



SIERRA CLUB MARIN GROUP

COASTAL SECTION C/O GORDON BENNETT

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Christine Gimmler, Marin County CDA (via fax 499-7880)

Re O'Hanrahan Coastal Permit/Design Review
240 Vallejo Avenue, Inverness APN 114-241-13

Dear Ms Gimmler: The Sierra Club We has reviewed both the LSA biological opinion and the site plan. Additionally, representatives from both the Sierra Club and Tomales Bay Association met today at the subject property. The Sierra Club offers the following general comments:

- 1) Since this project is proposed within a Streamside Conservation Area (SCA), we believe that the recent Hedlund decision mandates that the County require a CEQA Initial Study, rather than the biological report submitted. An Initial Study should address the later questions we pose.
- 2) In our 1/25 letter to you, we congratulated the CDA for making SCA issues clear in its public notices of projects. Unfortunately, the Club has now found that the SCA was not actually in the public notice until one of our colleagues, Catherine Caufield of EAC, called you to clarify this point. So the public was noticed of the SCA issue only as a result of the intervention of concerned environmentalists. This is exactly the problem brought up by several environmental organizations in a meeting with Alex Hinds last year in which we were promised that the CDA would institute changes to map potential SCA impacts and disclose them in public notices of projects. We therefore request another meeting with Mr. Hinds and CDA staff to assess where CDA is in meeting its commitments made last year.
- 3) Regardless of CDA's SCA mapping and disclosure capabilities, we note that the O'Hanrahan architect, Mr. Jon Fernandez has also been the architect for previous projects involving SCA issues, including the Zeigler project and the Tides Writers Refuge Cabin projects. These are both projects about which environmental organizations raised numerous concerns related to the SCA, so we must assume that Mr. Fernandez understands both the County's SCA codes and the interest of the environmental organizations to see that they are enforced. It may be that Mr. Fernandez disclosed potential SCA issues on this parcel in his initial project applications, but that CDA did not carry this discloser through onto

the public notice. If so, then we would like to take this up as another item in the requested SCA meeting with Mr. Hinds. If Mr. Fernandez did not disclose the potential SCA issue in his filings with the County, then we request that CDA send Mr. Fernandez a letter informing him that in his future project applications a reasonable effort must be made to disclose potential SCA impacts and that failure to do so will not only render the application incomplete, but potentially fraudulent. In the case of the O'Hanrahan property, since Vallejo Avenue was built in the creek bed, and the creek is easily visible a few feet from the property line, there should have been no mystery whatsoever about whether there was an SCA issue and it should have been disclosed by a competent and experienced architect such as Mr. Fernandez.

- 4) The creek described in the LSA biological report as "an unnamed creek" is actually Fish Hatchery Creek, which drains a major sub-watershed of Tomales Bay. We believe that this creek historically was habitat for steelhead, a listed species. In my call to Brannon Ketcham of PRNS, he indicated that surveys for restoration of the Giacomini Ranch revealed steelhead fry both at the mouth of Fish Hatchery Creek and further upstream nearer the project site. Since there are no apparent barriers to fish passage, we believe that these upstream fish indicate that Fish Hatchery Creek supports spawning habitat for listed steelhead that could on the one hand be enhanced by the Giacomini restoration and on the other hand be impacted by poor planning of development within the SCA. In addition to steelhead potential, Fish Hatchery Creek may provide habitat for other listed species, including Northern Spotted Owl, all of which should be discovered through the Initial Study. Furthermore, Fish Hatchery Creek is a tributary to Tomales Bay, a key resource recognized as having international importance per the United Nations RAMSAR convention, so we want to be sure that all reasonable precautions are taken when construction is proposed on Fish Hatchery Creek. On our site visit, we noted real estate signs nearby the subject parcel on Vallejo advertising "acreage" so we suspect that this new construction will not be the last proposed along Fish Hatchery Creek and want to make sure a good precedent is set and careful consideration is given to cumulative impacts if every parcel along Vallejo were developed.

We reserve judgment on final mitigations until we review the Initial Study, but we hope the Initial Study will inform our following preliminary comments:

- 5) The LSA biological opinion misstates the County's SCA provisions when it claims that the SCA extends outward "to a width of 100 feet on each side of the water course." In fact, the SCA extends outward 50 feet from the edge of the riparian vegetation or 100 feet from each side of the watercourse, *whichever is greater*. Since neither the LSA biological survey nor the site plan describe where the edge of the riparian vegetation

occurs, it is not possible to determine if the SCA shown in the LSA site plan at the 100-foot limit is accurate. The Initial Study should document the edge of the riparian zone in order to determine where the SCA falls. Our later questions will provisionally use the claimed 100-foot line until the Initial Study data is available.

