



TOWN OF FAIRFAX MEMORANDUM

TO: Mayor and Town Council
FROM: Building Official
DATE: August 5, 2013
SUBJECT: Nuisance Abatement Hearing scheduled for August 5, 2013

PURPOSE OF HEARING

A nuisance abatement hearing has been scheduled to consider the violation, by the Owner of the Marin Town and Country Club property (Owner), Fairfax, CA 94930 (Parcel No. 022-131-1; #40 Pastori Avenue, Fairfax CA 94930), of provisions of Chapter 1.12 of the Code of the Town of Fairfax (Town Code) that govern dangerous property conditions .

§ 1.12.045 SUBSTANDARD OR DANGEROUS PROPERTY CONDITIONS.

Section 1.12.045 of the Town Code provides, in relevant part: "No occupant shall cause or allow any condition on its property, or on an adjacent sidewalk, which unreasonably increases the risks to public safety or public health, or which results in substantial detriment to the property of others in the immediate vicinity thereof." Similarly, the definition of "public nuisance" set forth in Section 1.12.005 of the Town Code includes "[a]nything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a neighborhood or by a considerable number of persons in the town."

The Owner has continued to refuse access needed by the Town of Fairfax to perform critical Bank Stabilization work (Work) in the San Anselmo Creek (Creek) located in the near the Owner's property (Property). The Creek bank is eroding to a point that is endangering the property at 45 Pastori Avenue and other properties in the immediate vicinity of the damaged bank. The Town has sought temporary access from the Owner to perform the following necessary repair Work: 1) installation of a temporary diversion of the stream through a pipe placed across a portion of the Property, 2) the attachment of "perma jacks" to the concrete footing of the Pastori Street Bridge, and 3) filling the void between the concrete footing and the wing wall foundation with lean concrete. All Work to be performed is described in the Bid Forms and Special Provisions and any

Addenda for the Pastori Storm Drain Outfall project. The Work must be completed within the time period from August 1, 2013 to October 31, 2013.

The Owner's refusal to provide the Town the requested access is delaying the repair Work, thus, further exacerbating the potentially harmful condition. In its current state, the Creek bank seriously endangers properties in the immediate vicinity of the damage, as well as the public. The Creek bank is continuing to erode, creating a deteriorating, increasingly dangerous situation.

The Owner has been informed he can abate this adverse condition by allowing the Town of Fairfax access to his Property for the purpose of conducting the Bank Stabilization Work as described above. Specifically, he can correct this situation by providing written authorization to the Town of Fairfax granting access to the Property to perform the work listed above for the period between August 1, 2013 to October 31, 2013 without interruption during normal working hours.

The Owner has been informed that if he does not voluntarily correct this condition by August 5, 2013 at 12:00 noon, a nuisance abatement hearing will be held before the Town Council on August 5, 2013 at 6:00 o'clock, in the Fairfax Women's Club.

NEED FOR ACCESS

For several years, the Town has been working to stabilize and repair the eroded creek bank in the San Anselmo Creek near the Pastori Bridge, as well as replacing the existing 24" storm drain pipe with a 48" pipe to prevent water from "bottle-necking" in that location. In August 2012, the Council bid out only the first portion of that work (i.e., the Bank Stabilization Work) due to technical, legal and funding barriers on the installation of the larger outfall pipe. However, the 2012 project was ultimately cancelled due to concerns related to unexpected costs, tree removal, access to the adjacent properties to perform the work, and other issues.

At that time, the Owner did grant the Town access to his Property to perform similar work, but only on the condition that such access could be revoked at anytime by either party. In 2012, the Owner did, in fact, revoke access he had granted the Town under a written right of in entry agreement that included a revocability clause. The current repair Work requires irrevocable, though temporary, access because the Work must be completed within the specific time frame discussed below. The Owner has indicated he is willing to grant access to perform the Work with a condition of revocability similar to that in the prior grant of access, but the Town cannot risk a mid-project revocation here.

The current repair Work must be completed by October 15, 2013 per the regulatory permits. In addition, the FEMA funds committed to the project require all Work to be

completed by November 1, 2013 or the Town cannot seek reimbursement of FEMA funds. Due to these time constraints and permit issues, the Town cannot have a situation in which the Work can be started and then the Owner can deny access during the project causing the Town to incur significant costs and resulting in critical repair Work being left incomplete for an indefinite period of time.

The project engineer indicates the Bank Stabilization Work requires access to the Property to meet the conditions of the regulatory permits. He also states that the conditions of the bank will further deteriorate placing the adjacent property at risk this rainy season. The adjacent property owner has also sent the Town a letter expressing her concerns.

ATTEMPTS TO GAIN COMPLIANCE

Staff has actively been trying to gain voluntary access to the Property from the Owner. The following is timeline of contacts:

May 1, 2013	At the Council meeting, Council discussed the Pastori Storm Drain Outfall Project (Project)- Staff indicated ROE must not be revocable; Owner present at the meeting
June 5	At the Council meeting, council continued discussing Pastori Storm Drain Outfall- Staff also indicated ROE must not be revocable; Owner present at the meeting
June 26	Council directed staff to bid out the Project with base bid for Bank Stabilization and bid alternate for pipe enlargement.
July 3	Town Attorney spoke to Owner's attorney and sent ROE
July 9, 16	Town Attorney contacted Owner's Attorney regarding the ROE
July 16	Mayor Reed and Councilmember Goddard spoke to the Owner
July 17	Owner contacted Town Attorney regarding ROE
July 17	Councilmember Goddard spoke with the Owner
July 17	Owner emailed the Council and Town Attorney indicating he would sign the ROE from 2012
July 19	Staff emailed Owner revised ROE
July 23	Staff responded to inquiry from Owner

July 24 Staff responded to inquiry from Owner

July 26 Staff posted Property (Bridge) with Notice to Abate, hand delivered notice to Owner, sent Owner an email regarding the violation, and sent the Owner a notice by certified mail; Owner requested staff to leave so staff did not post all the buildings.

PERMIT DEADLINES

Army Corp of Engineers- Construction contract must be signed by June 12, 2014

California Department of Fish and Wildlife- Expires December 31, 2013

Conditional Water Quality Certification- No expiration

Mitigated Negative Declaration- still valid

FEMA funding- construction must be completed by November 1, 2013

Permits required all construction work in the creek be completed by October 15, 2013

CONSTRUCTION SCHEDULE

August 2 Bid Opening at 2:00pm

August 7 Award Bid to lowest responsible bidder

August 15 Begin construction

October15 Complete construction in creek

November 1 Complete all construction

MATERIALS FOR THE HEARING

The following materials are being provided in advance of the meeting to assist the Council in its determination:

- Copy of Notice to Abate Public Nuisance
- Engineer's statement regarding the bank stabilization work
- Right of Entry agreement sent to the Owner

- Right of Entry agreement signed by Owner in 2012
- Owner's letter revoking the ROE in 2012
- FEMA Funding Letter
- Letter from CSW discussing status of permits
- Copy of email correspondence
- Estimated project cost
- Copy of Plans and Specs for the Pastori Storm Drain Outfall Project (the packet includes copies of regulatory requirements/permits for the project) Available in digital format or hard copy upon request.

RECOMMENDATION

Based on all the information and materials set forth above, as well as the presentation to be made at the nuisance abatement hearing, it is recommended that the Mayor and Town Council make a finding that the Owner's refusal of the access needed to complete critical bank stabilization repair work on San Anselmo Creek constitutes a public nuisance. It is further recommended that the Mayor and Town Council issue an Order to Abate the public nuisance immediately.



TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

POSTED 7-26-2013 POSTED AND SENT CERTIFIED MAIL : 7011 3500 0001 3099 4447

Michael Mackintosh
C/O Marin Town and Country Club
P.O. Box 150870
San Rafael, CA 94915

NOTICE TO ABATE PUBLIC NUISANCE

TO THE OWNER, AGENT OF THE OWNER, LESSEE, OCCUPANT, OR PERSON IN POSSESSION OF THE PROPERTY HEREAFTER DESCRIBED:

Marin Town and Country Club property, Fairfax, CA 94930; Parcel No. 022-131-1; #40 Pastori Avenue, Fairfax CA 94930

YOUR ATTENTION IS HEREBY DIRECTED to the provisions of Chapter 1.12 of the Code of the Town of Fairfax on file in the office of the Town Clerk. Pursuant to the provisions of said Chapters, you are hereby notified to correct by 12:00 noon on August 5, 2013, on the property herein before described, the following public nuisances:

§ 1.12.045 SUBSTANDARD OR DANGEROUS PROPERTY CONDITIONS.

No occupant shall cause or allow any condition on its property, or on an adjacent sidewalk, which unreasonably increases the risks to public safety or public health, or which results in substantial detriment to the property of others in the immediate vicinity thereof.

Your continued refusal to grant access to the Town of Fairfax to perform the Bank Stabilization work (Work) in the vicinity of your property is having a detrimental impact to adjacent properties, including, but not limited to 45 Pastori Avenue. The Work includes the following: 1) installation of a temporary diversion of the stream through a pipe placed across a portion of your property, 2) the attachment of "perma jacks" to the concrete footing of the Pastori Street Bridge, and 3) filling the void between the concrete footing and the wing wall foundation with lean concrete. All Work to be performed is described in the Bid Forms and Special Provisions and any Addenda for the Pastori Storm Drain Outfall project. The time period by which the Town needs to complete the work is from August 1, 2013 to October 31, 2013. Failure to provide to the Town of Fairfax written authorization for access is delaying the Work, thus, further exacerbating the condition as the bank is continuing to erode, creating an adverse, deteriorating situation which is placing adjacent properties at risk of damage including, but not limited to, 45 Pastori Avenue.

This condition may be corrected by allowing the Town of Fairfax access to your property for the purpose of conducting the Bank Stabilization work as described above.

Specifically, you can correct this situation by providing written authorization to the Town of Fairfax granting access to your property to perform the work listed above for the period between August 1, 2013 to October 31, 2013 without interruption during normal working hours.

Should you fail to correct this violation by August 5, 2013 at 12:00 noon, a hearing will be held before the Town Council on August 5, 2013 at 6:00 o'clock, in the Fairfax Women's Building, 46 Park Road, Fairfax, California.

Please be advised that if you do not abate this nuisance as directed by this notice, or as directed by the Town Council, the Town may enter upon the property to abate the public nuisance and the Town's costs thereby incurred, including staff time and attorney fees, shall constitute a special assessment and a lien against the property.

Date July 26, 2013

A handwritten signature in black ink, appearing to read 'Mark Lockaby', written in a cursive style.

Mark Lockaby
Building Official

Date: August 1, 2013

File: 7.775.317

Mr. Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

RE: FAIRFAX: PASTORI STORM DRAIN OUTFALL REPAIR AND IMPROVEMENT PLANS

Dear Garrett:

The Bank Stabilization work for the Pastori Storm Drain Outfall project will require access to the adjacent properties. The Work includes, but is not limited to, the following:

1. Fish relocation involving installation of a temporary diversion of the stream through a pipe placed across a portion of the Property;
2. The attachment of "perma jacks" to the displaced portion of the concrete footing of the Pastori Street Bridge;
3. Filling the void between the concrete footing and the displaced portion of wing wall, and below the voids in the wing wall foundations with lean concrete, and
4. Installation of rip-rap rock, geofabric, and root wads to stabilize the bank from future erosion.

All Work to be performed is described in the "Bid Forms and Special Provisions" and any Addenda for the Pastori Storm Drain Outfall project.

The regulatory agencies have required all of these improvements be installed for the Bank Stabilization work. To significantly alter the work (e.g., relocate water diversion pipe), would require the Town to redesign the project, amend its permits, and seek re-approval from the regulatory agencies which is a very time consuming and costly process. It would be impossible to receive such approvals to proceed with the Work this year.

With regard to condition of the creek bank in question, it is clear the bank continues to erode and deteriorate with each passing day. The bank has reached a point where further delays will potentially cause detrimental impacts to the adjacent property. We recommend the Work be

CSW ST 2

Mr. Garrett Toy
Town Manager
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August 1, 2013
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completed this year to avoid creating a situation of potential creek bank failure next year, depending on the severity of the rainy season.

Sincerely,

CSW/STUBER-STROEH ENGINEERING GROUP, INC.



Gregg E. Grubin
R.S.E. #4312

GEG:gmp

RIGHT OF ENTRY AGREEMENT

This Right of Entry ("Agreement") is entered into as of July _____, 2013 by and between the Town of Fairfax (GRANTEE) and Michael Mackintosh (GRANTOR).

RECITALS

A. The GRANTOR is the owner of the real property located in the Town of Fairfax, County of Marin, State of California, and more particularly known as 60 Pastori Avenue, Fairfax, CA and designated by the Marin County Tax Assessor as Assessor's Parcel No. 002-131-10 and 002-131-11 ("Property").

B. GRANTEE is in the process of making bank stabilization improvements in the vicinity of the Property (the "Work"). The Work includes temporary diversion of the stream through a pipe placed across a portion of the Property, the attachment of "perma jacks" to the concrete wing wall footing, and filling the void between the concrete footing and the wing wall foundation with lean concrete. The Town will perform work for the bank stabilization per the plans and specifications in the 2013 Pastori Storm Drain Outfall bid package incorporated herein as reference. Specifically, the work performed will consist of items listed A-E in the Bid Schedule and **not** item F, Bid Alternate-Storm Drain Replacement.

The Work will **not** include any other work on or alteration of the Pastori Bridge located on the Property. GRANTEE requires access to a portion of the Property for purposes of placing the stream diversion pipe across that portion of the Property adjacent to the stream bed and the aforementioned Work and has requested from Grantor the right to enter the Property to complete the Work.

NOW THEREFORE, in consideration of the mutual promises contained herein the parties have agreed as follows:

AGREEMENT

1. Recitals. The Recitals above are declared to be true and correct and are hereby incorporated into this Agreement as if set forth fully below.
2. Grant of Right of Entry: The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, agents and designees permission to enter upon the Property for the purposes of completing the Work. GRANTOR shall not be responsible for any of the costs of the Work. GRANTEE shall direct and control all activities pertaining to the Work and shall not impose, at any time, any charge or exaction against GRANTOR. GRANTEE hereby agrees that it shall not undertake or permit any of its contractors, subcontractors or agents to undertake any action, other than the Work described in Recital B above, that involves work on, including, but not limited to, cutting or jack hammering, or alteration of the Pastori Bridge located on the Property. GRANTEE further agrees to include provisions in any agreement with its contractor for the Work prohibiting the contractor from undertaking any action that

involves work on or alteration of the Pastori Bridge, other than the Work described in Recital B above.

3. Compensation: GRANTEE shall pay GRANTOR the sum of one thousand dollars (\$1000) as full compensation for the right to enter upon the Property and place the temporary stream diversion pipe on a portion of the Property.

4. Assumption of Risk: GRANTEE enters the Property and performs or causes to be performed such work as referred to above, at its own risk and subject to whatever hazards or conditions may exist on the Property. GRANTEE agrees to repair any damage to the Property caused by its entry thereon and to restore the Property to substantially the same condition it was in on the date of GRANTEE's entry.

