

From: bonitamarmor
Sent: Thursday, February 16, 2023 9:51 AM
To: BCDC PublicComment; Daysog, Anthony@BCDC; Ng, Michael@BCDC; Lavine, Ethan@BCDC
cc: Bill Gates
Subject: 2/16 Commission Meeting: Comments re #M2021.010.00, Agenda Item #7

To the Honorable members of the BCDC Commission:

Before you vote on whether to approve permit application #M2021.010.00, Agenda Item #7, we request that you consider the following comments and attachments, including photos below:

1. *Incursion into the BCDC shoreline band at this property would result in significant adverse direct or indirect impacts on wetlands.*

The attached report evaluating the site, prepared by wetland expert **Dr. Stuart Siegel**, concluded unequivocally that *“WCA incursion at this property would result in significant adverse direct or indirect impacts on wetlands.”* Dr. Siegel’s expertise is set forth in the attached CV. In his report, he describes his involvement in a hydrology improvement project for the Beach Drive Wetland adjacent to the property. (That project was funded by donations from area residents and a grant from the County of Marin.) Dr. Siegel’s report makes clear that, given projections for sea level rise, allowing encroachment into the wetland buffer area is increasingly impactful and especially significant at the Beach Drive wetland because of its stepping stone function along the limited available wetlands in San Rafael and their general lack of space to adjust to rising sea levels. Throughout his report, contradict's applicant's Biological Site Assessment (BSA) in several aspects and details deficiencies in the project plans.

Please note that some details about the extent of the incursion into the shoreline band, which is concurrent with the 100’ Marin County Wetland Conservation Area, were not included in the summary Description of this project:

- The plans include an approximately 340 square foot deck and staircase (see illustration below) within the 100’ BCDC shoreline band. (The story poles which show the deck and staircase and their proximity to the wetlands can be seen in photos below.)
- A 733 square foot ground plane gravel area within the shoreline band.

2. *The encroachment into the shoreline band and impacts to the environment are greater than necessary.*

The Marin County Planning Commission unanimously rejected the applicant’s proposed plan, finding: "Given the footprint, size and scale of the proposed development, the impacts to the required WCA 100-foot buffer zone and the surrounding environment **are greater than necessary**. Thus, future development must be **reduced in building footprint, size, and scale to minimize any potential impacts to WCA and other biological resources.**" Upon the applicant’s appeal from that decision to the Marin County Board of Supervisors, the County Staff recommended that the Board uphold the Planning Commission findings. In spite of the avoidable and impactful encroachment, the Board approved the project, conditioned only upon a 15” reduction in height of the planned 7’4” high understory.

3. *The impact to the public view should be considered because the project site is located on a Scenic Drive.*

Point San Pedro Road, a designated Scenic Drive, is especially popular with bicyclists riding from San Rafael to China Camp. The project will block an important public view, i.e., the scenic vista shown in the photo below, which is the only view to the bay visible from Pt. San Pedro Road between Marine Drive and Beach Road, just west of Bayside Park where the County of Marin was required to provide a dedicated bike lane as a condition of a BCDC permit.

