

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653, travis@bcdc.ca.gov)
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SUBJECT: **Staff Report and Recommendation on Whether Appeal No. 2-08 Raises a Substantial Issue; Solano County Extension No. Five to Marsh Development Permit No. MD 82-12 Issued to Lois Tonnesen for the Continued Operation of A Pet Cemetery**
(For Commission consideration on November 6, 2008)

Summary and Recommendation

On June 5, 2008, Solano County modified Marsh Development Permit No. MD 82-12 issued to Lois Tonnesen to grant a five-year time extension allowing the continued operation of a pet cemetery at 3700 Scally Road, in the City of Suisun City, Solano County. The 20-acre site is within the secondary management area of the Suisun Marsh, for which Solano County has the authority to issue marsh development permits.

The Commission has received an appeal of Solano County's action (Exhibit E). The Suisun Marsh Preservation Act (SMPA) provides that the Commission first determine whether the appeal raises a substantial issue as to the conformity of the proposed project with the SMPA, the Suisun Marsh Protection Plan (SMPP), and the Solano County component of the Suisun Marsh Local Protection Program (LPP). If the Commission determines that the appeal does not raise a substantial issue, the appeal shall be dismissed and the Solano County decision on Extension No. Five to Marsh Development Permit No. MD 82-12 becomes final. If the Commission determines that the appeal raises a substantial issue, then it must hold a hearing *de novo* on the project.

The staff recommends that the Commission determine that the appeal of Solano County Extension No. Five to Marsh Development Permit No. MD 82-12 *does not* raise a substantial issue as to the conformity of the proposed project with the Suisun Marsh Preservation Act, the



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Suisun Marsh Protection Plan, and the Solano County component of the Suisun Marsh Local Protection Program.

Staff Report

Background. The Solano County Board of Supervisors conditionally approved the creation of the subject pet cemetery in 1980. Subsequently, the County's decision was appealed to the Commission, which denied Marsh Development Permit No. MD 82-12 in 1981 due to concerns that the project would establish a precedent for class II disposal sites in the secondary management area of the Suisun Marsh. In 1982, Solano County adopted the Suisun Marsh Local Protection Plan (LPP), which limited the types of uses in the Suisun Marsh. The same year, the Commission certified the LPP as consistent with the Suisun Marsh Preservation Act. The County subsequently found the pet cemetery to be an allowable use under the newly adopted LPP, and approved Marsh Development Permit No. MD 82-12 in August of 1982. The permit has been extended by the County on four previous occasions: In 1987, 1992, 1997, and 2002. On August 5, 2008, the Solano County Board of Supervisors conditionally approved a resolution and staff report granting a fifth five-year time extension to Marsh Development Permit No. MD 82-12 to allow the continued operation of the pet cemetery (Exhibit D).

The pet cemetery, as originally authorized in 1982, was the subject of a Negative Declaration. The County staff report states that Extension No. Five to Marsh Development Permit No. MD 82-12 would not result in any additional or new impacts and there is no evidence in their records of additional or new impacts and, therefore, additional CEQA analysis is not required. Final Notice of County approval of the project was received at the Commission's office on September 3, 2008 (Exhibit D).

Summary of the Project on Appeal. Extension No. Five to Marsh Development Permit No. MD 82-12 continues the authorization for using the subject property for the burial of animals in common graves. The 20-acre pet cemetery parcel is located on the east side of Scally Road, approximately 3,300 feet south of Highway 12, and is divided into three sub-parcels, referred to as Phases One, Two and Three, that pursuant to the original authorization, are intended to be used successively during the operation of the pet cemetery. To date only the Phase One sub-parcel has been used for animal burial. The property is located in an area that is zoned for Limited Agricultural (AL 160), and the General Plan Land Use Designation for the area is Extensive Agriculture and Secondary Marsh. Current uses of the area include a single-family residence and the pet cemetery. Animals to be disposed of at the pet cemetery are brought to the site in refrigerated trucks from veterinarians and animal shelters around the Bay Area.

