel are released into the ocean environment, the concentrated contaminants and sediment built up behind the sandbar for sustained periods, up to 5 months, will have potentially significant impacts to the nearshore beaches and marine life. These all could be significant impacts, yet

remain unknown; unstudied and are not addressed in any proposed monitoring.

Again, it is simply premature to allow this project to proceed for 3 Yrs + 3 Yr renewal. NO EXTENSION should be allowed until impacts of the implementation of the project are identified and assessed - based on practical observed & monitored results AND critical information/impacts associated with the lowered river flows and the marine sanctuary expansion are available from the respective pending EIR and the EIS to factor into the analysis.

Thank you for your consideration of my comments

Norma Jellison
PO Box 1636
Bodega Bay 94923



A new ethic for the ocean where the ocean is not seen as a commodity we own but as a community of which we are a part.

The sea is worth saving for its own sake. Bill Ballantine NZ
And take this to the land as well.

Th176

From: NORMA JELLISON [<mailto:normalj@sonic.net>]
Sent: Sunday, August 05, 2012 9:47 AM
To: Kellner, Laurel@Coastal
Cc: Lester, Charles@Coastal; jeffrey.staben@coastal.ca.gov; madelline.cavaliere@coastal.ca.gov
Subject: Coastal Development Permit Waiver 2-12-009-W

Laurel - Today I retrieved from my PO Box, a letter Notice of Proposed Permit Waiver for the above referenced CDP Waiver at Goat Rock Beach State Park.

I sent you an email on 6/18/2012 asking about this permit notice I found posted to a sign at Goat Rock Beach that I happened upon going to my Seal Watch shift. In my email I noted the following and asked for further information:

CCC permit notice - Development Permit pending.
No permit number, that line was blank.
Posting date was June 14. No length of time noted prior to issuance, ditto no indication comments were in order. Just contact CCC.
It said it was for Goat Rock State Beach Jetty Study: Temporary Subsurface Investigations of the Extent of an Abandoned Rock and Concrete Jetty near Russian River Mouth and Groundwater Flow through the Sandbar.
Applicant is Sonoma County Water Agency (SCWA).

You never responded to my inquiry asking for information about the permit, despite a follow up email on 6/30/2012.

Now I receive a notice that you recommend the Coastal Commission approve a CDP Waiver. Not an email that I might have responded to more timely, but a letter dated July 31 to my PO Box sent by US Mail, guaranteeing that I would not get timely notice.

I hereby object to the waiver on the grounds that the applicants statements that there are no sensitive animal species in the area of the proposed study.

I further object to not being provided information in response to my public information requests and not being provided adequate notice of pending action by the Commission.

In addition, I object to this single aspect of the Estuary Management Plan, which is pending before the Commission as CDP 2-12-004, being processed as a separate action and as a separate permit when it is part and parcel of the pending CDP 2-12-004.

In a February 23, 2012 letter from the Commission staff, additional information was requested by staff, Daniel Robinson at the time was the assigned staff, specific to CDP 2-12-004.

My requests and those of other interested parties for copies of the information provided by SCWA in response to that February letter have gone unresponded to in the interim months.

There is in fact a Harbor Seal colony on this beach, Goat Rock State Beach. Harbor Seals are a protected species under the Marine Mammal Protection Act and thus they are a sensitive species.

The attached photos show the sensitive species in the study area - the Jenner Harbor Seal colony. Photo 1 was taken July 4, 2012 from the overlook on Route 1 and shows the mouth of the Russian River, the jetty and the sandbars and beach with 3 groupings of the Harbor Seal colony. Photo 2 was taken July 22, 2012 from Goat Rock State Beach with the jetty on the left and one of the three groups of the Harbor Seal colony hauled out across the river mouth on the north side beach facing the Pacific Ocean. Photo 3, July 4, shows more of the beach and the jetty covered with sand extending back to left from the concrete section.

Further, the Sonoma County Water Agency (SCWA) has been issued 3 Incidental Harassment Authorizations by the National Marine Fisheries Service, NOAA for "Small Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Water Level Management Activities."

The most recent Incidental Harassment Authorization (RIN 0648-XB132) effective April 21, 2012 to April 20, 2013 added to the prior activities covered by previous IHA (artificial breaching of the sandbar and lagoon management outlet channel adaptive management plan when the sandbar closes naturally), jetty studies. The jetty studies were authorized in the same window, May 15 - October 15, as allowed for the lagoon management outlet channel adaptive management plan.

In order to issue an Incidental Harassment Authorization under Section 101 (a)(5)(D) of the Marine Mammal Protection Act, National Marine Fisheries Service sets forth permissible methods of taking protected species, in this case small numbers of protected species by Level B harassment, and requires mitigation. .

Sonoma County Water Agency's Incidental Harassment Authorization defines the mitigation measures required to **minimize impacts to affected species and stock**. There are 8 detailed and specific mitigation measures required of SCWA under the Incidental Harassment Authorization issued under the authorities of the Marine Mammal Protection Act.

For an Incidental Harassment Authorization to be issued there have to be protected species under the Marine Mammals Protection Act present and under threat of harassment by activities contemplated.

It therefore is contradictory for the applicant for the applicant, SCWA which is one and

the same as the County of Sonoma, the local coastal zone management plan regulatory agency - the Sonoma County Board of Supervisors is the Board of the SCWA - to now say in this CDP Permit Waiver there are no sensitive species present in the area of the proposed study.

The photos clearly show the Harbor Seals hauled out adjacent to the jetty on the sandbar and beach areas of Goat Rock State Beach at Jenner. The existence of 1 Year Incidental Harassment Authorizations in 2010, 2011 and 2012 clearly prove that sensitive species exist at Goat Rock State Beach, marine mammals protected under the Marine Mammal Protection Act. The Harbor Seal colony has existed on this beach for 30 years, is one of the most studied Harbor Seal colonies on the northern California coast and is the largest colony north of Drakes Bay in Marin County to the Eel River to the north.

For these reasons, I object to the CDP Waiver 2-12-009-W.

Norma Jellison
P O BOX 1636
Bodega Bay CA 94923

Th/76

From: sonomacoastsurfrider [mailto:sonomacoastsurfrider@comcast.net]
Sent: Sunday, August 05, 2012 11:20 AM
To: Lester, Charles@Coastal; Kellner, Laurel@Coastal; Mary Shallenberger
Subject: re: CDP Waiver 2-12-009-for Jetty Studies for Jenner Russian River Mouth Estuary

Sonoma Coast Surfrider hereby objects to the Coastal Development Permit Waiver 2-12-009 for SCWA to conduct a geophysical study of the existing rock and concrete jetty at the Russian River Mouth which is to be presented to the Commission at the upcoming meetings in Santa Cruz on the following grounds:

1. The inaccurate statement from the applicants, Sonoma County Water Agency, that there are no sensitive animal species in the area of the proposed study.
2. We further object to not being provided information in response to several public information requests and not being provided adequate notice of pending action by the Commission.
3. We also object to the segmentation of this waiver from the pending CDP application: Russian River Estuary Management Project **Permit 2-01-004** which requires that all agencies involved issue a permit for changes in management of the estuary. There has been no evidence or notices posted of other agency permits for the jetty studies.

1. First point of objection involves the fact that there is an established and documented Harbor Seal colony on this beach, Goat Rock State Beach. Harbor Seals are a protected species under the Marine Mammal Protection Act and they are a sensitive species.

Further, the Sonoma County Water Agency (SCWA) has been issued 3 Incidental Harassment Authorizations by the National Marine Fisheries Service, NOAA for "Small Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Water Level Management Activities."

The most recent Incidental Harassment Authorization (RIN 0648-XB132) effective April 21, 2012 to April 20, 2013 added to the prior activities covered by previous IHA (artificial breaching of the sandbar and lagoon management outlet channel adaptive management plan when the sandbar closes naturally), jetty studies. The jetty studies were authorized in the same window, May 15 - October 15, as allowed for the lagoon management outlet channel adaptive management plan.

In order to issue an Incidental Harassment Authorization under Section 101 (a)(5)(D) of the Marine Mammal Protection Act, National Marine Fisheries Service sets forth permissible methods of taking protected species, in this case small numbers of protected species by Level B harassment, and requires mitigation. .

Sonoma County Water Agency's Incidental Harassment Authorization defines the mitigation measures required to **minimize impacts to affected species and stock.** There are 8 detailed and specific mitigation measures required of SCWA under the Incidental Harassment Authorization issued under the authorities of the Marine Mammal Protection Act.

For an Incidental Harassment Authorization to be issued there have to be protected species under the Marine Mammals Protection Act present and under threat of harassment by activities contemplated.

It therefore is contradictory for the applicant, SCWA which is one and the same as the County of Sonoma, the local coastal zone management plan regulatory agency - the Sonoma County Board of Supervisors is the Board of the SCWA - to now say in this CDP Permit Waiver there are no sensitive species present in the area of the proposed study.

The existence of 1 Year Incidental Harassment Authorizations in 2010, 2011 and 2012 clearly prove that sensitive species exist at Goat Rock State Beach, marine mammals protected under the Marine Mammal Protection Act.

The Harbor Seal colony has existed on this beach for 30 years, is one of the most studied Harbor Seal colonies on the northern California coast and is the largest colony north of Drakes Bay in Marin County to the Eel River to the north.

2. Our second point of objection deals with lack of adequate notice from Coastal Commission staff on this issue. Sonoma Coast Surfrider has unequivocally established itself as a stakeholder on all issues relevant to the Russian River Estuary permit application process through comment letters, repeated email inquiries, and public comment at Commission hearings. We were not notified either by post or by email of the waiver application for the August 8-10 Commission hearings in Santa Cruz nor was this item listed on the calendar agenda. We have made numerous email inquiries as to the status of both jetty studies and permit progress (attachment is only one example) and have been repeatedly told that "the issue was still under investigation and more time was needed to respond to the direct inquiries" It is troubling if staff is repeatedly proclaiming that "My supervisors and I have not had a chance to check in on these issues." which indicates that these issues have not been completely investigated that they are simultaneously comfortable in submitting waiver applications.

3. In both comments submitted for the EIR and to the Commission regarding the Russian River Estuary Management Plan Permit Application, Sonoma Coast Surfrider recommended that impacts of the existing jetty be evaluated and considered before issuing permits for construction of an outlet channel. At no time, did we suggest that this be done without proper protocol and following guidelines of notice, opportunity to make public comment or without consideration of impacts or mitigation measures. Projects in the Russian River mouth require authorization from State Parks, Regional Water Quality Control Board, Army Corp of Engineers, State Lands Commission, NMS, and Department of Fish and

Game. The applicant's arguments for the waiver are similar to their arguments for the Estuary Management Project in that they claim no substantive issues with Public Access, Recreation, Water Quality, or Sensitive Marine and Plant species. The Commission itself has responded to these arguments with demands for further information to substantiate these impacts which have yet to be fully provided by the applicant. How then can the waiver be granted based on these arguments?

Sonoma Coast Surfrider strongly opposes this waiver and asks that a full CDP be required for studies of the jetty at the Russian River Mouth or that the item be postponed for lack of notice to interested parties.