4. *The project, as proposed, is opposed by area residents:*

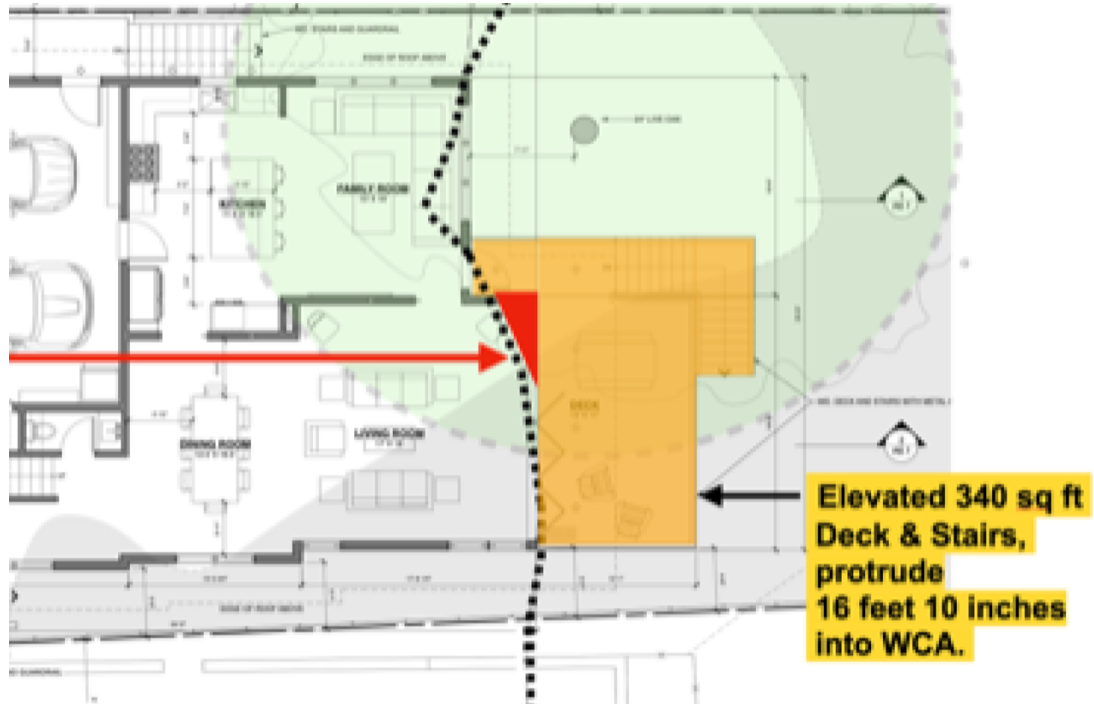
Dozens of comments were submitted to the County of Marin and many concerned citizens spoke at both the Planning Commission hearing and Board of Supervisors hearing on this project to urge that the size and scale of the project be reduced and that the incursion into the wetland buffer be minimized. A summary of some of the comments is attached below.

We ask that BCDC require that the incursion into the BCDC shoreline band be eliminated or reduced and that the impact of the project on the public view from Scenic Pt. San Pedro Road be considered.

Thank you for giving our comments your attention and consideration.

Respectfully,

Bonnie Marmor and William Gates
San Rafael



Red arrow points to dotted line showing edge of WCA and shoreline band. The red triangle shows the incursion of the rear of the home, including the perimeter foundation, into the WCA.



Public view of project from north side of Pt. San Pedro Road as seen by bicyclist, motorists, and pedestrians.



View of project from south side of Pt. San Pedro Road as seen from public sidewalk in front of property.



Story poles showing incursion into shoreline band.



Pole with pink tape shows rear property line to show proximity of wetland. (Photo taken after rains in October 2021, during the drought).

Memorandum

To: Bonnie Marmor
From: Stuart Siegel, Ph.D., P.W.S.
Date: December 6, 2021
Re: Beach Drive Wetlands Setback for Proposed House at 726 Point San Pedro Road, San Rafael, Marin County, California

Bonnie,

I have taken a look through the Biological Site Assessment for the above-referenced property, prepared by Huffman Broadway Associates and dated August 2021. My review has focused on the appropriateness of that report's conclusion that encroachment into the Marin County wetlands buffer setback is deemed not significant. As you know, I worked with the Beach Drive community and Marin County many years ago (early 2000s?) to improve the tidal hydrology of the Beach Drive wetlands, so I am quite familiar with site conditions and in particular site hydrology.

I have also reviewed the photographs you sent me of the December 4th and 5th, 2021 "king tides", allowing for a visual assessment of the proximity of the demarcated wetland buffer from the reach of these high tides. For context, I looked up the measured peak high tides at the nearest continuous-recording National Ocean Service tide station, located at the Chevron Pier in Richmond¹. The reported "preliminary" measured high tides were 7.58 ft and 7.32 ft NAVD88 on December 4th and 5th, respectively. Mean higher high water (MHHW) for this station is 6.04 ft NAVD88, and the highest observed water level is reported as 8.63 ft NAVD88. This past weekend's spring high tides were well within the range of observed high tides in SF Bay. The NOS data (see Figure 1) also show that actual tides were very close to predicted tide levels, and there were no storms occurring during these tides, indicating no local climatic factors were influencing this past weekend's tides.

¹ <https://tidesandcurrents.noaa.gov/waterlevels.html?id=9414863>



Figure 1. NOS Richmond Observed Water Levels for "King" Tide events of December 4th and 5th, 2021.