5. Permits: GRANTEE shall obtain all necessary permits from appropriate agencies at GRANTEE'S sole expense.

6. Termination: The term of this Agreement shall commence on the above written date and expire on October 31, 2013.

7. Indemnification: GRANTEE shall indemnify, defend and hold harmless GRANTOR from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors, or omissions, of any person directly or indirectly employed by or acting as agent for GRANTEE in performance of this Right of Entry Agreement, except to the extent arising from the negligence or intentional misconduct of GRANTOR.

8. Insurance: During the term of this Agreement, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning workers' compensation.

GRANTEE is a member of the Bay Cities Joint Powers Insurance Authority, a self-insured risk sharing pool. GRANTEE shall provide the GRANTOR with a valid certificate of coverage confirming comprehensive general and automobile liability coverage in the amount of \$ 2 million as an additional covered party. The certificate will further confirm that the coverage in effect will not be canceled, limited, or allowed to expire, except upon thirty (30) days written notice to the GRANTOR. It is further agreed that any coverage extended by reason of this paragraph shall be primary and that any similar insurance maintained by GRANTOR for its own protection shall be secondary or excess and not contributing insurance.

GRANTEE shall require its contractors and subcontractors to obtain at their sole cost and keep in full force and effect during the term of this Agreement, commercial general liability insurance in the amount of \$ 2 million per occurrence for bodily injury, personal injury and property damage.

9. Recording: Neither GRANTOR nor GRANTEE shall record this Agreement.

10. Notices: All notices required or permitted under the terms of this Agreement shall be in writing and sent to:

Town of Fairfax
Public Works Department
142 Bolinas Road
Fairfax, CA 94930
Fax # (415) 453-1618
Phone# (415) 453-0291

Michael Mackintosh
60 Pastori Avenue
Fairfax, CA 94930
Phone # (415) 264-0396

11. Time is of the Essence; Entire Agreement: Time is of the essence of each of the terms and provisions of this Agreement. This Agreement constitutes the entire agreement between GRANTEE and GRANTOR, and no alteration, amendment or any part thereof shall be effective unless in writing signed by parties sought to be charged or bound thereby.

12. Authority. The persons executing this Agreement represent and warrant that they have the requisite authority to enter into this Agreement and to bind their respective entities or principals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

GRANTOR:

Michael Mackintosh

GRANTEE:

TOWN OF FAIRFAX

Garrett Toy
Town Manager

RIGHT OF ENTRY AGREEMENT

This Right of Entry ("Agreement") is entered into as of July 10, 2012 by and between the Town of Fairfax (GRANTEE) and Michael Mackintosh (GRANTOR).

RECITALS

A. The GRANTOR is the owner of the real property located in the Town of Fairfax, County of Marin, State of California, and more particularly known as 60 Pastori Avenue, Fairfax, CA and designated by the Marin County Tax Assessor as Assessor's Parcel No. 002-131-10 and 002-131-11. The Property is improved with, among other things, a bridge connecting Pastori Avenue to the Property (the "Pastori Bridge").

B. GRANTEE is the Town of Fairfax, County of Marin, State of California.

C. GRANTEE is in the process of making stormwater system and bank stabilization improvements in the vicinity of the Property as described more particularly in the bid documents approved by the Town Council on June 29, 2012 by Resolution 12-42 (the "Work"). GRANTEE requested the right to enter the Property to complete a portion of the Work.

D. GRANTEE wishes to obtain permission from GRANTOR to enter upon the Property for the purpose of completing the Work.

NOW THEREFORE, in consideration of the mutual promises contained herein the parties have agreed as follows:

AGREEMENT

1. Recitals. The Recitals above are declared to be true and correct and are hereby incorporated into this Agreement as if set forth fully below.
2. Grant of Right of Entry: The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, agents and designees permission to enter upon the Property shown on Exhibit A for the purposes of completing the Work. GRANTOR shall not be responsible for any of the costs of the Work. GRANTEE shall direct and control all activities pertaining to the Work and shall not impose, at any time, any charge or exaction against GRANTOR. It is agreed and understood that all work contemplated in this Agreement will be performed during the hours of 8 A.M. and 5 P.M. Monday – Saturday unless otherwise agreed to by the parties. GRANTOR reserves the right to grant others the privilege to use the Property and the parties specifically agree that this Agreement is not exclusive.
3. GRANTEE's Use Covenants. GRANTEE previously contemplated a larger project that included the Work and certain storm water system repairs that would have

required enlarging an opening in the Pastori Bridge. GRANTOR did not agree to permit GRANTEE to enlarge the opening in, or to undertake any other work that would penetrate the structure of the Pastori Bridge, and that portion of the project was removed and is no longer a part of the Work. GRANTEE hereby agrees that it shall not undertake, or permit any of its contractors, subcontractors or agents to undertake, any actions that would cut, jackhammer or otherwise alter the structure of the Pastori Bridge. GRANTEE further agrees to include provisions in its agreement with its contractor for the Work that required the contractor to agree that it will not undertake any such actions affecting the Pastori Bridge.

4. Assumption of Risk: GRANTEE enters the Property and performs or causes to be performed such work as referred to above, at its own risk and subject to whatever hazards or conditions may exist on the Property. GRANTEE agrees to repair any damage to the Property caused by its entry thereon and, except for the Work, to restore the Property to substantially the same condition it was in on the date of GRANTEE's entry prior to the termination date of this Agreement. GRANTEE shall comply with all applicable governmental laws, ordinances, rules and/or regulations in exercising the privileges granted herein.

5. Permits: GRANTEE shall obtain all necessary permits from appropriate agencies at GRANTEE'S sole expense.

6. Termination: The term of this Agreement shall commence on July 10, 2012, and expire on October 31, 2012, unless GRANTOR approves an extension of the Agreement by written amendment. This Agreement may be terminated by either party at any time ~~without cause; provided each party shall provide the other party with written notice of such intent to terminate the Agreement seven (7) business days prior to the effective date of termination.~~



7. Indemnification: GRANTEE shall indemnify, defend and hold harmless the GRANTOR, its officers, directors, employees, contractors, subcontractors, agents, and affiliates from any and all claims, suits, costs or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors, or omissions, of any person directly or indirectly employed by or acting as agent and/or contractor for GRANTEE in performance of this Right of Entry, except to the extent arising from the negligence or intentional misconduct of GRANTOR, its employees, contractors, subcontractors, or agents.

8. Insurance: During the term of this Agreement, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability GRANTEE and its agents may have for worker's compensation.

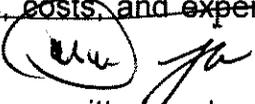
GRANTEE is a member of the Bay Cities Joint Powers Insurance Authority, a self-insured risk sharing pool. Prior to the commencement of the Work, GRANTEE

shall provide the GRANTOR with a valid certificate of coverage confirming comprehensive general and automobile liability coverage in the amount of \$ 2 million as an additional covered party. The certificate will further confirm that the coverage in effect will not be canceled, limited, or allowed to expire, except upon thirty (30) days written notice to the GRANTOR. It is further agreed that any coverage extended by reason of this paragraph shall be primary and that any similar insurance maintained by GRANTOR for its own protection shall be secondary or excess and not contributing insurance.

GRANTEE shall require its contractors and subcontractors to obtain at their sole cost and keep in full force and effect during the term of this Agreement, commercial general liability insurance in the amount of \$ 2 million per occurrence for bodily injury, personal injury and property damage; provided (i) that the GRANTOR, its officers, agents, employees, and volunteers shall be added as additional insureds under the policy, and (ii) that the policy shall stipulate that this insurance will operate as primary insurance; (iii) that no other insurance effected by the GRANTOR or other named insureds will be called upon to cover a loss covered thereunder.