- 6) The LSA biological opinion misstates the County's SCA provisions when it claims that development within an SCA is generally prohibited "unless it can be conclusively demonstrated that development on any other part of the parcel would have a more adverse effect on water quality or other environmental impacts." In fact, this exception is available only when parcels fall *entirely* within the SCA and is not applicable to the subject parcel, over the upper half of which falls outside the SCA. Therefore we urge the applicant to make a best-faith effort to gain access to the upper half of the property from above via existing easements or purchasing new easements, thus eliminating the need for SCA encroachment. If access from above cannot be reasonably achieved, and considering the subject parcel is separated from the creek by Vallejo Avenue, we are willing to consider what mitigations might be reasonable for SCA encroachments on the lower half of the property. Given LSA's misstatement of the SCA provisions noted here and in the above paragraph, we ask that the County send LSA an accurate description of SCA policies and codes along with a written request that in any future work in Marin, LSA should refer to these documents and make accurate statements in its submittals to the County.
- 7) The site is described in the LSA biological report as "a narrow strip along Vallejo that is relatively flat, but...most of the site is steep (approximately 60%)." At our site visit, it appeared that this "narrow strip" was not on the property and that except for a small 3mx3m area at the east corner, there was no strip at all and the entire site was at a 60% slope. However without property boundaries being marked on the ground and contour lines on the site plan, these specifics are difficult for the public to assess. Regardless, it is apparent that any construction will require significant excavation. We agree that the Initial Study is very likely to show that locating the garage out of the SCA but accessed from below with a driveway though the SCA has more impact than leaving the garage in the SCA where shown on the site map at the property boundary along Vallejo. However, the house has stairway, not driveway access. As presently shown on the site plan, the stairway appears about 75 feet long. It is not clear to us why the stairway could not be extended 25 feet further to so that the home would be outside the 100 foot SCA boundary. The site plan does not show the location of the septic leach field, which we believe must be at least 100 feet from the creek, so we believe that whatever equipment access is needed for the leach field 100 feet from the creek could also be used for construction of the house 100 feet from the creek without creating any more impacts.

- 8) Whatever construction is not possible to locate outside the SCA, including the garage, stairways to the home, and wells etc should be mitigated. In this regard, we observed what appeared to be a well site at the east corner of the property, although the neither the project description nor the site plan refer to any well. If this is indeed a well, then we have the following three comments: First, the well is situated in the high-flow creek bed only a few feet from the present low flow bed, and thus it is likely that the well pulls from the underflow of Fish Hatchery Creek, rather than from groundwater and therefore, the well requires an appropriate diversion permit from the SWRCB and therefore the well should not become operational until it has a SWRCB permit. Second, the County's SCA regulations state that a well may be only be permitted in an SCA *after* minimum creek flows necessary to support fisheries have been established by CDFG and SWRCB. We are not aware that such minimum streamflows have been established for Fish Hatchery Creek; therefore the well should not become operational until such CDFG/SWRCB flows have been established. Third, the County's SCA regulations state that a well may only be permitted in an SCA when it can be shown to be "*necessary*." Was a permit issued for construction of the well? If not, the well should be red-tagged until such permit can be retroactively obtained. Given that half of the parcel is outside the SCA and that public water from NMWD is available close-by, then it is not clear that such well is necessary in the SCA and therefore the well should not become operational until such a finding of "necessary" can be made.
- 9) We believe the Initial Study will show that erosion control practices on a 60% slope should be more robust and should focus on erosion prevention in addition to erosion control. We believe the LSA proposal for "standard erosion control practices" plus a silt fence and wattles at the lower edge of the property are inadequate and only serve to catch erosion that has already occurred.
- 10) Likewise, the second LSA recommendation notes: "*if possible*, ground disturbing activities should be conducted during the dry season (May through October) to reduce the potential of soil erosion." We believe that the Initial Study will show that on a 60% slope, there is a certainty of erosion occurring if construction is not done in the dry season. Dry season construction should be an absolute requirement, not merely an option "*if possible*."
- 11) Likewise the third LSA recommendation: "only native plant species or non-native ornamental plants should be used to landscape the area around the residence and garage." We believe that construction-disturbed areas within an SCA should re-vegetated with the same native plants as are present on the surrounding undisturbed land and that non-native plants should not be used. Furthermore, the proposed recommendation

does not account for the fact that landscape required as a condition of construction can be replaced later by other landscaping much less beneficial to the SCA. We therefore request that the native re-vegetation plan be made permanent by making it a condition of the deed.

- 12) Lastly, we note that the proposed house size is modest, but that was also the case with Zeigler except that a later series of incremental additions caused a significant cumulative impact on the SCA. Furthermore, if we are going to extend SCA exemptions ordinarily applicable only to parcels entirely outside the SCA instead to the O'Hanrahan parcel, then a finding of less impact if within the SCA vs more impact if outside the SCA must consider cumulative impacts from all future construction. We therefore request that a deed restriction be required that would define a building envelope for all construction to the roughly 1,000 square feet currently proposed, so that if future additions are requested then they would go up, not out.

Thank you for the opportunity to comment. Please advise us of when we can sit down with Mr. Hinds and CDA staff to discuss progress on SCA disclosures. It continues to be our opinion that SCA policies and regulations would be much easier to administer if forms were standardized and mapping completed so that architects, property owners, real estate agents, CDA staff and the environmental community that wishes to protect SCAs were all on the same page from the beginning rather than have these issues come up only later in the process.

Sincerely, Gordon Bennett
Sierra Club Marin Group