

[Town of Tiburon – 1505 Tiburon Boulevard, Tiburon CA 94920]

August 22, 2002

The Honorable Lynn O'Malley Taylor
Marin County Superior Court
Post Office Box 4988
San Rafael, CA 94913-4988

Mr. Lowell W. Smith, Foreperson
Marin County Grand Jury
3501 Marin Civic Center Dr., Room 303
San Rafael, CA 94903

Re: Response to Grand Jury Report 2001-2002- Emergency Management and Operations

Dear Honorable Judge Taylor and Mr. Smith:

This letter explains in detail the Town of Tiburon's response to the Grand Jury Report dated June 19, 2002. The Report directs the Town of Tiburon to respond to Finding No. 14 and Recommendation No. 9.

Finding No. 14:

The Grand Jury found the MERA system is designed and partially completed. The report states that final antenna installation is mired in a legal and neighborhood dispute over the selected site that could delay its completion beyond the end of 2002.

The Town of Tiburon agrees that the system is designed and partially completed. The Town also agrees that legal and neighborhood disputes have delayed completion of the Tiburon peninsula antenna and that this delay could conceivably continue past the end of the current year. However, the Town rejects any suggestion that it is responsible for the delay in completing the system. The tone of the report appears to trivialize the problems with MERA's original antenna site, dismissing the Town's concerns as "political." In fact, the problems with the Mt. Tiburon site are considerable and the Town has taken action to remedy those problems in the face of considerable political opposition. The Town believes that the current dispute will be resolved well before the end of the year.

Under MERA's original design, the Tiburon peninsula site was located at 99 ½ Mt. Tiburon Road, which is in a residential neighborhood. The antenna tower would be located only a few feet from a popular public hiking trail, and only a few feet further from the neighboring residence at 99 Mt. Tiburon Road. The tower's transmitters would be directed at the 99 Mt. Tiburon Road home and would cause unusually high radio frequency emissions at the nearest wall.^[1] The full length of the tower (approximately 80 feet, consisting of a 65 foot monopole, plus a 15 foot whip antenna) would loom over the residence and hiking trail and be highly visible from other nearby homes. No other tower in the MERA system shared these problems.

Unfortunately, MERA did not notice or otherwise involve the neighbors of the Mt. Tiburon site before approving its system design and certifying the EIR. The neighbors first heard about the proposal when MERA applied to the Town of Tiburon for a use permit for the site in early 2000. The MERA application excited considerable neighborhood opposition. Many disputed the safety of the RF emissions, even though within FCC standards, citing the uncertain state of the science in this field. Others opposed the tower's visual impacts. Most noted that public concern regarding the emissions, combined with the high visibility of the tower, would certainly impact property values. As the representative of its residents, the Town properly heard these concerns.

Like many other jurisdictions in Marin County, the Town of Tiburon has regulations that prohibit antenna towers in residential neighborhoods unless the applicant can demonstrate that there are no alternatives. The Town denied MERA's conditional use permit application in June of 2000 because MERA had failed to search for alternative sites. MERA initially appealed this decision, but later withdrew its appeal and agreed to look for another site.

The Town and MERA disagree as to whether MERA promptly began a search for another site. However, there can be no dispute that since the fall of 2001, the Town has proactively and aggressively worked with MERA in this search. Unfortunately, the search for a non-residential site has not been successful. The number of potential sites is limited from the outset by coverage requirements. We believe that the Town considered all of the sites that could offer possibly afford the necessary coverage. We found the non-residential sites to be infeasible either for technical reasons or because the necessary permits could not be obtained or would not be obtained in a reasonable timeframe.

The Town did identify a second residential site, at 145 Sugarloaf Drive, which was studied as an alternative in the MERA EIR and which Town officials believed might be preferable to the Mt. Tiburon site. To expedite the completion of the MERA system, the Council adopted an ordinance streamlining its permitting processes on June 19, 2002.^[2] Upon review, the Council found that at the Sugarloaf site, the transmitters could point away from nearby residences, which would be further from the antenna tower than at the Mt. Tiburon site. These features mean that the residences would experience lower RF emissions from the tower. Also, the Sugarloaf site currently has six transmitting antennas, five of which would be replaced by the MERA antenna. The result is that the emissions levels will actually be reduced at most locations. Any increases will be negligible, particularly when compared with the emissions increase that would occur at the Mt. Tiburon site. The Sugarloaf site also had better coverage than the Mt. Tiburon site. Lastly, the Sugarloaf site has a number of mature trees that will shield most of the antenna tower from view. The visual impacts will be much less than at the Mt. Tiburon site, where nearby residents and members of the public on the hiking trail would be able to see the full length of the tower. For these reasons, on July 31, 2002, the Town Council reluctantly, but unanimously, approved the MERA facility at the Sugarloaf site because it felt it had no other choice in light of the threats by MERA to commence construction on Mt. Tiburon and the threat of litigation from MERA. In addition the Town was able to impose conditions of approval at the Sugarloaf site which further lessened the impact. In contrast, MERA was prepared to go forward on the Mt. Tiburon site without giving the Town the opportunity to impose conditions.

Many of the residents in the neighborhood of the Sugarloaf site opposed the proposed facility. Their substantive complaints were similar to those raised in connection with the Mt. Tiburon site, notwithstanding the reduction in impacts. They also objected to the approval process. The day after the Town's action, a neighborhood group (entitled Tiburon Residents against Unfair MERA Antenna Siting Process, or "TRAUMAS") filed suit to overturn the Town's approval of the site. The court has granted us a prompt hearing, therefore we expect to have the matter resolved at the trial court level on September 5, 2002. The Town regrets finding itself in litigation with its residents. However, given that litigation seemed likely at either of the two possible sites for the MERA facility, the Town prefers to defend the site with lesser impacts rather than have the facility constructed in what is clearly a much worse location.

Recommendation No. 9:

The Report states the following:

AMERA should continue to work toward resolving the stalemate with affected parties in the Town of Tiburon relating to the construction of a fixed antenna. The involved parties should, to the extent that they are not already, be made aware, that delays in constructing the antenna in Tiburon compromises activation of the system for the entire county.

The first sentence of this recommendation is directed at MERA. However, we must note that the Town has worked diligently and proactively to resolve the siting problem. With respect to the second sentence, the Town has held no fewer than public four meetings this year relating to the siting issue, all widely noticed. We had hoped to ameliorate the neighborhood opposition by finding a site with lesser impacts. Nevertheless, the TRAUMAS group has chosen to attack the MERA approval in court. We believe that they are fully aware that this action threatens completion of the entire system.

* * * * *

The Tiburon Town Council reviewed and approved this response on August 21, 2002. If you have further questions on this matter, please do not hesitate to call.

Very truly yours,

ALEX D. McINTYRE
Town Manager

c: Town Council
Town Attorney

[1] The maximum predicted RF level at the nearest wall of the home at 99 Mt. Tiburon Road would be 21.6% of the FCC standard. Also clearly within legal limits, this level is higher than normal, and much higher than would result from any other MERA antenna.

[2] In matters of Town-wide importance, particularly relating to public services, the Town's practice is to adopt a streamlined procedure that allows the Council to take direct authority over the project. The Town has done this before in connection with the Town's library building, Town Hall, Police Station and the on-going Ferry Plaza project.