

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Agenda Item #8

September 7, 2007

Application Summary

(For Commission consideration on September 20, 2007)

Numbers: BCDC Permit Application No. 10-06
Date Filed: August 9, 2007
90th Day: November 6, 2007
Staff Assigned: Karen Wolowicz (415/352-3669, karenw@bcdc.ca.gov)

Summary

Applicant: San Rafael Marina, LLC

Location: In the Bay and within the 100-foot shoreline band, at the existing Loch Lomond Marina located at 110 Loch Lomond Drive at Point San Pedro Road, in the City of San Rafael, Marin County (Exhibit A).

Project: The proposed project would be a mixed-use development including residential, commercial, marina and public access uses. The project would involve the construction of 81 single-family residences, a combination of 1,750- to 2,000-square-foot, one and two-story cottages, 1,650- to 3,100-square-foot townhomes, and 2,750-square-foot single-family residences, covering a total of approximately 10.9 acres. Additionally, a new 13,400-square-foot, full-service grocery store would be constructed approximately 100 feet north of the shoreline. To the north of this commercial building would be a two-story, mixed-use building, with 9,000 square feet of ground floor neighborhood-serving retail space and five residential flats above. An 800-square-foot restaurant with indoor and outdoor seating would also be constructed just north of the existing yacht club. The existing boat maintenance shop north of the westernmost peninsula would be demolished and rebuilt at least 40 feet north of the current location to provide repair services to boat owners. Twenty-seven boat trailer parking spaces and 16 dry boat storage spaces would be provided on the northwest portion of the site. An approximately 50-square-foot restroom building would be installed along the



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shoreline adjacent to the eastern peninsula to serve visitors at the children's play area. The existing 517-slip marina at the south end of the site would be retained. Approximately 260 parking spaces would be distributed adjacent to the boat docks and waterfront to provide convenient parking for marina tenants as well as the visiting public (Exhibit B).

Some public access currently exists at the site, including an approximately 1770-foot-long, eight-foot-wide, paved public access pathway along the shoreline with amenities such as benches, trash cans, and landscaping. The site also has an existing two-lane boat launch ramp that is available to the public. This public access was required as part of BCDC Permit No. M00-5, which authorized the construction of a portion of the marina and associated facilities. Proposed public access proposed includes the expansion of the existing public access pathway; improvements to the breakwater and east and west spits, such as trails, picnic areas, and a children's play area; the development of a Marina Green along the shoreline; the installation of a kayak launching float and launching ramp; and the creation of view corridors throughout the project site to guide the public to the shoreline. The applicant also proposes to enhance and protect approximately 2.6 acres of existing seasonal wetlands at the project site (Exhibits C and D).

**Issues
Raised:**

The staff believes that the application raises five primary issues: (1) whether the project is consistent with the McAteer-Petris Act and *San Francisco Bay Plan* policies regarding fill; (2) whether the project would provide maximum feasible public access consistent with the project; (3) whether the project is consistent with the Bay Plan policies on natural resources including fish, other aquatic organisms and wildlife and tidal marshes and tidal flats; (4) whether the project is consistent with the Bay Plan policies on water quality; and (5) whether the project is consistent with the Bay Plan policies on safety of fills.

Background

The proposed project site is located approximately two miles east of U.S. Highway 101, on the south side of Point San Pedro Road, and extends southward into San Francisco Bay. The site currently consists of thirteen parcels totaling 130 acres, including 30 acres of dry uplands, a

40-acre marina basin, and 60 acres of open water. The upland portion of the site consists of roads, parking areas, small structures, and a small shopping area. Existing commercial development includes an estimated 34,000 square feet of marina, neighborhood retail and service businesses, and office space in six single-story commercial structures. The marina operation consists of 517 berths, a dry boat storage yard with approximately 180 stored boats and trailers, 292 parking spaces, and a boat launch ramp. The northeastern portion of the site contains undeveloped areas including seasonal wetlands and tidal marsh. There are two narrow peninsulas (east and west spits) that extend south into the existing marina and a third L-shaped peninsula that serves as the breakwater for the marina. The project site is located within an existing developed residential area with approximately 300 existing homes. The proposed project site is separated from adjoining residential neighborhoods by a small cove and open space on the western property line, a marsh and channel on the eastern property line, and Point San Pedro Road at the northern property line.

