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**2008 EASTON POINT
RESIDENTIAL
DEVELOPMENT**

*Rezoning
Master Plan
Precise Development Plan
Tentative Subdivision Map*

***Final Environmental Impact
Report***

***Response to Comments to the
Draft Environmental Impact
Report AMENDMENT***

MARIN COUNTY

State Clearinghouse No. 2009012010

OCTOBER 2013

2008 EASTON POINT RESIDENTIAL DEVELOPMENT FINAL ENVIRONMENTAL IMPACT REPORT RESPONSE TO COMMENTS AMENDMENT

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INTRODUCTION

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The *State CEQA Guidelines* requires that the lead agency (Marin County) prepare and certify a Final Environmental Impact Report (EIR) that includes responses to comments on the Draft EIR before considering a project for approval. The lead agency may provide an opportunity for review of the Final EIR by the public or commenting agencies, and this review should focus on the responses to comments on the Draft EIR, in accordance with *State CEQA Guidelines* Section 15089.

The lead agency must, however, provide each public agency that commented on the Draft EIR with a copy of the lead agency's proposed response to that agency's comments at least ten days before certifying the Final EIR (see Public Resource Code Section 21092.5). Lead agencies are not required by Public Resources Code Section 21092.5 to provide precertification responses to individuals and organizations that commented on the Draft EIR, although they may choose to do so.

The Marin County *Environmental Impact Review Guidelines* do, however, provide for a minimum ten-day period for review of the Final EIR prior to any action to certify it. The County's guidelines state that the review of a Final EIR shall exclusively focus on the adequacy of the response to comments on the Draft EIR. A separate public hearing to receive testimony on the recommendation to certify or certification of a Final EIR shall not be required. Written comments received on the Final EIR response to comments within the review period deadline shall be considered, together with any written or oral response from staff or the EIR preparer, at the time action is taken by the recommending body and by the decision making body prior to certifying the Final EIR.

MARIN COUNTY CEQA COMPLIANCE

Marin County did prepare and on March 10, 2011 circulated the *2008 Easton Point Residential Development Draft Environmental Impact Report*. A Notice of Completion of the Draft EIR was published and began a 51-day review and comment period. During the public review period from March 10, 2011 to April 29, 2011 comments on the Draft EIR were solicited from governmental agencies and the public. The Marin County Planning Commission conducted a public hearing on April 25, 2011 to receive governmental agency and public comment on the Draft EIR.

During the review period Marin County received a total of 108 comment letters on the Draft EIR from governmental agencies (11 letters), organizations (nine letters) and the public (88 letters). The comment letters contained a total of 812 comments. In addition another 70 oral comments were received on the Draft EIR at the April 25, 2011 hearing held by the Planning Commission bringing the total number of comments received on the Draft EIR to 882. Marin County prepared individual written responses to each of the 882 comments received. The written and oral comments received on the Draft EIR along with the written responses to each comment received are incorporated into the Final Environmental Impact Report.

Marin County prepared, and on June 28, 2013 circulated, the *2008 Easton Point Residential Development Final Environmental Impact Report Response to Comments to the Draft Environmental Impact Report*. Copies of the Final EIR were circulated to all public agencies that submitted comments on the Draft EIR in compliance with Public Resource Code Section 21092.5. Copies of the

Final EIR were also distributed to members of the public that submitted comments on the Draft EIR. A notice of availability of the Final EIR for review was published and began a 32-day review and comment period on the Final EIR, which ended on July 29, 2013.

Marin County received a total of 46 written letters and email messages commenting on the Final EIR Responses to Comments. Many of the comments received on the Responses to Comments address similar issues and are grouped into several categories:

- Request clarification on of some environmental impacts and recommended mitigation measures;
- Questions concerning feasibility of some recommended mitigation measures;
- Inadequate response to Draft EIR comments requesting the analysis of additional potentially feasible alternatives in the EIR including a fully mitigated project alternative;
- Request for analysis of additional potentially feasible alternatives;
- Request for expanded traffic analysis;
- Can court judgment legally limit range of alternatives analyzed in EIR;
- Feasibility and operational safety of the proposed construction access road;
- Public health and safety concerns; and
- Opinions that the proposed project fails to comply with the provisions of the 1976 and 2007 court judgments.

In accordance with the Marin County *Environmental Impact Review Guidelines* summarized above, written master responses have been prepared for the major environmental issues raised in the comment letters received on the Final EIR. The written comments received and master responses herein present amplifications, clarifications and / or additional information which in some cases may result in minor and insignificant modifications to the EIR. They do not, however, raise new or substantially more severe significant impacts or new mitigation measures or alternatives not considered in the EIR and do not require recirculation for further review and comment in accordance with *State CEQA Guidelines* Section 15088.5. The written master responses together with the written comments received on the Responses to Comments are incorporated as a minor amendment to the Final EIR.

PERSONS COMMENTING

Written comments on the *2008 Easton Point Residential Development Final Environmental Impact Report Response to Comments to the Draft Environmental Impact Report* were received from the following governmental agencies, organizations, and individuals:

1. Scott Anderson, Director of Community Development, Town of Tiburon
2. Wade B. Holland, Chair, Marin County Planning Commission
3. Richard Simonitch and Berenice Davidson, Marin County Department of Public Works
4. David Schnapf, President, Marin Conservation League
5. Jerry Riessen
6. Jerry Riessen, Tiburon Open Space Committee

7. Barbara Salzman, Co-chair Conservation Committee and Phil Peterson, Co-char Conservation Committee, Marin Audubon Society
8. Scott Hochstrasser, President, IPA Inc.
9. William M. Lukens, Lukens Law Group
10. Paul S. Simmons and Kelly M. Taber, Somach Simmons & Dunn (on behalf of the Keil Family)
11. Derek Parker
12. Shelly N. Brown
13. Dr. and Mrs. Robert J. Swanson
14. Anne Drew
15. Andrew Hoybach
16. Jill Barnett
17. Linda Bine
18. Ellen Nadeau
19. Louise Capozzi
20. Connie Peirce
21. Richard E. Wodenhouse
22. Jim Wickett, Justin Wickett and Magdalena Yesil
23. Dr. and Mrs. R.G.G. Cattell
24. Genevieve Chapman
25. Dr. Ronald & Mrs. Roberto
26. E. Weisheit
27. Randy Greenberg
28. Diane Lynch
29. Dellie and Doug Woodring
30. Joan Bergsund
31. Jim Erskine & Jane Elkins
32. Carolyn Losee, RPA
33. John and Sallie Arvesen
34. George Landau
35. Ralph Mihan
36. Michael and Nancy Pulling
37. Susan Brautovich
38. John H. Goodhart
39. Robert L. Hart
40. Molly Keil Hynes
41. Marilyn V. Knight
42. Nathan Lane III and Mary B. Lane
43. Paula Little
44. David J. Barker and Margaret Mason
45. Barry and Fran Wilson
46. Cheryl Woodford

The original comment letters are reproduced and included in the Appendix.

Comments That Do Not Raise Issues Related to Adequacy of Previous Responses

State CEQA Guidelines section 15088(c) states that the focus of the responses to comments received on an EIR shall be on the disposition of significant environmental issues. Individual responses to each

comment received on the Final EIR Responses to Comments are not required under the *State CEQA Guidelines* or the *Marin County Environmental Impact Review Guidelines*. Nor are responses required to comments received on the merits of the project. However, all written comments received on the Responses to Comments are part of the public record and will be incorporated into the Final EIR as an Amendment and forwarded to the Marin County Board of Supervisors for consideration prior to taking action on the *2008 Easton Point Residential Development Project*.

Comments Reviewed in this Amendment

1.0 REQUEST CLARIFICATION ON SOME ENVIRONMENTAL IMPACTS AND RECOMMENDED MITIGATION

1.1 Water Tank and Emergency Radio Facilities Impacts

Comments were made regarding the design feasibility of the proposed water tank and the design impact of raising the base of the tank from elevation 580 to 590. Also there were comments concerning the potential visual impact of the raised water tank in conjunction with the proposed adjacent emergency radio facilities, especially as viewed from the Old Saint Hilary's property. There were also comments requesting input from the Marin Municipal Water District (MMWD) on the proposed and mitigated water tank designs.

Response

The proposed water tank would be located in Parcel C, on the ridgeline that is mapped as massive geologically stable Franciscan bedrock. Because the geology of the tank site is underlain by stable bedrock, it is anticipated that any foundations for the tank and ancillary improvements would be designed in accordance with the California Building Code. As proposed, the water tank and access road would be located upslope of landslide areas and is not in the path of any landslides. Draft EIR *Section 5.4 Geology and Soils* discusses landslides located near Parcel C. Landslide 16 is located south of the proposed water tank site and could potentially pose a threat to the water tank and access road. The applicant's geotechnical consultant recommends repair of the upper portion of Landslide 16, within 100 feet of the proposed water tank and the construction access road, through the use of a compacted fill buttress. Landslides 19 and 20 are located approximately east and north of the proposed water tank, respectively. Both of the landslides are proposed to be improved with the use of subsurface drainage and the use of a pier and grade beam retaining structure for Landslide 20.

Members of the EIR consultant team met with the MMWD staff on August 28, 2013 to discuss the technical feasibility of the proposed and mitigated designs for an 180,000 gallon water tank. According to MMWD staff, a drilled pier foundation that is founded on rock would be required for construction of the water tank. According to MMWD staff both the proposed water tank (tank base elevation 580 feet) and the mitigated water tank (tank base elevation 590 feet) appear technically feasible from an engineering perspective.¹ The Easton Point Project's engineers concur, that from an engineering perspective, a water tank design utilizing pier foundation is technically feasible for both

¹ Nichols • Berman meeting with MMWD staff on August 28, 2013.

the 580 feet base of tank elevation and the 590 feet base of tank elevation.² It was noted by MMWD staff that retaining walls would likely serve to support the earth around the foundation and the area adjacent to the tank that would be necessary for maintenance access. The applicant's engineers believe the retaining walls should be designed to further insure the stability of the water tank site. MMWD staff expressed reluctance to accept a water tank design that is supported by a deep drilled pier foundation that, subsequently relative to the depth of the piers, would require extensive retaining walls. At this time design level drawings for the water tank have not been provided to the MMWD for review.

In regards to the design and construction of the water tank, the design would be subject to the *MMWD Design Guidelines for Water Storage Tanks*.³ These guidelines provide general design criteria for the construction of water storage tanks; however each individual site will present design constraints and require unique solutions. Excerpts from the MMWD Design Guidelines that would influence the extent of construction for site preparation and foundation/support include the following:

- General – No. 4: The tank and all the associated facilities and elements shall be designed to all applicable, current local, state and federal regulations and guidelines (e.g. California and Federal OSHA, California Building Standards Code, ASCE, ACI, AWWA, ASTM, APWA) to ensure public safety, as well as safe operations and maintenance of the facility.
- Site Selection – No. 3: The tank foundation will be located on a geologically stable feature. Site stability will be investigated and certified by a registered soils engineer or registered engineering geologist. For tanks to be built on foundation other than hard rock excavation, the designer shall comply with the soils engineer's recommendations and applicable codes.
- Site Selection – No. 4: Siting of the tank will be such that the visual impact is minimized and/or mitigated. Typical mitigation measures can include: a knuckle roof edge, placing the tank in a bowl; berming in keeping with existing features of the site; revegetating/landscaping to provide screening for the tank; retaining existing vegetation; minimizing cut slopes; and painting. The District reserves the right to select the final design criteria for visual impact mitigation.
- Access Road – No. 1: Tank access roads shall, at a minimum, be designed to allow access to the tank site by a vehicle meeting ASHTO, H10 loading. The following design requirements may be waived if site conditions do not allow their use. The road shall have a minimum inside curve radius of 30-feet and a minimum outside radius of 45 feet. The tank access road will be at least 12 feet wide with an average grade no greater than 15 percent and a maximum grade not exceeding 20 percent measured at any point along its length. Paving, or other approved access and erosion control measures, will be required on slopes greater than 10 percent. The road route will be selected so as to minimize cut and fill slopes. The cross-slope of the roadway and the drainage facilities will be designed to mitigate erosion, ponding and flooding.

Based on conversations with MMWD staff and information from the *MMWD Design Guidelines*, MMWD's normal approach to design a water tank would be to cut the tank into the hillside, which would reduce the tanks visual prominence. Upon review of plans for parcel C it appears that the tank could be cut into the hillside with resulting elevation approximately 570 feet. This would result in an

² Nichols • Berman communication with John Roberto, notes from meeting with Easton Point project applicant's engineer Michael Tarnoff, September 14, 2003.

³ *Marin Municipal Water District Design Guidelines for Water Storage Tanks*, MMWD, September 2008.

average drop of water pressure for all lots approximately four pounds per square inch for a tank base of 580 feet and nine pounds per square inch for a tank base of 590 feet. Draft EIR **Exhibit 5.7-1** shows the results of a preliminary water feasibility analysis, which indicates certain lots would have low water pressure and require low pressure agreements (see *Impact 5.7-7 Water Service Impacts*). Lowering the tank elevation would exacerbate water pressure impacts for residential lots proposed at higher elevations; such as lots proposed along Mt. Tiburon Court (see Draft EIR **Exhibit 3.0-4**). Impacts related to water pressure for residential water service (*Impact 5.7-7*) and fire flow (*Impact 5.7-8 Inadequate Fire Flow*) were addressed in the Draft EIR. Although the exact elevation of the water tank is not determined at this time, it is anticipated that decreases in water pressure approximately four pounds per square inch, based on a project design that lowers the base elevation of the water tank to 570 feet, would continue to require low pressure agreements and water pumps for domestic service. Please see **Response 7.2** for more discussion regarding water pressure, mitigation measures, and health and safety issues.

In conclusion, based on information provided by the MMWD, the feasibility of the proposed water tank location and Mitigation Measure 5.7-7 is affirmed by feedback on the preliminary design. MMWD staff did not condone the proposed design or indicate any preliminary approval. Approval would be subject to review of final design plans by MMWD staff.

Throughout the EIR process mitigation measures requiring a MERA antenna have been refined, adding specific design requirements (see Mitigation Measure 5.7-1(b)). Visual impacts resulting from construction of the proposed water tank and MERA antenna is discussed in the EIR. Draft EIR **Exhibit 3.0-8** provides a cross-section of the water tank. The *Visual Changes Created By The Project* section beginning on page 504 of the Draft EIR includes a description of the water tank. Secondary impacts resulting from the potentially raised elevation of the water tank (Mitigation Measure 5.7-7) are discussed on page 475 of the Draft EIR. Master Response 7 in the *Final EIR* contains a discussion of visual impacts related to the MERA facility.

The EIR provides an analysis of impacts to visual quality from the perspective of selected study viewpoints that allow a comparison of the existing setting with the amount of visual changes that would result from project implementation. The viewpoints are documented on page 501 of the Draft EIR. The visible appearance of the water tank is discussed under *Impact 5.8-2 View from Heathcliff Drive* and *Impact 5.8-4 View from Ayala Cove*. The EIR presents varying circumstances that affect the degree of visual presence of the water tank and MERA antenna. For example implementation of Mitigation Measure 5.7-1(b) and Mitigation Measure 5.7-7 would increase the visual conspicuousness of these facilities. Furthermore, MMWD design guidelines may reduce the elevation of these facilities thereby reducing the visual conspicuousness to some degree. However, it is important to note that the visual impacts discussed above were found to be significant and unavoidable in the EIR.

1.2 *Extent of Landslide Repair*

Commentors stated that the *Response to Comments to the Draft Environmental Impact Report* did not analyze the full extent of land disturbance associated with the construction of all the proposed subdivision improvements including the proposed landslide stabilization program. There was concern that the temporary/permanent impacts associated with repairing the slides and stabilizing the development area were not fully considered.

Response

The proposed landslide repair structures would include a combination of grading buttresses, buried pier and grade beam walls, subdrains and debris fences, which are all clearly shown on the EIR

exhibits (see Draft EIR **Exhibits 5.4-2** and **5.4-3**). The potential impacts relating to each of these proposed landslide repair structures are thoroughly evaluated in the EIR, but are discussed in more specific detail below.

Graded Landslide Repair (Removal & Recompaction): The approximate limits of the proposed graded landslide repairs have been well constrained and are clearly shown on the Landslide Mitigation Plan (see Draft EIR **Exhibit 5.4-3**). The proposed landslide grading and the resulting corridor of disturbance would be limited to areas previously mapped as landslide material which are located within 100 feet laterally or downslope from a proposed building site or public improvement. Nearly all of the proposed landslide grading would occur within the boundaries of the proposed residential lots. Therefore, it is not expected that the limits of the proposed landslide grading would affect unforeseen areas or result in any unanticipated secondary impacts to areas outside of the limits of the graded repairs shown on the plan.

Buried Pier and Grade Beam Walls: The buried pier and grade beam walls are all to be located entirely within landslide material as shown on the Landslide Mitigation Plan. These walls are proposed downslope of some of the proposed building sites and are intended to support the adjacent potentially unstable landslide materials within 100 feet of a building site, so that the landslides do not eventually retrogress upslope and encroach on the upper, more geologically stable, building site portions of the lots. Even if these walls vary slightly in size they are anticipated to be located similarly to where they are shown and entirely within areas which have been previously mapped as landslide material. Therefore, it is not expected the pier grade beam walls would extend outside the landslide repair limits shown on the plan, or produce any significant unanticipated secondary impacts.

Subdrains: The proposed subdrains are shown on the Landslide Mitigation Plan and would all be excavated in areas previously mapped as landslide material, with the exception of one drain located along Paradise Drive (below mapped Landslide 14). This subdrain is shown to extend from Paradise Drive to an elevation of approximately 200 feet and is to be excavated entirely within an area previously mapped as being underlain by colluvial soils, rather than landslide debris. This proposed shallow subdrain would only be 12-inches wide and about 250 to 300 linear feet in length. It is anticipated that any corridor of disturbance associated with the excavation of this trench subdrain would be limited to what would be needed for an all-terrain backhoe to access the location (ten to twelve feet wide). Since the subdrain is shown on the Landslide Mitigation Plan, its potential impacts have already been evaluated with respect to biotic resources and the other topics evaluated for the preparation of the EIR.

Debris Fences: The debris fences are proposed to involve installation of a mesh fence supported by shallow “H” or pipe pile piers, to be three feet deep and 16 inches in diameter and spaced at a maximum of 30 feet on center. The corridor of disturbance would be limited to areas in close proximity to Paradise Drive and along the debris fence installations. Since these debris fences were shown on the plan, the potential impacts to biotic resources and other topics have already been considered and thoroughly evaluated.

1.3 Alternative 2 Remainder Parcel – Level of Analysis Required

Commentors stated that the EIR did not analyze in detail the environmental impacts of developing the remainder parcel in *Alternative 2 (32-Unit Lower Density Alternative)*. Furthermore, deferring the impact analysis of the Remainder Lot does not provide full disclosure of the environmental impacts of *Alternative 2* including the grading, tree removal, biological and visual impacts of constructing a 15,000 square foot house and access driveway on the Remainder Lot.

Response

Alternative 2 includes a 10.74 acre remainder parcel that is not proposed for development at this time. Remainder Parcels are governed by Section 66424.6 of the Subdivision Map Act (California Government Code Division 2). If and when a development proposal is received by Marin County, that proposed project would be subject to environmental review as required by CEQA at that time. The *Alternative 2* Schematic Site Plan (see Draft EIR **Exhibit 6.0-2**) does indicate the location and extent of site development that could occur if and when the remainder parcel is developed. These details are as follows: (1) a 1,600 feet long access driveway with cul-de-sac terminus; (2) a residential building envelope with building footprint; (3) work to stabilize landslides that involves installation of debris fences and subdrains; and (4) a schematic fence line bordering the lots natural area. The Subdivision Map Act provides for local government agencies, upon certain situations, to require construction of improvements when it is evident that such work would benefit the public health and safety or is a necessary prerequisite to the orderly development of the surrounding area.⁴ Therefore it is prudent of the applicant to provide preliminary information showing improvements that would facilitate future development of the remainder parcel. However the level of detail provided for such improvements is nominal, consistent with typical Master Plan development proposal, and not a higher level of detail typically associated with a precise development plan or tentative map approval. Consequently, any environmental analysis of the remainder parcel is limited by the amount of information provided in the development proposal.

Information about the remainder parcel provided in the EIR is adequate to inform the CEQA process, including existing setting of the remainder parcel, conceptually designed improvements and information about the environmental change that would occur if these improvements are implemented. The following information in support of environmental setting, description of improvements, and impact analysis is provided:

Existing Setting:

- Draft EIR **Exhibits 6.0-1, 6.0-2, 6.0-3** disclose the size of the remainder parcel (10.74 acres, 468,000 square feet, occupying 9.8 percent of the project site, and location.
- Draft EIR page 556 describes the presence of a Natural Area on remainder lot, which contributes towards the description of the environmental setting.

Description of Improvements:

- Draft EIR page 564 provides details of the driveway that would serve the remainder lot if developed. Details include 1,600 feet length; two turn-outs provided at Paradise Drive, the driveway would end in a cul-de-sac. Although not proposed for development at this time, a lead agency could require certain improvements to a remainder lot, if deemed necessary for the orderly development of a project area⁵

⁴ California Government Code, *Subdivision Map Act*, Title 7, Division 2, Section 66424.6, California State Legislature, 2008.

⁵ California Government Code, *Subdivision Map Act*, Title 7, Division 2, Section 66424.6, California State Legislature, 2008.

- Draft EIR page 568 provides a possible means to provide water for domestic service and fire flow.
- The grading estimates included in Draft EIR **Exhibit 6.0-7** account for preparation of the remainder lot. As indicated on pages 624 and 625, the extent of landslide repair proposed for the remainder lot is contingent upon whether or not the lot is developed (Landslides 22 and 23). Again, development of the remainder lot is not proposed as part of *Alternative 2*. Landslide 21, 22, and 23 are located within remainder parcel area (approximately one-half of landslide 21 is outside of remainder parcel area, within Parcel A). Currently proposed repair methods include subdrain and debris catchment with debris fence on piers located near Paradise Drive. As stated on page 625 because development is not currently proposed, repair of the landslide suitable for development is also not proposed and grading estimates do not include what would occur with development. If developed the driveway would be threatened. The project applicant's geotechnical engineer (Miller Pacific) recommends if developed complete repair of landslide 23 through removal and recompaction.
- Draft EIR **Exhibit 6.0-8** contains Conceptual Lot Grading Study that includes grading estimates for the remainder lot.⁶
- Draft EIR **Exhibit 6.0-9** provides trip generation for the remainder lot.
- Draft EIR **Exhibit 6.0-33** provides landslide repair information for the remainder lot under both the developed and non-developed scenario.

Impact discussion incorporating information about proposed remainder lot includes:

- *Impact 6.5-1 Water Quality* – Remainder lot development effect on impervious surfaces on page 642 of the Draft EIR.
- *Impact 6.6-2 Impacts to the California Red-Legged Frog* – Discusses the impact driveway to remainder lot would have on habitat page 657.
- *Impact 6.6-4 Loss of Coast Live Oak Woodland* – loss of habitat resulting from construction of driveway to serve remainder lot on page 660.
- *Impact 6.6-8 Loss of Ordinance Sized Trees* – Construction of hiking trail on remainder loss would require removal of some ordinance sized trees discussed on page 664.
- *Impact 6.6-7 Water Service Impacts* – The remainder lot is included in the discussion of water service.
- *Impact 6.7-8 Fire Flow* – Lack of fire flow on Remainder lot is discussed.
- *Impact 6.7-10 Waste Water Service* – No specific proposal to provide waste water service.

The information included in the EIR does not conclusively determine the extent of environmental impacts that would occur with a developed remainder parcel. Any future development proposal for the remainder lot would be subject to CEQA review at that time. A detailed development proposal

⁶ Source of grading estimates: Remainder lot Grading Plan, 3-10-2009.

would allow for environmental analysis based on substantial evidence. The information provided in the EIR does indicate the remainder lot is an environmentally sensitive area, and warrants additional environmental review prior to development.

1.4 More Detail on Draft EIR Alternative 3 and 4

Commentors requested more detailed information on the development assumptions under *Alternative 3* and *Alternative 4* (house square footage and building height, lot size, and street widths) to allow for a fair comparison of the impacts of these two alternatives with the proposed project and *Alternative 2*.

Response

The 2007 court judgment states that the owners of the Martha Property are entitled to 43 homes on minimum one-half acre residential lots unless the parties subsequently agree otherwise in writing. As discussed in Draft EIR **Chapter 6.0 Alternatives to the Proposed Project** on November 12, 2009 the Town of Tiburon and the Easton Point project applicant (the Martha Company) signed a Memorandum of Understanding (MOU) regarding a 32-Unit Lower Density Alternative (LDA) for the project site. As a part of the MOU a draft Development Agreement was prepared. Exhibit C of the draft Development Agreement is the proposed site plan for the LDA. Also, as a part of the MOU it was requested that Marin County evaluate the LDA as a project alternative in the Draft EIR. It was also requested that if the LDA is found environmentally equal or superior to the 43-unit project submitted to Marin County that the County approve the master plan, tentative subdivision map, and precise development plan for the LDA, and enter into a Development Agreement with the Martha Company substantially in the form provided by the Town.

Since the property owner has agreed in writing to accept a lower density, 32-unit project, if the terms of the MOU and draft Development Agreement are satisfied, the LDA was included as a feasible alternative for analysis in this EIR, titled *Alternative 2*. Given the requirement of the 2007 court judgment it would not be prudent to analyze additional reduced density or smaller than one-half acre lot alternatives to the proposed project because the property owner has not consented in writing to the analysis of another lower density or smaller lot alternative. However, it is prudent for the EIR to analyze alternative 43-unit site designs (primarily the location of the lots on the project site) to reduce identified significant impacts of the proposed project.

In order to meet the requirements of CEQA and provide for an informed comparative analysis of the project alternatives it is not necessary to provide additional details for *Alternative 3 (Visual Quality Alternative)* and *Alternative 4 (Biological Resources Alternative)*. Given the project site's geologic, hydrologic, biologic and visual constraints and the provisions of the 2007 court judgment it was not possible to formulate an alternative that would mitigate all project impacts to a less-than-significant level. *Alternatives 3 and 4* were designed to reduce a focused scope of significant environmental impacts that would occur with implementation of the proposed project. A description of *Alternative 3* with development assumptions is provided on page 690 of the Draft EIR. Similarly, a description of *Alternative 4* begins on page 697 of the Draft EIR. *State CEQA Guidelines* require the evaluation of alternatives included in an EIR provide sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project (section 15126.6 (c)). *State CEQA Guidelines* further state the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project. In accordance with *State CEQA Guidelines* *Alternative 3* focuses on reducing the significant effect the project would have on visual quality, and *Alternative 4* focuses on reducing the significant effects on biological resources. As discussed in the analysis of *Alternative 3* (beginning on

page 693 of the Draft EIR) and *Alternative 4* (beginning on page 700 of the Draft EIR) all applicable mitigation measures of the proposed project would still apply.

The level of detail provided in the Draft EIR is adequate for a comparative analysis of the potential environmental impacts of these alternatives with the proposed project. *Alternative 3* focuses on revising the design of the project to relocate residential lots to areas that would reduce the visual presence of development, thereby reducing the severity of visual impacts while maintaining the same number of lots (43). Lot sizes would be smaller; the exact size is unspecified except to state the minimum lot size would be consistent with the 2007 court judgment. Although not explicitly stated, it can be assumed that building areas and house sizes would be similar to the proposed project. For more discussion on the mitigated effects of reduced house sizes please see **Response 1.5**. The design element of *Alternative 3* that substantially lessens the significant visual effects of the project is the reconfiguration of the project site plan as described under the visual quality analysis of *Alternative 3* beginning on page 696 of the Draft EIR. From the basis of this design a fair comparative analysis is derived that includes all impact topics assessed for the proposed project and *Alternative 2*.

Alternative 4 provides a development alternative with reduced lot sizes and reconfigured lot location intended to avoid, or at least substantially reduce biological impacts that the EIR finds would occur with development of the proposed project. The same development assumptions apply to *Alternative 4* in that building area and house sizes would be similar to the proposed project, and lots would meet the minimum half acre lot size requirement stated in the 2007 judgment. The design element of *Alternative 4* is intended to substantially reduce the significant adverse effect the project would have on biological resources is the reconfigured site plan.

1.5 Reduce Severity of Impacts by Limiting House Square Footage, Lot Size, and Project Redesign

Commentors stated that the *Response to Comments to the Draft Environmental Impact Report* did not discuss the effect of potential mitigation ideas such as smaller house square footages, lower building heights, and smaller lot sizes would have on reducing the severity of environmental impacts associated with the proposed project such as magnitude of site grading, landslide repair, vegetation and tree removal, traffic and parking, view disruption, domestic water consumption and fire flow requirements. Questions as to whether project redesign had been considered as a way to mitigate the amount of tree removal associated with the proposed project was raised.

Response

As discussed in the Draft EIR (see page 64) the proposed project includes both a proposed maximum house size and building footprint for each lot. The house sizes would range from 5,000 square feet to a maximum 8,750 square feet. The footprints would range in size from 2,500 square feet to 4,050 square feet (see Draft EIR **Exhibit 3.0-5**). The EIR also provides information regarding house sizes in the surrounding neighborhoods of Lyford Cove /Old Tiburon and Hill Haven (see pages 56 and 57 of the Draft EIR). In the Hill Haven neighborhood house sizes range from approximately 2,500- to 5,000-square feet with more homes in the 3,000- to 4,000-square foot range. In the residential neighborhood accessed by Lyford Drive house sizes range from 2,500- to 7,500-square feet, with more house sizes in the middle of this size range. It does appear that the applicant's proposed houses would be somewhat larger in terms of square feet than the existing homes in the vicinity.

Recent development approvals by both the Town of Tiburon and Marin County include approvals for projects with house sizes similar to the proposed project. In 2008 Marin County approved a Master Plan and Land Division for the 18.9 acre Sorokko property located at 3820 Paradise Drive. The

approval divided the property into four lots and a remainder parcel. The four lots range in size from 2.35 acres to 3.35 acres. The remainder parcel is 7.27 acres. The conditions of approval for the Sorokko property limit development on each lot and the remainder parcel to a maximum residential floor area of 8,000 square feet. In 2012 the Town of Tiburon approved the 14 unit (one existing and 13 new houses) Alta Robles project at 3825 Paradise Drive. The 13 new lots range in size from 1.03 acres to 1.67 acres. The approved house sizes range from 4,000- to 7,800-square feet plus a garage/carport which would range in size from 600- to 750-square feet plus a detached accessory building allowance of up to 500 square feet. It does appear that the proposed house sizes in the proposed project would be similar in size in terms of square feet to recent development approvals.

In evaluating environmental impacts the Draft EIR takes into consideration factors such as house size, building footprints, and building sites. For example in the analysis of biological resources the EIR assumes that all habitats within building footprints are expected to be lost. Furthermore, with the possible exception of woodland habitat, any remaining habitats, including grassland and scrub habitats, within the building site areas and private use areas (the term “private use areas” refers to all areas of individual lots outside of the building sites as shown in Draft EIR **Exhibit 5.6-2**), may be substantially altered in the future by individual lot owners, including but not limited to, the removal of native vegetation, planting of landscape trees or shrubs, and as a result of landscape irrigation runoff and chemical downdrift from upslope landscaping. Therefore, for the purposes of this EIR, these latter habitats outside building sites but within private use areas are expected to be completely lost.

It is not clear to what extent residents would remove trees within the building sites and private use areas of their individual lots. The EIR assumes that all trees within road alignments and building footprints would be lost, as well as within the footprints of landslide repair areas and to comply with Urban-Wildland Interface Restrictions. These assumptions were made in order to ensure that the EIR does evaluate a “worse case scenario” in terms of impacts to biological resources.

Other impact areas analyzed in the EIR that would be affected by house size include visual quality and public services, including fire flow and energy. For example, the photo simulations prepared for the proposed project (see **Exhibits 5.8-5, 5.8-7, 5.8-9, and 5.8-11**) do represent proposed building bulk, mass, scale and height. In regard to energy the County’s ordinance requires new single family homes greater than 1,500 square feet to exceed the current energy efficiency standards of Title 24 regulations by 15 percent or more. The larger the home the greater percent that the house must exceed Title 24 standards (see Draft EIR **Exhibit 5.7-2**).

In regard to transportation impacts, the analysis is also related to house size. During the public scoping process for the Draft EIR several comments were made that standard trip generation rates prepared by the Institute of Transportation Engineers were not representative of residential projects in the Tiburon area. In response to these comments and in order to determine trip generation rates to be used for the Draft EIR analysis, five days of 24-hour counts were conducted at two Tiburon neighborhoods with characteristics similar to those proposed for the Easton Point residential units:

- large lots (over one-half acre) with landscaped areas, and
- homes of 6,000 square feet or more in size.

As discussed in the EIR, the survey did find that the normal pattern of inbound /outbound trips (normally higher outbound in the morning and higher inbound in the evening) does not hold true for either neighborhood. This is likely due to the number of workers traveling to these homes in the morning and leaving in the afternoon and evening. The neighborhoods are a “work destination” for a large number of workers. This is in contrast to the standard rates in common use per the Institute of

Transportation Engineers. The total two-way trip rate for the AM and PM peak hour was, however, found to not greatly differ than the trip rate documented for Tiburon in its Traffic Fee Program. As a result the trip generation rates used in the EIR (see Draft EIR **Exhibits 5.1-12, 5.1-13, and 5.1-14**) do take into account the proposed house sizes. However, reducing the size of the proposed houses is unlikely to reduce the documented AM and PM peak hour rates.

Although the Draft EIR does not directly discuss any potential effects of reducing house size the Draft EIR does provide mitigation measures that would require reduced building height, reduced building square footage, and measures that require setbacks from sensitive species or lot relocation. These mitigation measures could result in similar effects as reduced building mass. These mitigation measures include:

- Mitigation Measure 5.8-1 which would limit building height to one story with a maximum 18 feet building height on lots that would be visible from Old St. Hilary's Open Space Preserve. This however could result in the secondary effect of increasing the area of building footprints. Mitigation 5.8-1 also requires location of buildings on Lot 24 and Lots 35-43 moved as far from the spine of Ridgeline C as possible, and lots 10 through 19 as far from the spine of Ridgeline D as possible. Similarly to reducing structure height, varying structure location would reduce visual presence of the structures.
- Mitigation Measure 5.6-1(a) requires a redesign of site plan to preserve and protect biological resources. This includes a minimum setback 100 feet from edge of mapped populations. Implementation of Mitigation Measure 5.6-1 (a) would require the relocation of Lots 1 through 3, or their elimination.
- Mitigation Measure 5.7-8(b) that would mitigate for inadequate fire flow by limiting the square footage of the applicant's proposed homes (fire flow rate of 1500 gpm needed for houses greater than 3,600 square feet). Draft EIR **Exhibit 5.7-1** estimates the number of lots that could be subject to implementation of Mitigation Measure 5.7-8(b).

The mitigation measures proposed in the EIR are adequate and do not need to be supplemented to comply with *State CEQA Guidelines*. There is no need to revise the proposed mitigation measures to include reductions of project scale more than what is already addressed by the EIR in the form of mitigation measures and the analysis of alternatives.

2. QUESTIONS CONCERNING FEASIBILITY OF SOME RECOMMENDED MITIGATION MEASURES

Commentors stated that several of the recommended mitigation measures in the EIR ultimately assign the task of implementation, reporting and financing of the mitigation measure to the future Property Owner Association (POA). The comments question whether a POA has the professional qualifications and adequate funding to prepare and carryout a geologic and hydrologic monitoring and maintenance program for the project site and private open space lands, preparation and financing of a Resource Management Plan to insure the protection and viability of not only threatened and endangered species and their habitats, but oak woodland monitoring and maintenance, wetland protection and maintaining the water quality of storm water runoff. Other POA tasks include on-going implementation of the International Urban-Wildland Interface Code. Furthermore, it was stated that the EIR has not demonstrated that future project residents, through the Property Owners Association, can feasibility carry out the extensive mitigation assigned to them by the EIR. Commentors were concerned that reliance on the POA is not sufficient to ensure mitigations would be effectively implemented, and that

the County right to force the POA to comply with the mitigation measures did not provide the assurance necessary to deem the mitigations feasible. Commentors wanted to know how the County proposes to monitor compliance with the mitigation measures and what mechanisms would it take to enforce the requirements.

Questions were also raised about the feasibility of mitigation measures that required the Town of Tiburon's co-operation to implement. Tiburon also wanted to know what the impact would be if the Town did not implement the parking prohibition on Diviso recommend as mitigation in the EIR.

Response

The *State CEQA Guidelines* (section 15126.4) provide that an EIR shall describe feasible measures that could minimize significant adverse impacts. Feasible is defined as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (section 15364).

The EIR proposes feasible mitigation measures that would be implemented and / or enforced by a responsible party. The EIR does provide options for determining additional parties that would be responsible for implementation of ongoing mitigation measures. As discussed in Chapter 3.0 *Description of the Proposed Project* of the Draft EIR the applicant proposes to establish a Property Owners Association (POA) and a declaration of Covenants, Conditions and Restrictions (CC&Rs) that would impose legally-binding commitments regarding issues such as architectural design, landscape management (fuel modification), and protection and management of biological resources. When considering a POA's authority to enforce CC&R's and organizational capacity to communicate with, and solicit cooperation from individual homeowners, POA's are a logical option to insure implementation of mitigation measures.

A POA, also called a Home Owners Association (HOA), has the responsibility and requirement to fund all provisions of the CC&Rs. The POA / HOA has the right to retain and pay for consultant experts to assist the Association in carrying out its responsibilities. For example a POA / HOA may retain consultants to insure that contractors retained to maintain, repair and replace roads, lighting, pools, tennis courts, ponds and lakes, building roofs and siding etc. perform tasks to professional standards of adequacy. A POA / HOA also may retain attorneys and consultants as needed to comply with legal requirements and obtain permits from governmental agencies such as the Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife (CDFW) when maintaining areas protecting biological resources.

California Law requires all POA / HOA to have two funds. The first is an operating fund to deal with the day-to-day costs of carrying out the operational requirements of the CC&Rs. The second fund is a reserve fund that must be created to cover the longer term cost of maintaining infrastructure, amenities, and other costs associated with implementing the CC&Rs. In the case of the Easton Point project there may be a requirement to fund hydrologic and geologic monitoring and maintenance and the creation of a Resource Management Plan (PMP) and the long term monitoring and maintenance of the sites natural resources. The POA/ HOA has the legal responsibility to implement and fund the CC&Rs.

POA / HOA's operate under the provisions of the Davis-Stirling Act Common Interest Development Act (1986).⁷ In general the law allows for the creation of a Board of Directors that is elected by the members of the POA / HOA. The developer of a property has the right and authority to create a POA / HOA and draft the CC&Rs that the POA / HOA must comply with and fund. Once created the POA / HOA does not have the authority to change the CC&Rs without due process, which may include City / County review to ensure project conditions of approval are met. The requirement to create and fund programs such as the RMP and landslide stabilization long-term maintenance plan would be required to be included in the CC&Rs as conditions of project approval. Once these requirements are in the CC&Rs the developer and eventually the owners of property (the POA / HOA) in the development have the legal responsibility to comply with the provisions of the CC&Rs. Legal action can be taken against the Board of Directors for non-compliance with the provisions of the CC&Rs.

Regarding the ability of the POA to implement mitigation measures, if indeed the POA results in being the responsible party, the EIR's mitigation measures provide information that includes instruction, standards for successful implementation, and oversight of additional parties, all of which enhance feasibility of mitigation implementation. Some examples of mitigation measures and reasons implementation is reasonable are discussed further below:

Mitigation Measure 5.4-1 requires a geotechnical report that is subject to approval by the Marin County staff, which is also given authority to enforce the terms of the ongoing landslide stabilization maintenance program that would be contained in the report. Marin County Department of Public Works would have input on the maintenance measures proposed in the report, and along with the applicant's geotechnical consultant, would provide the level of expertise needed.

Mitigation Measure 5.5-1(b) addresses the implementation the post-construction Best Management Practices (BMPs) shown on the applicant's Stormwater Control Plan. It assigns responsibility to the POA to privately contract with Mill Valley Refuse Service (MVRS) or its equivalent to undertake monthly street sweeping. The MVRS already serves numerous areas on the Tiburon Peninsula. With MM 5.5-1(b) the POA would also be responsible for the provision of informative documentation regarding the use of less toxic pest management procedures, including integrated pest management. As stated in the mitigation measure, information regarding less toxic pest management is available from Marin County Stormwater Pollution Prevention Program (MCSTOPP) and other sources. It is feasible for the POA to rely on these sources, which are based on scientific research, for information to help homeowners incorporate less toxic pest management strategies on each lot.

Mitigation Measures 5.6-1(b) and 5.6-3 provides options for the dedication of preserved populations of Marin dwarf flax, and serpentine reed grass, and serpentine bunchgrass habitat to the Marin County Open Space District (MCOSD) with option for dedication to public agency or non-profit approved by Marin County, or an additional option for the POA to retain ownership and dedicate a conservation easement to a non-profit approved by Marin County. The POA is not the primary responsible party named here, however the flexibility provided in Mitigation Measure 5.6-1(b) allows for reasonable options for implementation of this mitigation measure.

Mitigation Measure 5.6-1(c) requires the Resource Management Plan (RMP) be written by a qualified biologist, which then would be reviewed and approved by the Marin County Planning Division in consultation with MCOSD and other applicable agencies (CDFW, USFWS, USACE, etc.). Any responsibility assumed by the POA would be carried out with reliance on the expertise of the qualified

⁷ Civil Code Sections 1350-1378. The code was recently rewritten and renumbered for simplification, Civil Code Sections 4000-5160. The rewrite goes into effect on January 1, 2014.

biologist and other named agencies. The monitoring required by Mitigation Measure 5.6-1(c) would require funding. There are two options provided for funding. In the event monthly POA fees are not adequate, funding can also be established by the applicant in the form of an endowment.

