



**MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE PLANNING COMMISSION

MARTHA COMPANY APPEAL OF THE DIRECTOR'S DETERMINATIONS REGARDING ACCEPTANCE FOR PROCESSING OF THE EASTON POINT (MARTHA COMPANY) MASTER PLAN, PRECISE DEVELOPMENT PLAN, AND SUBDIVISION APPLICATIONS

Item No:	6.	Application No:	MP 05-4/DP 05-10/SD 05-3
Appellant:	Martha Company	Owner:	same
Property Address:	Paradise Drive, Tiburon	Assessor's Parcel:	059-251-05
Hearing Date:	July 28, 2005	Planner:	Ben Berto Christine Gimmler

RECOMMENDATION:	Deny appeal and uphold Director's determination
APPEAL PERIOD:	Ten working days to the Board of Supervisors
LAST DATE FOR ACTION:	July 28, 2005

SUMMARY RECOMMENDATION:

Staff is recommending that the Planning Commission deny the Martha Company appeal and uphold the Director's determination that the Easton Point (Martha Company) Master Plan, Precise Development Plan, and Subdivision applications cannot be filed for processing until a determination has been made by the Marin Local Agency Formation Commission (LAFCO) as to whether the County is the appropriate jurisdiction to process the submitted application.

PROJECT DESCRIPTION:

The Easton Point project proposes the subdivision and development of a 110-acre property located near the southeastern tip of the Tiburon peninsula generally bounded by Paradise Drive to the east, residential neighborhoods within the Town of Tiburon to the south, and public open space lands (Old St. Hilary's Open Space Preserve and the Tiburon Uplands Nature Preserve) to the west. The subject property is proposed to be subdivided into a total of 36 lots including 31 single-family residential lots, 3 multi-family (triplex) lots, 1 public open space lot, and 1 MMWD water tank lot. The residential lots range from 0.62 acres to 6.67 acres in size. Proposed residential development includes 31 market-rate single-family homes and 9 affordable units within three triplex structures. Specific home designs have not been submitted. However, the applicant has proposed architectural and landscape design guidelines (including maximum homes sizes of 5,000 to 8,750 square feet) that would apply to development on the property. Access to the proposed lots would be provided by three new roadways/driveways off Paradise Drive (serving 14 lots) as well as extensions of existing roadways including Mountain View Drive (serving 3 lots), Ridge Road (serving 19 lots), and Straits View Drive (serving 1 lot). Proposed open space and public access improvements include the creation of 59.3 acres of dedicated public open space, 34.9 acres of private open space, and access easements to provide pedestrian access through the project site to proposed and existing public open space areas. As part of the project, the applicant is applying to be annexed into the service area of Sanitary District #5 to provide sanitary service to proposed development.

GENERAL INFORMATION:

Countywide Plan:	PR (Planned Residential, 1 unit per 1-10 acres) and SF6 (Single Family Residential, 4-7 units per acre)
Zoning:	RMP-0.2 (Residential, Multiple Family Planned District, 1 unit per 5 acres) on approximately 106 acres and R-1 (Single Family Residential, 7,500 square foot minimum lot size) on approximately 4 acres
Lot size:	110 acres
Adjacent Land Uses:	Single-Family Residential and open space lands
Vegetation:	Primarily coast live oak woodlands (lower elevations) and grasslands (high elevations)
Topography and Slope:	Moderately to steeply sloping, with some flatter areas along ridgelines
Environmental Hazards:	None identified

ENVIRONMENTAL REVIEW:

The requirements of the California Environmental Quality Act (CEQA) are not applicable to the administrative determination that is the subject of this appeal because the administrative determination regarding the status of pending applications is not a project pursuant to Section 15378 of the CEQA Guidelines.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the nature of the appeal, the location of the property, and giving the scheduled date of the public hearing in accordance with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

BACKGROUND:

In 1973, the Board of Supervisors adopted the Marin Countywide Plan, which designated a substantial portion of the subject property as "Ridge and Upland Greenbelt Area". The following year, the property was rezoned from R-1:B-2 (Single Family Residential, 10,000 square foot minimum lot size) to RMP-0.2 (Residential, Multiple Family Planned District, one unit per five acres) consistent with Countywide Plan policies which encourage lower density development on visually sensitive lands in these areas. In 1975, the Martha Company filed a lawsuit against the County contending that the rezoning constituted a taking of the property without just compensation. The stipulated judgment resulting from this legal action specified that the development of 43 single family homes on half-acre lots would be consistent with the goals of the Countywide Plan while allowing the property owners a feasible economic use of their property (see Attachment 5). However, the status of this judgment is uncertain given that during the intervening 29 years, a number of statutes, ordinances, policies and regulations have been adopted which further affect jurisdiction over and development of the site. Key among these are Local Agency Formation Commission (LAFCO) policies related to "dual annexation". This issue is discussed in more detail in the "Annexation" discussion below. However, the term refers to a policy adopted and interpreted by LAFCO which states that the development of unincorporated land within a city's sphere of influence which necessitates annexation into a special district for services also triggers a requirement for annexation into the city.

The subject property is currently located within an unincorporated area of the County. However, the site is within the Sphere of Influence and the Urban Service Area of the Town of Tiburon and the project would require annexation into the service area of Sanitary District #5 to provide sanitary services to the proposed residences. Accordingly, in 1992, when the Martha Company submitted an application to subdivide the subject property (along with an adjacent 15-acre parcel under common ownership at the time) into a total of 44 lots for residential development, the application was submitted to the Town of Tiburon with a request for annexation into the Town. A draft Environmental Impact Report (DEIR) for the project was prepared and released for public review in 1996.

The Tiburon Planning Commission subsequently determined that additional study of potential environmental impacts was needed. During the fall of 1997 and early 1998, the applicant developed a revised reduced density alternative which proposed a total of 34 lots. The revised plan was submitted to the Town and deemed complete in October 1999. The DEIR was revised to analyze the modified reduced-density project and was released for public circulation in September of 2001. However, the Tiburon Town Council determined that the revised DEIR could not be certified without additional study regarding certain environmental issues. According to the applicant, the property owner elected to cease pursuing their application through the Town of Tiburon at this point, due to the amount of time and money that had been expended on the application process without a project EIR being certified. The Easton Point application was subsequently submitted to the County on April 20, 2005.

In 2004, the applicant approached the County and Town staffs regarding the possibility of the two respective jurisdictions entering into a memorandum of understanding (MOU) that would allow the County and Town to review and take sequential action on a 16-unit single-family residential proposal for the property. According to the applicant, the property owner could realize a tax benefit if the County were to initially approve fewer number of units than the minimum 43 units noted in the stipulated judgment (the extinguished density used to gain the tax benefit is the difference between the 43 dwelling units noted in the stipulated judgment and the 16 units proposed in connection with the MOU, or at least 27 units). The Town would retain authority to take action on subsequent entitlements addressing the final location and design of homes and other improvements. Both County and Town staff expressed an interest in considering such a proposal. The Town staff requested information regarding the 16-unit proposal from the applicant for the purpose of soliciting input from the City Council regarding their interest in pursuing an MOU. The applicant also indicated their intent to submit a draft MOU for staff review. After several discussions between the various parties about the specific terms and processing scenarios for implementing an MOU, the applicant has apparently chosen to discontinue their pursuit of it as reflected by the submittal of the 40-unit project that is the subject of this appeal.

ANNEXATION ISSUES

County Policies

The Marin Countywide Plan contains several policies and programs related to annexation, which encourage annexation of unincorporated lands, unless annexation is not desired by the city (text provided below).

CF-1.3 All development applications within a city's urban service area should be reviewed by the city to ensure consistency with its land use and development policies.

Program CF-1.3a Subdivision and master development plans involving unincorporated land within a city's urban service area shall be submitted to the City for planning action and annexation. The approach awards the "right of first review" to the affected city to perform the planning analysis of any development plan requiring urban services.

CF-1.4 Prior to development of vacant unincorporated lands within an urban service area, the unincorporated territory should seek annexation to the city, unless the city signifies that it does not desire to annex the lands at that time.

As noted previously, the subject property is within both the designated Urban Service Area and the Sphere of Influence of the Town of Tiburon. As described in Attachment 4, the Town of Tiburon has expressed a commitment to annexation of unincorporated territory on Paradise Drive and has a strong desire to process development applications, such as the Easton Point project, which would have a significant impact on the Town and its residents. Accordingly, the property should be annexed pursuant to the Countywide Plan policies noted above.