9. Recording: Neither GRANTOR nor GRANTEE shall record this Agreement.

~~10. Attorney's Fees: If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.~~



11. Notices: All notices required or permitted under the terms of this Agreement shall be in writing and sent to:

Town of Fairfax
Public Works Department
142 Bolinas Road
Fairfax, CA 94930
Fax # (415) 453-1618
Phone# (415) 453-0291

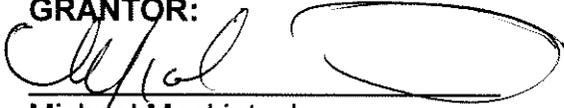
Michael Mackintosh
60 Pastori Avenue
Fairfax, CA 94930
Phone # (415) 264-0396

12. Time is of the Essence; Entire Agreement: Time is of the essence of each of the terms and provisions of this Agreement. This Agreement constitutes the entire agreement between GRANTEE and GRANTOR, and no alteration, amendment or any part thereof shall be affective unless in writing signed by parties sought to be charged or bound thereby.

13. Authority. The persons executing this Agreement represent and warrant that they have the requisite authority to enter into this Agreement and to bind their respective entities or principals.

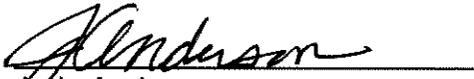
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

GRANTOR:


Michael Mackintosh

GRANTEE:

TOWN OF FAIRFAX


Judy Anderson
Interim Town Manager/Town Clerk

Jim R. Karpiak

From: Marin Town and Country Club [mtcc@classactionlocator.com]
Sent: Tuesday, September 04, 2012 12:25 PM
To: Judy Anderson; Jim R. Karpiak
Cc: rob@epsteinlawyer.com; georgiam@cswst2.com; wcateng@yahoo.com;
alice@aarichandassociates.com; fairfaxpd@fairfaxpd.org; David Weinsoff; John Reed; Larry
Bragman; Pam Hartwell Herraro; Ryan Oneil
Subject: Revocation of Right of Entry

**Marin Town & Country Club
P.O. Box 150870
San Rafael, CA 94915
(415) 925-1518**

FAX: (415) 925-1704

EMAIL: mtcc@classactionlocator.com

To all Concerned:

The Right of Entry granted by the MT&CC LLC (Marin Town & Country Club), on July 10, 2012, to the Town of Fairfax, their agents and assigns, to work within the creek to arrest the erosion on the North East corner of the Pastori Bridge is hereby revoked; as of this date September 3, 2012. Please recall that the Right of Entry entered into by the Town of Fairfax their agents and assigns, and MT&CC LLC and Michael Mackintosh; had a written clause allowing either party to cancel and vacate the agreement immediately upon written notice by either party. This is that written notice.

The property is private property and the Fairfax Police department is hereby requested to enforce the laws, prohibit and remove people, Town officials, Town agents, Engineers, Assigns, Contractors, Agencies, etc. To access the creek, any and all parties/entities must request permission to enter the private property owned by the MT&CC LLC and provide proof of insurance with the MT&CC LLC and Michael Mackintosh named as an additional named insured. Permission will not be unreasonably withheld if the purpose is to improve the creek.

This revocation and cancelation is due to the fact that Fairfax has capriciously decided to rescind their approval of the contract publically awarded to Wildcat Engineering to stabilize the bank. The bank erosion is the direct result of the Town's water pouring out of the Pastori Pipe onto the properties of the MT&CC and Wendy Orear. This erosion started after the 6 foot extension of the outfall pipe failed during the flood of 2006. Instead of reattaching the pipe, the Town directed the dumping of large rocks from the top of the bridge down on the bank and foundation. This action of dumping the rocks broke the foundation and pushed the soil away from the bridge. The remaining rocks provided a perfect hard surface for the Pastori water to splash off the rocks and erode the bank. The town has been aware of this for 6 years.

My neighbor's house is approximately 11 feet away from the creek. The Pastori pipe water has eroded a 5 foot hole under the bank towards the house. The fact that the Town Council publically stated that they did not want to spend this much money to protect one property owner's bank; is unconscionable. It is not the Town's money to throw away. The money to repair this site came from FEMA. By walking away the Town will incur walking away fees of approximately \$20,000.00 from Wildcat; Alice Rich's fees; 6 years of CSW fees; 6 years of Fairfax staff fees; over \$43,000.00 of FEMA money, permit fees, and credibility with the different agencies.

The Town of Fairfax enlarged the Pastori pipe under Pastori Avenue without proper permits. They stated that they were categorically exempt from CEQA under a provision that allows for the replacement of a preexisting pipe up to ¼ mile in length. This same provision does not allow for the enlargement of the pipe. They now have created an environment that builds pressure on the water exiting from their pipe. This pressure could be alleviated by putting in flow monitors.

By enlarging the pipe 4Xs the Town of Fairfax is attempting to allow 4 times the volume of water to enter the creek over the same duration of time, at peak flows. This will add to the flooding of the Ross Valley. It will add to an increased sediment load barreling down the creek. This will lead to more erosion and sediment deposits. All the time the Town of Fairfax represented they did not need a stream bed alteration permit because "it was the same water entering the creek".

The Town's current suggestion is to seize (it will have to be through Eminent Domain or Inverse Condemnation) the front yard land a few feet in front of my neighbors front door adjacent to a small right of way. This seizure is to facilitate increasing the Pastori pipe from the preexisting 24" diameter up to a 48" diameter pipe. Remember by diameter this is a 4 times increase of water dumping into the creek, at peak flows.

The Town is breaking their nose in spite of their face, to continue a 40 year grudge.

Right now there are Federal and State programs aimed to protect our future by rebuilding the many bridges in the Ross Valley (recent example the Lagunitas Ave Bridge in Ross). The Federal Government is offering to pay 88% and the State is offering to pay 12%. They want our aging bridges replaced for the safety of our communities, especially seismic upgrades.

The replacement of the Pastori Bridge is for the benefit of the Town. The MT&CC is elevated above FEMA's 5% or 500 year flood plane. The Town's of Fairfax and San Anselmo flood because they are in the 1% or 100 year flood plane. When our town is under water the MT&CC is high and above the floods. The MT&CC is the safe place where the town can go for temporary housing with a line of sight to San Rafael hill for communications.

The proposal offered to the Marin Town & Country Club would replace the Pastori Bridge with a bridge 12 feet wider. Architecturally it will look the same. It will include new "belvederes" where people can sit and watch the fish jump with a new fish ladder. Currently we have an antiquated design that impedes and stops the migration of some fish. These generous proposals are aimed at improving the passage of fish through new fish ladders.

This proposal would also incorporate a new Pastori outfall pipe. It would also correctly address the erosion caused by the Town's pipe. The Town would save the bank stabilization costs, fees, engineering, permits, contractors, everything. The Town of Fairfax as lead agency could be paid \$200,000.00 to oversee the grant distributions.

The catch; The Federal and State Governments can not give public money to a private stake holder. What to do? The MT&CC LLC offered to give to the Town of Fairfax the Pastori Bridge and the land it sits on, unencumbered for FREE. The Town Council refused the gift.

In 2006 the MT&CC received a grant of \$1,900,000.00, from the State Water Resources Control Board to restore the creek, Pastori fish ladder, and the Pastori outfall pipe. The matching funds to be put up by the Marin Town & Country Club were between \$458,000.00 and \$500,000.00. The Fairfax Town Council scuttled those plans also.

Maybe it is time we find a Town Council that wants to represent all their constituents and restore our beautiful creeks. The Council fails to understand that “What is good for the Town is good for you; and what is good for you is good for the Town”. We do not need a Town Council that spends money on personal agendas continuing a 40 year grudge.

Date: May 9, 2013

File: 4.1086.14

Mr. Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

**RE: PASTORI STORM DRAIN OUTFALL
STATUS OF ENVIRONMENTAL PERMITTING**

Dear Garrett:

This letter summarizes the status of environmental permitting for the Pastori Storm Drain Outfall project.

