


Fw: Pastori Bridge (Privialaged communication)

Marin Town and Country Club <mtcc@classactionlocator.com>

Tue 7/11/2023 9:15 PM

To:Christine Foster <cfoster@townoffairfax.org>

 5 attachments (203 KB)

MTCCFOIAPastoriSMR.120523.doc; MTCCFOIAPastoriFEMA.120523.doc; MTCCFOIAPastoriNotices.120523.doc; MTCCFOIAPastoriPMR.120523.doc; 20120523220508393.pdf;

Dear Christine:

Your email address was not included on the first email.

Please include this in the public comments.

Thank you

Michael Mackintosh

From: Marin Town and Country Club

Sent: Tuesday, July 11, 2023 9:08 PM

To: Michele Gardner

Cc: Heather Abrams; backerman@townoffairfax.org; bcoler@townoffairfax.org; Lisel Blash; shellman@townoffairfax.org; lumbertis@townoffairfax.org; ccutrano@townoffairfax.org

Subject: Fw: Pastori Bridge (Privialaged communication)

Dear Heather, Michele, Christine, Loren & Council:

I am writing to request that you pull from the Consent Calendar item #16.

Furthermore, I request that this email along with the attached email from 5/23/2012; and a following email from 6/1/2012; be presented in the public comments file, before tomorrow evening's Council meeting and added to the file currently referred to as "Sir Francis Drake Blvd (Kent Ave Intersection)" and/or any subsequent file incorporating the Pastori Ave Outfall pipe. Printing out the associated PRAs, will better educate the general public and current town staff.

In simple terms, a CEQA permit was issued to the Town of Fairfax for the Pastori Ave Outfall Pipe, before 2012. Afterwards, it was learned that the Town of Fairfax falsely claimed that Fairfax owned the Pastori Ave Bridge. This was later retracted when County recordation supported that the Bridge and the fish ladder below it are "recorded" improvements of the MT&CC LLC.

The CEQA exemption cited in the Pastori Ave outfall pipe permit request, a pipe "of the same size diameter" could be replaced up to 1/4 of a mile. The pipe was over a 1/4 mile and increased from 14"od to 48"od. A 400% increase.

Additionally, a Negative Declaration (Neg-Dec) was falsely submitted, by Fairfax, to the State of California stating Fairfax was not required to file or address a "Streambed Alteration Permit". because

Fairfax was not altering the water entering the creek. Originally Fairfax wanted to increase the outfall pipe by 400%. Even if the same water volume is in the watershed, alteration of the outfall pipe or increasing the delivery or velocity of water to the drainage system, requires a "Streambed Alteration Permit".

By your proposed Kent Ave drain, you are reducing the overall time required to reach the current volume, thus increasing the velocity exiting the Pastori Ave outfall pipe by increasing the cfs entering the drainage system. This requires a "Streambed Alteration Permit". Also absent from your current discussion are the required hydro-carbon (roadway oil and debris) filters to protect the creek and the baffles to moderate the velocity.

Furthermore, adding more volume to the creeks add to the flooding downstream in San Anselmo, Larkspur, and beyond. Flood district #9 and FEMA need to be advised and incorporated in these designs.

A little history:

Sometime before the above referenced problems, Cal Trans' liaison made a presentation, on our behalf, to the Town of Fairfax where Fairfax would receive \$4m in grants to replace the Pastori Bridge with a design compliant bridge 30' wide to conform with safety egress standards. Fairfax would be paid \$200k to oversee the expenditure of the grant money. This translated to 100.5% for the replacement of the bridge. The 0.5% was for municipalities to oversee the grant. The Meadow Ave bridge and other bridges in the Ross Valley also benefited from this program.

At the then Council meeting, Fairfax declined the grants because MT&CC LLC owned the bridge. MT&CC LLC offered to give the bridge, for free, to Fairfax if Fairfax placed the bridge in this program. MT&CC LLC was then asked how much land we would give the Town to place the bridge into the program. MT&CC LLC offered to give all the land under the bridge and the land north of the bridge up to the stairs for the shopping center, for free. Fairfax then asked how much land south of the bridge. We declined to provide any further land. We pointed out that with the bridge, they could complete the Pastori Pipe outfall any way they like, with a new fish ladder, belvederes, etc.. The official quote from the then mayor, in public, at the council meeting, was no we will not accept the bridge because "it might help you".

(Although currently Pastori Ave is 18' curb to curb, the actual recorded street is 30' curb to curb.)

