

# Midcoast Community Council

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

P.O. Box 248, Moss Beach, CA 94038      www.MidcoastCommunityCouncil.org

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

## Approved Minutes: Meeting on March 27, 2013, at GSD

**Call to Order.** 7:00 pm      Present: all 6 councilmembers      14 members of the public  
Government: Nicholas Calderón, CHP Captain Mike Maskarich, John Nibbelin, Peggy Jensen

### 1. Board of Supervisors' Report – Nicholas Calderón

**Devils' Slide Tunnel** opening ceremony on 3/25. Trail will be open in about a year.

**Safe Routes to School** funding for Montara/Moss Beach trail on hold till State decides about budget.

**Surfer's Beach erosion** multi-agency meeting convened by Harbor District March 13 (staff from Army Corps, County Parks & Public Works, Caltrans, Gulf of Farallones Marine Sanctuary, Coastal Commission, offices of Senators Feinstein, Boxer, Hill, Assemblyman Mullin). County Parks will follow up with County TA and Caltrans re public access/safety along Hwy 1 at Surfers Beach. Harbor District & Army Corps will follow up re possible small scale demonstrations of alternative erosion control measures for Surfers Beach.

CHP Captain Mike: Sizable **decrease in collisions** year-to-date from last year. Last year much higher incidence of DUI accidents, which continue as main cause of accidents. Working with Sheriff to crack down on DUI's. Speeding and unsafe turns are also causes of accidents.

### 2. Public Comment (7:20)

Leonard Woren: **Fire District Midcoast forum** - LWV does not ask tough or complicated but necessary questions; didn't ask Leonard's questions and ended forum early. Look for other moderator for future forums.

Mary Larenas: Fire District Midcoast forum - Frustrated that moderator ended meeting early – her questions also not asked. Nothing done about disruptions from audience. Important missed opportunity to hear directly from candidates. Agree with Leonard, ask in tactful way to change moderator, better discipline.

Bill: **Community Preparedness Fair** and Grand Opening of new Sheriff's Department Emergency Operations Center in HMB, Saturday, April 6th, from 10 to 2, at 537 Kelly Street.

Karen Wilson (to Nicholas): What will happen to bypass land in back of Montara? (will research)

Dan: Tunnel celebration was fabulous - honor April Vargas for making tunnel pennants.

Bill: Tunnel celebration: thank Don Horsley for donating money to transport high school bands.

### 3. Consent Agenda:

Approval of Minutes for February 27, 2013 approved 6-0

Approval of MCC Treasurer Procedures (moved to end of regular agenda)

### 4. Regular Agenda

#### a. (7:30) Montara Coastal Access & Views from County Streets & Rights-of-Way. (Ketcham)

Follow-up report by Deputy County Manager Peggy Jensen on public coastal access and view issues raised at 10/24/12 and 12/12/12 MCC meetings.

Peggy Jensen (PJ) summarized 3/21/13 memo to MCC. LCP requires maintenance only of existing developed coastal access points – since "paper streets" (4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>) have not been developed, there are no Coastal Act requirements.

Bill: So the County still has right to exercise these right-of-way easements? (correct) Does that also imply that the public has the right to use that easement to access the coast?

John Nibbelin (JN): In broad sense CA law allows that people who live within a subdivision may have a right of access to "paper streets" on that map. That right does not necessarily confer to the public as a whole. The County has that right, but not necessarily the general public. Frankly have not looked at Farallone City subdivision map. Accepting street dedications on a subdivision map does not create public streets. They must first be developed and accepted into county road system.

Lisa: There is precedence where the county has wanted to abandon a right-of-way not needed for a street and it was requested and granted that non-motorized access be retained. That is what we're

asking for -- not to spend money or build a street. These streets were accepted by the BoS "on behalf of the public and dedicated to public use." We're asking that the neighboring property owners not be allowed to close off access with a sign or a fence, so that the people can walk to the coast. Government agencies have worked hard to obtain coastal access dedications as conditions of development, and here we already have these rights-of-way. We must protect them. This is the spirit of the Coastal Act. However legal positions are worded, hope we can agree on actions requested in draft letter (read aloud).