Project Description

Project

Details:

The applicant describes the project as follows:

1. **In the Commission's Bay jurisdiction:**
 - a. Install, use, and maintain 740 cubic yards of rock riprap covering 21,600 square feet along 2,400 feet of the outboard side of the existing breakwater to improve structural stability;
 - b. Install, use, and maintain a 200-square-foot floating dock adjacent to the existing boat launch ramp for launching kayaks;
 - c. Install, use, and maintain a 200-square-foot portion of a 600-square foot gravel kayak launch ramp on the eastern side of the project site near the terminus of the parking area; and
 - d. Repair and maintain two existing 18-inch-in-diameter piles that support the yacht club building extending over the marina basin by removing damaged portions of the existing pilings and replacing them with concrete and fiberwrap.
2. **Within the Commission's 100-foot shoreline band jurisdiction:**
 - a. Install, use, and maintain portions of 8 homes, totaling 15,700 square feet;
 - b. Temporarily stockpile 2,000 cubic yards of earth material on the West Spit to be used to raise the elevation of the project site during construction of the project;
 - c. Install, use, and maintain a 2,070-square-foot portion of a 13,250-square-foot grocery building;

- d. Install, use, and maintain a 1,640-square-foot addition to the existing yacht club building to construct a café, with 500 square feet of outdoor dining on the eastern side of the café building;
- e. Install, use, and maintain a 400-square-foot portion of a 600-square-foot gravel kayak launch ramp on the eastern side of the project site near the terminus of the parking area;
- f. Install, use, and maintain a central Community Plaza at the foot of the entrance road and a 600-foot-long, 55-foot-wide landscaped Marina Green with a five-foot-wide raised planter and a series of concrete seat walls on the Marina Green's northern edge, which will provide a buffer between the public access area and adjacent vehicular traffic;
- g. Install, use, and maintain a 14-foot-wide boardwalk, expanded from the existing eight-foot-wide boardwalk along the Marina Green;
- h. Improve, use, and maintain 260 parking spaces covering 40,946 square feet along the shoreline and on the East and West Spits for marina, commercial, and public access parking;
- i. Use and maintain an existing 8-foot-wide, 900-foot-long pathway along the shoreline that would connect to the 14-foot-wide portion of the boardwalk south east of the Marina Green;
- j. Use and maintain an existing 8-foot-wide, 270-foot-long pathway from the boat launch ramp to the Marina Green;
- k. Install, use, and maintain a 5-foot-wide, 400-foot-long, decomposed granite trail, a children's playground, picnic areas, and benches on the East Spit;
- l. Install, use, and maintain a 5-foot-wide, 250-foot-long decomposed granite trail, picnic areas, and benches on the West Spit;
- m. Install, use, and maintain a 6-foot-wide, 2,200-foot-long decomposed granite trail along the existing breakwater;

- n. Install, use and maintain a 50-foot-wide, 300-foot-long passive park area along the eastern end of the marina parking area including a picnic and bird-viewing area overlooking the adjacent seasonal wetland;
- o. Create and maintain 0.22 acres of seasonal wetland;
- p. Preserve, enhance, and maintain the existing 1.6 acre seasonal wetland within the Commission's shoreline band jurisdiction;
- q. Install, use, and maintain two public restrooms, one at the East Spit and one at the entrance to the breakwater, totaling 792 square feet;
- r. Install, use, and maintain two fish cleaning stations with benches, picnic tables and fishing pole holders, one at the entrance to the breakwater and one at the southeast corner of the breakwater;
- s. Install, use, and maintain 43 benches, signage, and trashcans throughout the shoreline public access areas along the spits, community plaza, breakwater, and adjacent to the boat launch ramp, seasonal wetlands, and bird viewing area;
- t. Replace and maintain an existing boat repair facility located on the west end of the property, with a new boat repair facility of similar size at a location at least 40 feet north of the current location;
- u. Install, use, and maintain an approximately 65-foot-wide public access area, path and landscaping along the west end of the property to connect to the neighboring site;
- v. Install, use, and maintain 1,000 cubic yards of rock riprap along a 1,100-foot-long section of the boardwalk; and
- w. Install, use, and maintain 1,850 cubic yards of rock riprap along a 2,400-foot-long section of the outboard side of the existing breakwater to improve structural stability.

