

Baypoint Lagoons Landscaping and Lighting District: Proposed FY 2023-24 Assessment

Written Comments Submitted for Consideration
At City Council's July 17, 2023 Public Hearing

My name is Carolyn Lown and I own the property identified by APN [REDACTED] and located within the Baypoint Lagoons Landscaping and Lighting District (the "District"). Since 1998, I have resided full time at that property and have paid all annual District assessments.

I request the City Council take two actions at this public hearing:

- consider whether it is fair to compel the District assessment to pay the full costs – without apportionment according to the benefit received by those actually paying the assessment – of upgrading and rehabilitating the Cayes Storm Water Pump Station ("Pump Station"); and
- act to limit the District's share of any costs of Pump Station improvement proportionately – to reflect the fair share properties within the District should shoulder as compared to properties outside of the District that also benefit from Pump Station services (*e.g.* fairly prorate any and all of such costs)

The only authority the District has to spend its assessment funds is that set by State law.

Special assessments are unlike the property taxes and the City's Clean Stormwater Activity Fee that are levied City-wide on property owners to pay for commonly used municipal services like storm water management. Special assessments such as those being considered for the District are for a more limited purpose. Special assessments are tied, as a matter of law, to a special benefit received by the property owners being assessed and so may only be used to provide special benefits to those property owners.

However, a significant portion of this year's proposed annual District assessment is allocated in the annual Engineer's Report to upgrading the Pump Station. That same allocation also is made to the assessment funds already held by the District from prior annual assessments. All those allocations appear to be of the full cost of the upgrade, without apportionment to any properties located outside of the District that also will directly benefit from the upgrades.

Each and every of the functions attributed in the annual Engineer's Report to the Pump Station are municipal in nature (as the Baypoint/Spinnaker lagoon complex is used by the City as to manage stormwater in East San Rafael)—and all directly benefit the City residents who live outside of the District, principally in the Spinnaker Point neighborhood. Importantly, however, none of the properties in the Spinnaker Point development pay assessments to fund District activities. Instead, the full burden of those assessments falls on the Baypoint Lagoon neighborhood. If for no other reason than fundamental fairness, recognition should be given to the fact that the Pump Station benefits a larger community than that contained in the District.

Further support for my requests is contained in the written comments I submitted to the City Council at its July 5, 2022 public hearing on last year's annual District assessment, a copy of

which is attached for your consideration.

Respectfully submitted,



Carolyn A. Lown

Attachment: Comments regarding proposed FY 2022-23 District annual assessment

Written Comments Regarding the Proposed FY 2022-23 Assessment
Within the Baypoint Lagoons Landscaping and Lighting District

Submitted for Consideration at the July 5, 2022 Public Hearing

My name is Carolyn Lown and I own the property identified by [REDACTED] that is located within the Baypoint Lagoons Landscaping and Lighting District (the "District"). Since 1998, I have resided full time at that property and have paid all annual District assessments.

I am appearing today to raise a question of fairness: whether it is fair to include in the District assessment the full costs – without apportionment according to the benefit received – of upgrading and rehabilitating the Cayes Storm Water Pump Station. This is a municipal facility serving directly not only properties located inside the District but also properties outside of the District, located in the larger East San Rafael neighborhood.

According to the District Engineer's 2022-23 Annual Report, a total of \$74,100 will be spent from District funds to design a replacement motor control center for the Cayes Storm Water Pump Station and an additional \$375,000 to \$400,000 will be required to complete the upgrade and rehabilitation of that station. Although the Annual Report states that the second amount will be included in future Capital Improvement Budgets "to supplement the contribution from the District", the Annual Report does not commit to just what the District's future contribution will be. Indeed, the Annual Report increases in FY 2022-23 the allocation of funds held by the District to add more to those already designated for Pump Station Control, suggesting additional contributions yet to come.

Is this a fair distribution of costs to District properties, made in proportion to the benefits they will receive from improvements to the Cayes Storm Water Pump Station?

The Cayes Storm Water Pump Station was constructed in the 1960's and is located outside of the District, on Narragansett Cove within the Spinnaker Point development. For your ease of reference, two maps are included with my written comments to illustrate locations discussed. The facility is used principally for flood control and storm water management and provides services directly to the Baypoint Lagoons development (located fully within the District) as well as to the Spinnaker Point development (located completely outside of the District).