BSA Basis for Establishing that Wetlands Setback Encroachment Not Significant

The BSA notes on p.29 that the project qualifies for exception #4, “Wetlands are avoided and a site assessment demonstrates that minimal incursion within the minimum WCA [Wetland Conservation Area] setback distance would not result in any significant adverse direct or indirect impacts on wetlands.” The proposed project has the following incursions into the 100-ft WCA setback (p.29):

- 1) Permanent incursion of 3-4 ft for the house foundation
- 2) Permanent incursion of about 12 ft for the deck overhang
- 3) Permanent incursion within the deck overhang for a planter box and energy dissipator to address roof runoff
- 4) Landscaping to replace non-native vegetation with native shrubs and herbaceous plants (this may be permanent or temporary depending on the level of landscape maintenance to keep non-native vegetation out of the WCA)
- 5) Permanent installation of a hogwire fence at the property boundary, approximately 9 feet from the salt marsh edge
- 6) Temporary incursion to install the sewer lateral

The BSA states that these incursions “would not result in significant indirect biological impacts to the salt marsh located on the adjacent property” (p.29). Nowhere in the BSA is the basis of this conclusion described, it is merely stated. The BSA also states that temporary construction activities “would result in minor (insignificant) biological impacts” (p.30).

Findings in the BSA that Support Significance of WCA Incursion

1. **Beach Drive Marsh Hydrology.** The BSA states the marsh is “managed tidal salt marsh” and that “[t]he marsh is connected to the Bay only through a pipe under Beach Drive

equipped with a flap gate that can be secured in an open or closed position. Tidal flows are managed by manually opening or closing the flap gate. The flap gate can allow managed tidal flows into the marsh, prevent back flow into the salt marsh during incoming tides, or allow water to flow into the Bay during storm events.” As the person who worked with Marin County to design and install the culvert slip liner and flap gate, this characterization is not factually accurate. When the tide gate is open, there is tidal connectivity without any management of the tidal flows. Instead, the size of the culvert defines the limits of tidal inflow (unless Beach Drive itself is overtopped). In practice, the marsh hydrology is tidal with some amount of tidal muting (dampening of the tide range) that is more pronounced with larger tides. Storm flows exit the marsh through the culvert whether or not the flap gate is open or closed, with the flap gate designed specifically when closed to allow storm outflow and not allow tidal inflow. The flap gate is held open with a locked chain. It is my understanding from local residents that the flap gate has remained in the open position since its installation nearly 20 years ago.

2. **Importance of the Site for the Federally Endangered and State Fully Protected Salt Marsh Harvest Mouse.** The BSA states (p.25) that “[t]he area of the salt marsh adjacent to the project site at 726 Point San Pedro Road is a small area of non-tidal marsh unsuitable to support the species and located in a heavily disturbed area of roads, housing, and an active marina. **Salt marsh harvest mouse is not present in the marsh adjacent to the subject parcel**” (emphasis added). The BSA already notes that this marsh is a tidal marsh and that site conditions described in the BSA (pp.17-20) establish that all elements necessary for SMHM (described on p.24) are present at the site. In contrast, the BSA notes the presence of SMHM at Spinnaker Lagoon, a highly disturbed and fully non-tidal marsh surrounded by the highly-used Bay Trail and homes (conditions I know because I developed a restoration concept for the City of San Rafael for Spinnaker Lagoon). **The BSA did not conduct surveys for SMHM** at the Beach Drive wetland. Based on the BSA’s own establishment of suitable SMHM habitat conditions at the Beach Drive wetland, its observation of SMHM present at a far less suitable site in San Rafael (Spinnaker Lagoon), the far less disturbed site conditions than found at Spinnaker Lagoon, and the lack of surveys, **there is no basis for its conclusion that SMHM are not present.** In fact, it is quite possible that SMHM are present, based on the site having highly suitable habitat conditions and the documented presence of SMHM at other nearby marshes of far less suitable habitat quality and far greater levels of disturbance.

Other Factors that Establish Significance of WCA Incursion.

Two additional factors support the finding that WCA incursion is in fact significant.

1. **Rarity of Tidal Marsh in the San Rafael area.** San Rafael does not have much tidal marsh remaining. Historically, most of downtown San Rafael was tidal marsh, as were the other “valleys” of Marin (Mill Valley, Corte Madera/Larkspur, Gallinas, Hamilton, Novato Creek). Today, the extent of tidal marsh in San Rafael includes a few small restored pieces in southeast San Rafael between Home Depot and the Rod and Gun Club, the

very small Tiscornia Marsh (which is has been eroding) near the Al Boro Community Center, a small piece marsh at the foot of Bay Way, Beach Drive Marsh, the larger but diked marsh at the quarry, then around to China Camp State Park. Collectively, these marshes are a minute fraction of the historical marsh. The Beach Drive wetland thus is of especial importance to support marsh-dependent wildlife noted in the BSA.

