

**Save Mount Diablo asks for Pittsburg investigation of Seeno Companies' destruction of creek, and ridgeline at San Marco project in Pittsburg above Concord and Naval Weapons Station. The damage took place on the heels of January 2008 \$3 million in Seeno fines for illegal grading nearby and despite \$1 million in Seeno fines in July 2002, also at San Marco.**

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**High Resolution Photos & Maps** (permission to use given): contact Beryl at banderson@savemountdiablo.org or (925) 947-3535.

**Captions and credits:** for all photos will be included

**Where:** a small part of the grading can be viewed from the end of Avila Road; Avila can be accessed from Willow Pass Road near Hwy. 4; it is also visible from Hwy 4 between Willow Pass and Bailey Road; however the most dramatic views are from the air.

**When: Related Public Hearing:** The Pittsburg City Council will consider an ordinance about Hillside regulations on Monday, April 7, 2008, at 7:00 pm, 65 Civic Ave., Pittsburg.

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(Walnut Creek) Save Mount Diablo, a Contra Costa based conservation organization, submitted a request to the City of Pittsburg Thursday, with copies to City of Concord officials, charging what they believe may be illegal grading by the "Seeno Companies" in Pittsburg at their 2,938-unit San Marco subdivision in Pittsburg, and asking for an investigation. The grading, which appears to have been completed in January at about the same time that the Seeno Companies were fined \$3 million for grading in nearby Antioch, extends to the ridge overlooking Concord.

"We want to give Pittsburg officials time to consider our request," said Ron Brown, Save Mount Diablo's Executive Director, "but we also feel that the community has a right to this information, given that the Pittsburg City Council will be considering Hillside development regulations Monday evening."

"It's the highest grading in Pittsburg, ever. They've scalped the ridge," said Seth Adams, Director of Land Programs and spokesman for Save Mount Diablo. "The Seeno Companies have once again destroyed a seasonal creek, related tributaries and steep slopes. In places the grading is 400-500 feet across. Despite landslides they've already experienced in lower elevations of San Marco, this new grading is already showing signs of erosion and slumping."

An independent investigation of the grading by the California Dept. of Fish & Game has already begun. The grading has taken place as Pittsburg considers new Hillside Development Regulations, which so far appear to be toothless—Pittsburg doesn't yet even categorize the ridge and hills north of Bailey Road, between central and east County, as a major or a minor ridge.

“The creek is gone—they simply graded it out of existence,” said Brown. “The creek once started at the ridge and ran all the way to Highway 4 in Pittsburg. They bulldozed the stream all the way up to one of the area's highest knolls. The knoll is 860 feet in elevation and overlooks Concord. Almost all Pittsburg development otherwise is below 400' with a few areas around 500'. During the Measure P campaign in 2005, they promised that their projects would not be visible from Concord.”

“The Seeno grading is within the approved San Marco project in Pittsburg—but we don't believe this grading has been permitted and it violates the spirit and the letter of the Pittsburg General Plan and proposed Hillside Development Regulations, as well as other agencies' regulations,” said Adams. “It's the tip of an iceberg because, although San Marco is not yet finished, the Seenos are also proposing development on adjacent parcels which would be even more expansive, visible and damaging. They're thumbing their noses at the public, which has called for 'saving our hills' for over a year now, by obliterating a creek and damaging the ridge line even as hillside protections are being discussed.”

“We're asking the city of Pittsburg to investigate the grading and also informing Concord officials, because although it's taking place within the Pittsburg city limits, part of it overlooks and drains to Concord. It affects residents in both areas,” said Adams. “If Pittsburg won't protect its creeks and the ridgeline overlooking Central County, Concord should step in and request LAFCO's help in protecting the ridge.” LAFCO, the Local Agency Formation Commission, manages annexations and city boundaries. The majority of Seeno lands along the ridge are unincorporated county lands and are not yet part of either city.

In January 2008 the Seeno Companies paid more than \$3 million in fines for illegal grading at its Mira Vista subdivision in Antioch that destroyed ponds and several creeks. In July 2002 Seeno's West Coast Home Builders paid \$1 million in fines and restitution after pleading guilty to violating the federal Endangered Species Act for its 2001 killing of threatened red-legged frogs and deliberate destruction of frog habitat, also at San Marco in Pittsburg. In 1989 the Company was caught removing heritage sized oak trees at its Crystyl Ranch project in Concord, before an Environmental Impact Report was prepared. The company has a long history of other violations.

