



# COMMUNITY DEVELOPMENT AGENCY

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Board of Supervisors  
County of Marin  
3501 Civic Center Drive  
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**RE: Certification of the 2008 Easton Point Residential Development Final Environmental Impact Report (Final EIR); Rezoning of Martha Company Property APN 059-251-05; and Merits Consideration of the Easton Point Modified Master Plan, Precise Development Plan/Tentative Map.**

Dear Board Members:

## **RECOMMENDATION:**

1. Review and consider the Final EIR documents and the EIR administrative record, conduct a public hearing on the adequacy of the Final EIR for certification;
2. Approve the attached Resolution to certify the 2008 Easton Point Residential Development Final EIR as adequate and complete pursuant to CEQA, the State EIR Guidelines and the Marin County Environmental Review Guidelines and Procedures (Attachment 1);
3. Conduct a public hearing on the merits of the Easton Point Modified Master Plan, review and consider public comments and the information in this staff report; and
4. Approve the attached ordinances rezoning the Easton Point property (Attachment 2) and conditionally approving the Easton Point Modified Master Plan (Attachment 3), and resolution denying the Easton Point Precise Development Plan/Tentative Map applications (Attachment 4).

## **BACKGROUND:**

### *Prior Court Judgments*

The Board of Supervisors' consideration of this proposal is guided by some unique circumstances not present in more typical development proposals. As the result of an inverse condemnation suit filed by the Martha Company in 1975 and a subsequent settlement agreement between Martha Company and the County, the Federal District Court entered a Stipulated Judgment in 1976. The Judgment provides that the County will consider, as consistent with the goals of the Countywide Plan, development on the project site with a minimum of 43 residential units on minimum one-half acre lots and would allow the Martha Company feasible economic use of their property. The Stipulated Judgment also found that, due to the character of the property and its terrain, some of the building sites may have to be

located within 300 feet horizontally or within 100 feet vertically of the ridge line. Additionally, the Stipulated Judgment directs that a master development plan shall be submitted prior to development that complies with the County’s residential design standards.

In 2007, the Martha Company and the County settled a second lawsuit, which also resulted in a Stipulated Judgment. The 2007 Stipulated Judgment affirmed Martha’s right to develop 43 homes on its property and provides that the lots to be approved by the County would be at least one-half acre in size, and that these lots must be placed on geologically safe portions of the site, without the necessity for extensive landslide repair, rather than in the path of known landslides. Additionally, the County was required to allow some development within the Ridge and Upland Greenbelt. The 2007 Judgment also states that any development alternative, or any proposed mitigation measure, which does not accord Martha Company all rights to which it is entitled under the 1976 Judgment is legally infeasible unless required to ensure health and safety, and that both the 2007 and the 1976 Judgments are to be implemented to the greatest extent feasible consistent with health and safety. Additionally, the 2007 Judgment indicates that it is not the parties’ intent to allow the unmitigated taking of any endangered, threatened, listed, or otherwise protected species identified in the extensive environmental reviews previously prepared for the Martha Company by the Town of Tiburon.

In 2016, the Martha Company sought Federal District Court intervention on the project, claiming that the County was not complying with the 1976 and 2008 Stipulated Judgments. As a result, the Martha Company and the County agreed to a general timeline for processing the application as reflected in a series of court orders. The current order provides that that County is required to hold a hearing on the Final EIR by October 3, 2017. As a result of the above-described series of court orders, the broad discretion that the Board of Supervisors has in considering planning and zoning matters must be exercised in conformance with the stipulated judgments.

Development Application Overview

Development of the Easton Point property requires submittal and action on a number of development applications, and other public agency approvals. The following is a brief description of the sequence of plans and approvals required by the Marin County Development Code (zoning and subdivision ordinances) and the California Environmental Quality Act (CEQA) before construction can begin.

- Under state law, the Board of Supervisors must first certify the Final Environmental Impact Report (Final EIR) for the project before making decisions on the development applications described below. Certification means the Board finds the Final EIR is adequate with respect to identifying potential environmental impacts associated with the proposal, feasible mitigation measures and a reasonable range of project alternatives. Certification of a Final EIR does not approve a project.
- A Rezoning request is also required for Easton Point insofar as the property owner is seeking a zoning that is consistent with the Court Judgment that authorizes 43 homes on minimum one-half acre lots.
- A Master Plan application is required in conjunction with a Rezoning to determine the type, intensity and conceptual layout of a development proposal.
- Approval of a more specific Precise Development Plan and Tentative Subdivision Map are required if the Master Plan and Rezoning applications are first approved by

the Board of Supervisors. The Precise Development Plan/Tentative Map applications provide much more detail including proposed lot boundaries, public and private easements; water, sewer, and storm drain size and alignment, and other elements of the proposed subdivision.

- A Final Subdivision Map and construction permits are required if the Precise Development Plan and Tentative Subdivision Map are approved. The Final Subdivision Map is the mechanism that creates legal lots of record that can then be marketed. Application, review and approval of construction permits (e.g., grading permit, building permits, encroachment permits) allow the actual development/construction of a project.

Master Plan approvals typically include Conditions of Approval that must be satisfied before either the filing or approval of subsequent phased development applications (this also holds true for Precise Development Plans and Tentative Subdivision Maps). If the applicant is unable to meet one or more conditions, the project is not allowed to proceed to the next phase of approvals.

The preceding procedural steps reflect in a general way only those approvals required by the County as the lead local agency with the greatest overall purview over the project. However, as discussed in the previous section, the County’s discretion over the Easton Point project is severely limited due to the 1976 and 2007 stipulated judgments the County is required by the courts to implement.