- 2. Importance of wetland buffers in context of climate change and associated sea level rise.** Not mentioned at all in the BSA is sea level rise and its implications for upland escape habitat for marsh-dependent wildlife especially SMHM. The State of California predicts a range of 1-3 feet of sea level rise by 2050² at the Golden Gate. This amount of sea level rise would put the salt marsh boundary at the 8-10 ft NAVD88 contour, well within the WCA and, at the higher levels, overlaying the footprint of the proposed house. When those conditions occur, there will be little to no adjacent uplands to the tidal salt marsh. Places within these WCAs that allow for tidal salt marsh to “migrate” landward” are quite rare in Marin and throughout much of the bay area, due to extensive shoreline development. This property is one of the relatively few places where this “migration space” exists in San Rafael.

Role of Vegetation Management in Mitigating Impacts

The proposed project includes vegetation management to remove non-native plants and plant native shrubs and herbaceous plants. These actions are conceptually a good idea (described in Figure 5 of the BSA). This planting palette is intriguing. However, it does not include any of the native wetland-upland transition species well suited for these settings, such as native creeping wildrye (*Elymus triticoides*). Most importantly, though, the significant impacts of the house incursion into the WCA as described above remain, regardless of improvements to vegetation composition.

Conclusion

Based on the information described above, WCA incursion at this property would result in significant adverse direct or indirect impacts on wetlands.

² Ocean Protection Council, 2018. <https://www.opc.ca.gov/updates/californias-sea-level-rise-guidance/>



CURRENT POSITIONS

Interim Manager, San Francisco Bay National Estuarine Research Reserve, Sep 2021-present
Coastal Resilience Specialist, San Francisco Bay National Estuarine Research Reserve, 2015-present
Associate Research Professor, Department of Earth and Climate Sciences, San Francisco State University Estuary & Ocean Science Center, 2016-present

EDUCATION

Ph.D., Geography, 2002. University of California at Berkeley
M.A., Geography, 1993. University of California at Berkeley
B.A., Environmental Science, 1986. University of California at Berkeley
B.S., Chemistry, 1986. University of California at Berkeley

SUMMARY

Dr. Siegel has spent the past 35 years working across three broad elements of estuarine ecosystem recovery mainly in the San Francisco Estuary: 1) studying physical processes driving the evolutionary trajectories of restored tidal marshes, 2) restoring tidal marshes (planning, design, permitting, constructing, and monitoring projects from a few acres to several thousand acres), and 3) engaging in a wide variety of regional planning and policy forums focused on developing climate change-focused “nature-based” strategies to maintain and recover ecological functions and ecosystem services. Dr. Siegel brings integrative, collaborative, systems approaches to this work. His technical expertise is tidal marsh geomorphology, in estuarine water levels, sediment transport, marsh elevation recovery, and evolution of tidal marsh landscapes, through field instrumentation, topographic surveying, geodesy, remote sensing, and more. Over his 35 years, Dr. Siegel has synthesized and bridged his knowledge across all three of these elements.

SELECTED EXPERT PANELS AND COMMITTEES

“Bay Adapts” Regional Adaptation Policy Development. Bay Conservation and Development Commission. 2020-present. **Multiple workgroups member.** Provide expertise on nature-based adaptation strategies design, construction, permitting.

“Delta Adapts” Climate Change Vulnerability Assessment and Adaptation Plan. Delta Stewardship Council. 2019-present. **Technical Advisory Committee member.** Provide expertise on wetlands restoration, tidal datums and geodesy, nature-based strategies.

Climate Adaptation for Decision Support: Developing a Spatially Explicit Climate Adaptation Framework for Estuarine Ecosystems of the San Francisco Bay. San Francisco Bay Joint Venture. 2014-2015. **Invited Contributor**

IPCC Expert Meeting on Scoping Additional Guidance on Wetlands, Geneva, Switzerland. Intergovernmental Panel on Climate Change, Task Force on National Greenhouse Gas Inventories. 2011. **Invited Participant**

Climate Ready Estuaries Expert Elicitation Panel, San Francisco Estuary. U.S. Environmental Protection Agency. 2010. **Invited Panel Member.**

Delta Vision Blue Ribbon Task Force. Governor Schwarzenegger’s Task Force. 2007-2008. **Ecosystem Workgroup Technical Lead**

San Francisco Bay Subtidal Goals Project Restoration Committee. National Marine Fisheries Service and State Coastal Conservancy. 2006-2010.