APPROVED PLANS FOR ENVIRONMENTAL PERMITTING

Authorization under the U.S. Army Corps of Engineers (Corps) Nationwide Permit #3, the San Francisco Bay Regional Water Quality Control Board (Water Board) Conditional Water Quality Certification, and the California Department of Fish and Wildlife (CDFW - formerly California Department of Fish and Game) Final Streambed Alteration Agreement were all issued based upon the attached Bank Stabilization for Pastori Storm Drain Outfall set of plans consisting of 4 sheets (EN1 and EN2 are dated April 14, 2010 and EN3 and EN4 have a revision date November 21, 2011).

ENVIRONMENTAL PERMITTING PROJECT DESCRIPTION

The project description for the approved set of plans and environmental permitting includes the installation of a 48-inch diameter HDPE pipe that will replace the existing 24-inch diameter pipe, stabilization of the failed creek bank with a stable engineered rock slope protection (RSP) energy dissipation structure including a rootwad (with trunk) installed to enhance fish habitat and provide refugia. The project also includes the installation of four (4) "perma-jack" piles to protect and support the existing bridge wingwall footing and the filling of voids that have developed between the concrete footing and the wingwall. The dewatering plan to be implemented so construction can occur has also been approved. Removal of the bigleaf maple tree adjacent to the bridge wingwall is not included in the project description.

CEQA

"The Water Board, as a responsible agency under CEQA, has considered the MND and finds that the Project's significant environmental effects that are within the Water Board's purview and jurisdiction have been identified and will be mitigated to less-than-significant levels. Specifically, significant impacts pertaining to wetland and aquatic habitat and water quality will be mitigated to less-than-significant levels."

Mr. Garrett Toy
Town Manager
Town of Fairfax
May 9, 2013
Page 2

Before the CDFW may issue an Agreement, "it must comply with the California Environmental Quality Act ("CEQA"). In this case, the Department, acting as a responsible agency, filed a notice of determination ("NOD") on June 12, 2012, based on information contained in the Pastori Storm Drain Outfall Project, Mitigated Negative Declaration the lead agency prepared for the Project. Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the project." No party challenged the filing of the CDFW's approval of the project.

EXPIRATION OF ENVIRONMENTAL PERMITTING

The Corps "verification will remain valid for two years" from the June 12, 2012 date of the Corps letter or until June 12, 2014. "Activities which have commenced (i.e. are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d)." In other words, per the Corps, the Town can construct the project in 2013 or 2014. If it is to be constructed in 2014, then the construction contract must be signed before June 12, 2014.

Per the CDFW Final Streambed Alteration Agreement, the Town can construct the project in 2013. The Town will need to extend the Agreement before December 31, 2013 if it would like to construct the project in 2014.

There is no expiration date stated in the Conditional Water Quality Certification.

CONDITIONAL APPROVALS

All of the environmental permitting is based upon certain conditions of approval being met. All letters contain the measures that must be implemented and tasks that must be completed. The measures to be implemented should be included in the bid documents so the contractors can include the costs for implementing the measures in their bids. The letters from the Corps, Water Board and CDFW plus the National Marine Fisheries Service (NMFS) Biological Opinion are attached.

PUBLIC COMMENTS

If there are any concerns voiced by the public or creek groups, they should be informed that the design for the Pastori Storm Drain Outfall project was prepared in conjunction with Matt Smeltzer, author of the "Geomorphic Assessment of Town of Fairfax Project Sites, Final Report" for all of the FEMA Fairfax creek projects. In addition, the plans and "Hydrology and Hydraulic Analysis" were reviewed and approved by Jack Curley, Capital Planning and Project Manager at County of Marin Public Works Department.

Mr. Garrett Toy
Town Manager
Town of Fairfax
May 9, 2013
Page 3

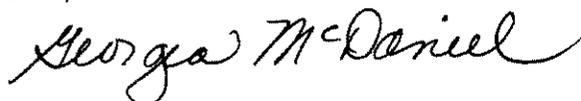
Please notify the agencies if the Town decides to move forward with the construction of the project. Below is the contact information for the agency representatives assigned to the project.

Corps	Roberta Morganstern, (415) 503-6782 Roberta.A.Morganstern@usace.army.mil
Water Board	Xavier Fernandez, (510) 622-5685 xafernandez@waterboards.ca.gov
CDFW	Tim Dodson, (707) 944-5513 tdodson@dfg.ca.gov
NMFS	Amanda "Mandy" Morrison, (707) 575-6083 Amanda.Morrison@noaa.gov

If you have any questions or need additional information, please contact me at my cell number (707) 529-7643 or via email at Georgia@gmcdassoc.com.

Best regards,

CSW/STUBER-STROEH ENGINEERING GROUP, INC.



Georgia McDaniel, M.C.P., R.L.A.

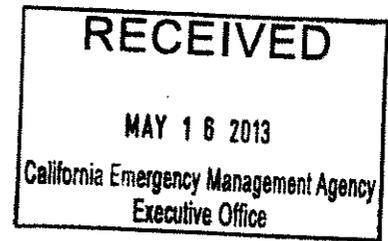
GKM:kab

- Attachments:
1. Letter to Georgia McDaniel from Jane M. Hicks, U.S. Army Corps of Engineers, dated June 12, 2012;
 2. Letter to Michael Rock from Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board, dated June 14, 2012;
 3. Letter to Michael Rock from Craig J. Weightman, California Department of Fish and Game (now California Department of Fish and Wildlife), dated June 13, 2012;
 4. NMFS Biological Opinion, dated June 4, 2012
 5. Bank Stabilization for Pastori Storm Drain Outfall, EN1-EN4, revised November 21, 2011

cc: Gregg Grubin, CSW | ST2



FEMA



MAY 10 2013

Mr. Mark Ghilarducci
Governor's Authorized Representative
California Emergency Management Agency
3650 Schriever Avenue
Mather, California 95655

MAY 17 2013
566796.1

Reference: First Appeal – Project Worksheet 2224
FEMA-1628-DR-CA, P.A. ID: 041-23168-00
Subgrantee: Town Fairfax
Cal EMA Log: 566796; FEMA Log: 303193.7

Dear Mr. Ghilarducci:

This responds to your letter dated April 11, 2012, which forwarded and supported a first appeal from the Town Fairfax (Subgrantee) for Project Worksheet (PW) 2224. On February 9, 2012, the Subgrantee appealed the decision by the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) to deny a time extension on PW 2224.

FEMA approved PW 2224 Version 1 for estimated costs of \$54,631.00 to address repair of a culvert and headwall with erosion control at the Pastori Avenue storm outfall facility. The approved Scope of Work (SOW) generally consisted of removing the damaged culvert and headwall, as well as reconstructing both along with placing 90 cubic yards of riprap as erosion control.

On May 23, 2011, and June 20, 2011, the Subgrantee requested approval from the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) for a change in the approved SOW for PW 2224 Version 1, resulting in an additional \$16,000.00 for a revised estimated total of \$70,631.00. In addition, the Subgrantee requested the deadline be extended through November 1, 2012.

On November 11, 2011, FEMA responded with a denial, stating that in accordance with Title 44 Code of Federal Regulations (CFR) 206.203(d)(1), the California Emergency Management Agency (Cal EMA) declared this project an Improved Project (IP) on September 9, 2008.

Mr. Mark Ghilarducci
First Appeal – PW 2224
FEMA-1628-DR-CA, P.A. ID: 041-23168-00
Page 2 of 2

Though it is not mentioned in the transmittal letter, Cal EMA informed FEMA that this project was considered to be part of a much larger jurisdiction-wide storm drain improvement project. Federal funding for IP's is limited to the federal share of the estimated cost of the original project, or the federal share of the actual cost to complete the project, whichever is less. FEMA noted that incorporating this small project into a jurisdictional-wide drainage-improvement project, and choosing to complete an IP rather than the original SOW to repair to the pre-disaster condition, are not circumstances beyond the control of the Subgrantee. Therefore, FEMA denied the Subgrantee's request for additional funding and additional time for this IP, in accordance with Title 44 CFR § 206.204(d).