Regarding comments requesting information about consequences if the Town of Tiburon did not implement the parking prohibitions included in Mitigation Measure 5.1-7(b). It is noted in the Draft EIR (page 245) that implementation of Mitigation Measure 5.1-7(b) would require approval of the Town of Tiburon. Furthermore the applicant would be responsible to secure the necessary approvals from the Town. Mitigation Measure 5.1-7(b) has three components a) posting signs prohibiting parking along both sides of Diviso Street and other residential streets narrower than 20 feet wide, b) providing stop or yield sign control for the side streets intersecting Ridge Road and c) certain prohibitions on the placement of dumpsters along Lyford's Cove / Old Tiburon and Hill Haven neighborhood streets. As noted in Comment Letter No. 6 to the Draft EIR the Town of Tiburon already limits the placement of debris boxes in these neighborhoods. As discussed in Master Response 1 in the *Response to Comments to the Draft Environmental Impact Report* it is recognized that prohibiting parking on any streets within existing neighborhoods would result in an inconvenience where on-street parking is relied upon. In the event the parking prohibitions required in Mitigation Measure 5.1-7(b) are not enforced a further reduction of on-street parking would be avoided. This appears to be equally beneficial in matters of convenience and safety to residents of the Hill Haven and Old Tiburon / Lyford Cove neighborhoods, who have daily experience dealing with the narrow roadways with sharp curves of the existing street network. The EIR discloses observed condition for pedestrians during peak traffic periods can result in stressful walking and a sometime hazardous walking environment. The proposed project is not expected to exacerbate these conditions. Even without the prohibition of parking on these streets implementation of Mitigation Measure 5.1-7(a), the remainder of 5.1-7(b) and 5.1-7(c) together with Mitigation Measures 5.1-3 and 5.1-6 would reduce the project's impact to pedestrians to a less-than-significant level.

3. REQUESTS FOR ANALYSIS OF ADDITIONAL POTENTIALLY FEASIBLE ALTERNATIVES

3.1 Adequacy of Range of Alternatives Considered in Final EIR

Several commentors expressed concerns regarding the adequacy of the range of alternatives considered in the EIR. It was stated in comments received that the stipulated judgment should not eliminate the obligation to evaluate alternatives that would avoid the proposed project's significant impacts or substantially lessen the significant effects of the proposed project. The EIR should include an evaluation of a mitigated project alternative or stipulate why such an alternative was deemed infeasible. It was also requested that the EIR include an alternative assuming smaller house sizes and lots than that requested in the proposed project and *Alternative 2*. It was also argued that additional lower density alternatives are not precluded from analysis in the EIR because the stipulated judgment allows for a reduction in the number of units if both the applicant and the County agree in writing to the reduction.

Response

This EIR provides a range of feasible alternatives that meet the requirements of CEQA. *Alternatives 1 thru 4* provide information for an evaluation and comparison of environmental merits, and foster discussion of environmental impacts and ideas that would decrease impacts. The 2007 court judgment established a minimum number of 43 residences shall be approved, and warrants review of project alternatives that maintain this housing density. *Alternative 2* is a reduced density alternative that would result in the construction of 31 residential lots and designation of a remainder parcel.

Alternative 2 is consistent with the 2007 judgment's provision to allow a mutual agreement for a reduced density alternative. For more information about *Alternative 2* please see **Response 1.4**.

As stated in Response to Comments 17-1 thru 17-3 and Response to Comment 8-13, Marin County has pursued legal action to set aside or amend the 1976 court judgment. The 1976 judgment provided for "...not less than a minimum of 43 single family residential units located on one-half acre minimum lots..." Since the applicant did not seek to enforce this judgment against the County until 2008, and several environmental and species protection statutes had been significantly strengthened in the intervening years, the County brought a lawsuit to seek relief from the judgment pursuant to Federal Rule of Civil Procedure, Rule 60 (b)(5) on the basis that "...applying (the judgment) prospectively is no longer equitable." However, the federal court ultimately dismissed the County's lawsuit but allowed the applicant to proceed on its cross complaint against the County for refusing to honor the judgment. Therefore the County entered into the 2007 court judgment which also provided for continued enforcement of the terms of the 1976 court judgment with respect to number of lots and lot size. Furthermore, the 2007 judgment specifically provided that any alternative or mitigation measure which would have the effect of reducing the number of lots or lot size would be deemed legally infeasible unless necessary to ensure "health and safety."

3.2 Inadequate Data to Support Identification of Environmentally Superior Alternative

Commentors stated that there was not enough data provided in the alternatives analysis to support the finding in the EIR that *Alternative 2* is the environmentally superior alternative, and that other alternatives that would have been environmentally superior were not analyzed in the EIR.

Response

CEQA provides minimal requirements for identification of an environmentally superior alternative. The *State CEQA Guidelines* (section 15126.6(e)(2)) state if the environmentally superior alternative is the no project alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. For comparison and evaluation of alternatives the *State CEQA Guidelines* (section 15126.6(d)) state the EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying major characteristics and significant environmental effects of each alternative may be used.

The EIR states *Alternative 2* would have a reduced number of housing units and therefore would result in less disturbance to the project site, reducing the degree of several impacts, qualifying *Alternative 2* as the environmentally superior alternative. Draft EIR **Exhibit 6.0-43** contains an impact comparison of the proposed project and each project alternative, including the No Project Alternative. The information in Draft EIR **Exhibit 6.0-43** is based on the discussion of each alternative and comparative summary that begins on page 713 of the Draft EIR.

In the comparison of the proposed project and the alternatives the EIR notes several instances where *Alternative 2* would be superior to other alternatives. For example in regard to air quality it is stated: Because *Alternative 2* includes a reduction in grading activities when compared with the proposed project and the other alternatives, construction-period impacts would be slightly less.

In regard to geology and soils it is stated: With *Alternative 2*'s reduction in the number of houses, less landslide stabilization, and reduction of grading and excavating there would be less disturbance to the water source for Keil Spring than with the other development scenarios.

In regard to hydrology and water quality it is stated: Although the impacts of *Alternative 2* would remain significant it would represent a substantial improvement over the proposed project, due to the removal of residential lots and related improvements upslope of Keil Spring. For additional discussion regarding Keil Spring please see **Response 5.1**.

In regard to biological resources it is stated: Compared to the proposed project *Alternative 2* would have less impact to special status plants and the loss of serpentine bunchgrass. *Alternative 2* would have greater impacts to both the loss of coast live oak woodland and the loss of ordinance-size trees, primarily due to the construction of the hiking trail from the end of Spanish Trail Road across the public open space to Paradise Drive, and the size of the remainder parcel. It should also be noted that the woodlands located in the designated natural area in the remainder parcel, on private property, would not necessarily be protected and future preservation can not be assured.

In regard to visual quality it is stated: Compared to the proposed project, due to the reduced number of houses, the impact of *Alternative 2* on views from Tiburon Ridge, Heathcliff Drive, and Ayala Cove on Angel Island would be less.

4. REQUEST FOR EXPANDED TRAFFIC IMPACTS ANALYSIS

4.1 Traffic Impact During Peak School Hours

A number of commentors stated that the local peak traffic period on Tiburon Boulevard was not the typical morning and evening peak hours, but during the peak school drop-off and pick-up periods. It was requested that the EIR be expanded to include a traffic impact analysis during the peak school hours.

Response

An analysis was not conducted for the after-school (midday) period, as the “design” period in the Town of Tiburon and in most communities, coincides with the morning and evening peak commute periods. The “design” period is the time known to produce peak traffic on a regular basis, i.e., *every weekday morning and afternoon-evening*. Peak traffic can be predictably observed during these time periods. Streets must be designed to meet the demands of these predictable peak periods.

The Town of Tiburon completed detailed traffic counts along Tiburon Boulevard in February 2013. These were the first comprehensive traffic counts conducted by the Town since 2002 for the length of Tiburon Boulevard.⁸ Growth and new development on the Tiburon Peninsula have been very limited since 2004. However, there has been a broad perception of an increase in school pick-up and drop-off time congestion along Tiburon Boulevard in the past three to four years, so much so that the 2013 traffic counts were commissioned.

The February 2013 data, gathered by Tiburon Public Works, shows that at specific intersections, traffic peaks due to school-related traffic. These traffic peaks generally last 30 minutes or less, with peaks varying in duration per school location. **Exhibit 1** provides a comparison of data for peak periods at major intersections in Tiburon. The exhibit allows for direct comparisons between:

- The 2009 Draft EIR PM peak hour counts and the 2013 midday (after school) peak hour counts,

⁸ Smaller scale counts at Trestle Glen Boulevard were conducted in 2004 as part of the Town’s General Plan update, but these merely confirmed the 2002 traffic counts.

- The 2009 Draft EIR PM peak hour counts and the 2013 PM peak hour counts, and
- The 2009 Draft EIR AM peak hour counts and the 2013 AM peak hour counts.

Observations of the 2013 data versus the 2009 data

Based on a review of the information in **Exhibit 1** the following is noted:

- In regard to the 2009 Draft EIR PM peak hour counts versus the 2013 mid-day (after school) peak hour counts: the 2013 volumes are higher at two intersections of seven intersections along Tiburon Boulevard; Trestle Glen, where total volumes increased by 44 vehicles (a two percent increase), and at San Rafael Avenue, where total volumes increased by 36 vehicles (also a two percent increase). The increase at both intersections is within the range of daily fluctuations. Thus, these increases are not considered to display meaningful increases. Based on this information it can be concluded that the 2009 Draft EIR PM peak hour vehicle counts provide a “worst case” analysis.
- In regard to the 2013 PM peak hour counts versus the 2009 Draft EIR PM peak hour counts, the 2013 volumes are lower than 2009 Draft EIR volumes at all intersections where a comparison can be made. Based on this information it can be concluded that the 2009 Draft EIR PM peak hour vehicle counts provide a “worst case” analysis.
- In regard to the 2009 Draft EIR AM peak hour counts and the 2013 AM peak hour counts, with comparisons at four intersections, there were increases in 2013 volumes at Trestle Glen Boulevard (a ten percent increase), Rock Hill Drive (a six percent increase) and San Rafael Avenue (an 12 percent increase). In a less recessionary time, this is more in line with growth that would be expected over a five or six-year period. Intersection LOS during this time period (see Draft EIR **Exhibit 5.1-9**) shows existing operation at the three intersections to be acceptable both with and without project volumes: all operate acceptably at LOS B. Under cumulative conditions, as shown in Draft EIR **Exhibit 5.1-36**, with the General Plan planned improvement at the Trestle Glen intersection, operation would remain acceptable (within the LOS D range) for the Trestle Glen Boulevard and Rock Hill Drive intersections with and without the project, and operation would remain acceptable (within the LOS B range) at the San Rafael Avenue/Tiburon Boulevard intersection with and without the project. Based on this information it can be concluded that if analyzed with a 2013 count base, rather than the 2009 count base, ambient (without project) traffic volumes might be higher at most intersections, but the project contribution, as a percentage of the total, would be lower, and *would not be expected to result in a significant impact.*

Exhibit 1
Traffic Count Comparison ^A

Intersection	2009 Draft EIR PM Peak (5:00-6:00)	2013 Midday Peak	2013 Midday Peak compared to 2009 Draft EIR PM Peak	2013 PM Peak	2013 PM Peak compared to 2009 Draft EIR PM Peak	2009 Draft EIR AM Peak (7:45 -8:45)	2013 AM Peak	2013 AM Peak compared to 2009 Draft EIR AM Peak
Blackfield Dr./Greenwood Cove Dr./Tiburon Blvd.	3040	2958	-82	2853	-187	3190	NA	NA
Trestle Glen Blvd./Tiburon Blvd.	2285	2329	+44	2140	-145	2330	2570	+240
Avenida Miraflores/Tiburon Blvd.	2039	2050	-11	1870	-169	2146	NA	NA
Rock Hill Dr./Tiburon Blvd.	1900	1878	-22	1765	-135	2010	2133	+123
San Rafael Ave./Tiburon Blvd.	1700	1736	+36	1550	-150	1755	1957	+202
Lyford Dr./Tiburon Blvd.	1400	1331	-69	1395	-5	1325	NA	NA
Beach Rd./Tiburon Blvd.	1140	964	-176	1043	-97	890	811	-79
Strawberry Dr./ Bay Vista./Tiburon Blvd.	NA	3025	NA	2914	NA	NA	3172	NA

A: The 2009 Draft EIR vehicle traffic counts were conducted weekdays in May while schools were still in session. The 2013 vehicle traffic counts were conducted weekdays in February 2013 with schools in session. The 2013 midday peak hours generally begin at 2:30 pm. The San Rafael Avenue/Tiburon Blvd peak hour begins at 2:00 pm. The 2013 PM peak hour begins at 4:00 pm, except at the Blackfield Drive /Tiburon Blvd. intersection, where the peak hour begins at 5:00. The Draft EIR analysis of existing plus project intersection LOS, Impact 5.1-1, indicates project implementation would not affect intersection LOS (see Draft EIR **Exhibits 5.1-36** and **5.1-37**). 2013 traffic counts conducted by Town of Tiburon and Marks Traffic Data.

Overall Observations

Based on the above the following observations can be made:

- The project contribution to traffic at intersections along Tiburon Boulevard would not result in a significant impact. If analyzed during the after-school (midday) time period, project-generated volumes would be lower than during the AM or PM peak hours, thus the “project impact” would be less than has been analyzed for the AM and PM peak hour time periods in the Draft EIR.
- The 2013 after school (midday) peak hour volumes are, as a system (and at most intersections), lower along Tiburon Boulevard than the 2009 PM peak hour analyzed in the Draft EIR.

Conclusion

Based on the above it is concluded that the Draft EIR analysis provides a reasonable “worst case” basis for analyzing project impacts.

4.2 Request Analysis of Traffic Impacts on Neighborhood Intersections

It was also requested that the traffic intersection impact analysis be expanded to include impacts on neighborhood intersections: Paradise Drive/Solano; Diviso/Vistazo East/St. Bernards Lane/Vistazo West/Ridge; Ridge/Lagoon View.

Response

EIRs rarely analyze all intersections affected by project traffic. For the Easton Point EIR, the process of determining how many intersections to analyze, and which intersections to analyze, involved a routine process of requesting input from Marin County, Town of Tiburon staff, and consideration of all public comments in the scoping sessions. Fifteen intersections were chosen for quantitative analysis. They were considered to already carry a substantial traffic load, and predicted to be most directly affected by project-generated traffic. Consideration also was given to choosing intersections for analysis that were representative of other nearby intersections.

During the EIR scoping process, concerns were raised regarding impacts to the hillside neighborhood streets located south and southeast of the project site. These concerns included the physical effects project traffic would have on the paved surfaces of streets; the project’s contribution toward cumulative traffic impacts with an emphasis on existing construction vehicle traffic for current ongoing residential construction/remodel projects in the existing neighborhoods; traffic and pedestrian safety where these streets are difficult to navigate; emergency vehicle access; and how the project would impact the capacity of these streets in the event of an emergency evacuation. The impact of project-generated construction vehicle traffic on the existing neighborhood streets was a concern.

In response, the Draft EIR describes existing road use in the Lyford’s Cove/Old Tiburon and Hill Haven neighborhoods, including current practices for teardowns of homes. It details the number of vehicles projected to be added to neighborhood streets during peak weekday AM and PM traffic periods, (see Draft EIR **Exhibits 5.1-42** and **5.1-43**). Traditional quantitative analysis (Level of Service and delay) of intersections carrying relatively minor amounts of traffic, such as those in the Lyford’s Cove/Old Tiburon and Hill Haven neighborhoods, is less meaningful than qualitative observations of intersection function. For this reason, a specific section of the EIR traffic analysis was provided to describe issues in these existing neighborhoods, and to consult with Town of Tiburon public works, police and fire officials concerning access issues in the neighborhoods.

4.3 Contractor Vehicle Impacts Analysis

Commentors also stated that the responses concerning contractor vehicle impacts were not adequately addressed in the Responses to Comments.

Response

If the proposed project is approved, the timing of individual home construction will remain unknown, and could occur at any time within the next ten or 20 years. Construction activity would be annoying to existing residents, as occurs today with teardown and reconstruction of homes in existing neighborhoods. Housing construction would primarily result in trips by building material delivery trucks and construction workers. The number of home construction trips (both delivery and construction workers) to and from the project site would fluctuate, depending on the activity and number of houses being built at any one time. It is however, anticipated that construction vehicle traffic expected during individual home construction would consist of a few truck trips per day per house.

Post Phase One; with a finished construction access road connecting to Forest Glen Court, it is assumed that all construction vehicles working on lots with access via Mountain View Drive and Ridge Road would be accessed via Forest Glen Court and Paradise Drive. With the construction access road in place, no on-site construction traffic would be routed via existing Lyford's Cove/Old Tiburon and Hill Haven neighborhood streets with the exception of the upper elevations of Ridge Road and Mountain View Drive, which would be necessary for access to Lots 1, 2, and 3. For this reason, as stated in the Draft EIR, the applicant proposes to accelerate grading and site preparation to the greatest extent possible for those portions of the project (Lots 1, 2, and 3) which require access through the existing Hill Haven neighborhood. It is proposed to condense grading operations to the "shortest period feasible".

When routed through these neighborhoods, truck trips would be noticeable to residents at home during construction hours and would result in a significant intrusion. Uphill and downhill movement of construction trucks is currently noticed by residents (noise, obstruction of sight distance for cars following behind large trucks, temporary obstruction of progress through intersections too constrained to accommodate large truck turning movements, etc.), and any increase in truck activity would be considered a traffic hazard (as is the case today). This would be considered a significant temporary impact to traffic flow and road safety in the neighborhood, especially through the narrowest and steepest roads, Diviso Street (as narrow as 16.5 feet wide) and Centro West and Centro East streets (as narrow as 17 feet wide). These road widths are not sufficient to allow two trucks or a truck and a car traveling in opposite directions to pass one another safely. For this reason, the EIR provides Mitigation Measure 5.1-13(b) to implement the Construction Management Plan as set forth in the Precise Development Plan and modified as follows:

- Prohibit construction worker, construction vehicle and all other construction activity through existing residential neighborhoods, with the exception of access to Lots 1, 2, and 3 which require use of the upper elevations of Ridge Road and Mountain View Drive.
- Control all uses of the temporary construction access road as a constant safety precaution.
- Implement all project traffic control elements including consolidating delivery of construction materials using routes approved by Marin County and Town of Tiburon, informing Town of Tiburon residents of construction activities and duration, and providing a comprehensive network of flag persons along construction routes. Flag persons shall be stationed along all road segments

which may require stopping through traffic for safe truck passage or guiding trucks through existing streets.

5. CAN COURT JUDGMENT LEGALLY LIMIT RANGE OF ALTERNATIVES ANALYZED IN EIR

5.1 Proposed Project and Alternative 2 Are Infeasible

Comments on behalf of the Keil Cove property stated that the proposed project and *Alternative 2* are legally infeasible because the landslide stabilization program required for the proposed project and *Alternative 2* would permanently destroy the source of water and thereby interfere with the Keil Family's long held water rights to Keil Spring. The Keil's also objected to proposed mitigation that would have required them to agree to accept a substitute water source and that the Responses to Comments then concluded that the impact to Keil Spring was a significant unavoidable impact. Keil contends that the impact to Keil Spring can be avoided by redesigning the proposed project to avoid construction in areas of landslides.

Response

In the Draft EIR *Section 5.5 Hydrology and Water Quality* the analysis of *Impact 5.5-6 Depleted Groundwater Supplies, Keil Spring and the Keil Property Spring-based Water Supply* concluded that project implementation would reduce the available water supply to Keil Spring. The specific activities that would affect groundwater are:

- Dewatering subdrains: Subdrains installed to stabilize landslides by reducing groundwater flow through the slide area would convert groundwater to surface water. Therefore reducing groundwater flow available to Keil Spring.
- Construction of impervious surfaces where groundwater recharge currently takes place would reduce groundwater quantities

The environmental analysis for *Impact 5.5-6* did not conclude destruction of water supply for Keil Spring, but rather a reduction of water supply that could be mitigated by installation of a water conveyance system that would link landslide improvement subdrains with the water storage system at the Keil Cove property.

The responses in the *Response to Comments to the Draft Environmental Impact Report* and the revised Hydrology and Water Quality Impact and Mitigation discussion (see Master Response 3) acknowledge that the mitigation measures recommended in the Draft EIR (Mitigation Measure 5.5-6 and Mitigation Measure 6.5-6) would be infeasible without cooperation of the Keil family in accepting the new piping system and other proposed measures that could transfer groundwater intercepted by on-site landslide dewatering systems to the Keil Cove water storage facilities. Mitigation Measure 5.5-6 specified that the feasibility of the measures was contingent of the consent of the Keil family to their implementation. The Keil family comments on the Draft EIR (see Draft EIR Comment Letter 22 from Paul S. Simmons, Kelly M. Taber, Somach Simmons & Dunn) stated that such consent would not be given, a position that they have recently reiterated (see letter from Paul S. Simmons and Kelly M. Taber, Somach Simmons & Dunn [on behalf of the Keil Family] in the Appendix). Moreover, regarding the revised EIR text citing of the Keil family's "lack of cooperation" to the installation of an alternative water delivery (i.e. piping) system and the on-site monitoring of Keil Spring and cistern

flows vs. irrigation use, the EIR preparers relied on the Public Hearing testimony of Mr. Keil on April 25, 2011,⁹ which stated the following:

“The Draft EIR proposes mitigations to deal with water on this site. The first issue it addresses is mitigating landslides by removing groundwater. The second that it addresses is dealing with surface water and storm runoff and their impacts on the Red-legged frog. The third is the implications of this project on the historic spring, which has provided the water source for the preserved Keil Cove Gardens which, as you know, are held under a conservation easement. All three of these mitigations call for or require the cooperation of the Keil Family. Without the cooperation of the Keil Family there is no mitigation. *There is no cooperation.*” (emphasis added)

Given this testimony and its implied lack of consent to allow implementation of mitigation measures unacceptable to the Keils, at least those that do not offer a more severe limitation on the numbers of Easton Point lots, the *Response to Comments to the Draft Environmental Impact Report* acknowledged that the related impacts would be significant and unavoidable. For additional discussion please see Master Response 3 in the *Response to Comments to the Draft EIR*.

The revisions to the Mitigation Measure 6.5-6 which addressed the significant and unavoidable impact of *Alternative 2 (32-Unit Lower Density Alternative)*, were made on the basis of the probable significant impact of landslide dewatering measures on the conversion of on-site groundwater to surface water via the installation of sub-drains, principally in the lower reaches of Drainageways 2 and 3 (Watersheds K and L). While the applicant’s Supplemental Groundwater Investigation¹⁰ did not determine an irrefutable recharge boundary for Keil Spring, it did cite credible geologic evidence and groundwater quality data to suggest that the recharge area was north-northwest of the Keil Spring location. Based on the reported field assessment of Keil Spring discharge and lab water quality data for the Spring, *Alternative 2* eliminates all residential lots in the vicinity of the identified recharge zone. Accordingly, *Alternative 2* also scales back the proposed number of repair and replace landslide repairs within the probable recharge zone - only one of which remained (Landslide 16, at the northeast corner of Parcel A). Only a single road segment is proposed within the recharge zone, and bioswales are proposed along the road shoulders to compensate for the local loss of infiltration under the roadway footprint. Taken together these reductions in impervious surfaces and the extent of landslide repairs proposed in *Alternative 2* would likely reduce the impact to the Keil Spring to a less-than-significant level. However, as noted in the Draft EIR, the impact addresses the Keil water supply system as a single unit. The conversion of groundwater to surface water via the installation of sub-drain systems in the lower reaches of Drainageways 2 and 3, as well as in the smaller Watersheds N and P to the east, would therefore, still result in a significant and unavoidable impact on the quantity of groundwater inflow to the Keil’s subsurface cisterns.

Regarding comments in the letter from Paul S. Simmons and Kelly M. Taber, Somach Simmons & Dunn referencing the lack of baseline water quality data and the inadequate basis for the EIR’s finding of a less-than-significant project impact on water quality, monitoring data for potential project impacts to Keil Pond water quality, the Draft EIR assessment cited under *Impact 5.5-1 (Water Quality)* determined that the increase in urbanization within the Keil Pond watershed (including site

⁹ Easton Point Project Draft Environmental Impact Report Public Hearing (transcript prepared by California Reporting, LLC), April 25, 2011, page 77.

¹⁰ *Supplemental Groundwater Investigation for Easton Point Subdivision Tiburon, California*, Questa Engineering Corporation, November 4, 2008.

Watersheds X, Y, K, M, L, N, P, R and S) would be from an existing six percent to 13.7 percent. Based on referenced United States Environmental Protection Agency (USEPA) and San Francisco Bay Regional Water Quality Control Board (RWQCB) water quality criteria, significant water quality impairment does not typically occur at such low levels of urbanization. This relatively low level of watershed urbanization associated with the proposed project would be reduced even more under *Alternative 2*. The most likely water quality constituent that could degrade the quality of Keil Pond waters would be pesticide. Mitigation Measure 5.5-1(b) includes the requirement that the Property Owners Association (POA) provide homeowners with information on more sustainable and less toxic pest management practices. Implementation of such an educational program in concert with other measures already proposed by the proposed project (e.g. lot-based bioswales, catch-basin filtration systems and roadside swales, and incorporation of bioretention planters) would represent the best available practical technologies for water quality protection. Also, the intensity of RWQCB oversight of Stormwater Pollution Prevention Plans (SWPPP) and their implementation, including more rigorous self-monitoring during construction by Board-certified Qualified Stormwater Practitioners (QSPs), would reduce the risk of proposed project-related discharge of sediment and other contaminants during construction.

Questions also have come up regarding the Keil Family's water rights in regard to the Keil Spring and other waters from the Easton Point site. As stated in Response to Comment 22-1, the EIR must address all potentially significant environmental impacts and propose effective mitigation measures where possible and feasible. However the EIR cannot resolve issues of common or statutory law with respect to competing rights of neighbors and/or appurtenant easements. That would require a separate legal or equitable action before a court of competent jurisdiction.

Also, please see **Response 3.1** regarding the range of alternatives analyzed in the EIR.

6. FEASIBILITY AND OPERATIONAL SAFETY OF PROPOSED CONSTRUCTION ACCESS ROAD

Commentors contend that there was insufficient analysis of potential health and safety issues related to the use of the proposed construction road. A portion of the construction road would have a maximum grade of 25 percent. Concern was expressed regarding the ability of construction vehicles to safely access the site using the construction road. Commentors noted that the Tiburon Fire Protection District (TFPD) staff expressed concerns regarding the safety of construction vehicles travelling on the construction road and the ability of District vehicles to utilize the construction road due to its slope. Comments also questioned whether it was practical and feasible to assume the construction access road would be used over the ten to 20 year period assumed for project buildout. There were also questions raised as to what actions the County would take if contractors failed to comply with the requirement to use the construction access road or argued that the road was unsafe during inclement weather conditions.

Response

The proposed project does include a construction access road that would be constructed from the terminus of Forest Glen Court to the terminus of Mt. Tiburon Court. As proposed by the project applicant, the construction access road would be ten feet wide with turnouts and paved with grooved concrete. After construction, it is proposed that this road remain for emergency egress only and would be blocked at either end by a barricade gate. With *Alternative 2* the extent of development of the construction road would be contingent with the final outcome of the development. *Alternative 2* provides for the eventual removal of the construction access road and the footprint of the road would

be utilized as a hiking trail. Additionally, the draft Development Agreement provides that if all lots in either the Lots 1 through 8 cluster or Lots 9 through 17 cluster are dedicated to non-residential uses, then the construction access road would not be built and construction access to Lots 1 through 8 or to Lots 9 through 17 would be through the Hill Haven neighborhood.

As discussed in Master Response 2 - *Construction Road and Construction Phase Issues*, the applicant requested review by two local construction contractors, Ghilotti Construction Company and Red Horse Constructors, Incorporated for their expert opinion, which opined that the construction road would be suitable for construction vehicle access.¹¹ Recommendations from both firms regarding safety measures were agreeable to the EIR traffic analyst (Crane Transportation Group). Mitigation measure 5.1-13(a) requires the construction road safety recommendation of both firms be implemented.

In response to comments regarding the safety of the construction road Whitlock & Weinberger Transportation conducted a technical analysis of the construction road and made recommendations to enhance safety.¹² The W-Trans conclusions and recommendations are provided in Master Response 2 in the Final EIR. Draft EIR **Exhibit 9.0-1** shows the revised construction road plan and profile. W-Trans recommendations were incorporated into revisions of Mitigation Measure 5.1-13(a).

Commentors have noted that the TRPD staff expressed concerns regarding the safety of construction vehicles travelling on the construction road and the ability of District vehicles to utilize the construction road due to its slope. Concerns with the non-compliance with TFPD standards are discussed and acknowledged in the EIR (see page 16 of the *Response to Comments to the Draft Environmental Impact Report*). TFPD staff remains concerned with potential safety issues associated with the construction road.¹³

There were also questions raised as to what actions the County would take if contractors failed to comply with the requirement to use the construction access road or argued that the road was unsafe during inclement weather conditions. If contractors did fail to comply with the requirement to use the construction access road Marin County has the authority to stop such a violation immediately if deemed necessary. The County's Building Official has the authority to stop construction (to "Red Tag" the project) of a project if the contractor is in violation of the provisions of the County's permit. Once a job is Red Tagged all construction must stop immediately until the issue is reconciled.

¹¹ Letter from Bradford Simpkins, Vice President, Ghilotti Construction Company, to Land Development Solutions, attention Michael Tarnoff, Subject: Accessibility Issue – Construction Traffic, April 9, 2009 and letter from David Warner, President, Redhorse Constructors, Inc. to Land Development Solutions, Inc., attention Michael Tarnoff, Re: Construction Access for the Easton Point Development, April 14, 2009.

¹² Letter to Mr. John Reed from Mary Jo Yung, PE, PTOE, W-Trans, Re: Easton Point Construction Planning Traffic Evaluation, November 17, 2011.

¹³ Nichols • Berman communication with John Roberto, Notes on meeting with Jessica Powers of the TFPD, September 14, 2013.

7. PUBLIC HEALTH AND SAFETY CONCERNS

7.1 Health and Safety Impacts Associated with Project Construction Traffic

Commentors stated that project construction traffic (large trucks and grading equipment) would result in public health and safety impacts that were not fully addressed in the Final EIR. The comments state that project construction traffic would create unsafe traffic conditions for other vehicles, bicyclists and pedestrians on Tiburon Boulevard, Paradise Drive and the neighborhood streets adjacent to the project site. Since the TFPD deems the temporary construction access road unsafe for emergency vehicle ingress and egress the commentors are concerned that the narrow streets in the Hill Haven neighborhood would not provide adequate emergency vehicle access during project construction creating an adverse public safety impact. It was requested the EIR consider other ways of providing emergency vehicle access to the project site since the temporary construction access road will not be used for emergency vehicle access.

Response

The EIR provides a comprehensive discussion of both construction traffic impacts and post-construction impacts. Construction impacts are discussed in *Impact 5.1-13 Construction Traffic Impacts* plus in Master Response 2 in the *Response to Comments to the Draft Environmental Impact Report*. Post-construction impacts in the adjacent neighborhoods are discussed in *Impact 5.1-10 Project traffic added to Lyford's Cove / Old Tiburon and Hill Haven Neighborhood Streets – Accident Records, Emergency Access and Traffic Flow* and Master Response 1 in the *Response to Comments to the Draft Environmental Impact Report*. These discussions include existing and future conditions that may affect vehicles, bicyclists, and pedestrians on all streets that would provide access to the project site.

Master Response 1 repeats information contained in the Draft EIR that provides a description of observed traffic issues identified for the Lyford Cove / Old Tiburon and Hill Haven neighborhoods. It is stated in Master Response 1 that the applicant proposed Construction Management Plan, as modified by Draft EIR mitigation measures, includes provisions for managing the movement of large construction trucks and vehicles along the roadways providing access to the project site and additional requirements of Mitigation Measure 5.1-13(b).

Master Response 2 further analyzes the proposed temporary construction access road and includes mitigation measures improving the safety of the proposed use. An adequate description of construction traffic flow begins on page 17 of the *Response to Comments to the Draft Environmental Impact Report*, which provides adequate description of how construction traffic would change the existing setting, providing for reasonable analysis of environmental change and assessment of traffic/safety related impacts resulting from the addition of construction traffic. Additional traffic mitigation measures to establish speed controls for construction vehicles is provided by Mitigation Measure 5.1-7 (b), however it is not anticipated these measures would make a significant change to existing conditions.

Please see **Responses 4.1** and **4.2** for additional information regarding traffic in the Old Tiburon / Lyford Cove and Hill Haven neighborhoods. The EIR addresses traffic/pedestrian safety and emergency access adequately to inform the CEQA process. Furthermore, in regards to monitoring the use of the construction access road, Marin County does have authority to stop construction if the construction road is not utilized as proposed in Mitigation Measure 5.1-13 (b). Post construction emergency access was initially discussed under *Impact 5.1-10*.

7.2 Health and Safety Impacts Associated with Inadequate Domestic Water Pressure and Fire Flow

Commentors pointed out that the lack of required fire flow for proposed house sizes at the higher elevation would be a public safety concern and requested that the EIR consider alternative designs and a reduction in house size to mitigate the fire flow impact. It was also contended that approving lots that did not have standard domestic water service pressure would be a public health issue that could be avoided by redesign rather than mitigating the impact by requiring home owners to install water pumps and sign documents for MMWD recognizing the lack of standard water pressure.

Response

The discussion of *Impact 5.7-8 Inadequate Fire Flow* contains information about how fire flow requirements could require reduced the square footage of houses from the maximum house sizes shown in Draft EIR **Exhibit 3.0-5**, (please see Mitigation Measure 5.7-8 and Draft EIR **Exhibit 5.7-1**). The Tiburon Fire Protection District concurs with the requirements of Mitigation Measure 5.7-8 in that house size should be restricted based on available fire flow.¹⁴ There is no need for further analysis of this issue.

Water pressure for domestic use is discussed under *Impact 5.7-7 Water Service Impacts* beginning on page 472 of the Draft EIR. The preliminary water feasibility analysis (see Draft EIR **Exhibit 5.7-1**) determined that based on the design of the proposed project as many as 17 residences could have less than standard water pressure. MMWD staff indicates they do not view low water pressure as a health and safety issue.¹⁵ Mitigation Measure 5.7-7 requires, where homes would have low water pressure, that the applicant enter into a low water pressure agreement with the MMWD. Low pressure agreements are regulated by MMWD Code section 11.08.120, which states the following requirements for water pressure: less than 29 pounds per square inch (psi) - a pump is required for domestic service, 30 to 40 psi - a pump is optional, and 40 psi – is considered standard water pressure for domestic service. In the event that the proposed water tank design is further mitigated by reducing the base elevation, the need for residential water pumps would likely increase as required by the MMWD low pressure agreements in Mitigation Measure 5.7-7. However, this would not increase the severity of *Impact 5.7-7*. As stated on page 467 of the Draft EIR: if the project is approved the MMWD plans to improve water pressure for residences on Mountain View Drive, Ridge Road, and Straights View Drive by connecting these lines to the distribution system for the proposed project.¹⁶

7.3 Health and Safety Impacts Due to Lack of Water During Project Construction

Commentors also stated that the absence of a water system on the project site during project construction would be a fire safety issue. It was requested that this issue be further discussed in the EIR and mitigation required.

¹⁴ Nichols • Berman communication with John Roberto, Notes on meeting with Jessica Powers of the TFPD, September 14, 2013.

¹⁵ Nichols • Berman meeting with MMWD staff on August 28, 2013.

¹⁶ Nichols • Berman communication with Marin Municipal Water District Staff, March 8, 2010.

Response

The Tiburon Fire Protection District (TFPD) ¹⁷ concurs with the need to supply water as a fire safety issue, and this could be addressed as a condition of site development. TFPD regulations and the Uniform Fire Code include clauses that allow for the requirement of water on site during the early phases of site development. According to the TFPD transportable water tanks could be required to provide adequate water for one-half hours of fire flow. The size of portable water tanks necessary to provide adequate water supply are estimated to be approximately 5,000 gallons, and multiple tanks may be required given the phasing and location of the site work. The exact details (size and location of tanks) would be finalized between the TFPD and the contractor. This requirement is enforceable through the TFPD and the Uniform Fire Code, and can be included as a condition for construction permit.

Accordingly this requirement would be in place throughout both of the two sequential overlapping phases listed on page 82 of the Draft EIR, up to the point when Task 3 of the applicant implemented construction, which is when utilities would be installed. Prior to construction using combustible materials (i.e. house construction) the TFPD requires the installation of a complete and operable water delivery system including fire hydrants.

According to the TFPD there is no safety issue associated with the emergency response to the project site during or after project completion. The issue of supplying a temporary water source for fire suppression during site grading, road and utility installation would be adequately addressed by the enforcement of the Tiburon Fire Protection District Ordinance and the Uniform Fire Code.

There is no need to analyze this issue further in the EIR. While CEQA does direct environmental review to consider all aspects of a project including development, there is no evidence that fire risk associated with initial site development would substantially increase more so than existing conditions. CEQA directs the consideration and discussion to significant environmental effects of the project (*State CEQA Guidelines* section 15126.2). The EIR does analyze environmental issues related to fire safety where the proposed project presents evidence that environmental change would occur, changing circumstances that would result in a significant environmental impact. These issues were discussed in the Draft EIR and include *Impact 5.7-1 Fire Service Impact*, and *Impact 5.7-2 Wildland-Building Fire Exposure* analysis concluded less-than-significant impacts, *Impact 5.7-3 Cumulative Fire Service Impact* and *Impact 5.7-8 Inadequate Fire Flow* both significant impacts that would be reduced to a less-than-significant level with implementation of Mitigation Measures, and *Impact 5.1-10 Project Traffic Added to Lyford's Cove / Old Tiburon and Hill Haven Neighborhood Streets – Accident Records, Emergency Access and Traffic Flow*, where mitigation measures would reduce impacts to a less-than-significant level.

8. PROPOSED PROJECT FAILS TO COMPLY WITH THE PROVISIONS OF THE STIPULATED JUDGMENT

A number of comments addressed the 1976 judgment and the 2007 judgment. Commentors wanted to know if the proposed project complied with the provisions of the Court judgments which states that the 43 lots are intended to be placed on geologically safe portions of the site, without the necessity for extensive landslide repair, rather than in the path of known landslides. Furthermore commentors noted

¹⁷ Information regarding requirements of the TFPD was obtained at a meeting between John Roberto, consultant planner for Marin County and Jessica Powers, Fire Marshal for TFPD, *op. cit.*

that the court judgment states that it is not the intent to allow the unmitigated taking of any endangered, threatened, listed or otherwise protected species, and wanted to know if the proposed project was in compliance with these provisions. It was also recommend that Marin County should pursue a Rule 60 procedure in federal court to set aside the stipulations.

Response

Several commentors questioned the consistency of the proposed project with the 2007 judgment. Specifically the proposed project's consistency with the judgment's statements regarding the relationship of the placement of the proposed lots in relationship to on-site landslides and the potential taking of special status plants and animals was questioned. It will be up to the Board of Supervisors to determine whether the proposed project complies with the judgment. However, either or both parties may seek judicial review and instructions from the federal court pursuant to the terms of the 2007 judgment.

The Rule 60 procedure is the procedure the County employed in challenging the 1976 judgment. However the federal court ultimately rejected the County's effort to employ that rule in this matter. The new (2007) judgment represents the final judgment on that effort. Therefore the County cannot seek to reuse that Rule 60 procedure.

In regard to the placement of the proposed lots in relationship to on-site landslides the stipulated judgment includes the following provisions:

- 2a. Right to 43 Homes. Pursuant to the 1976 judgment, the County is required to approve forty-three (43) homesites on the Martha Property unless the parties subsequently agree otherwise in writing.
- 2b. Minimum Half-Acre Lots. Pursuant to the 1976 judgment, each of the 43 lots to be approved by the County shall be at least one-half acre size unless the parties subsequently agree otherwise in writing. These lots are intended to be placed on geologically safe portions of the site, without the necessity for extensive landslide repair, rather than in the path of known landslide. If the parties cannot agree whether any required landslide repair is unreasonably extensive under the circumstances, the parties may petition this Court for binding instructions.
- 2c. Lots within the Ridge and Upland Greenbelt. In conformance with the 1976 judgment, the County shall allow some development within the Ridge and Upland Greenbelt.

In regard to the potential taking of special status plants and animals the stipulated judgment includes the following provision:

- 4c. Protected Species. Notwithstanding the foregoing, it is not the parties' intent to allow the unmitigated taking of any endangered, threaten, listed, or otherwise protected species identified in the extensive environmental reviews previously prepared for the Martha Property by the Town of Tiburon ("Identified Species"). If the parties cannot agree on adequate mitigation measures concerning Identified Species, the parties shall jointly petition this Court for binding instructions concerning the adequacy of such mitigation.

Geology and Soils Discussion

As discussed in Draft EIR *Section 5.4 Geology and Soils* (see pages 317 through 320) a number of geologists have mapped and studied the Tiburon area in general and the project site in specific in various levels of detail over the years. As a part of the proposed project the applicant's geotechnical

consultant (Miller Pacific Engineering Group [Miller Pacific]) prepared a preliminary geotechnical report. The geotechnical report includes a conceptual landslide stabilization plan which includes recommendations for landslide repair, landside avoidance, and landslide improvement. Based on its analysis Miller Pacific concludes that it is its profession opinion that “development of the project site is feasible from a geotechnical standpoint”.¹⁸ As a part of the preparation of the EIR Snyder & Wilson Engineering completed a peer review of the Miller Pacific report.

Snyder & Wilson has noted that based on existing geological conditions and to comply with the 2007 judgment the proposed project locates the building sites as high on the ridgelines as possible, locates building sites as far from existing landslides as feasibly possible; and, limits the siting of proposed building sites to the more geologically safe bedrock portions of the project site. The proposed project does not locate building sites on top of or in the path of existing landslides.

The intent of Miller Pacific’s landslide stabilization plan is to locate the building sites within geologically stable areas as much as possible. The landslide stabilization plan was designed to defend the proposed homes from future encroachment and the risk to health and safety of the occupants by stabilizing the adjacent landslides areas within 100 feet of the building sites.

Out of the proposed 43 lots, there are approximately six building footprints that partially extend into the mapped landslide deposits. cursory review of the proposed development indicates that less than ten percent of the area of the building footprints would encroach into the limits of previously mapped landslide debris. These areas would be repaired and stabilized within 100 feet of a building site to defend the proposed homes from future encroachment by downslope landslides. In the proposed landslide stabilization plan, none of the proposed building sites are proposed to be located in the paths of known landslides.

It is acknowledged in the EIR that after project completion large portions of the project site will still be subject to landslides. However, neither the Marin County landslide mitigation policy nor the Miller Pacific policy developed for this project would require landslides outside the proposed development area be completely repaired. Compliance with the recommendations of Miller Pacific and implementation of the mitigation measures contained in **Section 5.4 Geology and Soils** would reduce the hazards risk to people and property associated with the proposed project to a less-than-significant impact.

As noted in the EIR, two previous EIRs have been prepared for development proposals on the project site. The *2001 Draft EIR* evaluated a proposed project that was designed, in part, to comply with the Town of Tiburon’s Landslide Repair Policy. The Town’s policy requires complete repair of all landslides, including the complete removal and repair of Landslide 11. This would have involved significant mass grading, over 300,000 cubic yards of material, and would have resulted in several secondary impacts (such as hydrology, vegetation and wildlife, visual, transportation, air quality and noise impacts). For the proposed project Miller Pacific estimates that grading and excavating for landslide stabilization would involve about 53,156 cubic yards, the minimum grading required to ensure the health or safety of future occupants of the proposed homes, as well as, adjacent offsite properties and public improvements. This is over an 80 percent reduction in grading from the proposed grading presented in the *2001 Draft EIR*.