A number of other local and state agency authorizations will also be required if the County approves the Easton Point project. For example, the Local Agency Formation Commission must approve a request to annex the property to the Tiburon Sanitary District. Public utilities will review and act on the more detailed development plans to ensure the project meets their respective design and operational criteria. The Tiburon Fire Protection District has purview over fire flow and other fire protection standards. The State and Federal Departments of Fish and Wildlife Service may require application approval prior to the removal of any protected plant or animal species. If one or more of these other agencies (referred to as Responsible Agencies in CEQA nomenclature) do not approve the project based on their authority and regulations, the project will not proceed to a more concrete phase.

*Proposed Easton Point Development Project*

The applicant, Martha Company, is requesting approval of a Modified Master Plan, and Rezoning of their 110-acre parcel located on the southeastern tip of the Tiburon Peninsula bordering Paradise Drive. The project application includes rezoning the project site from the current Single Family Residential (R-1) and Residential Multiple Planned District (RMP-0.2) to Residential Single Family Planned (RSP). The Modified Master Plan proposes to create 43 minimum half-acre residential lots for single-family home development. The applicant is not proposing to construct any homes at this time, but is requesting approval of design guidelines and standards, including minimum house sizes (square footage) for each lot, that would regulate future home construction on the property. In addition two parcels (Parcel A – 68.49 acres and Parcel B – 5.86 acres) would be offered for dedication to the Marin County Open Space District. Parcel B is proposed as a Marin dwarf flax (a special status plant species) preserve. The Modified Master Plan includes a Parcel C (0.46 acre) for the construction of a 265,000 gallon water storage tank, a Parcel D (0.77 acre) to accommodate MMWD’s request to relocate their existing water tank at the end of Forest Glen Court to a higher elevation on

the Martha Company property, and a small parcel partially within and adjacent to Parcel C for a possible future Marin Emergency Radio Authority (MERA) communications site. The applicant proposes to construct roads and utilities to serve each of the 43 residential lots. The application also includes a proposal to construct a temporary construction access road that would be used for all phases of project construction, including future home construction. The applicant also proposes to remediate or repair some landslides on-site to accommodate proposed development.

Project History

The 2008 Easton Point Residential Development Project applications (property Rezoning, Master Plan, and Precise Development Plan/Tentative Subdivision Map) were filed with Marin County in reliance on a U.S. District Court decision resulting from a 1975 lawsuit that determined development of the project site with a minimum of 43 residential units on minimum one-half acre lots would be consistent with the goals of the Marin Countywide Plan. The project site is within the Town of Tiburon’s Urban Service Area and Sphere of Influence. However, the applicant is not proposing to annex the project site to the Town of Tiburon. The applicant will apply for annexation to Sanitary District #5. The Easton Point applications were deemed complete for processing on May 28, 2009.

On November 12, 2009, the Town of Tiburon and the property owner (Martha Company) signed a Memorandum of Understanding (MOU) regarding a 32-Unit Lower Density Alternative (LDA) for the Easton Point project site and requested that Marin County evaluate the LDA as a project alternative in the EIR. In order to complete a full scope environmental impact analysis of the LDA the County required the applicant (Martha Company) to submit information on the LDA at the same level of detail as that submitted for the Proposed Project. On January 21, 2010 the applicant submitted the requested information and the County completed a full scope environmental analysis of the LDA within the context of the draft and prepared written responses to comments received on the LDA in the final EIR.

However, on December 2, 2015 Marin County Counsel received a letter from the Town of Tiburon informing the County that the Memorandum of Understanding expired on December 31, 2014 and shortly before that date the Tiburon Town Attorney was informed by the Martha Company’s legal counsel that Martha Company would not be seeking a time extension of the MOU. The Martha Company also informed Marin County that Martha would no longer agree to the Lower Density Alternative. Therefore, under the provisions of the Court’s Judgment the County could not approve a project with less than 43 units without agreement from Martha and the Court.

EIR History

The Draft and Final EIR for the 2008 Easton Point Residential Development Project were prepared in accordance with the California Environmental Quality Act (CEQA), including the CEQA Statutes (Public Resources Code §§21000-21178.1), State CEQA Guidelines (Code of Regulations, Title 14, §§ 15000-15387), the Marin County Environmental Impact Review Guidelines and relevant court decisions including the 1976 Judgment and the 2007 Judgment Pursuant to Stipulation.

The Draft EIR was completed in March 2011. A Notice of Completion (NOC) was published in a newspaper of general circulation to begin an extended fifty-one (51) day public review and comment period, which concluded on April 29,2011. The Planning Commission held a public hearing on the Draft EIR on April 25, 2011. At that hearing, the Planning Commission received testimony from public agency representatives and members of the public on the

analysis provided in the Draft EIR. In some cases, comments were also received on the merits of the project. After the hearing and after considering the comments received, the Planning Commission directed staff and the environmental consultant to prepare written responses to all the written and oral comments received on the Draft EIR.

Under the provisions of the 2007 Judgment Pursuant to Stipulation, the County was restricted to holding one Planning Commission hearing on the proposed project. Since the Planning Commission held a public hearing on the Draft EIR, there was no hearing before the Planning Commission on the Final EIR. However, the Planning Commission did submit a written comment letter on the Final EIR. The Commission’s comment letter is part of the public record on the Final EIR.

The Notice of Availability (NOA) of the Final EIR Responses to Comments and the notice of date and place of the Board of Supervisors public hearing was published in a newspaper of general circulation to begin a 30-day public review and written comment period that ended on July 29, 2013.