“It's especially bad when you consider that while Pittsburg is considering adoption of Hillside Development Regulations, the Seeno Companies have graded to the very top of the ridge, and while Concord is proposing to protect the hills and ridges of the Concord Naval Weapons Station—all of Concord's reuse scenarios for the Naval Weapons Station protect the hillsides adjacent to Pittsburg—the Seenos have graded land over looking the Weapons Station,” said Adams, “This grading is on land within the Pittsburg city limits, but overlooks Concord from above the Naval Weapons Station, affecting the views of everyone in Central County. You can see it from Highway 4 and from Highway 680. It's just the beginning; they have plans on the books for more development on County lands outside of Pittsburg's city limits, much of it even higher in elevation.”

“Last Fall Albert Seeno III asked to meet with us in attempts to get Save Mount Diablo to be more supportive of his development efforts,” said Brown. “We said that our support would only begin if there was collaboration at the earliest stages of their projects and if they followed the rules. Now, six months later, they're back to business as usual, even as they were just fined \$3 million for other illegal practices. Not only did they not communicate with us, it appears that they've also failed to obtain necessary approvals to do the work. So much for Mr. Seeno's ability to forge a positive working relationship. This is the same project where they've previously been cited for destruction of creeks and endangered species habitat. We have no choice but to respond publicly, loudly, and with grave concern about the Seeno Companies' impact on the community in which we all live.”

“Save Mount Diablo was not involved in the process leading up to the original approval of the San Marco development,” said Brown. “However, we do expect and hold developers accountable for insuring that their project obtain all of the required permits and approvals prior to construction. Once again, it appears that the Seeno companies have failed to obtain the required approvals and have just moved forward with self serving destruction of critical wildlife habitat. The

Seenos don't seem to understand that just because they own the land that they are not entitled to indiscriminately eradicate habitat. Time and again, the Seenos seem to show no understanding of or respect for the State and Federal laws that govern how land owners treat their properties."

"The Seenos have also expressed interest in being one of the developers for the Concord Naval Weapons Station redevelopment," said Brown. "We would strongly oppose their efforts to be involved with that project. Everything we've seen suggests that they willfully refuse to follow the rules or to be environmentally sensitive."

### **Save Mount Diablo**

is a non-profit 501(c)(3) conservation organization, which has been preserving lands on and around Mount Diablo and educating the public to the mountain's natural values since 1971. Preserved lands have increased from 6,788 acres to more than 90,000. Save Mount Diablo continues to raise funds to preserve the remainder of the mountain. For more information, contact: Save Mount Diablo, telephone: (925) 947-3535, 1901 Olympic Blvd., Ste. 220, Walnut Creek, CA 94596; [www.savemountdiablo.org](http://www.savemountdiablo.org)

## **MORE BACKGROUND**

### **Aerial Reconnaissance**

One of SMD's members first noticed the grading visible above Concord in January. The organization took photos, then got up in the air in February to take even better images. That's where you can really see how they've obliterated an entire creek in a canyon rising all the way to the ridge. Since then, SMD has been mapping the various parcels where more work is planned. We've had to look at historic images to see the creek that existed before the grading.

### **Fish & Game Investigation**

The grading is being investigated by the California Dept. of Fish & Game, which was involved in the investigations leading to two previous prosecutions of the Seeno Companies, and leading to significant fines and penalties of more than \$1 million (2002) and \$3 million (2008) respectively. In this case, the Seeno Companies have clearly graded through a creek without necessary permits.

The 2002 San Marco prosecution included a \$1 million fine, protection of Seeno's 640-acre Morgan Territory Ranch, and a public apology published in local newspapers.

The 2008 Mira Vista settlement included a \$3 million fine. In addition to monetary penalties, Seeno agreed to transfer a 60-acre parcel to the East Bay Regional Park District's Black Diamond Mines Regional Preserve. The company was also required to train its employees on environmental regulations, and it must conduct biological and wetland assessments of its properties. It will be difficult to assess wetlands on San Marco, given that this creek no longer exists.

### **The San Marco Project, Save Mount Diablo and the Seeno Companies**

The San Marco project includes 2,938 units and commercial and retail development on a steep 639-acre site along Bailey Road. The project extends the City of Pittsburg further west from the Bay Pointe BART station almost to Willow Pass, on the south side of Highway 4. The project at one time included a 60,000 sq. ft. casino with a 58 table card room, rejected by Pittsburg voters in 1997 by a 61% vote. The City of Pittsburg approved the remainder of the project, which is valued at more than \$1 billion. The massive project is under construction and is visible from Highway 4 and Bailey Road.