Cea Higgins
Sonoma Coast Surfrider

Th/76

From: Kate Fenton [mailto:kafenton@sonic.net]
Sent: Saturday, August 04, 2012 2:41 PM
To: Kellner, Laurel@Coastal; Cavaliere, Madeline@Coastal
Cc: Lester, Charles@Coastal; NORMA JELLISON; nxokada@yahoo.com; orca-sonoma@calorca.org; Dian Hardy
Subject: CDP Waiver for Jetty Studies, Mouth of Russian River

Dear Ms. Kellner:

I object to the waiver on the grounds that the applicants' statements that there are no sensitive animal species in the area of the proposed study. There is in fact a Harbor Seal colony on this beach, Goat Rock State Beach. Harbor Seals are a protected species under the Marine Mammal Protection Act and they are a sensitive species.

Norma Jellison's photos show the sensitive species in the study area; you have received them from her. Further, the Sonoma County Water Agency (SCWA) has been issued 3 Incidental Harassment Authorizations by the National Marine Fisheries Service, NOAA for "Small Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Water Level Management Activities."

The most recent Incidental Harassment Authorization (RIN 0648-XB132) effective April 21, 2012 to April 20, 2013 added to the prior activities covered by previous IHA (artificial breaching of the sandbar and lagoon management outlet channel adaptive management plan when the sandbar closes naturally), jetty studies. The jetty studies were authorized in the same window, May 15 - October 15, as allowed for the lagoon management outlet channel adaptive management plan.

In order to issue an Incidental Harassment Authorization under Section 101 (a)(5)(D) of the Marine Mammal Protection Act, National Marine Fisheries Service sets forth permissible methods of taking protected species, in this case small numbers of protected species by Level B harassment, and requires mitigation.

Sonoma County Water Agency's Incidental Harassment Authorization defines the mitigation measures required to **minimize impacts to affected species and stock**. There are 8 detailed and specific mitigation measures required of SCWA under the Incidental Harassment Authorization issued under the authorities of the Marine Mammal Protection Act.

For an Incidental Harassment Authorization to be issued there have to be protected species under the Marine Mammals Protection Act present and under threat of harassment by activities contemplated.

It therefore is contradictory for the applicant for the applicant, SCWA which is one and the same as the County of Sonoma, the local coastal zone management plan regulatory agency - the Sonoma County Board of Supervisors is the Board of the SCWA - to now say in this CDP Permit Waiver there are no sensitive species present in the area of the proposed study.

The photos clearly show the Harbor Seals hauled out adjacent to the jetty on the sandbar and beach areas of Goat Rock State Beach at Jenner. The existence of 1 Year Incidental Harassment Authorizations in 2010, 2011 and 2012 clearly prove that sensitive species exist at Goat Rock State Beach, marine mammals protected under the Marine Mammal Protection Act. The Harbor Seal colony has existed on this beach for 30 years, is one of the most studied Harbor Seal colonies on the northern California coast and is the largest colony north of Drakes Bay in Marin County to the Eel River to the north.

For these reasons, I object to the CDP Waiver 2-12-009-W.

--

Kate Fenton
PO Box 86
Jenner, CA 95450
www.willowcreekdesigns.net

Th176

From: Kellner, Laurel@Coastal
Sent: Thursday, July 26, 2012 1:49 PM
To: Bargsten, Stephen@Waterboards
Subject: RE: Status of Coastal Commission permit for SCWA Russian River Estuary management

Hi Stephen-
Thank you for being in touch. We are still reviewing the materials (CDP application and supplemental info) for the SCWA Russian River Estuary management project.
We are also moving forward on a subsequent application from SCWA regarding the Jetty Study. Let's put it on our calendars to check back in next month on the Management CDP if that works for you. Thanks for your patience in this process.
Best-
Laurel

From: Bargsten, Stephen@Waterboards
Sent: Thursday, July 26, 2012 1:14 PM
To: Kellner, Laurel@Coastal
Cc: Neely, Mark@Waterboards
Subject: Status of Coastal Commission permit for SCWA Russian River Estuary management

Hi Laurel,

Hope all is well with you. I was just checking in with you to see what the status of your permit is for the SCWA Russian River Estuary Breaching project. I haven't heard from you since the Confab, and have heard through the grapevine that there may be some issues that are still being resolved. I was waiting for the Coastal Commission permit before we issue our 401 Water Quality Certification, in case there were any changes to the project that you'd require and that I would need to include in the 401. I look forward to hearing from you.

Cheers,
Stephen

STEPHEN BARGSTEN
ENVIRONMENTAL SCIENTIST
401 WATER QUALITY CERTIFICATION PROGRAM
NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD
5550 SKYLANE BLVD. SUITE 100
SANTA ROSA, CA 95403
OFFICE: 707-576-2653
FAX: 707-523-0135

TH17b

From: Kellner, Laurel@Coastal
Sent: Monday, July 02, 2012 9:08 PM
To: NORMA JELLISON
Subject: RE: CCC Development Permit Pending

Hi Norma-

Thank you for following up with us on this matter.
We appreciate your years of work on the coast and your dedication to the protection of coastal resources.
I want to clarify that this permit has not yet been filed.
We are reviewing additional materials received from SCWA last month.
We welcome any additional materials or comments that you would like to send to our office. Additionally, you are welcome to come to the office to review materials submitted by SCWA. Also, your name is on the mailing list for this item so you will be notified.
I want to assure you that no parties are receiving preferential treatment in this matter.
We unfortunately are working with very limited permitting staff for the entire Sonoma and Marin County regions. You may also be aware that recent budget cuts require staff to take one un-paid day out of the office starting this month. We appreciate your understanding of these constraints, while we do our best to respond in a timely manner to materials and requests.

Sincerely-
Laurel

From: NORMA JELLISON [normalj@sonic.net]
Sent: Saturday, June 30, 2012 12:59 PM
To: Kellner, Laurel@Coastal
Cc: Lester, Charles@Coastal
Subject: RE: CCC Development Permit Pending

Laurel - I am writing because I am noticing a pattern in your response to my inquiries > I ask questions, you say you have received my inquiry and will look into it, as in below May 8 reply to my question about the SCWA RR Estuary Permit #2 OR, as in 6/20 reply below, you have to consult w/ your supervisors to respond.

Unfortunately, the "I'll get back to you" is then followed by silence. In first instance, it has been almost 2 months w/O a reply. In the second instance, I have no way to know if there is a permit comment period timeline ticking away that could well result in my being preempted from commenting.

The below link is to an article in the local newspaper about the jetty. It talks about the studies of the jetty. Obviously, they are pending receipt of the development permit from CCC along with a permit from State Parks and others. What exactly is the status of the development permit before the Commission.

I would appreciate a real response to my request about the pending permit from CCC for the jetty studies, as well as to my inquiry about lacking information to Permit #2 requested by CCC staff on February 23, 2012, precedent to your assignment to the permit application.

I sincerely doubt that you are this non responsive to the Sonoma County Water Agency staff. Preferential treatment to an applicant over a citizen request, and I am not the only one inquiring about SCWA activities who is not being responded to, is most troublesome. I am an interested party to matters before

the CCC. I am not an adversary of the CCC. In fact, in past I have been an advocate, lobbying legislators not to cut funding to the agency. I do not expect preferential treatment as a result, just even and commensurate responsiveness w/ that afforded an applicant.

Thanks,
Norma

<http://www.pressdemocrat.com/article/20120626/ARTICLES/120629630/1010/sports?Title=Low-water-levels-reveal-jetty-at-mouth-of-Russian-River>

From: [Kellner, Laurel@Coastal](mailto:Kellner,Laurel@Coastal)
Date: 5/8/2012 4:37:46 PM
To: NORMA JELLISON
Subject: RE: Russian River Estuary SCWA Permit #2



Hi Norma-

I just want to let you know that I received your message and I will look into your request.

Best-

Laurel

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

From: [Kellner, Laurel@Coastal](mailto:Kellner,Laurel@Coastal)
Date: 6/20/2012 3:01:03 PM
To: 'NORMA JELLISON'
Subject: RE: CCC Development Permit Pending

Hi Norma-

Thank you for being in touch. I just wanted to confirm that I have received this message and I am checking with my supervisors to work on a response for you.

Best-

Laurel

From: NORMA JELLISON [<mailto:normalj@sonic.net>]
Sent: Monday, June 18, 2012 11:10 AM
To: Kellner, Laurel@Coastal
Cc: Lester, Charles@Coastal; 'O'Neil Brendan'
Subject: CCC Development Permit Pending

Hi Laurel - I was at Goat Rock State Beach doing my Seal Watch shift yesterday and noticed a CCC permit notice - Development Permit pending.

There was no permit number, that line was blank.

Posting date was June 14. No length of time noted prior to issuance, ditto no indication comments were in order. Just contact CCC.

It said it was for Goat Rock State Beach Jetty Study: Temporary Subsurface Investigations of the Extent of an Abandoned Rock and Concrete Jetty near Russian River Mouth and Groundwater Flow through the Sandbar.

Applicant is Sonoma County Water Agency (SCWA).

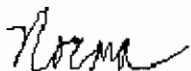
Please advise status of this permit application and exactly what the studies (jetty and groundwater) propose to do/consist of, when CCC will consider this permit and if you are accepting public comment on the permit application.

I would appreciate receiving a copy of the project/study description so I can better understand it and its potential impact on the Harbor Seal colony and other natural resources in the river and ocean as well as the impact on visitors to the State Beach.

The attached EM shows the current configuration of the river mouth, with minor variation. Yesterday, the entire Harbor Seal haul out (170 adults and pups) was tucked up against the jetty on the beach, ocean and river side.

I would also appreciate a status report on the SCWA's Russian River Estuary SCWA Permit #2 unresponded to questions posed by CCC staff. This is in regards to my EM of May 7 which you replied to on May 8th saying you were looking into my inquiry.

Regards,



From: NORMA JELLISON [mailto:normalj@sonic.net]
Sent: Monday, June 18, 2012 11:10 AM
To: Kellner, Laurel@Coastal
Cc: Lester, Charles@Coastal; 'O'Neil Brendan'
Subject: CCC Development Permit Pending

Th176

Hi Laurel - I was at Goat Rock State Beach doing my Seal Watch shift yesterday and noticed a CCC permit notice - Development Permit pending.

There was no permit number, that line was blank.

Posting date was June 14. No length of time noted prior to issuance, ditto no indication comments were in order. Just contact CCC.

It said it was for Goat Rock State Beach Jetty Study: Temporary Subsurface Investigations of the Extent of an Abandoned Rock and Concrete Jetty near Russian River Mouth and Groundwater Flow through the Sandbar.

Applicant is Sonoma County Water Agency (SCWA).

Please advise status of this permit application and exactly what the studies (jetty and groundwater) propose to do/consist of, when CCC will consider this permit and if you are accepting public comment on the permit application.

I would appreciate receiving a copy of the project/study description so I can better understand it and its potential impact on the Harbor Seal colony and other natural resources in the river and ocean as well as the impact on visitors to the State Beach.