On October 22, 2013 your Board conducted a noticed public hearing on the Easton Point Final EIR and at that hearing provided an opportunity for the public to comment on the adequacy of the Final EIR. After receiving public comment the Board closed the public hearing and discussed the content of the Final EIR in light of the written and oral public comments received. The Board then directed staff and the environmental consultant to provide clarification on a limited number of environmental issues.

**PREVIOUS BOARD OF SUPERVISORS DECISION/DIRECTION ON FINAL EIR**

On March 11, 2014 your Board conducted a 2<sup>nd</sup> noticed public hearing on the 2008 Easton Point Residential Development Final EIR. After receiving public comment, the Board closed the public hearing, but did not certify the Final EIR. After considering the information in the Final EIR and the comments submitted by public agencies and the public at large it was the Board’s opinion that some mitigation measures recommended in the Final EIR do not fully mitigate the impact. The Board noted that certifying the Final EIR would imply that the project as proposed in the December 2008 applications was feasible. However, project feasibility and project compliance with mitigation measures in the Final EIR had not been demonstrated in the applications before the Board in March 2014.

Specifically the Board found that:

- the final elevation of the proposed water storage tank was unknown, and the EIR found that the final elevation of the water storage tank had a direct impact on fire flow and residential water pressure;
- the Marin Municipal Water District had not approved the location and design of the water storage tank proposed in the application;
- the fire hydrants proposed to serve many of the lots at the higher elevations might not meet the Tiburon Fire Protection District’s fire flow standards or be able to achieve the fire flow requirements for the home sizes requested in the application;
- the project’s ability to comply with domestic water pressure and fire flow standards is a necessary health and safety requirement; the feasibility of which had not been demonstrated;
- the Final EIR recommended mitigation to raise the base of the water storage tank to elevation 590 feet did not include a water tank design and a storage tank design at

that elevation had not been reviewed by MMWD (a water tank at elevation 590 is a safety issue because the base of the tank would be higher than the highest elevation on the project site); and

- the mitigation of significant environmental impacts to listed, threatened and endangered species required either the removal or relocation of a number of lots at both the higher and lower elevations on the property; and the application before the County does not mitigate the significant environmental impacts to the identified threatened and endangered species.

Based on these findings the Board decided not to consider certification of the Final EIR until a more specific proposal based on an actual plan that mitigates the significant environmental impacts of the project, with input from the MMWD and Tiburon Fire Protection District, are submitted by the applicant and reviewed for merits. Until then the Final EIR will be held in its current state and the Board will retain jurisdiction over the Final EIR.

**APPLICANT’S RESPONSE TO BOARD’S MARCH 11, 2014 DECISION**

On June 6, 2017 the applicant, Martha Company, submitted a modified project Master Plan and other technical documents for County of Marin review and Board of Supervisors consideration. The applicant’s submittal letter states that the modified project provides an alternative master plan layout that addresses the key issues the Board of Supervisors raised at their March 11, 2014 hearing to consider certification of the Final EIR.

The submission includes a Modified Master Plan, with a revised lot layout, modified road alignments, and a preliminary grading and utility plan. The submittal package also includes a modified landscape plan, a biological analysis of the modified site plan, and an updated geology report that includes an assessment of the proposed modified site plan.

Other than the modifications included in the June 6, 2017 submittal all the remaining project information on file and used by the Marin CDA to deem the original 2008 application complete for processing remain unchanged.

At this time the applicant has elected to seek a first phase of approvals including Final EIR certification, a decision on the rezoning application, and a decision on the merits of the Modified Easton Point Master Plan in compliance with the Court Judgment governing the application. Once the Final EIR is certified, and the Rezoning and master plan are decided, the applicant intends to submit a future Precise Development Plan and Tentative Map for subsequent County review and approval.

**STAFF REVIEW OF APPLICANT’S JUNE 6, 2017 RESPONSE**

A. Modified Master Plan

The Modified Master Plan proposes 43 residential lots of various sizes and dimensions, a parcel for a water storage tank at elevation 570, a parcel at elevation 283 upon which to relocate the existing MMWD water storage tank on Forest Glen Court, and a small parcel for a future MERA facility, if needed. The plan also includes two open space parcels totaling 74.35 acres, and a proposed public pedestrian easement from Ridge Road along Tam View Court to Saint Hilary’s Open Space Preserve.

The Modified Master Plan mirrors somewhat the lot arrangement in the Biological Alternative #4 in the EIR. However, the lots in the Modified Master Plan are larger in land

area than those assumed in Alternative #4 of the EIR. The number of lots proposed at the higher elevations in the original application has been reduced and those lots have been relocated to lower elevations on the site. Ridge Road has been extended further eastward to accommodate additional lots, and other lots have been transferred to the Forest Glen area and along the driveway paralleling Paradise Drive at the lower elevations.

The applicant is still requesting approval of maximum house sizes for each of the lots in the Modified Master Plan (Attachment 5) and is also requesting that the County adopt the applicant’s recommended design standards in lieu of the County’s zoning standards and hillside development regulations.

**B. Water Storage Tank Location, Fire Flow and Domestic Water Pressure**

*Water Storage Tanks*

The proposed water storage tank location has been lowered from elevation 580 to elevation 570 allowing the tank to be cut into the hillside. MMWD staff has reviewed the Modified Master Plan and verified in writing that the proposed location and 570 elevation of the water storage tank are feasible and acceptable to District staff (Attachment 6). However, the Water District is requiring the water tank be increased in capacity from 180,000 gallons to 265,000 gallons, and is also requesting Martha relocate MMWD’s existing water storage tank in the Forest Glen area of the project higher up the slope. The District wants Martha to remove the existing 1 million gallon tank and replace it with a new smaller 590,000-gallon water storage tank at elevation 283. The District is also offering to swap the existing water tank site for the new tank site requested of Martha at the higher elevation.