Suisun Marsh Plan Science Advisor and Chair of the Suisun Marsh Science and Technical Advisory Panel. Suisun Marsh Charter Principal Agencies. 2005-2010

Delta Ecosystem Restoration Implementation Plan (DRERIP). California Bay-Delta Authority Ecosystem Restoration Program. 2003-2008. **Adaptive Management Project Team co-lead scientist, Action Team co-chair.**

California Bay-Delta Authority Science Program. 2002-2008. **Wetlands Advisor**

San Francisco Airport Runway Expansion National Science Panel. National Oceanic and Atmospheric Administration. 1999. **Wetlands representative.**

Middle Harbor Habitat Enhancement Project TAC. Port of Oakland. 1997-2000

San Francisco Estuary Habitat Goals Project Hydrogeomorphic Advisory Team. San Francisco Estuary Project. 1996-1999

CERTIFICATIONS

Professional Wetland Scientist #196, Society of Wetland Scientists, 1994

Scientific Scuba Diver #749, University of California at Berkeley, 1994

SELECTED PROJECT ACTIVITIES

China Camp State Park Shoreline Road Adaptation Planning. 2017-present. **Lead PI.** Guided community-based adaptation planning process to consensus of adaptation project alternatives.

Delta Plan Ecosystem Chapter Update Technical Support. 2018-2020. **PI.** Prepared Restoration Opportunities Area map linking LiDAR data with tidal datums, science advising.

Delta Tidal Datums Computation. 2016-2017. **Lead PI.** With DWR and Delta Science Program, compute tidal datums for the 750,000-acre Delta and 100,000-acre Suisun Marsh based on long-term observational data, hydrodynamic modeling, and spatial analysis.

Suisun Marsh Managed Wetlands Water Quality Improvement Pilot Project. 2007-2011, 2016-2019. **Lead PI.** Developed and fielded test BMPs across multiple wetlands, developed tool for evaluating BMPs, supported TMDL development, outreach. Geodetic, water level, water quality data collection, analysis, synthesis.

Integrated Regional Wetland Monitoring Pilot Project. 2003-2014. **Project Lead PI, Physical Processes Team Co-Lead PI.** Field studies assessed tidal marsh restoration effects on ecosystem function recovery; emphasis on plants, birds, and fish in landscape ecology context. Geodetic, water level, water quality data collection, remote sensing, synthesis.

CALFED Delta Regional Ecosystem Restoration Implementation Plan (DRERIP). 2002-2008. **Co-Lead Scientist.** Collaboratively developed conceptual model framework for examining drivers and processes of estuarine ecology and restoration actions effects and methodology for evaluating efficacy of proposed restoration actions, and guided numerous scientists in developing several conceptual models.

Tidal Marsh Restoration Projects Design, Planning, Implementation, Monitoring. Have conducted and overseen all aspects of restoration site physical and biological assessments, engineering and ecological design, environmental assessment, permits, and monitoring plan development for 1-acre to 2,500-acre sites. Extensive experience in site geodesy, hydrology, geomorphology.

EMPLOYMENT HISTORY

Siegel Environmental, LLC. 2015-present. President.

Northgate Environmental, Inc. 1999-present. Associate Scientist.

Environmental Science Associates, Inc., 2014. Vice President.

Wetlands and Water Resources, Inc., 1996-2014. President.

San Francisco Estuary Institute, 1999-2000. Research Associate.

San Francisco Bay Regional Water Quality Control Board, 1996-1998. Wetlands Group intern.

Levine-Fricke, Inc., 1989-1996. Senior Environmental Scientist; Technical Discipline Leader for Ecological Restoration Group.

University of California at Berkeley, 1992. Graduate Student Instructor, Moorea field course ICF, 1987-1989. Community Relations, Emergency Preparedness.

Marine Ecological Institute, 1987. Ichthyology Instructor.

San Francisco Bay Conservation and Development Commission, 1985-1987. Permit Analyst, Environmental Planner Intern.

