



Making San Francisco Bay Better

June 19, 2014

Law Offices of A. Alan Burger
95 South Market Street, Suite 545
San Jose, CA 95113

SUBJECT: Proposed Gates at Bay Front Drive and BCDC Required Shoreline
Access from Lewelling Boulevard, in the City of San Leandro
(BCDC Permit No. 1992.057.00 and Enforcement File No. ER2014.015)

Dear Mr. Berger:

Thank you for your letter dated June 13, 2014, and received in our office on the same date, submitted on behalf of the Heron Bay Homeowners Association (the HOA). We are pleased to learn that the HOA recognizes its legal obligation as successor to BCDC Permit No. 1992.057.00 (the permit) and accepts its responsibility to provide a public access guarantee that the former owner, Citation Homes, failed to do.

The primary purpose of your letter appears to be asking BCDC staff to change our position about the HOA's proposal to place a gate across Bay Front Drive public access. As we stated in our letter to you dated June 12, 2014, the gate proposal that the City of San Leandro (the City) will review this week would require an amendment of the BCDC permit, and staff believes BCDC approval would be unlikely because a 4-foot-wide gate would significantly reduce the value of the public access path that that Commission's permit requires to be 8 feet wide. Staff continues to believe that the proposed gate project would impede the free flow of bicycles and pedestrians to the shoreline and, as such, is incompatible with the BCDC permit and the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

Your letter also expresses concern that the BCDC staff position will adversely impact the outcome of the HOA's gate proposal with the City. The City's decision on the project will presumably be based on its General Plan and implementing ordinances and, as stated above, BCDC's decision on the project would be based on the existing permit requirements, the McAteer-Petris Act and the San Francisco Bay Plan. Procedurally, you should be aware that as part of any BCDC application or permit amendment, our filing requirements include the need for permit applicants to provide, if required by the local government, a copy of any discretionary approvals needed for the project. As such, it is a fact that if the City does not approve the proposal, the HOA will not be able to submit a fileable application to BCDC unless and until it obtains local discretionary approval.

Upon receiving your letter and considering the questions you raise, we looked more carefully at the current site conditions and discovered that the Bay Front Drive sidewalk appears to be an approximately five-foot-wide sidewalk within an approximately 12-foot-wide landscaped corridor, which does not comply with the permit's requirements that the HOA provide an eight-foot-wide paved path plus four feet of shoulder. In other words, it appears that the HOA is not currently providing the physical public access that Special Condition II.F.3.c of the permit requires.

To correct this newly discovered violation, the sidewalk might either be widened to meet the full 8-foot-wide requirement or we can discuss possible public access offsets that would provide the public an equal benefit, such as providing bike lanes along the street that would be incorporated into the permit's requirements via a permit amendment and subsequently included in the public access guarantee along with the existing required sidewalk. You may propose other alternatives for complying with the permit if you do not wish to establish conditions that meet the existing requirements. Please contact me for further direction regarding the process for resolving what appears to be two permit failures.

Finally, the HOA's permit reflects the settlement of a 1992 lawsuit between The Sierra Club, the City and Citation Homes, therefore the permit's requirements were undertaken in conjunction with the City of San Leandro's Shoreline Marshlands Enhancement Project and BCDC Permit No. 1989.014.04. The City is responsible for guaranteeing any trail segments or portions of trail segments that are not owned by the HOA. I am attaching the City's permit and I encourage you to review the requirements and findings of both permits. Like the HOA, the City has not yet provided a public access guarantee and, like we have given you, we have given them a grace period to do so.

We look forward to working with the HOA and the City to resolve all of these matters.

Sincerely,



ANDE BENNETT
Coastal Program Analyst

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cc: Cynthia Yonning, Professional Associations Services
Elmer Penaranda, City of San Leandro
Lee Huo, SF Bay Trail Project