¹⁸ *Preliminary Geotechnical Report Easton Point Subdivision Tiburon, California*, Miller Pacific Engineering Group, January 11, 2008, page 13.

In regard to the placement of lots within the Ridge and Upland Greenbelt (RUG) this issue is discussed in the Draft EIR (see page 91 and 92). It is stated that given the 2007 judgment directing that minimum one-half acre lots be placed on geologically stable portions of the project site, limitation of the density within the RUG would likely result in extensive landslide repair over non-RUG portions of the site in order to accommodate the court-ordered density. In this case the most geologically safe portions of the project site are within the RUG.

Therefore, based on the Miller Pacific geotechnical report and the analysis in the EIR it can be concluded that, consistent with the 2007 judgment, the proposed project does place lots on geologically safe portions of the site, without the necessity for extensive landslide repair.

Biological Resources Discussion

Draft EIR **Section 5.6 Biological Resources** provides a discussion of special status plants and animals. It is noted on that several species of plants and animals in California have low populations, limited distributions, or both. Such species may be considered “rare” and are vulnerable to extirpation as the state’s human population grows and the habitats these species occupy are converted to agricultural and urban uses. State and Federal laws provide the California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting the diversity of plant and animal species native to the state. A sizable number of native plants and animals have been formally designated as threatened or endangered under State and federal endangered species legislation. Others have been designated as “candidates” for such listing. Still others have been designated as “species of special concern” by the CDFW. The California Native Plant Society (CNPS) has developed its own set of lists of native plants considered rare, threatened, or endangered.¹⁹ Collectively, these plants and animals are referred to as “special status species”.

In regard to special status plant species which occur on-site and within the sites immediate vicinity it is stated: Two special status plant species have been confirmed to be present within the serpentine bunchgrass habitat of the project site: the Marin dwarf flax and serpentine reed grass. Additionally, three other special status plant species occur within 100 feet of the western boundary of the site on the Old St. Hilary’s Open Space Preserve: the Tiburon Indian paintbrush, Tiburon jewel-flower, and Carlotta Hall’s lace fern (*Aspidotis carlotta-halliae*). Furthermore, serpentine bunchgrass has been designated as a Sensitive Natural Community by the CDFW.

In regard to animal special status species which occur on the project site it is stated: While several special status animal species may occur rarely or occasionally on site, the project is only likely to significantly affect the California red-legged frog, which is known to breed near the site in Keil Pond and is presumed to disperse through and forage regularly on the site (though none has been observed directly on-site).

Potential impacts to each of these special status plants or animals is fully discussed in the Draft EIR. *Impact 5.6-1 Impacts to Special Status Plants* and *Impact 5.6-3 Loss of Serpentine Bunch Grass* evaluates impacts to special status plants and *Impact 5.6-2 Impacts to the California Red-Legged Frog* evaluates impacts to the California Red-Legged Frog.

Impacts to special status species is identified as a significant project impact. Mitigation measures are provided to avoid or reduce impacts to special status species. The EIR concludes that implementation of Mitigation Measures 5.6-1(a) through 5.6-1(c), and Mitigation Measures 5.6-3(a) through 5.6-3(d) combined would reduce the project’s impacts to Marin dwarf flax, serpentine reed grass and serpentine

¹⁹ *Inventory of Rare and Endangered Vascular Plants of California*, California Native Plant Society, 1994.

bunchgrass to a less-than-significant level, as well as reduce impacts to all other special status plants occurring in close proximity to the site, to a less-than-significant level.²⁰ However, implementation of these mitigation measures would require the relocation of some proposed lots in the vicinity of mapped special status species.

Impacts to California red-legged frog habitat and dispersal is identified as a significant impact. Mitigations are provided to avoid or reduce or reduce to less-than-significant levels the impacts to California red-legged frog habitat (Mitigation Measures 5.6-2(a) through 5.6-2(e)). Implementation of these mitigation measures may also require the relocation or reconfiguration of proposed residential lots.

Therefore, based on the analysis in the EIR it can be concluded that significant impacts to endangered, threaten, listed, or otherwise protected animal or plant species can be mitigated to a less-than-significant level, but the implementation of the mitigation measures would require the spatial reconfiguration and redistribution of some lots.

RECOMMENDED CHANGES TO MITIGATION MEASURES

In order to clarify the wording of Mitigation Measures 5.7-1(a) and 6.7-1(b) the Marin County Department of Public Works recommends that the two mitigation measures be rewritten as follows:

In order to reduce the significant emergency radio coverage impacts at lower elevations on the project site, the applicant shall prepare an emergency radio coverage improvement plan, that includes a parcel dedicated to MERA adjacent to the proposed water tank Parcel C, any necessary air space easement to ensure connectivity of the emergency radio antennas with other MERA antennas off site, and access easements, subject to approval of Marin County Department of Public Works Operations Officer for MERA that shows acceptable emergency radio coverage can be provided for proposed Lots 21 through 23 and Lots 25 through 34 and coverage along Paradise Drive for emergency response units traveling to those lots, prior to recordation of the Final Subdivision Map. Upon approval by the Marin County Department of Public Works Operations Officer for MERA and prior to issuance of first building permit for the lower portions of the property Lots 21 through 23 and Lots 25 through 34, the applicant shall construct all MERA required communications facilities that could include a 10 x 18 foot radio building, a 45 KW emergency generator and fuel tank, a 65-foot high tower/monopole capable of supporting two 6-foot diameter microwave dish antennas and three two-way radio whip antennas.

The Final EIR will be edited to include the recommended rewrite of Mitigation Measures 5.7-1(a) and 6.7-1(b). The rewrite of the mitigation measures would not result in any new or more severe environmental impacts beyond those already discussed in the Final EIR. The environmental effects of the possible MERA facilities described in the recommended rewrite of Mitigation Measures 5.7-1(a) and 6.7-1(b) are already analyzed in the Master Response 7 of the *Response to Comments to the Draft EIR*.

²⁰ The EIR does note that if Mitigation Measure 5.6-1(a) (which requires the relocation or elimination of Lots 1 through 3) is determined to not be feasible project impacts would be a significant unavoidable impact.

APPENDIX
FINAL EIR COMMENT LETTERS

Community Development Department

July 29, 2013



Curtis Havel, Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Emmett O'Donnell
Mayor

Alice Fredericks
Vice Mayor

Richard Collins
Councilmember

Frank Doyle
Councilmember

Jim Fraser
Councilmember

Margaret A. Curran
Town Manager

**RE: EASTON POINT (MARTHA COMPANY) PROJECT: COMMENTS
ON EIR RESPONSE TO COMMENTS DOCUMENT DATED JUNE
2013**

Dear Mr. Havel:

Thank you for the opportunity to submit comments on the EIR Response to Comments document dated June 2013, prepared for the Easton Point Residential Development project. Our comments are as follows:

1. The proposed water tank on Parcel C will contribute to the significant unavoidable visual impact of the project (pp. 512-513 of the DEIR). The water tank would be prominent in eastward views from the ridge-top of the adjacent Old St. Hilary's Open Space Preserve, as well as from other locations. The DEIR concluded that planting of vegetation to screen the tank was not feasible, but would it be feasible to partially bury the tank to reduce its visibility? This potential mitigation measure was suggested in Comment No. 16-53, but was not addressed in the response. Please consider this as an additional mitigation measure for visual impacts associated with the proposed water tank. If it is not a feasible mitigation, a brief response explaining why should be provided.

2. In similar vein, the Response to Comments document (Master Response 7) describes the contemplated MERA facilities adjacent to the proposed water tank as "highly visible" and "contributing to the previously-identified significant visual impacts", which are in actuality significant unavoidable impacts as set forth at p. 727 of the DEIR. To the extent possible, the MERA facilities (equipment building, generator/fuel tank, antenna support structure) should be partially buried or otherwise screened to reduce visual impact. This should be added as a mitigation measure if feasible.

3. The Water Service Impacts and Inadequate Fire Flow discussions at pp. 472-476 of the DEIR appear to leave unresolved the issue of whether certain higher elevation lots could ultimately be built upon with residences. The Response to Comment No. 6-18 acknowledges that it is reasonable to question the feasibility of the mitigation measures, since they rely on unknown future calculations and substantial coordination between multiple agencies, with no guarantee of future acceptance by those agencies. It seems illogical for the County to approve lots on a Tentative Map application for which



water pressure and fire flow regulations may not be achievable or acceptable to the relevant agencies. Before deciding on the merits of keeping those lots, we urge the County to seek more definitive resolution from the applicant, water district, and fire district regarding the likelihood of acceptable implementation of the mitigation measures and therefore the fate of the lots.

4. Mitigation Measure 5.1-7(b) [MM 6.1-7(b) in Alternative 2] calls for the Town of Tiburon to prohibit parking along 820 linear feet of Diviso Street, and along 1,100 linear feet of Centro East Street, in order to address pedestrian safety issues on Old Tiburon streets that would be exacerbated by the Easton Point project, which were deemed a "significant" impact on DEIR p. 243. Response to Comment No. 6-7 states that implementation of this measure would result in a loss of on-street parking. Given the general scarcity of parking in Old Tiburon, every parking space is valuable. Any Town decision to eliminate parking spaces would need to be carefully studied and considered, but the likelihood of the Town approving wholesale elimination of on-street parking on these street segments appears unlikely, especially if the number of such spaces being eliminated is numerous. One side-effect of this mitigation measure could be to exacerbate an existing parking shortage in Old Tiburon. Would this impact remain a significant and unavoidable safety impact, in the opinion of the EIR preparers, if this mitigation measure is not implemented?

5. Response to Comment No. 1-2 indicates that the EIR analysis does not support widening of Paradise Drive along the property frontage to 12 foot wide travel lanes with four foot wide shoulders on both sides, as recommended by the County Public Works Department. The Town agrees with the EIR finding and believes that the widening proposed by the County Public Works Department would dramatically alter the existing visual character of 1.1 miles of Paradise Drive. Instead, we encourage selective paved shoulder widening of numerous segments of the Paradise Drive roadway frontage to provide improved bicycle and pedestrian passing/turnout areas. A drawing showing suitable locations for such shoulder widening has been previously provided to the County Public Works Department.

6. The proposed widening of the temporary construction road from 10 feet to up to 20 feet in width (Master Response #2) is unfortunate and will result in even larger scars on the site, whether or not it is eventually removed.

7. The Response to Comment 6-13 regarding street ownership appears to respond to a different comment regarding fire service impacts and is clearly misplaced.

8. The Response to Comment 6-19 does not address the question raised in the final sentence, regarding implications to fire safety of having substandard hydrant pressure at the upper reaches of the site.

Thank you in advance for consideration of these comments. Please feel free to contact me at (415) 435-7392 if you have any questions.

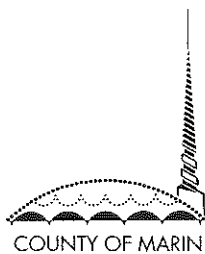


Very truly yours,

Scott Anderson

Scott Anderson
Director of Community Development

Cc: Digest



COMMUNITY DEVELOPMENT AGENCY

Brian C. Crawford
DIRECTOR

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Sustainability
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July 29, 2013

JUL 29 2013 AM 10:40 Planning

John Roberto, JRA Associates
c/o Marin County Community Development Agency
Environmental Planning Section
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903

SUBJECT: 2008 Easton Point Final Environmental Impact Report

Dear Mr. Roberto:

On July 22, 2013, the Planning Commission held a workshop to review the 2008 Easton Point Residential Development Final EIR, including the responses provided to the comments submitted on the Draft EIR. A number of issues were discussed as they relate to the adequacy of the environmental review, and there was unanimous agreement among all the Commissioners concerning a number of significant deficiencies in the Final EIR. These deficiencies are summarized as follows:

1. **Home Size/Lot Size.** Insufficient detail is provided in the response to comments on possible reductions to impacts (i.e., grading, construction traffic, visual, tree removal, and landslide repair related) that could be realized by substantially reducing the sizes of both the homes and the lots while still achieving 43 minimum-half-acre lots as specified in the Court order. This is a potentially significant mitigation measure that the Final EIR has ignored in utilizing only "similar" house sizes in the two alternatives analyzed. It is noted that the average proposed house size in Alternative 1 is 6,890 square feet and in Alternative 2 is 7,694 square feet, while according to the Draft EIR a survey of the house sizes in the immediately adjacent Hill Haven subdivision indicated existing homes range from approximately 2,500 to 5,000 square feet with more in the 3,000 to 4,000 square foot range, or roughly one half the size of the proposed homes analyzed in the Final EIR.
2. **Health and Safety Issues.** There are significant deficiencies in the analysis and response to comments related to three particular health and safety related issues:
 - A. **The temporary construction road.** Insufficient information has been provided in the response to comments to fully evaluate the safety of the 25 percent grade, heavily grooved concrete temporary construction road proposed to be installed atop a ridgeline and the potential hazards that heavy construction traffic utilizing it could cause to traffic, bicyclists especially, on Paradise Drive

beyond the property frontage section of Paradise Drive recommended to be widened by the Department of Public Works.

- B. Providing adequate water pressure for fire prevention. The EIR indicates that up to 20 of the homes will not have adequate water flow for fire protection (1,500 gallons per minute). The recommended mitigation measure is to EITHER increase the fire flow or reduce the size of some of the homes to 3,600 square feet. There is no indication of what might be involved in increasing the fire flow, such as requiring individual on-site water storage tanks, and what the impacts of this option to comply with the mitigation measure might be.
 - C. Landslide repair. The EIR contains a relatively detailed description of the proposed landslide repair, and it appears all landslides would be repaired to within 100 feet of any residence. Many of the landslide areas are located below proposed homes, and while the area within 100 feet of the home may be re-engineered fill, the area below that (often on very steep hillsides) is proposed to be left in its current unstable condition. The EIR contains insufficient information as to what the impacts would be and how access would be gained to the unstabilized portion of a landslide area located downhill from a home, if it begins to slide.
- 3. **Utilization of Temporary Construction Road.** While it may be technically feasible for construction vehicles to use the temporary construction road, there is insufficient information to evaluate how realistic the fundamental assumption in the EIR really is that ALL construction related traffic for 10 to 20 years will actually utilize it and what the traffic impacts might be, especially in the adjacent Hall Haven neighborhood, if that doesn't happen.
 - 4. **Landslide Repair Site Disturbance.** Insufficient detail has been provided in the analysis and response to comments to fully evaluate the potential impacts of the mitigations related to landslide repair, including in particular excavation and other work beyond the actual footprints of the slides required for associated benching, keying, retaining walls, and drainage facilities, and the extent to which this work could impact site biologic resources.
 - 5. **Traffic.** The response to comments does not adequately address the analysis of traffic impacts from the proposed project. Specifically, the traffic analysis was based solely on the peak hours for commuter traffic and does not include an analysis of the impacts during the other important local peak traffic period - that caused by school-related traffic. This information is critical for both the general public and the decision makers to fully understand the traffic impacts of the proposed project.
 - 6. **Property Owners Association Responsibility.** Several mitigation measures, as well as the resource conservation plan and the ongoing maintenance of open space trails, rely exclusively or heavily on a future Property Owners Association for implementation. The complexity of these tasks would pose a significant and potentially unrealistic financial and liability burden on the Property Owners Association that could potentially compromise the implementation of the

mitigation measures. The EIR fails to adequately address this possibility and the potential impacts.

7. **Water Tank/MERA site.** Insufficient detail has been provided in the response to comments to evaluate the potentially significant impacts (i.e., visual, grading, and access) that would result from the mitigation measure that calls for raising the water tank pad elevation from 580 to 590 feet and from expanding the site to accommodate addition of the MERA facilities.
8. **Kyle Cove Spring.** Insufficient detail has been provided in the response to comments regarding the impacts to the Kyle Cove spring, with respect to both the effects on the habitat of the red legged frog and the effects to the Kyle Cove property pond and the historic gardens.
9. **Tree Removal.** Both the response to comments and the alternatives analysis provide insufficient detail with respect to the significant tree removal proposed and a range of potential possibilities for tree replacement or other mitigation measures, including a reduction of tree removal that could occur as a result of a reduction in house sizes.

For the above reasons, the Planning Commission concluded that the current Final EIR does not provide adequate information for informed decision making by the Commission and Board of Supervisors on the merits of the Easton Point application. As a result, we do not consider the Final EIR ready for certification by the Board of Supervisors.

Sincerely,



Wade B. Holland, Chair
Marin County Planning Commission

cc: Marin County Board of Supervisors

INTER-OFFICE MEMORANDUM

DEPARTMENT OF PUBLIC WORKS

DATE: July 29, 2013

TO: Curtis Havel, CDA- Planning

FROM: Richard Simonitch, DPW- LU & WR

For: Berenice Davidson, DPW- LU & WR

RE: **FEIR for 2008 Easton Point Project SCH #2009012010**
DPW Comments

MESSAGE:

We recommend the following changes to address inconsistent language in several locations in the document, and to address the potential raising of the water tank discussed on Page 76.

Page 55, revise to read:

Mitigation Measure 5.7-1(b) In order to reduce the significant emergency radio coverage impacts at lower elevations on the project site, the applicant shall prepare an emergency radio coverage improvement plan and access easements, subject to approval of County Department of Public Works Operations Officer for MERA that shows acceptable emergency radio coverage can be provided for Lots 21 through 23 and Lots 25 through 34 and coverage along Paradise Drive for emergency response units travelling to those lots, prior to recordation of the final subdivision map. Upon approval by County Department of Public Works Operations Officer for MERA and prior to issuance of first grading or building permit, the applicant shall construct all required communications equipment, including a 10 by 18 foot equipment building, a 45 KW emergency generator and fuel tank, a 65 foot antenna support structure capable of supporting two-six foot microwave dish antennas and three-two way radio whip antennas. These facilities shall be located on a parcel adjacent to the proposed water tank ***Parcel C at elevation 580 with an airspace easement over Parcel C at elevation 630; or a base elevation of 590, or a 75-foot antenna structure, either option also providing an airspace easement over Parcel C at elevation 640.*** A free and unobstructed access (***20' side access easement and 12-foot paved road***) to the base station site shall be provided from Paradise Drive, or any other feasible access alternative.

Page 58, revise to read:

However, in order to include areas along Paradise Drive that lead from Tiburon Fire Stations and surrounding jurisdictions, it is required ***to implement revised Mitigation Measure 5.7-1(b), see Response to Comment 1-1.*** ~~that prior to issuance of first grading or building permit, the applicant shall provide all required communications equipment, including a 10 by 18 foot equipment building, a 45 KW emergency generator and fuel tank, a 65 foot antenna support structure capable of supporting two six foot microwave dish antennas and three two way radio whip antennas, adjacent to or on the proposed water tank Parcel C.~~

Page 58 and 59 revised to read:

Mitigation Measure 5.7-1(b) See Response to Comment 1-1. In order to reduce the significant emergency radio coverage impacts

at lower elevations on the project site, the applicant shall prepare an emergency radio coverage improvement plan, subject to approval of director of County Department of Public Works (Operations Officer for MERA) that shows adequate emergency radio coverage can be provided for Lots 21 through 23 and Lots 25 through 34. Upon approval and prior to issuance of first grading or building permit, applicant shall build an 65-foot high antenna support structure on or adjacent to Parcel C with three dishes eight foot wide each. The improvement plan shall clearly show that adequate emergency radio coverage can be provided for Lots 21 through 23 and Lots 25 through 34. The improvement plan shall be prepared in cooperation with the MERA for the review and approval of director of County Department of Public Works (Operations Officer for

MERA). One possible method to provide the necessary radio coverage would include the following:

Locate a nNew emergency radio facility □□□ □□□□ □□□□□□□□□□ □□□ □□□□ □□□□□□□□□□ □□□□□□□□ □□□□□□□□□□

Water Tank. The facility could be located either on the project site or possibly on the water tank site with MMWD permission. The facility design might consist of a new tapered monopole as high as the existing water tank with the two antennae extending above the tank. There would also be one microwave dish, a small radio building (approximately ten feet by 18 feet) and an emergency generators shall be located on or adjacent to proposed Parcel C as shown in Exhibit 9.0-2. The applicant shall provide a free and unlimited access to the base station site from Paradise Drive, or any other feasible access alternative. Upon approval by County Department of Public Works Operations Officer for MERA and prior to issuance of first grading or building permit, applicant shall provide on or adjacent to proposed Parcel C, all required communications equipment, including a 10 by 18 foot equipment building, a 45 KW emergency generator and fuel tank, a 65 foot antenna support structure capable of supporting two six foot microwave dish antennas and three two way radio whip antennas.

Page 60 revised to read:

Mitigation Measure 6.7-1(b) In order to reduce the significant lack of emergency radio coverage at the lower

elevations of the project site, and the lack of emergency radio coverage along portions of Paradise Drive between the Tiburon Fire Stations and fire stations in surrounding communities and the project site, **implement Mitigation Measure 5.7-1(b)**. it is required by the County Department of Public Works Operations Officer for

MERA that prior to issuance of first grading or building permit, the applicant shall on or adjacent to Parcel C, provide all required communications equipment, including a 10 by 18 foot equipment building, a 45 KW emergency generator and fuel tank, a 65 foot antenna support structure capable of supporting two six foot microwave dish antennas and three two way radio whip antennas. The applicant shall also provide free and unlimited access to the base station site from Paradise Drive, or any other feasible access alternative.

END

Curtis Havel, Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive Room #308
San Rafael, CA 94903



July 26, 2013

RE: MCL Comments on the Easton Point FEIR

Dear Mr. Havel:

The Marin Conservation League has followed efforts to develop the Easton Pt. property and previous environmental documents related to this project for decades. The 2011 DEIR made clear the many serious constraints to development of this visually prominent area on and adjacent to the ridgeline, with its steep and heavily wooded slopes underlain with 28 landslides, and suggested a broad array of mitigation measures intended to reduce significant impacts. MCL found numerous deficiencies in the DEIR and submitted them for consideration and response in the FEIR. We have read the FEIR and find that it fails to resolve many of the issues we raised, and that it raises several new issues. In summary:

- The FEIR is inadequate to support the determination that Alternative 2 is Environmentally Superior;
- Deferring environmental review of development of the Remainder Parcel under Alternative 2 is improper because it does not provide full disclosure of the impacts of that Alternative;
- The FEIR does not provide enough specific data on size (of lots, homes, etc.) to comparatively evaluate either Alternative 3 or 4. With more specific data we believe that either of these could be an Environmentally Superior alternative;
- As a "Health and Safety" issue, access by construction vehicles through Old Tiburon and Hill Haven or over Paradise Road over an extended, indeterminate construction period poses significant safety impacts that cannot be mitigated;
- Proposed mitigation measures that would require redesign may not be feasible and result in new significant unmitigable impacts and/or secondary impacts that have not been analyzed;
- Other potentially significant impacts of the project have been either ignored entirely, or mitigated by measures of questionable feasibility.

For reference, footnotes include explicit language in the DEIR or FEIR.

1. On Its Face, the FEIR Fails to Include Alternatives That Would "Substantially Lessen the Significant Effects of the Project"

"CEQA directs EIRs to analyze a reasonable range of alternatives to the project or project location which would feasibly attain most of the basic project objectives *but would avoid or substantially lessen any of the significant effects of the project.*" (FEIR p. 559; p. 565 online) The FEIR does not do this because it does not consider any alternative (other than "no project") that would *substantially* lessen the impacts of the project. A table comparing the effects of the

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selected alternatives (Ex. 6.0-43, DEIR p. 708, p. 731 online) indicates that the impacts of all of the alternatives would be the same. The table indicates that the effects in certain categories would be “greater” and “lesser” within the significance rating assigned under different resource topics; however, no explanation or quantification is given to explain what is meant by greater or lesser. The table leads to the conclusion that the FEIR failed to consider *any* alternative (other than “no project”) that would “substantially lessen the significant effects of the project,” and therefore fails to comply with CEQA. This inadequacy is reflected by published comments of John Roberto, the County’s CEQA consultant, (as quoted in the Marin Independent Journal (7/4/13, p. 3-4)), that the difference between alternatives “is marginal. The lower density plan [Alt 2] is environmentally superior, but marginally.” CEQA requires consideration of substantially different alternatives, not marginally different ones.

2. Deferring environmental review of development of the Remainder Parcel under Alternative 2 does not provide full disclosure of the impacts of Alternative 2

Alternative 2 would create a 10.74 acre “Remainder Parcel” that has the same potential for development as all the other lots. It would be located in an area contiguous with the Upland Nature Preserve, which would remain protected Open Space in all other alternatives. For purposes of the both the draft and final EIR, the Remainder Parcel is treated as a separate parcel, subject to its own environmental review and approvals¹, although it covers almost 10 percent of the land area of the entire project site. The FEIR acknowledges lack of information for the Remainder Parcel in Alternative 2 as compared to other lots. Future impacts (tree loss, grading, visual, infrastructure, habitat loss, etc.) were not fully factored into the comparisons that led to the choice of Alternative 2 as the environmentally superior alternative.

The Remainder Parcel has a guaranteed allowable 15,000 square feet (sf) of structures, according to the applicant’s provisions, unless inadequate fireflow requires a reduction in sf. Access is difficult (the driveway is estimated at 21 percent grade), utility connections (especially water for residential use and fireflow) present a challenge and may not be feasible. *Data comparable to development of other project lots should be provided to allow for proper impact assessment, and the adequacy of fireflow and provision of sewer and water should be addressed. These are basic health and safety issues.*

3. The FEIR does not provide enough specific data on size (of lots, homes, etc.) to evaluate the comparative impacts of either Alternative 3 or 4 as a possible Environmentally Superior Alternative

The EIR asserts that it does not have to provide many details for Alternatives 3 and 4 to assess

¹FEIR p. 108 (p. 114 online) Response 7-29. “Development of the Remainder Parcel would be subject to its own environmental review... **Due to lack of information at this time** [for Remainder lot development]... The Design Review process may require preparation of an Initial Study leading to a Negative Declaration, an addendum to this EIR, a supplement to this EIR or a subsequent EIR.”

FEIR p. 104, (p. 110 online) The EIR acknowledges that if the Remainder Parcel is developed, it would be necessary to completely repair Landslide 23 A repair plan for Landslide 23 has not been prepared. Based its size and geology Landslide 23 stabilization is estimated to involve approximately 6,500 cubic yards of excavated material.

DEIR p. 657 (p. 680 online) Re Alt 2: Though woodlands outside the building and landscaping envelopes are designated on the Remainder Lot as Natural Areas that are to remain undifferentiated from the surrounding preserved habitat of Parcel A, there is no provision made for access to these privately-owned Natural Areas to monitor these areas and ensure that they are not impacted over time by individual lot owners.

and compare impacts. This is incorrect. Without information as to lot, house, residential use and private open space sizes, one cannot fairly compare a variety of impacts related to habitat loss and fragmentation, grading for structure construction, construction time length and traffic concurrent with house development (including associated safety, noise, air quality issues), and necessary slide repair. The impact degree of significance correlates with the size of these areas.

a. Lot Size. No explicit lot sizes are given for Alternatives 3 and 4, except that lots are “at least” 0.5 acres (to meet the terms of the Stipulated Judgment) and are “substantially smaller” than for the Project and Alternative 2 (DEIR p. 17, 1st bullet; p 27 online. FEIR, response 7-1, p.102; p. 108 online). As a consequence, the FEIR lacks meaningful data to comparatively assess impacts. If the Judgment-mandated half-acre is used (as it should be to minimize impacts), 43 lots would cover 21.5 acres for each of Alternatives 3 and 4. In contrast, the Project’s 43 lots cover 49.61 acres and Alternate 2’s 32 lots cover even more at 50.54 acres. With half acre lots, total acreage for each of Alternatives 3 and 4 development would be *less than half the total acreage* of lots for each of the Project and Alternative 2. Lots totaling half the size of the project or Alternative 2 would likely reduce the required area of slide repair (slides are repaired only for a distance of 100’ from lots, and reduced lot coverage might avoid some slide areas) and thus also reduce the number of retention structures.

In its assessment of the environmentally superior alternative, the DEIR concludes: “Although the significant impacts associated with *Alternative 2* would be similar to the proposed project, the reduced number of housing units (32 versus 43) would result in less disturbance to the project site and thus reduce the degree of several impacts (DEIR, p. 17 bottom para.; p. 27 online). It follows that if Alternatives 3 and 4 had the minimal-sized half-acre lots, they would cover less than half the acreage of the Project and Alternative 2, surely reducing site disturbance and generating a different Environmentally Superior Alternative. (In addition, we cannot understand the conclusion, in light of tables in the FEIR (Ex. 3.0-10 & Ex. 6.07) which demonstrate that Alternative 2 is associated with 75% more cut and 25% more fill than the project.)

b. House Size. Smaller houses *should be factored into Alternatives 3 and 4*. The FEIR should provide an alternative with smaller houses, consistent with the neighborhood average, on half acre lots, to properly assess the environmentally superior plan. The FEIR states that house sizes for Alternatives 3 and 4 are “similar” to the other alternatives (FEIR Response 7-1, p. 102; p. 108 online). Why should these alternatives use smaller lots, but not smaller houses? Using “similar” house sizes is unnecessary and inappropriate. (The Judgment, while specifying minimum half acre lots, is silent as to house size). Alternatives 3 and 4 were supposedly designed to reduce visual and biological impacts, respectively. Smaller houses also help to achieve these and other impact reductions. In some locations at least, it seems likely that the large house sizes proposed for the project might not even be buildable on steep half acre lots.

The Project proposes a total of 296,300 sf for its units (averaging 6,890 sf each) and Alternative 2 has a total of 246,200 sf (averaging 7,694 sf). If Alternatives 3 and 4 units were limited to 4,000 sf each (which is larger than the neighborhood average),² this would result in 172,000 sf

²DEIR, p. 56 +(p. 67+ online). A survey of house sizes [in Hill Haven] shows that houses range from approximately 2,500- to 5,000 sf, with more homes in the 3,000- to 4,000 sf range. The higher density Lyford Cove / Old Tiburon neighborhood is developed with one-, two-, and multi-unit structures on smaller lots that vary in size but are typically closer to 10,000 sf lots than found in other nearby neighborhoods. House sizes in the Lyford Cove / Old Tiburon neighborhood range from 1,500- to 4,500 sf, with more homes in the 2,000- to 3,000 sf range.

of structures. Because the unit size totals for Alternatives 3 and 4 under this scenario would be just over 30 percent smaller than for Alternative 2 (and 40 percent smaller than for the Project), one could expect further reduction of impacts from structures and construction associated grading, noise, dust, traffic, visual impacts, impervious surface and runoff.

In addition, if some building heights are reduced (consistent with County policy), houses of greater square footage will necessarily have larger footprints, further increasing grading and associated impacts. The bottom line is that bigger houses with bigger "Residential Building Envelopes" will result in the need for more off-haul, more construction traffic, longer construction time, more noise, dust, etc. Units with bigger footprints are also likely to result in more impermeable surfaces and greater run-off. The DEIR provides only a limited assessment (primarily visual) of actual house development impacts. The failure to provide one or more alternatives with reduced house size does not give a fair, or real life, evaluation of possible means to reduce impacts.

c. Residential Building Envelopes. Smaller houses on smaller lots would have smaller Residential Building Envelopes, used for the primary residence, as well as "...garages and guest houses, other accessory uses such as pools, cabanas, gazebos, decks, patios, sports courts and swing sets..." (DEIR, p. 553; p. 576 online) further reducing visual impacts.

d. Private Open Space ["Private OS"]. The applicant says that 35 acres in the 43 unit project are "natural" or "private open space" (terms used interchangeably) areas. There is no information on the size of similar areas for Alternative 2, although it is noted that they exist on 25 of its 32 lots (DEIR, p. 554 & 556; p. 577 & 579 online). A 10/09 Easton Pt. Lot Data Plan Comparison between the 43 unit and 32 unit plans, as then proposed, shows that Alternative 2's "designated Natural Area" for all lots total 23.25 acres. So, for the Project and Alternative 2, these Private OS areas (*not* including the residential use areas and building envelopes) total **more than the total lot coverage** for 43 half-acre lots. The EIR explicitly acknowledges that habitat values in these private open space areas will be degraded over time.³ So, because of the greater acreage in the Project and Alternative 2's Private OS, considerably more habitat is at risk for loss and/or fragmentation than is possible for the smaller lots of Alternatives 3 and 4. *Alternatives with specified smaller houses and half acre lots should be analyzed and their*

³DEIR p. 427 (p. 446 online) "...while these private open space areas would retain a modest species richness and diversity, it is expected to decline compared with existing conditions. These types of decreases are well accepted in the conservation biology field because numerous examples exist to support this assumption. Thus, any remaining fragments of undeveloped habitat -- particularly the coast live oak woodlands contained on lots' private use areas may be isolated from larger areas of contiguous habitat and would be expected to have lower biological values than those prevailing before development."

DEIR p. 659 (p. 682 online) With Alternative 2, 5.59 acres (49.4 percent) of serpentine bunchgrass habitat would occur within the individual lots. Although some of this habitat occurs within lot areas designated under Alternative 2 as Natural Areas, it is considered likely that such habitat would be substantially altered or completely lost as a result of project implementation or use of these areas by individual property owners over time. As discussed for the proposed project, the EIR biologists are aware of very few examples where a sensitive habitat has been adequately protected in this manner.

DEIR p. 426 (p.445 online) "It is not clear to what extent residents would remove trees within the building sites and private use areas of their individual lots" [It appears that this tree loss is not included in the 724 estimated trees lost to project development.]

impact reductions should be factored into the Environmentally Superior Alternative analysis.

4. As a “Health and Safety” issue, construction vehicle access via available routes over a prolonged construction period poses significant safety impacts that cannot be mitigated.

According to the 2007 Judgment, the development is guaranteed a minimum of 43 units on at least half-acre lots, *unless there are health and safety issues that affect this guarantee*. Most project access routes are unsafe, including the “temporary” construction road. *There is no way to make access through Old Tiburon/Hill Haven safe*. These roads are unsafe due to lack of sidewalks, narrow roads, and constricted turning radii, inadequate sight lines, inability of two vehicles to pass in opposite directions, and danger to pedestrians (DEIR p. 252; p. 266 online & p. 255; p. 269 online).

Questions persist about the safety of the new construction road with a 25 percent grade for use by heavy delivery and cement trucks and independent contractors. Written comments by the Tiburon Fire Department explicitly state (in conflict with DEIR conclusions) that this proposed construction road would “create a safety hazard” (FEIR, p. 16; p. 22 online)⁴. In addition, there is no assurance that use of this construction road for all construction related vehicles can be enforced.

The DEIR also confirms safety issues for Paradise Dr. due to narrow lanes, lack of shoulders, steep drop-offs, cyclists for whom this is a highly popular, premium route, and inadequate sight lines at the Forest Glen entry. The FEIR attempts to rationalize reduced road widening along portions of Paradise Dr. because the Swahn property (2800 Paradise Dr., directly across the road from a portion of the Project) approval includes some road widening. This undeveloped property is currently on the market for \$39 million. There is no assurance of when, if ever, development will occur. The EIR must revise the current mitigation to assure proper road widening, by requiring it of the Project, if the Swahn development is not actively moving forward at some specific time early in the Easton Pt. development process. Without such assurance, traffic safety issues must be addressed for this portion of the project road frontage.

Although some of these are existing conditions, site grading, installation of infrastructure, construction of residences taking place over many years, plus a significant increase in new resident and associated service vehicles traffic, will greatly exacerbate an already dangerous situation. Nothing meaningful can be done to reduce impacts of access through the Old Tiburon/Hill Haven area, but the Paradise Drive access and associated Forest Glen Court road could be improved to meet current safety standards. Limiting project access to Forest Glen Court, and possibly other proposed Paradise Dr. access points, would necessarily mean reducing the number of units. This is the only way to resolve this significant health and safety issue. Findings of overriding consideration cannot be made where existing and future residents’ safety is an issue.

⁴ FEIR, p. 16, (p. 22 online). *The construction road would remain a potential safety hazard for users of the road, as it would not be in compliance with Tiburon Fire Protection District (TFPD) or Marin County standards for roads, and would be considered unsafe for use by public or TFPD vehicles. The TFPD has noted that requiring construction vehicles delivering heavy construction materials to use the construction access road with the proposed steep grades would create a safety hazard.*

5. Mitigation measures involving redesign that may have one or more significant effects in addition to those caused by the project have not been analyzed

A number of mitigation measures in both the DEIR and FEIR require Project redesign. There is some assessment of the secondary effects of these mitigations, but not for all. As a result, there is no way to know what the project layout actually is or what additional impacts might be created. The possible impacts of each of the redesigns to avoid a sensitive resource, as outlined below, need to be considered and feasible mitigation identified. As the FEIR now stands, these mitigation measures are left unresolved. Without further detail, the scope and feasibility of these mitigation measures cannot be predicted, and without such assurance, significant impacts become unavoidable and require findings as such:

- DEIR p. 34 (p. 44 online) **Mitigation 5.6-1(a)** Redesign the PDP site plan to preserve on-site populations of Marin dwarf flax and serpentine reed grass within Parcel A or Parcel B... DEIR, p. 436 (p. 455 online): The only feasible mitigation to reduce impacts [to Marin Dwarf Flax] to a less-than-significant level would be to redesign the PDP site plan either to greatly reduce both direct and indirect impacts or eliminate impacts altogether.
- DEIR, p. 658 (p. 681 online) **Mitigation 6.6-2(a) & (b)** which require avoidance of CRLF dispersal movements by redesigning the PDP in the Forest Glen area and to provide connectivity via a minimum 100-foot wide woodland corridor between all on-site and off-site woodland and drainage habitats and known CRLF breeding habitat at Keil Pond. (This mitigation does allow substitute mitigation if redesign is not feasible, including purchase of restoration credits. See FEIR, Response 15-7, p.184; p.190 online) [Note that DEIR mitigation 6.6-2 on p. 658 is mitigation 5.6-2 on p. 35].
- DEIR p.36 (p. 46 online) **Mitigation 5.6-3(a)**. Requires the PDP be redesigned to preserve serpentine bunchgrass habitat within Parcels A and/or B. DEIR, p. 444 (p. 463 online): "...as discussed above, no other feasible measure (such as the purchase and preservation of off-site habitat or the creation of compensatory habitat on-site) is available as an alternative to Mitigation Measure 5.6-3(a) which would provide a comparable level of mitigation. Therefore, if Mitigation Measures 5.6-3(b) through 5.6-3(d) are implemented in the absence of 5.6-3(a), while impacts to native serpentine bunchgrass habitat would be reduced (as a result of the elimination or reduction of indirect impacts and the in perpetuity preservation and management of remaining preserved habitat via the RMP), they would not be reduced to a less-than-significant level and this would be a significant unavoidable impact." [Note that Mitigation 5.6-3 on p. 35 is Mitigation 6.6-3(a) in DEIR p. 589; p. 682 online]
- DEIR, top bullet, p. 607; (p. 630 online) **Mitigation 6.1-11**. In order to create and maintain safe access intersections along Forest Glen Court, combine or redesign access drives to Lots 27 and 28 and Lots 32 and 33 to avoid driveways located along unsafe "blind" curves, per MCC Sections 24.04.060 (b), and (c).
- DEIR p. 661 (p. 684 online) Mitigation **6.6-4(a)** Redesign *Alternative 2* to preserve coast live oak woodland habitat within Parcel A at a minimum 3:1 preservation:loss

ratio. ... should redesigning *Alternative 2* to achieve a preservation:loss ratio of 3:1 be determined not feasible, Mitigation Measures 6.6-4(b) and (c) would not be adequate to reduce impacts to coast live oak woodland to a less-than-significant level and would result in a significant unavoidable impact.

6. A number of critical mitigations are of questionable feasibility, raising questions about the accuracy of significant impact assessment in the EIR.

When so many critical mitigations are potentially infeasible, then the EIR conclusions that they will reduce significant impacts to less-than-significant levels lack adequate support. This level of uncertainty is not acceptable.

Moreover, the FEIR explicitly states that a number of mitigations may *not* be feasible and, if not, their associated impacts would be significant and unavoidable. Others are of questionable feasibility. Besides the possibly infeasible redesign mitigations above, other likely infeasible mitigations include:

a. Resource Management Plan. There is the highly technical Resource Management Plan, the implementation of which would reduce the significance of many identified impacts. The RMP addresses *all* sensitive habitats in OS Parcels A & B, ensures preservation and management of Red legged frog habitat *forever*, preserves and manages Parcel A's wetland and drainages, monitors and manages non-natives, implements a fire management plan, and provides inspections and maintenance for a landslide stabilization program in perpetuity, among other tasks. In the absence of a public agency or similar entity to be responsible for this RMP, it is proposed that the Property Owner's Association be assigned responsibility.⁵ The EIR says the POA is unlikely to be an effective manager. What is the likelihood that this Plan is actually going to achieve intended impact reduction— *is it feasible?*

b. The Keil Spring mitigation to resolve its destruction appears to be infeasible.

c. Fireflow. FEIR p. 94 (p. 100 online) Response 6-18: "The preliminary water feasibility analysis demonstrates that up to 20 proposed lots **would not meet the minimum fire flow**

⁵FEIR p. 185 (p. 191 online) Response 15-11 *The POA would be responsible for ensuring that all requirements of the RMP are carried out for these areas should they retain ownership.*

DEIR p. 426 (p. 446 online) *"Most property owners associations (as the responsible entity) are ill-equipped to ensure that endangered plants or sensitive habitats are properly monitored or managed. Association board members usually are elected by project residents and have a fiduciary responsibility to the residents. As political and / or economic positions change, there is no guarantee or incentive that over the years the concerns of monitoring or managing these areas in perpetuity would continue to have a high priority. For these reasons and because few examples to the contrary exist, this EIR assumes the worst case for analysis purposes -- that implementation of the PDP would seriously compromise the value of serpentine grasslands and the size and distribution of the Marin dwarf flax."*

FEIR p. 183 (p. 189 online) *"Mitigation Measure 5.6-1 sets forth requiring a fully funded RMP developed in consultation with the County and all appropriate resource agencies; which sets forth minimum monitoring, management and reporting requirements, etc., would provide assurances that these areas would be managed and maintained in perpetuity regardless of whether the MCOSD, another conservation organization, or the POA retains ownership. If the POA retains responsibility for management of respective resources it is likely that the responsibility would be added to the CC&Rs. In addition Marin County would be required to be a named third party beneficiary with the right, but not the legal obligation to enforce the CC&Rs."* [note that 6.6-1(b) on DEIR p. 656 (p. 679 online) is the same as FEIR 5.6-1(b)]

requirement of 1,500 gallons per minute (gpm), a **significant impact**. Mitigation Measure 5.7-8 would reduce this impact by either increasing the fire flow to lots 21-23 or designing buildings with a maximum size of 3,600 square feet to comply with available fire flow. It is reasonable to **question the feasibility** of this mitigation, as the commentor does." Thus, the FEIR itself appears to acknowledge that the proposed mitigation measure is likely not feasible. This is an important potential "health and safety" issue that is left unresolved.

d. Financial Feasibility. A number of mitigations require long term management and oversight. Many of these are folded into a "Resource Management Plan" to be executed by a Property Owners Association. Despite lip service to a funding mechanism [that] would include the establishment by the applicant of a non-wasting endowment, funded by the applicant and/or through POA fees" experience shows the impracticality of relying long term on the collection of monthly POA fees as a source of revenue. This would be especially true where the amount is substantial .