LAFCO Policies

Final determinations regarding annexation issues are made by the LAFCO, the agency charged with review and approval of any changes to city or special district boundaries. As noted previously, to provide sanitary service for the proposed development, the applicant is requesting that the subject property be annexed into the service area of the Tiburon Sanitary District. According to LAFCO's adopted Dual Annexation Policy, annexations of unincorporated land to special districts that provide services necessary for urban development *shall require* (emphasis added) concurrent or subsequent annexation to a city if the land is located within the city's sphere of influence (see Attachment 6). The subject property's location within Tiburon's sphere of influence, in combination with the project's need to obtain sanitary service through annexation into the Tiburon sanitary district therefore triggers LAFCO's dual annexation policy. Although implementation of this policy may be waived or deferred at the discretion of LAFCO (through the use of an agreement between the city and the property owner providing for future annexation), the proposed project may be required to annex to the Town of Tiburon.

Conclusion

Given these factors, staff determined that it would be inappropriate for the County to proceed with processing of the applications in light of adopted LAFCO dual annexation policies and County urban service area policies, in combination with the Town of Tiburon's expressed interest in processing the applications and annexing the subject property. Accordingly, on May 20, 2005, a letter was issued stating that the submitted Master Plan, Precise Development Plan, and Subdivision applications could not be accepted for processing until a determination had been made by LAFCO as to whether the County would be the appropriate jurisdiction to process the submitted application (See Attachment 3).

APPEAL:

On May 31, 2005, Mary McEachron of Hanson Bridgett, on behalf of the Martha Company, filed a timely appeal of the Community Development Director's determinations contained in staff's letter of May 20, 2005. The submitted appeal asserts that California law and the above-referenced Judgment preclude the County of Marin from denying or deferring processing of the Martha Company applications (see Attachment 2). The basis of the appeal is primarily a legal question which would ultimately be decided by a court of law. However, in the absence of such a determination, staff's intent in referring the applicant to LAFCO is to avoid the expenditure of additional time and money processing entitlements through the County which, ultimately, may not be accepted or recognized by the local jurisdiction into which the property would be required to annex under current regulations. The County's acceptance of the Easton Point application for processing would be in direct conflict with adopted Countywide Plan and LAFCO policies, particularly given the Town of Tiburon's position on the issue. Furthermore, the fact that the applicant initially submitted their application to the Town of Tiburon and has been proceeding through the Town's development review process for over ten years strongly suggests the applicant's past acknowledgement of the dual annexation and urban service area policies, and their recognition that Tiburon is the appropriate agency to review the application, regardless of their frustration over the timeline. In summary, based on current policies and Tiburon's position on the issue, the County of Marin is not the appropriate agency to process applications for the subdivision and development of the subject property.

RECOMMENDATION

Based on the foregoing analysis, staff finds that the Martha Company appeal does not have a sufficient basis to overturn the Director's determination regarding the status of the Easton Point (Martha Company) Master Plan, Precise Development Plan, and Subdivision applications. Accordingly, staff recommends that the Planning Commission review the administrative record, conduct a public hearing; and move to deny the Martha Company appeal and sustain the Community Development Director's administrative determination regarding the Easton Point (Martha Company) applications.

- Attachments:
1. Resolution denying the Martha Company appeal and upholding the Director's determination
 2. Petition for Appeal, submitted May 31, 2005
 3. Project status letter, dated May 20, 2005
 4. Town of Tiburon letter, received May 9, 2005
 5. Judgment Pursuant to Stipulation filed December 29, 1976
 6. LAFCO Dual Annexation Policy
 7. Easton Point Project Narrative*

**Copies of project narrative have been included in Planning Commission packets only. A copy of the narrative is available for public inspection at the Marin County Community Development Agency Planning Division office, Marin County Civic Center, Room 308, during normal business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday.*

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE MARTHA COMPANY APPEAL OF THE DIRECTOR'S DETERMINATION REGARDING THE EASTON POINT (MARTHA COMPANY) MASTER PLAN, PRECISE DEVELOPMENT PLAN, AND SUBDIVISION APPLICATIONS