The attached EM shows the current configuration of the river mouth, with minor variation. Yesterday, the entire Harbor Seal haul out (170 adults and pups) was tucked up against the jetty on the beach, ocean and river side.

I would also appreciate a status report on the SCWA's Russian River Estuary SCWA Permit #2 unresponded to questions posed by CCC staff. This is in regards to my EM of May 7 which you replied to on May 8th saying you were looking into my inquiry.

Regards,

Norma

Th/7b

From: NORMA JELLISON [mailto:normalj@sonic.net]
Sent: Monday, May 07, 2012 8:42 PM
To: Kellner, Laurel@Coastal
Cc: c.lester@coastal.ca.gov; d.robinson@coastal.ca.gov
Subject: RE: Russian River Estuary SCWA Permit #2

Hi Laurel - Thank you for the attached October 2011 letter from CCC staff and the January 2012 letter from SCWA, which I already had copies of.

I trust you realize that the letter from Daniel Robinson dated February 23, 2011 was in fact a February 23, 2012 letter! It was misdaded.

His first sentence of that February 23, 2012 letter says "Thank you for submitting additional information in response to our application status letter dated October 24, 2011....."

The SCWA additional information he references was transmitted by the letter dated January 23, 2012, thus his letter acknowledging receipt could only be dated February 2012.

He states 4 items that require addressing "...**before the application can be filed...**": Definition of Flood Problem, Alternatives, Upstream Flows and provision of State Lands Commission lease.

My EM inquiry below was asking if SCWA had provided the information requested and asking for a copy of their information if so.

The February 23, 2012 letter gave SCWA until May 23, 2012 to provide the additional materials requested and stated that only after receipt and review could the application be filed, "if all is in order according to GC 65943(a)."

I look forward to your response.

I hope to schedule a time in the near future to come into the SF offices to meet with you.

Thanks,
Norma

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

From: Kellner, Laurel@Coastal
Date: 4/26/2012 11:04:38 AM

To: NORMA JELLISON
Subject: RE: Russian River Estuary SCWA Permit #2

Hi Norma-

Thank you for being in touch. This is some of the latest information that was submitted in regards to some of our earlier inquiries. The entire file documents are in the San Francisco office and you are welcome to go through them.

Best-

Laurel

From: NORMA JELLISON [<mailto:normalj@sonic.net>]
Sent: Monday, April 23, 2012 4:50 PM
To: Kellner, Laurel@Coastal
Subject: Russian River Estuary SCWA Permit #2

Hi Laurel - Please advise if there has been a response to the above letter written to the SCWA by Daniel Robinson on Feb 23, 2012, and if so, please provide a copy of that response to me.

Please add my name to those to be advised of the scheduling of this permit request in advance of its being published on the CCC agendas, which I receive.

Thank You,



Norma Jellison
P O BOX 1636
Bodega Bay CA 94923

Th17b

From: sonomacoastsurfrider [mailto:sonomacoastsurfrider@comcast.net]
Sent: Monday, May 07, 2012 8:56 PM
To: Kellner, Laurel@Coastal
Cc: Robinson, Daniel@Coastal; Lester, Charles@Coastal
Subject: Fw: Russian River Estuary SCWA Permit #2

Hello Laurel-I am resending as I believe I had the wrong format for the proper email addresses. Could you please confirm that you have received this email. Sorry for the mix-up
Cea

Re: CDP application No. 2-12-004 for the Russian River Estuary Management Project

Attachments: 1. Central Coast District Office review letter Feb 23, 2012 (misdated 2011)
2. Sonoma Coast Surfrider Comment Letter
3. ICCE 2008 Lost Jetty of California's Russian River

Attn:
Laurel Kellner
Charles Lester
Daniel Robinson

April 30, 2012 and May 7, 2012

Dear Ms Kellner

Thank you for mailing the following documents

1. Updated Russian River Estuary Flood Risk Management Feasibility Study -January 9, 2012
2. Response letter to status letter 1.23.12
3. Russian River Estuary Management Plan Project Status letter 2.23.2012

I have had a chance to review the response of the Sonoma County Water Agency that was submitted on January 23rd, 2011. That letter was sent as a response to the original request by Commission staff for further information regarding the permit application dated October 24th, 2011. In their letter, the Commission staff stated that an amended permit was not possible and that a new CDP was necessary.

Following a review of the SCWA response letter dated January 23rd, Commission staff forwarded another request for materials. That letter is dated Feb, 23, 2011. I believe it was written February 23, 2012, as it is requesting that further information be provided by May 23rd, 2012. The Commission staff letter stated that the SCWA application would be held for 3 months from the date of the letter ("i.e. May 23, 2012") pending receipt of certain information. Following receipt of the listed materials and review by Commission staff it would then be determined if the application could once again be filed.

It is this inquiry from the Commission that was the basis of my email to you on April 2nd, 2012.

The **Feb 23, 2102 letter** from the Commission staff to the SCWA **requested additional information by May 23, 2012, to wit:**

“1. Definition of Flood Problems- a clear graphic that depicts, in site plan view and cross-sections, as appropriate, all at-risk *structures* in relation to base and expected flood elevations.

2. Alternatives- additional detail over the same range of evaluation factors (including all expected costs and impacts to purchasing easements, raising structures, and general implementation of the alternatives, as well as degree of resource protection benefit provided) to allow a clearer feasibility comparison of the alternatives described.

3. Upstream Flows. Thank you for providing additional information about potential reduced instream flows. However, it is still unclear how the “Fish Flow Project” could improve or enhance various salmonid life stages in the Russian River to the point where it would become unnecessary to artificially manage the Estuary and Lagoon. Please provide any information on how the estuary management project proposes to adaptively manage its project based on the soon-forthcoming EIR and subsequent potential results of the Fish Flow Project, once implemented. In other words, how would the SCWA alter its flood-protection lagoon management activities to address expected changed circumstances that result from the Fish Flow Project, if at all? “

- Are all these materials now submitted by the SCWA?
- If there has been a response by the SCWA could you please forward that document.

I am still unclear as to the wording in your email which stated that

“I wanted to let you know that yes, there will be a new permit with full public review and we have received materials from SCWA

- Can you please clarify what is meant by “ yes, there will be a new permit”?

In addition the water agency has stated in their response of January 23rd that the jetty studies (which were a part of the original CCC request for materials from October 24th) will not be completed until December of 2012.

Also, the EIR for the “Fish Flow Project” has yet to be released. Information requested by the Commission staff in the February 2012 letter has yet to be provided.

Is the Commission staff now considering issuing a permit without the vital information previously stated as necessary for proper evaluation along with/ full public review ?

- What full public review is contemplated and what tenure of permit is being considered?
- What management operations are currently allowed for the May 14th-October 14th 2012 management period?

Permits issued by State Parks (the management area is located on State Parks lands) and the NMFS’ IHA permit (a Harbor Seal colony located on Goat Rock State Beach and the Jenner Estuary requires a permit from NMFS) do not exceed one year . Both of these agencies clearly feel evaluation of the impacts of the proposed outlet channel and the adaptive management plan is required before issuing any longer term permit.

Until there is an opportunity to study ecosystem changes associated with outlet construction and upstream flows, there can not be an understanding of what those impacts will be. It is the hope of Sonoma Coast Surfrider and other stakeholders that the adaptive nature of this proposal and the potential significant effects on the ecosystem in the estuary will be considered in any decision making.

I would appreciate the opportunity to come to the Commission offices to meet with you. Would you be available in the latter part of the week of May 14th?

Thank you
Cea Higgins
Sonoma Coast Surfrider
707-217-9741
sonomacoastsurfrider@comcast.net

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

From: Kellner, Laurel@Coastal
To: sonomacoastsurfrider
Sent: Friday, 13 April, 2012 4:16 PM
Subject: RE: Russian River Estuary SCWA Permit #2

Hi Cea-

This is a very large file, but I attempted to pick out the sections you noted.

Please find the information you requested attached.

Best-
Laurel

From: sonomacoastsurfrider [<mailto:sonomacoastsurfrider@comcast.net>]
Sent: Wednesday, April 11, 2012 5:12 PM
To: Kellner, Laurel@Coastal
Subject: Re: Russian River Estuary SCWA Permit #2

thank you-I was just worried that some correspondence got lost during your time out of office. I realize this is a time consuming request and will wait to hear back from you before scheduling a trip down to review the file. The management period does begin in May; however, so it would be helpful to know what practices will be permitted for this season.

-Cea

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

From: Kellner, Laurel@Coastal
To: sonomacoastsurfrider
Sent: Thursday, 12 April, 2012 4:57 PM
Subject: RE: Russian River Estuary SCWA Permit #2

Hi Cea-

I apologize for the delay in responding. Due to some other pressing regulatory deadlines, I have not had a chance to look into this file to confirm that it contains the information that you have referenced.

You are welcome to look at the entire file at any time.

I am not sure at this moment if the elements can be sent to you in pdf format.

I will get back to you on these points as soon as I am able.

Thanks for your understanding.

Best-

Laurel

From: sonomacoastsurfrider [<mailto:sonomacoastsurfrider@comcast.net>]

Sent: Wednesday, April 11, 2012 4:53 PM

To: Kellner, Laurel@Coastal

Subject: Fw: Russian River Estuary SCWA Permit #2

Dear Ms. Kellner

As I have not heard back from you, I am sending this email again in case you did not receive this correspondence or my phone message. I look forward to hearing from you

Sincerely

Cee Higgins

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

From: sonomacoastsurfrider

To: [Laurel Kellner](mailto:Laurel.Kellner)

Sent: Sunday, 08 April, 2012 10:45 AM

Subject: Re: Russian River Estuary SCWA Permit

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

From: sonomacoastsurfrider

To: [Kellner, Laurel@Coastal](mailto:Kellner,Laurel@Coastal)

Sent: Monday, 02 April, 2012 6:07 PM

Subject: Re: Russian River Estuary SCWA Permit

Hello Laurel

Thank you for the reply.

The last correspondence from the Commission to the SCWA requested:

Definition of Flood Problem- a clear graphic that depicts, in site plan view and cross-sections, as appropriate, all at-risk *structures* in relation to base and expected flood elevations.

Alternatives- additional detail over the same range of evaluation factors (including all expected costs and impacts to purchasing easements, raising structures, and general implementation of the alternatives, as well as degree of resource protection benefit provided) to allow a clearer feasibility comparison of the alternatives described.

Are all these materials now submitted by the SCWA?

What will be the tenure of the permit?

It would be helpful to know this before scheduling a day off to come to the Commission office and review the current file. I appreciate your time and would like the opportunity to schedule either an appointment or a phone conference with you.

Cee

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

From: [Kellner, Laurel@Coastal](mailto:Kellner,Laurel@Coastal)

To: Sonoma Coast Chapter of Surfrider Foundation

Sent: Tuesday, 03 April, 2012 5:24 PM
Subject: E: Russian River Estuary SCWA Permit

Hi Cea-

Thank you for being in touch.
I wanted to let you know that yes, there will be a new permit with full public review and we have received materials from SCWA. You will be able to review the file materials, if you like.
When we know the hearing date, we will let you know.
Please send me your mailing address and I will add you to the mailing list.

