

# Midcoast Community Council

An elected Municipal Advisory Council to the San Mateo County Board of Supervisors

P.O. Box 248, Moss Beach, CA 94038-0248

Laura Stein . Lisa Ketcham . Bob Kline . Bill Kehoe . Len Erickson . Dan Haggerty

## Approved Minutes: Meeting on December 12, 2012

### **Call to Order.** 7:00

Present: all councilmembers

County staff: Nicholas Calderón, Deputy County Mgr Peggy Jensen, County Counsel John Nibbelin  
~30 members of the public

### **1. Election of Council Officers for 2012-2013**

Chair: Laura Stein; Vice-Chair: Lisa Ketcham; Secretary: Bob Kline; Treasurer: Bill Kehoe.  
After nomination & unanimous vote for each office, Laura took over as Chair of meeting.

### **2. Board of Supervisors Report – Nicholas Calderón**

Memorandum of Understanding (MOU) from TA is expected in January. Then County can move forward on planning process for Midcoast Hwy 1 crossings, left turns, medians.  
MCC has vacancy, posted on county website under Board/Commissions, also on MCC website.

### **3. Public Comment**

Leonard Woren: CA King Tides Initiative encourages people to take coastal photos at peak seasonal high tides to demonstrate what normal conditions would be with sea level rise.

Cid Young (spoke after item 5a) At Fire Board meeting this evening, Burke moved special election March 12 as vote by mail; defeated 2-3. Alifano moved April 9 as standard ballot, passed 3-2. Additional burden to taxpayers for standard ballot election is \$55,000.

### **4. Consent Agenda:** Minutes for November 28, 2012 - approved 6-0

### **5. Regular Agenda**

**a. Montara Coastal Access & Views from County Rights-of-Way.** Follow-up to 10/24 MCC presentation, Deputy County Manager Peggy Jensen will address issues of diminishing public coastal access and views from county streets and ROWs, focusing on the area from Montara Beach south to 8th St.

Lisa: Gave brief review presentation of issues/questions raised at 10/24 meeting.

Peggy Jensen: Forwarded 10/24 presentation to Planning/Bldg, DPW, & County Counsel, convened staff meetings, talked with State Parks. 2 issues: access to coast and views.

**Access along Marine Walk** – is state parkland, was never developed as a trail, is not a path that's safe. Bluff access – potentially dangerous, eroding in some areas, ice plant growth can be slippery, ground can be unstable - don't want to encourage people into unsafe areas. Rescue operations expensive. State Parks has no money for survey re encroachments.

**4<sup>th</sup> & 5<sup>th</sup> paper streets:** 1909 subdivision laid out with street rights-of-way. County can choose whether or not to accept the rights-of-way. 4<sup>th</sup> and 5<sup>th</sup> were never accepted into County maintained road system. For that reason, there is no public access there. (John Nibbelin: Case of **Danielson v. Sykes** may cover owners of area parcels, but don't know if anyone needs 4<sup>th</sup> or 5<sup>th</sup> to access their parcels. General public right of access is separate issue.)

**Seacliff Ct.** – Staff concurs with MCC recommendation of guard rail. Need additional research on land ownership to determine next step re fence. Recommend combining guard rail installation and any changes to fence under one CDP or CDX. Will attend first MCC meeting in Feb to give status update.

**7<sup>th</sup> St.** – Staff approves 2 guard rails positioned for adequate parcel access. Fence is allowed by encroachment permit, though understand public wants access to coastal views. CCC appeal pending re 2<sup>nd</sup> story house addition with possible conditions regarding fence. Need to let that process run its course. Want to talk to property owner about leaving the gate open. Want to combine permits for any work done, same as at Seacliff.

Lisa: re Danielson v Sykes: State Parks needs access to their bluff-top parcel via 5<sup>th</sup> St. - by extension doesn't the public need access to their state parkland?

John Nibbelin: State Parks has no plans to develop the area. He doesn't think public has right of access to a State Park that he doesn't know actually exists or ever will exist.

Lisa: Not suggesting in any way that State Parks develop the site. It has spectacular views – only public access currently is via hazardous trail up from Montara Beach. Nice place to just sit & enjoy the view. Unless you're nimble enough to go up that trail, you're out of luck. So that parkland just sits there for the sole use of the neighboring property owner.

Bill: Please clarify re 4<sup>th</sup>/5<sup>th</sup> – why they are not public – because the County didn't accept them?

John Nibbelin: There are paper streets on subdivision map. Rights that might exist vis-à-vis those paper streets are controlled by state decisional law, and the Subdivision Map Act to some extent. There may be rights that private individuals, as owners of parcels in that subdivision have, but not a public right of access, because the dedications were never accepted into the County road system.