Save Mount Diablo was not involved in San Marco's original approvals. The organization began responding to development projects in Pittsburg in the late 1990s, beginning with the proposed Southeast Hills annexation, adjacent to Black Diamond Mines Regional Preserve, which would have extended all the way to land overlooking the City of Clayton. The annexation was stopped when huge land slides and coal mine dangers were revealed.

Save Mount Diablo has a long history in opposing Seeno Company projects. In 1988 SMD led opposition to Seeno's (with Braddock & Logan) Crystyl Ranch project in Concord, revealing removal of heritage trees before environmental review began and overturning project approvals with a citizen's referendum. Ultimately Braddock & Logan scaled the project back by half, protected ten times as much open space, and the project was approved.

The group also stopped Seeno's Montreaux project on Kirker Pass Road in Pittsburg and reported violations of Contra Costa County's Heritage Tree ordinance when contractors for the Seeno Companies removed trees there without permits. Ultimately the Seenos were required by the County to pay over \$100,000 for tree planting elsewhere. Montreaux was included within Pittsburg's Measure P Urban Limit Line but has not been annexed to the city.

Save Mount Diablo helped lead opposition to Measure P as part of efforts to protect the Los Medanos ridgeline between Pittsburg and Concord.

### **Reactions To The Grading**

"The grading done in the current San Marco development area is just the latest example of the Seeno's disregard of the law and Pittsburg's inability to control their lands. Given the history of the Pittsburg Planning Commission and City Council's willingness to grant the Seeno's requests, it seems likely what ever controls are in the Hillside regulations will be swept aside. The Seenos will grind off the hill tops, fill in the valleys and pack houses on the ridges in defiance of the wishes of the majority of Pittsburg residents. The Commission and Council's willingness to provide the Seenos with what ever they want are best exemplified by the development of the pending Hillside regulations. We have been discussing those regulations with the Seeno controlled Commission and Council over the last year plus. The very limited controls in the regulations have been further weakened by using implementing language like "where possible," "to the extent possible" and "should." This weasel wording gives the developer license to ignore the controls on grading, ridge protection, housing density and placement. When asked to strengthen the language, the Commission's set reply has been that these must be flexible so they can be enforced when the developer brings a development agreement plan for consideration. Councilman Ben Johnson was the latest city official to tout this position at The Los Medanos Hills - Concord and Pittsburg Working Group last Friday (28 Mar). It is very sad that Pittsburg's government seems to regard the Seenos as royalty to whom the City is beholden. It is about time the Seenos are treated as any other firm wanting to do business in the City. It is also about time the City listens to the desires of all it's residents, not just the Seeno royal court." Dennis Linsley, Spokesman, Friends of Pittsburg/Save Our Hills

"Members of the Concord Naval Weapons Station Neighborhood Alliance see the planning and development of the Weapons Station and the adjacent Los Medanos hills as a once in a life time opportunity to preserve this area for future generations. Our requests to the city of Pittsburg to limit hillside development have been ignored. The grading and development of these hillsides will result in diminished value of one of the last untouched areas of Contra Costa County." Kathy Gleason, Co-founder, CNWS neighborhood Alliance

"These damaged hills show the possible future fate of all of Pittsburg's beautiful landscapes if the proposed Hillside Ordinance is passed. It is appalling that Pittsburg's elected officials will continue to allow this inexcusable destruction." Christina Wong, East Bay Field Representative, Greenbelt Alliance

"The grading is completely appalling. The Seenos have a complete disregard for protecting the environment. What's the point of putting together a Hillside Development regulations if they can do whatever they want, whenever they want? These images show exactly the fears people have been expressing in planning commission meetings—their fears are what's already taking place. We've worked for almost two years on Hillside Development regulations —Measure P was supposed to give local residents control over the Los Medanos hills. The city is so far doing a worse job than the County would have." Christina Armor, Conservation Community Organizer, Sierra Club, San Francisco Bay Chapter

### **Montecito & Faria Projects, and Measure P**

Although their names have changed, the Montecito and Faria projects owned or controlled by the Seenos, are above the San Marco project, outside of the Pittsburg city limits on unincorporated county land. The Seenos initially proposed a development agreement with Pittsburg on Montecito, but were stopped by environmental organizations including Save Mount Diablo, because development agreements must be preceded by inclusion of an area within a city's sphere of influence, by annexation to the city limits, and by environmental review.

The Faria property was once protected by "blast" easements related to the Concord Naval Weapons Station. In 2005 the Seenos sponsored Measure P to create an urban limit line including areas in Pittsburg's Southeast and Southwest hills, and to pre-zone them. The measure was a "wolf in sheep's clothing" purporting to be environmentally beneficial when it was

in fact the first step toward development for the properties, which must still be annexed before development can move forward. Its proponents promised a greenbelt between Pittsburg and Concord, and that Pittsburg development would not be visible from Concord or Highway 4 west of Willow Pass. Measure P was approved with a margin of approximately 300 votes.