Best-
Laurel

Laurel Kellner
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45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5266 Voicemail
(415) 904-5400 Fax
laurel.kellner@coastal.ca.gov

From: Sonoma Coast Chapter of Surfrider Foundation [<mailto:sonomacoastsurfrider@comcast.net>]
Sent: Friday, March 30, 2012 5:26 PM
To: Kellner, Laurel@Coastal
Cc: Spencer Nilson
Subject: re: Russian River Estuary SCWA Permit

Hello
Our chapter has been working with Daniel Robinson on the Russian River Estuary Permit and would like to have the opportunity to review the file and dialogue with you concerning updates. It is our understanding that you are currently the staff person handling this permit application and that the file is currently located at the SF CCC office. We would appreciate any information confirming this. We have followed this issue carefully and have made extensive comments to the Commission.

Thank you
Cea Higgins
Volunteer Coordinator
Sonoma Coast Chapter of Surfrider
707-217-9741
sonomacoastsurfrider@comcast.net

Th176

LOST JETTY OF CALIFORNIA'S RUSSIAN RIVER

Orville T. Magoon¹, Donald D. Treadwell², Paul S. Atwood³, and Billy L. Edge⁴

This paper presents a history of the repeated attempts to construct a single jetty at the mouth of the Russian River near Jenner, California, USA. This "lost jetty" at Jenner provides a useful example of the futility of designing, building, and maintaining a coastal project in ignorance and/or disregard of the powerful forces of nature.

INTRODUCTION

The Russian River basin is a 3,846 square kilometer watershed in northern California (Figure 1). Attracted more than 150 years ago by the world's premier redwood groves, pioneer European loggers first came to the Russian River to exploit the ancient forests. Today, the Russian River area is in large measure a holiday destination, including the town of Jenner (located about 100 kilometers north of San Francisco) where the Russian River empties into the Pacific Ocean.

Construction of the jetty (locally referred to as the Jenner Jetty) at the mouth of the Russian River (Figure 2) began in 1929. It was originally initiated for the stated purpose of creating and maintaining a permanent navigable opening at the mouth of the river in support of the proposed commercial development of natural sand and gravel deposits in the lower reaches of the stream. However, the value of such a structure (if it could be built) for recreational purposes was soon realized by local citizens and entrepreneurs and the California Fish and Game Commission became interested in the project as a means of allowing ingress and egress of fish to and from upstream spawning grounds.

CONSTRUCTION AND REPAIR (1929-1948)

With the goal of creating and maintaining a navigable entrance from the Pacific Ocean to the Russian River, a number of construction and repair attempts were made between 1929 and 1948, all of which have been unsuccessful. The initial attempt was developed by the Russian River Improvement Company in February 1924. The driving force behind the company was C. A. Nelson of San Francisco, who arranged the initial capital investment of US\$75,000.

Based on historic photographic images it appears that the original plan was to remove sand and gravel from the Russian River immediately landward of the shoreline by providing appropriate cables to haul small barges of gravel from the river across the river mouth bar to be loaded on the schooner Caroline which was anchored offshore of the river mouth. Due to the very difficult task

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of transporting sand and gravel from the Russian River for subsequent shipment to the San Francisco Bay Area across the bar at the mouth, it proved not practicable to commercially operate in this fashion.

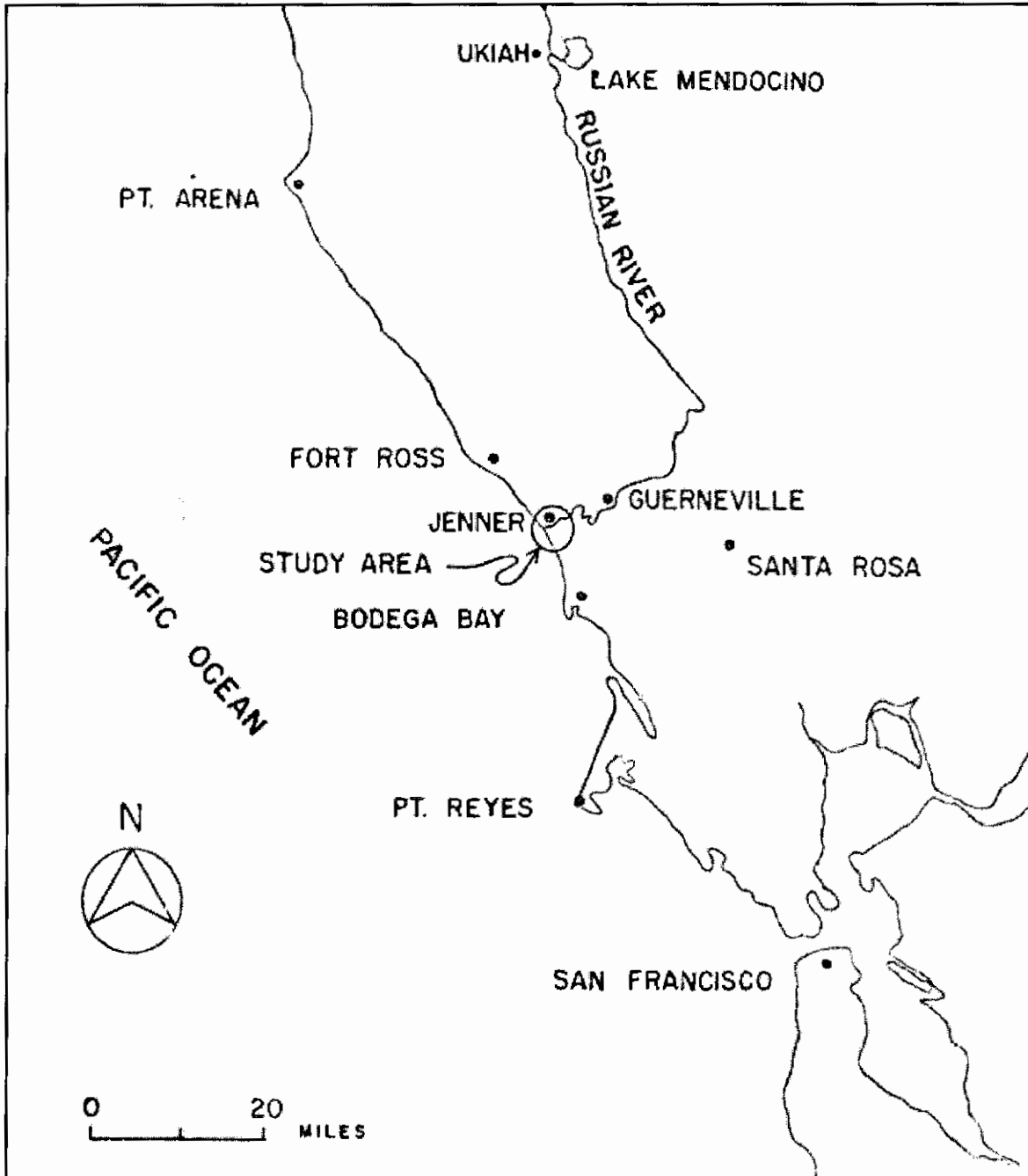


Figure 1: Location of Jenner and the Russian River, California, USA



Figure 2: Russian River and Pacific Ocean at Jenner, California, USA

As the original plan was unsuccessful, the capital investment in the Russian River Improvement Company was raised to US\$300,000 and Francis Betts Smith, PE, a California engineer, was retained to design a jetty at the river mouth. It is not clear why a single jetty at the southerly side of the Russian River mouth was implemented; however, one possibility is that at about the same time noted Professor L. M. Haupt (1908) expounded that the use of a single jetty (a “reaction jetty”) was all that would be required to maintain a navigable entrance.

The initial work on the jetty included opening a quarry located at Goat Rock approximately 1000 meters south of the proposed jetty, construction of a narrow gauge railroad (Figure 3) between the Goat Rock quarry site and the jetty site, and construction of the south wall to preventing overtopping of the rail line. Initial work on the jetty consisted of the construction of a wooden pile trestle structure that would allow stone from the quarry at Goat Rock to be placed at the desired jetty location.

In order to haul material from the quarry to the jetty, a narrow gauge railroad was built between the quarry and the jetty and two engines and appropriate cars that had been surplus from the construction of the Twin Peaks tunnel in San Francisco were mobilized at the site. Construction was terminated when all available funds were expended.

At about the same time, the value of a structure that would ensure a permanent opening between the river and the ocean was realized by local resort owners and sportsmen. The California Fish and Game Commission also became interested in the project as a means of allowing ingress and egress of fish to and from the spawning grounds in the Russian River and the Pacific Ocean. On August

16, 1929 by the provisions of legislative enactment set forth in Chapters 640 and 641, statutes of 1929, the State of California became part of the project and contributed US\$35,000 to match the US\$35,000 made available for the work by the Russian River Improvement Company.



Figure 3: Narrow Gauge Locomotive to haul stones to jetty from quarry

With the involvement of the State of California, the Goat Rock quarry was re-opened and approximately 3500 feet of narrow gauge industrial railroad was completed to transport the quarried stone. Approximately 1000 linear feet of combined timber pile trestle and core wall (Figure 4) were constructed from which the stone was placed in an excavated trench to form the jetty.

All work was discontinued in the late fall of 1930 when all allocated and contributed funds had been expended. During the winter of 1929-1930, a major portion of the jetty trestle was destroyed and much of the stone that had been placed was lost.

In 1932, an additional US\$30,000 was appropriated by the State of California to continue construction of the jetty. The destroyed wooden trestle was replaced by a steel trestle 225 feet in length for the forward extension of the stone section. A large portion of the stone placed during 1932 (Figure 5), which was used to widen the jetty base and to keep the section in place continued to settle in the underlying sand. It was believed that this would create a stable base which would allow more permanent construction in the future. Additional maintenance on the structure continued to January 1934 when very severe storms occurred. At that point in time, approximately US\$140,700 had been expended on the jetty project.