Stormwater and other runoff from both residential developments flow through the storm drains in neighborhood streets and then on to outfalls located in the West Lagoon, a unit of the larger four-unit Spinnaker Lagoon Complex. After residing in the West Lagoon, stormwater and runoff waters are pumped by the Cayes Storm Water Pump Station through the Station, and then (together with any other waters managed by that Station) on through a culvert running under Narragansett Cove and out to an outfall that empties into San Pablo Bay (at the east end of San Rafael Creek). From time

to time, Bay water also is pumped back, in the opposite direction, from the Bay through the Cayes Storm Water Pump Station and into the West Lagoon. This pumping has been done to raise the water level in and increase the salinity levels of the West Lagoon –with the goal of controlling cattail growth (to protect property owners’ views) and to address odor from the Lagoon Complex.

Each and every one of these functions of the Cayes Storm Water Pump Station directly benefits not only the residents who live in the Baypoint Lagoons neighborhood but also those who live in the Spinnaker Point development. Importantly, however, the Spinnaker Point development is not part of the District– even though the south side of Spinnaker Point fronts directly onto the West Lagoon and the development’s storm water drains flow directly into it. As a result, Spinnaker Point benefits directly from the services furnished by the Cayes Storm Water Pump Station to manage the West Lagoon. Any benefits that the Baypoint Lagoons development receives from the Cayes Storm Water Pump Station are neither particular nor distinct from those Spinnaker Point also receives.

Stormwater management activities occurring elsewhere in San Rafael generally are considered to be municipal services and are paid for through property taxes and the City of San Rafael Clean Stormwater Activity Fee (San Rafael Municipal Code, Chapter 9.40). Stormwater management activities in the District and the adjacent Spinnaker Point development, however, are in effect also funded by District assessments when those assessments are used for the Cayes Storm Water Pump Station.

The District was formed under the Landscaping and Lighting Act for the purpose of installing, maintaining, and servicing specifically described landscaping and appurtenant facilities. (Cal. Sts. & Hy. Code §§22500-22679). As a consequence, the District has a limited purpose, limited geographical boundaries, and limited authority to use the funds from any property assessments it levies. (Cal. Sts. & Hy. Code §22503; Cal. Const. art. XIII C and XIII D). The District qualifies as a special district under the California Constitution.

The District was formed in 1990. Assessments have been levied every fiscal year since. Beginning in 1996, the amount of the annual assessment (including of the proposed FY 2022-23 assessment) has not been changed. Consequently, this year’s assessment is governed by the provisions of the Landscaping and Lighting Act and not by the assessment reform provisions of the California Constitution.

Under the standard set in the Landscaping and Lighting Act, any assessment must be (1) “fairly” distributed among the assessed properties and (2) “in proportion to the estimated benefits to be received” from the assessment district improvements. (Cal. Sts. & Hy. Code §§22572-22573). If in the future the City proposes to increase the District assessment above that set in 1996, then a more specific standard will apply – that added in 1996 by Proposition 218 to the California Constitution. The California Constitution now allows increases above the amount levied in 1996 only if property assessed (1) receives a special benefit from the improvements for which a special assessment is to be

levied; and (2) the amount of that assessment is proportional to the special benefit that is conferred on the property. (Cal. Const. art. XIII D).

According to the District Engineer's Annual Reports, the District's annual assessments have at times reflected a fair distribution in proportion to the benefits received from District improvements, as required by the Landscaping and Lighting Act. However, at other times they have not. For example, the 2018-2019 annual cleaning and debris removal at the Cayes Storm Water Pump Station was fully paid for from District funds. However, in the next year it was not when the City instead decided to treat this as routine maintenance work and to pay for it fully out of City funds. As another example, the District decided in 2020-21 to allocate part of the costs of environmental work concerning water quality in the Lagoon Complex to the City instead of funding all the costs from District funds. According to an Annual Report, this choice was made because "the Lagoon is only approximately half within the frontage of the Baypoint Lagoons Assessment District, the District is only responsible for half of the contract." At the same time, however, the District made a contradictory decision about how to fund upgrade and rehabilitation work on the Cayes Storm Water Pump Station. That work – even though it also will directly benefit the Spinnaker Point development (located outside of the District) – was fully funded by the District.

The approach taken in 2020-21 to funding upgrade and rehabilitation work at the Cayes Storm Water Pump Station is being continued in this fiscal year's proposed assessment. According to the FY2022-21 District Engineer's Annual Report, costs to upgrade and rehabilitate that facility are being allocated fully to District properties – without apportionment to those properties located outside of the District that directly benefit from the services provided by the Cayes Storm Water Pump Station.

