



# Sicular Environmental Consulting & Natural Lands Management

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## Memorandum

**To:** Rachel Reid, Marin County CDA

**From:** Dan Sicular

**CC:** Tammy Taylor, Sabrina Cardoza, Marin County CDA

**Date:** October 13, 2023

**Subject:** Response to Issues Raised in the Petition for Appeal to the Board of Supervisors for the Approval of the Brian Johnson Trust Coastal Permit Project

Below are responses to issues raised in Attachment A to the Petition for Appeal dated August 23, 2023, by Elizabeth Brekhus, attorney for Sarafian, and J. Siedman, attorney for R. Friedman (“Petitioners”). The responses address only issues relevant to the CEQA documents prepared for the Project, and to CEQA issues generally. References to the 2023 Supplemental Environmental Review/Subsequent Mitigated Negative Declaration (SER/SMND) are to the document prepared by Sicular Environmental Consulting for the County and published in January 2023. References to the June 2023 Response to Comments document are to the document we prepared for the County responding to comments on the SER/SMND.

The issues raised in Attachment A have all been raised previously and responded to, in comments on the SER/SMND responded to in the June 2023 Response to Comments document, and in comments received prior to Planning Commission hearings responded to in memos to you dated July 30 and August 11 of this year. Overall, Petitioners provide no substantial evidence that would support a conclusion of a significant impact of the Project on the environment.

The letter designations and headings are taken directly from Attachment A. Each is referred to as an “item.”

### **A. AO Flood Zone Moratorium**

**Response:** The SER/SMND, Section II.10, Hydrology and Water Quality, finds that the Project would not result in a significant impact with respect to its location in the AO Flood Zone.

The SER/SMND concludes that the Project would not substantially alter the existing drainage pattern of the site or area in a manner which would:

- result in substantial erosion or siltation on- or off-site;
- substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;

- create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or
- Impede or redirect flood flows.

Furthermore, while the Project site is located in a flood hazard zone, the SER/SMND concludes that the Project would not risk release of pollutants due to project inundation.

Inconsistencies with LCP or other policies, where such inconsistencies are not associated with a significant environmental impact, are outside of the scope of a CEQA review.

### **B. FEMA VE Floodplain Base Flood Elevation**

**Response:** Petitioners' references to Base Flood Elevation (BFE) and lowest floor height are incorrect. As stated in SER/SMND Section 2.10, Hydrology and Water Quality, page 62, in the discussion of coastal flood hazards, which is based on the Applicant's coastal engineering analysis:

“The current 100-year flood elevation, or the Base Flood Elevation (BFE), at the Project site is 15.6 feet, NAVD88 and the Extreme Still Water Level (SWL) elevation is 9.1 feet NAVD88. Considering a sea level rise (SLR) of 0.6-2.7 feet, the 1-percent annual chance (100-year) BFE in 50 years... is approximately 19.1 feet, NAVD88. The proposed residence would be constructed on concrete piers to elevate it above grade a maximum of 6 feet 6 inches, such that the minimum height of any structural member (other than foundation piers) would be 19.1 feet alms [above mean sea level], and the height of the subfloor would be 21.0 feet amyl, to place it above future BFE.” (citations omitted).

The Project does, therefore, comply with the Residential Code requirements to elevate lowest floor level above BFE.

### **C. California Coastal Act**

**Response:** The points raised in this item are nearly identical to points raised in comments on the SER (comments C-12 through C-19 in the June 2023 Response to Comments document).

Responses to comments C-12 through C-14 are repeated below (response to comment C-14 summarizes more detailed responses to the subsequent comments on specific geologic hazards):

- C-12 The Project's potential for impacts related to risks to life and property from geologic, flood, and fire hazards are analyzed in SER/SMND Section 2.7, Geology and Soils, and Section 2.10, Hydrology and Water Quality, and Section 2.20, Wildfire, all of which conclude that the Project would have less than significant impacts of these kinds.... Section 2.7, Geology and Soils, examines the potential for impacts related to stability of the proposed structures and of the site, and likewise concludes that such impacts would be less than significant. The comment does not offer any new information or analysis that calls into question the validity of the conclusions in the SER/SMND.

- C-13 Impacts associated with the Project's location in FEMA flood zones are analyzed in SER/SMND Section 2.10, Hydrology and Water Quality, and found to be less than significant. With regard to effects of the December-January atmospheric river storms, please see **Master Response 1: Storm Effects** [in the June 2023 Response to Comments document].
- C-14 As discussed in the SER/SMND, Section 2.7, Geology and Soils, topic 2.7.c, Murray Engineer's 2021 geotechnical feasibility study recommended a design-level geotechnical investigation that would be completed prior to Project construction, as required by the County's building permit process. The design-level investigation stage is typically a more focused and comprehensive evaluation of site geology and would characterize the subsurface soil conditions, complete necessary soils strength testing, and provide final foundation design specifications, in accordance with the 2019 California Building Code (CBC), to ensure that the residence could withstand earthquake ground shaking and any associated secondary ground failure.

#### **D. Sea Level Rise Hazards**

**Response:** Sea level rise hazards, including coastal sea level rise and increased flooding from Easkoot Creek, are thoroughly examined in SER/SMND Section 2.10, Hydrology and Water Quality, topic 2.10.c.iv. See excerpt above, in response to item B. Impacts associated with sea level rise were found to be less than significant in the SER/SMND.