Fill: The proposed project would involve placing: 740 cubic yards of material covering 21,600 square feet of Bay surface area to improve the existing breakwater and shoreline, a 200-square-foot portion of a 600-square-foot gravel kayak launch ramp; and 200 square feet of floating fill for the construction of a floating dock for kayak launching.

Type of Fill (sq ft)	Removed	New	Total Net Fill (sq ft)
Solid	0	21,800	21,800
Floating	0	200	200
Pile-Supported	0	0	0
Cantilevered	0	0	0
Total (sq ft)	0	22,000	22,000

Public

Access: The existing public access on the site includes an approximately eight-foot-wide, 1770-foot-long, paved public access pathway along the marina basin shoreline with seven benches, five trash cans, three dog mitt stations, seven public access signs, landscaping and lighting. Proposed public access would include the following: (1) the creation of four view corridors and associated public access pathways that would provide visual and physical access from Point San Pedro Road to the shoreline; (2) a series of public access pathways totaling 4,650 feet in length, including the widening of the existing boardwalk along the marina basin shoreline and new trails on the East and West Spits and the existing breakwater; (3) a central Community Plaza at the foot of the entrance road; (4) a 33,000-square-foot Marina Green; (5) landscaping; (6) a kayak boat launch ramp and float; and (7) site amenities such as a children's play area, lighting, benches, trash cans, fish cleaning stations, restrooms, signage, and public access parking.

Type of Public Access	Square Feet	Acres	Shoreline Length (miles)	Amount (US\$)	Yes/ No
On-Site (new)	68,050	1.56	.86		
Off-Site (new)	0	0	0		
Protected or Maintained	14,160	0.33	0.34		
Monetary Contribution				na	
View Corridor					Yes
Total	82,210	1.89	1.2		

Priority

Use: The proposed project is not located in a priority use area.

Schedule

and Cost: The applicant would begin construction in December 2007 and would complete construction by June 2010. The total cost of the project would be \$80,000,000.

Staff Analysis

A. **Issues Raised:** The staff believes that the application raises five primary issues: (1) whether the project is consistent with the McAteer-Petris Act and *San Francisco Bay Plan* policies regarding fill; (2) whether the project would provide maximum feasible public access consistent with the project; (3) whether the project is consistent with the Bay Plan policies on natural resources including, fish, other aquatic organisms and wildlife and tidal marshes and tidal flats; (4) whether the project is consistent with the Bay Plan policies on water quality; and (5) whether the project is consistent with the Bay Plan policies regarding the safety of fill.

1. **Fill.** The Commission may allow fill only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part: (a) the public benefits from fill must clearly exceed the public detriment from the loss of water areas; (b) fill in the Bay should be limited to water-oriented uses, such as wildlife refuges or minor fill for improving shoreline appearance or for public access; (c) no alternative upland location exists for the fill; (d) the fill should be the minimum amount necessary to achieve

the purpose of the fill; and (e) the nature, location, and extent of any fill should minimize harmful effects to the Bay including the water volume, circulation, and quality, fish and wildlife resources, and marsh fertility. The proposed project would result in the placement of fill within tidal areas of the Bay.

- a. **Public Benefits v. Public Detriment.** Approximately 21,600 square feet, 740 cubic yards of solid fill would be placed along a 2,400-foot-long section of the breakwater in order to repair it and stabilize the shoreline at the site. Additionally, 200 square feet of solid fill and 200 square feet of floating fill would be placed in the Bay to construct portions of a kayak launch ramp and dock. Furthermore, minor fill would be placed in the Bay to repair two existing 18-inch-in-diameter piles that support the yacht club building.