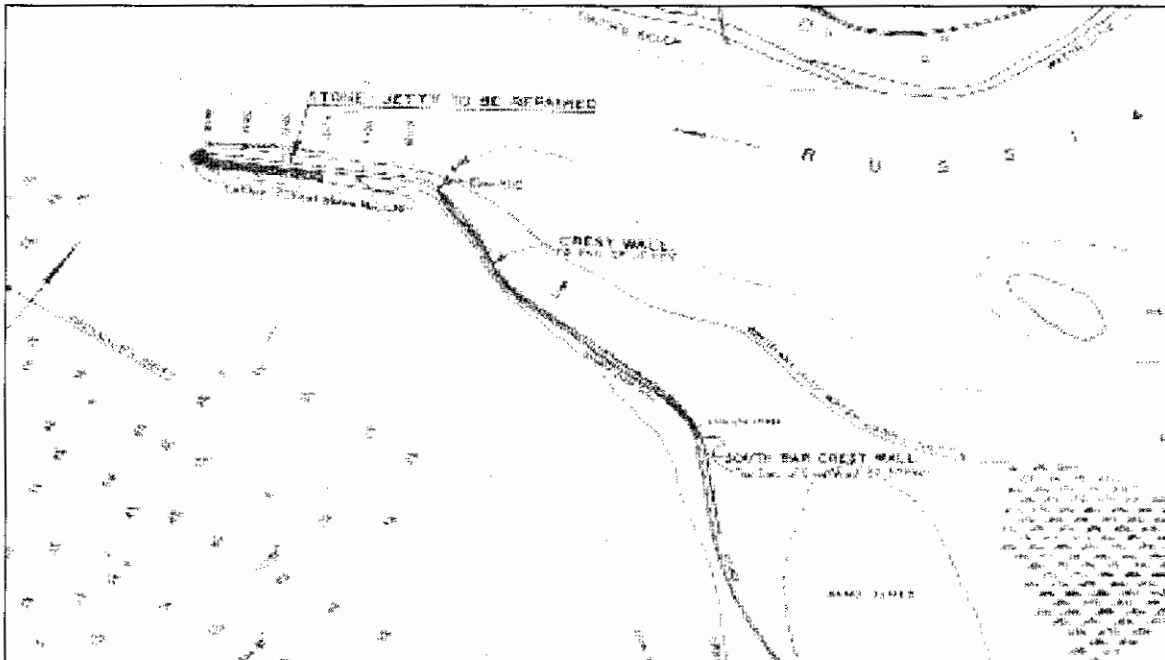


Figure 4: Layout of Narrow Gauge Rail System (Northern Portion)



Figure 5: Placement of Individual Large Armor Stone in November 1932

Plans for a more permanent type of jetty construction including a concrete cap were formulated in 1933 with the assumption that stone placed during the preceding years would undergo sufficient settlement to form a reasonably stable foundation to support a more rigid concrete structure. Extensive boring operations in the spring of 1940 indicated that the existing stone had been displaced by two large floods during February and March 1940 which moved the smaller stones into the ocean.

After continued settlement of the jetty (Figure 6), the "final" contract was awarded to the PIMBO Construction Company for US\$59,784 in May 1948. The plans provided for placement of 4280 tons of quarry stone along the ocean side the jetty from station 12+00 seaward, around the seaward jetty head, and additional stone on the north side of the jetty. The voids between the stone were filled with 651 cubic yards of Portland cement concrete to as low an elevation as possible.

Exploration holes were drilled through the existing cap to ensure concrete penetration in the voids between the stones. Additional displaced stone was salvaged from the river and placed in the berm which was about 15 feet wide with an elevation of about plus 4 feet above Mean Lower Low Water. The reinforced berm extended from the jetty head to about 100 feet landward on the riverside. The stone for the jetty repair obtained from the Goat Rock quarry was loaded on trucks with a power shovel. At the jetty, trucks were backed out on the jetty crest to a truck crane with each stone lifted and placed individually with cable slings. The planned typical cross-section is shown in Figure 7.

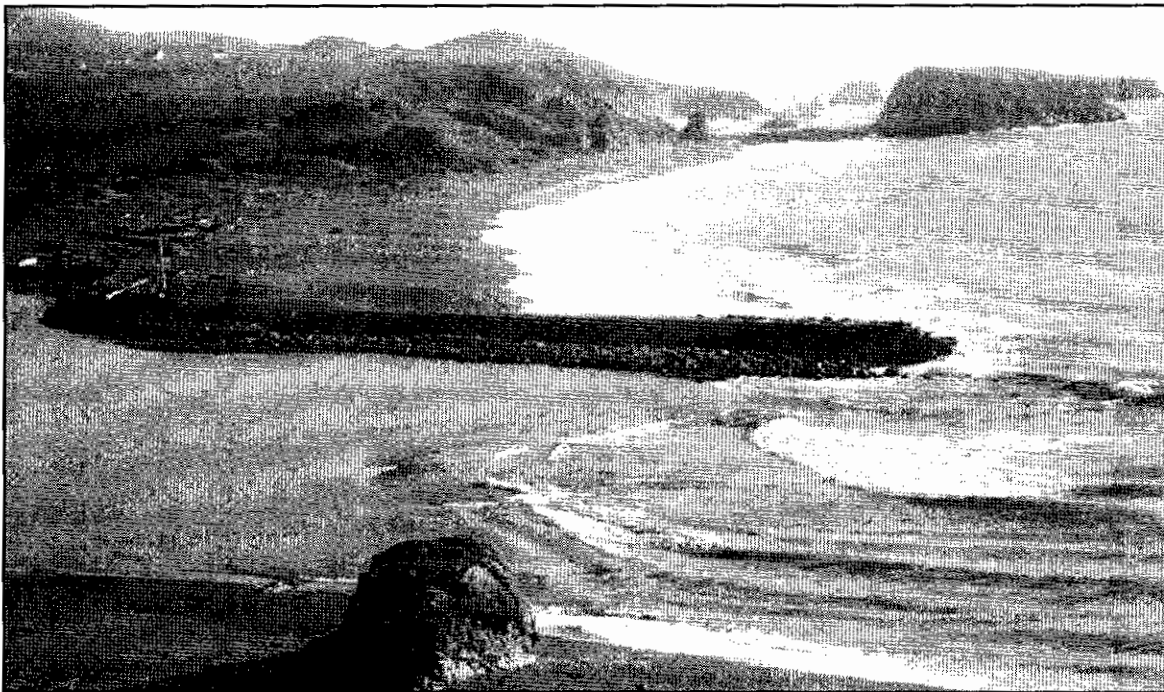


Figure 6: Condition of the Jenner Jetty in January 1946

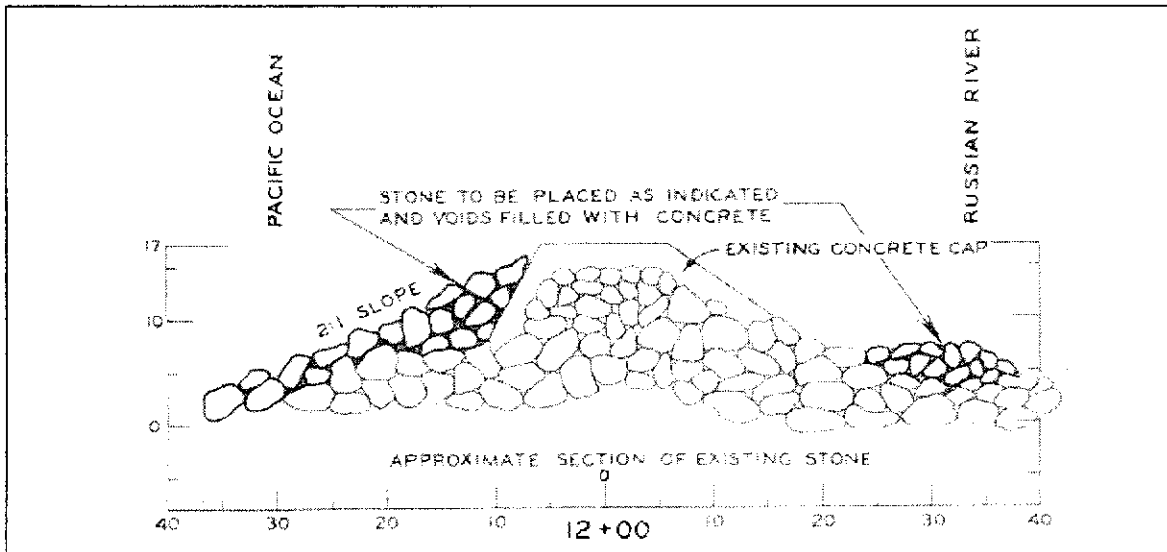


Figure 7: Planned Typical Cross-Section of Jetty Repair in 1948

JENNER JETTY FROM 1948 TO 2008

Given the poor economic conditions of the 1930s followed by worldwide conflict in the 1940s, very little work was done at the Jenner Jetty from 1948 until the 1960s, when the potential for sand and gravel mining in the lower reaches of the stream was again evaluated (Johnson, 1964). Eventually, however, the possible benefits were far outweighed by the costs and the permitting difficulties. The jetty still exists in a damaged state (Figure 8) and is mainly an important and instructive artifact from an earlier time.



Figure 8: Jenner Jetty in July 2004

The final attempt to maintain a navigable channel from the ocean to the Russian River was undertaken by the Utah Construction & Mining Company in the mid-1960s. This plan was to provide an entrance by use of a hydraulic dredge (Figure 9) to mine sand and gravel to be shipped to San Francisco, and development of river oriented boating and recreational facilities. Although work was initiated, the plan was never completed, largely due to local opposition to associated plans for the major residential development project.

The opening at the mouth of the Russian River continues to be intermittent and unpredictable, with the jetty providing shelter for seals and other wildlife. Volunteers occasionally open the sandbar using shovels (Figure 10). The conditions at Jenner have also been studied and reported by investigators such as Schulz (1942), Rice (1974), and Behrens, Bombardelli, and Largier (2008).



Figure 9: Dredging Sand from Mouth of Russian River in the 1960s

CONCLUSION

The repeated cycles of construction and repair of the single jetty at the mouth of the Russian River demonstrate the need for thorough investigation and understanding of conditions and forces prior to undertaking specific coastal installations. The Jenner Jetty remains a monument to the folly of attempting such works without fully understanding the power and complexity of natural forces along the coastlines of the world.

ACKNOWLEDGMENTS

The authors appreciate the support, encouragement, and enthusiasm of their families, friends, and colleagues. In particular, the authors wish to note the collegial support and historical information provided by Elinor Twohy of Jenner, California and by the Sonoma County Historical Society.



Figure 10: Using Shovels to Open the Russian River Sandbar in 2005

REFERENCES

- Behrens, D., Bombardelli, F., and Largier, J. (2008), Stability of River Mouths: The Case of the Russian River, California, Proceedings, ICCE 2008, 31st International conference on Coastal Engineering, Hamburg, Germany, September 2008.
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- Rice, M. (1974), Closure Conditions of the Mouth of the Russian River, Shore and Beach, Volume 42, Number 1, April 1974.
- Schulz, W. G. (1942), Report on Jenner Jetty at Mouth of Russian River, Department of Public Works, Division of Water Resources, State of California.

Th176

To:
California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention:
Charles Lester, Executive Director
Ruby Pap, District Supervisor
Daniel Robinson

From:
Sonoma Coast Chapter of Surfrider
PO Box 2280
Sebastopol, CA, 95473
sonomacoastsurfrider@comcast.net

The Surfrider Foundation is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches. The Surfrider Foundation now maintains over 80,000 members and 90 chapters worldwide.