7. Other potentially significant impacts of the project that are not fully addressed:

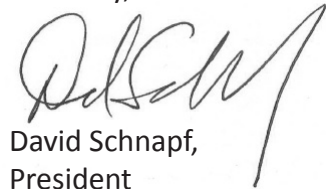
a. Detention systems. FEIR, Page 308 (p. 314 online) Response 22-33 states that road-based and lot-based detention systems and outfall would operate independently of each other. Runoff would be collected and detained in subsurface structures before being discharged at pre-project rates to points downslope of the capture zones. Will this discharge system require power to operate, e.g., to release run-off at certain rates? Would it be affected by power failures, and, if so, would there be a back-up system (generator)? Are there any secondary impacts associated with the installation and use of detention systems? How does capacity/size differ for Alternative 2's larger houses? Are there any additional impacts associated with larger capacity detention systems? These questions need to be answered.

b. Railroad Marsh FEIR, Response 22-33, p. 308 (p. 314 online); DEIR p. 260 (p. 275 online), p. 392 (p. 410 online), p. 394 (p. 412 online). It would appear that dewatering could result in less water entering Railroad Marsh in dry months and more water (ground water being converted to surface water due to landslide repair, more impermeable surfaces directing water into drainages) at a possibly greater rate than pre-project. The impacts from more and less water than the historical seasonal amounts should be assessed and addressed.

c. Construction Fire Hazard. The potential impact of fire hazard during the construction period, especially infrastructure construction, is not addressed. The woodlands areas where there is proposed development and the installation of a "construction road" are at extreme risk. This issue should be explicitly addressed in the FEIR and mitigations to address it identified. Who would bear responsibility for a construction related wild land fire? How would such responsibility be funded?

Thank you for this opportunity to comment on the Final EIR.

Sincerely,



David Schnapf,
President

From: Jerry Riessen <j.riessen@comcast.net>
Date: July 20, 2013 3:59:44 PM PDT
To: envplanning@marincounty.org
Bcc: Randy Greenberg <rgreenberg11@gmail.com>, Erica Williams <ericafwilliams@gmail.com>, Jon Welner <jwelner@JMBM.com>
Subject: Martha (Easton Point) EIR conflict

The Martha DEIR says the water tank pad elevation is 580' but Mitigation Measure 5.7-7, p 474, proposes to work with MMWD to raise the pad elevation to 590'. 580' elevation appears to be the maximum height on the Martha property. None of these facilities may be built on the public open space.

Master Response 7, p 31 of the FEIR, proposes a MERA pad at elevation 580'. P 32 shows the MERA pad and the water tank pad at 580'.

Question: What is the pad elevation for the water tank pad? Is any height increase still being considered?

Question: Exhibit 9.0-2, p 32 of the FEIR, seems to show a jog (near elevation contour 590') in the property line with Old St Hilary's Open Space. Why? Is there a setback requirement? Is there proper room for any fencing or vegetation that may be required for the water tank or the MERA facility? How will the MERA tower be safely separated from humans on the open space?

Jerry Riessen

TIBURON OPEN SPACE COMMITTEE
(Formerly Last Chance Committee)

July 29, 2013

Curtis Havel, Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903
chavel@marincounty.org
envplanning@marincounty.org

Re: 2008 Easton Point Residential Development Final EIR

Dear Mr. Havel:

I am writing to submit my written comments on the Final Environmental Impact Report (FEIR) for the 2008 Easton Point Residential Development Project. I have lived in Tiburon for over 40 years, and I am the President of Tiburon Open Space, a local group whose charter is to protect open space on the Tiburon Peninsula. As outlined in my written comments on the Draft Environmental Impact Report (DEIR), submitted on April 26, 2011, I am very concerned about the impacts this project will have on my community and on local open space areas. I believe the FEIR is fundamentally flawed and, as set forth below, fails to adequately address the concerns raised in my 2011 submission. Because of these deficiencies, the FEIR must not be certified.

Site Access

Located on a beautiful site along a pristine ridge, the Easton Point project appears at first glance to be a developer's dream. In reality, however, it is a developer's nightmare involving a site that is inaccessible and prone to landslides, and a community whose existing infrastructure is already overburdened by development and unable to safely withstand the project's significant impacts.

Site access is a big problem. The FEIR presents a Sophie's Choice of two evils with regard to construction vehicle access: (a) via a single-lane construction road from Paradise Drive up a steep (25%) grade to the project site for the duration of development, or (b) via this road for 10 years and then via old narrow roads in the adjacent Hill Haven and Old Tiburon neighborhoods for the remainder of development.

Neither of these options is acceptable, and both present serious safety impacts, which the FEIR has not adequately addressed. These impacts will be felt for 10, 15, or even 20 years as 43 very

large homes (in the case of Alternative 1) or 32 extremely large homes (in the case of Alternative 2) are constructed.

Construction Traffic Safety

The FEIR fails to address the serious safety impacts that construction traffic will have on the proposed construction road, adjacent neighborhood roads, and Paradise Drive. These safety impacts pose a substantial and protracted burden on the community.

The construction access road, proposed to be a single-lane road up a very steep grade, is so dangerous that the Tiburon Fire Department has deemed it unsafe for use, and the County's own traffic consultant has called for a crash bunker to protect construction workers and existing houses from errant vehicles. Over a 20-year period, there most certainly will be accidents on this road, especially during rainstorms when contractor trucks with muddy tires and poor brakes are unable to navigate such a steep grade. The FEIR lists how to make the construction road safer. It never says the road will be safe for contractors and it never describes a construction road that lasted 20 years. (FEIR, p 13, Master Response 2.) The Tiburon Fire Department has confirmed that the road is still unsafe for fire prevention use.

The construction road is unsafe for workers and for drivers along its access point at Paradise Drive. The FEIR totally ignores a related issue: 10 to 20 years of very unsafe trail conditions due to construction traffic near public trails. The construction road poses risks to pedestrians and others using nearby open space trails.

Under Alternative 2, the proposed construction road would be used for 10 years after the signing of the Development Agreement (8 years after infrastructure construction), at which point home construction traffic would access the site via the roads of neighboring Hill Haven and Old Tiburon. Moreover, construction traffic presumably will need to use these roads to build the proposed construction road. (See FEIR, p. 206, ignoring Comment 16-34.) As acknowledged in the FEIR, Hill Haven and Old Town streets are old, narrow, and totally unsafe for heavy construction traffic such as graders and cement trucks, and they are not able to safely accommodate these vehicles nor all of the contractor vehicles that would be required for a 32- or 43-lot development project occurring over a 10- to 20-year period. (FEIR, p. 18, Master Response 2.) Yet the FEIR offers no real mitigations to make these narrow roads safe for construction traffic. Where does the FEIR say Old Tiburon roads can be made safe? Mitigations that discuss moving dumpsters sound like moving Titanic deck chairs.

Paradise Drive is similarly unsafe for construction traffic. Running along the eastern side of the Tiburon Peninsula, Paradise Drive is a narrow and winding two-lane road that is used by cars, local pedestrians, and scores of bicyclists on a daily basis. Under Alternative 2, Paradise Drive would be used for construction traffic for at least 10 years. Under Alternative 1, that use would be much longer – potentially for up to 20 years! Large construction vehicles driving along this road every day for a period of 10 to 20 years would render this road seriously unsafe, and would

put cyclists and drivers at great risk. The FEIR fails to address left turns onto the construction road from Paradise Drive, which will pose a big risk to cyclists.

How can the applicant be certain to have adequate individuals, for 20 years, protecting the 1) large vehicles on Paradise Drive, 2) two entrances to the site on Paradise Drive, 3) the construction road (top and bottom) and 4) the entrance to the site via Hill Haven and Old Tiburon? Who will monitor those critical individuals? Saying that Tiburon will review traffic issues is cold comfort when no real solutions are presented.

Finally, while the FEIR estimates that construction traffic during the home construction phase of development will consist of only a few truck trips per day, this flies in the face of experience. (FEIR, p. 18, Master Response 2.) Any experienced developer knows that home construction produces closer to 10 truck trips per day per house. This flaw must be studied and corrected.

These traffic safety issues must be addressed, and the FEIR recirculated.

Further Studies Required

Instead of a Sophie's Choice of two terrible options, the only proper alternative is to lessen construction traffic and the consequent safety dangers by building 43 houses that are smaller in size than those proposed by the applicant (e.g., 4,000 sq. ft. on ½ acre lots versus the proposed 6890 sq. ft. or 7,693 sq. ft.). It is acknowledged in the FEIR that Alternatives 3 and 4 assume house sizes that are similar to those proposed by the applicant. (FEIR, p 102, Response to Comment 7-1.) The obvious way to mitigate traffic safety impacts – i.e., by building 43 *smaller* houses – was not studied in the FEIR. The Board of Supervisors must require this study to determine the truly “environmentally superior” alternative. There would be further safety benefits by building houses that meet county requirements for houses near ridgelines.

Further, in response to the DEIR, the Department of Public Works (DPW) has recommended widening Paradise for the full one-mile length of the project to mitigate safety impacts. Although the traffic consultant does not believe such widening to be necessary, the ultimate decision has been left to the Board of Supervisors. (FEIR, pp. 55-56, Response to Comment 1-2.) The Board must study the value of widening Paradise Drive as recommended by the DPW in order to assure the safety of cars and cyclists.

These issues must be studied, and the FEIR recirculated.

Flawed Tiburon Traffic Study

Another obvious flaw of the FEIR is its inadequate and inaccurate assessment of traffic impacts on Tiburon Blvd. The FEIR analyzed business rush-hour traffic along this road, *not* school rush-hour traffic, which is when traffic levels are truly at their peak. After-school traffic is gridlock and lasts for over an hour at varying times of the day, depending on the day and the schools’

schedules. The after-school traffic rush often coincides with the afternoon time period when worker and construction vehicles exit Tiburon along Tiburon Boulevard. This is a safety impact, and also contributes to a significant existing traffic problem. The failure to assess traffic at its peak is a deficiency in FEIR, rendering the conclusions pertaining to significant impacts unsupported. A new traffic analysis must be performed, and the report recirculated, because the current one does not address true peak levels of traffic on Tiburon Blvd.

Incomplete Visual Impacts Assessment

The FEIR fails to address several significant view impacts, and only raises more questions on this issue than it answers. The report contains no or inadequate illustrations of the new 20' x 40' water tank and 65' transmission tower, which are proposed to stand just below the primary viewpoint on Marin County's Old St. Hilary's Open Space. The only visual illustration of the huge 180,000-gallon water tank and its 30-foot retaining walls is in a photo from Angel Island! This water tank will be right next to Old St Hilary's Open Space, ruining the setting citizens created when they purchased that open space for \$8 million through public financing. There is *no* illustration of the new 65' MERA tower. These view impacts must be illustrated and the report recirculated. The 20' x 40' water tank must be dug into the hill so that it is fully within the contour of the current hill. This is the only way to lessen a terrible visual impact. MMWD often does this, and it would be consistent with other water tanks in the area. (See the attached photo mock-up of a similarly sized water tank at the proposed location.)

The FEIR raises several questions regarding the location of the water tank and MERA pads. Master Response 7 proposes a MERA pad at an elevation of 580', and Exhibit 9.0-2 shows both the MERA pad and the water tank pad at this elevation. (FEIR, pp. 31-32, Master Response 7.) However, Mitigation Measure 5.7-7, discussed in the DEIR at p. 474, proposes that the pad elevation be raised to 590'. It appears that 580' is the maximum elevation of the Easton Point property. Where, then, will the 590' water tank be located? At an elevation of 590', the MMWD access road (in addition to the construction road) would have a 25% grade. Where is the evaluation of such a steep access road for the water tank and the MERA tower? None of these facilities may be built on the public open space. What will be the elevation for the water tank pad? Is any height increase still being considered?

Exhibit 9.0-2 of the FEIR seems to show a jog (near elevation contour 590') in the property line with Old St Hilary's Open Space. Why? Is there a setback requirement? Is there proper room for any fencing or vegetation that may be required for the water tank or the MERA facility? How will the MERA tower be safely separated from humans on the open space? The FEIR does not address these questions, and it is therefore deficient and must, at a minimum, be modified to address these issues and recirculated.

Deficient Fire Flow Analysis

The DEIR's preliminary water feasibility analysis demonstrates that according to estimated

flows, up to 20 proposed lots would not meet the minimum fire flow requirement of 1500 gpm, creating a significant impact. The fire flow mitigation measures require an increase in the fire flow for some lots (by upgrading the Paradise Drive water line, for example) or the design of buildings to comply with available fire flow (by requiring smaller house sizes or alternative construction materials). The FEIR acknowledges that this would require significant project changes and coordination, and as such, *may not be feasible*. (FEIR, p. 94, response 6-18 - "... it is reasonable to question the feasibility of the mitigation....") Unmitigated inadequate fire flow poses serious safety impacts. The project is located in and adjacent to one of the largest forested areas next to the San Francisco Bay. There is little to no fire maintenance in this area, and zero protection from the sparks and other fire hazards that inevitably will be produced by the hundreds of construction trucks and other vehicles using Paradise Drive and the construction road on a daily basis for up to a 20-year period. The FEIR must propose and evaluate fire safety measures.

These are critical safety issues. They must be addressed, and the FEIR recirculated.

Lots on Unsafe Landslides

There are 28 known landslide areas on the property. (See Exhibit 3.0-9 of the DEIR.) The applicant asserts that its development plan is in conformance with the U.S. District Court's Judgment Pursuant to Stipulation, filed November 8, 2007, which requires that lots be placed on "geologically safe portions of the site, without the necessity for extensive landslide repair, rather than in the path of known landslides." Contrary to the applicant's assertions, the project site is mapped as being underlain by 28 known landslides, and the development plan shows many lots on and in the path of these known landslides. (Compare Exhibits 3.0-4 and 6.0-2 of the DEIR to Exhibit 3.0-9.) These lots clearly are not outside "the path of known landslides" and are therefore in direct violation of the 2007 Judgment.

The recommended landslide repair measures are extensive, involving a landslide stabilization program that requires retaining structures, compacted fill buttresses, subdrains, and other significant work. (See Exhibit 5.4-2 of the DEIR.) Mitigation Measures 5.4-1 and 6.4-1, which place responsibility for the recommended long-term slide maintenance program on the Property Owner's Association, is speculative and appears to be financially infeasible. The program provides for periodic inspections and maintenance of the landslide stabilization program during the life of the project, and would depend upon the long-term collection of POA fees. (See FEIR, p. 56 and p. 201, Response to Comment 16-5.) Experience shows how impractical it is to rely on the collection of monthly POA fees as a source of long-term revenue. Mitigation that relies on speculative future funding by the POA is not mitigation at all.

The FEIR must be modified to include only alternatives that are not in direct violation of the 2007 Judgment, and the landslide mitigation measures must be modified to be specific, realistic, and enforceable. After these changes are made, the FEIR must be recirculated.

Additional Flaws

There are a number of additional deficiencies in the FEIR, as follows:

- The FEIR purports to comply with the 2007 Stipulated Judgment; however, as discussed above, it fails to comply with the clear mandate in that Judgment not to locate lots on landslides. If the FEIR is approved, this failure likely will result in further litigation pertaining to that 2007 Stipulated Judgment.
- The applicant's repeated assertion that it can violate CEQA as a result of the 2007 Stipulated Judgment is plainly in error. A stipulated judgment in a federal court takings case (at which CEQA was not at issue) cannot and does not preempt the requirements of the California Environmental Quality Act. The outcome of the County's analysis cannot be a foregone conclusion, or the process is a sham. Pursuant to CEQA, the County is legally obligated to independently evaluate the environmental impacts of the project before it takes any action that significantly furthers the project by foreclosing alternatives or mitigation measures that are a necessary part of CEQA review. Additionally, the 2007 Stipulated Judgment itself requires the County to procure a full-scope EIR and examine all potentially significant environmental impacts. This has not happened. Instead, the applicant repeatedly justifies its reliance on a deficient and incomplete FEIR by referring to the 2007 Judgment. The FEIR is not based on an independent review of all environmental impacts, as required by law. Rather, it is an attempt at an impermissibly curtailed EIR process, and as such, it is fatally flawed. Its certification would be in violation of State law. (See Comment Letter No. 17-1.)
- The studied alternatives do not meet CEQA requirements to substantially reduce significant impacts.
- The serious water and hydrology impacts to Keil Cove remain unmitigated, and the FEIR fails to consider reasonable alternatives that would avoid these impacts.
- The serious impacts to Keil Cove's biological and cultural resources, such as the federally endangered California Red-Legged Frog, which breeds in Keil Pond, remain unmitigated, and the FEIR fails to consider reasonable alternatives that would avoid these impacts. Current proposed landslide mitigations impermissibly impact California Red-Legged Frog habitat.
- The proposed sewer and water lines along Paradise Drive are not discussed at all in the FEIR. Possible slide and biological species impacts are noted but ignored.
- Remainder lot impacts are not analyzed on a par with other lots in Alternative 2, so that all impacts linked to its development are not properly presented in Alternative 2.
- A number of mitigation measures call for lots to be reconfigured or moved or removed (project redesign). See, for example, Mitigation Measures 5.6-1(a), 5.6-3(a), 6.1-11, 6.6-2(a) and (b), and 6.6-4(a). It is not clear that these mitigations are feasible, and there is only limited assessment of the secondary effects of these mitigations. As a result, there is no way to know what the project layout actually is or what additional impacts might be created. These possible impacts must be considered and feasible mitigation measures identified.

- Many mitigation measures, such as the landscape repair measures discussed above, depend upon illusory financial guarantees. (See also FEIR pp. 132 and 189 regarding the Resource Management Plan.) Mitigations without real financial guarantees are totally infeasible, and are not true mitigations.
- What is the Resource Management Plan? What is its estimated cost? How will it be funded?
- The cumulative analysis is flawed. There is no listing of the assumptions used in the analysis and no listing of the cumulative impacts. (See FEIR response 6-22, p. 94 and FEIR response 16-54, p 208.)

Community Support of Preservation and Protection Efforts

Tiburon Open Space has reached out to many community leaders and members about the need to preserve and protect this site, including Congressman Jared Huffman, GGNRA Superintendent Frank Dean, the Marin Conservation League, and other prominent conservation leaders such as Amy Meyer, Ralph Mihan, Bill Long, and Marty Griffin. These individuals are supportive of efforts to purchase and preserve the property.

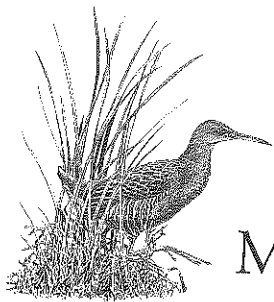
The Easton Point project deserves a thorough full-scope environmental review with mitigations that lessen impacts. This is not accomplished by the current FEIR.

Sincerely,

/s/

Jerry Riessen
Tiburon Open Space





20130728-0599

Marin Audubon Society

P.O. Box 599 | MILL VALLEY, CA 94942-0599 | MARINAUDUBON.ORG

July 28, 2013

Judy Arnold, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94901

RE: COMMENTS ON EASTON POINT FINAL EIR

Dear President Arnold and Supervisors:

The Marin Audubon Society appreciates the Board's consideration of our comments on the Easton Point Final EIR. We have reviewed the Final EIR and see that there are many inadequately answered questions and other deficiencies. We agree with the unanimous vote of the Planning Commission that the environmental information is insufficient and urge you to deny certification of the EIR.

It appears from the information available that the project may actually be infeasible and that many of the significant impacts cannot be reduced to less-than-significant at least with the current project design and the proposed and recommended mitigation measures. Further, the effectiveness of many of the mitigation measures is uncertain at best. Our specific comments and questions are:

1. The project fails to comply with the court order which requires that it be "placed On geologically safe portions of the site without the necessity for extensive landslide repair, rather than in the path of known landslides." Implementing the project as proposed would require significant work to repair the unstable hillside, as would all alternatives except for the no-project alternative. Actually it appears that the landslide repair may be the most environmentally damaging aspect of the project. The EIR should address whether geologically safe portions of the site on which a project could be constructed even exist on the site? If they do, they should be identified on a map and described.

In addition, the court order states "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.... If the parties cannot agree on adequate mitigation measures concerning identified Species, the parties shall jointly petition the Court for binding instructions concerning the adequacy of such mitigation." As the parties are clearly not agreeing on the adequacy of the proposed mitigation measures for impacts to many endangered and special status species, perhaps it is time to go back and consult the Court. The EIR should address this issue.

2. Rights for water do not exist for the project. While the applicants might dispute the claim, the downslope neighbors, the Keil Family has commented that they refuse to give water rights for the project because of the potential impact on their property, resources and their rights to the water. The Keil Family's attorneys, Somach Simmons and Olinn, have similarly written that the project would adversely affect the quantity and quality of the Keil's water supply would interfere with their water rights in a manner that... violates California law."

The EIR appears to dismiss the validity of this water right by stating that the Keil's have built a swimming pool and garden that was not in existence when the water right was granted. Water rights are very definite in California, and they do not depend on the specific use of the water. If they did, that would mean that many water rights holders would not be able to build a swimming pool or a new house for their children on their property, nor could agricultural users in the Central Valley change to crops that require more water. More homework is needed to investigate the validity of the complex issue of water rights in California. If there is no right to the water, then we don't see how a project, at least of this magnitude, can be built, unless the applicants secure an agreement with MMWD, which apparently they have not.

3. Mitigation analyses for impacts to multiple environmental resources are Inadequate.

- California Red-legged Frog. The mitigation for impacts to the endangered California Red-legged Frog is to preserve CRLF habitat on-site at a ratio of 3:1 by redesigning the project to avoid these impacts to CRLF dispersal corridor, or alternatively create breeding habitat on-site that is contiguous with foraging and dispersal habitats in Parcel A, or make up the loss through purchase and preservation of CRLF habitat off-site.

It is not clear whether the project could be redesigned to protect dispersal habitat, and if it could, there would need to be further analysis to address potential other impacts that would result from redesign. The remaining alternative, purchase of off-site habitat would not address the dispersal habitat loss on-site, would not benefit the species on this site, and would ultimately still result in the loss of one-third of the CRLF habitat because it would not be creation of new habitat. Loss of one-third of the CRLF habitat would be significant and is unacceptable.

- Marin western flax 2.2 acres has recently been mapped, serpentine bunchgrass of which more than 10 acres exist on-site and less than one acre of Serpentine reedgrass exists on the site. Almost 10 acres of the Serpentine bunchgrass would be lost with the project and the remaining acreage could be adversely impacted by on-going activities of users. All or most of the reedgrass could be destroyed and all or most of the Marin western flax would be destroyed, the amount varying according to alternative. Similar to the CRLF discussed above, the proposed mitigation for impacts to these species is to redesign the project. It is again unclear whether the project could be redesigned to protect these species and, if it could, would there be other unintended impacts that could occur.

- Native oak trees. Discussion of mitigation for the loss of native oak trees is inadequate and poorly informed. The EIR claims that tree loss should not be mitigated on-site because there is

no space, that if oaks would grow in now open areas they would be growing there now and coast live oaks should not be planted because it would perpetuate the SOD.

While the preferred approach for oak loss is avoidance, for any unavoidable losses, collecting acorns and growing oaks from them for planting back on-site should be the required mitigation. This is the approach recommended in the Marin County Open Space District's recently released Vegetation Management Plan and it is clearly applicable here. The rationale is that plants from on-site have developed immunities to SOD. To not plant oaks because of the presence of SOD would ultimately lead to significant further losses of oak woodlands.

Why couldn't Oaks and/or other native species be planted in the area where broom is growing after the broom is removed? This should be considered and required as mitigation for any loss of oaks. It could be that oaks are not growing in certain areas because no acorns were planted there by birds or squirrels.

Concerning the observation that a complex habitat would not be produced by planting on-site, diversity could be accomplished by staggering planting of saplings and acorns interspersed with understory species that would be characteristic of woodland habitats. There is no reason to leave any broom. One strategy to eliminate broom that should be considered is to plant competitive native species in combination with multiple removal events and mulching.

4. The EIR relies heavily on an Resource Management Plan (RMP) to ensure mitigation for resource impacts. The EIR claims that such plans are "typically endorsed by resource agencies" and for this reason preparation of an RMP is put forward as the answer to the many environmental impacts.

There are many uncertainties about this approach. It is unclear what "typical" means nor is it clear what resources the consultants are referring to i.e. one would need to know how similar or dissimilar are the environmental impacts resulting from this project to those other RMPs were intended to mitigate. Also, how successful were all of the other typical plans in mitigating for the impacts, and which agencies have approved such plans.

Depending on preparation of an RMP as mitigation delays identification of specific measures to some future time is problematic, particularly when there are no standards for the various required mitigations, as is the case here. In addition, relying on a future RMP would take the decision-making process out of the public view and, to make matters worse, there are so many uncertainties with regard to environmental mitigations proposed for this project that there is no way of even knowing whether it is possible to adequately mitigate many impacts.

We note that by depending on future plans to mitigate, there is always the accompanying question of what do you do if it is found, after the project that relied on those mitigations is approved, that the mitigation is actually impossible. We do not know of any project that has been brought back to the decision-making body for review of the original approval. We expect this is because there is usually some compromise in the RMP preparation process.

5. Reliance on a POA is not sufficient to ensure mitigations would be effectively

implemented. In addition to the uncertainties discussed above, the reality is, from our experience, likely to be quite different than put forward in the EIR. The type of framework provided in the EIR has not been sufficient to ensure POAs have the ability to effectively implement an RMP so that it adequately protects and manages sensitive resources and will ultimately preserve and mitigate for the project impacts. As discussed in our earlier letter, the reality is that neighbors are likely to disagree on requirements, particularly concerning expectations (Bahia) and needed funding to implement the mitigations. As years go by, property owners change and the original commitment becomes a vague memory, if that. Neighbors have to sue each other to enforce commitments, or they can simply neglect to follow through with the mitigations. We do not consider this approach an effective measure to ensure mitigation measures are undertaken successfully, particularly for a project of this size with the complexity of the recommended mitigations.

Actually, response 15-11 states that management of the on-site preserve areas by the POA is provided as an alternative in the event the MCOSD or another land conservation organization would not accept fee title. While ownership by another entity, presumably with more long-term motivation to manage and implement the mitigation measures, which will take years to complete, is a more dependable arrangement, one cannot expect another entity to assume responsibility for the mitigations. The POA should maintain financial responsibility and that could still be disputed.

6. Environmental review of the remainder parcel is delayed under Alternative 2, This would be piecemealing review of the project impacts which would minimize cumulative impacts. This presence of a developable remainder is encouraging such segmenting of the project's environmental impacts. Piecemealing or segmenting a project is not allowed under CEQA. The EIR should recommend that this 10.74 acre parcel should be considered along with the proposal for the rest of the project area and not be separated out.

7. The project Alternatives analysis is inadequate. The EIR needs to develop a reasonable range of alternatives that would avoid or substantially lessen significant environmental impacts of the project. The EIR reports that the environmentally superior alternative, other than the No Project Alternative, has almost identical impacts as the preferred alternative. No alternative is presented that reduces all or even most of the significant natural resource impacts to less than significant.

The EIR has recommended redesign of the project to avoid or minimize many significant impacts, including those discussed above and others, and the court decision directs that the project avoid significant landslide areas in order to avoid extensive landslide repair. An environmentally superior alternative that follows these recommendations and all other recommended measures to mitigate impacts to natural resources, including wildlife and wetlands, should be developed, should be presented.

It is unclear whether there is or are areas on the property where an environmentally superior project as described above could be developed. If there are not, that should be stated. If there are such areas, they should be identified on a map and the number of houses that could be built on them without natural resource impacts should be identified.

Conclusion


There are many significant problems with this project moving forward including significant impacts on natural resources, lack of water for human and resource uses, traffic and safety issues. The EIR should address how the project can move forward under these circumstances.

Thank you for addressing our concerns and questions.

Sincerely



Barbara Salzman, Co-chair
Conservation Committee



Phil Peterson, Co-chair
Conservation Committee



IPA, Inc

Scott L. Hochstrasser

E-Mail slh1ipa@aol.com

42 Glen Drive, Suite B * Fairfax, CA 94930 USA * Tele (415)459-6224 * Fax 459-5810

Jul 29 2013 PM 3:42 Planning

July 29, 2013

Hand Delivered July 29, 2013

Curtis Havel, Senior Planner
3501 Civic Center Drive, Suite 308,
San Rafael, CA 94903

RE: *Easton Point Final Environmental Impact Report – (FEIR Comments)*
Easton Point Project Sponsors Representative

Dear Mr. Havel,

Thank you for the opportunity to review and comment on the Easton Point Final Environmental Impact Report (FEIR). Based on a careful review of the FEIR by various members of our project development team including; civil engineer, traffic engineer, geotechnical engineer and planning consultant we find that generally the FEIR is complete, comprehensive and replete with information to warrant certification. We do however have a few specific comments that we suggest would provide clarification and amplification on a few matters as follows.

LAND SLIDE STABILIZATION – Question Change to Mitigation Measure 5.4-1 and 6.4-1

The FEIR offers a change in Mitigation Measure 5.4-1 adding a sixth bullet point and adding a seventh bullet point to Mitigation Measure 6.4-1. The change is regarding the long-term maintenance program for periodic inspection and maintenance of the landslide stabilization program. Our geotechnical engineer, based on experience with previous projects, recommends homeowners should be responsible for inspection and maintenance of landslide stabilization measures that are located entirely on their property, and the property owner's association should only be responsible to care for open space, common areas and landslide stabilization measures that cross multiple lots. During construction, efforts can be made to keep retaining structure and subdrain systems on individual lots and avoid crossing of multiple lots. Accordingly, our geotechnical engineer recommends the following modification to the new bullet point in Mitigation Measure 5.4-1 and 6.4-1

Modify Mitigation Measure 5.4-1 & 6.4-1

Homeowners shall be responsible for inspection and maintenance of landslide stabilization measures that are located entirely on their property. The property owner's association shall be responsible for implementation of the long-term maintenance program for open space, common areas and only landslide stabilization measures that cross multiple private properties. During construction, efforts shall be made to keep all retaining structures and subdrain systems on individual lots and avoid crossing of multiple lots. The Property Owners Association shall have the responsibility for implementing the long-term maintenance program on open space, common area and measures that

cross multiple private properties. A maintenance program and cost sharing agreements shall be incorporated into the subdivision's CC&Rs. Marin County shall be named a third party beneficiary to the CC&Rs with the right, but not the legal obligation, to enforce its terms.

MERA

Mitigation Measure 5.7-1(b) and Mitigation 6.7-1 (b)

The emergency radio coverage improvement plan mitigation measure has been modified to now require....

“Upon approval of the County Department of Public Works Operations Officer for MERA and prior to issuance of first grading or building permit, the applicant shall construct all required communications equipment, including a 10 by 18 foot equipment building, 45 KW emergency generator and fuel tank, a 65 foot antenna support structure capable of supporting two-six foot microwave dish antennas and three-two way radio whip antennas.”....

There are two major issues with this rewrite of this mitigation measure. One, the existing MERA facilities were initially designed to serve the subject property and existing surrounding hillside homes but the record shows that the current system does not operate as it was initially planned and designed. The need for the new facility is not only required to serve the subject property. The new facility is also required to upgrade inadequate facilities to serve an existing surrounding developed neighborhood. This is currently the responsibility of MERA to correct. Requiring the project sponsor to be responsible for the entire cost for constructing the upgraded facilities is a disproportionate mitigation and because it not only serves the project but also corrects an existing service deficiency beyond the project sponsors needs. The project should only be accountable for its fair share of the increase demand for the emergency service communication facility.

Secondly; the mitigation measure requires “construction” of facilities “prior to issuance of a grading or building permit”. Clearly a grading and building permit will be required to construct the new communication facility on the property. Accordingly, please modify the mitigation measure as noted below.

Modify Mitigation 5.7-(b) – The project sponsors and MERA shall work together to prepare an emergency radio coverage improvement plan that provides service to the existing hillside community where it is now deficient and to the new project area. The new facilities shall be located on Parcel C dedicated by the project sponsor. The project sponsor shall be responsible for a proportionate cost of the new facility linked to a proportionate need of the facility to provide emergency radio coverage at lower elevations on the project site. Upon approval of an emergency radio coverage improvement plan by the County Department of Public Works Operations Officer for MERA, and a cost sharing agreement between the project sponsor and the Officer, new facilities shall be constructed by MERA and the project sponsor prior to the issuance of the first grading permit or building permit for construction of the land subdivision improvements.

RESPONSE TO COMMENT - 12-4 & 12-6

The response dismisses the idea of providing greater clarity and readability of the document requested by the commenter. Simply stating that the FEIR is not required to provide a list of public benefits of

the project misses the point. Accordingly, the FEIR fails to provide a comprehensive list of public health and safety benefits that would result with the proposed project, beyond the landslide repairs and vegetation management mentioned on page 149 of the FEIR. Other public benefits of the project should be listed including the following:

1. The project provides improvement of existing deficient MERA emergency service communications systems. The current system does not provide the radio coverage planned for initially and the service is currently lacking for existing developed neighborhood. The MERA and project specific improvements combined will improve emergency service communications for the project site and the surrounding existing developed neighborhood.
2. The project's proposed new 180k gallon water tank will improve existing public water service for the existing developed neighborhood and provide fire flow for protection of public open space by providing increased pressure for domestic and fire flow service.
3. The Paradise Road improvements including widening for improved vehicle circulation and safe bicycle passage and turnouts will improve the existing road conditions. The changes will improve vehicle and bicycling safety on an existing narrow winding road now used extensively by homeowners, construction vehicles, bicycles and pedestrians.
4. The project will result in the preservation of substantial undeveloped land that could be available for new, permanent public open space.

RESPONSE TO COMMENT - 12-10

The EIR preparer notes that Paradise Drive "is not commonly used by large commercial vehicles and it is likely construction traffic serving this project site would be the source of large vehicles that could deteriorate pavement further and at an increased rate." Members of the public have consistently testified that Paradise Drive is commonly used by large commercial vehicles including heavy construction trucks, cement trucks and construction worker vehicles. There is no evidence to support the FEIR claim and it should be struck from the response. The Easton Point project should be held responsible only for the damage to roadways caused by its construction activity and this should be so noted in FEIR. The mitigation measure should be proportionate to the project impact identified in the EIR and based on facts and evidence not simply on conjecture.

RESPONSE TO COMMENT - 12-13

The response continues to ignore the fact that the Keils use a secondary water source "ground water" besides the Keil Spring. (See page 395 of the DEIR a second water collection box at the seep located on Watershed J –See also Exhibit 5.5-1). Although the Keils have no legal rights to collect water on the Martha property apparently they do and it is "ground water".

Secondly, it is disappointing that there was no further analysis of the quantity or quality of ground water now being collected and conveyed to the Keil property from the seep and secondary water collection box due to the Keils lack of cooperation. It is likely that the seep water being collected in the water box, constructed after the historic use of the spring in the 1890's, is most likely now being used to fill the relatively new water (5,000 gallon) tanks built in 1985 or 1995 and the Keil swimming pool built in 1963.

The ground water may be of lesser quality than that found by sampling the Keil Spring water. The point here is that the FEIR comment implies that ground water collected upslope at the "second water box" is apparently already of a lesser quality than the sampled Keil spring water.

Finally when both sources of water are collected and mixed to fill tanks and a pool on the Keil property the ultimate quality of water being used by Keil may be compromised by the mixing of water from two sources, the spring and the seep, yet the FEIR fails to disclose this finding with clarity and seems to imply, without evidence, that the quality of water being used by Keil may ultimately be compromised by the project development yet it may already be compromised by Keil mixing spring and seep (groundwater) to provide a quantity of water now being used.

CONCLUSION

This concludes our remarks on the FEIR. Again, thank you for the opportunity to review and comment on this very comprehensive and complete document. Please do not hesitate to contact me if you have questions regarding the above. Finally, our team looks forward to receiving the final FEIR comments and responses and the certification hearing now scheduled for the Board of Supervisors meeting October 22, 2013.

Sincerely,



Scott L. Hochstrasser, President

CC: via email only

Mark Reed and John Read, Owners Martha Co

Paul Smith, Martha Co. Legal Counsel



WILLIAM M. LUKENS
wlukens@lukenslaw.com

July 29, 2013

Via Electronic Mail

Community Development Agency,
Attention of Curtis Havel, Senior Planner
3501 Civic Center Drive, Suite 308,
San Rafael, CA 94903
chavel@marincounty.org

Re: Easton Pt. FEIR
Tiburon Ridge, CA

Dear Mr. Havel:

I am responding to the Final Environmental Impact Report ("FEIR") prepared for the County of Marin/Martha Co. re the development of 43 half acre lots on 110 acres on the Tiburon Ridge known as "Easton Pt." as a result of two stipulated judgments entered into between the applicant and the County of Marin in federal court. My wife and I are the owners of two parcels of property in Tiburon below the proposed project, at 1904 and 1906 Centro West, one of the two narrow access roads for this massive proposed development. We reside on adjacent property located at 160 Las Lomas Lane in Tiburon. In our locations, the width of the street (Centro West) is 13 ft. in portions and is substandard for access to a development of this magnitude. Both access routes necessarily merge into Diviso Street, which is also a narrow lane which at points has a width of approximately 13 ft. The FEIR fails to consider density constraints on the project that will be required to mitigate the adverse environmental impacts of this project. We will be adversely impacted by the use of our abutting roads and related traffic. The inability of the County to mitigate the project density ensures that the adverse impacts of the project will not be properly reduced.

These inhibitions of the CEQA process are a direct result of constraints imposed in two federally stipulated judgments between the developer, Martha Co., and the County -- one in 1976, and the other in 2007, the latter signed by Judge Sandra Armstrong, a copy of which is

attached. Both the original stipulated judgment and the most recent one were reached in private negotiations with *no public input or CEQA review* as required by State law. They provide that the County *must approve* a subdivision with 43 minimum half acre lots regardless of the adverse environmental consequences revealed in the CEQA process (Judgment, paragraphs 2(a) and (b), page 2). The question of the legality of this procedure was raised in letter # 17:1-4, in the FEIR submitted by Jon Welner, Esq. on behalf of the Last Chance Committee, and is referenced at p. 215). Mr. Welner requests that the County pursue a Rule 60 procedure in federal court to set aside the stipulation. ***There is no response to this request*** other than a terse statement that the County's hands are tied because, "it was challenged on those grounds and the [federal] court rejected the challenge" (Response to Comment 17-3, id.).

In fact, the judgment states on its face that *it was stipulated*. It was not challenged as the comment in the FEIR states. If the Board of Supervisors does not impose the necessary density constraints by substantially reducing the project to a reasonable size in proportion to the practical constraints as shown by the EIR, the undersigned, as a landowner injured by the massive adverse impacts, will be required to pursue legal recourse in the federal court to set aside the stipulated judgments that constitute an illegal extension of federal jurisdiction into areas reserved exclusively for the State. See 10th Amendment of the Constitution of the United States; *South Carolina v. Katzenbach*, 383 U.S. 301, 334-335 (1966) (holding that extension of federal law into state affairs requires justification by "exceptional" and "unique" conditions); also Such intrusion into State legal proceedings denies States their fundamental right to "...retain broad autonomy in ... pursuing legislative objectives." *Shelby County, Alabama v. Holder*, 570 U.S. ____ (June 2013), p. 9, decided June 25, 2013. There is a "fundamental principal of *equal sovereignty*" among the States. *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193 at 203(2009). Over a hundred years ago, the Supreme Court "explained that our Nation 'was and is a union of States, equal in power, dignity and authority.'" *Coyle v. Smith*, 221 U.S. 559, 567 (1911). Indeed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." Id. at 580. Such is the case with the CEQA laws of the State of California. Its procedures cannot be usurped by the single signature of a federal judge blessing a deal between a county and a developer. Adjusting the density of a project is basic to the process of mitigating adverse environmental impacts. *Citizens for Responsible Government v. City of Albany*(1997) 56 Cal. App. 4th 1199 at 1221-1222. See also *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138.

The situation is particularly aggravated by the fact that the property in question, the Martha Property, is seriously flawed with numerous slides, a substantial portion of the property consisting of sandstone from the Sierras which creates an alluvial deposit on the Eastern portion of the property that makes it uniquely susceptible to collapse. The average grades in this area approach 25%, making over half of the property virtually unbuildable. Yet, the County is

Mr. Curtis Havel, Senior Planner
July 29, 2013
Page 3

prevented by virtue of the stipulated judgments (which are in excess of federal jurisdiction) from imposing density reductions necessary to mitigate the severe adverse impacts.

To complicate the matter, the State of California Department of Conservation, Geological Survey, has recently released a new geologic map of the Southern Tiburon Peninsula showing at least three (3) major slides directly affecting the property which have *not been studied* by the developer's Geotechnical Engineer and reviewed by the inhibited DEIR process. A copy of the new map is attached.

We join the Last Chance Committee (now "Tiburon Open Space") in respectfully requesting that the Board of Supervisors refer the stipulated judgments for *independent review* by outside counsel in order to advise the County on how best to relieve itself from the constraints of the federal agreements.

Very truly yours,



William M. Lukens

Enc.

cc. Steven M. Woodside, Esq.
County Counsel, County of Marin
3501 Civic Center Dr Ste 275
San Rafael, CA 94903

envplanning@marincounty.org

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

COUNTY OF MARIN, a California
County,

Plaintiff,

v.

MARTHA CO., a California corporation;
TOWN OF TIBURON, a California
municipality; RUSSELL KEIL; JERRY
RIESSEN; MAXWELL DREVER;
MARILYN KNIGHT; JOANNA
KEMPER; and MARK BEWSHER,
individuals,

Defendants.

No. C 06 0200 SBA

JUDGMENT PURSUANT TO STIPULATION

RUSSELL KEIL; JERRY RIESSEN;
MAXWELL DREVER; MARILYN
KNIGHT; JOANNA KEMPER; and
MARK BEWSHER, individuals,

Counterclaimants,

v.

COUNTY OF MARIN, a California
County; MARTHA CO., a California
corporation; and TOWN OF TIBURON, a
California municipality,

Counterdefendants.