The grading at San Marco is important because, while damaging, it is just the beginning—development at Montecito and Faria would be even more damaging and even more visible from Eastern and Central County.

Seeno land holdings to the east are also the chief beneficiaries of Pittsburg's proposal for a James Donlon extension, the former "Buchanan Bypass" from Somersville Road to Kirker Pass Road, which is undergoing environmental review at present.

### **The "Seeno Companies"**

Albert D. Seeno, Jr., a major shareholder and director of Peppermill Casinos Inc. in Nevada and operator of five gaming establishments in that state, lives in a 25,000+ square foot hill top house in Clayton. His Concord-based companies include Albert D. Seeno Construction Company, Inc., Northstate Development, Seecon Construction, Seecon Financial and Construction Inc., Seeno Homes, West Coast Home Builders, West Coast Properties, etc. Seeno, Jr.'s son, Albert Seeno III, is the head of Discovery Homes, but the companies are inter-connected.

Salvatore "Sal" Evola, a member of the Pittsburg City Council, is Discovery's vice president and Albert Seeno III's cousin. He has not yet indicated whether he believes he has a conflict in discussions over Hillside Development Regulations, although almost all of the land affected is owned or controlled by the Seeno Companies. He has also represented the city as a member of a working group with Concord City Council members, discussing Los Medanos hills and Naval Weapons Station issues.

### **Seeno Companies Spokesmen**

For years the Seeno Companies refused to respond to media inquiries about their controversial activities. Polling has shown their public credibility and reputation to be very low. Beginning with the Pittsburg Measure P campaign in 2005, however, they began using the PR firm Singer Associates, Inc., which is known for representing controversial figures and corporations in periods of intense media interest, what the firm labels "crisis communications issues." Seeno Company spokesmen are typically Sam Singer, or Kiley Russell, a former Contra Costa Times reporter on development issues.

### **Pittsburg Hillside Development Regulations**

Pittsburg's General Plan calls for adoption of Hillside Development regulations to better protect its hills and ridge lines. The City has been working on the ordinance for the past several years however, in its most recent actions, the Pittsburg Planning Commission has gutted the proposed ordinance. At this point, the proposal is very weak, however the City Council has not yet weighed in. Their first opportunity takes place on Monday April 7, 2008.

### **LAFCO**

**Local Agency Formation Commission (LAFCO):** In 1963, the California Legislature responded to the urban boundary wars, and the problem of public finance and service they created, by enacting the Local Agency Formation Commissions. This law established an arm of state government, a commission, in each county responsible for overseeing most forms of local government boundary change, including incorporation, annexations, and special district formations. In the interest of more orderly development, LAFCOs were to act as judges of boundary disputes among governments and communities. Since 1963, numerous changes have been made to the law, culminating in the current Cortese-Knox-Hertzberg Act of 2000. The seven members of LAFCO include: two City Council Members (selected by the cities in the County), two County Supervisors (selected by the Board of Supervisors), two Special District Members (selected by independent special districts in the County), one public member (selected by the other six LAFCO Commissioners), and alternate members – one in each category – are also appointed.

LAFCO must ultimately decide whether to allow Pittsburg to annex the Seeno properties beyond the boundaries of San Marco.

## **Pittsburg General Plan**

The grading at San Marco violates a variety of Pittsburg General Plan policies. General Plan standards relative to creeks and grading are attached below.

Permits are required for any work within 50 feet of the top of bank of a creek, or where natural or finished slope is greater than 10%--both criteria exist in this situation. The General Plan calls for the minimization of cut-and-fill of natural hillsides and preservation of ridgelines and creeks (and their enhancement), which must first be mapped. Creek setbacks are required along riparian corridors, extending a minimum of 50 to 150 feet laterally on each side of the creek bed, and riparian (creek side) corridor characteristics must be retained. Proposed hillside standards call for special attention above the 500' elevation and no development shall occur within one hundred and fifty feet (150') of a major ridge, as measured from the center line of the ridge.

What's most ridiculous is that Pittsburg, however, fails to recognize the existence of any major or minor ridgeline north of Bailey Road. Although the Los Medanos Hills ridgeline between Concord and Pittsburg is one of the most prominent features in Contra Costa County, the Pittsburg General Plan doesn't even recognize it as a major or a minor ridge. (See attached Pittsburg General Plan Fig 4-2, Major and Minor Ridges, in which we have depicted San Marco and the other Seeno lands in the Southwest Hills.