Re: Russian River Estuary Management Project Permit 2-01-033-A2

The Sonoma County Water Agency has submitted an application to the California Coastal Commission for an amended permit for management of the Russian River Estuary at Goat Rock State Beach in Jenner to continue previous flood management practices during the months of Oct. 15th-May 15th and to implement a new Adaptive Management Plan (AMP) of the Russian River Estuary during the months of May -Oct. 15th. The implementation of the proposed new lagoon outlet channel raises many concerns in the areas of public access, economic viability, water quality, public recreation, and loss of species habitat that deserve the attention of the Commission. We believe the current permit application should not be accepted as an amended permit. If however, it is accepted, we recommend that it be denied. As detailed below, the current proposal is inconsistent with numerous policies of the Coastal Act, including:

1. Water quality and rights (section 30231)
2. Marine resources (section 30230)
3. Environmentally sensitive habitat areas (section 30240)
4. Public access (section 30211)
5. Lower cost visitor and recreational facilities (30213)
6. Protection of certain water-oriented activities (30220)
7. Recreational boating use (30224)
8. Economic, commercial, and recreational importance of fishing (30234.5)
9. Wetlands (30233)

These numerous impacts cannot be balanced against the possible benefit to one listed species. The standard of review is the Coastal Act not the Endangered Species Act. Section 30007.5 mandates "that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources". Given the multitude of unmitigated and un-mitigatable impacts there is no way the present project can be considered to be most protective of significant coastal resources.

Public Access (30211)

The use of large equipment will result in partial closure of Goat Rock Beach and impacts to public access.

Each time the Russian River is breached or the proposed lagoon channel is created or maintained, SCWA operations will impact park visitor use through partial closure of Goat Rock Beach. The FEIR acknowledges that the proposed project will result in an increase in equipment use and subsequent beach closures and concludes that the impact is not significant, as the increase is not substantial. During the last 14 years SCWA has breached the estuary an average of 6.2 times/year. At least 2 of those breaches occurred during the months of January, February, November, and December (non-management period). Under the new management plan two days of initial construction would be required followed by maintenance activity (undetermined #) throughout the management period. In addition to the number of days required to implement and maintain the new outlet channel, NMFS estimates "that SCWA will need to artificially breach the lagoon using methods that do not create a perched lagoon twice per year between May 15th and October 15th.

¹ "There are 153 days in the management period (May 15 – October 15). The proposed project will restrict public access to Goat Rock Beach during the most heavily used time of the year. Goat Rock Beach is also one of the easiest beaches to access along the Sonoma Coast." The frequency and duration of beach closures will significantly increase, is substantial without limitation, and the subsequent limitations to coastal access ARE significant. There are no measure included in the plan regarding procedures that might be taken during these days to alleviate the impacts to public access.

The project is unspecific about the number of beach closures and therefore the impact on public access can not be fully evaluated.

RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 37

7.6 EXCAVATION FREQUENCY

"Creating and maintaining the outlet channel will probably employ one or two pieces of heavy machinery (e.g. excavator or bulldozer) to move sand on the beach. At the start of the management period (late spring or early summer), when configuring the outlet channel for the first time that year, conditions may require operating machinery for up to two consecutive days. The precise number of excavations would depend on uncontrollable variables such as seasonal ocean wave conditions (e.g. wave heights and lengths), river inflows, and the success of previous excavations (e.g. the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations."

Therefore the number of excavations and subsequent beach closures is also **uncontrollable**.

From July 1, 2009 through June 30, 2010, Sonoma Coast State Beach received almost 3 million day use visitors. Goat Rock Beach is the second most popular beach on the Sonoma Coast. It is reasonable to assume that a significant portion (10%) of park visitors visit this beach. The lagoon management period corresponds with the most impacted time of year for park visitors with approximately 66.5% of visits.

Public Recreation (30220, 30224)

The project will result in significant impacts to public recreation

According to the FEIR, the proposed project would result in significant impacts to public recreation.

Swimming

The impacts of the Adaptive Management Plan (AMP) on swimming at Goat Rock State Beach, specifically the river side beach area have not been assessed nor analyzed. This riverside beach area is heavily used especially by families with children.

² “Higher water levels in the estuary, up to 9’ in some locations, as posited in the FEIR will inundate riverside beaches for the long periods of time that the lagoon is in place – up to 5 months. The loss of river side wading/swimming opportunities at Goat Rock State Beach is a significant impact to the many families with children who use the riverside beach area at Goat Rock State Beach exclusively due to the dangers of the ocean side area and there can be no mitigation for this impact with the plan as proposed. . This river side beach area is arguably the only State Beach that is safe for children to wade and swim along the entire 10 mile length of the Sonoma Coast State Beach. All other State Beaches have only ocean side beach areas. Further, the FEIR fails to identify the existence of or assess the impacts of loss of the beaches below Rivers End used by Inn guests and residents of the houses on Burke Avenue. The inundation caused by the implementation of the outlet channel of these two prime riverside beach areas restricts access to these PUBLIC recreational sites.”

Surfing

Surfing locations are a prime example of low cost visitor and recreational opportunities and legally protected under the California Coastal Act (Section 30213). No baseline monitoring of surf conditions has been done by the Water Agency. As stated in the SCWA’s FEIR, impacts to surfing at the River Mouth as well as surfing areas south of the river including North Side Goat Rock, South Goat, Blind Beach, and the Far Cove will result with the implementation of the Estuary Management Project. These premier Sonoma County surf recreation areas depend greatly on the influx of new sand and gravel. The combination of modifying breaching practices and lower flows will remove the possibility of surfing these areas. Surfrider has determined that the mouth of the Russian River is a high quality surfing location.

To quote SCWA’s FEIR Impact 4.7.2: Eliminate or Modify an Existing Recreational Resource:

“The proposed project would likely reduce the occurrence of open channel tidal conditions conducive to surfing activities.” It goes on to say *“This potential impact may be inconsistent with*

the California Coastal Act, which protects water based recreation (Section 30220) and low costs recreational opportunities (Section 30213). The California Coastal Commission has jurisdiction and would be responsible for making a consistency determination of the project with these policies; however it is recognized that alteration of the opportunity for surfing may not be consistent.

..... yet no feasible mitigation measures are identified.

Surfing in Sonoma County can only be practiced in the ocean and never at inland areas. The Surfrider organization and supporters are particularly protective of surfing locations on the Sonoma Coast, especially the high quality ones, as they are available to the public in very limited supply. Sonoma County has only 9 surfing areas. As of today, out of those 9 areas, 3 are totally closed to public access, one is partially closed (Bodega Head) and access to Salmon Creek is greatly reduced (the Dunes & Bean Avenue Parking lot closures). There are also fees for ½ of these areas. Access to surfing is already limited to Sonoma County residents.

The loss of surfing at the River Mouth for half of the year due to the inlet channel and its construction efforts will now eliminate surfing at one of the only free surfing areas on the entire Sonoma Coast. In addition-the more northern surf areas and Bodega Head are less frequently used due to level of experience required or travel time, therefore, only 2 possible areas remain for surfing –primarily-Salmon Creek & the River Mouth. The Estuary Management project therefore reduces the potential surf areas by ½ in Sonoma County during the months proposed.

Except for extreme drought years, the mouth has usually been open during the summer over the last 100 years. The SCWA Estuary Management events from 1996-2010 have averaged about 3 breachings during the May 15th-Oct. 15th time period. Therefore the mouth is open almost all of the 150 days of that period and allows for formation of sandbars which combined with swell create surf for residents to enjoy. Closing the mouth of the river and preventing the movement of sand and gravel will result in the loss of surf at the River Mouth as well as surfing at Goat Rock State Beach which also depends on this influx. The loss of over 5 months of surf at two locations which are free and accessible to the residents of Sonoma County **IS** a significant impact to recreation for Sonoma County residents and should be unacceptable to the State.

As to date, no baseline quantification of the frequency and quality of waves at the Russian River exists; however, estimates can be made by reviewing; weather records, breaching records, hydrograph records, seal data notes, locally produced films and photography, and consultation from surfers who frequent the Russian River mouth. These need to be analyzed and included in any review of this project.

Recreational Boating

Lowering the flows in the river is a requirement to enable a sustained closure of the mouth of the river. Lowering the flows creates impacts to recreational boating.

³ “The Russian River has been declared a navigable river. *Hitchings v. Del Rio Woods Recreation and Parks District*, 55 Cal. App. 3d 560, 567 (1976). There simply is no line where the Estuary stops and the river begins in so far as recreation goes. In 2004 & 2007 the SWRCB approved

Temporary Urgency Change Petitions on behalf of Sonoma County Water Agency to reduce minimum flows to 85 cubic feet per second at the Hacienda Bridge USGS gauging station.

The impacts from low flow on recreation are profound. At flows of less than 90 cfs as measured at Hacienda Bridge, Russian Riverkeeper received dozens of reports from boaters concerned that navigation in the free flowing portion of the lower Russian River was being impeded, resulting in more perilous conditions for boaters. As flows were reduced, areas below riffles were narrower and often boaters were swept dangerously into overhanging vegetation resulting in over-turned watercraft. Russian Riverkeeper has numerous pictures of boaters (including the Sonoma County Sheriff's Water Safety Patrol boat) having to push their boats through shallows, and other river users were forced to walk due to shallow water, resulting in serious impediments to navigation. Several canoe and kayak rental outfitters, principally Burke's Canoe Trips, and the Monte Rio Park and Recreation District, have been impacted by previous Temporary Urgency Change Petitions issued to Sonoma County Water Agency (SCWA) by the SWRCB in 2004 and 2007 that impeded the navigability of the Russian River. The owners of Burke's and River's Edge have received numerous complaints and that many regular customers did not return in successive years due to lower flows.

These realities sharply contrast with the blithe assertion in the RRBO (see pp. 264-265 of Russian River Biological Opinion) that recreation would not be impacted at 70-85 cfs. Additionally, when the temperatures spike during the summer diversions from the river (for both municipal and agricultural uses), the operating margin of 10-15 cfs is depressed at the same time as record crowds go to the River to cool off and canoe. Sonoma County residents regularly canoe and kayak the Russian River and the Estuary for exercise, recreation and fishing and there have been several dozen complaints about navigation being impeded by previous temporary urgency change petitions that reduced flows below 90 cfs in the lower Russian River." The impacts of lowering the flow in the river and failure to maintain an open estuary creates impacts to recreational boating that need to be considered in any analysis of this project.

Water Quality (30230, 30231)

Lowering the flows in the river and closing the estuary creates impacts to water quality that require further study. The project contains no performance standards with regards to when corrective measures should occur.

RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN (AMP) p. 43

9.3.2 Decline in Water Quality

Declines in water quality could have impacts to salmonids rearing in the estuary, other species which reside in the estuary and the public. Potential water quality concerns include, but are not limited to:

- *Dissolved oxygen conditions becoming dangerously low to fish and other species;*
- *Elevated salinity levels in domestic water wells; and*
- *Elevated bacterial levels.*

FEIR 2-14 Nutrients and Bacteria

Potential significant and unavoidable impacts to water quality associated with nutrient and bacteria levels are acknowledged and analyzed in Draft EIR Section 4.3, Water Quality. As noted

on Draft EIR pages 4.3-7 and 4.3-12, there are currently no specific limits on nutrient and bacteria levels for estuarine systems, only freshwater. As discussed in the Draft EIR (page 4.3-24), the precise response of the Estuary to the Estuary Management Project cannot be predicted with certainty. As discussed in Draft EIR Section 4.3, it is anticipated that nutrient and bacteria conditions would remain within the range of those experienced within the Estuary over the past 15 years, but that the duration of those conditions would likely increase as a result of the project. Therefore, based upon the best available information, this EIR concludes that the proposed project would have the potential to result in significant and unavoidable impacts to water quality related to bacterial and nutrient levels in the Estuary.

