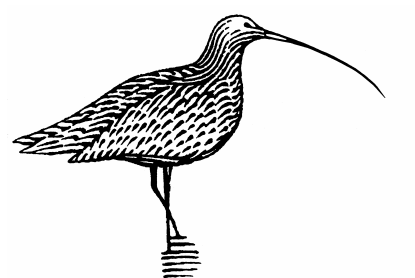


Analysis of the Proposal to Fill The Corte Madera Inn Pond

Corte Madera, California

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Project No. 1090



Prepared for

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Proposed Mitigation Not Described

The Mitigation Bank into which the project sponsor proposes to purchase credits for the avoidable loss to jurisdictional waters is not described in the documents provided with the public notice. The public notice included documents about a mitigation bank at a location no longer being considered for a mitigation bank. Therefore, the nature and adequacy of the mitigation cannot be evaluated in any manner, including whether the mitigation bank actually exists, has been constructed and met its performance criteria and thus is available to sell credits to offset spatial and temporal losses.

The February 7, 2003 Corte Madera Inn Mitigation Program Summary prepared by Zentner and Zentner states on page 1 that “[m]itigation credits of 0.65 have been purchased at the Burdell Ranch Wetland Conservation Bank to mitigate...” *Given the information above, has the Town received documentation from the applicant that (1) confirms such a mitigation credit purchase, (2) confirms that the mitigation habitat has been constructed and has met its ecological performance standards and therefore is able to offset the impacts, and (3) demonstrates to the Town that adverse impacts will be mitigated effectively in terms of acreage and timing of replacement habitats?*

Inconsistent with the Clean Water Act

The federal Clean Water Act Section 404(b)(1) alternative analysis subjects projects subject to the Act’s jurisdictional (in this case, Waters of the United States) to a sequential test for receiving federal authorization – avoidance, minimization, compensation. Section 404(b)(1) seeks to identify the least environmentally damaging practicable alternative. In this case, parking lot construction is not a water-dependent use and one may reasonably conclude that the impacts can be avoided. By skipping directly to compensation (see comment above), one must make the conclusion that Waters of the U.S. must be filled to provide restaurant parking, a conclusion we find difficult to support.

Prior Corps and Regional Board Approval Not Relevant

The Mitigation Program Summary (page 1) states that the 1985 project to fill the pond for an expanded hotel received approvals from the U.S. Army Corps of Engineers and Regional Water Quality Control Board. The fact that a prior pond fill proposal received those approvals has zero bearing on the likelihood of receiving those approvals in 2004. The intervening 19 years have seen a drastic change in the laws and regulations that govern issuance of such approvals. *We recommend the Town delay final action until the applicant has completed all its Corps and Regional Board permitting in order to allow those agencies and federal and state wildlife agencies to review the project and determine whether it can be permitted and if the proposed mitigation is acceptable.*

Biological Comparison to Corte Madera Ecological Reserve Inappropriate

Concluding that the Pond has minimal ecological function based on a bird use comparison to the nearby Corte Madera Ecological Reserve tidal marsh is inappropriate and misleading. These two systems are wholly unlike one another and in fact are complementary habitats for a large number of species, especially wading and diving birds.

Proposed Mitigation Too Far From Impact Site

The **Burdell Range Wetland Conservation Bank** is approximately 14 miles to the north of the project site. Though populations in the general vicinity of the Conservation Bank may benefit if the wetland mitigation bank is deemed successful, the *populations* that currently utilize the pond would not receive those same benefits.

Disaggregate Lagoon No. 1 Water Quality Benefits and Pond Filling

Page 4 of the March 5, 2004 Initial Study states, “[g]enerally, the pond is stagnant as little circulation occurs and large algae patches appear on the surface. Thus, the Town Engineer sees an improvement in general water quality of Lagoon No. 1 by the filling of the Inn Pond and the use of buried storm water pipes to control flows (Bracken, 2003).”

First, the **water quality data are 19 years old**, as stated on page 17 of the Initial Study. Further, the Initial Study asserts on that same page that “...little management or other conditions have changed in relation to the pond.” However, the pond is connected to Lagoon No. 1 to the northwest and to Shorebird Marsh east of Highway 101. Much has changed in the operation and management of Shorebird Marsh since 1985. On the day we visited the pond, April 7, we observed distinct water flow from north (where culverts to Lagoon No. 1 and Shorebird Marsh are located) to south. *We recommend that the Town obtain better data on the hydrologic linkages between the Inn Pond and these two other*

water bodies, update the water quality data if it accepts assertions regarding purported water quality improvements, then re-evaluate the water quality evaluation.

Second, the proposed project is not to improve water quality in Lagoon No. 1. Though the Town Engineer may view pond filling as improving water quality, it is not an examination of options for how to improve Lagoon No. 1 water quality. *Thus, strategies for the pond other than its filling may exist to improve Lagoon No. 1 water quality and at the same time avoid its loss and we recommend the Town pursue such alternatives.*

Potential for California Red-Legged Frog and California Tiger Salamander Breeding

Pages 16-17 of the March 5, 2004 Initial Study state that these two species may use the site but that salinity, isolation, and polluted runoff would be harmful to these species. However, in describing pond operations and conditions on pages 3-4, the Initial Study states, "...the pond is fresh to slightly brackish during winter months and brackish to saline during the rest of the year." Both these species breed from early November to March/April (Goals Project, 2000) and thus pond salinity may not be an impediment to their breeding at the pond. Though the pond is isolated from other habitats over land due to development, it retains the culvert connections which could act as dispersal corridors. Harmful pollution in runoff is generally greater following early rains and diminishes in concentration as winter rains proceed, thus pollution may not be timed to restrict breeding success. Finally, the Initial Study does not indicate whether formal surveys were conducted for these species but, on page 17, merely that "surveys" were done during the survey period. *We recommend that the potential for these species to breed at the Inn Pond be investigated further prior to any actions, including review of the California Natural Diversity Database if not already completed.*

Reference

Goals Project. 2000. Baylands Ecosystem Species and Community Profiles: Life histories and environmental requirement of key plants, fish and wildlife. Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. P.R. Olofson, editor. San Francisco Bay Regional Water Quality Control Board, Oakland, CA.