This is not fair. The upgrade and rehabilitation costs must be fairly distributed, in proportion to the benefits properties directly received from the Cayes Storm Water Pump Station. In addition, the contribution District properties already make to storm water management through property taxes and the City's Clean Stormwater Activity Fee should be taken into account so that District properties are not surcharged for municipal services other properties outside of the District receive.

Respectfully submitted,

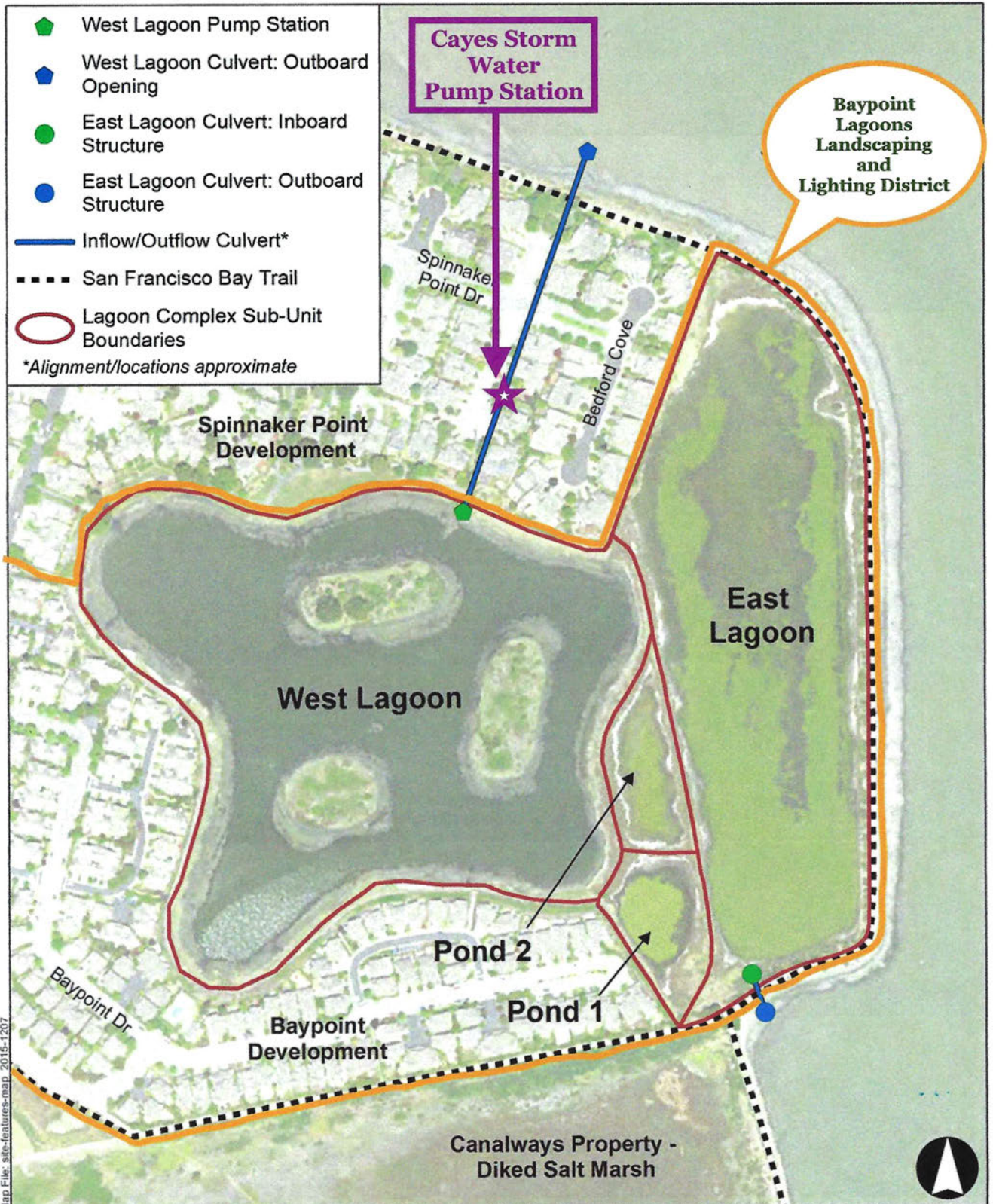


Carolyn A. Lown



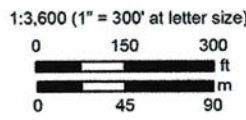
Figure 1





Map File: s86-features-map_2015-1207

Data sources: sub areas, infrastructure, Bay Trail (SE, 2015); photo (NAIP, 2014)



Spinnaker Lagoon Enhancement Project No. 3005

Figure 2