In the Subgrantee's appeal, they appeal only the time extension. The Subgrantee provided additional information to substantiate the request for a time extension, including: a summary of the Pastori Storm Drain Outfall Delays, the Pastori Drain Outfall Support Information for delays, and a copy of its previous time extension request letter that outlines the construction timeline. FEMA has determined the information submitted sufficiently documents extenuating circumstances beyond the Subgrantee's control. Therefore, FEMA approves additional time to complete this project in accordance with 44 CFR § 206.204(c)(2)(ii). The deadline to complete this project is now November 1, 2013.

If you have any questions regarding this matter, please contact me at (510) 627-7100 or Terrie Zuiderhoek, Director of our Recovery Division, at (510) 627-7250.

Sincerely,



Karen E. Armes
Deputy Regional Administrator
FEMA Region IX

cc: Mr. Garrett Toy, Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Garrett Toy

From: Garrett Toy
Sent: Friday, July 19, 2013 5:18 PM
To: 'Marin Town and Country Club'
Cc: Mayor John Reed; Renee Goddard
Subject: Revised ROE
Attachments: Macintosh Right of Entry - Pastori Bank Stabilization Project - Revised 7-20-13gt (3).doc

Hi Michael:

Renee asked me to send you the revised ROE. The work has been defined as the work needed to perform the bank stabilization and not any pipe replacement activity. No other work will be done on the bridge other than what is needed for bank stabilization. However, please note that we cannot allow the ROE to be revoked at any time while we are performing the work in accordance with the ROE. Once we have started, and we are complying with the terms of the ROE, to allow revocation at any time would result in the following: 1) the Town incurring significant costs without completing the project, 2) result in the lost of FEMA funding and 3) place Wendy's property at risk. Let me know any questions. Thanks for your understanding.

Garrett

=====

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94930
415-458-2345

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Garrett Toy

From: Garrett Toy
Sent: Monday, July 22, 2013 4:57 PM
To: 'Marin Town and Country Club'
Subject: Right of entry (ROE)

Hi Michael:

Just wondering if you had a chance to review the ROE I sent you Friday. Please let me know any questions. We would like to have a signed agreement by tomorrow evening. Thanks

Garrett

=====

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94930
415-458-2345

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Garrett Toy

From: Garrett Toy
Sent: Tuesday, July 23, 2013 3:20 PM
To: 'Marin Town and Country Club'
Subject: RE: Revised ROE
Attachments: 2013-07-11-PASTORI-BID SUBMITTAL.pdf; 2013-07-12_Specs_All_BID_SET.pdf; Reso 13-38 Authorizing Pastori Bid.pdf

Hi Michael:

Attached are the plans and specs and resolution. I've asked our insurance provider to issue an insurance certificate per the ROE requirements. Let me know if you need more info. Thanks

Garrett

=====

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94930
415-458-2345

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From: Marin Town and Country Club [<mailto:mtcc@classactionlocator.com>]
Sent: Tuesday, July 23, 2013 3:06 PM
To: Garrett Toy
Subject: RE: Revised ROE

Garrett:

I started looking at your revised agreement. It states:

The Town will perform work for the bank stabilization per the plans and specifications in the 2013 Pastori Storm Drain Outfall bid package incorporated herein as reference. Specifically, the work performed will consist of items listed A-E in the Bid Schedule and **not** item F, Bid Alternate-Storm Drain Replacement.

Please provide the above so I can review specifically what you are doing.

Please provide a copy of the resolution for the Town authorizing bidding current project on the Pastori Bridge.

What is the status of the Insurance policy naming Wendy and I as additional named insureds?

Michael

From: Garrett Toy [<mailto:gtoy@townoffairfax.org>]
Sent: Friday, July 19, 2013 5:18 PM
To: Marin Town and Country Club
Cc: Mayor John Reed; Renee Goddard
Subject: Revised ROE

Hi Michael:

Renee asked me to send you the revised ROE. The work has been defined as the work needed to perform the bank stabilization and not any pipe replacement activity. No other work will be done on the bridge other than what is needed for bank stabilization. However, please note that we cannot allow the ROE to be revoked at any time while we are performing the work in accordance with the ROE. Once we have started, and we are complying with the terms of the ROE, to allow revocation at any time would result in the following: 1) the Town incurring significant costs without completing the project, 2) result in the lost of FEMA funding and 3) place Wendy's property at risk. Let me know any questions. Thanks for your understanding.

Garrett

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Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94930
415-458-2345

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Garrett Toy

From: Marin Town and Country Club [mtcc@classactionlocator.com]
Sent: Tuesday, July 23, 2013 10:10 PM
To: Garrett Toy
Cc: Renee Goddard; wendy; Mayor John Reed
Subject: For discussion tomorrow night
Attachments: 20130724001153673.pdf; 20130724001211537.pdf

Dear Garrett:

June 21, 2013: You send me the attached letter advising that you want to place my property on your Parcel Inventory list.

June 26, 2013: Town Resolution 13-38 to request bids that include enlarging the pipe, is agreed to/signed in closed session.

July 19, 2013: You send a ROE requesting my signature.

July 23, 2013: You send me a copy of Town Resolution 13-38, asking for an alternative bid to enlarge the pipe compromising my bridge.

July 23, 2013: You send me the bid proposal to review, 237 pages.

July 23, 2013: You send me the engineering specifications illustrating pipe enlargement alternative.

July 23, 2013: I respond to your June 21, letter, see attached.

How many meetings have you had on this subject? I have not been included. Being excluded from discussions does not instill trust. Renee is the only one who has invited a conversation. I thought you were instructed to open dialog with Wendy and me? Maybe the rest of the Council could learn from Renee's lead.

John said that almost \$500,000.00 has been spent on this issue. The Town wants to spend an additional \$250,000.00? I offered to give the Town the bridge for free to place it into the Fed/State seismic upgrade program saving Fairfax \$500,000.00 and giving our community an asset with a new fish ladder. The Council states that they do not want the new bridge because it might help me? Maybe there is something else.

Someday the Council will realize: What is good for the Town is good for me; and what is good for me is good for the Town.

Generally when someone wants to negotiate something in good faith they invite parties to the table so they can address their concerns.

When Judy was manager she would pick up the phone and share what things were important so we could move forward. This novel approach still works.

I signed the original ROE agreement Fairfax sent to me last year. I will sign it again if we restrict the new changes to current dates. I am also in the process of reviewing your new ROE language.

Please do not lose the \$49,000.00 from FEMA by stalling this process. It has been 7 years since FEMA offered to pay towards this repair. I feel Fairfax has used Wendy as a pawn.

Maybe it is time for change where the Town works with this property? Not against it.

Michael



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

6/21/2013

Marin Town and Country Club LLC
#40 Pastori Avenue
Fairfax 94703, California

PO Box 150870
San Rafael, California 94915
VIA CERTIFIED MAIL

RE: Notification - Assessor's Parcel No.: 002-131-11

Dear Mr. Mackintosh:

Your property is currently listed in the Town General Plan's "Parcel Inventory." Parcels are on the list because they are valued by the Town of Fairfax for its/their open space and/or conservation potential should it/they ever become available for purchase. The inventory includes publicly owned, currently-designated open space parcels, as well as privately-held lands that are not zoned or otherwise designated open space but that, if protected, could contribute to the Town's open space, land use, and conservation goals and objectives.