MARTHA CO., a California corporation,
Counterclaimant,

v.

COUNTY OF MARIN, a California
County,

Counterdefendant.

1 IT IS ADJUDGED, DECREED AND ORDERED that, pursuant to the Stipulation for
2 Entry of Judgment Creating Timeline and Procedures for Enforcing Judgment Entered in *Martha*
3 *Co. v. County of Marin*, No. C 75 0125, (“Stipulation for Entry of Judgment”) between Plaintiff
4 County of Marin (“County”) and Defendant Martha Co. (“Martha”), judgment is entered as
5 follows:

6 BACKGROUND

7 Martha is the owner of Marin Assessor Parcel No. 59-251-05, consisting of approximately
8 one hundred ten (110) acres of land on the Tiburon Peninsula in unincorporated Marin County
9 (“Martha Property”). The County of Marin is a governmental entity duly organized and existing
10 under the laws of the State of California as a county.

11 On January 20, 1975, Martha filed suit against the County, alleging a taking of the Martha
12 Property as a result of: (i) the County’s adoption of its 1973 Marin Countywide Plan designating
13 a substantial portion of the Martha Property as Ridge and Upland Greenbelt; and (ii) the County’s
14 1974 down-zoning of the Martha Property from a maximum development potential of three to
15 four hundred units down to development density of twenty-seven (27) residential units, with a
16 possible bonus of seven (7) units, for a maximum density of thirty-four (34) units.

17 On December 29, 1976, the United States District Court for the Northern District of
18 California, the Honorable Robert H. Schnacke, entered Judgment Pursuant to Stipulation in the
19 matter of *Martha Co. v. County of Marin*, No. C 75 0125 RHS (“1976 Judgment,” Exhibit A
20 hereto). Such 1976 Judgment was entered pursuant to a Stipulation for Entry of Judgment, also
21 filed on December 29, 1976.

22 On April 19, 2005, Martha submitted to the County of Marin an application for approval
23 of a Master Plan, Precise Development Plan, and Vesting Tentative Map seeking approval of
24 forty residential lots (“2005 Application”). The County declined to accept the 2005 Application
25 for processing at that time.

26 On January 11, 2006, the County of Marin filed its Complaint for Declaratory Judgment
27 in the above-captioned matter, and on April 11, 2006, the County filed its First Amended
28 Complaint (“Complaint”) seeking a declaration that the 1976 Judgment should no longer have

prospective application and seeking a declaration of the rights of the Town of Tiburon and six named individuals: Russell Keil, Jerry Riessen, Maxwell Drever, Marilyn Knight, Joanna Kemper, and Mark Bewsher ("Individual Counterclaimants").

On April 19, 2006, the Individual Counterclaimants filed a Counterclaim to the County's Complaint, also seeking a declaration that the 1976 Judgment was void and unenforceable and seeking an injunction prohibiting the County and Martha from taking any action to implement the 1976 Judgment.

On September 8, 2006, this Court entered its Order dismissing both the County's Complaint and the Individual Counterclaimants' Counterclaim and denying as moot a Request for Judicial Notice which had been filed by the Town of Tiburon. However, the County continued to decline to process the 2005 Application, and litigation between the County and Martha therefore continued.

ENFORCEMENT OF 1976 JUDGMENT

Based upon the above-referenced rulings of the Court, the County acknowledges that it must process a subdivision map in conformance with the 1976 Judgment. Therefore the parties have settled all litigation between them by creating a timeline and procedures for enforcing the 1976 Judgment, and this Court implements such settlement by ordering and decreeing as follows:

1. Retention of Jurisdiction. This Court shall retain continuing jurisdiction to enforce both this Judgment and the 1976 Judgment, provided, however, that any dispute arising hereunder shall first be presented to a Magistrate Judge, with a right of reconsideration by either party to this Court.

2. 1976 Judgment.

2a. Right to 43 Homes. Pursuant to the 1976 Judgment, the County is required to approve forty-three (43) homesites on the Martha Property unless the parties subsequently agree otherwise in writing.

2b. Minimum Half-Acre Lots. Pursuant to the 1976 Judgment, each of the 43 lots to be approved by the County shall be at least one-half acre in size unless the parties subsequently agree otherwise in writing. These lots are intended to be placed on geologically

safe portions of the site, without the necessity for extensive landslide repair, rather than in the path of known landslides. If the parties cannot agree whether any required landslide repair is unreasonably extensive under the circumstances, the parties may petition this Court for binding instructions.

2c. Lots within the Ridge and Upland Greenbelt. In conformance with the 1976 Judgment, the County shall allow some development within the Ridge and Upland Greenbelt.

3. Revised Scope of Application. Martha intends to revise its 2005 Application to request approval of a forty-three (43) unit subdivision map as required to be approved under the 1976 Judgment (“2007 Application”), to remove its request that the map be a “Vesting” Tentative Map, and to file such 2007 Application with the Marin County Community Development Agency.

4. Action Required by County to Implement the 1976 Judgment.

4a. Action on 2007 Application. The County shall procure a full scope Environmental Impact Report (“EIR”) for the project. The County shall take final action to certify a final Environmental Impact Report (“EIR”) in conformity with the California Environmental Quality Act, Cal. Public Resources Code §§ 21000 *et seq.* and to act on the 2007 Application within fourteen months of the date on which the 2007 Application is filed.

4b. Legal Infeasibility of Any Alternative or Mitigation Measure Inconsistent with the 1976 Judgment. The County has acknowledged that any development alternative, or any proposed mitigation measure, which does not accord Martha all rights to which it is entitled under the 1976 Judgment is legally infeasible unless required to assure health or safety. Should the parties disagree as to what measures or alternatives are required to ensure “health or safety,” the parties shall jointly petition this Court for binding instructions which implement the 1976 Judgment and this Judgment to the greatest extent feasible consistent with health and safety.

4c. Protected Species. Notwithstanding the foregoing, 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

1 Martha Property by the Town of Tiburon (“Identified Species”). If the parties cannot agree on
2 adequate mitigation measures concerning Identified Species, the parties shall jointly petition this
3 Court for binding instructions concerning the adequacy of such mitigation.

4 4d. Assumption of Responsibility for Affordable Housing. In light of the fact
5 that no affordable housing requirements existed at the time of the 1976 Judgment, any affordable
6 housing requirement or other inclusionary-housing mandate which is required with respect to the
7 Martha project by the Marin Countywide Plan or any County ordinance, code, or regulation shall
8 be assumed by the County itself, and Martha shall have no additional obligation whatsoever,
9 whether for the donation of land or otherwise, with respect to affordable or inclusionary housing.

10 4e. Conduct of Hearings. Public hearings on the 2007 Application shall be
11 held before the Marin County Board of Supervisors except for a one-day advisory hearing before
12 the Marin County Planning Commission.

13 4f. Prompt Action on Final Map. The County shall promptly review and
14 process Martha’s proposed Final Map and approve the Final Map on the first legally permissible
15 date following approval of the Tentative Map. The filing of a legal challenge by third parties to
16 County action shall not constitute grounds for refusal to process, approve and record the Final
17 Map. Moreover, the County shall not use any County custom, policy, or procedure which is not
18 mandated by state law to deny or delay approval and recordation of the Final Map.

19 5. Payment of Processing Costs. Martha shall pay all of the ordinary, customary, and
20 reasonable costs of processing its 2007 Application which are typically and ordinarily paid to
21 third-party contractors during the processing of a development application (including, without
22 limitation, the fees, costs, and expenses charged by environmental impact report consultants) up
23 to a maximum of \$250,000, with the County and Martha to each pay half of any amount in excess
24 of that number, provided, however, that each party shall pay half the cost of the contract planner
25 who has been hired by the County to process the 2007 Application as an agent of the County
26 (“Contract Planner”). In addition, Martha shall reimburse the County for the Staff time and out-
27 of-pocket expenses involved in its ministerial/secretarial support of the Contract Planner, such as
28 legally-required mailings and publications. The County shall apply the processing fee previously

1 paid by Martha in conjunction with the 2005 Application towards the costs of such
2 ministerial/secretarial support and shall reimburse Martha for any amounts remaining after
3 completion of processing. The County shall waive all other fees and costs which it would
4 otherwise collect with respect to its own internal costs of processing the 2007 Application
5 (including, without limitation, the County's customary 33% add-on to the cost of the
6 environmental impact report, as well as any other increment collected by the County based on the
7 cost of an outside consultant).

8 6. Effect of Subsequent Events.

9 6a. Defense of Approvals. Should litigation be commenced to overturn
10 County certification of the environmental impact report for this project or to overturn County
11 approval of development, or to otherwise interfere with any permit or entitlement which the
12 County has granted to Martha, then the County shall take all action necessary under state law to
13 defend such certification, approval, permit or entitlement. This requirement shall be satisfied by
14 the County's appearance on all pleadings, motions, and other papers as appropriate to defend such
15 certification, approvals, permits or entitlements. Except as required by the foregoing sentence,
16 the County is not required to expend additional County time or money in this effort. Each party
17 shall bear its own fees and costs in such defense, except that if fees and/or costs are awarded to
18 any petitioners/plaintiffs in such litigation, then Martha and the County shall each bear half of the
19 fees and costs awarded.

20 6b. Sanitary District Annexation. Should the Martha Property not be annexed
21 for any reason into the local Sanitary District, the County will not oppose Martha's application
22 for an out-of-district service agreement with the local Sanitary District. Should such agreement
23 not be available for any reason, the County shall process an application for a sewer or septic
24 system on the Property which will serve only the Property. If, after processing, the County is
25 unable, based on sound scientific evidence or other reasons, to approve such application for a
26 sewer or septic system serving only the Property, the parties shall jointly petition this Court for an
27 independent, *de novo* review of and decision concerning the County's determination and for
28 binding instructions as to how best to fulfill the letter and spirit of the 1976 Judgment and this

1 Judgment.

2 6c. Attempt to Annex Prior to Final Map. The parties have expressed their
3 intent that, in order to implement the 1976 Judgment, the Town of Tiburon, which was not a party
4 to that judgment, should not annex the Martha property until after a Final Map is recorded.
5 Should Tiburon, for any reason whatsoever including without limitation for the purpose of
6 defeating Martha's rights under federal Judgments, commence proceedings which could lead to
7 annexation the Martha Property prior to recordation of a Final Map, the County has agreed not to
8 oppose or otherwise interfere in Martha's effort to obtain appropriate relief from this Court. In
9 such event, the County shall continue to carry out all of its obligations hereunder, including
10 without limitation the obligations set forth in ¶ 4f above. If Tiburon succeeds in annexing the
11 Martha Property prior to recordation of a Final Map, the parties shall petition this Court for
12 binding instructions as to how best fulfill the letter and spirit of the 1976 Judgment and this
13 Judgment.

14 7. Common Sense Interpretation. The 1976 Judgment as well as the Stipulation for
15 Entry of Judgment and this Judgment constitute binding contracts. As such, the parties are
16 required to exercise good faith to implement the letter and intent of these documents. The parties
17 shall refrain from any conduct which has the purpose or effect of defeating the parties' respective
18 rights hereunder. It is impossible to set forth every contingency which might interfere with the
19 accomplishment of the intent expressed by the parties in entering into these stipulations; therefore
20 these documents shall be interpreted in a common-sense manner that gives effect to their intent.

21 8. Term. This Judgment, and all rights and obligations hereunder, shall not be for a
22 term of years, but instead shall run coterminous with the 1976 Judgment, which is to say it shall
23 run with the land and shall bind and benefit the parties hereto, their heirs, successors, and assigns.

24 9. Severability. Should any portion of the Stipulation for Entry of Judgment or this
25 Judgment be invalidated by a court of competent jurisdiction, then the remainder of the
26 Stipulation for Entry of Judgment and this Judgment shall nevertheless be implemented. The
27 invalidation of any or all portions of the Stipulation for Entry of Judgment or this Judgment shall
28 in no way affect the continuing validity and enforceability of the 1976 Judgment.

IT IS SO ADJUDGED, DECREED AND ORDERED.

Sandra B. Armstrong
SAUNDRA B. ARMSTRONG
United States District Court Judge

July 26, 2013

VIA E-MAIL

Curtis Havel (envplanning@marincounty.org)
Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive
San Rafael, CA 94903

Re: Easton Point Residential Development Final Environmental Impact Report
(State Clearinghouse No. 2009012010)

Dear Mr. Havel:

On behalf of the Keil Family, following are comments on the Final Environmental Impact Report (FEIR) for the 2008 Easton Point Residential Development Project (Project)¹. The Keil Family submitted extensive comments on the DEIR and continues to have substantial concerns about the proposed Project. As noted in the Keil Family's comments on the DEIR and acknowledged in the FEIR, the proposed Project would substantially diminish and degrade, if not completely eliminate, the water source for the historic Keil Cove property and gardens. The Project would thus unlawfully interfere with the Keils' water rights and threaten the federally protected California red legged frog (CRLF) population that breeds in Keil Pond.

The FEIR does not adequately respond to significant issues raised concerning the DEIR, and fails to resolve many of the substantial concerns that were raised by the Keils and others who commented on the DEIR. In fact, the FEIR states that mitigation is not available to address several of the Project's most severe impacts. Significant new information in the FEIR regarding Project impacts, and the EIR's failure to evaluate a reasonable range of alternatives to the Project that would avoid these impacts, requires that the County revise and recirculate the EIR to address these important issues.

I. The FEIR Does Not Adequately Respond to Issues of Substantial Importance Raised in Comments on the DEIR

CEQA requires that a lead agency evaluate comments on the draft EIR and respond with a good faith, reasoned analysis of the issues raised in the comment. (Pub. Resources Code, § 21091(d); CEQA Guidelines, §§ 15088(a), (c).) The final EIR must address recommendations and objections raised in comments in detail, giving reasons why they were not accepted. (CEQA Guidelines, §§ 15088(a), (c).) Specific responses are required to

¹ These comments address the adequacy of the County's environmental review for the Project. As relevant, comments reference the Draft Environmental Impact Report (DEIR), the Final Environmental Impact Report (FEIR) or, for issues that apply to the combined documentation constituting the County's environmental review, "the EIR."

comments that raise specific questions about significant issues. (Pub. Resources Code, § 21091(d)(2)(B); CEQA Guidelines, §§ 15088(c), 15132(d), 15204(a).)

The requirement of a detailed written response to comments helps ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 904.)

The FEIR's responses to comments on many issues of substantial importance are not adequate. Most notably, the responses do not address the feasibility of alternative designs suggested by the public that would avoid the significant impacts, including significant impacts to Keil Cove and views of the ridgeline. Other responses address only part of the issue raised by the commenter. As but one example, comment 22-66 raised concerns about the Project's impact on the water quality of Keil Pond and Keil property cisterns. The response merely refers the commenter to a master response that addresses impacts to water supply only.

The Keils commend the County for circulating the FEIR for public review. We note, however, that the FEIR makes numerous revisions to the DEIR, and the length (almost 800 pages) and format of the FEIR (with comments separated from responses, and numerous cross references from one response to others) make it very difficult for the reader to get a clear and comprehensive understanding of the scope of the EIR revisions, including changes to findings of significance and mitigation measures. CEQA states that a summary of the significant revisions that were made to the EIR should be set forth in the document itself or in an attachment. (CEQA Guidelines, § 15088.5(g).) Due to the numerous deficiencies in the DEIR and responses to comments, the Keils believe the County must revise the DEIR and recirculate it for public review. The recirculated draft EIR should include a summary of all revisions.

Further, due to the FEIR's length, it was not feasible within the comment period provided for the Keils to review and comment on every deficiency in the responses to comments. Exhibit A accompanying this letter includes discussion of several deficiencies in the FEIR's response to the comments of the Keils and others on the DEIR.

II. The Project As Proposed Is Infeasible and Must Be Redesigned

From the Keils' perspective, the most critical Project impacts are those that result from locating development in areas of landslides. While it may be technically feasible to build on those hazards, the repairs required would result in the destruction of Keil Spring. The spring, which is owned by the Keils, has been used for over 100 years as the primary water supply for the historic gardens on the Keil Cove property, as well as Keil Pond, the breeding habitat for the CRLF, which is protected under the federal Endangered Species Act (ESA).

In comments on the DEIR the Keils objected to the Project on the grounds that the landslide repairs necessary to accommodate the proposed building plan would dewater Keil Spring. The Keils noted that the landslide mitigation was infeasible because it would permanently destroy the source of water and thereby interfere with their long-held water rights to Keil Spring. The Keils further objected to proposed mitigation that would have required them to agree to accept a substitute water source, of unknown quantity and quality,

to be provided by the applicant or the property owners' association, all in order to enable luxury homebuilding in landslide areas above Keil Cove.

The FEIR fails to recognize that the Project as proposed is infeasible because landslide repair outside the Lands of Keil will dewater the Keil Spring, destroying the Keil property's water source. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." (CEQA Guidelines, § 15364; Pub. Resources Code, § 21061.1.) Because the applicant may not legally destroy the Keils' water right, the proposed repairs are legally infeasible. Without the ability to conduct the extensive landslide repair, the Project will result in significant health and safety impacts from locating homes in and around landslides. The EIR fails to acknowledge this significant impact. Because the DEIR did not correctly identify this significant impact, and the FEIR did not adopt any mitigation or alternatives to avoid it, the EIR must be revised and recirculated for public review.

The FEIR does recognize the infeasibility of the DEIR mitigation measures that would require the Keils to accept a substitute water supply. In doing so, the FEIR implies that the Keils were somehow unreasonable in refusing to acquiesce in the destruction of their water right and water supply. In fact, as noted in the Keils' comment on the DEIR, the mitigation the EIR recommended, which has now been withdrawn, has been held to be illegal under CEQA. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.) The FEIR correctly acknowledges that because the proposed mitigation is infeasible, Project impacts to the historic significance of Keil Cove and the CRLF breeding population that resides in Keil Pond would be significant. The FEIR incorrectly states, however, that these impacts are unavoidable. In fact, as suggested by the Keils and others, these impacts can be avoided by redesigning the Project to avoid construction in areas of landslides.

There are two things an agency cannot do: It cannot acknowledge a significant impact, refuse to do or find anything else about it, and approve the project anyway. And it cannot acknowledge a significant impact and approve the project after imposing a mitigation measure not shown to be adequate by substantial evidence." (*Woodward Park Homeowners' Ass'n, Inc. v. County of Fresno* (2007) 150 Cal.App.4th 683, 724.) Rather, CEQA requires that when an agency proposes to approve a project that has significant impacts that will not be avoided, it must first demonstrate that alternatives that would avoid the impacts are infeasible and then adopt a statement of overriding considerations setting forth the specific reasons why the project should be approved notwithstanding those impacts. (Pub. Resources Code, §§ 21080.1(a), (b); CEQA Guidelines, §§ 15043, 15091, 15092(b), 15093(a), (b).) A statement of overriding considerations offers a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible. (Pub. Resources Code, § 210801(b); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 368-369) [agency's abuse of discretion in determining project effects cannot feasibly be mitigated necessarily invalidated statement of overriding considerations].)

CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute ([*Pub. Resources Code*,] § 21081, subd. (b)), would tend to displace the fundamental obligation of

“[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (*Id.*, § 21002.1, subd.(b); *City of Marina v. Bd. of Trustees of the Cal. State Univ.*, *supra*, 39 Cal.4th at pp. 368-369.)

There are no overriding considerations implicated by the Project that would justify destroying the Keils’ water rights or the Keil Cove historic resource or harming a protected species.

III. Substantial New Information Requires That the County Recirculate the Draft EIR

Under CEQA, the County is required to recirculate the DEIR if “significant new information” is added to the EIR after it is released for public review but before it is certified. (CEQA Guidelines, § 15088.5(a).) Significant new information requiring recirculation includes a disclosure that (1) a new significant impact would result from the project or (2) a feasible alternative considerably different from the other previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it. (*Id.*, §§ 15088.5(a)(1), (3).) Recirculation is required when the addition of new information deprives the public of a meaningful opportunity to comment on substantial adverse project impacts or feasible mitigation measures or alternatives that are not adopted. (*Laurel Heights Improvement Assn v. Regents of Univ of Cal.* (1993) 6 Cal.4th 1112; Guidelines, § 15088.5(a).) Recirculation is also required when the new information shows a feasible alternative, considerably different from those considered in the EIR, that clearly would lessen the environmental impacts of a project and the applicant declines to adopt it.

Comments on the DEIR demonstrated that landslide repair outside the Lands of Keil will dewater the Keil Spring, destroying the Keil property’s water source. Because the applicant may not legally interfere with the Keils’ use of water under vested water rights, the proposed repairs are legally infeasible. Without the ability to conduct the extensive landslide repair, the Project will result in significant health and safety impacts from locating homes in and around landslides. The EIR fails to acknowledge this significant impact. Because the DEIR did not correctly identify this significant impact, and the FEIR did not adopt any mitigation or alternatives to avoid it, the DEIR must be revised and recirculated for public review.

The infeasibility of the landslide mitigation, as well the FEIR’s conclusion that the Project would have significant unavoidable impacts to the Keil Spring, the CRLF on the Keil Property and the historic significance of Keil Cove, is significant new information because the public was not given the opportunity to comment on a feasible way to avoid those impacts. The DEIR included no alternative that would avoid these impacts and declined to evaluate or adopt alternatives suggested by the public that are considerably different from the EIR alternatives (including alternatives that would remove homes from the ridge, and that would avoid areas of landslides). The suggested alternatives would clearly lessen the Project’s significant environmental effects by avoiding significant impacts to the Keil Spring and Keil Pond, CRLF and Keil Cove historic resource (Impact Nos. 5.5-6, 5.6-2, 5.9-3), as well as substantially lessen the Project’s adverse impacts to views from Angel Island (Impact No. 5.8-4) and minimize conflicts with Countywide Plan policies designed to protect open space, historic and scenic resources, and provide trails, among others (as described in DEIR section 4.0).

IV. The FEIR Has Not Evaluated a Reasonable Range of Alternatives

Because there is no way to *mitigate* the impact to the spring and the CRLF, CEQA requires the County to consider an alternative that can *avoid* those impacts, as noted in the Keils' comments on the DEIR more than two years ago. Yet the EIR unreasonably and unlawfully fails to evaluate an alternative that would locate development outside of the areas of landslides.

The apparent justification in the FEIR for refusing to look at a design that would avoid these impacts is that such alternatives are precluded by the terms of the 1976 Judgment on Stipulation and 2007 Judgment on Stipulation (collectively, the "Stipulated Judgments" or "Judgments") in the developer's lawsuit related to development of the property. The Judgments, however, do not dictate that the proposed Project be built. Rather, the Judgments specify certain development criteria and allow the developer and the County to agree to any development project. The developer has already made an agreement with Tiburon regarding a smaller project, although that alternative does not meet CEQA's requirements because it does not avoid any of the Project's significant impacts. It is well established that any contract or agreements entered into by an applicant "cannot be used to avoid the scrutiny envisioned by CEQA. Environmentally superior alternatives must be examined whether or not they would impede to some degree the attainment of project objectives. (Guidelines, § 15126, subd. (d)(3).)" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736.)

Moreover, CEQA provides that alternatives need only be *potentially* feasible to be evaluated in an EIR. (CEQA Guidelines, §15126.6(a); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 920.) While the County may ultimately determine that potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives. (*Watsonville Pilots Assn v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 (citing *California Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981, 999-1000.) Further, the CEQA Guidelines provide that if alternatives are excluded from the EIR because the agency deems them to be infeasible, the EIR should discuss the reasons they were excluded. (CEQA Guidelines, § 15126.6(c).)

Ultimately the selection of alternatives is dictated by the County, and informed by CEQA review. "Since CEQA charges the agency, not the applicant, with the task of determining whether alternatives are feasible, the circumstances that led the applicant in the planning stage to select the project for which approval is sought and to reject alternatives cannot be determinative of their feasibility. The lead agency must *independently* participate, review, analyze and discuss the alternatives in good faith. [Citation omitted.] The applicant's reasons for deciding upon the project as proposed are merely a part of the evidence to be considered. The current circumstances must also be a part of the feasibility equation. [Citation omitted.] 'The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.' [Citation omitted.] Otherwise, CEQA's mandate to consider alternatives would be meaningless." (*Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 736.)

Indeed, the CEQA review conducted for the Project has confirmed that the Project would have significant unavoidable impacts to the Keils' water supply, the Keil Cove historic resource, scenic resources (views from Ayala Cove) and the CRLF. These are just the types

of insights that trigger the requirement to evaluate alternatives capable of avoiding the impacts. Commenters suggested various alternatives to address these impacts, including alternatives that would involve smaller lots, substantially fewer larger lots, and lots clustered lower on the hillside. Other options would include alternatives that remove homes from the ridge or upland greenbelt areas.² The EIR contains no evidence or analysis explaining why an alternative that would avoid these significant impacts is not at least *potentially* feasible. The EIR thus fails to provide a valid statement of reasons for excluding alternatives that would avoid development in areas of landslides and thus avoid the significant impacts to the Keils' water supply and CRLF, among other significant impacts.

V. The Stipulated Judgments Do Not Eliminate the Obligation to Evaluate Alternatives That Avoid the Project's Significant Impacts

The 2007 Judgment recognizes that development of the site should not result in extensive landslide repair or harm to protected species. Specifically the 2007 Judgment says that "lots are intended to be placed on geologically safe portions of the site without the necessity for extensive landslide repair, rather than in the path of known landslides." The 2007 Judgment further acknowledges that development of the site in the manner and to the extent stipulated in by the 1976 Judgment may not be feasible due to health and safety impacts from geologic hazards and impacts to protected species. In that vein the 2007 Judgment states that notwithstanding any statements regarding the developer's entitlement to a certain amount of development on the property, "it is not the parties' intent to allow the unmitigated taking of any endangered, threatened, listed or otherwise protected species" and that if the parties cannot agree on adequate mitigation for protected species, they are required to submit the matter to the court for resolution. What's more, the 2007 Judgment also says that it, and the 1976 Judgment, are contracts and that they shall be "interpreted in a common sense manner that gives effect to their intent."

The EIR confirms that the applicant's proposal would locate substantial development in the area of known landslides, require extensive repair (in conflict with the express terms of the judgment), conflict with numerous goals and policies in the Countywide Plan and have significant unavoidable impacts to important historic and scenic resources and species protected under the federal ESA. Comments by the Keil Family demonstrate that the required landslide repair is not legally feasible because it would destroy their water rights. And the EIR confirms that if the landslide repairs were to occur, there is no feasible mitigation available to avoid take of the CRLF in Keil Pond because there is no way to avoid the dewatering of Keil Spring, the pond's primary water source. Thus, not only does the Project have many serious environmental impacts, it fails to conform to the terms of the 2007 Judgment.

The FEIR's suggestion that the Stipulated Judgments preclude it from evaluating alternatives that avoid significant impacts is thus incorrect and the County should reject it. An agency's "use of an erroneous legal standard constitutes a failure to proceed in a manner

² While the Judgments provides that the County "shall allow some development in the ridge and upland greenbelt," the Judgments do not define development. Under the Countywide Plan, "development" is defined broadly to include things like trails and infrastructure. To address the Project's significant visual impacts, including views from Ayala Cove on Angel Island, the EIR should evaluate an alternative that includes only trails in the ridge and upland greenbelt areas.

required by law.” (Internal citation omitted.) An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects based on erroneous legal assumptions is not sufficient as an informative document. (*City of Marina v. Bd of Trustees of the Cal. State Univ.*, *supra*, 39 Cal.4th at p. 355-356.) The Stipulated Judgments do not obviate or otherwise limit the County’s independent duty under CEQA to protect the physical environment from the effects of the Project.

VI. The EIR Has Not Demonstrated That Project Residents Can Feasibly Carry Out the Extensive Mitigation Assigned to Them by the EIR

An issue of critical importance that remains unresolved in the FEIR is the feasibility of assigning the responsibility for such extensive mitigation to the property owners’ association. The EIR indicates that the homeowners would be responsible for maintaining the landslide stabilization program, monitoring storm water control and detention measures, maintaining the bio-retention system, oak tree and other biological resource mitigation, as well as adequately managing two open space parcels with protected plant and animal species on them, among other duties. The DEIR itself acknowledged the problems with this approach (see DEIR p. 426). Numerous comments on the DEIR raised legitimate questions about the long-term viability of the property owners’ association to carry out the mitigation. Notably, the responses to comments ignored this concern. (See, e.g., responses to Comments 1-3, 1-18, 1-19, 6-5.) The FEIR’s response is merely to modify mitigation to give the County the right to enforce the mitigation. This right, in fact, already exists as the County’s obligation to monitor implementation of mitigation, so the amendments to the mitigation do nothing to address or adequately respond to the public’s concern about this issue.

The applicant’s reaction to the identified mitigation requirements underscores the reasons for concern over this issue. In comments on the DEIR, the applicant objects to a number of mitigation requirements necessary to address the Project’s health and safety impacts, such as fire mitigation fees, road widening and provision of on-lot parking to ensure road safety. (See Comments in Letter 12.) The applicant’s opposition to these requirements suggests the applicant does not take the Project’s health and safety impacts seriously and that it may not be willing or able to devote the necessary resources to fund the extensive mitigation required for the Project’s many significant impacts. The applicant’s objections undermine a finding that the extensive mitigation will be feasible.

Before the County takes any action on the Project, decisionmakers should demand answers to questions such as: What is the expected cost of these measures over the life of the Project and what happens if most of the homes are never built and the Project fails? Who would assume the mitigation responsibilities and how could their performance be assured? The amendment of mitigation measures to make the County a third party with the right of enforcement does not guarantee that sufficient resources will be available to fund mitigation in perpetuity. In its comments on the DEIR, County Public Works staff suggested that a geologic hazard abatement district should be considered. The FEIR did not respond to that comment. Given the extent of the mitigation, formation of a special district with a guaranteed funding mechanism, including a bond equal to the cost of mitigation, seems critical to ensure the success of these measures.

Without substantial evidence to support a determination that the property owners will be able to afford or reliably fulfill the mitigation requirements and that the funding source will be secure, the County must acknowledge the uncertainty of all mitigation measures assigned to the property owners, and adopt a statement of overriding considerations recognizing that the

mitigation might not be successful. (*Woodward Park Homeowners' Ass'n, Inc. v. County of Fresno, supra*, 150 Cal.App.4th 683 at p. 724 [agency approval improper where mitigation measure not shown to be adequate by substantial evidence].)

VII. Approval of the Project as Proposed Will Subject the County and Applicant to Potential Liability under the Federal Endangered Species Act

The FEIR confirms that approval of the Project would harm the CRLF by destroying the water source for Keil Pond, which is acknowledged to be breeding habitat for this federally protected species. If the County approves the Project, it may itself be in violation of the federal ESA. (*See The Aransas Project v. Shaw*, 835 F. Supp.2d 251, 270-71 (S.D. Tex. 2011); *Strahan v. Coxe*, 127 F. 3d 155 (1st Cir. 1997) [governmental third party pursuant to whose authority an actor directly exacts taking of federally protected species endangered species deemed to violate ESA].) The question of liability under the ESA only adds to the Project's substantial CEQA, water rights, and Planning and Zoning law issues. If the County were to certify the EIR in its present form and approve the Project as it is proposed, or any of the alternatives in the current EIR, it would be inviting risk of substantial liability for itself and the developer.

VIII. Due to the Project's Many Significant and Unavoidable Impacts, the County Should Seek Relief from the Judgments under Federal Rule of Civil Procedure 60(d)

Rather than inviting more conflict, the County and applicant should recognize that there is no feasible way to develop the property in the way that is being proposed. They should go back to the drawing board and agree on a project that fits within the constraints of this particular site. If the applicant is unwilling to cooperate in avoiding these serious environmental impacts, the County has a duty, consistent with its police power, its obligation under CEQA to minimize significant impacts to the environment, and its obligation under the federal ESA to avoid harm to protected species, to go back to the federal district court and seek relief from the Stipulated Judgments on the grounds that approving the developer's proposal will require it to violate state and federal law, as well as Countywide Plan policies.

Federal Rule of Civil Procedure 60(d) permits a party to seek relief from a judgment in order to avoid a "miscarriage of justice." The County has a strong argument justifying relief from the Stipulated Judgments based on the information that has arisen as a result of CEQA review, which had not been completed at the time of either judgment. That review has revealed that development of the site as could occur under the Judgments cannot be accomplished without extensive landslide repair, which would have the following significant unavoidable environmental and legal effects: dewatering the slopes, thereby eliminating or substantially reducing the primary water source for the historically significant Keil Pond and gardens; reducing the water quality of any water that does reach Keil Pond or the property; adversely affecting the breeding habitat of the CRLF, a threatened species protected by the federal ESA. Approval of the Project also would conflict with important Countywide Plan policies (as described in the DEIR section 4.0) and violate CEQA's mandate that the County not approve a project with significant effects if there are feasible alternatives or mitigation measures that would avoid or substantially lessen one or more of those effects. Requiring an agency to approve a project that would result in violations of federal, state and local law would amount to a miscarriage of justice.

IX. Conclusion

For well over a decade the Keil Family has participated in the dialogue regarding the wisdom of proceeding with development of this property on the scale proposed by the applicant. Throughout this time the Keils have maintained that they are not opposed to development of the property, but that they cannot support development as it is being proposed due to the drastic and unacceptable environmental impacts that it will cause.

In light of the evidence about the significant impacts of the Project and all of the current EIR alternatives, the developer and County should agree on a different project that avoids the need for extensive landslide repair and impacts to Keil Cove and the red legged frog. Under any circumstances, as noted by the Planning Commission at its July 22 hearing on the FEIR, the significant flaws in the current EIR require that the County revise it and recirculate it for public review. If after preparation of a legally adequate EIR the County and applicant cannot agree on a project that avoids significant impacts, the County has the right and duty to seek relief from the Judgments.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Paul S. Simmons", with a stylized flourish at the end.

Paul S. Simmons
Kelley M. Taber

PSS/KMT:sb

Enclosure: Exhibit A: July 26, 2013 Comments of the Keil Family on Final EIR

cc: The Honorable Judy Arnold, President, Marin County Board of Supervisors
Wade Holland, Chair, Marin County Planning Commission
John Eller, Commissioner, Marin County Planning Commission

Exhibit A

Keil Family Comments on Responses to Comments

Following are the Keil Family's Comments on the Responses to Comments provided in the Final Environmental Impact Report (FEIR)¹.

Master Response 3: This response addresses comments about Project impacts on the spring and groundwater based supply that the Keils use to maintain the historic gardens and Keil Pond at Keil Cove.

The EIR concludes that impacts to the Keils' water supply would be significant and unavoidable. This determination is not supported by substantial evidence. Impacts may only be found to be significant and unavoidable if there are no feasible alternatives or mitigation measures that would avoid them. As noted by the Keils and others, an alternative that would avoid construction in areas of landslides would avoid the need for repair that would lead to the dewatering of Keil Spring.

Further, the Keils object to the revisions to Mitigation Measures 5.5-6 and 6.5-6 that state no feasible mitigation is available due to their "lack of cooperation." It is entirely inappropriate, and incorrect, to suggest that the Keils are somehow obliged to join in the destruction of their water supply and property right. The implication that the Keils are unreasonable in failing to agree to legally infeasible mitigation that would have that result is unjustified and suggests bias against the Keils and disrespect for the Keils' legitimate rights and interests. Moreover, the Keils have never refused to provide available data or access to their property for monitoring of the spring and cistern flows and irrigation use and, thus, this statement lacks any foundation in the record. Flows from the spring and the on-site wells have always been of a sufficient quantity and quality to maintain the historic gardens and California Red Legged Frog (CRLF) habitat. The general information regarding flows set forth on 369 and 370 of the DEIR was furnished to the applicant by Russ Keil. The Keil Family is willing to allow applicant's consultants access to the property to obtain baseline water quality measurements. Neither the County nor the applicant has ever requested access to the Keil Property to obtain such data. The Keil Family has no database of baseline measurements or studies to share. The County should address these inaccuracies by revising both mitigation measures.

Master Response 4: The response attempts to justify the EIR's failure to evaluate water quality impacts to Keil Pond, claiming the Keil Family has refused to cooperate in the environmental review. The Keils do not intend to "cooperate" in the destruction of their water right by agreeing to accept a substitute water source as recommended by Mitigation Measures 5.5-6 and 6.5-6. It is not the Keils' obligation to develop data to support the EIR. It is the County's duty as lead agency to obtain information necessary to conduct legally

¹ These comments address the adequacy of responses to comments on the Draft Environmental Impact Report (DEIR) prepared for the Project, as presented in the FEIR. As pertinent, comments reference the DEIR or FEIR, or, for issues that apply to the combined documentation constituting the County's environmental review, "the EIR."

adequate environmental analysis. The Keils have never refused to permit Applicant's consultant to test the water quality to obtain baseline water quality data or denied them access to the property for such purposes. They also never stated that they would refuse to cooperate in the environmental review. Even after the Keils submitted comments on the DEIR that raised questions about water quality impacts, the no one requested data from the Keils or access to the property to collect data that would address these substantial issues, and the Keils believe it is important that full and complete environmental review occur. Any reasonable requests for access to obtain necessary information will be granted.

The lack of availability of existing water quality data is not due to the lack of cooperation by the Keil family but to the failure of the Project proponent or EIR authors to perform the required investigation. All references to the Keil family's "lack of cooperation" and the "infeasibility" of obtaining baseline water quality data in the responses to comments should be stricken. As noted in the comments on the DEIR, the County must conduct the required investigation and include the results in a recirculated DEIR so that the public can understand this aspect of the Project's impact on Keil Pond, the Keil gardens and the CRLF that breed in the pond.

Master Response 5: The response augments the DEIR analysis with an estimate that groundwater converted to surface water as a result of Project landslide repairs would increase peak flow rates in receiving drainageways by 5 percent and requires the applicant to ensure that Paradise Drive culverts are sized to accommodate that additional flow. The basis for the 5 percent estimate is cited in the response (at FEIR page 25) but the magnitude of Project-related increases is specifically noted to be "uncertain." What further mitigation is required of the applicant if the 5 percent estimate used in the DEIR turns out to be too low and culverts, even redesigned ones, are inadequate to accommodate actual flows? Mitigation Measure 5.5-3(c) requires ongoing maintenance of erosion control measures by the property owners' association. Would the property owners' association be responsible for monitoring adequacy of the culvert to handle actual (versus estimated) runoff volumes and making any required replacements to avoid significant impacts?

Also, Mitigation Measure 5.5-7(b) states that design of culvert replacements "should" conform to the County's drainage standards and "should" include appropriate energy dissipation measures. The failure to include mandatory, enforceable design and performance standards renders this mitigation inadequate and the County cannot rely on it to find that impacts from surface water runoff are less than significant.

Master Response 6: The response suggests that the applicant may be able to minimize the required storage volumes for roadway detention facilities by using permeable pavers/pavement, gravel or other porous materials for ridgeline locations. However, the response also indicates that use of permeable materials in areas underlain by shallow soils could have adverse effects on water quality, particularly the recharge area of Keil Spring. Mitigation Measure 5.5-3(e) is revised in the FEIR to emphasize permeable materials for off-lot parking spaces, yet the mitigation measure merely states that permeable parking spaces "should" be restricted to areas outside of the recharge area of the spring. Due to the significant water quality impacts to Keil Spring, use of permeable materials should not be optional but should

be prohibited for any parking or road areas in or near the recharge area of Keil Spring. Without such a prohibition, there is no basis for concluding that Mitigation Measure 5.5-3(e) will reduce water quality impacts to Keil Spring to a less than significant level.

Under the discussion of responsibility and monitoring for Mitigation Measure 5.5-3(e), the response revises the DEIR to shift the responsibility for inspection of the water quality measures from the agency with expertise in that area, the Regional Water Quality Control Board (RWQCB), to the property owners' association. This begs the recurring question of whether the property owners' association is qualified to conduct such technical inspection and monitoring and how compliance will be monitored by the County. The FEIR further states that the applicant may be responsible to implement remedial measure if the County or RWQCB indicate that site stormwater quality objectives are not being met. Since the RWQCB will not be inspecting and monitoring the success of the water quality measures, how can it be expected to know if site water quality objectives are being met?

Responses 1-3, 1-18 and 1-19: These responses fail to address (i) the concerns of the County's Public Works Department regarding the feasibility of assigning so much mitigation responsibility to the property owners' association; (ii) the questions raised about how the long-term maintenance of the landslide stabilization program will be funded, and how the property owners' association will be viable in the long-term; and (iii) the suggestion that a Geologic Hazards Abatement District should be considered to ensure that mitigation is actually and correctly performed.

Response 7-6: While it may be that the landslide stabilization measures identified in the EIR are technically feasible, they are legally infeasible because they would unlawfully interfere with the Keil Family's water rights by dewatering Keil Spring.

Response 7-36: This response fails to address the commenter's concern about visual impacts of ground debris fences.

Response 22-1: Note that the Keils do not have an easement for use of Keil Spring but rather own the spring parcel and the right to water from the property and spring.

Response 22-3: Contrary to the phrasing in the response, the 2007 Judgment's test for the extent of the landslide is that it may not be "extensive." It cannot reasonably be argued that the proposed landslide repair is not extensive. The 2007 Judgment further requires that lots be placed on "geologically safe portions of the site." Clearly most of the proposed lots are not located in geologically safe portions of the site or they would not require the extensive repair identified in the EIR.

Comment 22-5: See comments on Master Responses 3 and 4.

Response 22-8: This response fails to address the concerns raised in the comment. The response also misstates the purpose of and requirements for CEQA's alternatives analysis. The comment stated CEQA's requirement that an EIR evaluate alternatives capable of avoiding significant impacts. As noted previously, alternatives need only be "potentially

feasible” to be included in an EIR. None of the alternatives in the EIR addresses the significant impacts to Keil Cove and Keil Spring, including impacts to its historic significance or its function as a breeding ground for the CRLF. The fact that the applicant and Town of Tiburon agreed to a reduced scale alternative design suggests that other design alternatives, such as that suggested by the Keils, are potentially feasible and should have been considered in the EIR. The response also mischaracterizes the Stipulated Judgments. The applicant’s right to construct 43 lots is qualified by the court’s directives that lots not be located in areas requiring extensive landslide repair and that development avoid impacts to protected species. With the exception of the No Project Alternative, no alternative evaluated in the DEIR is consistent with the language or intent of the Judgments.

Response 22-11: The response states that detention structures “*should* be designed per the requirements of applicable codes.” (Emphasis added.) Is compliance with codes optional for the Project? What is the mechanism for ensuring that detention structures are designed in compliance with codes? Without a binding commitment to specified performance standards, the mitigation is inadequate.

Response 22-13: The response does not address the questions regarding the visual impact of increased retaining wall heights. It also does not address the question of where the detention vaults will be located. This information is necessary to evaluate the potential impact of these structures.