The Martha Company has amended the Modified Master Plan to reflect MMWD’s request for a larger water storage tank at elevation 570 and the relocation of the Forest Glen water tank to elevation 283. In addition, Martha Company has reconfigured Lot #39 to take advantage of the abandoned water tank site.

The reconfiguration of Lot 39 mitigates for the loss of Oak woodland associated with the relocation of the water storage tank to elevation 283. In the Modified Master Plan Lot #39 had a total land area of 1.63 acres, all of it Oak woodland habitat. The reconfigured Lot #39 has 0.57 acres in Oak Woodland habitat. The relocated water tank site has 0.84 acres of Oak woodland. Combined the reconfigured Lot #39 and the relocated water tank site contain 1.41 acres of Oak woodland habitat. As a result, the relocated water tank site and reconfigured Lot #39 will reduce the impact on Oak woodland habitat by approximately 0.22 acre.

At the County’s request the Martha Company submitted a geotechnical report prepared by Miller Pacific Engineering dated July 25, 2017 evaluating the geotechnical feasibility of relocating the water tank to the site proposed by MMWD. The report found that MMWD’s proposed new water tank site is on a steep hillside comprised of colluvium soils over Franciscan sandstone bedrock. No landslides are mapped in this area. The report found that the proposed tank site was technically feasible and recommended additional subsurface exploration and soil testing prior to design review/tentative map approval.

A preliminary visual analysis of MMWD’s proposed water tank site concluded that the site is not on a visually prominent ridgeline (Figure 4.01 of DEIR) and is completely surrounded by existing Oak woodland (Figure 5.6-2 of DEIR) that will screen the new water tank from view. As a result the site is not visually prominent and the water tank will not be visually prominent on the landscape.

Therefore, the relocation of the existing water storage to elevation 283 will not result in any new or more severe environmental impacts beyond those identified in the Final EIR. The relocation of the water tank to elevation 283 and reconfiguration of Lot #39 will result in less loss (0.22 acre) of Oak woodland habitat than that calculated in the recent impact assessment of the Modified Master Plan by Live Oak Associates, Inc. There are no geologic impacts or constraints to locating a water tank at the site requested by MMWD, and the existing Oak woodland forest will visually screen the relocated water tank for off-site viewpoints.

*Fire Flow and Domestic Water Pressure*

MMWD staff also completed an analysis of domestic water pressure and fire flow that would be available to serve lots in Modified Master Plan. MMWD estimates fire flow at the hydrants anywhere from 900 to 3,650 gallons per minute (gpm). The Tiburon Fire Protection District (TFPD) has reviewed the fire flow estimates provided by MMWD staff and verified in a letter that MMWD’s estimated fire flows are adequate for a family residence to be constructed on each of the proposed lots (see Attachment 7).

The Fire District’s minimum fire flow requirement for a sprinkled house is 750 gpm. The Fire District’s current minimum fire flow requirement of 750 gpm is lower than the 1,000 gpm minimum requirement contained in the Final EIR. Since publication of the Final EIR the Tiburon Fire Protection District has adopted an updated Fire Code and the new fire code allows a minimum 750 gpm fire flow for a sprinkled residential structure. TFPD will require all homes in the Easton Point project be sprinkled. Therefore, all the lots proposed in the Modified Master Plan have adequate fire flow available to serve a sprinkled residential structure.

MMWD’s letter also notes that some of the lots will not achieve standard domestic water pressure (40 psi). The District advises that lots with estimated domestic water pressure at the structure of less than 40 psi will be required to submit a Low Pressure Water Service Application including completion and notarization of a Low Pressure Agreement. The installation of private pumps, to be owned and maintained by the property owner, will be required for locations with estimated pressures below 30 psi.

Based on the fire flow estimates prepared by MMWD and Tiburon Fire’s minimum fire flow requirement, the public safety hazard associated with fire flow in the original Master Plan application has been mitigated in the Modified Master Plan submitted by the applicant.

C Special Status Species Impacts and Mitigation

The applicant submitted a report that assessed the special status species impacts of the Modified Master Plan to document compliance with the mitigation measures contained in the Final EIR. The report was prepared by a wildlife biologist at LSA Associates and calculated both the direct and indirect (setback) impacts to special status species found on the project site. The biological report concluded that the modified master plan avoids all direct impacts to Marin dwarf flax and serpentine reed grass and exceeds the EIR mitigation ratio indirect impacts to these special status species. The modified master plan also exceeds the 3:1 (preservation/take) ratio for impacts to serpentine bunchgrass, California Red Legged Frog habitat, and oak woodlands.

Marin County Staff retained the EIR consultant’s biologist, Live Oak Associates, Inc., to complete a peer review of LSA’s biology report including verification of preservation/take calculations contained in the LSA report. Live Oak Associates concluded that the Modified Master Plan satisfies the Final EIR mitigation requirements to re-configure, eliminate or

relocate lots to avoid or minimize impacts to special status plant species including the Marin dwarf flax, serpentine reed grass, serpentine bunch grass, red-legged frog habitat and, Oak woodlands. The peer review report notes that the applicant has decided to create a new Red-legged frog breeding habitat in Parcel A instead of providing a 100 foot movement corridor through the Forest Glen Court portion of the project. The creation of breeding habitat in lieu of the wildlife corridor is consistent with Mitigation Measure 5.6-2.