The low flows and perched lagoon will create significant impacts to water quality yet there has been no data available to the public on bacteria, nutrients, and pathogens for the Lower Russian River and Russian River Estuary. Current County of Sonoma Department of Health data only tests and reports to the public the area of the Russian River from Alexander Valley to Monte Rio Beach for total coliform, escherichia coli, and enterococcus.

Water quality monitoring in the Adaptive Management Plan should require that this testing occur in the lower river and estuary, a baseline established, and data made available to the public before the water agency's experimental implementation of the perched lagoon and low flows is allowed. We are concerned that extended periods of low flow or stagnant lagoon conditions will result in increased bacteria levels with associated human health impacts for swimmers in the lagoon/river beach areas.

The Estuary Project and low flow (permanent changes to Decision 110) must be reviewed by California Coastal Commission together in order to fully understand the impacts.

Lowered flows are necessary for successful sustained mouth closure but the analysis provided does not deal with this issue because the lowering of the river is not included in the project considered in the EIR and therefore no analysis of the impacts is available to the Commission. The Commission cannot determine the extent of the impacts to habitat, water quality and other coastal resources without such analysis.

⁴ "The California Environmental Quality Act (CEQA) requires that the whole of a project be considered in one EIR. Bifurcation of the Estuary Management Plan and the Fish Flow Project avoids full examination of the environmental impacts that will result from the Estuary Project. Many, many people provided comments on this issue, as it is one of the most serious lapses in the FEIR, and one noted by almost every commenter. The FEIR gives numerous justifications in their Master Response (2.1) for separating these two projects. For instance, they insist that the BO prioritizes the Estuary Project before D1610 revisions because it will take much longer to process changes to D1610. What they don't mention however, is that the Temporary Urgency Change Petition process, which requires the same lowered Hacienda flows called for in the BO and the Fish Flow Project, mitigates for the delay. Conveniently, the TUCP does not require CEQA review. Furthermore, the BO was never subjected to environmental review either. An overarching criticism of the current analysis is that it is not comprehensive as to assessing the impacts of modifying Decision 1610 and the AMP." Segmenting is illegal under CEQA and this

bifurcating of the analysis of the two projects, which are intrinsically linked, is flawed and does not provide the CCC with the information needed to fully analyze the project and its impacts.

Impacts to Environmentally Sensitive Habitat Areas (ESHA) (30240)

The project has numerous impacts to species and their habitats.

Species Habitat Considerations

It is clear that with SCWA's efforts to promote conditions advantageous to one threatened species; they will impact, in some cases severely, other species. The Biological Opinion aimed at one listed species does not consider the impacts to other species, including other sensitive species. Even if we agreed with the BO, and we do not, the ESA (Endangered Species Act) is not the basis for approval of a project under the Coastal Act. To evaluate the impact of the AMP on ESHA and the wildlife it supports it is necessary to determine if it will have a substantial adverse effect, either directly or through habitat modifications, on any species identified, but not limited to candidates for listing, sensitive, or special-status species in local or regional plans, policies, or regulations or by the CDFG, USFWS, or NMFS. In this case it is clear that the project will cause significant disruption to the habitat values of ESHA and the numerous species that depend on it.

Pinnapeds, Specifically Harbor Seals

Impacts on the Harbor Seal colony are inadequately assessed and the CCC needs to take a closer look at this issue. The conclusion that the impacts are reduced to less than significant by virtue of the Incidental Harassment Authorization (IHA) permit and its protocols is disputed. The Jenner Harbor Seal colony has been established on Goat Rock Beach at the mouth of the Russian River since 1974 - 37 years. Of the 21+ Sonoma Coast Harbor Seal haul outs that constitute the Sonoma County Harbor Seal Census, the Jenner/Goat Rock haul out is the most significant. The Jenner colony is the largest and most significant Harbor Seal colony in Sonoma County and from Drakes Beach in Marin County to the mouth of the Eel River in Mendocino County.

Harbor Seals are colonial and have a large degree of site fidelity. Being diurnal, they haul out during the day. The haul out period is critical for metabolic processes (e.g. re-oxygenation) that allow them to dive in cold ocean waters when they feed at night, for bonding with pups, nursing pups and generally resting in a colony where there is safety in numbers. Harbor Seals are easily disturbed. Disturbances, whether natural by birds flushing or man-induced harassment whatever the source - boats, beach walkers approaching too close, mechanical equipment associated with the project - interfere with the needed biological processes, rest and restoration. The FEIR documents the short time frame after a harassment incident that the Harbor Seals will return to the haul out site. However, what has been observed over time is short term incidences of harassment for short periods of time. At no time over the years that breaching activities have been implemented has the river mouth been closed for more than one month maximum.

The protocols of the IHA permit are intended to mitigate the impacts of harassment associated with the mechanical breaching of the river and the construction associated with creating the lagoon. These protocols CAN NOT and DO NOT mitigate the impacts of 1) the vast increase in

the number of times/year the colony can/will be disrupted by these actions nor 2) the up to 5 month closure of the river mouth. Long term, chronic disturbances result in 1) reduced use of a site, 2) a shift to nocturnal rather than diurnal feeding, 3) reduced pup production and 4) site abandonment.

There is a lack of assessment of the effect on harbor seal colony from the multiple times the colony will be harassed and disrupted in any given year, year after year of the project life (undefined as to number of incidents or length anywhere in the FEIR document or AMP).

The Sonoma County Water Agency should also be required to do a full assessment of the long term impacts of a 5 month closed mouth on the seal colony. Creating a closed mouth for up to 5 months and the associated long barrier beach which will result in multiple ongoing disturbances/harassment associated with beach walkers approaching the colony – ignoring the signs warning them to maintain the statutory distance -when no Seal Watch volunteers are present to interpret and maintain the statutory distance is “having a substantial adverse effect, either directly or through habitat modifications” The protocols of the IHA Permit, intended for individual incidents of construction equipment and associated staff presence on the beach, cannot be used as the basis for declaring these substantial adverse effects which were not assessed as less than significant. Moreover, the harassment protocols for short term impacts cannot be used as mitigating the long term potential for loss of the colony associated with ongoing, continual, chronic disturbance/harassment of the colony and the likely resulting abandonment of the site.

A full cumulative assessment of the harassment needs to be required by the CCC. Additionally, there are no benchmarks to determine when review of the impacts should occur and no performance standards in the AMP with regard to when, if or what should happen, if the impacts are greater than those contemplated.

Dungeness Crab (section 30234.5)

⁵ “The Russian River Estuary is an important nursery area for juvenile Dungeness crab, which is an economically important species for the local fishing fleets. Several studies have documented the fact that juvenile Dungeness crab that are able to access coastal estuaries have accelerated growth rates due to warmer temperatures and better foraging opportunities (Stevens, Armstrong, 1984). According to studies completed by the University of Washington’s School of Aquatic and Fisheries Science (Stevens, Armstrong, 1984), adverse environmental effects on juvenile Dungeness crab nurseries directly impact adult populations. In the Russian River, Dungeness crab use of the estuary is well documented by SCWA seine netting performed in 2004, although no juveniles were trapped in 2005 this was also observed in the San Francisco Bay in 2005 and is likely due to ocean conditions.

The availability of the Russian River estuary to Dungeness crab could be a significant factor in their abundance on the Sonoma Coast (Pauley et al, 1989), but no studies have been conducted to determine the contribution Russian River estuary juvenile Dungeness make towards the total adult abundance in coastal waters.”

The CCC should require the analysis of the impact of the project on this species, including requiring studies to determine the importance of the estuary to the Dungeness Crab population.

Additionally, there should again be benchmarks to determine when additional reviews of the crab population should occur and specific remedial actions that should be taken if significant impacts occur.

Birds

⁶ “Impacts on birds are inadequately assessed. The beach at Goat Rock State Beach is a colonial site. Not only does it provide a resting place for Harbor Seals, it provides a resting place for birds. At any one time, hundreds of gulls, terns, Brown Pelicans and/or cormorants rest on this beach. This is a community haul out! There are few places like this along the coast – large sandy beach area with access to both the river and the ocean. As such it is a very important site for birds to rest and preen, giving them access to the river and to the ocean to swim and to feed. Gulls nest on Haystack Rock, cormorants congregate on it and on the smaller rocks disbursed in the river. As with Harbor Seals, birds are easily disturbed. The major disturbance for birds is beach walkers whose approach results in flushing the birds. There has been no assessment made of the impacts of prolonged closure of the river mouth on the flushing of birds which rest on the beach as a necessary part of their metabolic processes. Regardless of whether flushing the birds is considered a take under the Federal Migratory Bird Treaty Act, the fact that both equipment operation and beach alteration will increase flushing is an impact of the project on species that inhabit/use the beach and are a part of the ecosystem of the estuary.” and therefore inconsistent with 30240

Impacts of invasive species: Ludwigia

⁷ “In recent years the invasive non-native plant Ludwigia Hexapetla has rapidly colonized the lower Russian River resulting in lost beach and river access and unknown impacts to aquatic organisms in particular endangered Coho Salmon and Steelhead Trout. According to invasive plant experts at UC Davis and the Laguna Foundation one of the limiting factors for Ludwigia growth is depth, velocity and amount of shade. The flow reductions mandated by the RRBO could encourage the spread of ludwigia by slowing the river velocity and reducing the depth. In addition, the currently saline Russian River estuary if turned to a freshwater lagoon as envisioned in the RRBO, could encourage the spread of ludwigia to that portion of the river. Increases in plant growth in a freshwater system result in conditions that do not favor aquatic animals especially cold-water fish like Coho Salmon and Steelhead Trout.” The project does not contain remedial actions that should be mandated if an increase in the amount of Ludwigia Hexapetla occurs.

Section 30233

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The diking and filling contemplated in this project does not fall under one of the 7 allowable uses of Section 30233. Even if it were an allowable use it is not the least damaging feasible alternative required under Section 30233.

Consideration of Alternatives and Economic Viability

***RUSSIAN RIVER ESTUARY OUTLET CHANNEL ADAPTIVE MANAGEMENT PLAN
(AMP) p. 38***

"Actual feasibility with regards to the full range of dynamic conditions has not been determined. Risks associated with outlet channel failure have not been quantified. In addition to the channel's performance criteria, there are also water quality and ecological performance criteria for the perched lagoon. These additional criteria have not been evaluated as part of the outlet channel management plan."

There has been no economic analysis for the project or any possible alternatives.

The economic viability of the SCWA's proposed project is questionable. No cost analysis for the Estuary Management Project has been made available to the public. The Water Agency steadfastly claims that they must proceed with their project as designed because the Russian River Biological Opinion requires it. This is not true. The required outcome of improved fish habitat could be accomplished by other methods not chosen by the Water Agency, and cost comparisons should be a major consideration for the final project design.