Response 22-24: The response fails to address the questions raised in the comment about the financial feasibility of the numerous mitigation requirements assigned to the property owners or whether the County would actually monitor the mitigation in perpetuity to ensure that the necessary maintenance is conducted.

Response 22-27: The response misses the point that landslide repair outside the Lands of Keil will dewater the Keil Spring, destroying the Keil property’s water source. Because the applicant may not legally destroy the Keils’ water right, the proposed repairs are legally infeasible. Without the ability to conduct the extensive landslide repair, the Project will result in significant health and safety impacts from locating homes in and around landslides. The EIR fails to acknowledge this significant impact. Because the DEIR did not correctly identify this significant impact, and the FEIR did not adopt any mitigation or alternatives to avoid it, the EIR must be revised and recirculated for public review.

Response 22-30: The response does not address the potential for chemical treatment with something other than lime or whether any such chemicals, including lime, have the potential to leach into groundwater.

Response 22-31: The response does not address the concerns raised in the comment. See comments on Master Response 3.

Response 22-32: The response and cross-referenced responses do not address the comment that independent peer review, funded by the applicant, should be required for all technical

studies submitted by the applicant, especially those necessary to ensure that significant impacts are avoided.

Response 22-40: The revision to Mitigation Measure 5.9-3(b) incorrectly states that the Keil Family will not “cooperate” or provide access to its property for purposes of assessing project impacts, including monitoring of flows and irrigation use. The Keil Family’s lawful and reasonable unwillingness to accept destruction of their property or a substitute water source of unknown quality and quantity has no relationship to the County’s obligation and ability to conduct the required investigation to quantify project impacts.

Note also that the *Significance after Mitigation* paragraph should be modified by adding the following: “In turn, the significant impacts on the Keil Cove property, identified as an historical resource, would also be significant and unavoidable,” and the reference to Impact 5.5.6 in *Significance after Mitigation* paragraph on page 311 should be changed to Impact 6.9.3.

Response 22-42: The response does not address the feasibility of long-term compliance with the measures by the property owners’ association.

Response 22-47: The response fails to address the fact that mitigation purportedly relied on by Dr. Jennings for his opinion that Project impacts to the CRLF breeding habitat would not be significant is not feasible. Without the mitigation relied on by Dr. Jennings, there is no foundation for his opinion that Project impacts would be less than significant and thus no substantial evidence to support any finding other than that Project impacts are significant.

Response 22-55: The comment asks about the availability of off-site mitigation for loss of CRLF habitat. The response merely refers the reader to Response to Comment 49, which addresses the suitability of on-site habitat. Mitigation Measure 5.6-2(b) requires the applicant to acquire off-site habitat if preservation of on-site habitat at the required ratio is not feasible. While Response 22-49 suggests that on-site preservation is feasible, the final determination on feasibility has not been made, the PDP has not been redesigned, and the RMP has not been prepared or approved. Thus, the questions regarding availability and feasibility of off-site mitigation remain relevant and require a response.

Response 22-56: This response fails to address the concerns raised in the comment about secondary impacts from mitigation requiring lower building heights for homes along the ridge – specifically whether larger footprints will result in more extensive landslide remediation and what the effects of that will be.

Response 22-59: Giving the County the authority but not the duty to enforce the CC&Rs does not resolve the questions raised in the comment, and in the DEIR (including the quoted language from DEIR p. 426) regarding the unsuitability of the property owners’ association to fulfill the numerous and crucial mitigation requirements, including those required to protect the CRLF. How does the County propose to monitor compliance with the mitigation requirements? With what frequency will it inspect mitigation and what mechanisms would it take to enforce the requirements? Who will fund the County’s ongoing monitoring of

mitigation or costs of enforcement? Will this cost be assumed by County residents? Without substantial evidence to support a determination that the property owners will be able to afford the mitigation, and that the funding will be secure, the County must acknowledge the uncertainty and adopt a statement of overriding considerations recognizing that the mitigation might not be successful. (*Woodward Park Homeowners' Ass'n, Inc. v. County of Fresno* (2007) 150 Cal.App.4th 683, 724.)

Response 22-60: The Keils strenuously disagree with the assertion that the range of alternatives presented in the EIR is reasonable. No alternative avoids the need for extensive landslide repair, which is the proximate cause of the dewatering of Keil Spring and loss of water supply to Keil Pond, and thus the significant impacts to the Keil Cove historical resource and CRLF breeding population. There is no evidence that an alternative design that avoids landslide areas is not feasible or that such a design could not be consistent with the judgment.

Response 22-61: The Keils disagree with the assertion that Alternative 2 meets CEQA's requirement for an alternative that would avoid or substantially lessen any of the Project's significant effects. Because this alternative also requires extensive landslide repair, it would have the same significant impacts to Keil Cove and the CRLF as the Project, as well as significant visual impacts.

Response 22-65: The response fails to address the concern raised in the comment that the discussion of Impact 5.5-6 for Alternative 2 does not provide for mitigation responsibility and monitoring.

Response 22-66: The response fails to address the comments regarding water quality issues. Master Response 3 addresses impacts to water supply only.

Response 22-67: The response does not respond to the issues raised regarding the need to conduct further water quality sampling to evaluate water quality impacts to Keil Spring, groundwater supplies and Keil Pond. The response merely refers the reader to Master Response 4, which, as noted previously, inaccurately states that the Keil Family has refused to cooperate in providing access to obtain the information needed to conduct the required investigation.

Response 22-69: The response does not respond to the issues raised regarding the need to quantify current sediment loads to Keil Cove, Keil Pond and Keil Spring in order to assess potential impacts and reach a determination about the significance of Project impacts. The response merely refers the reader to Master Responses 3 and 4, which, as noted previously, inaccurately state that the Keil Family has refused to cooperate in providing access to obtain the information needed to conduct the required investigation.

Response 22-79: Master Responses 3 and 4 fail to address the water quality concerns raised in the comment, including water quality of wells on the Keil property, nor do they address the comments about how Project-related hydrologic changes could affect the position of the local salt water wedge beneath Keil Cove and Railroad Marsh.

Response 22-81: As stated previously, references to “cooperation” by the Keils should be changed to “agreement.”

Response to Exhibit D (memo from Robert Lamb Hart): The response to Comment 90 does not adequately respond to the issues raised in the exhibit – namely, the effectiveness of the suggested alternative to avoid the Project’s significant impacts from landslide repair and visual impacts. The response to which the reader is referred essentially says the County is not obligated to consider any alternatives other than those proposed or already agreed to by the applicant. As set forth in previous comments, this response is incorrect as a matter of law and the decision not to evaluate one or more alternatives capable of avoiding these significant effects violates CEQA.

Response 91-6: The comment raises concerns about the feasibility of mitigation measures for landslide risk that, as a practical matter, appear to require that improvements be designed and constructed if not concurrently, then at least in a coordinated manner. The response fails to address the concerns about whether development of the project in a piecemeal fashion (via construction of custom homes, rather than as a planned development) will permit or ensure the necessary coordination of design and construction issues.

DEREK PARKER

7/2/2013

Curtis Havel, Senior Planner
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

FEIR, Easton Point Residential Development

Dear Mr. Havel,

We have reviewed the FEIR and the response to our 69 comments on the DEIR.

We comment as follows:

1.0. The EIR finds the project would result in significant environmental impacts in 14 of 15 topical issues and the proposed mitigation measures would still leave significant unavoidable impacts for 10 of 15 topical issues, including air quality, hydrology, traffic/parking/circulation, biological resources, noise, aesthetics, green house gases. So we now have a comprehensive document which confirms what we have known all along. These impacts cannot be taken lightly and will require the utmost vigilance by our representatives on the Board of Supervisors.

2.0. This is a large project in a small community. It is very high risk for the developer. In those circumstances, where failure to complete the project and its mitigations is a strong possibility, it would seem reasonable for the County to require a Bond in case of bankruptcy so that the community can have confidence that the unavoidable impacts are fully mitigated BEFORE the project is approved.

The response from the consultant to our comment in the DEIR, "*Response to Comment 54-2 "This is a comment on the merits of the proposed project and not on the adequacy of the EIR. No further response is necessary."*" is far from satisfactory and not reassuring.

3.0. The required construction road is a complex topic. Its final disposition in the FEIR is left up to the Board of Supervisors. We would like the Board to recognize that this road is unsafe and a serious hazard to all who live downhill of the project.

Finally, if the Board adopts the FEIR and its clearly stated unmitigated serious impacts, what next?

Does that mean we as a community just live with consequences over the next decade and beyond?

Sincerely,



Derek Parker

2351 Spanish Trail, Tiburon, California

415 435 8893

derekparker42@gmail.com

From: Shelley N. Brown [<mailto:sbrown@milagrofoundation.org>]
Sent: Tuesday, July 16, 2013 3:43 PM
To: Havel, Curtis
Subject: Martha Property Concerns

Attn: Curtis Havel
Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Living in Old Tiburon one short block off Paradise Drive, I have several concerns about the Martha Property FEIR.

1. FEIR p. 55 & 56, response 1-2: Safety along Paradise Road. The County Dept. of Public Works says it must widen the full length of the project yet a consultant said it was not needed. There must be further study about the value of widening Paradise Drive to accommodate construction vehicles and the impact that would cause in the neighborhood.
2. FEIR p. 102, response 7-1: Construction Traffic Unsafe. Construction Traffic through Old Tiburon or on Paradise Drive must be minimized. Supervisors should direct staff to evaluate the safety benefits of smaller size houses on 1/2 acre lots rather than the larger houses proposed by the applicant. Smaller houses would need less truck access.
3. FEIR p. 105. Response 7-14: Traffic on Tiburon Blvd. is at its worst during before school and after school hours. (not during business hours.) A new analysis of impact must be done again using the peak traffic periods in Tiburon.
4. FEIR p. 9 (DEIR p. 255): Neighborhood Roads Unsafe: Says Hill Haven and Old Tiburon roads are unsafe. Use of construction road for only 10 years after signing Development Agreement. Revisit this decision. Homes being built after 10 years would have construction vehicles using Hill Haven and Old Tiburon roads.
Also, DEIR p. 462 Tiburon Fire Dept. says construction road is unsafe for emergency vehicles. Also wouldn't it be unsafe for daily contractor vehicles? This issue could force contractor vehicles onto neighborhood roads. (FEIR comment 7-16.)
5. FEIR p.31: Visual Impacts of water tank (20' to 40' high) and 65' MERA tower from protected open space. This is a significant impact to all of us who pay for and use this open space. There should be visuals in the FEIR and this should be studied further and clearly described in the FEIR.

Shelley N. Brown
2300 Vista Del Mar Lane

Tiburon, CA 94920-1208

Phone: 415-435-8435

Cell: 415-827-8435

Fax: 415-460-6802

2013 Easton Point Final EIR June 2013
Page 618: "The issue of fire and emergency services
is adequately addressed in the Draft EIR."

FEIR Inadequacies: prudent fireflow, real-life traffic and smaller house studies

PAGE 92

Due to the 25 percent maximum grade, the construction access road **would not meet TFPD standards for grades** and, therefore, it is unlikely that the construction access road would be available for use by emergency vehicles.

PAGE 59

As discussed in *Impact 6.1-9* in three locations, turnouts would be needed to meet TFPD standards and the construction access road, proposed to be removed after construction, **would not comply** with TFPD standards for grade.

PAGE 62

With project-generated traffic, emergency access vehicles and residents of existing neighborhoods would be exposed to more frequent unpredictable traffic flow and intermittent safety hazards when traveling the narrow, winding residential streets, a **significant impact**.

PAGE 9

As stated on page 255 of the Draft EIR, there are **no clear solutions** to the existing narrow, winding streets in the Lyford's Cove/Old Tiburon or Hill Haven neighborhoods. Road widening mitigations would require residents to dedicate lot frontages (lawns and landscaped areas) to the public road right-of-way. It is anticipated that most, if not all, residents would object to such a project.

PAGE 450

Fire flow requirements are based on factors including building design, capabilities of fire suppression equipment, and proposed building square footage. Available fire flow at each lot could **limit the total building floor area** allowed on any given lot in the proposed project.

PAGE 94

The preliminary water feasibility analysis demonstrates that up to 20 proposed lots **would not meet the minimum fire flow** requirement of 1500 gpm, a **significant impact**. Mitigation Measure 5.7-8 would reduce this impact by either increasing the fire flow to lots 21-23 or designing buildings with a maximum size of 3,600 square feet to comply with available fire flow. It is reasonable to **question the feasibility** of this mitigation, as the commentor does.

PAGE 80

Ron Barney, Fire Marshal, Tiburon Fire Protection District, states traffic delays are a source of concern for **emergency response times** when fire service vehicles travel on Tiburon Blvd.

It was pointed out numerous times that Tiburon's unique "peak traffic hours" coincide with arrival and departure times for the seven schools on two-lane Tiburon Boulevard plus three schools on two-lane Paradise Drive, accessed from Tiburon Boulevard, with **critical mass in afternoon hours** exacerbated by current construction and service workers leaving Tiburon and Belvedere via Tiburon Boulevard. A relevant traffic study is needed.

Dr. and Mrs. Robert J. Swanson, 2 Seafirth Lane, Tiburon

-----Original Message-----

From: Anne Drew [<mailto:asdrew1@comcast.net>]

Sent: Wednesday, July 17, 2013 9:48 AM

To: Stratton, Debra; Havel, Curtis; Julie Keil

Subject: Easton Point

Dear Ms. Stratton and Mr. Havel,

I am writing to comment on the FEIR document concerning the Martha Property (Easton Point). The two areas of concern that I have are about the unsafe construction traffic and the danger of fire. We have lived at 2345 Spanish Trail in Tiburon since 1969 and are very familiar with narrow winding roads. As most neighborhood do, this one has changed over the years and is now loaded with children. The FEIR does NOT address that issue of safety or the enormous traffic that is generated around SCHOOL hours on Tiburon Blvd. This end of Tiburon cannot support any more traffic without endangering those of us who live here.

My other concern is fire. Since we have been here there have been 2 fires up on that hill. One was caused by children playing with matches and the whole hill caught on fire. The access for the fire trucks was off of Spanish Trail which is very narrow and can only support one car at a time. We were lucky then because the wind shifted. The other fire was on the ridge and attacked by helicopters. There does not appear to be enough attention to the very real issue of fire.

I urge you to give full consideration to these issues before any final report is made.

Yours

truly,

Anne

Drew

2345 Spanish Trail
Tiburon
asdrew1@comcast.net
435-3978

From: Andrew Hoybach [<mailto:hoybach@live.com>]
Sent: Wednesday, July 17, 2013 2:10 PM
To: Havel, Curtis; Stratton, Debra
Subject: MARTHA PROPERTY FEIR COMMENTS

Gentlemen - I have been slowly getting up to speed on developments with respect to the Martha Property and wanted to provide a few comments on the latest FEIR.

Traffic Impact - I noted that the FEIR analyzed business "rush" hour traffic along this road, not school "rush" hour traffic. For those living in Tiburon, business rush hour does not represent peak traffic circulation. I believe school traffic should be factored into a new analysis.

Construction Traffic - There is no discussion of traffic caused by the contractor vehicles that will be required throughout the construction period, which could go on for several years. I also saw mention of the number of trips being limited to "a few truck trips per day during home construction? How is that possible? Does that also include all of the site development that will be required before foundations are even poured? Can dump trucks be successfully fully loaded when using the construction road? If not, how full can they be and what impact will that have on total trips?

Safety - I am seriously concerned about the serious safety impacts of construction traffic on the proposed construction road, Paradise Drive, and nearby neighborhoods streets. The proposed construction road consists of a single lane on a steep grade. Paradise Drive is a narrow and winding two-lane road that is used by many bicyclists on a daily basis. Large construction vehicles on this road for ten or more years will put cyclists and drivers at great risk. As acknowledged in the FEIR, neighborhood streets in nearby Hill Haven and Old Town are old and narrow and totally unsafe for construction traffic. In regard to Alternative 2, the FEIR states that the construction road shall be used for 10 years after the signing of the Development Agreement, at which point construction traffic would be diverted to the Old Town and Hill Haven streets. Construction traffic on Paradise and through Old Tiburon must be properly analyzed and minimized. I believe that the Board of Supervisors must propose studying a fifth alternative for 43 smaller houses so as to minimize construction traffic.

Paradise Widening - The FEIR stated that the Department of Public Works has recommended the widening of Paradise Drive for the full mile-long length of the project but that the traffic consultant said this would not be necessary. I am writing to demand that the Board of Supervisors study the value of widening Paradise Drive as recommended by the DPW.

Views - I am concerned that the view impacts were not fully addressed in the FEIR. There is no illustration of the new 20' x 40' water tower and 65'

transmission tower, which are proposed to stand just below the primary viewpoint on the Old St. Hilary's Open Space. How would these towers impact the views?

Performance - Has financial failure of the developer been addressed before any of the required work begins? Will there be any requirement for performance bonds before irreversible development occurs?

Many thanks for your consideration and continued focus on this.

From: Jill B [<mailto:jillgbarnett@hotmail.com>]
Sent: Thursday, July 18, 2013 4:20 PM
To: Havel, Curtis; Stratton, Debra
Subject: Martha Property

Dear Curtis and Debra

Regarding the Martha Property.

I have written in the past about the impact of traffic on Tiburon Blvd should this development project be approved and I am writing again now that the FEIR has been written. I feel you have no idea of the impact this project will bring to the residents of Tiburon and Belvedere.

Traffic Issues:

- *I am concerned about the FEIR's assessment of traffic impacts on Tiburon Blvd. The FEIR analyzed business "rush" hour traffic along this road, not school "rush" hour traffic, which is when traffic levels are truly at their peak. I believe there must be a new traffic analysis because the current analysis does not address peak levels of traffic on Tiburon Blvd; the situation is much worse than described in the DEIR!*

- *I am concerned that the FEIR has not fully addressed construction traffic impacts. For example, there is no discussion of traffic caused by the contractor vehicles or flag trucks that will be required throughout the construction period – at least ten years and perhaps much longer! Is the FEIR accurate in its analysis that only a few construction truck trips to the site will be required per day during home construction? Can dump trucks be successfully fully loaded when using the construction road? If not, how full can they be and what impact will that have on total trips?*

School Issues:

Has anyone thought about the impact on our school system, should 34-43 new homes be built? Our schools are overcrowded as they are.

Jill Barnett

July 18, 2013

To: Marin County Community Development Agency
Attention: Curtis Havel, Senior Planner
cc: Debra Straffon, Senior Secretary
FAX: (415) 473-7880

From: Linda Bine
339 San Rafael Avenue
Belvedere, CA 94920

RE: Martha Property/Easton Point FEIR Concerns

I am writing with several concerns about the Final Environmental Impact Report for the Martha Property/Easton Point Project in Tiburon. I am extremely concerned about several aspects of the FEIR that do not adequately address serious safety and view issues.

1. The thought of construction trucks rumbling along Paradise Drive, Monday through Friday for 10 or more years is truly frightening. Given the narrow, curvy road, with poor visibility, large trucks would pose huge safety risks for people in cars, and especially those on bicycles. How is a bicycle rider supposed to "share the road" with a cement truck? The County Department of Public Works recommended widening Paradise Drive for the full length of the project. I believe that it should be widened along the entire path the trucks will travel; that is from Trestle Glen to the southern end of the Martha Property.

Before moving forward, please require the appropriate party to obtain a study of the value of widening Paradise Drive from Trestle Glen to the southern end of the Martha Property.

2. The traffic analysis of Tiburon Boulevard was performed incorrectly because it was done during "business rush hours" without consideration for "school rush hours," which, given the number of schools that are accessed along Tiburon Boulevard, are as congested, if not more congested than business rush hours.

Before moving forward, please require the applicants to conduct the traffic analysis again, using the appropriate time periods.

3. As a regular hiker in the Old St. Hillary's Open Space, and as someone who has paid thousands of dollars, and continues to pay nearly \$200 a year for its existence as open space, I am very troubled by the lack of information about the location of the 20' X 40' water tank, which is not illustrated in the DEIR or the FEIR. And I am even more alarmed that the new 65' MERA tower was not mentioned in the DEIR, and not illustrated in the FEIR. These need to be placed in locations that will not infringe on the views that we all paid for, pay for, and deserve to enjoy.

Before moving forward, please require disclosure of the proposed locations of the water tank and MERA tower and engage in a discussion that will assure maintenance of unobstructed views from the Old St. Hillary's Open Space.

Thank you for ensuring the safety and open space rights of the residents of Marin County.

From: Ellen Nadeau [<mailto:ellenm@nadeau.com>]
Sent: Thursday, July 18, 2013 8:46 AM
To: Havel, Curtis
Cc: Stratton, Debra
Subject: Bay Area Wild and the Martha project in Tiburon

Dear Marin County Development Agency:

I have reviewed the impacts of this development and feel that because our county lives in what we consider a blessing and abundance of open space that we are missing the bigger picture. The entire Bay Area is at risk of losing precious wildlife corridors and habitat as a whole, and Tiburon represents one of the areas at greatest risk for development curtailing these habitats for plants and wildlife throughout the Bay Area.

Specifically in this project the access of construction vehicles for up to 10 years will remove all sense of wild lands from the remaining open space and will impact the surrounding runoff, noise, wildlife corridors and habitat that remains. The pretense that areas of Paradise Drive, the remaining open space and the lands down to the Bay below Paradise Drive will be unaffected is extreme ignorance.

Recommended reference: Bay Area Wild by Galen Rowell

Nestled among the cities and suburbs of the San Francisco Bay Area is the most extensive system of wild greenbelts in the nation. Galen Rowell, renowned adventurer and wilderness photographer, has created the ultimate tribute to the area where he was born and raised. His inspiring text and the book's 170 spectacular color photographs present a unique view of the Bay Area.

Chosen from more than 20,000 images, these extraordinary photographs make clear why so many have worked so hard to preserve the Bay Area's wildlands, and why this work must continue.

Ellen Nadeau
Mill Valley, CA 94941

former home 18 Hillcrest Rd.
Paradise Dr. & Trestle Glen
Tiburon

From: Louise Capozzi [<mailto:louisecapozzi@gmail.com>]
Sent: Friday, July 19, 2013 8:36 PM
To: Havel, Curtis
Cc: Stratton, Debra
Subject: Fwd: concern about Easton Point

Begin forwarded message:

From: Louise Capozzi <louisecapozzi@gmail.com>
Date: July 19, 2013 8:31:29 PM PDT
To: Louise Capozzi <louisecapozzi@gmail.com>
Subject: Fwd: concern about Easton Point

Begin forwarded message:

From: Louise Capozzi <louisecapozzi@gmail.com>
Date: July 18, 2013 2:06:45 PM PDT
To: Angelo Capozzi <angelocapozzimd@gmail.com>
Subject: concern about Easton Point

We have lived in Tiburon for 45 years and have seen the continual crowding and back up of traffic on Tiburon Blvd.. The DEIR did their traffic analysis during the work rush hour that effects traffic on 101, that is not the most heavy traffic on Tiburon Blvd. The analysis should be redone during the 3 p.m. school rush hour, that is the height of the traffic on Tiburon Blvd., and that is when the traffic backs up to make it very undesirable to try to leave or enter town. We are also extremely concerned about the safety issues that will be faced if the homes are built to the size that has been suggested for Easton Point. There should be a much more comprehensive study done on permitting smaller homes in that development rather than the present idea. The present proposal for development will put a great hazard on the people and especially on the children who live in Hill Haven, Old Tiburon, and the other areas that encircle the possible development. Envisioning large trucks and construction machines using the local roads, when it might be more efficient than using the construction road; which, if built, is not considered safe by our fire department to enter with the 25% grade; is a frightening situation to imagine. The noise that will result for the entire town will totally destroy our beautiful environment. The idea of a 20' by 40' water tank up on the hill along with a 65' transmission tower would top off the destruction of our wonderful Tiburon surroundings. How would these towers impact the view? That has not been addressed in the DEIR. The edge of the property has an old wooded area with many dry, dead trees--wonderful tinder for the beginning of an out of control fire, that would take down the new homes and the old homes in the area. The water supply from the water tank could last maybe 2 hours. Imagine the lack of public safety from that issue alone. The idea of widening Paradise Drive to accommodate the new development should have much further study. We hope that the true costs of development of this special area can be reached and that further study can be done on the best use, for all, of this valuable land. Angelo and Louise Capozzi

From: Connie Peirce [<mailto:connie94920@yahoo.com>]
Sent: Friday, July 19, 2013 8:52 PM
To: Havel, Curtis; Stratton, Debra
Subject: FEIR Easton Point

Dear Chair and Commissioners,

The Final EIR for the Easton Point Project did not address any of the three items I raised in my April 29, 2011 response to the DEIR, letter#105 in the FEIR.

Item #1 concerns the noise and vibrations that will occur when the thousands of truck hit the raised pedestrian cross-walk on Tiburon Blvd. at the Mar West/Lagoon/Cove Rd. intersection. As I noted in my letter, the noise and vibrational disturbance is great when garbage trucks hit that cross-walk. Given that 10's of 1,000's of truck trips will cross-over that spot before build-out is complete, the impact for my immediate neighborhood will be significant. My home is adjacent to that intersection and it shudders with each passing garbage truck.

The FEIR directed me to Master Responses 1 & 2.

MR#1 speaks to the traffic impacts in the three other neighborhoods. It does not address the concerns I noted for my neighborhood. It does, however, speak to the necessity of flag trucks leading and following over-size vehicles. Such trucks and that necessity further underscore my concerns.

MR#2, on p. 17, states "Trucks delivering or hauling materials to the site would arrive and depart throughout the day. Virtually all would travel to and from the west on Paradise Drive-Tiburon Boulevard and would produce only minor (insignificant) impacts (such as slower trips through curves and slow acceleration from signals and stops along Tiburon Boulevard and Paradise Drive)." I strongly disagree with this statement for many reasons, including the fact that the FEIR did not address, at all, the noise and vibrational impact of the project and build-out trucks on all those in the many neighborhoods along the full length of Tiburon Blvd. and Paradise Dr.

Please address the noise and vibrational impacts on all of these other Tiburon and Belvedere neighborhoods, including the hours that such vehicles will be allowed on these roads. I raise this additional point because the FEIR referenced project/ build-out traffic avoiding the AM commute hour. Does that mean our residential neighborhoods will be disturbed in the early hours of the morning?

Item #2 concerns pedestrian and bicycle safety at the Tiburon Blvd./Mar West/Lagoon/Cove Rd. intersection.

The FEIR directed me to Response to Comment 1-2. That response addressed an issue related to Paradise Dr.

The Tiburon Blvd. crosswalk at the intersection of Mar West/Lagoon/Cove Rd. is the most highly used pedestrian crossing on Tiburon Blvd. that does not have a traffic safety light of any kind. The cross-walk is used frequently by all ages, as the library, Town Hall and Tiburon Peninsula Club (pool, tennis and fitness) are on one side of Tiburon Blvd. and the bike path and most of the rest of town are on the other side.

In addition, the bike path ends at this intersection. Consequently, all bicyclists, regardless of age, are directed to merge out onto Tiburon Blvd. itself at this intersection. There is no sign warning drivers of this merger and drivers are essentially unable to even see the bicyclists heading south

until those bicyclists are on the roadway. The danger at this intersection is compounded by the fact that pedestrians and bicyclists heading south cross two streets, Lagoon and Cove, immediately before crossing or merging onto Tiburon Blvd. Pedestrians and bicyclists are quite vulnerable and confused at this intersection.

Adding 10's of 1,000's of construction trips with unfamiliar drivers to this mix is unthinkable, especially during summer and the wide window of after-school hours given early dismissal days. I believe a thorough study of all the safety concerns related to this intersection is imperative.

Item #3 concerns all the environmental impacts of the vehicular traffic associated with this project through the build-out of all homes. The noise, dust and vibrations will affect all who live near, work, shop or visit Tiburon's downtown, an area that revolves around 2-lane Tiburon Blvd. Such a project rumbling through town over the next 10-15 years is unprecedented.

The FEIR responded that these concerns related to the merits of the project and, essentially, were not environmental. I strongly disagree.

As one who enjoys shopping, dining and visiting our commercial area and its adjacent Shoreline Park, I can well imagine being so negatively impacted by all the noise, dust and vibrations of that construction traffic in the downtown area that I will refrain from going there. I fear that failing to address these clearly environmental impacts could have a deleterious effect on our local economy, especially given our reliance on tourism.

Please study the impacts such heavy construction traffic will have on our downtown and Shoreline Park areas.

Lastly, I would like to underscore the inaccuracy of the FEIR conclusions resulting from using the 2009 traffic study. Namely, due to before-school drop-off and after-school pick-up, traffic on Tiburon Blvd. is already unbearable in both directions for significant periods. A new traffic study must be undertaken to truly reveal the traffic-related construction and post-build-out impacts of this project.

I thank you in advance for your service and all of your diligence related to these and all the concerns shared by so many others.

Sincerely,
Connie Peirce



RICHARD E WODEHOUSE

Professional Project Manager
Owner's Representative
Certified in Mediation
CA. G.C. Lic #305719



PO Box 211
Tiburon, CA. 94920

Cell: 415 944 0278

rewodehouse@gmail.com

July 19, 2013

Attn: Curtis Havel
Senior Planner
Marin County Com Dev Agency

Chair Holland and County Planning Commissioners
FM: Richard Wodehouse, resident 2356 Spanish Trail, Tiburon

RE: Easton Point FEIR comments

Commissioners:

As a long time builder of fine residences I am seriously concerned about some issues in the FEIR that I wish to comment on below. Specifically *safety and environmental* concerns.

1. I can tell you that the proposed **construction road** with portions at 25% grade is unrealistic and will result in huge dangerous problems not addressed in the FEIR, such as:
 1. Traffic going up and down the steep grades in the winter time sliding off the road into the forest posing great *Fire danger as well as environmental damage*.
 2. The statement of controlling traffic will go away soon and then there will be multiple private trade trucks traveling at times recklessly and at times in ill equipped vehicles of all types, including many old two-wheel drive cars.
 3. The construction of retaining walls for this road will cause huge impacts environmentally. And when are they demolished and the area returned to "natural" ? Not specified in the FEIR.
 4. Winter rains with the steep grades will further increase mud and slides both on the road and in the vicinities of the disturbed earth due to the retaining wall construction.
2. Construction traffic on **Paradise Drive** impacts.
 1. I find the statement that there will be flag vehicles ahead of and behind every large truck ludicrous. It won't happen for long, and who enforces this costly and impractical requirement, and for how long?
 2. Paradise Drive is the favorite bicycle route in the county, heavily travelled by athletes training often at fairly high speeds. What will happen when a bike comes around a turn and is faced with the front of a huge truck?
 3. Paradise drive is narrow and windy. Is this road going to be really widened for the mile within the property? And what about the rest of the distance North and South? The FEIR does not definitively address this huge cost.
3. **Cost of road damage and needed alterations seems to fall on the county tax payers.** The FEIR does not address this significant probable cost.

4. **Length of construction time is stated as 10 years.** Who is this FEIR report kidding? This number of large homes will continue construction for many more years, and by the time the later ones are being completed, many of the early ones will be being remodeled!. This has happened on many high-end subdivisions I have been a part of.
5. **Access streets in Old Tiburon/Hillhaven AND Paradise Drive** are narrow, have tight turns and one hairpin turn on Diviso Street. These streets will be pandemonium and dangerous both during construction, sales time, and future occupancy. These streets are NOT adequate to serve a large subdivision. The FEIR does not address these issues properly.
6. **Traffic volume on Tiburon Boulevard was measured at off-peak times in the FEIR.** All of us residents know that there is two mile long bumper to bumper traffic during school start and end hours NOT commuter hours.
7. **Visual impacts report is deceiving and disingenuous in the FEIR** because it does not show either the:
 1. Water tank
 2. Added communications tower 65' tall
8. **Increased probability of a forest fire along Eastern Ridge** is not addressed in the FEIR. Aerial photographs will show this as one of the bigger forested areas in the county. The amount of deadfall on the ground is a great fire danger for this whole area. Construction workers traveling along Paradise Drive and up and down the construction road increase the probability of a fire starting both by carelessness or by faulty vehicles, or accidents on Paradise Drive's narrow and curvy road.²

From: Magdalena Yesil [<mailto:magdalena.yesil@gmail.com>]
Sent: Sunday, July 21, 2013 11:19 AM
To: Havel, Curtis; Jim Wickett; Justin Wickett
Subject: EastonPoint FEIR

Our family lives in Old Tiburon and we are writing to you because we are concerned about the Easton Point FEIR's assessment of traffic impacts on Tiburon Blvd. We believe that the traffic analysis has to be re-studied for several reasons: Definition of rush hour, underestimation of the number of construction vehicles, and impact on neighborhood roads after the first 10 years.

The FEIR analyzed business "rush" hour traffic along this road, not school "rush" hour traffic, which is, as anyone using Tiburon Blvd. on a daily basis knows, the time when traffic levels are truly at their peak. The current analysis does not address peak levels of traffic on Tiburon Blvd, which is already very slow during school rush hour, thus needs to be redone.

Furthermore we are concerned that the FEIR has not fully addressed construction traffic impacts. There is no discussion of traffic caused by the various contractor vehicles or flag trucks that will be required throughout the construction period – at least ten years and perhaps much longer. In any construction site, the majority of the construction vehicles are the small trucks and cars used by contractors and their work crew, not the dump trucks and concrete trucks. So F150s, F250s, and other types of trucks and cars used by the trades and their crews will be the main source of traffic and their impact has not been studied by the FEIR. We think that the number is several dozen per home per day, when we base it on the construction trucks for new construction in other parts of Tiburon. In addition, because of the grade, dump and concrete trucks will not be fully loaded when using the construction road and thus have a significantly higher total number of trips. The FEIR is not accurate in its analysis on the number of trips; it grossly underestimates the number of concrete, lumber delivery, and dump truck trips to the site will be required per day during home construction.

We are also deeply concerned about the serious safety impacts of construction traffic on the proposed construction road, Paradise Drive, and nearby neighborhoods streets, where our family lives. The proposed construction road consists of a single lane on a steep grade. Paradise Drive is a narrow and winding two-lane road that is used by many walkers, joggers and bicyclists on a daily basis. Large construction vehicles on this road for ten plus years will put walkers, joggers, cyclists and local drivers at great risk. As acknowledged in the FEIR, neighborhood streets in nearby Hill Haven and Old Town are old, narrow and totally unsafe for construction traffic. In regard to Alternative 2, the FEIR states that the construction road shall be used for 10 years after the signing of the Development Agreement, at which point construction traffic will switch to these unsafe neighborhood roads for the remainder of construction. This presents serious safety issues for all the neighbors and users of the County Parks. Construction traffic on Paradise and through Old Tiburon must be properly analyzed and minimized. We strongly believe that

the Board of Supervisors must propose studying a fifth alternative for 43 smaller houses so as to minimize construction traffic.

We hope you will take these comments into consideration and re-study the traffic impacts from these points of reality. Traffic safety is a very serious issue on the Tiburon Peninsula where access is highly constrained because of the nature of Tiburon Blvd and Paradise Drive. We are in Earthquake Zone and the Peninsula also has significant threat from a fire because of the fuel in tree and brush contained around the Easton Point Project. In an emergency, the roads are going to be highly strained and the impact of the Easton Project to the safety of the residents of the Peninsula has to be given serious thought and analysis in the FEIR.

Thank you for your consideration,

Jim Wickett, Justin Wickett and Magdalena Yesil

Dr. and Mrs. R. G. G. Cattell

JUL 24 2013 PM 2:17 Planning

8 Raccoon Lane Tiburon, CA 94920-1949 (415) 435-5612

20 July 2013

Curtis Havel, Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael CA 94903

Dear Mr. Havel:

We have read through the Final Environmental Impact Report for the Easton Point Project. It is likely we will be out of town on the date of the public review, so we are sending our feedback in writing.

This is our third letter in response to the Easton Point project; we wrote regarding the original proposal and draft report. In both cases we believe our concerns about safety on Old Tiburon streets were dismissed with unrealistic optimism for proposed "mitigations," and excessive pessimism for an alternative access route that would provide a safe way down to Paradise Drive or Tiburon Blvd.

The mitigations proposed basically do nothing:

- Parking is already disallowed on all or nearly all Old Tiburon roads where they are less than 20 feet wide.
- Dumpsters should not be placed in the right-of-way today (we're unclear why two have been allowed on Centro West, but it appears there was no other alternative location).

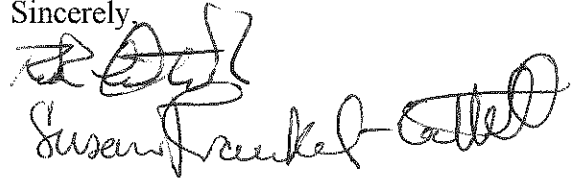
The final report asserts that an alternate route down is either too expensive or not feasible because of the maximum allowable grade of 12 percent and the required width of 30 feet, but this conclusion is based on a "communication with Michael Tarnoff" that is not reported. There is no real explanation why the problems are insurmountable. Why is the maximum grade and width an issue for the route we've marked in blue on the attached contour map of the area? We suspect the real issue is the cost to the Easton Point property owners... that an engineering solution exists, *with* adequate landslide protection. The blue route on the map has a width of 30 feet and a maximum grade of 12 percent. Why is it necessary to "move hundreds of thousands of yards of dirt" for this route? And even if this were true, is the savings worth it if just one child is killed by a car or truck coming around a blind narrow curve, or if there is a fire or other disaster blocking the single route in and out of the roads above Diviso?

We will not repeat the points in our earlier letters about the inadequacy of the narrow, winding Old Tiburon roads, trying to accommodate additional residential traffic. If it is really not feasible to build a better route down, we believe the correct environmental impact response is that *it is simply not feasible to build the proposed homes off of Ridge Road* with reasonable safety for new and existing residents.

Without another route to the site, the only plausible mitigation is to significantly downsize the density of the project to address the serious safety issues with vehicular access.

Thank you for listening.

Sincerely,

Handwritten signatures of Rick and Susan Cattell. The signature on the left is 'Rick' and the one on the right is 'Susan'. They are written in a cursive, flowing style.

Rick and Susan Cattell

Dr. and Mrs. R. G. G. Cattell

8 Raccoon Lane Tiburon, CA 94920-1949 (415) 435-5612

JUL 25 2013 PM 2:31 Planning

22 July 2013

Curtis Havel, Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael CA 94903

Dear Mr. Havel:

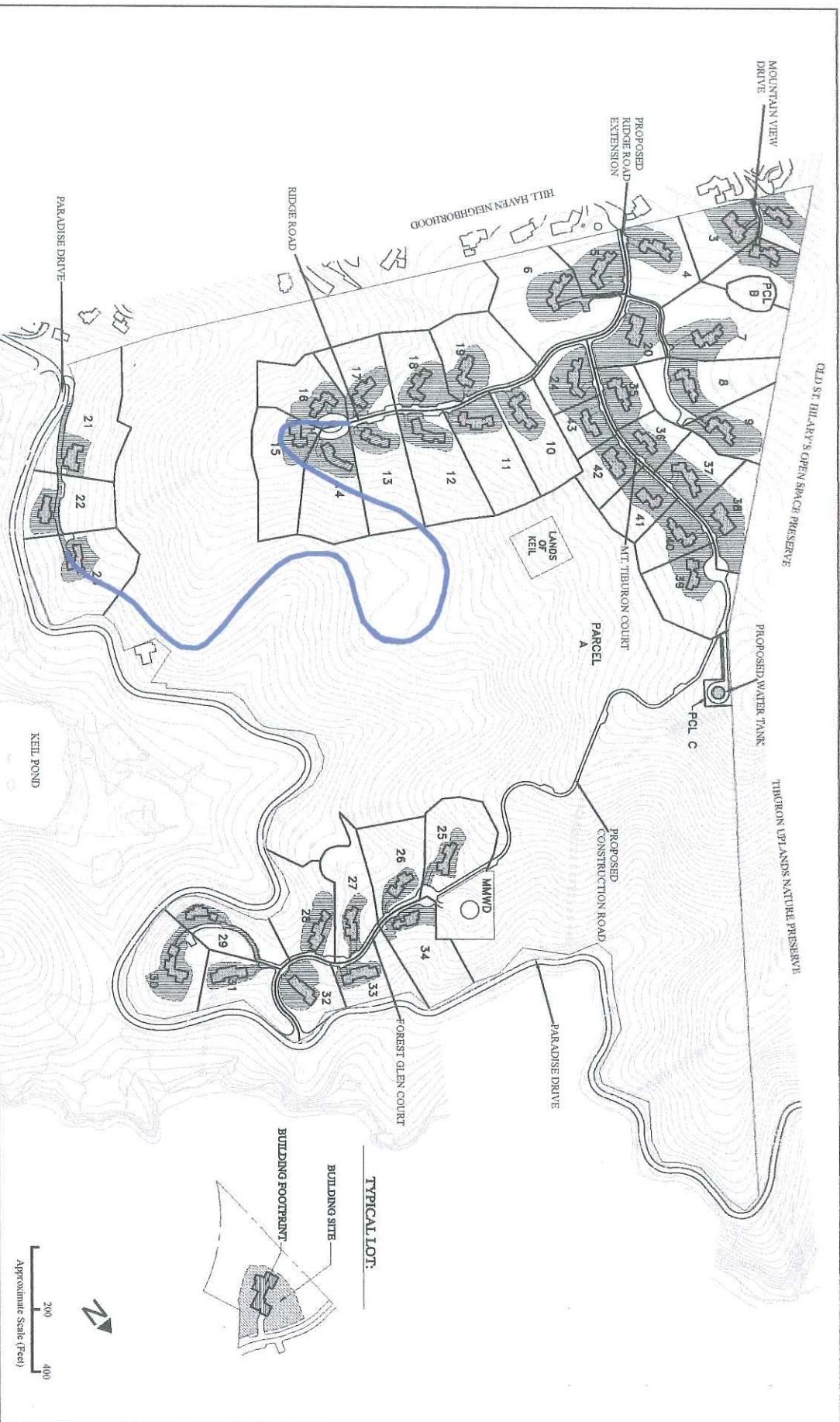
Our letter of 20 July regarding the Easton Point FEIR was missing the attachment,
sorry... here it is.

Sincerely,



Rick and Susan Cattell

Exhibit 3.0-4
Proposed Master Plan



Source: Bucken Gilliam, International Planning Associates, CSW/Slater-Stroel, revised January 29, 2009

P.O. Box 1093
Tiburon, Ca 94920

July 15, 2013

Curtis Havel, Senior Planner
Community Development Agency
3501 Civic Center Drive Suite 308
San Rafael, Ca 94902

Re: Martha Property EIR

Dear Mr. Havel,

I have several concerns regarding the thoroughness of the EIR report.