Extension No. Five to Marsh Development Permit MD 82-12 contains conditions which require the permittee to: (1) minimize physical and visual disturbance by limiting the area disturbed by burial disposal to six pits at any time; (2) cover, recontour, and revegetate each burial area prior to excavating a new burial site; (3) screen each burial area to eliminate dust and visual impacts during burial operation; (4) protect groundwater quality by complying with the requirements of the San Francisco Regional Water Quality Control Board (Regional Board) and the County Division of Environmental Health regarding standards for covering and capping burial pits, excavating burial pits no deeper than 10 feet and not below the groundwater level, and (5) reporting the number of animals buried each month to the County Health Department on a quarterly basis. The permit is limited to a five-year period unless an additional extension of time is applied for and granted.

The Regional Board requires annual monitoring reports to assess the presence of contaminants in groundwater at the site. In its letter to the permittee dated March 12, 2008, the Regional Board states that the permittee must obtain revised Waste Discharge Requirements prior to using the Phase Two and Phase Three sub-parcels within the project site (Exhibit C). The Phase One sub-parcel is almost at capacity and the pet cemetery is expected to commence operations on the Phase Two parcel in the near future.

Appeal Procedures. Public Resource Code Sections 29522 through 29524 of the SMPA and Sections 11400 through 11452 of the Commission's regulations outline the procedures the Commission must follow in considering an appeal of a marsh development permit. The SMPA provides that a local action on a marsh development permit may be appealed to the Commission by an aggrieved person or by two Commissioners.

On August 22, 2008, the Commission received and filed an appeal by Ms. June Guidotti for the County's action on Extension No. Five to Marsh Development Permit MD 82-12 (Exhibit E). Ms. Guidotti is an "aggrieved person" under Section 29117(b) of the SMPA, which states, "'Aggrieved person' means any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision made or action appealed; or who, by other appropriate means prior to a hearing, informed the local government of the nature of his or her concerns; or who for good cause was unable to do either of the foregoing." At the Commission staff's request, the appellant revised and resubmitted her appeal on September 23, 2008 (Exhibit E). Copies of both appeals have been included in the attachments to this report.

When considering the appeal, the Commission must first determine whether the appeal raises a substantial issue with respect to the consistency of the County's approval with the SMPA, the SMPP, and the LPP. At its November 6, 2008 meeting, the Commission will hold a public hearing on the substantial issue question. Sections 11450(b) and 11450(c) of the Commission's regulations set out the process to consider an appeal, as follows:

- "(b) The Commission shall determine whether the appeal does not raise any substantial issues only after the staff has presented a recommendation...
- (c) Unless the Commission determines by a majority vote of those present and voting that the appeal does not raise any substantial issue, the Commission shall proceed to hear the appeal. If the Commission determines that the appeal does not raise any substantial issue, it shall dismiss the appeal."

After public testimony is presented, the Commission may question the various parties and the Commission staff. The staff will then present its recommendation and the Commission will vote on whether the appeal raises a substantial issue.

If the Commission determines that the appeal does not raise a substantial issue then the appeal would be dismissed and the County's marsh development permit would stand.

If the Commission determines the appeal does raise a substantial issue, it must then consider the project *de novo* (that is, the Commission must notice, schedule and hold a public hearing on the entire project and act on the time extension application) to determine whether the project is consistent with the applicable policies of the LPP.

Exhibits. Attached and incorporated into this recommendation are the following: (A) a vicinity map; (B) a site map; (C) the letter from the San Francisco Regional Water Quality Control Board dated March 12, 2008, regarding the project; (D) the Solano County Extension No. Five to Marsh Development Permit No. MD 82-12; and (E) copies of the two appeals dated August 22, 2008 and September 23, 2008.

Analysis of Appeal. The appeal raises 13 separate concerns (or appeal points). Many of the appeal points have been condensed because they contain overlapping issues. In order to focus the Commission's analysis of the substantial issue question, the Commission staff has evaluated the appeal points and identified those pertaining to an applicable policy, ordinance

or regulation found in the SMPA, the SMPP or the LPP.

In evaluating whether an appeal point raises a “substantial issue,” the staff believes the Commission should consider whether: (1) the point raises a legitimate question as to the conformity of the project with the SMPA, the SMPP, or the LPP; and (2) there is sufficient information to enable the Commission to determine that a particular aspect of the project is not in conformance with the SMPA, the SMPP, or the LPP.

Five issues raised by the appellant are appealable and are evaluated below.