Fairfax wanted to cut out a 5'x5' area of the Northeast Wing wall of the foundation to our bridge. This would cause erosion to Wendy Orea's property and structurally compromise our bridge. Reviewing the RFP, Fairfax falsely claimed that they owned the Bridge and that Fairfax had egress language to work beneath the surface. Pointing this out to Ghilotti Bros, they quit until this was resolved with the Stakeholder (MT&CC LLC). Ghilotti also required payment in full for their good faith performance.

The Hinkley(?) and Pacheco Tracts come together down the center of Pastori Ave, 1922. No egress language. The bridge was rebuilt in 1927.

After Fairfax capitulated, an agreement was made where Fairfax: could work in the street; would provide a firetruck on our side of the bridge when the roadway was closed; not alter our bridge; dewater the creek; and support our bridge abutments with widespread Helicals.

Fairfax tried to change the design to save a few dollars and move to a shallow spread footing with drilled creek bed filled with sediment gravel. We advised not to do this type of drilling due to

liquefaction, safety and torque of the mass of the abutment. Our advice was ignored, which almost cost the life of the hydraulic driller. As advised in advance, the drilling caused the different sized aggregate to walk due to liquefaction. All equipment was crushed. The original abutments holding up our bridge failed and peeled away from the wing wall foundation.

So as to avoid litigation and MTCC sending complaints to the state, a new design was created to bolster and support our bridge. Fairfax paid \$186k in additional work as well as lost \$200k. This is another example of Fairfax breaking their nose in spite of their face.

Janet Coleson will recall these negotiations.

Fairfax must adhere to the same rules and laws that the rest of us have to conform to. Fairfax needs to protect our creeks.

Thank you for your considerations.

Michael Mackintosh

From: Marin Town and Country Club
Sent: Wednesday, May 23, 2012 8:42 PM
To: mrock@townoffairfax.org
Cc: David Weinsoff ; Jim Karpiak; John Reed; Larry Bragman ; Pam Hartwell-Herrero; Ryan O'Neil
Subject: Pastori Bridge (Privileged communication)

Dear Michael:

Attached please find 4 FOIAs. Signed copies will be hand delivered to the Town tomorrow.

The Town clerk includes me with the general email blasts advising me of upcoming town events and public meetings. Via this community at large communication I received the Town agendas for May 16, 2012 and May 24, 2012.

On your May 16th, your public notice stated the following:

"CONFERENCE WITH REAL PROPERTY NEGOTIATOR pursuant to Government code section 54956.8; Property: 40 Pastori Ave., APN# 002-131-11 (Bridge); Negotiating Parties: Michael Rock on behalf of the Town of Fairfax and Michael Mackintosh, Property Owner; Under Negotiation: Price and terms of payment."

Government Code 54956.8; prohibits your closed session until after you have an open meeting.

"Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase,

sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it

identifies its negotiators, the real property or real properties

which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the

legislative body of the local agency.

For purposes of this section, "lease" includes renewal or

renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding

a closed session for discussions regarding eminent domain

proceedings pursuant to Section 54956.9."

Although there is an exception for eminent domain if you cited 54956.9, being that this is a recorded improvement with the County of Marin, your taking would need to be through a Redevelopment Agency. Please recall that you have publicly acknowledged that you are fully aware that the County of Marin accepts that the Pastori Bridge is a recorded improvement and that the Bridge was built in 1927 by the Emporium Capwell in the amount of \$7,000,00. Again you know and you have stated this in front of your attorney and mine. Therefore I wonder if this is incompetence or an intentional government code violation. You are not in negotiations with me, you have not provided me with anything, and I have no knowledge what your "Price and Terms of Payments" are for.

Furthermore, your Public Hearing notice for June 6; states:

Pastori Outfall Replacement Project:

"A Resolution of the Town Council of the Town of Fairfax approving the initial study and mitigated negative declaration, adopting findings regarding environmental effects and a Mitigation Monitoring and Reporting Program, for the Pastori Outfall Replacement Project"

I have asked you and the Town since 2006; to repair the damage the Town of Fairfax created when the Town ordered the dropping of large rocks against my bridge, which in turn pushed my foundation away from the bridge into the creek causing and exacerbating erosion. Please recall that the original erosion was not a wear, it was caused from piping of the original pipe. You and the Town have continued to encourage me not to sue you because you would repair the damage. We have had meetings with engineers representing Fairfax and the MTTCC agreeing that the foundation would have to be repaired in conjunction with and/or prior to.