1. Pg 55-56 The feasibility of widening Paradise Drive is questionable. We need a proper study with plans for widening. Who will pay for the widening and who will pay for the maintenance?
2. The concrete and other heavy trucks that will be using the construction road for many years will impact the land below which is very fragile. I live below the proposed road. Who will be responsible if my house slides because of the heavy use of the road?
3. Fire hazard. It will be almost impossible for cars to get out safely if there is a fire on the whole property. The only way out of Hill Haven area is by substandard roads. With the addition of 43 houses, it will make it very difficult to leave safely.

Traffic on both Paradise and Tiburon Blvd was not properly addressed in the EIR.
Another study is needed.

Very truly yours,


Genevieve Chapman
2641 Paradise Drive
Tiburon Ca 94920

Dr. Ronald & Mrs Roberto
1799 Lagoon View Drive
Mailing address: P. O. 293
Tiburon, CA 94920

Chair Holland and County Planning Commissionners
Marin County Community Development Agency,
Planning Division, 3501 Civic Center Drive, suite 308
San Rafael, California 94903

RE : Easton Point FEIR Comments.

July 24, 2013

Dear Chair and Commissioners:

Located at the end of Lagoon View Drive, we are particularly concerned about the construction of properties on 30 new lots so close to Hill Haven where we have been living for over 60 years.

Our concern is first about the **traffic** : already, a few neighbors in our community have been remodeling their properties for months, even for years. Streets are very narrow, and traffic is becoming more and more intense. We cannot imagine to have traffic as heavy as on highway 101! In addition, Tiburon Boulevard, which is already suffering from heavy school traffic, will become more congested with an increasing number of vehicles.

Second, **safety** would become a real issue - If existing heavy traffic on our narrow streets are already making it difficult for everyone to reach their destination, what would happen to fire trucks if they have to cope with a series of construction vehicles ? And what about people who need to have immediate access to hospital in case of emergency?

Third, **noise**. In the long period of lot preparation, (grading the soil, utilities installation, etc) and house construction, noise will be constant, though we are supposed to be living in a quiet residential community.

Fourth, **air quality** : The air will become more polluted by dust and by vehicle and other machinery exhaust.

Fifth - **Rare plants** : Many rare native plants will disappear. And of course, Tiburon will lose its lovely village appearance.

We thank all of you for taking our concerns under your consideration.
Sincerely


Ronald Roberto

From: LaurieW12@aol.com [<mailto:LaurieW12@aol.com>]

Sent: Thursday, July 25, 2013 8:16 AM

To: Havel, Curtis

Cc: Stratton, Debra

Subject: MARTHA PROPERTY DEVELOPMENT -FEIR

Greetings, this is to add my concerns to those of the community.

Simply put, they are:

- *For the natural beauty of Tiburon, which is somewhat fragile based on soil types, exposure to the elements, geological and environmental issues, and steepness, and is threatened by the Martha Property development.

- *For the effects of pushing in a road and utilities above other homes, and in a particularly fragile, possibly slide-prone area.

- *For the impact, both physical, visual and financial on views and aesthetics of the area in general, about to be compromised by towers, tanks and rooflines.

- *For the impact on the already crowded schools.

- *For the inevitably dramatic impact on Tiburon Blvd, and Paradise Drive should one or probably two cars hit the road five days a week for work and school runs. Construction traffic alone would be a nightmare on often-slowed Tiburon Blvd.

- *Even the additional pets will be a problem in an area where residents and others already walk many dogs and are not always obedient to pickup signs. The total area for walking will be decreased and the dog waste increased on Old St. Hilary Open Space.

It would appear, given the long delay on doing anything with the Martha Property, that the owners would be pleased to sell and move on. It might please them to become, rather than pariahs, paragons of civic and environmental virtue. This would seem to be a win/win situation.

A development would benefit no one but the home buyers who might end up regretting the problems of an increased population in a tiny town, possibly some business owners to a small degree,

but mostly those employed to create the development, most of whom will come from outside

Tiburon, even Marin, and whose hard-earned money will go elsewhere (excepting some lunch purchases perhaps). Then, there is the question of fees: I am not qualified to comment with any exactitude, but I do trust that neither the Town nor the County could or would be swayed by

any bounty bound for its coffers should this development actually go through.

A very concerned citizen hoping for a wise outcome which will be of benefit to Tiburon and those who care about its future.

E. Weisheit

To: Curtis Havel, Easton Pt. Environmental Coordinator
From: Randy Greenberg
Date: July 26, 2013
RE: Comments on Easton Pt. FEIR responses to Letter 7

I feel that the FEIR's response to a number of my comments was insufficient, off point or did not provide requested information necessary to fairly evaluate a number of impacts or properly compare alternatives. The relevant questions are listed below, with clarification.

Response 7-1 states: "...that Alternative ["Alt"] 2 is the environmentally superior alt because, despite similar significant impacts to the proposed Project's, the reduced number of housing units (32 vs. 43) would result in less site disturbance and thus reduce the degree (though not significance) of several impacts. The following grading tables from the DEIR shows this is clearly not the case. Please explain EIR conclusion of Alt 2 as environmentally superior because of less site grading in regard to these tables:

<i>Lot development</i>	<i>43-unit Project</i> (Exhibit 3.0-10, p. 80)	<i>32-unit Alternative 2</i> (Exhibit 6.07, p. 571)
<i>Cut</i>	23,649 cy	41,497 cy
<i>Fill</i>	20,013 cy	25,046 cy

Response 7-1 further states: "The Draft EIR provides enough detail for *Alternative 3* and *Alternative 4* to make a reasonable comparison of the environmental impacts each of the alternatives would have compared with the impacts of the proposed project and other alternatives." The FEIR appears to dismiss Alts 3 & 4 from its analysis of the environmentally superior alternative by not presenting data that would allow readers to understand the basis for the comparison. It states that *Alts 3 and 4 have "smaller" lots* than the Project and Alt 1. Lots the size of the Judgment mandated half acre would result in Alts 3 & 4's lot size totaling half the acreage for the Project and Alt 1, which could result in significant impact reduction. The EIR should give some estimate of Alt 3 and 4's proposed lot sizes and provide discussion of why this smaller footprint does not result in reduced impacts in regard to grading, slide repair, habitat loss from significantly smaller Private Open Space area, tree loss, etc. There may be an explanation, but it needs to be provided to justify the impact assessments.

In the FEIR we learn that house size assigned to Alts 3 & 4 are "similar" to the house sizes for the Project and Alt 2. The function of Alts 2, 3 & 4 is to provide alternates to the Project that substantially lessen significant effects of the Project. Smaller houses for Alts 3 & 4 would reduce both visual and biological impacts, as well as construction associated traffic, length of time for construction and related safety and noise issues. Taken together, this could result in meaningful impact reduction. Information should be provided as to why smaller house size was not used in Alts 3 & 4, beyond that of trying to meet the financial profit goals of the applicant, which apparently require houses over twice the size of the neighborhood average.

Response 7-2 states: "The analysis of a range of alternatives is governed by a "rule of reason" for alternatives that could feasibly attain the basic objectives of the project." "CEQA directs EIRs to analyze a reasonable range of alternatives to the project or project location which would

feasibly attain most of the basic project objectives *but would avoid or substantially lessen any of the significant effects of the project.*” According to Ex. 6.0-43 (DEIR p. 708, p. 731 online), besides the No Project alternative, all the alternatives have the same level of significance for all stated impacts as the Project, though within that significance rating they may differ to an unknown “degree”. In the effort to meet project and/or the Stipulated Judgment objectives, the CEQA direction above appears to have been ignored. This should be corrected by providing alternatives that actually “avoid or substantially lessen” significant project effects, as directed by CEQA.

Response 7-4 states that Mitigation Measure 5.1-6(a - c) “requires improvements to Paradise Drive... The required measure differs slightly from that of the applicant’s traffic consultant to take into account widening of the shoulder across the street required in the Swahn approval” (2800 Paradise Dr.). No one knows when the Swahn property might be developed. This undeveloped property is currently on the market for \$39 million with development entitlements for one primary residence and accessory structures. The Project cannot rely upon approved but unbuilt, and possibly never-to-be-built, improvements on another property to address health and safety impacts of the Project. Mitigation should restore the requirement for the original road widening if the Swahn project does not move ahead prior to some specified initial phase of the Project. Without this change, the health and safety impacts associated with use of this portion of Paradise Dr. for all construction vehicles will be significantly increased.

Response 7-5 states: “The amount and comparison of grading quantities between the two project versions is a matter of the project merits and does not reflect the adequacy of the Draft EIR.” The EIR, in defending its choice of Alt 2 as the “environmentally superior alternative”, says: “Although the significant impacts associated with *Alternative 2* would be similar to the proposed project, the reduced number of housing units (32 versus 43) would result in less disturbance to the project site and thus reduce the degree of several impacts (DEIR, p. 17). This conclusion appears to rely on grading assumptions and flies in the face of the grading amounts presented in Exhibits 3.0-5 and 6.0-3, which demonstrate significantly more grading, or “disturbance to the project site” for Alt 2 than for the Project. Deciding the environmentally superior alternative is a function of the EIR, not the merits, process. The EIR should provide an explanation for the discrepancy between its statement about site disturbance, which appear to have largely governed its choice of the environmentally superior alternative, and the grading data it provides.

Response 7-7 does not address the question, which was: Was the grading amount for necessary slide repair (estimated in the FEIR at 6,500 cy) for the Remainder lot included in the grading amounts for Alt 2’s slide repair? If it was not, grading amounts should be recalculated and comparisons between the Project and Alternatives reassessed.

Response 7-15 says that except for Alt 2, the Construction Road would remain for emergency access, apparently dismissing the written statement from the TFPD which says the road would be unsafe for emergency use. Use of this road should be reconsidered or feasible mitigation should be provided to address the health and safety issue of providing an emergency access road that the TFPD states is unsafe for that use.

Response 7-16 does not factor in the TFPD assessment of safety (FEIR p. 16, p. 22 online) – which is that it is not safe for any users and that use by construction vehicles would in itself create a safety hazard. Why does the opinion of contractors who might hope to find work through this project trump those of an independent agency whose business is safety? While it might be *feasible to build* the road, if it *cannot safely fulfill its function*, health and safety aspects of its use should be reassessed and mitigated or removed from the Project and alternatives.

Response 7-22 does not provide the data requested, which is for the square footage of designated “private open space”, building and landscape area by lot. The referenced tables do not provide this information. The data is requested to understand the actual impacts of each lot on potential habitat loss as well as visual impacts.

Response 7-23 says there is sufficient information to compare alternatives. However, the FEIR explicitly states that habitat within “natural” or “private open space” areas will be degraded or lost over time, despite restrictions. Thus the size of these areas is critical to impact assessment and comparison. The size of the Private OS area for the Project is given as 35 acres, representing almost 1/3 of the entire property. The DEIR states that a variety of structures may be situated in Residential and Landscape Envelopes, which can result in meaningful visual impacts. Thus information about the size of these areas is necessary for proper impact comparison among alternatives.

Response 7-29 acknowledges lack of information for the Remainder lot comparable to other lots, and implies that it is okay to defer analysis of impacts to future Design Review. *The 10.74 acre Remainder lot comprises almost 10% of the entire property.* Not providing impact information and assessment (including for infrastructure installation, slide repair, habitat impacts, etc.) for this lot appears to give an unfair advantage to Alt 2 in the determination of the environmentally superior alternative if it is not factored in. Remainder lot development impacts should be assessed, information made available, and alternative comparisons re-evaluated.

Response 7-30 does not address the question in terms of how long this soil is to remain stockpiled and if there are impacts associated with long term storage such as visual and dust on this windy ridge. If there are impacts, how are they to be mitigated? I further note that Lot 20 and to a lesser extent lot 24, proposed for stockpiling, are in/adjacent to serpentine bunchgrass and the presence of stockpiled disturbed soil could destroy areas of bunchgrass as well as provide a nursery for invasive species such as broom and thistle. Impacts should be assessed and mitigation provided.

Response 7-37 does not provide information on location, height and length of retaining walls nor any information as to their visual impacts. There is no discussion of visual impacts of retaining walls provided on p. 505-6 as indicated.

Diane Lynch • 171 Solano Street • Tiburon, California 94920

July 25, 2013

Curtis Havel, Senior Planner
Debra Stratton, Senior Secretary
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

JUL 26 2013 PM 1:58 Planning

RE: 2008 Easton Point Residential Development EIR

Dear Mr. Havel,

I have many concerns about topics not well covered in the EIR.

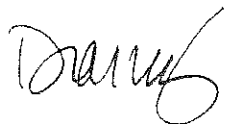
- There is no reasonable access up to the property through Old Tiburon streets. Postings on Esperanza and Solano (Town of Tiburon Ordinance 23-22) specifically prohibit tractor-trailers on these streets. I have seen many such rigs get stuck at the top of Solano and have to be towed off the rise in the street there. In addition, Diviso Street is substandard in width and presents a very cumbersome intersection for such big trucks. The construction road on Paradise Drive is only for about 10 of the houses if I understand correctly, and it wouldn't be fair to shuttle all of the traffic onto Paradise anyway, just as it's not fair to have all the traffic come up Solano. Basically, there's not adequate access for this scope of building.

- I hope the developer will be required to put in several affordable units as this community is sadly lacking in affordable housing. Developers of Point Tiburon were required to put in several units, which are a nice addition to our community.

- Things will change dramatically in this quiet neighborhood when construction starts on 43 massive homes, which will average about twice the size of the typical home in Old Tiburon/Lyford Cove. Walkers will be at greater risk than they are now, my kitchen windowsill will be covered in gritty dust every day for years, traffic tie-ups will become routine at the tiny intersections of Solano and Centro, Diviso and Centro, Ridge and Vistazo as trucks are stuck and have to make three point turns to make corners, etc., etc. The list of potential and real impacts could go on and on, but the bottom line is the need to balance the developer's rights with those of the immediate neighborhood and the entire town of Tiburon, as well as Belvedere, as regards the use of Tiburon Boulevard and other services. I'm not sure it's possible to mitigate or balance his right to do something with his property with the rights of several hundred homes below said property to enjoy their now relatively quiet, clean and safe homes and neighborhood--and I don't think the EIR properly addressed this important issue.

- Fire is a huge issue at this isolated end of the peninsula. If a fire starts under the worst, and most common, conditions, such as a late summer, wind-driven fire it will spread very rapidly to take over many acres of existing fuel, including many dead trees and accumulated leaf litter. Evacuation will be difficult to impossible under current conditions. Adding 43 more homes will exacerbate the situation. The only access up, after the construction road is removed, will be via the current narrow substandard Diviso Street. This very hazardous fire potential must be better addressed. Our Fire Department doesn't have the manpower to fight a conflagration and compromised access in on Paradise from either direction will prohibit other responders from getting in.

Thanks for your consideration,



JUL 26 2013 PM 1:58 Planning

Dellie and Doug Woodring
6 B Peninsula Road
Belvedere, CA 94920

July 25, 2013

Curtis Havel
Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

RE: MARTHA PROPERTY (EASTON POINT) FEIR

Dear Mr. Havel:

The FEIR for the proposed project is inadequate in many areas:

- 1) It doesn't even begin to address safety issues regarding construction equipment and vehicles traveling on narrow, winding, 2 lane streets through hillside neighborhoods.
- 2) It doesn't begin to address safety to bikers, runners, walkers on Paradise Drive.
- 3) It doesn't address mitigation of traffic traveling 101 S to Tiburon Blvd. exit. This off-ramp is already congested with vehicles trying to get to a) Mill Valley and b) Tiburon Blvd. We can't even imagine this exit impacted by the many construction vehicles, large and small, that the project would require.
- 4) The FEIR traffic study was done during normal commute hours. It does not address the serious traffic back-ups on Tiburon Blvd. that take place at school start and dismissal times. It can often take ½ hour or more to drive from the Tiburon Library at the corner of Tiburon Blvd. and Mar West St. to the stoplight at Trestle Glen and Tiburon Blvd. at Blackie's Pasture. This backup occurs on school days between 7:45 and 8:45 a.m. and again at 1:30 p.m. often lasting until after 4 p.m.. The Town of Tiburon and the Reed School District have been trying to mitigate this congestion for the 20 years we've lived on the peninsula. There is no feasible solution. Too many cars are trying to get in and out of Tiburon for a variety of reasons - normal business, school, jobs in Tiburon - all on 2 lanes of road.
- 5) The Martha Property and areas around it are covered in tinder dry brush and vegetation. All it will take is one cigarette, or one spark from a large construction vehicle to set the whole hillside and ridge into an Idylwild type fire, or Santa Barbara/Montecito fire.
- 6) The nightmare of living with constant construction traffic through downtown Tiburon will be detrimental to the whole community. - traffic issues, noise, dust, fumes. Can a big-rig dirt hauler even make it around the round-about at Ferry Plaza? With each large vehicle come many smaller pick-up trucks, vans, etc. which belong to the construction workers.
- 7) The property is spectacular as natural habitat and undeveloped space. It is one of the Bay Area undeveloped treasures. The property is LAND-LOCKED with no easy access.

The project just does not make sense. It is a different world and neighborhood environment today than when the development was first proposed in 1974. Building regulations have changed.

Thank you to each of you serving on the Marin County Planning Commission and the Board of Supervisors. Projects such as this are challenging, to say the least.

Sincerely,

Dellie and Doug Woodring

MAIL: P.O. Box 1160
BELVEDERE 94920

From: bergsund8@comcast.net [bergsund8@comcast.net]

Sent: Saturday, July 27, 2013 11:09 AM

To: Havel, Curtis

Subject: The Martha Property

Curtis Havel

Senior Planner, Marin County

Dear Mr. Havel:

I am one of many Tiburon residents who have watched the Martha Property Saga over the last 40 years with mounting distress. It seems the current EIR and its responses to issues not covered by the original document will determine whether the project moves forward...or is stopped, to await another solution. Because there still are areas not adequately covered by the EIR, I will address two of them. I know others are writing about their concerns, which may be those I cover and others equally disturbing.

* Traffic: During the construction stage of the project, there will be many trucks and heavy equipment rumbling along Tiburon Blvd , winding up the narrow, sub-standard streets en route to the top of the hill and traveling through quiet neighborhoods. The same vehicles will be returning back toward 101. The access roads do not allow two large vehicles to pass one another, nor can they turn around without difficulty. So the substantial disruption to the neighborhoods in order to get to the project is unsafe and unpleasant, and these conditions will continue throughout the time to accomplish build-out; as many as 20 years or more. I see no mitigations for this situation.

* Safety: I think the fire departments have stated that they can service the area. I find this difficult to believe. For the reasons stated above, the area is practically land-locked as the streets are so narrow and winding that one can't imagine fire engines and their equipment reaching the hilltop if there were an emergency. The fuel build-up on the property is heavy, and a single spark could release a raging firestorm. Such conditions will impact the nearby neighborhoods surrounding the project so the fire safety issue isn't limited to the project.

Please take these issues into consideration during your deliberations. I was encouraged to observe that the commissioners were dissatisfied with the EIR and realized that many issues had not been adequately addressed, nor were mitigation measures described to alleviate impossible situations. After all the time, effort and money spent over the last 40 years, the solution may be "no project."

Thank you for your continued interest in the Tiburon Peninsula.

Joan Bergsund

From: Jim Erskine [jimerskine@comcast.net]
Sent: Saturday, July 27, 2013 3:01 PM
To: Havel, Curtis; Stratton, Debra
Cc: 'Jane Elkins'
Subject: Easton Point concerns & questions

Regarding the Easton Point (Martha Property) proposed development, there are several areas we feel are not appropriately treated in the FEIR:

We're concerned that the impact from construction traffic over a period of years is not adequately addressed. The impact will last far longer than the initial construction period and an analysis should include the impact when the project is fully developed as well as during the initial construction period. The analysis needs to reflect traffic impact not only during traditional rush hours, but also during peak traffic times for school traffic on Tiburon Boulevard.

As residents of the Hillhaven neighborhood, we are quite familiar with the difficulty with construction related traffic navigating our narrow, winding streets. This project promises to introduce even greater inconvenience and danger to our neighborhood and the mitigation suggested is either unrealistic or impossible to implement. The impact on our streets after the construction road is closed has not been adequately analyzed in the FEIR.

The FEIR does not clearly explain the impact on views from the water tower, transmission tower and structures proposed for the property themselves. This should include consideration of the views from downtown Tiburon, from the adjacent open space and other viewpoints. Photos would be helpful.

Some the issues raised in the FEIR are assumed to be the responsibility of the yet-to-be-formed Property Owners Association. We wonder what measures will be taken to ensure the ability, willingness and financial capability of this organization to fulfill their responsibilities. Without such warranties, any mitigation relying on the POA is meaningless.

More broadly, we don't understand why the FEIR doesn't address more than one alternative the primary 43 home project, when it seems that there are actually numerous alternatives. While evidently not the current desire of the property owners, the development could be scaled down significantly, with a quite different environmental impact. Why are we looking only at a choice between 43 large houses and 32 larger houses – both of which have a long list of negative consequences?

Jim Erskine & Jane Elkins
415-435-1354 home
1801 Vistazo West
Tiburon, CA 94920

Carolyn Losee, RPA
P.O. Box 225
Belvedere, California 94920
Losee025@comcast.net

July 25, 2013

Curtis Havel, Senior Planner
cc: Debra Stratton, Senior Secretary
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

RE: *Martha Property (Easton Point) Development Proposal*

Dear Mr. Havel,

I have a lot of concerns regarding the inadequacy of the Final Environmental Impact Report (FEIR) for the Easton Pt. Residential Development. I walk the Old Saint Hilary's Botanical Preserve almost daily, and there is no question in my mind that constructing homes adjacent to the preserve would be environmentally destructive to the species that render this part of Marin so unique.

With a number of my neighbors, it is my opinion that the FEIR is inadequate for the following reasons:

1. The FEIR does not support adequately the determination that Alternative 2 is Environmentally Superior. The EIR process should provide full analysis of the impacts of each alternative. The FEIR should explain specifically how Alternative 2 meets the CEQA standard for environmental superiority. Deferring impact analysis is unacceptable.
2. The FEIR does not provide enough specific data on size (of lots, homes, etc.) to allow a possible determination that either Alternative 3 or 4 could be an Environmentally Superior Alternative.
3. As a Health and Safety issue, access by construction vehicles through Old Tiburon and Hill Haven over an indeterminate construction period poses significant safety impacts that cannot be mitigated.

4. Mitigation measures that require unassessed redesign may not be feasible resulting in new significant unmitigable impacts and/or secondary impacts that have not been analyzed.
5. Other potentially significant impacts of the project that have been either ignored entirely, or mitigated by measures of questionable feasibility. Access is difficult (the driveway is estimated at 21percent grade), utility connections (especially water for residential use and fireflow) present a challenge and may not be feasible.

As the project is planned currently, it is my understanding that a 180,000 water tank would rise 20 feet above a 25-foot retaining wall on a prominent ridgetop, construction traffic is a real problem, and no landslide repair detail has been provided. Visual impacts, historic open space, health and safety, traffic and fire danger, environmental degradation, endangered species habitat are issues that have not been proven mitigable. The EIR efforts to date have failed to provide detailed information regarding the full impacts of developing the fragile, highly visible project area that is also contains 28 known geological landslides.

In sum, with the existing analyses of health, safety, traffic, vista and related impacts I can conceive no merits of this proposed project. The report identifies 48 project impacts as significant, and indicates all but six can be eased "to a less than significant level." As a local resident, I do not find this is adequate. A housing development in this area is clearly a very bad idea, and one that is not supported by my family.

Thank you for listening to my concerns.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carolyn Jones".

From: John Arvesen [mailto:arvesen@cirrus-designs.com]
Sent: Sunday, July 28, 2013 10:21 PM
To: EnvPlanning
Subject: Response to Easton Point FEIR

Attention: Marin County Community Development Agency

Attached, please find our response to the FEIR regarding development of the Point Tiburon / Martha Property (aka Easton Point). **Assessor's Parcel 059-251-05**

Sincerely,
John and Sallie Arvesen

Martha Easton Point FEIR Concerns

Attention:

Community Development Agency

envplanning@marincounty.org

We submit the following images and comments in the hope that they will illustrate the priceless value of the Tiburon Ridge and the potential risk and liability to Marin County that could result from its development. We feel that the FEIR does not adequately address the concerns illustrated here.

John and Sallie Arvesen

2077 Centro East

Tiburon

7/28/2013



Tiburon Ridge – A Marin Legacy



Martha Property *Development* - Future Marin Liability?

- A development site with present and future problems
 - Wildfire safety (construction road vehicles and personnel)
 - Road safety (Tiburon Blvd. / Paradise Road / Old Tiburon roads)
 - Landslides (requires construction mitigation and future liability)
 - Ridgeline construction (allowed in Marin?)
 - Environmental / ecological / litigation risks
 - ✓ Keil Spring contamination
 - ✓ 1973 Endangered Species Act: “Protect species *and the ecosystems upon which they depend*” – Keil Pond / California red-legged frog



Proposed Construction Road



Construction Road Problems

- The 25% grade has been deemed unsafe by Tiburon Fire Department
 - Runaway construction vehicle is a possibility
 - A crash barrier will not stop a 60,000 pound concrete truck
 - Upper section of road through existing landslide areas
- Extreme fire hazard from dead, dry undergrowth and dense vegetation
 - Ignition source from any accident could start a fire storm
 - Construction personnel and vehicles will be in area for years
 - Contiguous, dense forested area extending 2 miles along north side of Tiburon Peninsula
 - Remember Colorado Springs!
 - ✓ In 2012: 350 homes destroyed by wildfire near forested areas
 - ✓ In 2013: 400 homes destroyed by wildfire near forested areas

Gilmartin Drive, Tiburon

~15 % grade

Truck Takes a Dive



A dump truck crossed Tiburon's multi-use path and landed in the water after losing its brakes on Gilmartin Drive on Monday morning, on a sunny day with lots of walkers, joggers and cyclists using the path. The driver climbed out through the broken windshield and waded out of the water to safety, and, fortunately, no one was in the truck's way. See story on page 10. Photo: Elliot Karlan

Paradise Road Problems

- One of the Bay Area's premier bike routes
 - Heavy utilization every day of the week
- Narrow, with blind curves
- No existing turnouts
- No existing construction vehicle “wait areas”
- Flag trucks will not prevent a bicycle accident



Old Tiburon / Hill Haven Street Problems



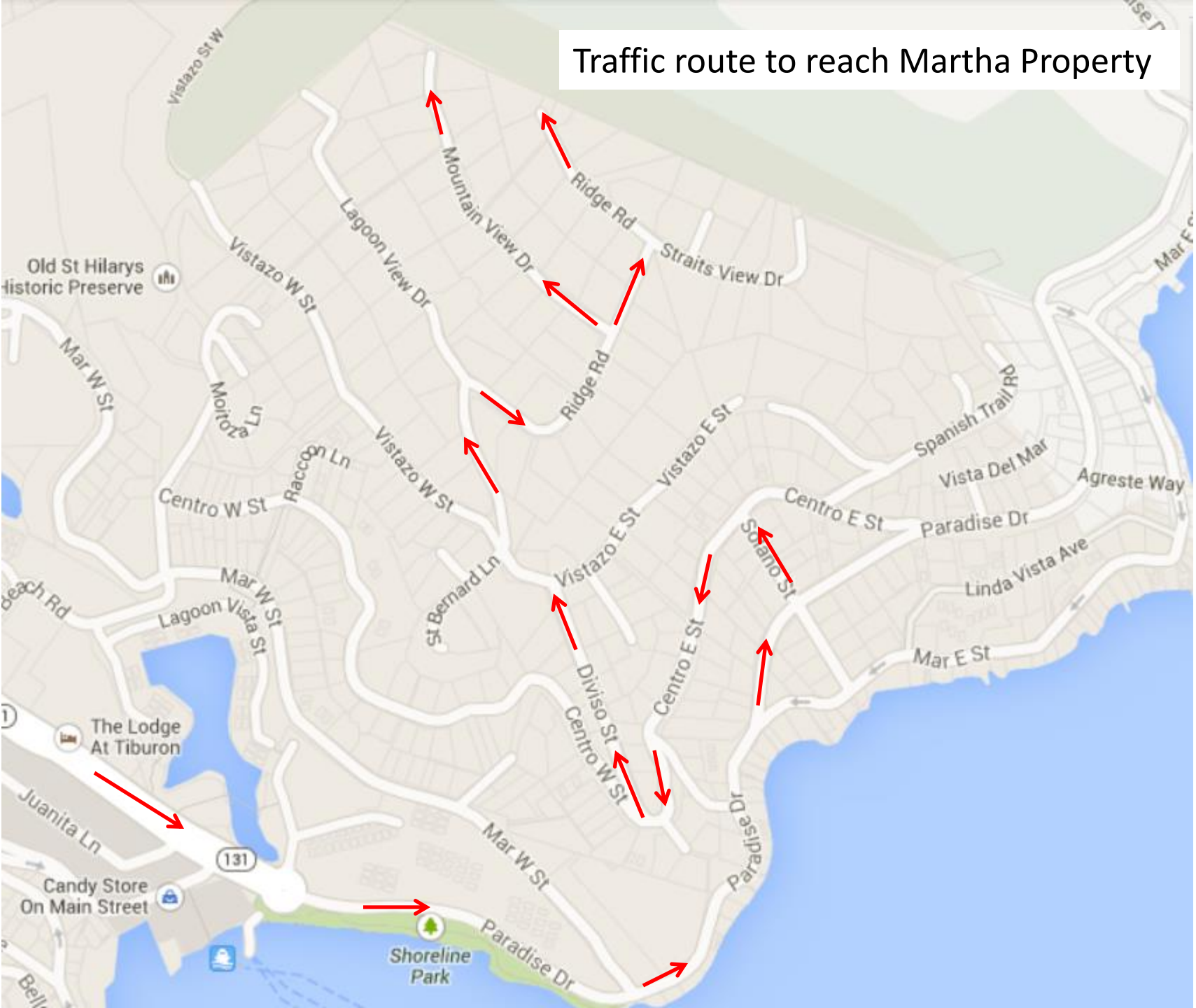
Old narrow streets

Centro East Street



New wide trucks

Traffic route to reach Martha Property



Landslide Vectors on Martha Property

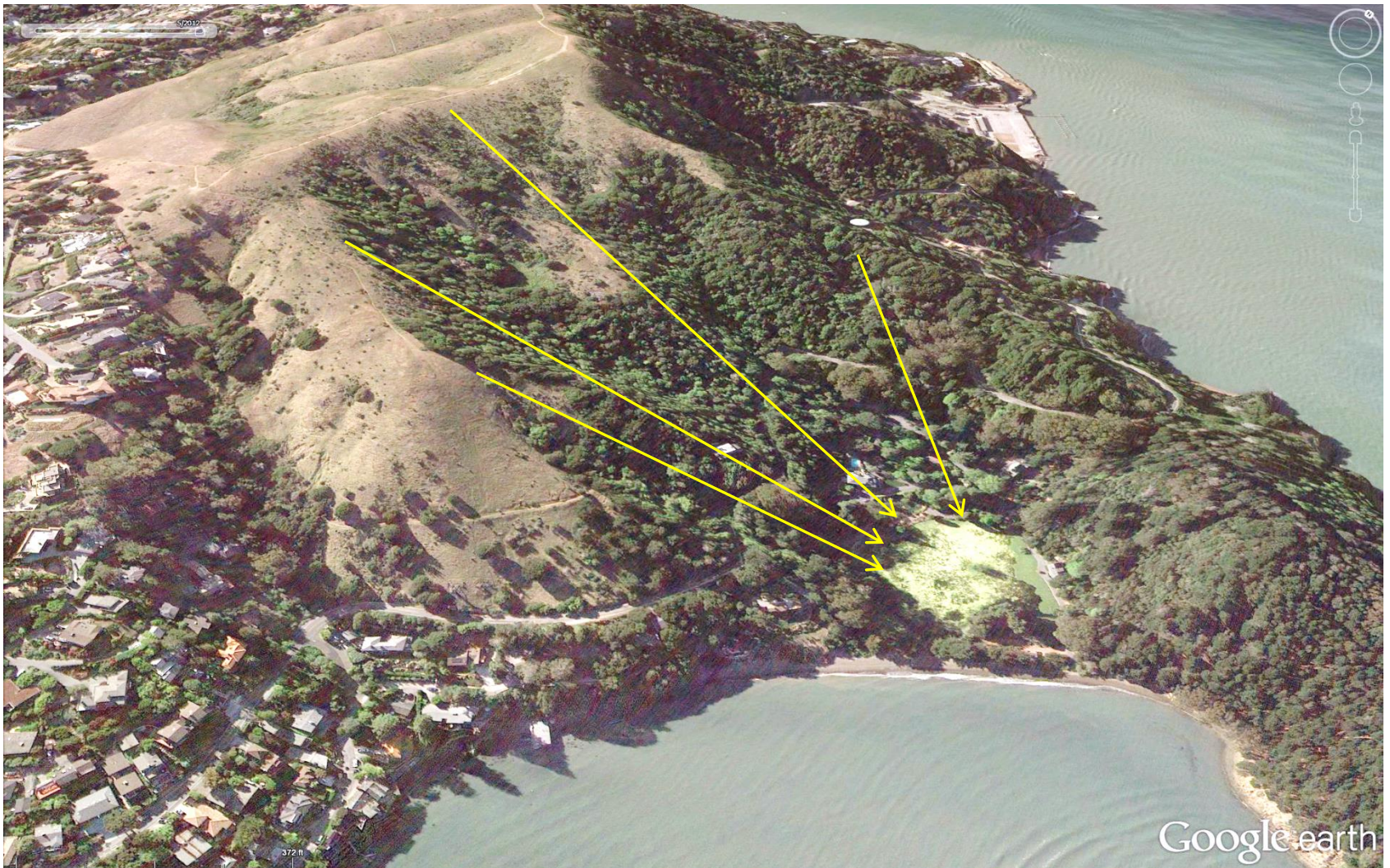


Proposed Lot Site Locations



Keil Pond Ecosystem

Upslope development will impact pond and endangered California Red-legged Frog



From: George Landau [mailto:georgelandau1@gmail.com]

Sent: Sunday, July 28, 2013 10:30 PM

To: EnvPlanning

Subject: Re: My Additional Comments on the FEIR for the Easton Point Residential Development

Marin County Community Development Agency

Attn: Curtis Havel, Senior Planner

3501 Civic Center Drive, Room 308

San Raphael, CA 94903

Subject: My Additional Comments on the FEIR for Easton Point Residential Development

Dear Mr. Havel,

On April 29, 2011 I submitted a 5 (five) page letter to Ms. Rachel Warner at the County of Marin Community Development Agency with my comments pertaining to the Easton Point Residential Development DEIR.

My letter can be found as LETTER NO. 99 on page 595 of the FEIR.

Your office sent back 25 (twenty five) Responses to my Comments. They appear in Section 9 of the FEIR on pages 601, 602 and 603.

Unfortunately the responses that I received from your office do not satisfy me. In addition I have new concerns as a result of information that I have learned recently for this proposed development.

I stated my concerns verbally when I participated in a courtesy hearing on the FEIR that was held at the Marin County Planning Commission on Monday, July 22, 2013 beginning at 1:00 pm.

The link to/for the recording of the entire Session is on:

http://www.co.marin.ca.us/depts/CD/main/plngcom_video.cfm

My remarks follow Mr. Riessen's beginning at approximately the 35:00th minute of the broadcast and end at approximately the 40:00th minute.

Here are my comments, slightly expanded, in written form for your consideration and response:

I. Visual Impacts:

Please refer to the Marin County Board of Supervisors RESOLUTION of 1st of March 2005, on the 10th Anniversary of the Old St. Hilary's Open Space Preserve (and Honoring Those Who Took Part In Its Creation).

The Resolution was unanimously passed and signed by Supervisor Charles McGlashan and President Harold C. Brown Jr.

Let me quote you paragraph 3 and paragraph 5 of the Resolution:

Paragraph 3:

"WHEREAS, the Old St. Hilary's Open Space Preserve is a place of outstanding natural beauty, and the scenic backdrop of Old St. Hilary's Church, a historic and beloved local landmark and

Paragraph 5:

WHEREAS, the Old St. Hilary's Open Space Preserve would not exist today were it not for the foresight and generosity of the local citizens of the City of Belvedere, the Town of Tiburon, and Marin County who twice taxed themselves to provide most of the money necessary to purchase the land as public open space...."

For your information it took us many years of difficult negotiations to acquire the land. Today, almost 20 years later we are still paying for it as part of our Real Estate taxes.

The Preserve is a major part of our life style and we consider the views on/from this Open Space as our "World Heritage Site".

For us these views are equivalent to the Taj Mahal or any other universally agreed upon great site of the world. It is therefore vital that the viewpoints are not polluted by unsightly construction of structures.

Therefore the visual impact of the proposed 20 foot by 40 foot water tank and the 65 foot transmission tower that the developer intends to build on the Easton Point property needs to be addressed as it not included in the FEIR.

II Traffic

A. On Tiburon Boulevard:

As a 40 year resident of 82 Sugar Loaf Drive in Tiburon and former Trustee of the Reed School District I can assure you that there is not much more that we as a Community can do to lessen the traffic on Tiburon Boulevard, particularly during the School 'commute' times in the mornings and in the afternoons.

We have 4 schools and a number of 'pre-schools' and day care centers that are served by Tiburon Boulevard, each adding to the congestion of traffic in the morning, the afternoon as well as during the day.

The Traffic Study that the FEIR shows does not take 'school related' traffic into account.

Please therefore do this traffic study again but this time please conduct it during **"OUR" peak hours** as I am very concerned with what it will show.

Adding huge trucks to the traffic flow on Tiburon Boulevard will add to what is already a bad situation.

Tiburon Boulevard has only one lane going East and one going West.

When both lanes are congested added safety hazard are created as Emergency Vehicles will not be able to reach the victims of accidents that, due to the added truck traffic, will occur more frequently.

B. Construction Traffic on Paradise Drive:

Many people have already commented on the safety hazards of using Paradise Drive, as it currently exists, as the primary road to and from the site during the Pre- Construction and the actual Construction phases.

Safety issues in trying to integrate the bicyclists with motor vehicles and the construction trucks all using this narrow and winding road need further study.

In addition I am concerned that some of the construction debris inadvertently will drop off the trucks and will be abandoned on Paradise Drive.

Given the speed with which the cyclists ride on Paradise Drive, even a few pebbles can and will cause bicyclists to spill resulting in bad accidents. In our present litigious society, (176 lawsuits filed every minute!) these accidents will result in law suits in addition to the personal tragedies that the accidents will bring with them.

This is not some future conjecture on my part as a few years ago we had such a case on Paradise Drive.

Given the above please tell me how the developer **realistically** plans to deal with the Safety problems on Paradise Drive.

III Post Construction Traffic:

My home on Sugar Loaf Drive is located at the end of Lyford Drive, one of the widest roads in Tiburon. A few months ago an existing house (located on the corner of Lyford Drive and Acela) was sold and for months it is being renovated. There are consistently up to 11 large trucks, (most of them-Ford F150's) plus a large and wide refuse box all parked on Lyford Drive. Traffic has become difficult, even though from time to time there are 'flag men' directing traffic around this construction site.

Using the above as an illustrative example, when any of the proposed houses eventually get built on the Easton Point Residential Development there will be a stream of other trucks arriving and departing on a regular basis for years to come.

This will be a safety nightmare for the residents of 'Old Tiburon' because even at present their streets are already too narrow and congested for the residents of 'Old Tiburon' to navigate on.

If I read the FEIR correctly the 'post' construction traffic is programmed to go through the 'Old Tiburon' neighborhood since the 25% grade specially built construction road is to be abandoned after 10 years.

This is of great concern to me and I would appreciate a more comprehensive study of this problem.

Due to narrow roads the citizens of Belvedere frequently experience similar situations.

A home that became known as "The Lava House" is such an example. This was a construction site for a house in size in the same order of magnitude of the homes proposed for the Easton Point Development.

For years traffic was blocked for hours at a time due to the construction activity.

As a result there was a lot of hostility toward the owner, so much so, that he abandoned the house prior to completing it. As a result the house is now a ruin that is frequently vandalized and is still causing problems in the community.

Given the above stated problems please take another look at the portion of the FEIR dealing with all the phases of construction-namely- the initial construction of the infrastructure, the construction of the homes and the construction and maintenance of these homes for the future years to come as I think that these phases were **not** satisfactorily discussed and mitigated.

IV 'Bonding' of the Project

Perhaps I missed it but I did not find a section dealing with Completion Bonding for the Project. If this is not discussed in the FEIR then please look into it as in reality real estate developers frequently go bankrupt. If this would happen we in Tiburon would be greatly affected. (please see my notes on the 'Lava House' above)

How does the FEIR deal with this potential real problem to give us 'comfort and peace of mind'?

Does the developer truly believe that leaving maintenance of the common Open Space of the property around the homes and the responsibility to maintain the infrastructure including the repair of any subsequent land slides will become the responsibility of the 'Home Owners Association'?

If so I am asking you and/or the developer to show me and others real life examples of where this is the case in similar developments, preferably in Marin County or at least in California as this is another big concern for me and I did not see the discussion of these concerns in the FEIR.

I am looking forward to your reply to each of my points as well as your answers to the issues raised by others.

Thank You in Advance,

George J. Landau

82 Sugar Loaf Drive

Tiburon, CA 94920

[415-435-7051](tel:415-435-7051)

george@georgelandau.com

From: Ralph Mihan [rgmoak@outlook.com]
Sent: Sunday, July 28, 2013 9:48 PM
To: Havel, Curtis; Stratton, Debra
Subject: Easton Point (Martha) FEIR - my comments

I use Paradise Drive very frequently for multiple purposes.
I hike the Old St. Hilary Open Space Preserve often.

The Final EIR for the Easton Point (Martha Property) project is totally inadequate for numerous reasons.

I will address only a few of the more serious ones.

1. The FEIR (Measure 5.1 etc.) provides that the applicant will make a few improvements as it relates to access by future residents of the proposed development. Those improvements are minuscule compared to the impact of the increased traffic the development will bring. The improvements on Paradise Drive are only for small segment directly adjacent to it land.

2. The FEIS is totally deficient as to the construction traffic (Measure 5.1.13) that will take place for the development.

Does the applicant presume that all the construction traffic will go through downtown Tiburon? That is extremely presumptuous. Has the Town agreed? I doubt it will.
So what is the alternative? None is even addressed in the FEIR.

The only other one would be a route via Trestle Glen and then along Paradise Drive for many miles of twisting, windy and sharp cornered turns.

The FEIR does not address Paradise Drive for that major length of road.

The innumerable number of heavy and very wide and long construction trucks (cement, masonry, lumber, etc.) will have to travel on Paradise Drive from Trestle Glen all the way to the applicants construction road. Paradise Drive would have to undergo major renovation, widening and modification to accommodate that extreme use and monumental traffic. The safety of motorist, bicycles, etc. would be a major issue.