Quotes from Neighbor Comment Letters

The following are quotes excerpted from some of the comment letters that neighbors submitted to the County expressing concerns about the proposed project:

- “IT’S WAY TOO BIG, I’ll leave it at that”. *Mary Estes, 4 Beach Drive.*
- “It is truly inconsiderate of all our homes already here to allow such a large, ill-conceived project to be foisted upon the land, the environment, and the neighbors.”
- “The proposed residence at 726 Pt San Pedro Road (APN 186-141-03) does not appear to respect either the character or the environment of the neighborhood. Given a small lot like this and all the site constraints (wetlands, slope, a beautiful Heritage Oak, access and parking), a much smaller house design is needed so as to blend into the neighborhood and avoid the wetland buffer zone. This design is simply an example of too much house for the size of the lot.” *David N. Tattersall, 26 Beach Dr.*
- “Building this home will reduce the bird activity whatever the setback. Obviously the farther back from the wetland the better. Please protect it as much as is consistent with the regulations.” *Rodney Ruskin, 112 Oak Dr.*
- “The size of the proposed home seems too large for the lot and not in keeping with the other homes in our unique area. We believe that such a large structure would adversely affect our natural resources and character of our local community.” *Elaine Goldman & Tom O’Brien, 712 Point San Pedro Rd.*
- “This home that is on the docket is way too large and takes away the quaint feel of our neighborhood...and really does not fit in at all. I am not disputing *any* building on this lot - just this size and height. Most of the homes surrounding lot are quite moderate in size and modest in look.” *Elise & Paul Samuelson, 117 Oak Dr.*
- “The integrity of and stress reduction on wetlands is critical to protecting various forms of wildlife, as they serve as both an important nursery for all manner of invertebrates, in addition to habitat for mature birds and other wildlife that populate them. Buffers are defined to shelter these importThe (Wetland) buffer setback has been established at a specific distance for a reason....” *Winifred Dajani, 26 Bayharbor Way*
- “Although we and many others have improved our properties both inside and out, all of us - purposefully or not - have retained the quaint, relatively modest feeling of the neighborhood. There are no “McMansions”, no imposing houses to detract from the neighborhood’s intrinsic charm. I do think this new house, though, will overwhelm its setting.” *Joann Ruskin, 112 Oak Dr.*

- “We have no issue with a home being built on the site but request that the current plans be modified so that a smaller structure sits on the property - a structure that doesn’t infringe on sensitive habitats and on neighbors views - simply put, a structure that fits in with the current neighborhood. We were frankly shocked that a building of that mass would even be considered.” *Bob & Cathy Lenz, 2 Beach Dr.*
- “The proposed project is simply too large. It is out of character with the rest of the neighborhood on that little stretch of Pt. San Pedro Rd. Adjusting the size would also make it easier to position the house somewhat closer to the street and farther from the sensitive wetlands habitat.” One only need look at the tree and the story poles to understand that the tree is effectively going to be butchered...I think we have a legal and moral obligation to alter the construction plans to accommodate the tree. A house that honors the full wetlands buffer and does not intrude into the Coast Live Oak habitat would be a better, and a more harmonious addition to the community than the unnecessarily bloated project currently being proposed.” *Arlette Cohen, Peacock Gap.*
- “We have also studied the plans and are concerned about the enormous size of this proposed house and its impact on our neighbors and our environment. While we do not oppose the development of the property, we feel that the projected structure is inappropriate for its location and will be a blight. It is completely out of character with the properties around it. We are referring to the massive height, shape and bulk of the planned 3,854 square foot proposed house. It is a 30 foot tall, flat roofed, three story structure while most of the houses around the lot are significantly smaller with pitched roofs and greater top floor setbacks; no other home is a comparable three-story, modern, flat-roofed, blocky mass. We are also concerned that the new house will impinge extensively upon an existing Heritage Coastal Oak tree and intrude into the wetland buffer zone.” *Daniel & Susan Keller, 345 Riviera Dr*
- “The proposed building seems unsuited in character and size to the neighborhood. I am also concerned about the heritage tree that requires protection and nurturing, but will necessitate dramatic trimming to accommodate the large structure.” *Peter Stack, 51 Beach Dr.*
- “I respect the fact that the owners have a right to build on their property, but I would hope that they would be encouraged to tone-down the scope of the project to fit in with our community and to protect the flora and fauna of the wetlands.” *Hal Lauritzen, 53 Beach Dr.*
- “Please consider scaling back the plans up for review and take into account the existing properties that are directly, and indirectly, impacted by the current plans. Save the Heritage oak tree on the vacant lot (which appears to have story poles running right near its trunk” *Sandy Mahoney, 736 Point San Pedro Rd.*
- “The proposed plan calls out for the tree to be significantly cut back to facilitate the construction of the residence. We are very concerned that if the tree is cut back it may not survive.” *Colin & Maureen McRae, 35 Marine Drive.*

