

## 2. COASTAL PERMIT (Project I.D. 2009-0377): RICHARD KIRSCHMAN

NEO

The project is a proposal to obtain a Coastal Permit for a common domestic well (Well 2) constructed in 1987 that provides water to two single-family residences. The subject well provides water for a mutual water supply system to two existing residences at 5959 and 5963 State Route One, Bolinas. The County of Marin, Department of Health and Human Services, Environmental Health Services issued a "Permit to Operate Mutual Water Supply System" with this well in 1985. This permit to operate includes a provision that it is valid only after approval of a Coastal Permit for the well. The well is located 50 feet from the front (northeastern) property line and 60 feet from the side (northwestern) property line, approximately 310 feet from Copper Mine Creek and 100 feet from Cronin Creek. The subject property is located at **5959 State Route One, Bolinas (Dogtown Area)**, and is further identified as **Assessor's Parcel 188-100-35**.

The Deputy Zoning Administrator (DZA) summarized the e-mails submitted from John and Cela O'Connor and asked if staff had any additional comments or had received additional correspondence, including today's e-mail from Cela O'Connor, after distribution of the staff report and supplemental memorandums dated March 21<sup>st</sup> and March 26<sup>th</sup>. Staff responded, noting the following:

- Staff did not receive today's e-mail from Cela O'Connor.
- Staff received an additional e-mail from Terrence Carroll on March 23<sup>rd</sup> that disagrees with the staff recommendation regarding affirmative Coastal Permit findings regarding development in a Wetlands Conservation Area (WCA).
- The subject property was sold to Wayne and Sue Trivelpiece and they are in support of proceeding with the project as proposed by Mr. Kirschman; and
- Staff recommends an affirmative finding for the existing well and distribution pipes in the buffer around a wetland because it is the least environmentally impacting alternative in comparison to removal of the existing facilities and installation of a new common water supply system and well.

The public testimony portion of the hearing was opened.

Richard Kirschman, applicant, asked that the Hearing Officer accept the staff report and noted that no physical changes are requested for the well.

Members of the public objecting to, or questioning the merits of, the project included: John O'Connor, Cela O'Connor, and Bridger Mitchell.

Issues noted included the following:

- The complaint regarding unauthorized dredging of the wetlands and drainage modifications to surrounding property was not properly addressed by Department of Public Works staff;
- A submitted geotechnical report finds problems with the windmill tower stability on the O'Connor's property;
- Easement rights;
- Master Plan waiver;
- Mapping of the constraints did not adequately address Cronin Creek and wetlands;

- The CEQA finding of a Categorical Exemption Section 15301 is not correct in an environmentally sensitive habitat area (ESHA);
- Request for clarification in writing of how density is determined in the CARP-5 zoning district;
- Whether findings could support approval of a well in a wetlands buffer; and
- The applicant supplied water to a neighbor through a mutual water system without a permit.

The public testimony portion of the hearing was closed.

The Deputy Zoning Administrator (DZA) made several comments pertaining to the project, including the following:

- The Department of Public Works reviewed the easement and determined it to be legal and this is not an issue because the Land Division application was withdrawn;
- Department of Public Works Assistant Engineer Dave Nicholson investigated the complaint regarding dredging of ponds and could not tell when it was done. Notification of the dredging of the wetlands was needed immediately because it is difficult to determine what was done after the fact;
- Regarding the density issue, the proceedings should not be held up because the applicant withdrew the Land Division application and density is no longer in question;
- The project is not in an ESHA, it is in an area where LCP Policy 18 establishes a 100-foot buffer. The Deputy Zoning Administrator (DZA) concurred with the staff finding that since the well relies on water in the wetland, Finding G.5.d allows for fill for minor public works projects pursuant to Section 30233 of the Coastal Act. The project is the least environmentally damaging alternative and as a mutual water system qualifies as an incidental public service; and
- The project has been reduced in scope and the Categorical Exemption is acceptable.

The Hearing Officer concurred with staff's recommended language.

The Deputy Zoning Administrator (DZA) approved the project with the following modifications to the project:

- **SECTION 1: FINDINGS VI and VII:** Delete, as no longer necessary because no subdivision is proposed;
- **SECTION 1: FINDINGS VI (G)** The project site is located along protected blue-line creeks -- Copper Mine Creek bisects the property, and approximately 50 feet of the northwest side of the property is within 100 feet of Cronin Creek. The site also contains two constructed ponds that the National Wetlands Inventory identifies as Freshwater Ponds. While a complete delineation of hydric soil and hydrophytic vegetation was not prepared, the applicant mapped a 100-foot wetlands buffer around the edge of the ponds based on Section 404 of the Clean Water Act. The 100-foot creek buffer along Copper Mine Creek is also mapped on a Composite Constraints Map. The existing common driveway crosses Copper Mine Creek over a two culverts, permitted Well 1 is within the 100-foot creek buffer area, and as-built Well 2 was constructed in 1985 within the 100-foot wetland buffer area mapped. No fill is proposed within the mapped wetlands or the creek and no work is proposed within the buffer areas.

However, Well 2 is subject to a Coastal Permit and shall be evaluated for conformance with LCP Policy 18, "To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands as delineated by the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip." The wells and appurtenant facilities of the mutual water system are dependent on the water resources in the wetlands and are allowable as incidental public services within the wetland buffer pursuant to Section 30233(5) of the Coastal Act. Permitting the well to remain is the least environmentally damaging alternative because relocating it would entail additional ground disturbing activities.

It is noted that the mapped buffer is likely smaller than the buffer would be if based upon the United States Fish and Wildlife Service wetlands classification system, which defines wetlands based on one or more of the three attributes: 1) The land supports predominately hydrophytic vegetation; 2) The substrate is predominately undrained hydric soil; and 3) The substrate is saturated with water or covered by shallow water at some time during the growing season of each year. The construction of Well 2 occurred 27 years ago and additional disturbance of the site is not proposed or required for maintenance. The project would comply with the stream and wetland conservation protection policies of the Local Coastal Program. And

- Add the name "(Trivelpiece)" after "Kirschman" to the project title.

The Deputy Zoning Administrator (DZA) concurred with staff's findings and conditions of approval in the Resolution, and approved the Kirschman (Trivelpiece) Coastal Permit.

The Deputy Zoning Administrator (DZA) informed all parties of interest that this action may be appealed to the Marin County Planning Commission within five (5) working days.