Please recall that in May 2009; the Fairfax Police Department was called out and removed your people trying to drill my soil beneath the bridge. The Town, you, Georgia McDaniel, agreed to hold off from entering my property, until you fully responded to my 2009 FOIAs. You have failed to provide the requested information. Your response to my FOIA provided an old map of your plans prior to incorporating the improvements to the foundation.

This same information was to be provided to me so I could make input to any and all initial studies and reports. I believe that there are code provisions that require timely inclusion to these discussions for the stakeholders and the public at large.

I have called our Mayor twice in the last two days to try to get some sort of understanding. No calls have been returned.

I believe at this point; I would be well within my rights to sue the Town of Fairfax for:

Negligence and damage cause by the rocks the Town of Fairfax dumped against the Pastori Bridge.
Erosion from piping that was not addressed when you expanded the Pastori Drain Pipe.
Interference with my production of income.
Someone at the Town made false statements to the State of California Licensing board regarding ownership of the Pastori Bridge impeding the gate.

If there is pre-existing information to support you knew these things and intentionally chose to move forward in a reckless manner independent of the Town Council's direction, overstating your authority; this might allow for vacating the indemnification of the insurance that would otherwise indemnify you. Please recall that insurance does not indemnify intentional acts.

Michael Mackintosh

**Marin Town & Country Club
P.O. Box 150870
San Rafael, CA 94915
(415) 453-5800**

FAX: (415) 925-1704

EMAIL: mtcc@classactionlocator.com

Michael Rock
Fairfax Town Manager
Public Works Director
142 Bolinas Road
Fairfax, CA 94930

May 23, 2012

Surveyed area under and around Pastori Bridge
(Requested period January 2009 – June 1, 2012)

Dear Mr. Rock:

Pursuant to the Freedom of information Act, (FOIA), I hereby request full disclosure of the following documents for inspection and copying: Any and all: documents, emails, facsimiles, pictures, surveys, studies, permits, plot maps, correspondence, notes including investigative notes, calculations, messages, minutes, reports (please include all, but not limited to, partial, preliminary, and outside reports), etc; Please include all the above material and the information identified on the attached sheet; sent and received to and from any and all individuals and their firms/employers, including but not limited to, subcontractors, independent contractors, engineers, consultants, architects, Town department heads and employees, council members, and any and all other related individuals, firms, agencies; for the **Surveyed area under and around the Pastori Bridge located at the end of Pastori Ave, Fairfax; and connecting into the Corte Madera Creek at the Marin Town and Country Club property**

(See attached sheet)

As the FOIA requires, please release all reasonably segregable non-exempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

Please notify me in advance of incurring \$100.00 in photocopying costs.

To expedite the release of the requested documents (information), please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request, format of this request, or any other matters, please call me at (415) 925-1518. I look forward to receiving your response within the twenty day statutory time period.

Please note; that this FOIA is similar to a FOIA provided to you April 1, 2009. The fact that you did not provide responses with supporting documentation to many items at that time, including but not limited to capacity calculations, will bar you from moving forward.

Sincerely,

Michael Mackintosh

Surveyed area under and around Pastori Bridge

(Requested period January 2009 – June 1, 2012)

- 1) Subcontractor reports
- 2) Engineering calculations
- 3) Surveys
- 4) Studies
- 5) Plot maps
- 6) Drawings and renderings
- 7) Legal opinions
- 8) CEQA and related material
- 9) Initial Study and related material
- 10) EIR and related material
- 11) Any and all exemptions
- 12) Army Corp of Engineers and related material
- 13) Fish & Game and related material
- 14) Friends of the Corte Madera Creek
- 15) California State Resources Control Board and related material
- 16) Marla Lafer
- 17) Calculations supporting the increased capacity of the Pastori pipe
- 18) Documentation supporting that your increased rate of water entry into the creek will not add to flooding
- 19) Documentation supporting that the increased rate of water entry into the creek will not require a stream bed alteration permit
- 20) Engineering calculations supporting that the increase to the diameter of the hole through the bridge will not compromise the bridge
- 21) Easement language entitling subsurface utility egress
- 22) Insurance for this project
- 23) Miller Pacific Engineering Group
- 24) CSW/Stuber-Stroeh Engineering Group
- 25) Al Cornwell
- 26) FEMA
- 27) Any and all funds, monies, and expenses, allocated and/or paid towards this project and/or these firms/companies/architects/engineers/consultants/contractors/independent contractors/ etc. and their totals
- 28) Identify which accounts these funds were allocated from
- 29) Georgia McDaniel
- 30) Jim Karpiak
- 31) Gregg Gruben
- 32) Kathie Wilkie
- 33) Yvonne Roberts
- 34) Fairfax PD Report # 4108614