- “The heritage Oak tree on the lot would be threatened by such extensive construction and pruning one-third of it’s limbs would risk its death - losing habitat for birds, insects, and soil organisms.”
- “I welcome the Kiskaddons to the neighborhood, but do ask them to reconsider the size and siting of the house they intend to build, and its impact on the scale and character of a neighborhood they wish to join.” *Tricia Rose, 704 Point San Pedro Rd.*
- “The proposed house next door to the Marmor Gates property is too massive for the small lot and not keeping and incompatible with the size of the existing homes and the character of the Chicken Point San Rafael neighborhood.” *Ellen Kутten, former Chicken Point 8 year resident.*
- My first concern is the overall significant size (both height and width) of the nearly 3,900 square foot home is grossly incomparable with the character of the surrounding neighborhood. Most of the homes in that area are half that size. *Denise M. Lucy, 3 Peacock Lane*

From: Ogden Hamilton
Sent: Sunday, February 12, 2023 8:23 PM
To: Daysog, Anthony@BCDC
Subject: BCDC PERMIT APPLICATION NO. M2021.010.00

Hello again, Tony Daysog. Thanks so much for keeping me in the loop.

I understand the issue of incursion on the Commission's 100-foot Shoreline Band. I'd like to put this particular incursion into context. (I made this point casually in my reply to your first email.)

Many of the homes that border on the Beach Drive Wetlands were built before BCDC was established in 1965. To the best of my knowledge, every one of them is guilty of incursion on the Commission's 100-foot Shoreline Band. Our house and several others were built after 1965. Nonetheless every one of those properties also is guilty of incursion on the Commission's 100-foot Shoreline Band, one of them egregiously so (not our house :-).

The most extreme offender is the San Rafael Sanitary District pumping station, which is located completely within the Commission's 100-foot Shoreline Band—actually in the wetlands itself.

I'm familiar with the details of the home that is under review. As best I can tell, the incursion by this home will be less than that of any other property bordering on the wetlands.

If I am correct, I ask that BCDC cut the applicants some slack. That would not be because there is no incursion. It would be simply a matter of fairness.

I hope the conditions of approval referenced in BCDC's decision do, indeed, "cut them the slack" they need to move forward with their home.

Thank you for your attention to this comment.

Ogden Hamilton

Subject: Questions re Wright permit application: M2021.010.00

On December 2, 2022, at 4:09 PM, bonitamarmor wrote:

Dear Tony,

Thank you for your email reply to my questions and for letting me know that there is an opportunity for the public to submit comments. Below is some information for your consideration. First, I do follow up questions (in red) in response to some of the information you provided in your email:

2. Has a determination been made that the application is complete?

Tony Response: No, the application is not yet complete as we are awaiting additional required materials. **Will these additional required materials be available to the public and, if so, how can they be accessed? How much time will the public have to review them and submit comments?** Tony Response 12/20/2022: I am happy to provide you with the additional materials that we required. I will review the materials for personal identifiable information (PII) and, where appropriate, make redactions, and then send you the materials submitted hopefully tomorrow (Wednesday 12/21) or Thursday (12/22).

3. Have you made a recommendation to approve or deny the application? If so, what is your recommendation? If not, when do you expect to make a recommendation?

Tony Response: As the application is incomplete, we are not yet in a position to fully evaluate the proposal and make a recommendation. **Will your recommendation be made available to the public in advance of the hearing before the commission?** Tony Response 12/20/2022: I have not yet completed my review of the application — and *if* and *when* I do submit the application for official approval the application will be posted at least 5 days before the BCDC Commission in which it will be considered. It is also important to note that the applicant has included you in what is called an “interested party” list, meaning that when we at BCDC are ready to post the application five days before the BCDC Commission meeting, we will notify you at that time via email of the upcoming meeting.