Based on the County of Marin’s peer review of the applicant’s biological report, the impacts to special status species identified in the Final EIR have been reduced to a level-of-insignificance through implementation of the Final EIR’s recommended mitigation measures in the Modified Master Plan. (Copies of the LSA report and Live Oak Associates, Inc. peer review can be viewed on the Marin Community Development Agency’s Projects website.)

D. Proposed Ridge Road Extension

The Modified Master Plan would extend Ridge Road further eastward toward Paradise Drive and increase the number of residential lots along this portion of the ridge from 10 in the original application to 14. In addition, an open space gap has been created between proposed Lots 20 and 21 to avoid impacts to wetlands identified in this area.

At the County’s request the applicant submitted a geotechnical report prepared by Miller Pacific Engineering Group addressing the proposed eastward extension of Ridge Road and the new lot configuration. The report concluded that there would be a need for some additional slope stabilization work at Lots 19 and 20. Landslide 4 would be stabilized via the construction of a drilled pier supported grade beam with new subsurface drainage. This stabilization technique would also be used to remedy the shallow-seated soil creep in the colluvium swale with Lot #39. The Miller Pacific report was peer reviewed by the EIR’s geotechnical consultant Snyder West & Associates, Inc. The peer review concluded that the recommendations contained in the Miller Pacific report regarding the minor modifications in their geotechnical repair methods based on the Modified Master Plan, are adequate and found to be in accordance with the previous mitigation measures presented in the Final EIR.

The roadway extension and new lots will not have an impact on any special status species. The biology peer review completed by Live Oak Associates concluded that the Modified Master Plan resulted in insignificant changes to impacts to oak woodlands as opposed to the original plans evaluated in the project EIR.

A photo simulation of the proposed Ridge Road extension and new lot configuration was prepared and submitted by the applicant to demonstrate that EIR mitigation measure 5.8-3 could still be implemented in the Modified Master Plan. The applicant used the Existing Condition Exhibit 5.8-8 photograph in the draft EIR to simulate the visual appearance of the extended roadway and lot configuration as seen from the Paradise Drive viewpoint.

The County retained the services of WRA, an environmental consulting firm, to peer review and verify the accuracy of the submitted photo simulation. WRA’s peer review found that the photo simulation from the Paradise Drive viewpoint is a relatively accurate portrayal of a design intended to minimize visual impact from this location. The design features incorporated into the design are successful at keeping the appearance of homes away from the ridgeline. The visual effect is that the homes are subordinate to the ridgeline as required in EIR mitigation measure 5.8-3.

Based on the preceding and the findings of the geology, biology and visual peer reviews the proposed eastward extension of Ridge Road and the new lot configuration will not result in

any new or more severe environmental impacts beyond that identified in the EIR. In addition the peer reviews found that it was feasible to implement the geologic, biologic and visual mitigation measures recommended in the EIR thereby reducing the impacts of the eastward extension of Ridge Road to less-than-significant.

Project Roadways

The new roadways proposed in the Modified Master Plan now comply with the County of Marin Development standards for residential streets. The redesigned roadways serving Ridge Road, Tam View Court and Forest Glen Court are 32 feet in width with 24 foot travel lanes and 8 foot wide parking areas on either side of the roadway. A 4-foot wide walkway is provided on one side of the road. The driveways serving lots 33-36 and 40-43 have a 16 foot paved width with turnouts as required by County code. Proposed improvements to Paradise Drive, as conditioned, will be consistent with the improvement requirement of the Final EIR. The conditions of master plan approval require detailed plans for these improvements be submitted with a future Tentative Map application.

The recommended conditions of approval require implementation of all mitigation measures related to the design of the temporary construction road. The construction road will be the only source of access for project development and is to be used in all phases of project development including future home construction.

Open Space and Trails

Marin CDA received a Memorandum from Marin County Parks setting forth the department's concerns regarding the Modified Master Plan (see Attachment 8) The Park's department made it clear in their memo that the Department not support the acquisition of either Parcel A or B. They noted in their memo as regards Parcel B, the Modified Master Plan is an improvement over the original proposal, but due to the proximity of the development the Department still anticipates impacts on existing special status species populations. The memo specifically points out the continuing direct impact on the Serpentine bunch grass population. The Alternatives portion of this staff report points out that there are potential opportunities to relocate and reconfigure lots to further reduce the impact on Serpentine bunch grass. Should the final lot configuration preserve additional Serpentine bunch grass populations, the Parks Department might support the applicant's offer to dedicate Parcel B to the Open Space District. The Department staff is also opposed to the Open Space District acceptance of the applicant's offer to dedicate Parcel A to the District. The Parks staff points out the numerous landslides within Parcel A and the difficult to protect natural resources in Parcel A due to easements the applicant envisions over Parcel A to benefit the future residences of the proposed project.

The Parks Department staff also pointed out in their memo that the applicant's proposal to allow public access through Tam View Court to access St Hillary's Open Space Preserve will direct people to an area that supports special status species. The Planning staff has recommended a condition of project approval that would relocate the pedestrian access easement adjacent to the ridge above lots 5 through 9, thereby allowing the easement to terminate at point currently used by recreation hikers on the Open Space Preserve. This relocation would require the applicant to provide a pedestrian access easement between some proposed lots and across Parcel A to the existing open space preserve.

The Parks District also points out that the applicant is not proposing a public pedestrian trail easement along the lower elevations of the property in the vicinity of what has been termed Spanish Trail. The applicant has only offered one public access easement and the wording of

the Court Judgment seems to imply that the applicant only need provide an access easement for one trail. The applicant could of course offer additional trail easements over the property, but it does not appear that more than one is mandated. Furthermore the County of Marin or some other entity is responsible for constructing and maintaining the trail.