Peggy Jensen: Property owners own to the middle of the street. Only when County accepts the ROW into road system does the public access right override the property owner's.

Bill: re State parkland, even though no plans to "develop", doesn't public have right to access?

John Nibbelin: Lots of public land not necessarily open for public access. We were talking about streets that might access that land that should or should not be open to public access. Don't know if public should have access if there are concerns about safety.

Bill: If the public wanted to pursue this, can they petition the county, that we think there are valuable coastal views that entire community should be able to share and why doesn't the county have a ROW there for public access? Isn't that what the Coast Act was about?

Peggy Jensen: Other option would be for State Parks to provide access via public land. If they've posted danger signs, there may be good reason why they don't want people there.

Bill: Seen encroachment after encroachment expanding into Midcoast streets. 7<sup>th</sup> St fence is right in middle of street. County lets them do it. Now I hear it's almost institutionalized.

Peggy Jensen: County doesn't have resources now for 5<sup>th</sup> St. But at 6<sup>th</sup>/7<sup>th</sup> can improve safety with guard rail and are looking at options around fencing.

Bill: Wouldn't be fair to people on 6<sup>th</sup>/7<sup>th</sup> if County won't apply same rules to all street ends with vistas. What do we need to do to get those streets accepted into the county system?

Peggy Jensen: That's a question we can take back.

Lisa: Can hedge with barbed wire on 7<sup>th</sup> St be removed also? Will all improvements have to wait until CCC appeal is resolved? Aside from the possible permit condition to remove fence, what is the county policy for revocation of an encroachment permit?

John Nibbelin: Would revoke encroachment permit if we had a need for road purposes.

Lisa: BoS has to approve abandonment of ROW? John: correct.

Lisa: So, BoS would have to approve abandonment of 4<sup>th</sup>/5<sup>th</sup> St ROW

John Nibbelin: that's assuming that we took it in the first place, which we didn't.

Lisa: There are paper streets in Seal Cove where adjacent property owners were told by County not to plant in ROW. Unimproved streets are used by vehicles. Neighboring property owners are not allowed to block - have to get encroachment permit to plant anything.

John Nibbelin: That's not a matter that vests in the public generally. It's a matter of concern to the owners of the parcels in the subdivision. Not a concern of the County broadly.

Lisa: To clarify, nowhere in the presentation were we suggesting that lateral access along the Marine Walk or bluff-top be provided -- only reason we brought it up was because it establishes the property line. We're only interested in access to coastal ends of county streets and rights-of-way. So you're saying at the end of 7<sup>th</sup> St you would revoke the encroachment permit if the county had a need for that street area. In this age of the Coastal Act and the public having a right to coastal views, is that not reason enough for the county to provide non-motorized access to the end of that street for the public?

John Nibbelin: That's a fair argument. We want to wait for process of review at CCC.

Lisa: CCC staff may not be able to make nexus with fence in the appeal and all this waiting may have been for naught. Just put the house addition aside and look at the encroachment permit. Why is that set in stone? It's not an easement. We urge the county to be more motivated to protect our coastal access on these rights-of-way. These are like picture windows at the end of these short streets – why board them up? Why shut them off?

Peggy Jensen: We appreciate your point.

Len: MCC/community coastal trail effort has compiled list of Midcoast coastal access points. Have continuing dialog with DPW/Parks - slow process. Hoping to consolidate effort.

Bill: Don't understand subdivision rights vs county.

Peggy Jensen: There are roads in county that are private and maintained by people who live along the road - same thing at 4<sup>th</sup>/5<sup>th</sup>.

John Nibbelin: As a subdivision property owner you have the right to make use of what's shown on the subdivision map. Not the public generally.

Laura: State parkland - My tax dollars pay for this - how to pursue access?

Peggy Jensen: Suggest start with State Park Superintendent Paul Keel

Lisa: He already did change the signs. It no longer says Area Closed -- now says Danger Sheer Cliff. There are sheer cliffs at Pillar Point Bluff, but it's not closed off.

>>10-minute break to move cars; then public hearing at 8:00.

Leonard Woren: Subdivider dedicates land for public streets - that's where it sits until street is developed. Just because not in county road system does not mean streets are not public ROW. A number of Coastside streets in public ROW which are not county-maintained roads, either not built to standards or never submitted to be accepted into county system. Heard a lot of arguments on why the county shouldn't do anything - wrong question. Question is "what's the right thing to do"; most people here know what that is, MCC needs to ask the county to get it done. Philosophically similar issues in other places on Coastside, notably Miramar) - private landscaping out into ROW to prevent public parking there.