In addition to notifying owners that their properties are on the Inventory list, the General Plan also requires us to inform you that if you are considering development on these parcels, the Town requires that the Fairfax Open Space Committee (FOSC) review your development application. While the Town encourages applicants to contact FOSC prior to submission of their development applications, we also suggest applicants meet with Town staff prior to submitting an application or meeting with FOSC so we can provide more detail on the process.

The General Plan also requires that we respectfully request that you notify the Town of Fairfax if the parcels are ever offered for sale. For your reference, attached is a copy of the Open Space Element of the General Plan. You may download the entire General Plan and Appendices from the Town's website at <http://townoffairfax.org>.

Should you have any questions or wish to notify the Town that your parcel is for sale, please contact me at (415) 453-1584, email at gtoy@townoffairfax.org, or mail at the above address.

Thank you for your time and consideration.

Sincerely,

GARRETT TOY
Town Manager

**Marin Town & Country Club
P.O. Box 150870
San Rafael, CA 94915
(415) 925-1518**

FAX: (415) 925-1704

EMAIL: mtcc@classactionlocator.com

Garrett Toy
Fairfax Town Manager
142 Bolinas Road
Fairfax, CA 94930

July 23, 2013

Re: Letter of June 21, 2013

Dear Garrett:

I received your letter stating that my "property is currently listed in the Town's General Plan's "Parcel Inventory"". You go on to state that you have added an additional level of review (interference) by the Fairfax Open Space Committee before any development application. This is just one more attempt, of the many attempts over the last 41 years by the Town to financially diminish and inversely condemn this property.

Placing such a cloud over any entitlement, that could discourage conveyance or development, is a taking. It is also seen as interference with the production of income. Compensation would be summed by all diminished opportunities.

I encourage you to look at my zoning. You have no authority to add, alter, or carve out my entitlements. My zoning is by initiative. Only the voters can change my zoning.

Should you find such authority over entitlements by initiative, please provide. If you are unable to provide a legal standing within 30 days, I shall disregard your letter.

Recently I met with you and asked for help to procure permits to place a recreational Barn type building on my property respecting all zoning and setbacks. The Barn would be used for a Children's Mindfulness group, Cross Fit Gym, and with an open center inviting community dances. Any assistance would have been well received. The request for building this barn is well within my zoning and entitlements.

I received this letter while you are asking me for a ROE agreement under my bridge. I have to ask: is this your way of reaching out to build a relationship? You want me to trust, that you will repair my bridge if you damage it? You damaged my bridge 7 years ago. You still haven't fixed it.

Sending a letter that FOSC feels entitled to my personal property is the same negative attitude that has hurt Fairfax and stagnated this property for the last 41 years. FOSC has never presented an offer. It was listed for sale for "30" years before I purchased it.

The only offer, I am aware of, where the Town of Fairfax was involved, was when Fairfax Mayor Weinsoff, sitting on the RVSD acquisition committee collaboratively presented the following offer: For approximately ¼ of my acreage; I would receive a new bridge and fish ladder; RVSD would pay for the zoning change; and pay me \$4,000,000.00 in cash. Publically undisclosed, Fairfax would back the RVSD bond measure to purchase my property if the RVSD bond set aside money to build Fairfax a new community center with the Bondholders' money. I questioned the legality of that unwritten "agreement".

How would you feel if someone tried to take your personal property just because they want it?

What if you attempted to take the property through eminent domain? You would have to pay me for it.

As a municipality you have a much more stringent set of public housing compliance requirements. You could not afford to rebuild or legally manage the property as is. So you would have to evict over 65 people and pay to move and re-house them. How many millions and millions of dollars and years of litigation from the tenants, would you impose on the tax payers of Fairfax?

In 2010 West Marin had over 14,000,000 visitors. They spent approximately \$400,000,000.00. There are not that many rooms to accommodate everybody. Multiple trips had to be made to the 101 corridor, thus increasing traffic and congestion through Fairfax.

If the Town would be supportive of moving forward, we could restore the Club and add a hotel. A hotel would significantly reduce traffic, hire local, and provide the Town of Fairfax with possibly \$1,600,000.00 annually in TOT, \$300,000.00 to Fairfax in Property Tax, and an unknown Sales Tax component. Working with me could provide the Town of Fairfax over \$2,000,000.00 annually.

Isn't it time for a more congenial relationship where we work together to bring this underperforming asset to a place where it can benefit the entire community?

Michael Mackintosh

Garrett Toy

From: Garrett Toy
Sent: Wednesday, July 24, 2013 8:51 AM
To: 'Marin Town and Country Club'
Subject: RE: Revised ROE

Hi Michael:

As clarification, the ROE only applies to the bank stabilization work. The Council authorized a bid with the bank stabilization and bid alternate of pipe enlargement. The bids are due Aug 2nd with Council consideration on Aug. 7th. If you sign the ROE, I will recommend to Council on Aug 7th that they not award the Bid Alternate and only the bank stabilization. If the bid alternate is awarded, then your ROE cannot be used for the pipe enlargement work. Also, I'm assuming you are requesting \$5,000,000 insurance coverage in the ROE. I will ask our insurance provider to do that if that is the only issue with the ROE. The previous ROE was for \$2,000,000. Let me know. Thanks

Garrett

=====

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94930
415-458-2345

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From: Marin Town and Country Club [mailto:mtcc@classactionlocator.com]
Sent: Tuesday, July 23, 2013 7:34 PM
To: Garrett Toy
Subject: RE: Revised ROE

Dear Garrett:

I might be missing something here.

It appears that Fairfax Resolution 13-38 asks for a bid alternative to enlarge the pipe. Dated June 26, 2013. Your correspondence just prior fails to address this.

If you want an ROE you must provide proof that there is(are) no bids for this bid alternative.

Furthermore and as you know, \$2,000,000.00 would be inadequate to cover the bridge. The insurance will need to be \$5,000,000.00 per occurrence. This is very doable. While I was CEO/President of Atlas Elevator I was requested to raise all our insurance policies to \$5,000,000.00 per occurrence. That was 10 years ago.

Thank you

From: Garrett Toy [mailto:gtoy@townoffairfax.org]
Sent: Tuesday, July 23, 2013 3:20 PM

To: Marin Town and Country Club
Subject: RE: Revised ROE

Hi Michael:

Attached are the plans and specs and resolution. I've asked our insurance provider to issue an insurance certificate per the ROE requirements. Let me know if you need more info. Thanks

Garrett

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Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
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From: Marin Town and Country Club [<mailto:mtcc@classactionlocator.com>]
Sent: Tuesday, July 23, 2013 3:06 PM
To: Garrett Toy
Subject: RE: Revised ROE

Garrett:

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The Town will perform work for the bank stabilization per the plans and specifications in the 2013 Pastori Storm Drain Outfall bid package incorporated herein as reference. Specifically, the work performed will consist of items listed A-E in the Bid Schedule and **not** item F, Bid Alternate-Storm Drain Replacement.

Please provide the above so I can review specifically what you are doing.

Please provide a copy of the resolution for the Town authorizing bidding current project on the Pastori Bridge.

What is the status of the Insurance policy naming Wendy and I as additional named insureds?

Michael

From: Garrett Toy [<mailto:gtoy@townoffairfax.org>]
Sent: Friday, July 19, 2013 5:18 PM
To: Marin Town and Country Club
Cc: Mayor John Reed; Renee Goddard
Subject: Revised ROE

Hi Michael:

Renee asked me to send you the revised ROE. The work has been defined as the work needed to perform the bank stabilization and not any pipe replacement activity. No other work will be done on the bridge other than what is needed for bank stabilization. However, please note that we cannot allow the ROE to be revoked at any time while we are

performing the work in accordance with the ROE. Once we have started, and we are complying with the terms of the ROE, to allow revocation at any time would result in the following: 1) the Town incurring significant costs without completing the project, 2) result in the lost of FEMA funding and 3) place Wendy's property at risk. Let me know any questions. Thanks for your understanding.