Currently, the breakwater at the site serves to protect the marina from wind-wave action and is used by the public as an informal trail. This breakwater frequently overtops during storm events in the winter and erosion is causing it to deteriorate. In order to repair the breakwater and protect the marina and the public access improvements proposed to be installed on top of the breakwater, 1,850 cubic yards of rock riprap would be placed in the shoreline band and 740 cubic yards of rock riprap would be placed in the Bay. Public access along the breakwater is a unique experience as it allows the public to be surrounded by the Bay on three sides. Repairs to the breakwater would ensure that this public access remains available, useable, and safe. Additionally, repairs to the breakwater would ensure that the boating activities associated with the marina would be protected.

The placement of fill for the kayak launch ramp and dock would improve access to the Bay for boaters. Currently, there is informal access to the water for kayakers via the existing boat launch ramp or along the shoreline. However, this access is difficult and requires kayakers to drag their boats across concrete or unimproved shoreline. The floating kayak dock and launch ramp would improve the water and shoreline access for kayakers, protecting their boats and allowing them to enter and leave the water safely.

The existing yacht club at the project site, a portion of which is supported by piles, was originally constructed in the 1960's. The applicant's structural engineer has recommended that two of the piles supporting this building be repaired in order to maintain the structural integrity of the yacht club. Damaged portions of the piles would be removed and repaired with concrete and fiberwrap, and therefore would not result in any new net fill in the Bay. Reinforcing these piles would ensure continued use of the yacht club, thereby promoting water-oriented activities and affording views of the Bay from the facility.

The Commission should determine whether the public benefits associated with the fill for the shoreline protection, kayak launch ramp and floating dock, and pile repairs exceed the public detriment from the placement of that fill.

- b. **Water-Oriented Use.** The purpose of the proposed fill is to provide shoreline protection public access, boat access, and structural support for the yacht club building. The applicants propose that the fill for the riprap protection and repairs to the yacht club pilings would protect and support marina and boating activities, public access, and enjoyment and appreciation of the Bay, all water-oriented uses. Additionally,

the fill associated with the kayak launch ramp and floating dock would involve minor fill to improve water access at the project site.

- c. **Alternative Upland Location.** The applicant believes that there is no alternative upland location for the proposed fill as the purpose of the fill is to protect the shoreline and breakwater from erosion, provide improved water access to the Bay, and stabilize a pile-supported structure that was constructed partially over the Bay.
- d. **Minimum Amount Necessary.** The applicant states that the fill proposed as part of the project would be the minimum amount necessary to repair the breakwater and stabilize the shoreline, while minimizing the impacts to existing habitats and wildlife. Currently, fringe tidal marsh habitat exists on the inboard side of the breakwater. In order to avoid all impacts to this habitat, all breakwater repairs would be conducted on the outboard side of the levee.

Additionally, the applicants contend that the fill for the kayak launch ramp and floating dock would be the minimum amount necessary to allow for safe boating access to the Bay. Finally, the fill for the repairs to the piles would be the minimum amount necessary in that it would be an in-kind repair and replacement of a select group of existing piles and would not result in any net new fill.

The Commission must determine whether the fill placed as part of the restoration would be the minimum amount necessary to construct the project.

- e. **Minimizing Impacts.** The Bay Plan policies on water surface area and volume state that, “[w]ater circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes or piers should be thoroughly evaluated to determine their effects on water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.”

The fill placed along the breakwater and shoreline would involve repairs to existing structures within the Bay. Placement of riprap along these structures would not result in any changes to the water circulation of the Bay. Additionally, the installation of a small kayak floating dock and launch ramp would involve the placement of small amounts of fill within an established marina that is protected by a breakwater. Therefore, the installation of these structures would not have any significant adverse impacts on water surface area or circulation of the Bay. Further, the repairs to the existing yacht club piles would not result in any new net fill and therefore would not impact water surface area or circulation of the Bay.

The Commission should determine whether the project has been designed to minimize harmful impacts to water volume circulation as a result of fill placement.

2. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states that “...existing public access to the shoreline and waters of the...[bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” The Bay Plan policies on public access state that “[i]n addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible public access to and along the waterfront...should be provided in and through every new development in the Bay or on the shoreline....” The policies go on to state that, “[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human

intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided..." The policies further state, "...[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife..." and "...[p]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of the Bay natural resources, such as aquatic life, wildlife and plant communities, and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for the physically handicapped, and should be identified with appropriate signs..." The Bay Plan policies on Appearance, Design and Scenic Views state, "[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas..." The policies further state that, "[v]iews of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water."

BCDC Permit No. M00-5 was issued on April 17, 2001 and authorized the marina facilities at the Loch Lomond Marina. Additionally, that permit required public access that includes an approximately eight-foot-wide, 1,770-foot-long, paved public access pathway along the marina basin shoreline, and the placement of seven benches, five trash cans, three dog mitt stations, seven public access signs, landscaping and lighting within the public access area. The proposed public access associated with the Village at Loch Lomond Marina project includes:

- a. A view corridor, ranging from 100 feet wide at the project's entry to 150 feet wide near the waterfront at the western portion of the site. This area would serve as the main entry from the intersection of Point San Pedro Road and Lochinvar Road into the development and would provide a physical and visual connection to the marina and waterfront. This entry would include an 18- to 24-foot-wide public access sidewalk on the west side of the entry and a 6-foot-wide public access sidewalk on the east side of the entry that would lead visitors and residents to the waterfront;
- b. A 14-foot-wide boardwalk, expanded from the existing eight-foot-wide pathway, along the 600-foot-long Marina Green and an eight-foot wide, 900-foot-long boardwalk beyond the Marina Green to the East;
- c. A central Community Plaza and 600-foot-long by 55-foot-wide Marina Green between the boardwalk and marina drive and parking. A five-foot-wide raised planter and a series of concrete seat walls would be installed along the Marina Green's northern edge to provide a buffer between the public access area and adjacent vehicular traffic. Nine benches would be installed along the Marina Green's southern edge to provide opportunities for sitting and viewing the Bay. The Community Plaza and Green would serve as waterfront gathering places and recreational areas and will also serve as a buffer between the boardwalk and the marina drive and parking;

- d. Three, wide, landscaped view corridors with six-foot-wide, 400-foot-long pathways through the residential development that would provide additional pedestrian connections for visitors and residents from Point San Pedro Road to the waterfront;
- e. A six-foot-wide, 750-foot-long public access pathway along the eastern side of the project site, between the residences and the seasonal wetland, connecting Point San Pedro Road to the waterfront;
- f. Improvements to the existing East and West Spits and “L-shaped” breakwater for picnicking, viewing, fishing, and other recreational activities, including: (1) five-foot-wide, pedestrian/bike paths on the East and West Spits, totaling 650 feet; (2) a six-foot-wide, 2,220-foot-long pedestrian/bike path along the breakwater; (3) benches and picnic tables; (3) a fishing area with benches, a picnic table, and fishing pole holders; (4) a children’s play area; and (5) a bird observation platform. Landmark features, such as berming, and appropriate landscaping would also be incorporated;
- g. Fee use of the existing two-lane boat launch ramp located at the southwest portion of the site. A kayak launching float would be installed on the east side of the boat launch ramp. Twenty-seven car-trailer parking spaces and 16 dry boat storage spaces would be provided for day-use boaters just north of the boat launch ramp. A second kayak launch ramp would be installed at the southeast end of the marina parking area near the entry to the breakwater;
- h. A 50-foot-wide, 300-foot-long passive park area along the eastern end of the marina parking area, including a picnic and bird-viewing area overlooking the adjacent seasonal wetland;
- i. Benches, signage, and trash cans throughout the shoreline along the spits, community plaza, breakwater and adjacent to the boat launch ramp, seasonal wetlands, and bird viewing area; and
- j. Connections to the adjacent residential community to the west at both the northern and southern portions of the project site connecting the proposed development to the public access area at the San Pedro Cove community.

The applicant states that the proposed project would significantly improve public access to the shoreline. Currently, the property is in disrepair, cluttered with boat and trailer storage, underutilized paved and unpaved parking lots, and old commercial buildings. The proposed public access would provide passive and active recreational opportunities such as sitting, hiking, biking, picnicking, boating, fishing, wildlife-observation, and viewing of the Bay. It would create clear physical and visual connections to the shoreline from Point San Pedro Road and, with the development of the Marina Green and Community Plaza, would establish a more attractive, inviting, and interesting shoreline experience.

The Environmental Impact Report for the project extensively analyzed the traffic and parking impacts of the proposed project. The analysis included counts of cars entering and leaving the site and parked cars during peak-usage days, such as the 4th of July. The analysis also included estimates of traffic volumes and parking demand generated by the proposed project and its various uses. The EIR concluded that the proposed project would provide adequate parking for members of the public utilizing the boat launch ramp, the public access trails, and the other site amenities, as

well as for those people taking advantage of the marina, commercial, and residential uses at the site.

Currently, an informal public access pathway exists on the eastern side of the project site, starting at Point San Pedro Road, extending between the two separate seasonal wetland areas, to the waterfront. An earlier iteration of the applicant's plan proposed that this pathway be formalized into a four-foot-wide pedestrian pathway. However, during the City of San Rafael's review of the project, it was determined that having a pathway in this location conflicted with the City's requirement of a 50-foot setback between all development and wetland habitats. Furthermore, the Department of Fish and Game (DFG) raised concerns that development in this location would have the potential to impact listed species documented as having used the tidal marsh just north of the seasonal wetland, including the endangered California clapper rail and black rail. DFG stated that this area would likely increase the activity of people and pets adjacent to tidal and non-tidal wetland habitat, which could degrade habitat suitability and value, as well as cause the disturbance of habitats known to be home to special status species. In response to these concerns, the applicant has relocated portions of the development and the public access pathway in order to maintain a 50-foot buffer between the residential and public uses and the wetland habitats. Additionally, the existing recreational trail separating the two seasonal wetlands on the site would be removed and these areas would be connected to create one large seasonal wetland habitat. Habitat fencing would be installed between the public and private uses and wetland areas in order to minimize impacts to sensitive habitats and wildlife from humans and pets.

Currently, no formal public access connection exists at the western boundary of the project site to connect to the San Pedro Cove BCDC required open space area. The applicant proposes to provide at least a 65-foot-wide connection by moving an existing building for boat repair a minimum of 40 feet north of its existing location. This connection would include a path and low lying landscaping in order to provide a clear visual and physical connection to the required open space.

The Commission should determine whether the proposed public access and view corridors are the maximum feasible public access consistent with the project.

3. **Natural Resources Policies.** The Bay Plan policies on fish, other aquatic organisms and wildlife state, "To assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal areas should be conserved, restored and increased." The policies further state that, "[t]he Commission should consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...(and) give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat."

The Bay Plan policies on tidal marshes and tidal flats state that, "[t]idal marshes and tidal flats should be conserved to the fullest extent possible." The policies further state that, "[a]ny proposed fill, diking or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to

minimize, and if feasible avoid any harmful effects.”

The installation of fill material for the construction of the kayak launch ramp and floating kayak launching dock and repair of the breakwater and the yacht club piles would create minimal and temporary disturbance to water quality due to turbidity. The results of the Section 7 consultation with NOAA Fisheries state that this work would have the potential to impact several listed species of salmonids that may occur seasonally in the project area, including the Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook Salmon, Central Valley steelhead, and Central California Coast steelhead. In order to minimize impacts to listed fish species, the applicant proposes to restrict all in-water work to the period between June 15 and November 30. NOAA Fisheries determined that the proposed project is not likely to adversely affected listed salmonids or their designated critical habitat.

In addition, the in-Bay work would have the potential to impact Essential Fish Habitat for various life stages of fish species managed within the following Fishery Management Plans (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act: Pacific Groundfish FMP, Coastal Pelagics FMP, and Pacific Coast Salmon FMP. NOAA Fisheries has determined that construction activities associated with the project, which would either be within the footprint of an existing structure (in the case of the breakwater, shoreline protection, and piles supporting the yacht club) or within a small area that would not significantly change the character of the subtidal or tidal habitat in the project area (in the case of the kayak launch ramp and float), would not have a significant adverse impact on EFH for the above-listed fish species.

Currently, tidal marsh habitat is established on the inboard side of the breakwater. In order to avoid any impacts to this tidal marsh habitat and any wildlife species that utilize this habitat, the applicant proposes to conduct all breakwater improvements on the outboard side of the levee. The location proposed for the kayak launch ramp does not support tidal marsh and, therefore, the construction of this feature would not impact wetland habitat.

The applicant proposes to create 0.22 acres of new seasonal wetlands on the project site by lowering an existing berm that currently separates the two seasonal wetlands and expanding the eastern portion of the wetland area through the creation of new seasonal wetland habitat and removal of non-native vegetation. While 1.8 acres of this seasonal wetland habitat (totaling 2.6 acres) would be outside of the Commission’s jurisdiction, it would provide an expanded and more diverse habitat at the project site that would support a variety of wildlife and plant species, would enhance the connectivity of habitats, and would contribute to the overall health and habitat complexity of the Bay ecosystem.

The Commission should determine whether the project is consistent with its policies regarding fish, other aquatic organisms, and wildlife, tidal marshes and tidal flats.

4. **Water Quality Policies.** The Bay Plan policies on water quality state that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s Basin Plan and should be protected from all harmful or potentially harmful pollutants. The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board, should be the basis for

carrying out the Commission's water quality responsibilities." Finally, the policies also state that "[n]ew projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices; especially where water dispersion is poor and near shellfish beds and other significant biotic resources."

The proposed project would involve the placement of approximately 88,000 cubic yards of imported earth material outside of the Commission's jurisdiction to raise and surcharge the site. The placement of such a large amount of fill material would create the potential for erosion of sediments from the project site into the Bay. Because nearly all of the area where surcharge would be placed, would be landscaped, paved or support buildings, this activity would result in minimal risks to water quality from sedimentation once construction was complete. Post-construction, non-point source pollutants would be the primary threat to water quality as pollutants are washed by rainwater from rooftops, landscaped areas, and impervious parking areas into the on-site drainage system and into the Bay.

On August 6, 2007, the Regional Water Quality Control Board (RWQCB) issued a Water Quality Certification (Water Board Site No. 02-21-C0519) for the proposed Village at Loch Lomond Marina project. The certification requires that erosion control measures be utilized throughout all phases of project construction where sediment runoff from exposed slopes threatens to enter the Bay. Additionally, the certification requires that all exposed/disturbed areas within the project site be stabilized with erosion control measures such as straw wattles, straw mulch, and hydro-seeding. The applicant would employ Best Management Practices during and after construction and would also prepare a Storm Water Pollution Prevention Plan and an Erosion Control Plan. These plans would identify critical areas with high erosion potential, erosion control measures, soil stabilization techniques, types and sources of stormwater pollutants, and control measures to eliminate significant impacts on receiving water quality from stormwater runoff. Finally, the applicant proposes to incorporate site features that would clean water in accordance with the RWQCB and the Marin County Stormwater Pollution Prevention Program standards before water entered the San Rafael Bay. These features could include bioswales, stormwater treatment units, filters placed within drainage inlets, and landscaping.

The Commission should determine whether the proposed project is consistent with the Commission's policies on water quality.

5. **Safety of Fills Policy.** The Bay Plan policies on the safety of fills state that, "[t]o prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers." Additionally, the policies state that, "[t]o minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed development should be sufficiently high above the highest estimated tide level for the expected life of the project or sufficiently protected by levees..." Finally, the policies state that, "[l]ocal governments and special districts with responsibilities for flood protection should assure that their requirements and criteria reflect future relative sea level rise and should assure that new structures and uses attracting people are not approved

in flood prone areas or in areas that will become flood prone in the future, and that structures and uses that are approvable will be built at stable elevations should assure long-term protection from flood hazards.”