William Giffen: 30-yr resident at 103 Seacliff & 8322 Cabrillo Hwy; Submitting for the record: A: County map showing Marine Walk & Lighthouse Ave as being rejected by the BoS. A-1: 1 of 4 quitclaim deeds to his property describing ownership of Marine Walk. B: Parks & Rec map with legend identifying the bluff-tops in question as having no trails for public access or any public designation. C: letter of recommendation (re Resolution #38155), that discourages public access on these cliffs and recommends that public be directed to safe access to the north. D&E. BoS res #039939 signage for entrance to Seacliff Ct: no parking, no beach access, not a through street. Entrance to 5<sup>th</sup> St remains private property. Submitting F 1-5, letter from Ivy Rosequist 2/4/2001 to MCC describing multiple cliff rescues. G: aerial view of Montara State Beach & bluffs and GGNRA trails, & their proximity to our homes & neighborhood. Final important note: Public access brings with it garbage, stolen property, vandalism, loitering, peeping, poaching, drug manufacture and use. Please heed recommendation of CCC in resolution #38155 directing public north to Montara SB where there is parking, bathrooms, garbage cans, stairs, handrails, park rangers, rescue, etc. (Referenced documents were not turned in.)

Michael McCracken: attorney representing Westerfields (present), property owners at end of 7<sup>th</sup> St. Good ideas to add guard rails & take hedge out (not on their property, blocks views). Fence has been there since 50's per photo evidence. Re revoking encroachment permits, citing Danielson v. Sykes real property street law, pretty clear that governs rights of owners within subdivisions. Difference between general revocation of encroachment permit and this case is the right vested back in 1972. Letter by County Counsel in file to that effect. Legally the fence is vested right grandfathered under the Coastal Act because it pre-existed the Coastal Act. Westerfields are committed to keeping the gate open starting now during day for public access (closed at night). County assume area control & management. Clarified per Lisa's question; small gate will be open, public access signage posted; public access just to end of 7<sup>th</sup> St, not for lateral access along bluff west of house.

Neil Merrilees: Live right on ocean in Miramar, understand that visitors do bring trash, park in front of your house, can be irritating. On other hand when he didn't live by the ocean, really appreciated the ability to visit and see the ocean. We could all do a better job of preserving the views, preserving and creating public access for visitors. As locals it is our job to keep the coast nice, including for people who don't live on the coast. County's job to monitor what goes on, but also to monitor and improve it for people who don't live in County. People come here from all over the world and when they drive down Hwy 1 and they can't see the ocean, that's a shame. Implores the property owners to lower the fence to reasonable level, 3 or 4 ft., so people can see over the top and see the ocean. Every spot on the coast where you can drive by and see the ocean for a moment, that's precious, should preserve that, or in places where we can improve that by pruning trees or changing fences, let's do that.

Carl May: Coastal access is largely what Prop 20 was about. This access is not just about beaches - much of the coastline is not beach - there are public values along the rocky shoreline and bluff-tops. Property owners make offers to dedicate access in exchange for

development. MCC should consider access policies of LCP. County doesn't have right to give away aspects of Coastal Act.

David Beck: 138 Seacliff Ct. since '88 – just read about meeting in HMB Review today – would expect direct mail notice to property owners. Fence was originally chain link - rusty. People on end of Seacliff thought wood looked better and replaced it. Personally, he is fine with what county is recommending re Seacliff. Can't speak for 3 others on Seacliff.

Lisa: Made extra effort to get articles in Review last week and this week; asked Peggy Jensen what to do about notifying property owners.

Peggy Jensen: MCC is advisory group with no specific action to be taken, direct mail notice from County not required.

John Nibbelin: informational meeting only

Bill: MCC agendas posted minimum 72 hrs in advance at 3 post offices, on website, via google email notification list. County does not give property owner info to MCC.

Karen Wilson: County needs to participate in improving/protecting public coastal access.

Encouraged that a lot of people who live in the area are supporting opening that up. Views disappearing behind tall trees/hedges. Now will be going through tunnel. Safety teams need to be able to reach coast. All of Montara is on a dangerous cliff. Montara only has 2 subdivisions -- Farallone City in front with numbered street names – all those property owners should have access to the paper streets. County fence ordinance is maximum 4ft high in front yard – should be enforced at least in Scenic Corridor. Ordinance also covers trees and hedges that block public views. Need room to pull off highway, to safely walk along hwy. What is the right thing to do – share our views. No one is opposed to the addition to Westerfield property – we're opposed to letting the fence stand. If County has made a decision that a better outcome is a guard rail instead of the fence, let's just do it, and save the CCC (and tax payers) some money.

Lisa: Reminded of the benches placed by neighbors along Beach St. near Moss Beach Distillery for folks to sit and enjoy the views – could envision this kind of use for street ends in Montara. Appreciate attendance by County staff and the partial good news. Encourage County to consider fighting for our coastal access and look forward to updates.