#### **E. Dune and Sandy Habitat Protection**

**Response:** Petitioners reference an out-of-date plan set, and do not acknowledge the extensive analysis of dune and sandy beach habitat within the Project site included in the SER/SMND and the June 2023 Response to Comments document. See **Master Response 2: Dune Habitat Protection; Consistency with Local Planning Regulations** in the June 2023 Response to Comments document. That Master Response documents the extent of dune and sandy beach habitat within the Project site, identifies dune habitat as ESHA, and discusses the Project's consistency with Local Coastal Program policies regarding dune and ESHA protection. The Master Response reaffirms the conclusion reached in the SER/SMND that, with the incorporation of mitigation measures, including requirements for dune restoration, the Project would not have a significant impact on biological resources.

#### **F. Shoreline Protection**

**Response:** The SER/SMND discusses the proposed concrete retaining wall around the proposed septic system, as well as the proposed concrete foundation piers for the residence, and concludes that neither meets the definition of a shoreline protective device, and neither would they act as shoreline protection. The following is from SER/SMND Section 2.10, Hydrology and Water Quality, topic 2.10.c.i, page 2-60:

“Further, because the proposed retaining wall would extend only 3-6 inches above existing grade, and because of its landward location, the retaining wall would not act as a shoreline protective device: the retaining wall, while designed to withstand wave run-up forces and protect the septic system from localized erosion during inundation, is not designed or intended to arrest

shoreline or bluff erosion or coastal retreat (the intended function of seawalls and riprap armoring). Neither would it redirect wave energy in a manner that would create erosion, geologic instability, or destruction of the site or neighboring properties due to altered on-site conditions. The proposed Project would not arrest natural coastal erosion or coastline recession resulting in substantially altered landforms. For these reasons, the proposed septic system barrier would not result in physical impacts that conflict with California Coastal Act Section 30253(b) related to shoreline protection. In addition, as described in Chapter 1, Project Description, the Applicant has proposed recording a deed restriction that prohibits future shoreline protection and requires removal of the structure at such time as a legally authorized public agency issues an order to do so.”

As stated in the June 2023 Response to Comments document in the response to comment A-21:

The use of foundation piers (rammed, driven, or drilled), does not violate the Local Coastal Plan or the Coastal Act because, as currently designed, they would not alter natural shoreline processes. As shown in the SER/SMND Chapter 1, Project Description, Figures 6-9, the vertical structural piers would be spaced far enough apart to allow flood water to flow beneath the residential structure without obstructing or substantially changing the flow patterns.

### **G. Impact on Neighboring Properties**

**Response:** Petitioners contend that, “this larger scale development also puts the neighboring properties at significant risk of damage.” As discussed above, the Project would not substantially alter flood flows (including coastal flooding and Easkoot creek flooding), nor redirect wave energy in a manner that would put neighboring properties at risk of damage. Petitioners’ contention that, “the vacant lot typically floods during heavy rains...” is unsubstantiated and conflicts with post-storm observations of the Project site by a hydrologist and Certified Engineering Geologist (see **Master Response 1: Storm Effects**, in the June 2023 Response to Comments document).

Regarding the scope of the CEQA documents prepared for the Project, the 2020 IS/MND prepared by the Stinson Beach County Water District focused on the septic system, but also examined impacts of a future, 1,400 sf residence (no design then existed for the residence). The SER/SMND examines potential impacts of the septic system and the proposed 1,296 sf residence and includes extensive analysis of shoreline hazards. Petitioners provide no evidence to support the claim that creek or coastal flooding could “wash the development into and destroy existing homes and compromise the safety of residents and members of the general public.” The extensive analysis of coastal and creek flooding hazards in the SER/SMND, excerpted above, concludes that the proposed residence and septic system would stay above flood elevation for the next 50 years. Furthermore, as described in SER/SMND Chapter 1, Project Description, page 1-13,

“Project plans include several specifications for special construction techniques in a flood zone: an open foundation system to set the structure above Base Flood Elevation; building elements and enclosures below the elevated structure would use flood-resistant materials and would be designed and constructed to break away from the structure and not transfer any loads to the

elevated building nor the foundation system; and all utilities and service equipment would be located above Base Flood Elevation (per 2016 California Residential Code § R322.1.6).”

#### **H. Denying the Permit Does Not Result in a Constitutional Taking**

**Response:** The issue of a constitutional taking, should the Project be denied, is not an environmental issue.

#### **I. The Project Was Approved Without an Approved Septic System**

**Response:** The Stinson Beach County Water District (SBCWD) is the agency responsible for issuing the permit for an onsite wastewater treatment (i.e., septic) system for the Project. Should the Applicant reapply for a permit, the SBCWD may choose to rely on the existing environmental documentation, including the 2020 IS/MND and the 2023 SER/SMND, or may choose to prepare a new environmental document. Both the 2020 IS/MND and the 2023 SER/SMND examined impacts associated with the proposed septic system. The expiration of the permit has no bearing on the adequacy of the environmental documents. If a reapplication were to propose a substantially different onsite wastewater treatment system, additional environmental review could be required, as determined by the SBCWD or the County.

#### **J. The Planning Commission Denied the Project at the Hearing on July 31, 2023, and Did Not Have Authority to Reconsider or Approve the Project on August 14, 2023 or Approve the Project Piecemeal and Revisit the Project on August 28, 2023**

**Response:** This is not a CEQA issue.

#### **K. Project Did Not Comply with CEQA**

**Response:** Petitioners fail to recognize that Marin County completed a Supplemental Environmental Review, leading to a Subsequent Mitigated Negative Declaration (SER/SMND), that analyzes the potential for environmental impacts of the entire Project, including development of the proposed residence and septic system. The SER/SMND was prepared in compliance with State CEQA Guidelines Sec. 15162.