The applicant states that the current elevations of the project site within the Commission’s jurisdiction would be maintained, and other than fill in the shoreline band for the breakwater and boardwalk, no fill in the shoreline band is proposed. In addition, the applicant states that there would be negligible subsidence of the site after it has been surcharged and that no significant change to the hydrodynamics of the project site should occur as a result of constructing the project.

In order to understand potential sea level rise at the proposed project site, the applicant reviewed the sea level rise rates for a fifty-year period that are generally consistent with the California Climate Action Team Reports on Climate Change. The sea level rise scenarios include: (1) a low rate of 0.08 inches (2 mm) per year; (2) a medium rate of 0.18 in (4.6 mm) per year; and (3) a higher rate of 0.33 in (8.4 mm) per year. The applicant states that the East and West Spit recreation areas and the boardwalk would be protected from the assumed high tides related to the three scenarios.

The applicant states that for the fifty-year period using the low estimate for sea level rise, the site would stay dry, but under the medium and high rates the wetland area and the east end turnaround would be inundated during high tides. The applicant states that the wetland area would be permanently inundated if sea level rise were above elevation 5.0 feet NGVD 29, and that the east end parking lot adjacent to the breakwater would be slightly inundated at high tide.

The Commission should determine whether the proposed project is consistent with the policies on safety of fills, particularly whether the public access areas would be affected by rising sea levels.

B. Review Boards

1. **Engineering Criteria Review Board.** The Engineering Criteria Review Board did not evaluate the proposed project.
2. **Design Review Board.** The Commission’s Design Review Board (DRB) reviewed an earlier version of the proposed project on January 10, 2005. On June 11, 2007, the DRB reviewed a revised plan for the project. While the DRB was basically pleased with the revised design of the proposed project, it had several concerns that it requested be addressed. These included: (1) widening the width of the trail on the breakwater; (2) removing or revising the landscaping along the greenbelts within the residential portions of the project to avoid impacting views to the waterfront; (3) removing the sculpture in the Community Plaza; (4) revising the design of the waterfront lighting to ensure down lighting; (5) installing landscaping along the wetland buffer fence; (6) installing fish cleaning station at the entry to the breakwater; and (7) relocating the existing boat maintenance building in order to create a clear view corridor and useable connection from the shoreline to the adjacent property to the west.

In response to the DRB’s recommendations, the applicant revised its plan to include an 8-foot-wide pathway along the breakwater, no trees and either low hedges or shrubs along the greenbelts, deletion of a sculpture element, landscaping along the buffer fence, and a second fish cleaning station at the entry to the breakwater. After staff spoke with

the applicant, it was determined that the lighting of concern to the DRB was proposed only for the Community Plaza and not for the entire waterfront. Therefore, staff believes that these lighting fixtures are appropriate in this discrete location to provide a focal point and destination from the entry road. Bollard lighting would be installed along the waterfront pathways. The final recommendation from the DRB regarding relocation of the boat maintenance building to create a better connection to the property to the west was also implemented.

C. **Environmental Review.** On August 6, 2007, the City of San Rafael, acting as lead agency under the California Environmental Quality Act, certified the Final Environmental Impact Report for the project. A summary of the Final EIR is attached (Exhibit E).

D. **Relevant Portions of the McAteer-Petris Act**

1. Section 66605

E. **Relevant Portions of the San Francisco Bay Plan**

1. *San Francisco Bay Plan Policies on Fish, Other Aquatic Organisms, and Wildlife* (page 15)
2. *San Francisco Bay Plan Policies on Water Quality* (page 17)
3. *San Francisco Bay Plan Policies on Water Surface Area and Volume* (page 20)
4. *San Francisco Bay Plan Policies on Tidal Marshes and Tidal Flats* (page 21)
5. *San Francisco Bay Plan Policies on Safety of Fill* (page 31)
6. *San Francisco Bay Plan Policies on Public Access* (page 50)
7. *San Francisco Bay Plan Policies on Appearance, Design and Scenic Views* (page 61)

Exhibits

A. **Vicinity Map, Exhibit A**

B. **Site Plan, Exhibit B**

C. **Public Access Plan, Exhibit C**

D. **View Corridor Plan, Exhibit D**

E. **Summary of Final EIR, Exhibit E**