No analysis of feasible alternatives resulting in un-necessary expense and environmental impacts.

According to SCWA, the Estuary Management Project has two fundamental objectives - enhance juvenile salmonid habitat by maintaining a seasonal freshwater lagoon and alleviate potential flooding of properties along the estuary as a result of higher estuary water levels. The former is required by the Russian River Biological Opinion (RRBO) but the later is not. Although the RRBO states that the goal is to benefit fish, the estuary is still controlled by flood control levels that have nothing to do with improving fishery habitat, so the goal is already compromised. This places non-fish centric constraints on any effort to improve estuarine conditions.

Natural estuary breaching would provide a deeper lagoon of freshwater for fish habitat. It should be noted that review of estuarine science and the RRBO and RRBA (Russian River Biological Assessment) suggests that either an always open or always closed estuary could produce the same benefit to listed fish species. If the low-lying structures were elevated or relocated, an always open sandbar regime could produce a benefit to the fish without the negative impacts to the Lower River community. The extremely dynamic nature of coastal areas such as the sandbar at the mouth of the Russian River have proven to be difficult to manage, as evidenced by past mechanical breaching events that were followed by wave action closing the sandbar within days. This shows that any attempt to control or manage the sandbar to achieve some desired condition is problematic and fraught with risk of failure to obtain desired conditions.

The Water Agency made an initial project design decision to continue the historical estuary management practice of artificial breaching for flood protection. This concept remained in the project throughout the vetting process of environmental impact review without any cost analysis of alternate flood prevention methods. It is fact that only a few properties have structures threatened by water levels if the estuary is allowed to breach naturally. SCWA offers no cost comparison of natural breaching and requiring the small number of vulnerable properties to lift

structures above the flood zone vs. using heavy machinery every week between May and October for 15 years to artificially maintain a flat outlet channel in the sand.

It is noteworthy that most other property owners along the Russian River are required to follow FEMA guidelines and remove structures from the flood plain by means of lifting or relocation (as has been done for almost 150 homes in the Lower Russian River due to repetitive flooding). SCWA refuses to explain why this tactic was ignored or eliminated from their proposed project even though it appears to have cost advantages. The SCWA has flood control jurisdiction and could mandate the elevation of low lying structures via its flood control authority and reduce the impacts to the Lower River community. There is no explanation as to why this has not been considered.

SCWA's own environmental review determined that the estuary's water quality might deteriorate as a result of their proposed project. The term "adaptive management" is used by the Water Agency as a euphemism for "figure it out as they go" when desired outcomes are not realized. If water quality issues plague the fish habitat and "adaptive management" begins, the cost of their estuary management plan is completely unknown. This project, as designed, is fiscally irresponsible and should be called an expensive experiment.

The Estuary Management Project's EIR identified many "significant and unavoidable" impacts for which there are no "feasible" mitigation measures. At the same time, no back-up information with cost analysis is offered to support the claims that mitigation measures are unfeasible.

In closing, it must be stated that

This project is inconsistent with the Chapter 3 policies of the Coastal Act and must be denied. It is unacceptable to take and alter a public resource – Goat Rock State Beach – a part of the commons owned by the citizens of California, to alter a State owned Beach, interfere with multiple State owned and state protected resources, impact numerous species and their habitats, and alter the river and its recreational uses as well as access to the river for so many users who have few safe alternatives to enjoy the coast side environment.

This is a highly expensive and prolonged experiment with an important coastal and marine resource. It is an experiment that cannot be justified. Many of the impacts are permanent and the Coastal Commission must consider what condition the Estuary will be in at the end of the Adaptive Management period. Given the numerous permanent impacts and uncertain consequences of other aspects of this experiment it is fair to assume that it will be far worse than it is today, possibly making restoration impossible.

References

¹ Liz Burko, Russian River District Superintendent
State Parks Comments to SCWA in DEIR

² Norma Jellison, -comments on the Russian River Estuary Management Plan Draft EIR

³ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the **Sonoma County Water Agency**

⁴ Brenda Adleman, Russian River Water Protection Council Letter to Sonoma County Board of Supervisors

⁵ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the **Sonoma County Water Agency**

⁶ Norma Jellison, -comments on the Russian River Estuary Management Plan Draft EIR

⁷ Don McEnhill, Executive Director, Russian Riverkeepers –protest and petition to State of California State Water Resources Control Board relative to a petition requesting modification to Water Rights Permits submitted by the **Sonoma County Water Agency**

From: sonomacoastsurfrider [mailto:sonomacoastsurfrider@comcast.net]
Sent: Sunday, April 08, 2012 10:46 AM
To: Kellner, Laurel@Coastal
Subject: Re: Russian River Estuary SCWA Permit

Th 176

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

From: sonomacoastsurfrider
To: Kellner, Laurel@Coastal
Sent: Monday, 02 April, 2012 6:07 PM
Subject: Re: Russian River Estuary SCWA Permit

Hello Laurel
Thank you for the reply.

The last correspondence from the Commission to the SCWA requested:

Definition of Flood Problem- a clear graphic that depicts, in site plan view and cross-sections, as appropriate, all at-risk *structures* in relation to base and expected flood elevations.

Alternatives- additional detail over the same range of evaluation factors (including all expected costs and impacts to purchasing easements, raising structures, and general implementation of the alternatives, as well as degree of resource protection benefit provided) to allow a clearer feasibility comparison of the alternatives described.

Are all these materials now submitted by the SCWA?

What will be the tenure of the permit?

It would be helpful to know this before scheduling a day off to come to the Commission office and review the current file. I appreciate your time and would like the opportunity to schedule either an appointment or a phone conference with you.

Cea

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

From: Kellner, Laurel@Coastal
To: [Sonoma Coast Chapter of Surfrider Foundation](#)
Sent: Tuesday, 03 April, 2012 5:24 PM
Subject: E: Russian River Estuary SCWA Permit

Hi Cea-

Thank you for being in touch.

I wanted to let you know that yes, there will be a new permit with full public review and we have received materials from SCWA. You will be able to review the file materials, if you like.

When we know the hearing date, we will let you know.

Please send me your mailing address and I will add you to the mailing list.

Best-
Laurel

Laurel Kellner
Coastal Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5266 Voicemail
(415) 904-5400 Fax
laurel.kellner@coastal.ca.gov

From: Sonoma Coast Chapter of Surfrider Foundation [<mailto:sonomacoastsurfrider@comcast.net>]
Sent: Friday, March 30, 2012 5:26 PM
To: Kellner, Laurel@Coastal
Cc: Spencer Nilson
Subject: re: Russian River Estuary SCWA Permit

Hello

Our chapter has been working with Daniel Robinson on the Russian River Estuary Permit and would like to have the opportunity to review the file and dialogue with you concerning updates. It is our understanding that you are currently the staff person handling this permit application and that the file is currently located at the SF CCC office. We would appreciate any information confirming this. We have followed this issue carefully and have made extensive comments to the Commission.

Thank you
Cea Higgins
Volunteer Coordinator
Sonoma Coast Chapter of Surfrider
707-217-9741
sonomacoastsurfrider@comcast.net

Th176

From: Brenda Adelman [<mailto:rrwpc@comcast.net>]
Sent: Tuesday, April 03, 2012 4:26 PM
To: Kellner, Laurel@Coastal
Subject: Re: Sonoma County Water Agency Estuary Project Permit

Thank you for getting back to me Laurel. Can you give me a sense of what is in the file and how big it is? I am elderly, partially disabled and it's not always easy for me to travel. Also, I am quite overwhelmed with work right now and can't take a day off to drive to SF and back (I'm about 85 miles away.) Any help you can give me would be very appreciated. Also, I am able to take large files on my computer, so whatever you can send electronically would be accessible to me.

Brenda Adelman

From: "Kellner, Laurel@Coastal" <Laurel.Kellner@coastal.ca.gov>
Date: Tue, 3 Apr 2012 11:48:32 -0700
To: Brenda Adelman <rrwpc@comcast.net>
Subject: RE: Sonoma County Water Agency Estuary Project Permit

Hi Brenda-

Thank you for being in touch.
I wanted to let you know that yes, there will be a new permit with full public review and we have received materials from SCWA. You will be able to review the file materials, if you like.
When we know the hearing date, we will let you know.
Please send me your mailing address and I will add you to the mailing list.

Best-
Laurel

From: Brenda Adelman [<mailto:rrwpc@comcast.net>]
Sent: Thursday, March 29, 2012 9:44 AM
To: Kellner, Laurel@Coastal
Subject: Sonoma County Water Agency Estuary Project Permit
Importance: High

Laurel:

I just got your email address from Daniel Robinson. I would be interested in learning the status of SCWA's Estuary Permit. I had been in touch with Daniel over the last year and had entered some concerns into the file on behalf of Russian River Watershed Protection Committee. I was wondering where things were at? It was my understanding that there would be a new permit with full public review. Is that the case?

Brenda Adelman
Russian River Watershed Protection Committee
(707) 869-0410

From: Brenda Adelman [<mailto:rwpc@comcast.net>]
Sent: Thursday, March 29, 2012 9:44 AM
To: Kellner, Laurel@Coastal
Subject: Sonoma County Water Agency Estuary Project Permit
Importance: High

Th176

Laurel:

I just got your email address from Daniel Robinson. I would be interested in learning the status of SCWA's Estuary Permit. I had been in touch with Daniel over the last year and had entered some concerns into the file on behalf of Russian River Watershed Protection Committee. I was wondering where things were at? It was my understanding that there would be a new permit with full public review. Is that the case?

Brenda Adelman
Russian River Watershed Protection Committee
(707) 869-0410

From: Daniel Robinson
Sent: Tuesday, February 28, 2012 9:47 AM
To: Brenda Adelman
Cc: Laurel Kellner
Subject: RE: SCWA Permit

TH/76

Hi Brenda,

I'll attach our status letter (#2 - dated 2.23.12) that we just sent out last week in response to their submittal of information in response to our status letter (#1 - dated 10.24.11) (also attached).

Also, this project is being transferred back up to our San Francisco office and the North Central District. I've CC'ed Laurel Kellner who is now taking over the day to day workings of the project. I'm transitioning down to work on SLO county matters, but I'll still be here at the SC office if you have questions.

And bonus! The entire project file is/or soon will be up in SF so a visit to review any file material is now closer to you.

Cheers,
Daniel

From: Brenda Adelman [<mailto:rrwpc@comcast.net>]
Sent: Tuesday, February 28, 2012 8:40 AM
To: Daniel Robinson
Subject: SCWA Permit

Daniel:

I haven't heard anything in awhile about the SCWA Permit for the Russian River Estuary Project.

I was wondering if you could give me an update and any reports or information that has been prepared? Is there any way to see reports SCWA submitted to you without traveling to your office? I have arthritis and don't get around as much as I used to.

Thank you.

Brenda Adelman
Russian River Watershed Protection Committee
(707) 869-0410