

From: David Olson [REDACTED]
Sent: Monday, June 21, 2021 1:54 PM
To: Distrib- City Clerk <City.Clerk@cityofsanrafael.org>
Subject: Fwd: Baypoint Lagoons District Protest - June 17, 2021

Please add this written protest to tonight's meeting.

The Baypoint Lagoons Assessment District was formed in 1990 to provide funding for the 3 Year Phase I of the Water Management Plan. The fact that funding for Phase I was for 3 Years and not permanent is supported by the selected documents that I have attached. Attachments 1 through 5 were provided to me by the City of San Rafael. Attachment 6/7 was provided by the developer to each of the first 87 homeowners through early 1995.

Attachment 1.) This attachment is page 5 of the formation report, considered the contract between the City of San Rafael and the developer who owned all of the lots. It clearly shows the scope, the estimated costs, and the **three years** shown as First Year, Second Year, and Third Year

Attachment 2.) This is the City's recognition that they had the consent of the owner/developer, and the formation of the assessment district.

Attachment 3.) This is the consent of the owner/developer in accordance with Phase I of the Water Management Plan.

Attachment 4.) This is the implementation Section 6.1 Funding of the Water Management Plan. It states "if at the end of the **3 year** Phase I monitoring program, the City,....." This clearly states that Phase I is for three years.

Attachment 5.) This pamphlet also indicates Phase I was to be from 1990 through 1992, or **three years**. The start of Phase I was delayed by one year.

Based on the above printed proof the Baypoint Lagoons Assessment District actually expired in 1993 and therefore I am asking the City Council to not adopt the resolutions.

For those City Council members who are new within the last year, it is up to you to not adopt the resolutions as they are not in compliance with the Landscaping and Lighting Act of 1972, either in duration or scope.

You may or may not be aware that Bill Guerin, Director of Public Works, and the City's legal department, have claimed that the assessment district was permanent, they have yet to provide any written proof to their claim. They have only claimed that in some meeting somewhere their intent was for it to be permanent, or could have been, or should have been.

Attachments 1, 4, and 6/7 clearly show that the approved Baypoint Lagoons Assessment District had a 3 Year duration.

Thank You,

David Olson



San Rafael, CA 94901

BAYOINT LAGOONS ASSESSMENT DISTRICT FORMATION-ENGINEER'S REPORT

Page 5

PART B

SCOPE

ESTIMATE OF COST

DURATION

Phase I Program

Plan review and inspect
 Monitor applications of Rodeo
 Monitor Pickleweed
 Monitor Water quality
 Monitor Salt Marsh Harvest Mouse
 Data analysis and reporting

First Year Second Year Third Year

3850 1512 1583
 2000 0 0
 2000 2300 2645
 8000 8400 8820
 3400 3570 3750
9200 9660 10143

Total Phase I Cost

23450 25442 26946

First Year Contingency
 20% of \$28,450

5690

FUNDS

First Year Incidental Expense
 Engineer's Report
 City Engineer - review
 Legal fee
County Auditor - expense
 City - fund management

6000
 2000
 3000
 500
500

Total First Year Assessment

\$46140
 =====

FY

FIRST YEAR = 1990/1991

SECOND YEAR = 1991/1992

THIRD YEAR = 1992/1993

$26,946 / 205 = 131.44$

(Now 193)

2
CITY APPROVAL

1990

RESOLUTION NO. 8224

RESOLUTION ORDERING IMPROVEMENTS

BAYPOINT LAGOONS LANDSCAPING AND LIGHTING DISTRICT
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of San Rafael resolves:

1. On this date the City Council adopted its Resolution Initiating Proceedings for the formation of Baypoint Lagoons Landscaping and Lighting District and directed the preparation and filing of an Engineer's Report on the proposed formation.

2. The Engineer for the proceedings has filed an Engineer's Report with the City Clerk.

3. Owners of all land within the boundaries of the proposed assessment district have filed their consent to the formation for the proposed district without notice of hearing, and to the adoption of the Engineer's Report and the levy of assessments stated therein.

4. The City Council hereby orders the improvements and the formation of the assessment district described in the Resolution Initiating Proceedings and in the Engineer's Report.

5. The City Council hereby confirms the diagram and assessment contained in the Engineer's Report, and levies the assessment for the fiscal year 1990-91.

* * *

I, JEANNE M. LEONCINI, Clerk of the City of San Rafael, California, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 20th day of August, 1990, by the following vote, to wit:

AYES: COUNCILMEMBERS: Boro, Breiner, Shippey, Thayer & Mayor Mulryan
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None

Jeanne M. Leoncini
JEANNE M. LEONCINI, City Clerk

CONSENT

LANDOWNER CONSENT TO FORMATION OF MAINTENANCE DISTRICT

BAYPOINT LAGOONS LANDSCAPING AND LIGHTING DISTRICT
CITY OF SAN RAFAEL, MARIN COUNTY, CALIFORNIA

(Pursuant to the Landscaping and Lighting Act of 1972)

1. The undersigned are the owners of the land described as Baypoint Lagoons Landscaping and Lighting District, City of San Rafael, California.


2. The undersigned hereby request and consent to the formation of a maintenance district pursuant to the Landscaping and Lighting Act of 1972 (Sections 22500 and following, California Streets and Highways Code) for the purpose of providing the following improvements:

Creating, maintaining and monitoring open space habitat in accordance with Phase I of the WATER MANAGEMENT PLAN FOR THE LAGOON AT SPINNAKER-ON-THE-BAY, SAN RAFAEL, CALIFORNIA, as prepared by Western Ecological Services Company, Inc., dated December 7, 1989.

Phase I
↙

3. The undersigned hereby waive the notice of public hearing otherwise required by the Landscaping and Lighting Act of 1972 for the formation of the maintenance district and the adoption of the first annual budget, and the undersigned further consent to the approval by the City Council of the City of San Rafael of the Engineer's Report a copy of which has been reviewed by the undersigned.

Spinnaker Point Development, Inc.

By 
Dennis R. Horne

4

WATER MANAGEMENT PLAN - (1989-12-07)

6.0 IMPLEMENTATION

6.1 FUNDING

A landscaping and lighting district, as provided by the Landscaping and Lighting Act of 1972, will provide funding for the lagoon management program. Implementation of the landscaping and lighting district will take place in the following sequence:

- ✓ 1) An engineer's report will be obtained outlining the boundaries of the district and providing an engineer's cost estimate of the improvement and maintenance of the lagoon.
- ✓ 2) Spinnaker Point Development, Inc. will make a formal offer of dedication of the lagoon to the City of San Rafael.
- ✓ 3) Acceptance of the lagoon will take place on a date to be determined by the City.
- ✓ 4) Necessary documents and resolutions will be prepared, and within 2 weeks a complete package will be submitted to the City.
- ✓ 5) Before the close of escrow of the first Spinnaker-on-the-Bay townhome, the district will be approved by the City Council.

Spinnaker Point Development, Inc. is responsible for certain costs of improving the lagoon. Prior to the issuance of building permits the developer will bond for these improvements, thus ensuring their completion. The amount to be bonded will have been determined as part of Step 1, above. Spinnaker Point Development, Inc. will bond for the following Phase I costs listed in Table C-1:

- Removal of all pampas grass
- Monitoring first year applications of Rodeo
- Planting of native vegetation
- Staff gage installation

➔ Additionally, if at the end of the 3 year Phase I monitoring program, the City, under advise from the Wetlands Advisor Committee, decides it is necessary to install the diffuser mechanism as outlined by WESCO (Appendix B), the developer will be responsible for all capital costs involved. The developer will be required to post a bond for this improvement consistent with the engineer's estimate.

The wetlands to the east of the lagoon will remain in private ownership. The current owners will fund any necessary maintenance of these wetlands.

6.2 MANAGEMENT

Implementation of the proposed non-capital improvement maintenance and management program will involve coordination and resolution of five potentially conflicting management objectives: 1) flood control; 2) water quality assurance; 3) habitat protection; 4) mosquito control; and 5) visual and aesthetic considerations. Conflicts could potentially arise, for instance, if it was requested that water levels in the lagoon be raised with Bay water for mosquito control. This is likely to result in concerns for waterfowl or flood storage. Consultation and coordination will thus be required among several responsible management agencies, including the City's Department of Public Works, Parks and Recreation and the Marin-Sonoma Mosquito Abatement District. Occasionally, the CDFG or the RWQCB may have to be consulted or notified if, for instance, emergency algicide or herbicide use is necessary. Hopefully these conflicts can be handled through consultation with the Wetlands Advisory Committee which consists of representatives of most of these agencies.

PHASE I
PHASE II

WILDLIFE HABITAT PRESERVATION EFFORTS AT THE SPINNAKER POINT LAGOON AND WETLANDS

The lagoon and wetland areas at Spinnaker Point are located on the edge of San Francisco Bay's shoreline mosaic of marshlands, mudflats, and wetland/upland transition zones. Although the Spinnaker project area has been altered by diking, deposition of dredge material,

construction, and other human activities, the fresh/brackish water lagoon and salt marsh areas have retained a high wildlife habitat value. **Such habitats are rare adjacent to the Bay, and represent one of the most severely depleted, yet highly valued wetland habitats in the entire Bay system.** The wetland areas in San Rafael are particularly important as feeding areas for the heronry on West Marin Island, the largest nesting colony in the Bay, located just off-shore of Spinnaker Point.

This pamphlet was prepared to provide the homeowners and residents at Spinnaker Point/Bay Point Lagoons with background information concerning the history, habitat value, and management goals of the lagoon and wetland areas adjacent to the housing development.

Spinnaker Point Site History

The lagoon and diked wetland at Spinnaker Point were created in the early 1960's. Once the levees around the property were completed, the lagoon was dredged from the marsh, using the spoils to form the existing lagoon banks and islands. A pump was also installed as part of the public improvements for a proposed 727 unit residential development. Although the original housing project was never completed, the roads and sidewalks were constructed long before the Spinnaker Point/Baypoint Lagoons residential development was proposed.

As a condition of the Environmental Impact Report for the later project, a Water

Management Plan was prepared. Due to the lack of existing water quality data, a Phase I Monitoring Program for 1990 through 1992 was developed. Based on the data collected during this period, adjustments are to be made accordingly and a Phase II Monitoring Program will be initiated in 1993.

The following are the components of the Water Management Plan which are monitored under the Phase I Program:

- Landscaping Plan Development
- Invasive exotic plant species eradication (pampas grass, Scotch broom, French broom, and fennel), including herbicide applications, as necessary
- Salt marsh harvest mouse population assessments
- Vitality evaluations of pickleweed and other important wetland habitat plant species within the diked wetland east of the lagoon
- Regular assessments of the lagoon's water quality

Environmental Importance

Lagoon

The 20 acre lagoon at Spinnaker Point includes approximately 14.8 surface acres of open water and 5.2 acres of islands and shoreline vegetation. The lagoon ranges from 3 to 6 feet in depth (approximately 59 acre-feet of water). The lagoon's inflow is largely freshwater derived as stormwater runoff from the surrounding 108 acre drainage area. Small quantities of fresh groundwater also infiltrate the lagoon.



The lagoon serves as a stormwater retention pond for the development area with excess water pumped to San Rafael Bay. For several years, this pump system was also used to add Bay water to the lagoon for summertime water elevation control and water exchange.

The key water quality parameters for the lagoon are salinity, nutrient loading, petroleum residue contamination, and trash. The aesthetic value of the lagoon is also considered. The control of water salinity is important for the waterfowl which use the lagoon as a drinking water source. Ducklings require fresh water for drinking until their salt glands fully develop. Drinking salt water prior to salt gland development is known to cause mortality and/or reduced growth rates. Adult birds also seek out sources of fresh drinking water even though their salt glands are fully developed.

The other water quality parameters are monitored to aid in the management of the lagoon which receives urban associated contaminants (automobile emissions, spills, trash, etc.). These contaminants are deposited within the drainage area and carried with stormflows to the lagoon.

Diked Wetland Areas

The 16.6 acre diked wetland area immediately east of the lagoon is separated from the lagoon by a small levee. The primary water source for this area is rainfall, although occasional opening of the flapgate installed within the outfall culvert has, at times, allowed the backflow of Bay water into the wetland. This wetland, as well as the wetland perimeters of the lagoon, offer important regional wildlife habitat.

On-going small mammal studies have revealed the presence of the State and Federal listed endangered salt marsh harvest mouse. Suitable habitat for this species covers an estimated 1.8 acres around the lagoon and nearly all of the adjacent diked wetland.

Additionally, the Marin Audubon Society reports that black-necked stilts nest within the diked wetland. Flooding of the wetlands is considered to be detrimental to the survival of both these species, while prolonged inundation adversely impacts the marsh vegetation. Although the restoration of tidal action would greatly enhance the diked wetland habitat, it would be difficult to achieve due to its subsided condition. Given this problem, inflow of Bay water to the wetland must be carefully managed.

Management Goals

Lagoon

The Management under Phase I of the current Water Management Plan is to operate the lagoon as a fresh/brackish water ecosystem. The viability of the lagoon under this management will be evaluated at the end of the Phase I Monitoring Period. The goals of this management practice are as follows:

- Maintain an aesthetic lagoon setting while providing a fresh/brackish water source for local and migratory waterfowl. The extensive growth of aquatic vegetation has been noted; management practices to control such growth will be addressed in the Phase II Program, as needed.

- Provide a feeding, nesting, and resting area for waterfowl by enhancing the native plant habitat along the shores and allowing some growth of natural vegetation within the waters of the lagoon. The natural evaporative reduction of the lagoon water

level during the summer provides feeding areas for wading shore birds. These management practices will also be reviewed for the Phase II Program.

Diked Wetland

The management goals of the diked wetland area are still in the developmental stage. The uncontrolled flooding of the wetland has been curbed, allowing for increased native plant growth, and vigor. Data gathered during the Phase I Program will aid in the management of this area.

Habitat Enhancement

A landscape plan for the lagoon and island areas was prepared in 1990. The intent of this plan is to provide aesthetic value for the lagoon area while enhancing the wildlife habitat. The management goals contained in the landscape plan are as follows:

- Removal of exotic plant species (pampas grass, broom, and fennel) from sensitive habitat areas adjacent to the lagoon and wetlands. This aspect of the plan includes monitoring the type and application of any herbicide used within sensitive habitat areas, insuring lagoon water quality, and animal/native plant protection.
- Revegetate the areas of exotic plant species removal with native plants, which provide a greater habitat value.

This document was prepared by:
Western Ecological Services Company, Inc
Novato, California



for:
Spinnaker Point and Baypoint Lagoons Homeowners Associations, San Rafael California

