



## SIERRA CLUB MARIN GROUP

Box 3058 San Rafael CA 94912 sanfranciscobay.sierraclub.org/marin  
c/o Gordon Bennett 40 Sunnyside Dr Inverness CA 94937 415-663-1881/gbatmuirb@aol.com

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Community Development Agency (CDA)  
3501 Civic Center Drive Room 308, San Rafael, CA 94903-4157

Re: Ferguson Coastal Permit and Design Review APN #112-011-05

Dear Mr. Haddad and Mr. Havel:

On behalf of the Sierra Club's 7,000 Marin County members, we offer the following comments on the above Project:

We find the Initial Study (IS) inadequate in two areas:

- 1) The IS should consider whether the project's impacts, even if individually limited, would be "cumulatively considerable." CEQA requires a consideration of cumulative impact: *"One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact."* (Los Angeles Unified School District v. City of Los Angeles (2<sup>nd</sup> District 1997) 58 Cal.App.4<sup>th</sup> 1019 (68 Cal.Rptr,2d 367) ) Guide to CEQA, p. 466. Every addition of impervious structures and septic systems in this Streamside Conservation Area (SCA) creates an impact that could accumulate to a total that is significant to Tomales Bay, which is already listed as impaired for pathogens and sediment.
- 2) We agree with the IS conclusion (pg 8) that the SCA applies to this creek, however, not for the reason specified. This creek is not an ephemeral creek but rather a perennial creek and should be so classified by CDA. Environmental Health Services (EHS) has also classified this creek as an *"observable watercourse that flows only in direct response to precipitation. It receives no water from springs and no long-continued supply from melting snow or other surface source"*. In contrast, the Sierra Club has a series of 1989 letters from various Teachers Beach residents to EHS clearly noting year-round flows originating from a spring (attached 13 pg). Consequently, the creek should be classified by EHS as a *"Perennial Watercourse: any stretch of a stream that can be expected to flow continuously or seasonally. Perennial watercourses are generally fed in part by springs."* We note that the 7/13/04 Preliminary Environmental Assessment notes the creek as *"seasonal,"* however that one-time observation covering only a portion of the watercourse should be weighed against residents' numerous observations at points along the entire watercourse. "Flow" is not a professional judgment and a biologist is no more or less qualified to observe flow than is a resident.

The Sierra Club Marin Group urges that the above project be modified per below:

- 3) All Projects in the SCA should use creek classifications based on the most robust interpretation needed to insure creek health: ie if a creek flows only in direct response to rainfall in dry years, but flows seasonally in wet years, then it should be classified as seasonal. Likewise, if a creek has visible flow anywhere along its course in July of a wet year, but not in July of a dry year, it should be classified as perennial. Furthermore, classifications should be based on observations, and not solely on USGS maps, which may be out-of-date or incorrect. This is particularly important for this project, given that its associated septic is within 600 feet of Tomales Bay, which is already listed as impaired for pathogens and sediment. Furthermore, the septic is immediately above "Teachers Beach" where direct contact is more likely. Both of these speak to a classification of the creek that insures that flows even in wet years do not convey problems off-site. Clearly, this creek does not flow "only in direct response to precipitation" and has been documented by many residents as originating from a spring and having year round flow along some stretches. Thus EHS's required septic field setback should be 100 feet, not 50 feet.
- 4) All Projects in the SCA should maximize development outside the SCA in order to minimize development inside the SCA. The project does not go far enough in reducing car deck and driveway impacts to the SCA. The County Department of Public Works (DPW) has approved two parking spaces off-pavement but within the Camino Del Mar right of way. But there remains in the SCA a parking deck for two cars that includes a 320-foot long 10-foot wide gravel driveway with retaining walls. There appears to be more than adequate space in the same off-pavement right of way for all required/desired parking. Thus there is no environmental or public works reason to burden the SCA with the car deck or driveway. As the IS page 9 notes re CWP policy EQ-2.6, "The CWP polices permit new construction within designated SCA areas if development outside the SCA zone would result in more adverse environmental impacts." This is clearly a case where development outside the SCA (along Camino Del Mar) would result in less adverse environmental impact, therefore all parking should be relocated where DPW has allowed these spaces along Camino Del Mar and the driveway deleted.
- 5) All Projects in SCAs should be as "thin" as feasible in order to pull as far back from the creekbank as possible. The storage room may not allow for a maximum setback. On the downslope side, the 240 sq foot storage room is indicated as "underneath the proposed residence" (IS page 1). However the Site Plan (IS pg 5) appears to show it only partially beneath the residence with about 6 feet extending beneath the downslope deck past the downslope foundation of the residence, which creates additional an impermeable surface in the SCA. If so, then this portion of the storage room should be pushed back so that it is indeed 100% underneath the proposed residence. Similarly, the storage room door should be moved so that entry is from the side, not from downslope, in order to eliminate the need for an access pathway downslope from the residence. There is also an illegible note on the IS's Site Plan that may refer to a walkway from the storage room downslope towards the creek, and if so, then this burden to the SCA should also be removed.

- 6) All Projects in SCAs should be as "thin" as feasible in order to pull as far back from the creekbank as possible. The main entryway and access stairs on the upslope side of the residence do not allow for a maximize setback. Either the main entry way and access should be moved to the side of the residence or an easement could be pursued to allow the entryway and access to encroach about 6 feet into the utility right of way, which would still leave about 6 feet to the edge of the utility road. It should be noted that both stairways leading from the parking along Camino Del Mar are on its right of way, so the same arrangement could be made for the main entryway and access stairs. Whichever solution is obtained, the entire project should be moved upslope ~6 feet so that the main foundation of the residence is along the right of way, not the foundation of the approximate 6-foot wide entryway as shown now.
- 7) All projects in SCAs should have a record of decision that prohibits addition of any structure or any impermeable surface to the parcel or the conversion of now permeable surfaces to impermeable except as shown on the original plans. This would include but not be limited to paving/concreting what are now graveled or landscaped areas or applying a waterproof cover over decks.
- 8) All projects in SCAs should have a record of decision that requires construction using fire resistant materials (eg hardi-board) so that the need to remove vegetation for fire protection is minimized.
- 9) All Projects in SCAs should have a record of decision that prohibits both the removal of native vegetation anywhere in the SCA unless deemed to be an immediate hazard and also prohibits any use that would impair the health of existing native vegetation or impede the regeneration of new native vegetation in the SCA.
- 10) All septics in SCAs should have a record of decision that requires an inspection every two years by a qualified professional who will report the results to EHS.

Thank you for the opportunity to comment on this project.



Gordon Bennett, Chair Sierra Club Marin Group

cc: DPW and EHS