Also, it is still not clear to me whether there is a specific time period within which comments must be submitted after the application is complete. Tony Response 12/20/22: you can submit comments to BCDC (including staff) up to and including the day of the BCDC Commission meeting, although if you submit comments via email immediately right before the BCDC Commission meeting, our staff won't have enough time to post the comments onto the website and might not be able to transmit the comments to Commission members: if you are going to submit comments to BCDC staff and/or the Commission up to and including the day of the meeting, with respect to day-of-meeting submittals, please try to submit those in the morning. A notice of the BCDC permit application dated 11/18/22 has been posted on the property. It states that comments should be submitted “immediately” but no deadline is stated.

As you may know, during the Marin County review of the applicant's planning permit application there were dozens of comments letters submitted by the public in opposition to the project as proposed. People concerned about the impacts also voiced their objections at public meetings. Simply put, there was a great deal of controversy surrounding this project.

The Planning Commission **unanimously** denied the application, finding "At 3,854 square feet of proposed development, the proposed home size is incompatible with the surrounding neighborhood due to the size, bulk, mass, and floor area ratio. A future proposal for development should be scaled to align closer with the surrounding development in the neighborhood, and ***should be placed on the site to minimize encroachments into the Wetland Conservation Area (WCA)*** and to increase distance from the existing mature Live Oak tree.... Further, design of the residence should step down the slope to avoid the appearance of excessive mass and bulk." (Finding **5 A.**) Unfortunately, the public comment letters and the findings of the Planning Commission, which had been posted on the County's Planning Department website, have been recently taken down.

The applicant appealed to the Marin County Board of Supervisors (BOS) after the permit was denied by the Planning Commission. The Staff Report prepared for the BOS reached the same conclusions as the Planning Commission and made the same recommendations, i.e. that the permit be denied. The draft resolution for the BOS presented by the staff included the following:

The proposed project is inconsistent with the Design Guidelines and Discretionary Development Standards because it was not designed to avoid adversely affecting natural resources or the character of the local community.

Although the applicant has proposed a site plan which locates the proposed residence closer to Pt. San Pedro Road, against the hillside, the project proposes encroachments into the WCA and may endanger the long-term viability of the existing mature Live Oak tree. This is primarily due to the size, scale, and footprint of the proposed residence. A reduced building footprint with a building placement further against the hillside, closer to Pt. San Pedro Road, would reduce encroachment into the WCA.

Nevertheless, the BOS approved the permit, making findings that were in direct conflict with those of the Planning Commission and County staff recommendations. Although the Planning Commission found the encroachments into the WCA to be more than what was necessary to build a home on the site, the BOS made absolutely no requirement to minimize the wetland buffer incursion.

Some of the public comments submitted to the County related to conflicts between the proposal and the County's design review guidelines, and may be beyond your purview. However, the attached memorandum from Wetland expert, Dr. Stuart Siegel's which disagrees with conclusions in the applicant's Biological Site Assessment (BSA) may be important for your consideration. (I have also attached a copy of Dr. Siegel's CV.)

In his memorandum Dr. Siegel explained that he is "quite familiar with site conditions and in particular site hydrology" because of his work to improve the tidal hydrology of the Beach Drive Wetland in the early 2000's. After a thorough analysis, including his review of the applicant's BSA, Dr. Siegel concluded, "...WCA incursion at this property would result in significant adverse direct or indirect impacts on wetlands." Here is one more point made by Dr. Siegel that may be of particular interest to the BCDC review:

Importance of wetland buffers in context of climate change and associated sea level rise. Not mentioned at all in the BSA is sea level rise and its implications for upland escape habitat for marsh-dependent wildlife especially SMHM. The State of California predicts a range of 1-3 feet of sea level rise by 2050 at the Golden Gate. This amount of sea level rise would put the salt marsh boundary at the 8-10 ft NAVD88 contour, well within the WCA and, at the higher levels, overlaying the footprint of the proposed house. When those conditions occur, there will be little to no adjacent uplands to the tidal salt marsh. Places within these WCAs that allow for tidal salt marsh to "migrate" landward" are quite rare in Marin and throughout much of the bay area, due to extensive shoreline development. This property is one of the relatively few places where this "migration space" exists in San Rafael.

I will appreciate you taking into consideration the issues I have described above, particularly those raised in Dr. Siegel's memorandum. I look forward to hearing from you in response to the questions above. Your answers will help me to determine what additional comments I may want to submit and when.

Thank you — and have a nice-week-end!

Bonnie