

## **Informational Update to MCCD Board of Trustees**

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The Board will recall that we received a proposal entitled “Recommendation of the Faculty of the Life & Earth Sciences Department of the College of Marin: College of Marin Bolinas Marine Lab & Dock Project” on December 5, 2017. Accompanying the report, we have now received over twenty letters of support for reopening the Bolinas Field Station.

In the months since receiving the proposal, we have committed significant time and energy in researching the challenges and complexities associated with the matter. We have also had several collegial and collaborative meetings with Life & Earth Sciences department faculty members and others who were instrumental in preparing the proposal. Prior to its closure in 2005, the Bolinas Field Station had a primary focus on marine biology. Through dialogue with the faculty, it has become apparent that if it were possible to reopen the Field Station, it could enhance the field experience for students in courses across the Life & Earth Sciences.

Through fresh sets of eyes, we have endeavored to identify potential options for the Board to consider, as well as possible challenges for each option. I know that the Board has been very interested in having this discussion. I have appreciated your patience as I have endeavored to get this right.

One of our primary challenges associated with the Bolinas property includes the legal considerations regarding what’s possible from either a construction or renovation perspective.

### **Legal Considerations**

#### **The Field Act**

The purpose of the Field Act is to protect public school students from death and injury in the event of an earthquake.

The Field Act governs construction or alteration of “school buildings.” Regulations pertaining to the Field Act provide that “no ‘school building’ shall be constructed, rehabilitated, reconstructed, or relocated within 50 feet of the trace of an active fault, which has experienced surface displacement within the Holocene time (approximately 11,000 years). If the Field Station is subject to the Field Act, and the Field Station is within 50 feet of the trace of an active fault, it is possible this regulation could be interpreted to preclude the District from rehabilitating or reconstructing the Field Station.

The Field Act assigns the Division of State Architect to supervise the design and construction or renovation of any “school buildings” owned or leased by a community college district for conformance with the building standards published in Title 24 of the California Code of regulations.

The Field Act definition of a “school building” includes any building used for community college purposes that is constructed or reconstructed by a community college district or other public agency or political subdivision of the state. However, the definition of “school building” does not include:

Any building of a community college district that is used solely for classes or programs in outdoor science, conservation, and forestry and that does not occupy, in whole or in part, the same parcel of land upon which there is situated any school maintained by the district.

Based on that language we submitted a letter to the DSA on April 3<sup>rd</sup> stating that it was our understanding that the structures at the Bolinas Field Station would be exempt from the Field Act if they would be used solely for classes or programs in outdoor science, conservation, and forestry and because the property is not attached to either the KTD or IVC campus. We requested that the DSA confirm their agreement with our understanding.

While we await an official response, we did receive a brief email response from Dessa Rooney, Regional Manager for DSA, stating, “Since these facilities would be used by students and house school programs they are not exempt, they are required to be submitted to DSA for review.” We also have a transcript of a phone message from Ms. Rooney to the same affect.

We certainly have the option of challenging DSA on their position. The appropriate way to challenge DSA will depend on the response we receive. It is possible that challenging DSA through a formal approach such as litigation, should we choose to go that route, could in essence require that we invest in designing a project and then submitting it for review without any guarantee we would prevail. More research would be necessary on this point.

So what triggers the need to submit a project to DSA for review?

- Project costs exceeding 50% of the replacement value of the building
- Major structural work including seismic or ADA retrofitting
- Change of occupancy resulting in a structure being reclassified to a higher risk category
- Non maintenance work
- Partial demolitions of existing buildings, or any demolition which is part of a reconstruction, rehabilitation, alteration, or addition
- Projects may also trigger a more limited DSA review, such as access compliance review for new construction of structures that are not school buildings.

Ensuring whether the Field Act applies and, if so, how, is also critical because if death, injury, or property damage occurs as a result of damage to a seismically unsafe “school building,” members of a district’s governing board may be held personally liable if certain requirements have not been met. [Ed. Code 81177 (b)]

Setting the Field Act and the DSA aside for the moment, the District would still be subject to California Building Code Requirements and the Alquist-Priolo Earthquake Fault Zoning Act (and/or related Education Code sections).

### **California Building Code Requirements**

The California Building Code (Title 24 of the California Code of Regulations) applies to the construction or renovation of every building in the State of California. If renovation of the Field Station was determined to be exempt from the Field Act because its use does not make it a “school building,” the District would still be subject to all California Building Code Requirements and would be required to obtain all of the necessary permits from Marin County.