**Marin Town & Country Club
P.O. Box 150870
San Rafael, CA 94915
(415) 453-5800**

Michael Rock
Fairfax Town Manager
Public Works Director
142 Bolinas Road

Fairfax, CA 94930

FAX: (415) 925-1704
EMAIL: mtcc@classactionlocator.com
May 23, 2012

**FEMA: for the creek adjacent to
the Marin Town & Country Club**
(Requested period January 2009 – June 1, 2012)

Dear Mr. Rock:

Pursuant to the Freedom of information Act, (FOIA), I hereby request full disclosure of the following documents for inspection and copying: Any and all: documents, emails, facsimiles, pictures, surveys, studies, permits, plot maps, correspondence, notes including investigative notes, calculations, messages, minutes, reports (please include all, but not limited to, partial, preliminary, and outside reports), etc; Please include all the above material and the information identified on the attached sheet; sent and received to and from any and all individuals and their firms/employers, including but not limited to, subcontractors, independent contractors, engineers, consultants, architects, Town department heads and employees, council members, and any and all other related individuals, firms, agencies; for FEMA regarding the **Creek adjacent to the Marin Town & Country Club** From: 37 58'59.33" N, 122 34'54.92" W; to 37 59'06.82" N, 122 35' 14.62" W. Including the area around the bridge site at approximate: 37 59'.06.57"N, 122 34' 58.02" W.

(See attached sheet)

As the FOIA requires, please release all reasonably segregable non-exempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

Please notify me in advance of incurring \$100.00 in photocopying costs.

To expedite the release of the requested documents (information), please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request, format of this request, or any other matters, please call me at (415) 925-1518. I look forward to receiving your response within the twenty day statutory time period.

Please note; that this FOIA is similar to a FOIA provided to you April 1, 2009. The fact that you did not provide responses with supporting documentation to many items at that time, including but not limited to FEMA, will bar you from moving forward.

Sincerely,
Michael Mackintosh

FEMA: for the creek adjacent to the Marin Town & Country Club

(Requested period January 2009 – June 1, 2012)

- 1) Awards
- 2) Settlements
- 3) Agreements
- 4) Estimates
- 5) Amounts
- 6) Subcontractor reports
- 7) Engineering calculations
- 8) Surveys
- 9) Studies
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- 31) Identify which accounts these funds were allocated from
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- 33) Jim Karpiak
- 34) Gregg Gruben
- 35) Kathie Wilkie
- 36) Yvonne Roberts
- 37) Fairfax PD Report # 4108614

**Marin Town & Country Club
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San Rafael, CA 94915
(415) 453-5800**

FAX: (415) 925-1704

EMAIL: mtcc@classactionlocator.com

Michael Rock
Fairfax Town Manager
Public Works Director
142 Bolinas Road
Fairfax, CA 94930

May 23, 2012

Agenda Items:

5/16/2012 Closed Session (Pastori Bridge, Pipe, Outfall)

5/24/2012 #2, Discussion/Consideration (Pastori Bridge)

6/02/2012 Pastori Outfall Replacement Project

Dear Mr. Rock:

Pursuant to the Freedom of information Act, (FOIA), I hereby request full disclosure of the following documents for inspection and copying: Any and all: documents, emails, facsimiles, pictures, surveys, studies, permits, plot maps, correspondence, notes including investigative notes, calculations, messages, minutes, reports (please include all, but not limited to, partial, preliminary, and outside reports), etc; Please include all the above material and the information identified on the attached sheet; sent and received to and from any and all individuals and their firms/employers, including but not limited to, subcontractors, independent contractors, engineers, consultants, architects, Town department heads and employees, council members, and any and all other related individuals, firms, agencies; for the above cited agenda items.

(See attached sheets)

As the FOIA requires, please release all reasonably segregable non-exempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

Please notify me in advance of incurring \$100.00 in photocopying costs.

To expedite the release of the requested documents (information), please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request, format of this request, or any other matters, please call me at (415) 925-1518. I look forward to receiving your response within the twenty day statutory time period.