By comparison, in all of its reuse plan alternatives for the Concord Naval Weapons Station, the City of Concord protects the Los Medanos Hills.

### **EXISTING**

#### **Pittsburg General Plan**

##### ***Chapter 2 – Land Use***

###### *Section 2.5 – City-Wide Land Use Policies*

- Restrict development on minor and major ridgelines (as identified in figure 4-2). Encourage residential construction on flatter natural slopes or non-sensitive graded areas that reduce environmental and visual impacts. Minimize cut-and-fill of natural hillsides.

##### ***Chapter 4 – Urban Design***

###### *Section 4.2 – Hillside Development*

- 4-G-4 Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, ridgelines, in the design of hillside neighborhoods.
- 4-P-9 Encourage new hillside development to preserve unique natural features by mapping all natural features as part of development application, including landforms, mature trees stands, rock outcroppings, creek ways, and ridgelines. During development and design review, ensure that site layout is sensitive to such mapped features. (emphasis added)
- 4-P-14 Preserve natural creeks and drainage courses as close to possible to their natural location and appearance.
- 4-P-15 Minimize the visual prominence of hillside development by taking advantage of existing site features for screening, such as tree clusters, depressions in topography, setback hillside plateau area, and other natural features.

##### ***Chapter 9 – Resource Conservation***

###### *Section 9.2 – Drainage and Erosion*

- 9-G-4 Minimize the runoff and erosion caused by earth movement by requiring development to use best construction management practices (BMPs).
- 9-G-5 Preserve and enhance Pittsburg's creeks for their value in providing visual amenity, drainage capacity, and habitat value.
- 9-P-9 Establish creek setbacks along riparian corridors, extending a minimum of 50 to 150 feet laterally on each side of the creek bed. Setback buffers for habitat areas of identified special status species and wetlands may be expended as needed to preserve ecological resources.
- 9-P-10 Prohibit development within creek setback areas, except as part of a greenway enhancement (for example, trails and bikeways). Encourage developers to reserve space outside of the creek setbacks where endangered species habitat makes trail development inappropriate.

- 9-P-11 Ensure that riparian corridor characteristics are retained. Encourage the retention and/or reestablishment of creeks in the design of new development.
- 9-P-24 Reduce sedimentation and erosion of waterways by minimizing the site disturbance and vegetation removal along creek corridors.

## **EXISTING**

### **Pittsburg Municipal Code**

#### ***Title 15***

##### ***15.88.030 Permit Required***

A. No person may grade, fill, excavate or store or dispose of soil and earth materials or perform any other land-disturbing or land-filling activity without first obtaining a permit as set forth in this chapter.

No permit shall be granted until the applicant has obtained approval of all his legislative requirements, such as, but not limited to, use permits, hillsides planned development permit, tentative map, building permit or site plan review, where required. The environmental impact report shall be considered in the granting of a permit, and conditions may be imposed by the city to minimize or mitigate the negative environmental impacts of the proposed work.

B. All land –disturbing or land-filling activities or soil storage shall be undertaken in a manner designed to minimize surface runoff, erosion and sedimentation. A person performing such activities need not apply for a permit pursuant to this chapter, if all the following criteria are met:

2. The natural and finished slopes are less than 10 percent;

7. The activity does not take place within 50 feet, by horizontal measurement, from the top of the bank of a watercourse, the mean high water mark (line of vegetation) of a body of water or within the wetlands associated with a watercourse or water body, whichever distance is greater.

## **PROPOSED**

### **Chapter 18.88 – Hillside Development Regulations**

#### ***18.88.060 Site Development Standards***

A. Creeks. No structures shall be constructed within one hundred and fifty feet (150') of the centerline of a creek, or within fifty feet (50') from the top of bank, whichever is greater. To ensure creek stabilization, Best Management Practices (BMP's) shall be utilized to reduce potential erosion and sedimentation.

C. Grading. Grading on land zoned HPD and land above the 500-foot elevation, shall conform to the provisions contained within Title 15 and Title 17 of the Pittsburg Municipal Code. (See Above)

#### ***18.88.070 Ridge Preservation***

The requirements of this section are intended to preserve the views of important topographical features from within and outside the project area.

A. Horizontal setback. Each designated major or minor ridge, as identified on Figure 4-2 of the General Plan, shall be preserved in its natural state. No development shall occur within one hundred and fifty feet (150') of a major ridge, as measured from the center line of the ridge.

B. Obstruction of skyline. No structure shall be located such that it is silhouetted against the skyline as seen from any freeway, highway, or major arterial streets

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