### **The Alquist-Priolo Earthquake Fault Zoning Act**

In addition to standards for construction and renovation set forth in the California Building Standards Code, the legislature enacted the Alquist-Priolo Act to increase safety and minimize the loss of life during and immediately following earthquakes. The Act prohibits new construction “projects,” defined as structure with human occupancy, across the trace of active faults unless a comprehensive geological investigation shows that the fault does not pose a hazard to the proposed structure. The area within 50 feet of an active fault is presumed to be underlain by active branches of that fault unless proven otherwise by a geologic investigation and report meeting statutory and regulatory requirements.

My understanding is that what compliance with the Alquist-Priolo Act means for a particular project depends on the project’s scope, but we need to explore this further.

The Alquist-Priolo Act does not apply to the alteration of an existing structure if the value of the alteration does not exceed 50 percent of the value of the structure. When a renovation project exceeds 50 percent of the value of the structure, the project is treated as new construction.

Interestingly, the law is unsettled regarding the methodology for determining the value of the existing structure.

We continue to research issues related to application of the Alquist-Priolo Act, including its relationship to an Education Code provision relating to school buildings on fault traces (Education Code section 81033).

Obviously the common thread between the Field Act and the Alquist-Priolo Act is the proximity of the Field Station to a possible active fault line. Here’s what we currently know about that –

According to the Geologic Hazard Assessment conducted by Fugro West, Inc. in October 2005:

The Field Station is located within the State of California Earthquake Fault Zone for the San Andreas fault as shown on Plate 3, with more local detail highlighted on Plate 5. The Western Boundary fault and the “1906” trace of the fault, along with a number of other fault splays mapped near and beyond the northwest end of the Bolinas Lagoon,

are well-defined active fault features that are confidently mapped by the State, many of which were confirmed by the observation of geomorphic evidence observed during the aerial photograph review. The Western Boundary fault is located approximately 1,920 feet southwest, and the “1906” trace is located approximately 1,080 feet northeast, of the Lab Facility that is located within the *fault zone* between those two well-defined active fault features.

So what does this tell us? It tells us that the Field Station sits right between two major faults. What it doesn't tell us is whether the structures sit within 50 feet of an active fault.

In order to determine whether the Alquist-Priolo Act would limit construction projects on the property – again, the particulars of this may vary depending on the specific project -- the District would need to update its geological studies to determine whether the Field Station is located across the trace of an active fault. The District would be required to submit a geological report prepared by a registered geologist that addresses potential surface displacement at the site with any application for a building permit.

The cost of such a geological study was estimated at \$300K in 2005 and today the cost is estimated to be in the neighborhood of \$600K.

### **Financial Considerations**

Throughout this process of review, I have reflected on a variety of questions – What should we do? What can we do? – and - How do we do it?

As for what we should do – After possessing the property for over 60 years, at a minimum, I believe we have an ethical obligation to clean it up regardless of whether we ultimately keep it or whether we ultimately end up needing to surplus it. In the end, we will need to come to terms with what it would mean to clean it up. That could involve removing some or all of the structures on the property or it could mean removing some and reopening others. For an extreme point of reference, the all-in cost of complete demolition and clean-up of the property would be approximately \$250k.

As for the question of what we can do, clearly we are still trying to figure that out. However, as we gain clarity on that question, I'd like to focus on what I hope we are able to do.

In recognition that it appears the lab itself has structural integrity and could potentially be reopened with a modest investment, I'd recommend we explore what that might entail and what legal implications the possible project(s) might have. Toward that end and pending the outcome of our discussion this afternoon, I am prepared to direct staff to have an assessment of that structure conducted to include cost estimates and permitting/approval requirements.

And to the question of how we do – whatever we do – I pleased to report that I probably have more clarity in this area than any of the others.

After further scrutiny of the Federal and State laws that govern the use of general obligation bonds, I now have comfort that we can utilize some portion of Measure B funds for the purpose of rehabilitating – including both reopening and/or demolishing - of the Bolinas Field Station.

You may recall that I reported that I had all of the files associated with the Bolinas holdings delivered to my office which included files from multiple previous presidents and vice presidents. In creating one master file, I read each and every document. In doing so, I discovered one document that contained information pertaining to a fund that had been established in the name of Mauer for the Bolinas Field Station. With interest and curiosity, I checked both the funds maintained by the Foundation and the District and I discovered the Mauer Fund was maintained by the District and has a current balance of over \$240K. While I believe this fund was previously reported to me among others maintained by the District, I clearly did not connect the dots that this fund was designated for the Bolinas Field Station. Clearly those funds could be used in part to reopen and equip the lab.

And finally, we had been under the impression that the District had two water meters on the property, one of which would not be needed. You may recall Trustee Treanor bringing this to our attention. We are looking into this, but it appears that the District may only have one water meter on the Field Station property, with the other for the occupied house on a separate parcel. Unfortunately, this does not seem to be a potential funding source.

## **Questions**