The fact that you publicly released: "**APN# 002-131-11 (Bridge); Negotiating Parties: Michael Rock on behalf of the Town of Fairfax and Michael Mackintosh, Property Owner; Under Negotiation: Price and terms of payment.**" Coupled with the fact that you have not included me in any meetings, correspondence, conversations, and that we are not in negotiations; is fraud.

Sincerely,

Michael Mackintosh

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P.O. Box 150870
San Rafael, CA 94915
(415) 453-5800**

FAX: (415) 925-1704
EMAIL: mtcc@classactionlocator.com

Michael Rock
Fairfax Town Manager
Public Works Director
142 Bolinas Road
Fairfax, CA 94930

May 23, 2012

Pastori Outfall Pipe
(Requested period January 1, 2009 – June 1, 2012)

Dear Mr. Rock:

Pursuant to the Freedom of information Act, (FOIA), I hereby request full disclosure of the following documents for inspection and copying: Any and all: documents, emails, facsimiles, pictures, surveys, studies, permits, plot maps, correspondence, notes including investigative notes, calculations, messages, minutes, reports (please include all, but not limited to, partial, preliminary, and outside reports), etc; Please include all the above material and the information identified on the attached sheet; sent and received to and from any and all individuals and their firms/employers, including but not limited to, subcontractors, independent contractors, engineers, consultants, architects, Town department heads and employees, council members, and any and all other related individuals, firms, agencies; for the **Pastori Outfall Pipe** located at the end of *Pastori Ave, Fairfax; and connecting into the Corte Madera Creek at the Marin Town and Country Club property*

(See attached sheet)

As the FOIA requires, please release all reasonably segregable non-exempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

Please notify me in advance of incurring \$100.00 in photocopying costs.

To expedite the release of the requested documents (information), please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request, format of this request, or any other matters, please call me at (415) 925-1518. I look forward to receiving your response within the twenty day statutory time period.

Please note; that this FOIA is similar to a FOIA provided to you April 1, 2009. The fact that you did not provide responses with supporting documentation to many items at that time, including but not limited to capacity calculations, will bar you from moving forward.

Sincerely,

Michael Mackintosh

Pastori Outfall Pipe

(Requested period January 1, 2009 – June 1, 2012)

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- 33) Yvonne Roberts
- 34) Fairfax PD Report # 4108614



TOWN OF FAIRFAX

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

TOWN OF FAIRFAX
TOWN COUNCIL
MEETING AGENDA
7:00 PM, WEDNESDAY JUNE 6, 2012
FAIRFAX WOMEN'S CLUB, 46 PARK ROAD

PUBLIC HEARING ITEMS

Pastori Outfall Replacement Project;
A Resolution of the Town Council of the Town of Fairfax approving the Initial Study and Mitigated Negative Declaration, adopting findings regarding environmental effects and a Mitigation Monitoring and Reporting Program, for the Pastori Outfall Replacement Project

All interested persons are invited to attend and participate in the public hearings. In order to give all interested persons an opportunity to be heard, and to ensure the presentation of all points of view, members of the audience should (1) Limit presentation to three minutes; (2) Always address the Mayor; (3) State name and address; (4) State views and concerns succinctly; (5) Documents presented at the meeting must be submitted first to the Town Clerk, to be entered into the record.

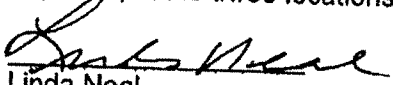
Staff Reports: Staff reports and associated materials will be available for public review at the front counter in Town Hall after 5:00 PM on the Friday before the meeting and on-line at the Town of Fairfax website.

Court Challenges: If you challenge in court the matter(s) described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to the above referenced public hearing [Govt. Code section 65009(b)]. If you need accommodation to attend or participate in this meeting due to a disability, please contact the Town Clerk at (415)453-1584.

The Final Agenda will be posted on the Friday evening before the hearing at the Fairfax Post Office, the Women's Club and Town Hall. Some items shown on this notice may be placed on the consent calendar or be taken out of order so all interested parties should be at the meeting promptly at 7:00 P.M.

If an item is continued, it is the responsibility of interested parties to note the new meeting date. Notices will not be sent out for items continued to a specific hearing date.

This public hearing was noticed in accordance with Government Code Section 65091 et seq. on or before May 17, 2012, at the three locations cited above.


Linda Neal
Senior Planner

Date: 5/17/12