Garrett

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Garrett Toy

From: Garrett Toy
Sent: Wednesday, July 24, 2013 9:07 AM
To: 'Marin Town and Country Club'
Subject: RE: Revised ROE

Hi Michael:

As clarification, the bid alternate (pipe enlargement) is an optional cost within the bid. The Council requested the bid package have the bid alternate to provide the greatest flexibility for the Council. The Council may chose to award only the base bid (bank stabilization) or both the base bid and bid alternate. Bids are not due until Aug 2nd and we have not received any bids as of today. Please note that the bids are sealed, meaning they can only be opened at 2:00pm on Aug. 2nd. The Council will consider awarding the bid at their Aug. 7th meeting.

If you are saying you will not sign the ROE, as provided, unless the bid alternate is eliminated or not awarded, please let me know. As I stated in my previous email, the ROE is only valid for the bank stabilization work. I will recommend to the Council that they not award the bid alternative if you sign the ROE, as provided, since the ROE is only valid for the bank stabilization work. Thanks

Garrett

=====

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94930
415-458-2345

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From: Marin Town and Country Club [<mailto:mtcc@classactionlocator.com>]
Sent: Tuesday, July 23, 2013 7:38 PM
To: Garrett Toy
Subject: RE: Revised ROE

Have you read your RFP? It continues to discuss the bid alternative. The bid alternative is created by resolution thus needs to be deleted by resolution.

Let's get going. Your trying to push the pipe through is going to quash this project.

Have you received bids for the alternative?

From: Garrett Toy [<mailto:gtoy@townoffairfax.org>]
Sent: Tuesday, July 23, 2013 3:26 PM
To: Marin Town and Country Club
Subject: RE: Revised ROE

Hi Michael:

I just sent you the info you requested, but the files are pretty large(7MBs combined). If you do not receive , the plans and specs are available on the Town website at www.townoffairfax.org, on the homepage under RFPs posted. I attached the reso again. Let me know if you need more info. Thanks

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From: Marin Town and Country Club [<mailto:mtcc@classactionlocator.com>]
Sent: Tuesday, July 23, 2013 3:06 PM
To: Garrett Toy
Subject: RE: Revised ROE

Garrett:

I started looking at your revised agreement. It states:

The Town will perform work for the bank stabilization per the plans and specifications in the 2013 Pastori Storm Drain Outfall bid package incorporated herein as reference. Specifically, the work performed will consist of items listed A-E in the Bid Schedule and **not** item F, Bid Alternate-Storm Drain Replacement.

Please provide the above so I can review specifically what you are doing.

Please provide a copy of the resolution for the Town authorizing bidding current project on the Pastori Bridge.

What is the status of the Insurance policy naming Wendy and I as additional named insureds?

Michael

From: Garrett Toy [<mailto:gtoy@townoffairfax.org>]
Sent: Friday, July 19, 2013 5:18 PM
To: Marin Town and Country Club
Cc: Mayor John Reed; Renee Goddard
Subject: Revised ROE

Hi Michael:

Renee asked me to send you the revised ROE. The work has been defined as the work needed to perform the bank stabilization and not any pipe replacement activity. No other work will be done on the bridge other than what is needed for bank stabilization. However, please note that we cannot allow the ROE to be revoked at any time while we are performing the work in accordance with the ROE. Once we have started, and we are complying with the terms of the ROE, to allow revocation at any time would result in the following: 1) the Town incurring significant costs without

completing the project, 2) result in the lost of FEMA funding and 3) place Wendy's property at risk. Let me know any questions. Thanks for your understanding.

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Garrett Toy

From: Garrett Toy
Sent: Thursday, July 25, 2013 1:38 PM
To: 'Marin Town and Country Club'
Subject: RE: Revised ROE

Hi Michael:

I need to know if you are going to sign the ROE by 5:00pm today. Unless I hear otherwise from you, I will need to assume that you are not going to sign the ROE without significant revisions. Thanks

Garrett

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Town Manager
Town of Fairfax
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From: Marin Town and Country Club [mailto:mtcc@classactionlocator.com]
Sent: Wednesday, July 24, 2013 2:47 PM
To: Garrett Toy
Subject: RE: Revised ROE

Dear Garrett:

I will address the language in the ROE as soon as I can. The Town has had 7 years to work on this. You just sent me over 200 pages to review.

Please request the Council to pass a resolution rescinding the "Bid Alternative". The alternative bid does not encourage my participation.

Thank you

From: Garrett Toy [mailto:gtoy@townoffairfax.org]
Sent: Wednesday, July 24, 2013 9:07 AM
To: Marin Town and Country Club
Subject: RE: Revised ROE

Hi Michael:

As clarification, the bid alternate (pipe enlargement) is an optional cost within the bid. The Council requested the bid package have the bid alternate to provide the greatest flexibility for the Council. The Council may chose to award only the base bid (bank stabilization) or both the base bid and bid alternate. Bids are not due until Aug 2nd and we have not

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Michael

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Sent: Friday, July 19, 2013 5:18 PM
To: Marin Town and Country Club
Cc: Mayor John Reed; Renee Goddard
Subject: Revised ROE

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Garrett Toy

From: Marin Town and Country Club [mtcc@classactionlocator.com]
Sent: Friday, July 26, 2013 5:10 PM
To: Mark Lockaby; Marin Town and Country Club
Cc: Garrett Toy
Subject: RE: Right of Entry

Dear Mark:

The ROE was never denied. I agreed to sign the exact language of last year's ROE your employer, Fairfax, provided for the same project.

The contention is that you want a different signed ROE with no revocation clause, inadequate insurance, and inadequate indemnification. You want the non revocable ROE signed in advance of deciding whether or not the Town will award the Town's Resoluted RFP to proceed with the Pastori Pipe enlargement that puts my property at risk.

Garrett advised a couple of days ago that the bid for the alternative pipe enlargement is moving ahead and he "might suggest to Council not to include the enlargement" on August 7th, after they receive the ROE. Fairfax demands the ROE today and will advise if they award the bid on August 7th, with no revocation.

You then personally tell me how you are going to post this "Notice to Abate Public Nuisance" on the door of each of my tenants after you serve me a copy?

The only conceivable purpose in your actions would be to harass me further.

I have asked you in advance not to enter my property. As it is private and posted.

These actions are deplorable.

Michael Mackintosh

From: Mark Lockaby [<mailto:mlockaby@townoffairfax.org>]
Sent: Friday, July 26, 2013 3:40 PM
To: Marin Town and Country Club
Cc: Garrett Toy
Subject: Right of Entry

Mr. Mackintosh:

This email is to inform you that we have not received the Right of Entry (ROE) from you regarding the Pastori Bank Stabilization project (Project). Despite numerous attempts to gain your cooperation to allow access to your property for the Project, you have indicated you will not sign the ROE. Your failure to authorize access to your property has resulted in the Town finding your property in violation of the provisions of Section 1.12.045 of the Town of Fairfax Municipal Code. However, you can still comply with Town Code by providing written authorization to the Town by Monday,

August 5, 2013 by 12:00 noon to allow the Town to perform the Pastori Bank Stabilization project during the time period of August 1, 2013 to October 31, 2013.

Mark Lockaby
Building Official
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
415-458-2370

Estimated Bank Stabilization Project Costs

Plans and Spec Preparation/Bid Award	\$12,000
Biological/Water Quality Consultant (up to)	\$26,000-\$46,000
Construction Management /Other	\$37,400
Bank Stabilization Only	\$150,000
Project Contingency (10% of hard cost)	<u>\$15,000</u>
Total Estimated Costs	\$240,400-\$260,400