Eight issues raised by the appellant have been determined by the staff to raise non-appealable matters because the appellant failed to identify the inconsistency of the project with the provisions of the SMPA, the SMPP or the LPP.

I. Appealable Points

- 1) **Ecological Impacts to the Marsh.** The appellant raises concerns that the subject time extension (i.e., continued operation) of the pet cemetery may have significant adverse ecological impacts on the Marsh. The LPP refers to the importance of the upland grasslands in the secondary management area in the Suisun Marsh and the importance of protecting these habitats for wildlife, as noted in the following policies:

Policy No. 1 of the Agricultural and Open Space Land Use section of the LPP (page 10) states, “The County shall preserve and enhance wherever possible the diversity of wildlife and aquatic habitats found in the Suisun Marsh and surrounding upland areas to maintain these unique wildlife resources.”

Policy No. 3 of the Agricultural and Open Space Land Use of the LPP (page 10) states, “...Where feasible, the value of the upland grasslands and cultivated lands as habitats for marsh-related wildlife should be enhanced.”

Policy No. 8 of the Utilities, Facilities and Transportation section of the LPP (page 26) states that “The proliferation of sites for the disposal of special wastes could have significant adverse impacts upon the preservation of marsh upland areas. The animal burial ground on Scally Road under County Use Permit should be allowed to operate as conditioned. The creation of additional disposal sites of a special nature shall be prohibited.”

The appellant cites the above LPP policies and raises the following concerns:

Appeal Point 1. The appellant states that the pet cemetery is located in an area zoned for Limited Agriculture in Solano County’s General Plan and, according to the appellant, should not be used as a solid waste/commercial burial site for animals.

Response to Appeal Point 1. While the LPP prescribes certain uses and establishes policies to protect and enhance wildlife and habitat in the project area, Policy No. 8 of the Utilities, Facilities and Transportation of the LPP specifically authorizes this particular pet cemetery as an allowable facility within the secondary management area that can continue to operate provided it will not adversely impact the Marsh and the conditions of the applicable County use and marsh development permits are met. Commission staff, therefore, believes that this appeal point does not raise a substantial issue.

Appeal Point 2. In a letter dated April 26, 2007, the California Department of Fish and Game (DFG) requested that the Solano County Department of Resource Management conduct a complete habitat assessment and inventory of sensitive flora and fauna within the project area and identify potential direct and indirect changes that may occur to these resources as a result of the operation of the pet cemetery. According to the

appellant, this assessment was not done and the appellant appears to suggest that this assessment should be carried out before the subject time extension is granted allowing continued operation of the pet cemetery.

Response to Appeal Point 2. Solano County Department of Resource Management is the lead agency for California Environmental Quality Act (CEQA) review. The County certified a Negative Declaration for the pet cemetery in 1982. Therefore, the County has determined that further environmental review is unnecessary given that Extension No. Five to Marsh Development Permit MD 82-12 -- like the previously authorized time extensions -- does not involve a change in use or expansion of the pet cemetery and that the operation of the pet cemetery will not have any environmental impact on species of concern or surrounding habitat. The DFG letter requested additional information from the permittee about the resource values at the project site but did not raise any issue regarding the consistency of the pet cemetery with the SMPA, SPP or LPP. Commission staff, therefore, believes that this appeal point does not raise a substantial issue.

- 2) **Impacts to Water Quality in the Marsh.** The appellant contends that the continued operation of the pet cemetery will adversely affect groundwater supplies and water quality in Hill Slough. The LPP refers to the importance of protecting water quality in the Suisun Marsh, as noted in the following policy:

Policy No. 5 of the Water Quality section of the LPP (page 19) states, in part, that "Any development in the Suisun Marsh watershed or secondary management area proposed for areas that have poor soil conditions for construction or that are seismically active, should be controlled to prevent or minimize earth disturbance, erosion, water pollution, and hazards to public safety..."

The appellant raises the following concerns:

- a) **Appeal Point 3.** The appellant states that water quality testing required by the permit is inadequate to assess potential groundwater contamination from the pet cemetery operations, and furthermore, that testing does not address the potential for animals [containing] pharmaceutical drugs or radiation to contaminate groundwater through leaching and ultimately migrating into Hill Slough and the Suisun Marsh. The appellant states that dogs disposed of at the pet cemetery have been subjected to laboratory tests involving exposure to low level radiation.

Response to Appeal Point 3. Pursuant to the Regional Board's original 1987 Order and Waste Discharge Requirements for the project, the Regional Board has required the permittee to conduct annual water quality testing and reporting of groundwater sampled at four on-site wells at the project site. To date, Regional Board staff states that the pet cemetery is in compliance with its authorization. In 2007 and 2008, a more comprehensive groundwater assessment and a one-time sampling event for additional constituents of concern were conducted at the request of the Regional Board. Test results did not yield any elevated concentrations for contaminants of concern. Slightly elevated levels of coliform were detected. However, Regional Board staff concluded that the elevated coliform was not caused by the operation of the pet cemetery, but rather by grazing cattle in surrounding agricultural lands. Commission staff believes that the current testing required by the Regional Board does not suggest evidence of water quality impacts and, therefore, this appeal point does not raise a substantial issue.

- b) **Appeal Point 4.** The Regional Board must issue a waste discharge requirement for Extension No. Five to Marsh Development Permit MD 82-12.

Response to Appeal Point 4. The Regional Board has stated that the permittee is operating the pet cemetery under the original Regional Board Order and Waste Discharge Requirements, issued in 1987 for Phase One, and that its operations remain in compliance with said order. The Regional Board, in its letter dated March 12, 2008 (Exhibit C), has raised the permittee's attention to the fact that the

permittee needs to update its Waste Discharge Requirements in order to move to the Phase Two sub-parcel. Commission staff, therefore, believes that this appeal point does not raise a substantial issue.

- c) **Appeal Point 5.** The appellant infers that the pet cemetery needs a liner underneath the pet disposal area to protect groundwater within the project site and at adjacent lands.

Response to Appeal Point 5. The existing Order and Waste Discharge Requirements, issued by the Regional Board in 1987, does not require a liner underneath the pet cemetery. In addition, the Regional Board staff has stated that it has analyzed the potential need for a liner and determined that it is preferable to not require one at the project site. Since the waste disposed of at the site is organic material, a liner would inhibit microbial action from breaking down the organic material. Commission staff, therefore, believes that this appeal point does not raise a substantial issue.

II. Non-Appealable Points

The following eight points raised by the appellant have been determined by the Commission staff to raise non-appealable issues since they do not address inconsistencies with the provisions of the SMPA, the SMPP or the LPP:

- 1) The Mitigated Negative Declaration originally prepared for the project in 1982 is inadequate.
- 2) There was a lack of public notification and knowledge about Extension No. Five to Marsh Development Permit MD 82-12.
- 3) Commission staff infers that the appellant believes that the permittee is “over-applying” boron at the project site and using sodium, which she states can cause “injury to plants and soil structural problems.”
- 4) Commission staff infers that the appellant believes that the Solano County supervisors are not sufficiently exercising their record-keeping responsibilities and allowing public access to information regarding the project.
- 5) Commission staff infers that the appellant believes that the County is not sufficiently investigating and maintaining records on the causes of death of the animals buried at the pet cemetery.
- 6) Commission staff infers that the appellant believes that the Solano County General Plan’s “new zoning changes to the site (rural residential)...” may contribute to increased industrial use of the Tonnesen site.
- 7) Several neighboring land owners have written letters of concern to the County regarding the potential for possible contamination at the pet cemetery site to migrate to their properties and leach into their groundwater.
- 8) The pet cemetery is not a water-dependent project.

Staff Recommendation. The staff recommends that the Commission find, based on the above discussion, that the points raised by the appellant’s appeal do not raise a substantial issue with regard to the conformity of the proposed project with the SMPA, the SMPP, and the LPP. The staff recommends that the Commission vote **YES** on the following motion:

I move that, based on findings set forth in the staff recommendation, the Com-

mission determines that Appeal No. 2-08 raises **NO** substantial issue as to the conformity of Extension No. Five to Marsh Development Permit No. MD 82-12 with the Suisun Marsh Preservation Act, the Suisun Marsh Protection Plan and the Solano County component of the Suisun Marsh Local Protection Program, and that the Commission dismiss the appeal.