

Luster, Tom

From: Hellwig, Raymond  
Sent: Wednesday, May 12, 1999 11:57 AM  
To: Luster, Tom; Stockdale, Erik  
Cc: Ehlers, Paula  
Subject: RE: FYI - airport-related article

Submitted by:

RCAA

Regional Commission on Airport Affairs

Luster  
EXHIBIT NO 223  
2-1-02  
M. Green

Thanks Tom, very interesting and relevant.

I look forward to seeing the draft agreement for Ecology, the POS and the FAA that Barbara H. was going to put together. You are right, the details will be critical.

Note: Regarding the last sentence in your intro comments below re "no" not being an acceptable option. Yes, we are looking for creative and regulatorily appropriate ways to get to "yes", but we still may not be able to reach agreement with the POS on what goes into those "ways". Therefore, the "no" option is still alive -- always has been. Our goal has been to be straight forward about our environmental objectives and how we think the law should apply to the POS project. Essentially, we offered to help the POS understand what it would take to come up with options for their project that would be defensible within the framework of the law. If the POS can't find a way to do that, for whatever reason -- economic, political etc., they could be looking at a "no".

Thanks again for the article.

—Original Message—

From: Luster, Tom  
Sent: Wednesday, May 12, 1999 11:15 AM  
To: Hellwig, Raymond; Stockdale, Erik  
Cc: Ehlers, Paula  
Subject: FYI - airport-related article

Hi Ray and Erik --

Just found the following article about a wetland, an airport, and the FAA...

The situation seems similar to ours -- how to do wetland mitigation in the flight path of an airport. It appears that the solution in this case was to allow the compensatory wetlands to be built using a design that will minimize the bird attractions, and to require a contingency measure if the created wetlands prove to be a hazard. The article doesn't go into detail, but I assume there is some sort of monitoring for bird use and associated hazards.

Hopefully, we'll find out Monday what the Port will propose, but we may be able to use an approach similar to that described in the article:

- \* determine what in-basin mitigation is adequate;
- \* agree on what kind of monitoring is needed to determine if there is "hazardous bird use", and establish an "action threshold" to determine whether changes are needed in the wetland;
- \* define what type of management options can (and can't) be used if changes to the wetlands are necessary (e.g., vegetation management, changes to structures that regulate hydrology, etc.); and,
- \* have a contingency plan in place that includes other in-basin wetland opportunities that would be developed if the existing mitigation proves hazardous and cannot be managed for safety.

Assuming this approach is acceptable, there will be a number of devilish details to work out, of course. If we go this route, the 401 will need to include a great deal of certainty about the above points -- specific locations of contingency sites, when the contingency would kick in, which management options can and can't be used, etc.

And my usual caveat -- this project will result in significant impacts to two already significantly impacted watersheds. In order for us to approve it under 401, we will need rigorous and specific conditions to ensure that beneficial uses are maintained and protected. Based on the regs and the literature, it would be easier and more justifiable under 401 to deny the project because of the scope and extent of the project's impacts and the current conditions in the waterbodies. However, since "no" is not seen as an acceptable option, we are looking for creative and regulatorily appropriate ways to get to "yes" -- this approach may provide one of those ways.

Tom L.

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### **Wetlands to remain in Cross Creek**

May. 12, 1999

By TOBIAS YOUNG  
Press Democrat Bureau

**PETALUMA --** Seasonal wetlands will remain in the path of airplanes landing at Petaluma's municipal airport, but proposed ball fields on the site have been rejected, according to an agreement announced Tuesday by Petaluma City Manager Fred Stouder.

The wetlands are a provision of the nearly completed Cross Creek subdivision and came into question when Federal Aviation Administration officials discovered they were planned near the airport. But Stouder said an agreement reached with FAA officials will allow the development to move ahead and the wetlands to stay, as long as the area doesn't attract birds and become a collision hazard to airplanes.

If the wetlands are declared a threat by the FAA within five years, developer Doyle Heaton has agreed to buy a replacement site and create new wetlands.

Under the new agreement, the ball fields, also a condition of the subdivision, will be relocated to public property elsewhere in the city because the FAA and council members are concerned about the risk posed to children and parents congregating under the path of planes landing at the airport.

Stouder on Tuesday lifted a two-week-old stop-work order, giving Heaton the OK to finish the final phase of his 200-home development. Stouder said Heaton, who owns Concord-based Mardell LLC, was expected to start grading as soon as today to try to finish the final 40 homes this year.

Three years ago, Heaton got approval for the Cross Creek subdivision by promising a 48-acre park, ball fields and the creation of new wetlands in exchange for sacrificing part of a greenbelt on the eastern edge of town. But earlier this year the FAA and a new City Council raised safety concerns about the fields and wetlands.

"I feel the last several weeks were spent clarifying an issue that proved not to be a problem," Stouder said.

The agency consented to the project in a May 10 letter from FAA District Office Manager John Pfeifer. He asked the city to limit the amount of runoff the seasonal wetlands will hold and reduce the amount of vegetation in order to lower the attraction for birds.