**SUMMARY OF THE MAJOR CONCLUSIONS IN FINAL EIR**

The Final EIR identified a total of 48 project impacts, including 5 cumulative impacts, as significant. Most of the significant impacts are under the categories of (1) biological resources; (2) geology and soils; (3) hydrology; (4) traffic and (5) visual. As identified in Table 2.0-1 of the Draft EIR, feasible mitigation measures are available to eliminate or reduce the great majority of the significant project impacts to a less-than-significant level. However, seven of the project specific significant impacts could not be mitigated to less – than-significant and will remain significant unavoidable impacts even after the implementation of recommended mitigation measures. Three of the unavoidable significant impacts are visual and there is one significant unavoidable impact each related to traffic, noise, hydrology and public service. The proposed project combined with other approved and foreseeable projects in the surrounding area will result in 5 additional cumulative significant unavoidable impacts. The cumulative unavoidable impacts are (1) traffic – impacts on US Highway 101; (2) air quality and greenhouse gas emissions; (3) construction noise; (4) biological – loss and fragmentation of natural undeveloped habitat; and (5) visual – associated with build-out of Tiburon Planning Area. However, project impacts on special status species can be reduced to less than significant though implementation of the mitigation measures contained in the Final EIR.

**COUNTYWIDE PLAN AND MARIN DEVELOPMENT CODE CONSISTENCY**

The Draft EIR evaluated the project's consistency with the 2007 Marin Countywide Plan, the Marin County Development Code (Zoning and Subdivision Regulations), Marin County Single Family Residential Design Guidelines, Local Agency Formation Commission (LAFCo) Sphere of Influence policies, Marin County Code Title 24 (Development Standards), and the Paradise Drive Visioning Plan. The consistency discussion in the Draft EIR is based, in part, on applicant prepared information submitted to Marin County with the applications. The discussion is the EIR consultant's best judgment of the policies examined, but recognizes that the County of Marin decision makers will make the final determination of consistency.

The analysis concludes that the proposed project is consistent with a great majority of the applicable policies and regulations (see Section 4.0 of the Draft EIR for details). However, the project was found to be potentially inconsistent with biological resource goals and polices calling for the protection and enhancement of habitat and biodiversity including wetlands and special status species habitat and limiting the impact of development on these resources. The Modified Master Plan implements the mitigation measures calling for the relocation and reconfiguration of lots needed to make the project consistent with the Countywide Plan's biological resource goals and policies.

The project was found to be inconsistent with County planning goals and policies calling for sustainable managed open space and preservation of open space for the benefit of the environment. The open space inconsistency is directly related to the applicant's offer to dedicate Parcel B as open space. In the original application Parcel B was found to be too small in size to protect the larger area of dwarf flax population on the project site and Parcel B was not contiguous to adjacent public open space land that also has a dwarf flax

population. The Modified Master Plan increases the size of Parcel B from 0.33 to 5.86 acres and the parcel is now contiguous to adjacent public open space. Other noted inconsistencies include the failure to provide trails and trail connections called for in the Marin Countywide Plan and inconsistency with community design goals and policies due to the proposed projects visual impacts on open space and the views from existing public open space land.

The proposed project was also found to be inconsistent with guidelines and standards contained in the County Development Code calling for clustering of development, avoidance of ridgeline development, and failure to locate more of the proposed development near existing woodlands that would screen homes from off-site views. The analysis also found that the location of proposed home sites and the proposed design guidelines, especially proposed building heights, would result in home heights that would exceed the building height limitations for homes constructed near ridgelines. Some of the planning policy and development code inconsistencies are resolved by the recommended conditions of project approval.

Housing Policies

Marin County’s housing policies promote projects that contain a range of housing types, sizes, and prices that accommodate workers employed in Marin County. The Easton Point project will increase the local supply of expensive housing. All house sizes requested by the applicant are large and future home prices are expected to be well beyond affordable to workers employed in Marin. The Court Judgment and subsequent Settlement releases the applicant from the need to comply with Marin County’s housing policies requiring a percentage of affordable housing in any new residential developments. The Easton Point applications do include a request to construct accessory dwelling units on any of the proposed 43 residential lots.

Ridge and Upland Greenbelt and Requested House Size

The applicant is requesting approval of house sizes for each of the 43 lots (see Attachment 5). The house sizes requested range from 5,500 to 8,750 square feet. The County’s adopted design goal is to promote the protection of scenic quality and views of natural areas including ridgelines and upland greenbelts, hillsides, water, and trees from adverse impacts related to development. The County policy to achieve this goal is to regulate the mass and scale of development to ensure the mass and scale of new structures respect environmental site constraints and character of the surrounding neighborhood and are compatible with ridge protection policies and avoid tree cutting. To achieve this policy the County will consider regulating home size.

The Court Judgment allows for some residential development within the County’s designated ridge and upland greenbelt zone. However, the majority of lots in the Easton Point project, due to environmental constraints such as landslides and special status species, are located within the Ridge and Upland Greenbelt zone within visually sensitive ridgelines and hillsides. The EIR finds that development along the visually sensitive ridgelines resulted in significant unavoidable visual impacts when viewed from adjacent and nearby public open space viewpoints. The EIR notes that the scale and size of future homes needs to be carefully evaluated to limit the visual impact on the visually sensitive ridges. EIR mitigation recommends limiting residential building heights within the visually sensitive ridge zone to 18 feet. Given the applicant’s requested house sizes reducing residential building height to 18 feet would result in spreading the building footprint further out along the hillsides requiring additional grading and retaining walls. Given these factors the applicant’s requested house

sizes could result in a development with a building scale and massing that is not consistent with the County's design goals of protecting the natural visual resources such as visually sensitive ridges and hillsides and maintain compatible scale with the adjacent neighborhoods.

Accordingly, the recommended conditions of project approval will limit future residential building heights to 18 feet and deny the applicant's request for house sizes because the requested house sizes result in visual impacts that are not consistent with the County's design and visual resource protection policies.

Given the visual constraints of the Easton Point property the County's design policies call for careful consideration of future house sizes in the Ridge and Upland Greenbelt zone. Implementing Program DES-4c of the Countywide Plan notes that the County will consider regulating home size to achieve its visual quality and community scale policies. The Court Judgment under which the Easton Point application is being processed is silent on the issues of residential building height and house size.

**ALTERNATIVES TO CONSIDER**

The Modified Easton Point Master Plan as conditioned is consistent with the Court Judgment in that it provides for the development of 43 residential lots on minimum half-acre parcels, does not result in any unmitigated public safety impacts, and avoids or mitigates development impacts to special status species. However, staff believes there are opportunities within the parameters of the Court Judgment to better achieve the County of Marin's natural resource protection policies.

Most of the 43 lots in the Easton Point Modified Master Plan are larger than the 1/2 acre minimum mandated by the Court Judgment. Accordingly, there appears to be spatial opportunities within the development areas proposed in the Modified Master Plan to relocate and reconfigure some lots to be more consistent with the County's natural resource protection policies.

For example the total lot area encumbered by proposed lots 40-43 totals 172,965 acres. The applicant has requested homes ranging in size from 7,000 to 7,800 square feet in this area. Mathematically, approximately eight half-acre lots can be accommodated within this area. However, the 16-foot wide driveway serving this area can only serve up to six lots under County development standards. Even so there is clearly an opportunity to relocate two lots into this area. No additional slope repair beyond that already required for current proposed development is necessary. Furthermore this area is outside the Ridge and Upland Greenbelt and does not contain any special status plant species and will have adequate fire flow.

Another location for an additional lot is in the area served by Forest Glen Court. The County's biological consultant has advised that the overall Forest Glen development area should not be expanded because any additional Oak woodland removal beyond that associated with the Modified Master Plan may result in a situation that cannot be mitigated. Given that limitation it is still possible to reconfigure lots within the overall development area to create at least one or possibly two additional lots. For example the total land area encumbered by lots 32-36 totals 183,066 square feet. Mathematically eight half-acre lots can be accommodated within this area. The applicant is requesting house sizes in this area ranging from 5,500 square feet to 7,900 square feet. Clearly, there is an opportunity to add one or two half-acre lots in this area without expanding the overall development boundary. This may result in smaller house sizes than that requested by the applicant. There are no new or more severe environmental impacts that would result from the relocation of lots to this area

because the lots would be located within areas of disturbance already studied in the Final EIR.

The ability to relocate three to four lots and still maintain the same development area boundaries presents a number of opportunities to better achieve the policies and goals of the Marin Countywide Plan. There is an opportunity to reduce the impact of the proposed project on special status species (Serpentine bunchgrass) by possibly relocating lots 1, 26 and 27. There is also an opportunity to reduce the visual impacts of the project by relocating proposed lots 19 and 20. There also appears to be an opportunity to reduce grading and a significant amount of slope repair by relocating lots 22 through 25.

**CONCLUSION:**

CEQA COMPLIANCE

In the course of responding to comments received during the public review and comment periods on the EIR, certain portions of the EIR were modified and some new information amplifying and clarifying information was added to the FEIR and/or presented to the Board prior to certification. In addition, in June 2017, the Martha Company submitted a modified site plan to the County in response to the Board’s request for more specific information regarding the feasibility of certain mitigation measures.

The staff has assessed whether any of these additions, modifications, or information implicate the thresholds for recirculation and/or preparation of supplemental environmental review. (See Pub. Resources Code, §§ 21166, 21092.1, CEQA Guidelines, §§ 15088.5, 15162, 15163, 15164.) The staff’s analysis supported by peer review of biological, geological and visual reports supplied by the applicant demonstrates that these additions, modifications, and information do not result in any substantial changes in the project, or substantial changes with respect to the circumstances under which the Project would be undertaken that would require major revisions of the EIR due to new or substantially increased significant environmental effects; and there has been no discovery of new information of substantial importance that would trigger or require major revisions to the EIR due to new or substantially increased significant environmental effects.

Specifically, the changes in the Project reflected in the Martha Company’s June 6, 2017 revised site plan, as modified on August 4, 2017, generally reduce environmental impacts compared to the analysis in the EIR, and do not result in new or substantially more severe significant impacts. For example, the revised Project plan will result in more overall earthwork movement on site but slightly less export of soil, thereby reducing off-site truck trips and associated off-site impacts compared to what was evaluated in the EIR.

There is no information to date that the passage of time since the DEIR was initially circulated in March 2011 has not resulted in any substantial changes with respect to the circumstances under which the Project would be undertaken that would require major revisions of the EIR or otherwise resulted in the discovery of new information of substantial importance that would trigger or require major revisions to the EIR. Therefore, no further circulation or subsequent or supplemental EIR is required prior to Project approval.

State CEQA Guidelines Section 15151 “Standards for Adequacy of an EIR” provides that an EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision that intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of

what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The Courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

An EIR is not inadequate for example, when it provides a program level of analysis commensurate with the underlying detail of the project application, or uses an environmental setting baseline that incorporates existing on-site uses. Nor is it inadequate if it doesn't resolve differences of opinion on impact conclusions in the EIR or resolve all matters related to the decision on the merits of the project for approval or disapproval. An EIR is not required to consider in detail each and every conceivable variation of the alternatives stated; nor is it required to evaluate alternatives to components of a project.

The State Supreme Court has stated "the purpose of CEQA is to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will be those which favor environmental considerations, nor does it require absolute perfection in an EIR".

The Final EIR for the 2008 Easton Point Residential Development Project has undergone rigorous preparation and processing in full compliance with CEQA, State EIR Guidelines, and County Environmental Review Procedures. Substantial opportunity and time for public participation in the EIR process and review and comment on the EIR documents has been provided which meets and exceeds the requirements of CEQA and the County's Environmental Impact Review Procedures. The Easton Point Final EIR provides thorough discussion and analysis of impacts and alternatives consistent with what is reasonably feasible, and is now adequate and complete to be acceptable for certification as the environmental review for the project. The Final EIR provides sufficient information to make an informed decision on the environmental effects, project mitigations and alternatives, and to proceed to reviewing the merits of the Easton Point project.

ZONING – EASTON POINT PROPERTY

The majority of the Easton Point property is currently zoned Residential Multiple Planned District (RMP-0.2). A small portion of the project site (northeast of where Spanish Trail Road intersects the project site) is currently zoned R1 (Residential, Single-family). The R1 zoning district is intended for areas suitable for single-family residential neighborhood development in a suburban setting, along with similar and related compatible uses. The minimum lot area in the R1 zoning district is 7,500 square feet.

An asterisk on the County's zoning map refers to a note on the map that states, "this zoning was modified by Court Order". The Court Order refers to a U.S. District Court decision resulting from a 1975 lawsuit, which determined that development of the project site with a minimum of 43 single-family residential units on minimum one-half acre lots would be consistent with the goals of the *Marin Countywide Plan*.

Approval of the proposed Easton Point Modified Master Plan will require rezoning of the project site from Residential Multiple Planned District (RMP-0.2) and Single-Family Residential (R-1) to Single-Family Planned (RSP-0.39) to reflect the maximum 43-unit density ordered by the Court.

MODIFIED MASTER PLAN

The Modified Master Plan, August 4, 2017, has undergone detailed analysis, including independent and professional peer review of biological, geological, and visual reports and photo simulation submitted by the applicant to document compliance with the mitigation measures contained in the Final EIR. It is staff’s opinion that the Modified Master Plan in conjunction with the recommended conditions of project approval, complies with the provisions of the Court Judgment and should not result in any health and safety impacts.

The Easton Point project as modified and conditioned is consistent with a majority of the policies in the Countywide Plan and provisions of the Development Code. However, the Modified Master Plan is not consistent with Marin County policies requiring the provision of affordable housing and protection of ridge and upland greenbelt natural resources including the protection of visually sensitive ridgelines. There are alternative lot configurations that could make the project more consistent with the County’s policies of protecting special status species and protecting visually sensitive ridges and hillsides. However, the Court Judgment prevents the County from reducing the number of lots in the development below 43 unless impacts to special status species cannot be mitigated or there is a health and safety reason for reducing the number of lots.

As regards affordable housing, the Court Order specifies that the Martha Company shall have no obligation whatsoever, whether for the donation of land or otherwise, with respect to providing affordable or inclusionary housing.

PRECISE DEVELOPMENT PLAN/TENTATIVE MAP

The Martha Company submitted a Precise Development Plan and Tentative Map application in December 2008 and the County of Marin deemed these applications complete on May 28, 2008. Although the Martha Company submitted a Modified Master Plan on June 6, 2017 and amended said plan on August 4, 2017; the Precise Development Plan and Tentative Map have not been modified and remain as originally submitted and deemed complete.

The EIR prepared for the 2008 Easton Point Residential Development Project found that the proposed site plan, including the precise plan and tentative map resulted significant adverse environmental impacts to special status species and resulted in severe public safety impacts resulting from fire flow calculations that were inadequate to protect future residences due to the high elevation location of some of the proposed lots.

Under the statutes of the California Subdivision Map Act, specifically Section 66452.1(b) & (c) once a public agency either certifies an EIR or approves a negative declaration that agency must take action of a tentative map application within 50 days of the certification. If the public agency does not take action within the required time frame the tentative map shall be deemed to be approved. Therefore it is prudent for Marin County to take immediate action on the Precise Development Plan/Tentative Map filed by the Martha Company and deemed complete by the County of Marin

Under Sections 66474(e) & (f) of the Subdivision Map Act the legislative body of the County of Marin shall deny a tentative map if the agency finds that the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, or the design of the subdivision or type of improvements is likely to cause serious public health problems. The Final EIR prepared on the original application found that the design of the Easton Point subdivision would result in substantial environmental damage to special status species and

create a public health hazard due to inadequate fire flow to serve the proposed design. Therefore the County of Marin by statute must deny the Precise Development Plan/Tentative Subdivision Map applications in their current configuration.

**REVIEWED BY:**

<input type="checkbox"/> Department of Finance	<input checked="" type="checkbox"/> N/A
<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
<input type="checkbox"/> Human Resources	<input checked="" type="checkbox"/> N/A

**SIGNATURE:**

John E. Roberto  
Contract Planner

Brian C. Crawford  
Director, CDA

- Attachments:
1. Resolution Certifying Final Environmental Impact Report
  2. Ordinance Rezoning the Easton Point Property
  3. Ordinance Approving the Modified Master Plan
  4. Resolution Denying Precise Development Plan/Tentative Map
  5. Proposed Lot, Development Area, & House Sizes
  6. Marin Municipal Water District Letter
  7. Tiburon Fire Protection District Letter
  8. Marin County Parks Memorandum
  9. Other Public Agency Comment Letters Received