

**Meribeth Dermond - Board of Supervisors Meeting of May 8, 2018, Item 5(h), Caltrans Coastal Permit Consolidation Request**

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**From:** Norbert Dall <norbertdall@icloud.com>  
**To:** <bos@mendocinocounty.org>  
**Date:** 5/7/2018 6:28 PM  
**Subject:** Board of Supervisors Meeting of May 8, 2018, Item 5(h), Caltrans Coastal Permit Consolidation Request  
**Cc:** "S. Dall" <sdall49@aol.com>, Ginetta Giovinco <GGiovinco@rwglaw.com>, No...  
**Attachments:** Salmon Creek Bridge -- Ltr to County BOS, Item 5(h), May 8, 2018.pdf

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Dear Colleague/s,

Attached for the Board of Supervisors record file please find a true and complete copy of the letter that I emailed today to the Chairman and each member of the Board of Supervisors regarding Item 5(h) on tomorrow's Board agenda.

I have also sent a copy thereof to Ms. Angelo, Mr. Gonzalez, Mr. Kiedrowski, and Ms. Acker.

Please confirm by reply email when you have received this email and the attached letter.

Thank you.

Regards,

**NHD**

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## DALL & ASSOCIATES

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By Electronic Mail

May 7, 2018

BOARD AGENDA ITEM 5(h)  
MAY 8, 2018

Hon. Dan Hamburg, Chairman  
And Members  
Board of Supervisors  
County of Mendocino  
501 Low Gap Road  
Ukiah, California 95482

RE: Caltrans Request For the County To Cede Coastal Permit Jurisdiction Over  
Salmon Creek Bridge Area Interim Lead Contamination Mitigation Measure  
Implementation

Dear Mr. Chairman and Members of the Board,

This firm and Ginetta Giovinco, Esq., of Richards, Watson & Gershon, represent John Danhaki, the owner of Whitesboro Farm in Albion. Whitesboro Farm directly abuts the Caltrans "interim mitigation" project (Project) area, for which Caltrans requests the County to cede its coastal development permit (CDP) jurisdiction to the Coastal Commission.

Our client respectfully urges your Board to retain CDP review jurisdiction over the proposed Caltrans Project and decline the Caltrans request for "consolidation", for the following reasons:

- (1) The request, given Caltrans' stated urgency, directly conflicts with the Coastal Act requirement that public participation not be "...substantially impaired by that review consolidation...." (Public Resources Code Section 30601.3(a)(2).)
- (2) The request would automatically make the general Coastal Act Chapter 3 policies the controlling standards for Project review, rather than the now-applicable certified County Local Coastal Program (LCP), which reflects policies based on local land use control, unique local coastal resources, and values important to the community, and would reduce the County's LCP to a mere advisory role. (Public Resources Code Section 30601.3(b).)
- (3) The Caltrans request constitutes an improper and unauthorized *de facto* amendment to previously issued County CDP 2006-0038, whereas LCP requires

- Costly logistical barriers to Albion area residents' participation in Coastal Commission hearings, including long round-trip distances, expensive overnight lodging and meals, and lengthy travel times between Coastal Mendocino County and the Commission meetings. Given the Caltrans claim to urgency, a comparison of travel times to Coastal Commission and Board meetings during the next three months quantifies those barriers: June-San Diego: 1164 miles, with at least 20.6 hours of travel time; July-Central Coast: 442-522 miles, with at least 8.2-9.6 hours of travel time; and August-Los Angeles-Orange County: 1040-1126 miles, with at least 17-18.2 hours of travel time, as compared to 34 miles and 52 minutes round trip to County offices in Fort Bragg, and 55 miles and 2.6 hours round trip travel to County offices in Ukiah.
- Potential for deprivation of a public hearing on a regularly scheduled CDP application, as when Coastal Commission considers and acts on a CDP waiver (as recently occurred for the unpermitted Caltrans grading of the dune-berm between Albion Cove and the Albion River Bridge timber foundation) that is listed on the District Director's Report;
- Limitations on submittal of written public comments, which must be delivered as much as a week in advance of a hearing in order to be distributed to Coastal Commissioners *at all*, with actual distribution frequently delayed to shortly before, or at, the Commission meeting;
- With the exception of possibly two Coastal Commissioners, the general unfamiliarity of other Coastal Commissioners with the Mendocino County LCP and coastal resources, in contrast to the local knowledge of County elected and appointed officials, and staff;
- Individual decisions of over half of the Coastal Commissioners to not communicate with interested (and knowledgeable) members of the public outside of the typically abbreviated (2- or 3-minute long) opportunity for public hearing testimony, notwithstanding that the Coastal Act provides for maximum opportunities for public participation in its CDP regulatory processes and specifically allows such disclosed "ex parte" communications;
- Ability of Coastal Commissioners (who are appointed, not elected) to engage in *undisclosed* personal communications with their appointing authorities (Governor, Senate Rules Committee, and Assembly Speaker) and Commission staff;
- Recent Coastal Commission failure - as a result of Caltrans District 1's not providing the required lists - to provide hearing notice(s) to all residents (tenants) within the required public notice radius, and other known interested parties (e.g., those who have appeared at Albion community meetings, communicated their interest or concern by email, etc.