JN: Don't want to take adversarial position, just here to communicate best understanding of legal obligations, powers, requirements. Not suggesting these are bad things to be requesting.

Len: Please restate your response to our request on 7<sup>th</sup> Street.

JN: Encroachment permit issued for fence prior to Coastal Act. In consultation with DPW, it is not warranted to remove the fence. Fence serves a useful purpose, while recognizing there are public access concerns that we are trying to address by requirement that gate be left open.

Len: Could you state useful purpose of fence.

JN: Serves as protective device for cars going off the cliff and safety barrier for people.

Lisa: In December Peggy Jensen said staff agreed that a guardrail would be more appropriate, that the wood fence would not stop a car, and that the guardrails would be installed regardless of whether the fence was removed. So there's no benefit.

JN: Also concerns about Nolan/Dolan case and nexus for conditions placed on development permits.

Lisa: We want to totally separate that issue. CCC staff has said they are not going to address the fence re the CDP appeal. As you said at our Dec meeting, an encroachment permit can be revoked at any time. It doesn't need any other excuse other than that the County decided this is our street and here's what we're going to do with it. The fact that this is right at the coastal bluff blocking the view is a good reason to revoke that permit. It needs no nexus. It has nothing to do with Nolan.

JN: Understand your perspective, but it's a little more complicated than that. We might get push back from people who see things differently. Public should be able to access the bluff thru the gate.

Lisa: Nobody would know, looking at it, that it was public.

JN: Understand there are some signage requirements.

Lisa: Why would you want this street to end in a wall with a sign when you could just open the view? What is the difference between Seacliff and 7<sup>th</sup> St. fence – both on county property – if you have the right to remove one, why not the other?

PJ: At December meeting extensive discussion with people on both sides of the issue. 7<sup>th</sup> St fence owner was represented by legal counsel. County taking interim position until CCC makes decision. County going forward with Seacliff fence removal - there is no gate there.

Len: Once 7<sup>th</sup> St. CCC appeal decision is rendered, is County free to remove fence if so decided?

JN: Yes we could, subject to all the risks and concerns already mentioned. Have not decided at this point that is the right thing to do.

Bob: If there was an act of God that knocked the fence down, would they be allowed to rebuild?

JN: Would need to think about it, but most likely yes.

Bill: Doesn't seem like it should be county position on coastal access to side with one private property owner. Should be looking out for general public. County giving up coastal access without any public benefit in return. Don't see the difference between the 2 streets.

JN: 7<sup>th</sup> St fence with encroachment permit has been there at least 40 years – does think the 2 are factually different. Correct that encroachment permit cannot be found, but there is documentation referring to it as dating prior to the Coastal Act.

Lisa: An encroachment permit is not an easement. You have said that you would revoke it if the county had a need. You have said that you can't landlock property. We're talking about the Coast – that's what's locked out. That section of coastline cannot be seen from anywhere else, and it's just spectacular. It's the public trust. It has been given away. Quote from Coastal Commissioner Steve Blank: "This is a public street. This public street is blocked off. This homeowner has been given a private gated part of the beach and I don't quite understand, where we actually enforce the public's access up and down the California coast, why we're making an exception here. Don't we have an issue with the County about closing off a public street?" He's expressing his frustration because they have no problem with the 2<sup>nd</sup> story addition. They're appalled with the fence. Yet their hands are tied because there's no nexus. Forget the 2<sup>nd</sup> story addition. Focus on the encroachment permit. This is a good use to take it away for -- coastal access.

Dan: Have you researched the height limit on the fence?

Lisa: 4 ft in front yards, was also the height limit in 50's when fence built. Fence is over 6 ft. But we don't want it cut to 4 ft – we want it gone.

JN: We certainly get the message.

Leonard Woren: These are dedicated rights-of-way, not easements. Subdivision map shows solid lines at property lines indicating dedicated rights-of-way, whether they're developed as streets or not. The elephant in the room is influential property owner who has hired land use law firm specializing in threatening and bullying government agencies. County Counsel is caving in to them. No difference between the 2 streets; no excuse for not revoking the encroachment permit and removing the fence. Agree with all requests in draft letter. If people want to sue County, contact Leonard for name of land use attorney.

Mary Larenas: County is taking side of extremely wealthy person against the public. This issue impacts a lot of people, not just residents. People come to the coast to see the ocean. Every piece that we block off with fences, trees, encroachments permits, land handed over to wealthy people, takes money away. It's not OK to say you can go down the road to Surfers Beach and see the beach there. Every part along the coast is different. Please re-think and listen to MCC. This won't end here. Please bring this to Supervisor Horsley because it's going to be going in his direction.

Ed Larenas: Agree with Lisa, Mary, Leonard. Represents Surfrider, involved in lawsuit re Martin's Beach property owner who is trying to take prescriptive rights from the public. Why is County being advocate for landowner instead of the public? This is public land being taken away from the public.

JN: We're trying to articulate our best understanding of the relative rights of both County and private landowners. Agree there were dedication of easements in 1907. Unless or until we actually take action to establish trails or roads, what we have are easements, not actual shoreline access.

Karen Wilson: Since December meeting have reported 7<sup>th</sup> St gate closed on 30 occasions. On holidays cars are parked blocking view of open gate. We don't know if encroachment permit had height limit, lifetime limitation, other conditions. Fence didn't meet height limit requirements, is liability & safety hazard – while locked it impeded a water rescue of someone drowning -- is old, rotted, won't stop a car. Guardrail would be much safer, just like Seacliff. Access should be available 24 hrs/day, not at discretion of homeowner. Have DPW drive down to 5<sup>th</sup> St tomorrow and take away the private property sign sitting at the highway. Give us back our views, please.

Dave Olson: Support fence removal at 7<sup>th</sup> Street. 5<sup>th</sup> St, though paper street, is well graded, decomposed granite, safe access, no work required to make it accessible. Hope County will exercise right-of-way, say it is OK for public to use. If a resident of that subdivision uses 5<sup>th</sup> St, and property owner complains of trespass, does County Counsel have opinion?

JN: No, response would have to be very situational.

Dan: In rural areas there are existing access easements not developed to County road standards. What is difference between easement and right-of-way?

JN: Don't mean to draw distinction between easement and right-of-way -- sometimes are equivalent. Easement can be used to establish a right-of-way. There were rights-of-way dedicated – in effect County owns an easement. Doesn't mean County needs to or should develop or use easement.

Dan: If there is an easement, why is that only important to the County and not the public?

JN: Because it's an easement that's owned by the County, dedicated to the County.

Lisa: Wording of County acceptance of rights-of-way was "on behalf of the public as dedicated to public use". Differ with Counsel's statement that there are no established trails – there are many decades of informal use. Currently 8<sup>th</sup> St. is the only way to access section of state beach from 8<sup>th</sup> to Seacliff. Don't let this be taken away from the public. County memo suggests public should use designated areas to access the coast to protect flora/fauna of our coastline. 8<sup>th</sup> St. county right-of-way is textbook case of neglect -- lined with invasive pampas grass, with side gullies eroded away over decades due to careless stormwater drainage. And yet there is an informal trail for people to access the coast -- once you get down to the granite beach, it's just gorgeous.

Bill: Residents like to walk down nearby streets to watch the sunset. Midcoast highway vistas eroding over time. Watching what is going on at Martin's Beach – glad Pete McCloskey is involved. All along San Mateo Coast, County seems hell-bent on trying to give coastal landowners private rights that the people said in 1972 had to stop. We'll push Supervisor Horsley as much as we can. We're not going to give up our rights to access the coast. Will make the issue as well known as possible. This is not going to end here with just this letter.

Dan: Talking about increasing disruption of views, there are many cypress trees planted at Beach House Hotel and RV lot in El Granada blocking public ocean views. Other areas where views blocked unnecessarily.