Peggy Jensen: Summary of next steps: On Seacliff need to research property ownership at fence and bundle with permit for guard rail; will report in Feb. On 7<sup>th</sup> St. Mr. McCracken has indicated they will comply with what County asked for re access through gate, and no interest in keeping hedge. As soon as CCC makes decision, if any action is called for on fence, that will be incorporated into permit for guard rails; can report in Feb. If there are additional questions for State Parks, best to speak with them directly.

## **b. La Costanera Restaurant Hours of Operation and Montara Beach Parking.**

Consideration of draft comments on early planning referral of restaurant application to modify their Use Permit to allow daytime hours. Original permit limits hours to 5pm to closing time in order to provide public beach parking in the shared lots.

Lisa: Slide presentation summarizing & illustrating issues and points made in letter.

Commenting now on early referral dated September which MCC didn't receive until late November. Next step will be public comment period on environmental documents (NegDec) to be released before Christmas, which MCC will consider on Jan 9. Planning Commission to consider approval in late Jan.

Len: to Nicholas, why didn't MCC received early referral?

Nicholas: Don't know why, but spoke with Planning to get assurance that won't happen again.

Len wants Nicholas to check with Planning regarding MCC comments on parking numbers

Nicholas: Not a planner, but the way it was explained to him, those parking spaces were not formalized so any change would be a net increase.

Lisa: As we saw with Princeton Boatyard staff report, planner will answer every issue MCC has brought up in detail in the staff report. They have not got to that point yet on La Costanera.

Len: Montara Gateway – calling for a public forum to consider parking issues along entire stretch of Montara State Beach and GGNRA, including restaurant. Feels it is MCC responsibility to bring these issues to a common focus, doesn't see any other way for that to happen. He'll be working with agencies involved to hopefully garner their support.

Laura: This can't be discussed now, should be placed on future agenda.

Leonard Woren: No reason to change Use Permit conditions, nothing has changed.

Dave Olson: Although parking spaces not formalized, they are heavily used, day and evening, both for the beach and for the restaurant.

Carl May: Restaurant still exists due to extensive armoring in '80's. State lot – keep as is, just grade to improve drainage; good idea to set parking back from bluff. How will exclusive beach parking in improved state lot be monitored? Put in safe crossing as part of this.

Nicholas: TA grant has crossing at 1<sup>st</sup>/2<sup>nd</sup> St.

Cid Young: Restaurant overflow parking does impinge on neighboring streets across highway, and people cross the highway like at Sam's in El Granada - not safe. Get crossing in soon. Complicated intersection - cars pulling out of lot and slowing to make turns.

Leonard Woren: County parking ordinance – all businesses required to have full onsite parking.

Bill: Be sure to change officers in header, add signature

Len: move accept letter with Bill's comments, approved 6-0.

## 6. Council Activity

Len: **New US congressional district** for Coastside will be 14<sup>th</sup> District, San Gregorio to Daly City, Jackie Speier. Would like to have rep from Jackie Speier's office visit MCC.

Lisa: **Princeton Plan RFP** & mailing list are posted on website Princeton Issue Page.

**Princeton Boatyard PC appeal** today was continued to date uncertain. Planner needed time to respond to concerns raised in letter from Committee for Green Foothills. Commissioner Slocum asked for more information to be included on:

--effect of sea level rise on the erosion study and building setbacks,

--"area-wide shoreline protection program and access solution" lateral access trail,

--how project relates to Princeton long-range planning getting underway, & other issues.

She noted the recent nearby Big Wave Project approved by County but denied at CCC and asked staff & Commissioners to reflect on what might be learned in reviewing future projects.

Commissioner Hansson commented that he doesn't understand how the proposed warehouses on the limited and precious available shoreline area will support the Midcoast.

Len: **DS Task Force** meeting on 12/19; delegates were Bill/Len, suggests Bill/Laura.

Bill: Attended **HMB meeting on disaster preparedness**; lack of overall cohesiveness. Group is mainly focused on HMB driven by Chamber. Lt. Williams wants to put together list of what we know, then work on plan to engage public. Bill will follow up with Lt. Williams.

Attended **Coastal Commission LCP workshop** on improving process; public comments on need for public education and inclusion in process. Tomorrow's CCC agenda has 263 Nevada St. project appeal.

**MWSD garbage rates** will be going up.

## 7. Committee Reports

Len: **CCT committee** meeting 12/18 at GSD, 7pm. Peggy Jensen asked for prioritized list of coastal access points. Comments from agencies are posted on new issues page. Laura found it hard going back and forth with 2 separate pages on CCT (issues and committee).

## 8. Future Agendas

1/9/13 – SamTrans, Costanera NegDec, Hwy 1 committee, at Pillar Ridge Community Center.

1/23 – Len- Montara Gateway

2/13 – Peggy Jensen- Coastal Access update

## 9. Adjournment (9:30)