Caltrans in County-issued CDP 2016-0038, and requires County approval, following the County LCP's rigorous, resource-protective coastal development permit amendment procedures (Zoning Code Division II, Chapters 20.532 and 20.536).

Certified LCP Zoning Code section 20.536.020(A) defines "permit amendment" to mean "any change to the development project that was the subject of the approved coastal development permit".

The Caltrans changes to the approved development in CDP 2016-0038 include, but are not limited to, the following:

- (a) A textual project description for remediation of lead contaminated sandblasting material within the development area specifically addressed in CDP 2016-0038;
- (b) Revised grading locations from those shown and permitted in CDP 2016-0038;
- (c) Location of a gate where the Coastal Permit Administrator Staff Report for CDP 2016-0038 identifies a "proposed public access trail segment [that] would continue down the one lane road to Salmon Creek Beach";
- (d) The extent of proposed changes in the kinds and intensities of use on the Project site and the Spring Grove Road public accessway, associated with the proposed remediation of lead contaminated sandblasting material;
- (e) CDP 2016-0038 Condition 3 ("The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission");
- (f) CDP 2016-0038 Condition 12 ("The applicant (or contractor) shall submit a Lead Compliance Health and Safety Plan to Planning & Building Services prior to issuance of the Grading Permit for grading which includes engineering and work practice controls as well as a written compliance program in accordance with the California Code of Regulations Title 8, Section 1532.1");
- (g) CDP 2016-0038 Condition 18 limitations on the project perimeter to avoid intrusion beyond the Ordinary High Water Mark (Mean High Tide Line) of Salmon Creek;
- (h) CDP 2016-0038 Condition 24, maximum practicable avoidance of disruption by vegetation removal and grading of the nesting bird breeding season between February 1 and September 14; and,
- (i) CDP 2016-0038 Conditions 25 and 26, Clean Water Act §410 water quality certification, and a non-reporting Section 404 Permit from the US Army Corps of

expeditiously through the LCP regulatory process begins with submittal of the required application to amend CDP 2016-0038. If Caltrans had made that application in January, 2018, County action on it may likely have occurred by now. Notwithstanding that, we believe that any proper and formal application from Caltrans to amend CDP 2016-0038 will be timely processed by the County, as the County strives to do in all instances with permit-related requests that it receives.

#### Conclusion

The Caltrans "CDP consolidation" request, made pursuant to Public Resources Code Section 30601.3, invalidly and unnecessarily deprives the County of hard-earned local land use control authority pursuant to the certified LCP and the public of maximum participation opportunities in the CDP regulator process, contrary to the clear Coastal Act requirements and to the detriment of Mendocino County's authority and its protected coastal resources.

For all of the reasons stated above, we urge the Board to reject the Caltrans request for CDP consolidation of the Salmon Creek Bridge area "interim mitigation plan" Project, and to not approve the proposed Resolution in Board Agenda Item 5(h).

Thank you for this opportunity to comment on this important matter.

Sincerely yours,

DALL & ASSOCIATES

By:

*Norbert H. Dall*

*Stephanie D. Dall*

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Norbert H. Dall

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Stephanie D. Dall

c: John Danhaki, Whitesboro Farm, Albion, Mendocino County  
Ginetta Giovinco, Esq., Richards, Watson & Gershon  
Ms. Carmel Angelo, County Executive Officer (by email)  
Mr. Ignacio Gonzalez, Director, Mendocino County Planning  
& Building Services Department  
Matthew Kiedrowski, Esq., Deputy County Counsel (by email)  
Ms. Julie Acker, Planning & Building Services Department (by email)