ASSESSOR'S PARCEL NUMBER 059-251-05
PARADISE DRIVE, TIBURON

SECTION I: FINDINGS

- I. WHEREAS the Martha Company has applied for Master Plan, Precise Development Plan, and Subdivision approval to subdivide the 110-acre subject property for the development of 31 single-family residences and 9 multi-family residential units ("Easton Point project"). Access to proposed development would be provided by three new roadways/driveways off Paradise Drive (serving 14 lots) as well as extensions of existing roadways including Mountain View Drive (serving 3 lots), Ridge Road (serving 19 lots), and Straits View Drive (serving 1 lot). The subject property is located on Paradise Drive, Tiburon, and is identified Assessor's Parcel Number 059-251-05.
- II. WHEREAS on May 20, 2005, the Community Development Director determined that it would be inappropriate for the County to proceed with processing of the applications in light of adopted County and LAFCO dual annexation policies and issued an administrative determination that the submitted Master Plan, Precise Development Plan, and Subdivision applications could not be accepted for processing until a determination had been made by the Marin Local Agency Formation Commission (LAFCO) as to whether the County would be the appropriate jurisdiction to process the submitted application
- III. WHEREAS on May 31, 2005, a timely appeal of the Community Development Director's determination was filed by Mary McEachron of Hanson Bridgett, on behalf of the Martha Company, asserting that California law and the Judgment Pursuant to Stipulation filed December 29, 1976 (No. C 75 0125 RHS), preclude the County of Marin from denying or deferring processing of the Martha Company applications.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on July 28, 2005, to consider the merits of, and hear testimony in favor of, and in opposition to, the appeal.
- V. WHEREAS the Marin County Planning Commission finds that the requirements of the California Environmental Quality Act (CEQA) are not applicable to the administrative determination that is the subject of this appeal because this administrative determination regarding the status of pending applications is not a project as defined by Section 15378 of the CEQA Guidelines.
- VI. WHEREAS the above property is located within the Town of Tiburon sphere of influence, as adopted by LAFCO, and the urban service area as defined by the Marin Countywide Plan (Countywide Plan Figure CF-3);

- VII. WHEREAS LAFCO's dual annexation policy generally states in part that annexation of unincorporated land to special districts that provide services necessary for urban development shall require concurrent or subsequent annexation to a city if the land is located within the City's sphere of influence.
- VIII. WHEREAS the Easton Point project is subject to LAFCO's dual annexation policy because it requires and proposes annexation to the Tiburon Sanitary District;
- IX. WHEREAS Marin Countywide Plan policies and programs pertaining to development proposals within the urban service area, including the above property and Easton Point project, state:
- CF-1.3 All development applications within a city's urban service area should be reviewed by the city to ensure consistency with its land use and development policies.
- Program CF-1.3a* Subdivision and master development plans involving unincorporated land within a city's urban service area shall be submitted to the City for planning action and annexation. The approach awards the "right of first review" to the affected city to perform the planning analysis of any development plan requiring urban services.
- CF-1.4 Prior to development of vacant unincorporated lands within an urban service area, the unincorporated territory should seek annexation to the city, unless the city signifies that it does not desire to annex the lands at that time.
- X. The Town of Tiburon staff has reviewed the Easton Point project, pursuant to above Countywide Plan Policy CF-1.3, and has responded in their letter of May 9, 2005 by indicating that the Town has not to date waived their "right of first review" and has referred to the Town's past commitment to annexation of unincorporated territory situated along Paradise Drive for the purpose of processing development proposals on such lands; and
- XI. WHEREAS the Marin County Planning Commission finds that the appeal lacks sufficient basis to overturn the Director's determination that the Easton Point project cannot be filed for processing at this time because it would be inappropriate for the County to proceed with processing of the applications in light of adopted County and LAFCO dual annexation policies in combination with the Town of Tiburon's expressed interest in processing the applications and annexing the subject property until a determination has been made by the Marin Local Agency Formation Commission (LAFCO) that the County is the appropriate jurisdiction to process the submitted application.
- XII. WHEREAS the Marin County Planning Commission finds that the County may be the appropriate agency to process the Easton Point project if LAFCO waives or delays implementation of the dual annexation policy in accordance with LAFCO procedures.

SECTION II: APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby denies the Martha Company Appeal and upholds the Director's determination regarding the Easton Point (Martha Company) Master Plan, Precise Development Plan, Subdivision based upon the information contained in the administrative record for this proceeding; and

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. To appeal this decision, a Petition for Appeal and a \$675.00 filing fee must be submitted in the Community Development Agency, Planning Division, Rm. 308, Civic Center, San Rafael, no later than 4:00 p.m. on August 8, 2005.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 28th day of July 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE C. THOMPSON, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary