

From: David Olson [REDACTED]
Sent: Tuesday, July 5, 2022 1:59 PM
To: Distrib- City Clerk <city.clerk@cityofsanrafael.org>
Subject: Baypoint Lagoons Assessment District 07/05/2022 SRCC Discussion

San Rafael City Council,

The District Contract was only funded through FY1992/1993 per the signed consent of the owner/developer. Since then the City has been in **breach of contract** and only continued assessments because of false claims and efforts by the SRDPW which has continued to mislead the City Council each year. The City's legal department has also misled the City Council through obfuscation and prevarication in attempts to provide plausible deniability to any wrong doing. They have duped the City Council.

The current District must cease to exist immediately as it is not valid as stated above and further explained below.

Should the City wish to have a District, a new or revised District should be formed between the City and those owners wishing to participate. This new District most likely would consist of the 44 on-lagoon owners of Baypoint Lagoons and roughly 40 on-lagoon owners of Spinnaker Point. Additional off-lagoon owners could be included if they so wish.

The Baypoint Lagoons Assessment District was formed pursuant to the Landscaping and Lighting Act of 1972, and per Resolution 8221 and 8224 (attached) as unanimously approved by the San Rafael City Council on the 20th day of August, 1990, for the purpose of 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.

Of particular importance is Item 3. of RESOLUTION 8224 as it clearly states that the owner (developer) only consented to the assessments contained in the formation Engineer's Report (attached).

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

Part B of the formation Engineer's Report mentioned above is the estimate of the cost of the improvements and assessments which is summarized as follows:

- First Year scope and cost \$46,140
- Second Year scope and cost \$25,442
- Third Year scope and cost \$26,946 (Divided by 193 Lots = 131.44/lot)

Here is the problem that the subsequent and current owners have:

The City Council has been misled by the Department of Public Works since 1993 into approving assessments against the 193 lots with Baypoint Lagoons, beyond the assessments consented to in the formation of the District. Each owner has been charged \$131.44 each year for 29 years, or \$3,811.76. Each year in total the City has assessed \$25,367.92 beyond the amount consented to in the formation of the District. The City has illegally collected \$735,669.68 through FY1993/2022.

There was no way for the City Council to know, except in 1994 City Council hearings when due to a written protest by the developer, Mayor Boro asked for clarification from the SRDPW and from owners as to whether the District was for three years or permanent. The developer did not attend any of the hearings. Several owners responded that they understood that the District was for three years, but neither the owners or the City Council were aware of the Resolution 8224 and the consent agreement limiting the assessments as explained above. Mayor Boro received a false response from the SRDPW that "as far as he was concerned the district was permanent" and agreed to extend the assessments for another year, but at the same rate.

We are 193 owners, most of whom including me bought our homes after FY1992/1993.

I have attached the most pertinent documents.

- 1.) Estimate of Cost - Assessments approved by Resolution 8224 item 3 (Assessment amounts and 3 year duration)
- 2.) Resolution 8224 - As approved by City Council in 1990
- 3.) Consent of Owner/Developer in 1990
- 4.) Implementation Of Water Management Plan - for context only (3 years)
- 5.) Pamphlet given to new owners on purchase of lots from developer - for context only (3 years)

David Olson

[REDACTED]

San Rafael, CA 94901

<Baypoint Lagoons LLAD.pdf>

BAYOINT LAGOONS ASSESSMENT DISTRICT FORMATION-ENGINEER'S REPORT

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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

Total Phase I Cost

First Year Contingency
20% of \$28,450

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

Total First Year Assessment

First Year	Second Year	Third Year
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3850	1512	1583
2000	0	0
2000	2300	2645
8000	8400	8820
3400	3570	3750
<u>9200</u>	<u>9660</u>	<u>10143</u>

23450 25442 26946

5690

FUNDS

6000
2000
3000
500
500

\$46140
=====

FY

FIRST YEAR : 1990/1991
SECOND YEAR = 1991/1992
THIRD YEAR = 1992/1993

$$26,946 / 205 = 131.44$$

(Now 193)

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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
A

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

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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



From: Joe Simmons [REDACTED]
Sent: Tuesday, July 5, 2022 2:15 PM
To: Distrib- City Clerk <city.clerk@cityofsanrafael.org>
Cc: Connie Lathrop [REDACTED] DonF [REDACTED] Linda Esposito
[REDACTED] Maryline Lewett [REDACTED]
Subject: Comments for Baypoint Lagoons Landscaping and Lighting District Public Hearing

After reading the engineers's report for the district, I have questions related to the east lagoon, where I live, and which is included as a responsibility for maintenance.

1. I saw no reference to suggested planing for the east lagoon, where about 3/4 of the area is now covered with algae. It would be helpful if that is addressed at the hearing.
2. It appears that the intake valve is not letting more water into the lagoon at high tide. According to information supplied by Bill Guerin year, the city unclogged the valve allowing more water to enter the lagoon, and that was, at least, helpful for a period of time. Is this issue part of any plan to respond to the algae buildup and odor source for the east lagoon?

Thank you for providing updates and information on this topic, which, as I'm sure you know, is of great concern to us living along the lagoon, as well as the many San Rafael residents who use the Starkweather trail.

Ellis "Joe" Simmons
[REDACTED]