Len: Points stated quite well. Most troubling is 7<sup>th</sup> St. fence. Is current plan to defer any decision until the appeal clears the Coastal Commission? County reserves right to remove fence at that time?

JN: Correct

Laura: From Coastal Act: "The scenic and visual qualities of coastal areas should be considered and protected as a resource of public importance." The County has a choice -- put energy into figuring out how to support our position. Will you come back to discuss your response to our letter?

PJ: Having us come back isn't going to change the County's position. Once decision is made on 7<sup>th</sup> St fence after CCC appeal complete, will notify Council.

Lisa: Shrubs planted across 4<sup>th</sup> St. which will grow to block view. 5<sup>th</sup> St is perfectly accessible to the coast, yet neighbor has put up private property sign and is chasing people out. Are you saying you have no interest in doing anything about those encroachments?

PJ: Property lines actually extend to middle of street. They've developed that with a private road. County has no need for easement for utilities or to access parcel of land.

Lisa: Public needs access to their coast. Won't argue point about subdivision map, whether they actually own to middle of street, but this property owner has taken all of 5<sup>th</sup> St, not just half.

PJ: Same property owner on both sides of street. (Lisa: No.)

JN: Then that's an issue between the 2 property owners.

Lisa: So you're saying even though these were dedicated for public use, the public gets no use.

PJ: County has limited funds to maintain road system, don't have resource to expand services.

Lisa (and general uproar): We're not asking for that. County on-line permit site when property owner between 4<sup>th</sup>/5<sup>th</sup> was getting after-the-fact building permits, staff notes encroaching trees planted in 5<sup>th</sup> St. right-of-way must be removed. What's changed that now owner can do whatever they want?

JN: Planning Dept looks at preventing development encroachments on the chance that County at some point might need to develop.

Dan: You clearly differentiate between County and public use of easement.

JN: County is a separate legal entity that exists separate and distinct from each of us individually.

PJ & JN leave.

Laura: We're not being heard. Our issue has nothing to do with spending money to develop roads.

Lisa asked Nicholas if it's OK to copy Coastal Commission staff on our memo. (Yes, OK)

Lisa moved approval of the letter as drafted, including CCC staff in distribution. 6-0 approved

**b. (8:35) Hop Dogma Brewing Co. LLC** (Stein) Request for Certificate of Public Need or Necessity for proposed small production brewery with separate wine and beer tasting bar at 30 Ave Portola, Suite 1B, El Granada.

Leonard Woren: County requires full on-site parking for all businesses.

Steven Travis: member of brew club, no financial interest. Environment for home brewers to gather and share hobby. Plenty of people live within walking distance.

Council discussion

Laura: Move the MCC recommend the County of San Mateo grant a certificate of public need or necessity to Hop Dogma Brewing Co. 6-0 approved.

#### **(9:00) Treasurer Procedures**

Bill: Adjust page 2 wording re budget/pre-approved expenses

Approval of Treasurer Procedures as amended: 6-0 approved.

#### **5. Council Activity – 9:15**

**Princeton Planning Project** (Lisa) Consultant has been chosen; Planning staff in contract negotiations; when contract finalized, will be brought to BoS on Consent; soonest the contract would come to BoS is May 7, but that date is not firm. Bill expressed concern for need for public review/comment on contract. Council discussion and determination that contract review/comment could occur via MCC special meeting if necessary once contract is available.

#### **6. Committee Reports – 9:40**

**CCT Committee** (Len) Committee wants to identify a walking trail closest to shoreline so it gains public recognition/support. – see handout. Report should be ready within a month.

#### **7. Future Agendas 9:45**

4/10 – SamTrans revised draft service change; GGNRA update 20 min.

4/24 – Midcoast County Parks – County staff update presentation – working on determining place

5/8 -- Disaster preparedness presentation (Bill 45 min); CCT report (Len)

Leonard Woren: Request Chair arrange MCC presentation by GSD Manager prior to LAFCo special June 3<sup>rd</sup> meeting on GSD as community service district.

#### **Adjournment -- 9:50**