Changing Paradise Drive solely for this project is absolutely absurd. It will destroy its unique atmosphere and character.

3.. The mitigation for the construction road from Paradise Drive up to the construction site for installing the infrastructure (roads, utilities, etc.) and then for the housing site construction is totally inadequate addressed in the FEIR The construction road (an incline of 20 to 25 degrees) is going through a major side area. The mitigation is totally not only inadequate, but basically ignored. At such a steep grade, the heavy loaded trucks (cement, masonry, lumber, shingle, etc.) will be only able to ascend in reverse gear, with most likely half loads, if that much. Those large truck coming down will be disasters that are going to happen.

The construction road will have to be maintained for at least 10 and probably up to 20 years as the housing site are sold and homes are being built. That likelihood is not addressed in the EIR.

3. The sight intrusion of the water tower and tank is not adequately mitigated. It cannot be mitigated. The height (rooflines, chimneys etc.) of the houses will be a definite intrusion for all users to the County Old St. Hilary Open Space Preserve.

4. The destruction of the flora and fauna within the Easton Point area (Measure 5.6.1) has not been adequately addressed in the FEIR.

The devastation impact on the flora and fauna on the adjacent Old St. Hilary Open Space Preserve, (since flora and fauna do not know property lines) will totally compromise the natural resources on Old St. Hilary Open Space Preserve. The loss of the live oak forest, which is a contiguous extension of that preserved in the the Open Space, will be irreplaceable.

The publics past heroic effort to protect the Open Space Preserve will be for naught. What a terrible shame.

There are innumerable other totally disturbing impacts that will not or can not be properly mitigated by the applicant.

This project needs to be either seriously rethought or under the circumstances of many major existing constraints and insurmountable natural difficulties, it should be totally abandoned.

Ralph Mihan
San Rafael
c 415 497 6195

**MICHAEL AND NANCY PULLING
2095 CENTRO EAST
TIBURON, CA 94920**

July 28, 2013

VIA EMAIL and FAX

Marin County Community Development Agency
3501 Civic Center Drive
Room 308
San Rafael, CA 94903
Attn: Curtis Havel, Senior Planner
Cc: Debra Stratton, Senior Secretary

Dear Planning Commissioners and Staff,

This letter is a follow-up to our April 26, 2011 letter concerning the Easton Point Residential DEIR. Upon our review, The Final Environmental Impact Report appears to fail to address our previously stated concerns in at least the following aspects:

Safety Impacts, Heavy Construction Vehicle Traffic, Peak Time Traffic Impacts

The construction traffic in our neighborhood is already unsafe. The FEIR appears flawed and incomplete in this regard. Traffic caused by contractor vehicles and trucks is inadequately addressed and analyzed. It is obvious to us that just single home development and renovation creates unsafe traffic and congestion on our narrow streets. It seems clear that an entire multi-year and multi-home development project will increase these dangerous conditions exponentially. The FEIR analysis that only a few construction trips to the site per day will be required during home construction is clearly flawed based upon the current "real conditions on the ground" as presently experienced in our neighborhood. This **highly hazardous and unsafe construction traffic impact needs to be fully and objectively reassessed based upon real life construction traffic conditions** as experienced in our neighborhood.

The overall peak time traffic and safety impacts, which we mentioned in our 2011 letter, are clearly inadequately addressed. **A new and objective traffic analysis is required to address school rush hour traffic.** With two grandchildren in school, and with various after school activities, we can attest to the "real life" level of congestion and unsafe conditions presently. The situation with the Easton Point development is much

worse than outlined in the FEIR, and poses extreme inconvenience and jeopardy to our grandchildren and all of those who use Tiburon Blvd., Centro East, Centro West, and Solano St. during the school rush hours.

The safety and traffic impacts on Paradise Road, and collateral roads such as Centro East, are inadequately addressed in the FEIR. In the very least, **there must be a full and objective professional study of the value and necessity of widening Paradise Road.** This study should also include the collateral impacts on alternative and secondary nearby roads considering the circumstances with either widening or not widening Paradise Road. Please note that we and our neighbors are frequent pedestrians on these roads with children, animals, exercise, and walking to town or ferry circumstances. These roads are narrow, without sidewalks, and already heavily trafficked and dangerous.

Thank you very much for your continued attention to our serious and heartfelt concerns based upon our everyday experiences in this neighborhood and in the Town of Tiburon.

Sincerely,

Nancy Pulling

Michael Pulling

Michael and Nancy Pulling
2095 Centro East, Tiburon
nherrmann@att.net

Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903
Attn: Curtis Havel, Senior Planner
cc: Debra Stratton, Senior Secretary

July 29, 2013

RE: Easton Point/Martha Property Final EIR responses to Draft EIR letter

I am concerned that the response to my letter of April 28, 2011 commenting on the Easton Point Draft EIR did not adequately address the concerns I outlined, particularly regarding health and safety issues around construction traffic and the proposed construction road. Judging by the large volume of letters your office received on these same issues reflected in the Final EIR, these are concerns shared by many other members of the community.

The two areas of most concern to me that are inadequately addressed by the FEIR:

- 1.) Response to Comment 45-1 and Master Responses 1 & 2 do not adequately address the danger to pedestrians and cyclists that would be created by the very significant increase in heavy trucks and other construction vehicles, as well as the long-term use of flagmen and trucks and other construction zone hazards in the areas of Paradise Drive and the Hill Haven and other Old Tiburon neighborhoods.

To me it is unconscionable that the FEIR continues to contend that that only a small number of construction truck trips to the site will be required per day by this project and that the dangers to pedestrians, cyclists, and other motorists are minimal and acceptable.

- 2.) Response to my Comment 5: *The Draft EIR contains a discussion of construction traffic impacts in Impact 5.1-13 Construction Traffic Impacts.* This response refers to the Traffic Impact study that was fatally flawed by the fact that it measured traditional "rush hour" traffic which anyone who has ever driven Tiburon Blvd at school opening and closing times will tell you simply does not apply to our town. In terms of Health and Safety, the amount of heavy traffic this project would add to our already congested school-hour choke points would mean dangerous delays to emergency vehicles in case of fire or accident.

Clearly a new Traffic Analysis is needed that accurately measures traffic impacts at our town's actual peak times, not that of some other town. Only then can the potential impact to the health and safety of those who live, work, and visit Tiburon be studied.

I hope these concerns and those of other members of the community concerned about impacts on health and safety will be seriously addressed.

Sincerely,

Susan Brautovich

From: john.goodhart@comcast.net [john.goodhart@comcast.net]
Sent: Monday, July 29, 2013 3:21 PM
To: Havel, Curtis; Stratton, Debra
Cc: john.goodhart@comcast.net
Subject: 2008 Easton Point FEIR

John H. Goodhart
2311 Spanish Trail Road
Tiburon, CA 94920

July 29, 2013

Curtis Havel, Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Re:
2008 Easton Point Residential Development FEIR

Dear Mr. Havel:

In my comment letter to the DEIR, I addressed my concerns with the proposed plans' failure to comply with the U.S. District Court's "Judgment Pursuant to Stipulation" (hereinafter "2007 Judgment"). The 2007 Judgment requires that, "These lots are intended to be placed on geologically safe portions of the site, without the necessity for extensive landslide repair, rather than in the path of known landslides." (2007 Judgment, p.2 line 28 - p.3 line 2.) The FEIR fails to address my concerns that none of the proposed plans for development of the property comply with the 2007 Judgment. Alternatives 1 and 2 proposed by the Applicant place sites directly on known landslides. In particular, lots 10-19 on Ridgeline D (Exhibit 3.0-4, p. 63 DEIR) for Alternative 1, (lots 9-17 for Alternative 2) are placed directly on, or immediately adjacent to, landslides #3 and #11. These are known, significant landslides. Applicant shows disdain for the 2007 Judgment by proposing a plan in direct defiance of the language requiring the lots to be placed on, "geologically safe portions of the site." Applicant

responds to my comment letter by merely stating that whether the proposed project complies with the 2007 Judgment , "is an issue that relates to the merits of the proposed project and/or its alternatives...but only the court itself can ultimately decide these issues if there is a dispute that cannot otherwise be resolved" (p. 568, FEIR.) This indicates Applicant's disdain for the process, by ignoring the clear instruction of the Court, and proceeding to place house sites in areas that obviously require significant landslide repair. The Applicant does not contest the fact that it has located houses on and in the path of known landslides, nor does the Applicant suggest that the landslide repairs it has proposed are not, in fact, extensive. The Applicant's concession in the DEIR that the landslide and soil stability impacts are significant prior to mitigation and, purportedly, less than significant after mitigation, is evidence of the Applicant's failure to abide by the 2007 Judgment.

The Applicant fails to comply with the requirements of CEQA to consider alternative plans that would reduce the risk of soil stability and landslides. I do not believe that the response to my comment letter addresses my concerns that safer alternatives, that place house sites on safe portions of the land, were adequately considered. This failure to consider an alternative without house sites on known landslides is a failure to comply with CEQA's Alternatives analysis.

Sincerely,

/S/

John H. Goodhart

Mr. Curtis Havel
County of Marin, Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

RE: 2013 Easton Point Residence Development FEIR

Dear Mr. Havel:

I am writing to comment on the 2013 Easton Point Residential Development FEIR because I believe the document does not adequately address impacts that this project will have on my local community. Specifically, I have identified two significant areas of impact that need further analysis:

- Mitigation in practice
- Public Safety on Paradise Drive, the "Driveway" and the new "Public Open Space"

They are outlined further in the attached pages.

Thank you for your attention.

Regards,



Robert L. Hart
2540 Paradise Drive
Tiburon, CA 94920

cc Debra Stratton

Mitigation in Practice

What assurance do we have that the important mitigation ideas will actually be carried out in practice?

1. Critical mitigation is handed-off to the Town of Tiburon. There is no evidence that Tiburon will agree to make expenditures that solely benefit the applicant and do not benefit its own citizens and its taxpayers, but instead leave them with unsafe conditions created by the Easton Point project. What happens then? Impacts simply are not mitigated.
2. The FEIR refers to the CC&R's which, it reports, will give a Property Owners' Association responsibility for follow-up on mitigation measures to assure they are carried out. However, POA performance is notoriously erratic. The formal CC&R document is not included in the FEIR, and there is no evidence that the POA or individual lot owners will have the resources or motivation to follow-up on required mitigation in construction contracts – or maintain the mitigation measures. This is one more example of **pass-the-mitigation-buck** to someone else in the future. If they are unable or unwilling to act or bankrupt, there's no mitigation.
3. The applicant may not be the landowner or developer during the construction and/or post-construction management and monitoring periods. Yet, there is no provision for the mitigation described in the DEIR or FEIR, once certified, to be incorporated in construction contracts, bonded or recorded on a deed. What happens if a developer or POA, home owner or someone else in the chain of ownership is unable to act or declares bankruptcy? Responsibility is handed off to the County, but since the County is not "obligated" to act, how is the community protected? Again, there's no mitigation.
4. Recorded covenants that run with the land, liens, and posting a bond that assures completion of promised improvements, are customary, well-tested ways to assure that the proposed mitigation will actually happen. They are an essential part of any certified FEIS.

5. If the County or Town governments, or concerned citizens are going to be able to take seriously the mitigation “words”, all these means of enforcement must be integral to any approval. The FEIS is **seriously incomplete** without them.

Public Safety Issues

In addition to the many unmitigated public safety problems already in the record, three more have simply not been addressed in the DEIR or FEIR.

Dangerous public open space. A significant acreage of Easton Point is to be “public open space”.

- It is an area, according to the DEIS “blanketed with landslides”.
- It will be left with a large Construction Road scar on the land, having 8’-10’-12’ high unprotected retaining walls – a significant public hazard for people of all ages.

Setting aside and proposing this dangerous land for public use is itself a significant unmitigated negative impact.

Paradise Drive. Most construction traffic will be required to pass along a winding section of sharp turns, just under ¼ mile long, on roadways as narrow as 18’ with shoulders often 0’ and generally under 2’ wide. Large and medium sized trucks typically occupy *both* lanes along the section today. When they’re present it’s a one way road. There will clearly be impacts on the safety of the many people on bicycles, as well as delays, and blocking of the road access for emergency vehicles for everyone, as trucks line up to wait their turn or creep through. Flagmen would help but not solve the problem. This road could not be built today because it would violate County standards established to protect health and safety. Where is evidence that the significant health and safety impacts have been addressed? Who is responsible for safety? Not the flagmen.

The Driveway – paralleling Paradise Drive at the south corner of the property – has significant negative impacts that have not been addressed.

1. Retaining Walls will be a permanent hazard. The full 600' length of this narrow Driveway is lined on both sides with vertical retaining walls. Most range from 4' to 8' high, and sections of the uphill wall are 14.5' and 13.5' high. In Alternatives 1 and 2, the Driveway serves 3 or 4 family-size homes (more in the other Alternatives).
2. Soils. This Driveway is to be built on to-be-repaired landslides and on colluvial soils that are nearly identical to the soils that have slid in the past. (See the Kleinfelder test-pit logs). It will have exposed uphill-side cuts over 15' high during construction and downhill-side fills. Both the cut and the downhill loading of this type and the changed drainage caused by home building and landslide repair are known to trigger landslides, as pointed out in the DEIR itself. But this hazard is not addressed. How will it be mitigated?
3. The code violation. The proposed Driveway also violates County regulations. It leaves Paradise Drive on a curve having an inside radius of 10' – 20' and an outside radius of 20' to 40'. The required radius is 50'. The County codes have been adopted to assure health and safety. This is clearly an unmitigateable safety violation that should be removed from the plan. Why is it not addressed?

Marin County Community Development Agency
attention: Curtis Havel, Senior Planner
3501 Civic Center Dr., Su. 308
San Rafael CA 94903
cc: Debra Strattan, Senior Secretary
FAX: 415-473-7880

Molly Keil Hynes
2550 Paradise Dr.
Tiburon CA 94920
7/29/13

Comments and concerns of the Final EIR of
Martha Co. - Easton Point:

First and foremost, I deeply hope that the
Martha Property will be preserved. It is the last scenic,
fragile ridge-top land in our 2 cities: Tiburon and
Belvedere - and must be saved for everyone - for
all time to enjoy its majestic views!

Issue # 1) Land Use - Planning and # 6: Traffic

The houses planned (43) are from 5,000 to 8,000 sq. ft.
are much too large, and smaller sizes would minimize
the on-going construction. Traffic is a huge issue: already
a big problem here. How will traffic be contained between
the hrs. of 7:30AM - 9:00AM and from 2:00PM - 5:30PM?
The EIR hasn't clearly addressed this severe problem.

M. K. H
7/29/13

- 2 -

Community Development Agency FEIR : Martha Co. - Easton Point

Issue # 10 and # 6: Noise and #2: Geophysical

I've lived in Tiburon @ 2600 + 2550 Paradise Dr. most of my life (71 yrs.). My concerns are not only noise, but also the safety of the hillsides of Martha directly across from my driveway. It's extremely steep and 4 homes (lots) are planned there. The area is noted as having numerous old landslides (noted in EIR) nothing has been mentioned as to how the increased "run-off" + mudslides would be addressed and protect all the downslope properties.

Issue # 5: Hydrology and Flooding

Safety of roads, homes, vegetation + human life. In the years of 1982 + 1994 - Marin + here in the Tiburon hills were years of dangerous mudslides, flooding damage, roads washing out, homes destroyed + even loss of human life. This will happen again. Where in the EIR are these items addressed to handle what this undertaking will cause or add to a important concern to everyone affected by this development?

Issue # 3 and # 9: Water Quality + Hazardous Materials

The EIR doesn't address how the "ecosystem" of Keil Cove will be protected. This historic garden + lake (over 120 yrs old), - 2 - needs to be addressed in the EIR.

M.K.H.
7/29/13

- 3 -

Community Development Agency
FEIR : Martha Co. - Easton Point

Issue #3 and #9 Con't. :

The lake and plants are food to over 150 species of birds, river otters, quail, deer, red-legged frogs (protected), possum, skunk, foxes & others.

The Keil family also owns a "spring" within the Martha property which feeds into the garden and lake and needs to be protected.

Thank you for reading my concerns
and comments.

Sincerely,

Mally Keil Hynes

-3-

Dear Mr. Havel,

I am writing you to ask that you review the Martha Easton FEIR Concerns. My concerns about safety issues were not addressed to my satisfaction.

FEIR admits that the Old Tiburon roads that lead to the Hill Haven Roads are unsafe . Even now if a garbage truck, cement truck, etc is on either Diviso or Centro West it is almost impossible to pass it safely. Emergency vehicles would be hard pressed to navigate around them. This presents a very unsafe situation in case of fire or other emergencies. I am very sensitive to this issue as my house burned down in 1973. It took the fire trucks much time to navigate the narrow roads and then the pressure from the water tank was too low to be of much help.

The construction of a new road also presents many difficulties. This hill is full of landslides and serpentine rock which has asbestos in it and would present a health hazard when moved in such great quantities.

Using Paradise Drive as suggested did not include a study of how the widening would impact present use. There are many sharp curves on the road and even now it can be dangerous for bike riders coming around some blind curves. How long would it take to reconstruct the road and what is the plan for mitigating the diversion of cars and also present a safety concern for emergency vehicles. This issue was not addressed to my satisfaction.

The traffic analysis was seriously flawed by using commute hours as an indication of the impact of construction vehicles, workman's cars on Tiburon Blvd. The School drop off and pick up times even now make Tiburon Blvd. bumper to bumper traffic. Those would be at the time construction would begin. Again this concern was not addressed.

The larger the house, the longer the construction time, the more support people and the greater use of a two lane road. Again I see this as a safety issue.

I am also concerned that the extremely large cement water tank was never discussed in the FEIR. It does not seem to be a complete and transparent report.

I would be delighted to have you and the committee visit the site and come via the Old Tiburon roads to experience the true significance of how this construction plan will impact the safety and quality of life for so many .

Thank you for your kind consideration in this matter.



Marilyn V. Knight
615 Ridge Road
Tiburon ,CA 94920-1817

From: Nathan Lane [natelane3@gmail.com]
Sent: Monday, July 29, 2013 3:02 PM
To: Havel, Curtis
Cc: Stratton, Debra; EnvPlanning; oxyokemary@aol.com
Subject: Comments on Final Environmental Impact Report for 2008 Easton Point Residential Development

From: Nathan and Mary B. Lane
200 San Rafael Ave.
Belvedere, CA 94920

To: Marin County Community Development Agency
Attn: Curtis Havel, Senior Planner
cc: Debra St4ratton, Senior Secretary
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Re: Comments on Final Environmental Impact Report for the 2008 Easton Point Residential Development

Dear Mr. Havel:

We are residents of Belvedere, California and write to provide you with comments about the Final Environmental Impact Report for the 2008 Easton Point Residential Development. We, of course, understand that the property has been the subject of litigation for years and is now subject to constraints imposed by court order. We do not comment, therefore, on the merits of the project. Rather, we urge your consideration of the following deficiencies that appear in the Final EIR. We take the very fact that an EIR has been prepared to indicate that the Agency, the Planning Commission and the Board of Supervisors acknowledge the application of the California Environmental Quality Act. If so, the Final EIR should be complete, utilize correct data and avoid incorrect assumptions. In material respects the Final EIR fails to satisfy these standards.

While there are multiple deficiencies in the document, we urge your attention to the following, which impact us directly and which need to be understood by those charged with authorizing and controlling the actual development of the property and the final planning of it.

1. The Final EIR incorrectly concludes that traffic impact along Tiburon Boulevard would be minor. We believe that this conclusion is based on the faulty assumption that peak traffic flows during what might be characterized as the "commute" time. This is not accurate. Peak traffic along Tiburon Boulevard actually occurs during the school commute time period, and proper analysis requires that this traffic period be analyzed using correct data and proper mitigation be required. The Final EIR is deficient in this respect and must be corrected.

2. While the Final EIR alludes to the number and types of construction vehicles passing over Tiburon Boulevard and Paradise Drive, it fails adequately to account for assuring that these vehicles are safely operated, particularly on the narrow sections of these two roads. If, in particular, super large vehicles are permitted to operate en route to the site, then either the road must be closed to traffic while they pass, an obviously major impact on the community, or roads must be widened to accommodate them. We do not consider that the true impact of extra-large vehicles and the safety issues that flow from their operation has been adequately and accurately addressed in the Final EIR.

3. Master Response 7 in the Final EIR purports to deal with the visual impact of the water tank on the ridge line and the MERS tower. With respect, this response does not do justice to the visual impact, which was apparently not shown on the drawings contained in the Draft EIR, and provides no independent justification for the newly added MERS tower (which we understand emergency responders may desire) and certainly does not accurately describe its visual impact. (The Appendix of the report dealing with the MERS tower is pure gibberish, literally, in the version of the Final EIR posted on-line. For something with this type of impact, gibberish is not acceptable.) Essentially, the MERS tower is, to the Town of Tiburon and City of Belvedere, nothing less than a Sutro Tower North, with the unseemly visual impacts that have so long characterized that San Francisco "landmark". The Final EIR must give a candid and accurate description, written in the English language, of these impacts, which have not previously been set forth for public review and comment.

We respectfully request that our comments be considered and appropriate changes made before the Final EIR is accepted and submitted to the Board of Supervisors.

Very truly yours,

Nathan Lane III
Mary B. Lane

From: Paula Little [mailto:paula@paulalittle.com]
Sent: Monday, July 29, 2013 9:29 AM
To: EnvPlanning
Cc: Paula Little
Subject: MARTHA (Easton Point) FEIR CONCERNS

My name is Paula Little and I live at 420 Ridge Road, Tiburon. My home is in the Hill Haven area of Tiburon.

I have some serious concerns and unanswered questions regarding the FEIR Report:

1) **CONSTRUCTION ROAD**

. The Tiburon Fire Dept. states that the construction road is UNSAFE for emergency vehicles. What happens if there is an emergency? How can the FEIR justify a tragedy should it occur when it was **warned** ahead of time by their own report?

. There is NO way that building 32 -43 houses will be completed within a 10 year period. What then? Has a study been made as to how many trucks are needed to build ONE average 4,000 sq. ft. house and over what period of time?

. FEIR confirms that Hill Haven and Old Tiburon roads are UNSAFE as they are. At the completion of 8-10 year use of the construction road, what impact will construction trucks have on neighboring streets that are already deemed unsafe?

. How safe are the construction trucks.....the tires, in the rain, in muddy conditions? Are they safer than emergency vehicles that the Tiburon Fire Dept. states are already UNSAFE to use on the construction road? What about the truck loads on the construction road? Can the trucks be fully loaded? If not, how full can they be on the construction road to be safe?

. The proposed construction road consists of a single lane on a steep grade. Numerous houses will be built at one time which will consist of MANY construction vehicles using that road at one time. What about the vehicles waiting to use the road: motors running, air pollution, other cars trying to pass?

. What about the SAFETY of the construction truck drivers on the construction road?

- . During the 10+ year period, the construction road will need repairs. Will these repairs hold up construction at the sites?

- What financial impact will this have on the houses being built?

2) TRAFFIC IMPACTS DURING SCHOOL RUSH HOURS ON TIBURON BLVD.

- . Traffic during school rush hours is already bumper to bumper. This issue was NOT addressed by the FEIR.

- . Normal business traffic rush hours are VERY different from **school** rush hour traffic.

- . There MUST be a NEW traffic analysis done during **school rush hour** traffic.

3) SAFETY IMPACTS ON PARADISE DRIVE

- . Paradise Drive could turn into a nightmare. It is a narrow and winding two-lane road that is used by many bicyclists called

- the "Tiburon Loop." Clearly, it is also utilized by many vehicles. Large construction trucks on this road for 10+ years will put

- cyclists and drivers at great risk. After the 10+ years, the construction vehicles are to utilize neighboring streets through

- Old Tiburon and Hill Haven.....already declared "unsafe." The Board of Supervisors must propose a fifth

- alternative for 43 **smaller** houses so as to minimize construction traffic. Larger homes mean more construction vehicles/traffic.

- . I am urging that the Board of Supervisors study the value of widening Paradise Drive for the full mile-long length of the

- project as recommended by the DPW despite the thoughts of the traffic consultant. It is imperative that this be addressed.

- . FEIR needs to address the left turn issue onto the property. It will be a huge risk for bikers.

4) VIEW IMPACTS NOT FULLY ADDRESSED

- . The FEIR did not fully address the visual impacts of the new 20' x 40' water tower and 65' transmission tower. The water

- tank was not illustrated in the DEIR. The transmission tower was NOT described until the FEIR. What about the RF

- exposures? How close does one have to be and for how long for RF's affect them?

. The FEIR does not deem the MERA and water towers to be "significant" as to their visual impact. What was our purpose of fighting so hard for the Old St. Hilary's Open Space? THESE ISSUES ARE VERY SIGNIFICANT!

5) LANDSLIDES

. There are already 40 **identified** landslides on the Martha/Easton Point property.

. What will be the impact of 32-43 construction sites on UNIDENTIFIED landslides? Will this massive excavation cause additional landslides and problems? Who will mitigate the landslide and other issues should they occur?

6) OTHER ITEMS OF CONCERNS

. Contractors/developers can go "belly up." Have the financial implications been addressed? Will there be performance bonds?

. Will there be significant fines for construction trucks/companies that do not use the construction road but cut through Old Tiburon and Hill Haven instead? If so, who will be responsible for these actions? How will they be enforced?

Thank you for addressing these significant issues.

Paula W. Little

Paula

paula@paulalittle.com

JUL 23 2013 4:11:09 PM

**1825, Lagoon View Drive
Tiburon, CA, 94920
Tel No: 415-435-0157**

July 26, 2013

Mr. Curtis Havel
Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Dear Mr. Havel,

Comments on the Easton Point FEIR

Thank you for the opportunity to comment on the FEIR. We find the responses to the comments in our letter dated April 26, 2013 to be selective, incomplete and misleading. We request that the County ensures that the Applicant properly addresses these issues before considering certification of the FEIR. The following comments are organized by the responses to our original comments.

Response to Comment 69-1

This portion of our letter raised two significant issues:

- The entire traffic analysis deals with level of service issues and does not address health and safety issues related to traffic in any meaningful way.
- No information is given about traffic increments at important intersections on the route to the site.

The response does not address the first issue at all. The response refers to data on traffic increments given in various exhibits at various intersections, but key difficult intersections (see Comment 2) are not adequately analyzed. For example, Exhibit 5,1-42 provides project increments, but no data for existing volumes and cumulative increments are given for the Lagoon View Drive/Ridge Road intersection. However, judging from the data that is provided, this increment may be close to 100%. Without such analysis, we believe that the health and safety implications of increased traffic under construction, post-construction and especially emergency conditions.

Mr. Curtis Havel
Senior Planner
Marin County Community Development Agency

Response to Comment 69-2

We consider this response to be totally inadequate. Our letter dated July 26, 2011 detailed five junctions where traffic patterns, sight lines, road conditions and other considerations pose a current risk to public health and safety which will be exacerbated by the increased traffic created by the Easton Point project. No assessment of the risks to public health and safety of this project can be complete without analysis of these issues under construction, post-construction and emergency conditions.

Response to Comment 69-3

On-street parking of vehicles or dumpsters is rarely a problem on Diviso, so the mitigations proposed by the analyst will have little impact. The problem is that the road is simply too narrow to allow two large vehicles to pass safely, an issue which will be greatly exacerbated by the large increase in traffic resulting from the Easton Point project. Furthermore, sharp drop-offs at the side of some of the narrowest parts of the road increase the risk of a major life-threatening accident. This issue must be considered a significant unmitigated hazard.

Response to Comment 69-4

The analyst has noted but not responded to this issue. Presumably this implies that it is a significant unmitigated hazard.

Response to Comment 69-5

It is hard to read the response to this issue without feeling that the analyst is being at best deliberately disingenuous. Contrary to the implication in the response, there will be only a single route for egress from and access to the Easton Point site. During emergency conditions, it is hard to believe that anyone would choose to use the construction road which is described in the EIR as challenging even for carefully controlled construction traffic. After removal of the construction road that option will no longer be available. The analyst then goes on to describe the lessons of the Oakland Hills fire, including "limiting the number of residences served by a single access road" (the project adds 17 residences served by a single route from the Mountain View Drive/Ridge Road intersection to the Diviso/Centro intersection), "maximizing access routes" (the project adds no

Mr. Curtis Havel
Senior Planner
Marin County Community Development Agency

access routes but simply exacerbated the route currently available to Hill Haven residents), and “setting road width standards that make possible two-way traffic flow through hilly terrain” (a recommendation clearly not met by the current route).

The issue of emergency egress and access is of the highest importance to us and unless the project can propose alternative routes, the development represents a serious risk of harm to ourselves and our neighbors.

Response to Comment 69-6

Since it is unlikely that all upland lots will be developed within the ten year life of the construction road, a traffic analysis of Hill Haven streets after removal of the construction road is required to complete the EIR. If other alternatives other than the LDA are considered, the County must require the additional traffic analyses identified in our comment.

Response to Comment 69-7

This response is unintelligible and may have misunderstood our original comment. We proposed rerouting the access to the water tank (and the construction road) via the unnamed shared driveway to lots 5-8, while maintaining the currently proposed route for the pedestrian track. This would mitigate safety issues by separating vehicular and pedestrian traffic along this portion of the route (as well as minimizing the area disturbed by construction road). We believe this option should be given further consideration.

Response to Comment 69-8

Our primary concern related to the cut and fill proposals is that grading operations for lots 1-17 (LDA) are unlikely to be completed for many years. Furthermore, given the imprecision of such calculations it is quite possible that stored material may remain after completion of all such work. While the Construction Management Plan may include provisions for adequate management of such material during initial site development, the FEIR should also specify a requirement to establish long-term provisions for control

July 26, 2013 Page 4

Mr. Curtis Havel
Senior Planner
Marin County Community Development Agency

and ultimate disposition of these materials, including the requirement to establish a bond to cover the costs of such work.

Response to Comment 69-9

The response to this comment is truly heroic and calls to mind the Clintonian excuse that it depends what the meaning of the word "is" is! Essentially the analyst is saying that "peak" does not mean peak. Irrespective of the definitional subterfuge, the fact remains that the traffic analysis of Tiburon Boulevard, indicating an average PM peak hour vehicle delay at intersection 5, Trestle Glen/Tiburon Boulevard (p177) of 14.7 seconds, does not reflect real world conditions, where queuing from well before Rock Hill Drive to Trestle Glen is common for much of the afternoon period. Further investigation and explanation is required before the FEIR can be considered adequate.

Thank you for your further consideration of these matters. We continue to urge staff, consultants, Commissioners and Supervisors to visit the site and experience local conditions prior to certification of the EIR.

If you have any questions, please do not hesitate to contact us.

Sincerely,



David J. Barker and Margaret Mason

TO: Chair Holland and County Planning Commissioners
Curtis Havel chavel@marincounty.org; envplanning@marincounty.org
Fax to: 473-7880
FROM: Barry and Fran Wilson
DATE: 7/19/13
RE: Easton Point FEIR comments

Does the 2007 Judgment trump CEQA?

We question whether the DEIR and FEIR have allowed the 2007 Judgment to truncate duties under CEQA law. Our impression is that the judgment is driving the FEIR to approve the project as proposed rather than acknowledge the overwhelming evidence that this site presents massive unresolved environmental problems.

Rather than consider a full range of project alternatives that would substantially lessen the effects of the project, the DEIR confines itself to only four alternatives. And only two are examined in detail. Alternates 3 and 4 are deemed not “environmentally superior.” We question why they assumed the same large houses as in Alternates 1 and 2. To satisfy the 2007 Judgment, only 43 houses on half-acre lots are required. There is no legal mandate for them to be large. The FEIR makes no answer to our question why an alternate with much smaller houses, placed lower on the property wouldn’t be “environmentally superior.” They would certainly reduce many impacts – grading, habitat loss, slide repair, visual, traffic, noise and dirt.

FEIR response 17-1 simply relies on the existence of the Judgment to address questions about the adequacy of alternatives. The Response to 17-1 should have addressed how the Judgment (agreed to by both parties) can have apparently conflicting requirements:

- “*The County will procure a full scope EIR...*”
- “*The County is required to approve 43 home sites on the Martha Property...*”

and how the EIR dealt with them.

Safety and Accountability

The Easton Point development project is unique in its scope, hazards and potential liability. The Martha Company has been attempting to build it for many years. You simply cannot get to it safely without massive infrastructure mitigation. This is the third EIR to be produced. It is emblematic of the problems with this site that nothing has been built since efforts began in 1970s. The rest of our FEIR comments focus on safety and assuring the developers retain accountability for the environmental risks. The mitigations required for a project of this scale are likely to prove ineffective without effective enforcement mechanisms.

Financial Responsibility

In our opinion, both the Easton Point DEIR and FEIR fail to assure both meaningful environmental mitigations and accountability for performance. To our questions of the DEIR, the answers in the FEIR appear facile and naive. The immensity of the risks and potential liability imply that standard mitigations—if not backed by bonded performance guarantees—are insufficient and unacceptable.

The risks are manifold:

- Construction road: temporary, 25% grade, one-way, many curves, proponents with demonstrable conflicts of interest
- “Removal” of this road won’t be totally complete—some will remain

- Landslides: 40 altogether--28 of them on the project site
- Water pressure—significant questions about fireflow. Fire danger in wooded areas extreme
- Paradise Drive: significant exposure to landslides and dangerous traffic conditions
- Tiburon Boulevard traffic: complete misunderstanding of peak traffic times
- Trails: danger from construction and destruction of traditional paths

The Easton Point project promises profits for the owners and developers. That is their right. But we urge the County to exercise great care to ensure that responsibility for the risks and costs of development remains with the developers and future homeowners rather than being passed to others.

History demonstrates that financial accountability is difficult to define and enforce. It is further complicated by the distinct possibility that contractors will disappear or go bankrupt. **We request the County establish very significant bonding requirements on the developers during construction to insure compliance and performance.**

At some undefined point once construction is underway, financial and performance liability will begin to shift to a POA: an unformed, dubiously accountable, and very likely unprofessional organization without financial resources and with great motivation to avoid accountability.

We request the County establish a very significant bonding requirement on the POA and other measures to insure long term compliance, performance and assumption of future liability—especially for landslides and the construction road removal.

The Risks

Landslides

We don't wish to engage in an irresolvable battle of dueling experts. But the fact is that the Easton Point project will be built on 28 of the 40 identified landslides on this property. We remain very concerned that the cumulative impact of the project's massive excavation poses serious landslide risk to new homes, to Paradise Drive and to the neighborhoods below. Paradise Drive has a history of landslides in the project area bringing risk and access complications to pedestrians, motorists and bicyclists. Tiburon code requires repair of all identified landslides. The County and the project's neighbors should not have to endure greatly increased risk from this project with sub-optimal mitigation. The Department of Public Works has recommended the widening of Paradise Drive for the full mile-long length of the project but the FEIR traffic consultant says this is not needed. Decision up to the BOS. See FEIR p 55 & 56, response 1-2. See comment 1-15. Why wouldn't you require complete mitigation measures and clear assignment of liability as a pre-condition for beginning this project?

But that is not the only problem along Paradise Drive. Besides elevated landslide risk, the section fronting the Easton Point project is noteworthy for tight turns, no shoulders and limited sightlines. All of Paradise Drive after Solano (where sidewalks end) will become particularly hazardous with project construction traffic. Complicating matters, Paradise Drive is extremely popular with bicyclists.

Do not allow these risks to be pushed off on the Town, neighbors and bicyclists. Be our advocates with the developers! We agree with the County Dept. of Public Works which says the developers must widen the full length of project's Paradise frontage.

Insist the entire portion of Paradise fronting this project be widened for both traffic and landslide safety.

Construction Road Unsafe: DEIR p 462

Access to the property requires a temporary construction road so fraught with hazards that the Tiburon Fire Department refuses to use it. Further, a truck dispatcher has opined that heavily laden trucks (i.e. cement trucks, dump trucks) should use it only in reverse and with less-than-full loads.

Consider:

- Projected to last 10 years, or possibly much longer.
- Flaggers for all heavy trucks for 10 years.
- Radio controls required for every vehicle.
- 25% grade.
- No discussion of safety of heavily laden, construction vehicles and how well they can manage this questionable road.
- No discussion of impacts of inclement weather on the road and on Paradise Drive. Ignored FEIR comment 7-16.
- Page 18 states construction truck traffic for homes amounts to only a few truck trips per day. Our research indicates that house construction produces just under 10 truck trips per house, each day.
- The support for it comes from obviously conflicted sources.

Construction Road Removal Must be Mandated.

The temporary construction road is a misnomer. “Removal” of this road won’t be complete. Retaining walls and grading seem likely to remain—a permanent visual impact and potentially unsafe as people attempt to use it.

Insist the construction road be properly built and then entirely removed and the land returned to its natural state. In view of the substantial time period involved (10+ years), this requirement must be backed by very substantial bonded performance guarantees.

Local Streets Clearly Unsafe

The local streets through Old Tiburon are unsafe for existing traffic and pedestrians—a fact confirmed by the temporary construction road proposal. “Requiring” all construction traffic to use this road will prove ineffective. Savvy contractors will surely opt for local Old Tiburon streets to avoid hassles as flagmen control one-way traffic on the curving, 25% grade.

At some point, the construction road will be shut down and all future traffic will be added to the extremely substandard streets of Old Tiburon. The DEIR and FEIR responses claim there is no remedy except to assign the burden to the neighbors by banning parking and dumpsters for existing houses. **The answer is, of course, to require the developers to build a safe temporary construction road to the site and protect Paradise Drive from construction traffic and landslides.** Too expensive? Any other solution requires the community to assume the developers’ risk.

Fire Flow Analysis Questionable; Fire danger Extreme

Even the FEIR acknowledges fire flow is a problem: FEIR p. 94, Response 6-18:

“The preliminary water feasibility analysis demonstrates that up to 20 proposed lots would not meet the minimum fire flow requirement of 1,500 gallons per minute (gpm), a significant impact. Mitigation Measure 5.7-8 would reduce this impact by either increasing the fire flow to lots 21-23 or designing buildings with a maximum size of 3,600 square feet to comply with available fire flow. It is reasonable to question the feasibility of this mitigation, as the commenter does.”

The potential impact of fire hazard, especially during the construction period, is not addressed. The woodland areas are at extreme risk. This issue should be explicitly addressed and mitigations

identified. Who, besides the community, bears responsibility for a construction related fire? How would such responsibility be funded?

Why not instead reduce the number of houses on the ridge because sufficient water pressure is unavailable without unacceptable impact?

Communications Tower RF frequencies—A New Risk

New in the FEIR is a requirement for a 65' communications tower with two satellite dishes and other antennas. RF exposure will impact visitors to Old St. Hilary's Open Space (OSHSOS) prime viewpoint about 140' away and just 25' below the top of the tower.

The U.S. Federal Communications Commission (FCC) has established RF exposure limits. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Based on the analysis prepared by Hammett & Edison for a person anywhere at ground level, including the knoll to the northwest of Parcel C, the maximum RF exposure due to a base station design as described by DPW, including the contribution of the microwave antennas, is calculated to be 0.14 mW/cm². This exposure level is 43 percent of the applicable public exposure limit. The maximum calculated level for a person at the adjacent proposed water tank would be 62 percent of the public exposure limit.

The FEIR language is unclear. Does RF exposure at either 43% or 62% of FCC limits change with time? Both numbers seem alarmingly large. What do these limits mean? The prime viewpoint of OSHOS is the destination of most visitors. People enjoy picnicking and lingering there. Does an hour-long exposure have the same impact as a momentary one? How about repeated exposures? This is a very significant and new impact which further diminishes the value of taxpayer money spent to preserve this land.

It deserves more detailed study and thorough disclosure.

Other Issues

View Impacts

The destruction of the prime view from Old St. Hilary's Open Space is yet another impact the community is being asked to absorb.

The DEIR presents several view illustrations but all except one are distant, distorted views. Only a single view illustration shows the impact from our most spectacular and beloved viewpoint. And it completely ignores the proposed 20' x 40' water tank and 65' transmitter tower with satellite dishes and other antenna about 140' downhill. The tank and transmission tower platform (60' x 60' with a retaining wall up to 30' high) will stand out like a fortress.

Further, mitigation measure 5.7-7 proposes to *raise* the water tank an additional 10' to increase water pressure and flow to many upper elevation lots. FEIR Page 31: Not deemed significant. Why should this further intrusion into prime views be appropriate? As we note below under fire flow analysis, why not reduce the number of houses on the ridge because sufficient water pressure is unavailable without unacceptable impact?

The Tiburon community purchased the Old St. Hilary's Open Space (OSHSOS) at great cost to taxpayers (continuing to this day) in the 1990s to preserve the open land above the Town for its superb scenic and recreation value. The Easton Point project destroys a great deal of that value. The DEIR and FEIR acknowledge the view impacts as significant and unmitigable. However, the extremely limited alternatives considered by the DEIR belie this claim. Alternatives with smaller houses, placed off the ridge would ease water pressure and flow issues, allow the tank to

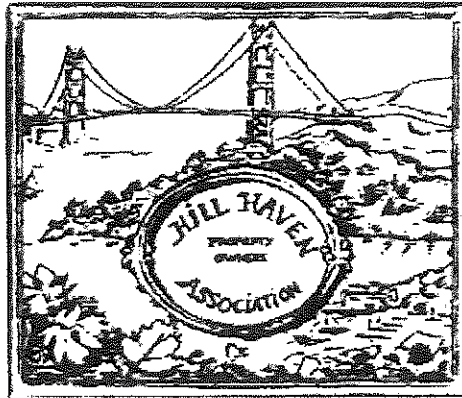
be dug into the hillside to minimize its impact. Perhaps several smaller antennas could be engineered to provide adequate coverage without impinging on the primary open space views.

- **Please produce individual and collective view illustrations for water tank, transmission tower and proposed houses from the prime open space viewpoint.**
- **Please require that the tank be lowered by digging it into the hillside so that it is not visible from the prime viewpoint of OSHOS.**
- **Please design and locate emergency communications tower(s) so as not to impact the prime viewpoint of OSHOS.**

Traffic Analysis of Tiburon Blvd Flawed

The Tiburon Boulevard traffic analysis was conducted at traditional business “rush hours” instead of school “rush hours” which is a significant error. Traffic is much worse than the DEIR states. The survey must be re-done. Even a small worsening of a significant impact is a significant impact. Many intersections are mis-categorized as having less than significant impacts due to this error.

Virtually every Tiburon resident will tell you that traffic on Tiburon Boulevard is a nightmare at school rush hours creating logistical and safety issues. FEIR p 105, response 7-14, at bottom.



July 24, 2013

Mr. Curtis Havel
Senior Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Dear Mr. Havel:

Easton Point Development – FEIR

On behalf of the Hill Haven Property Owners Association, I would like to thank you for the opportunity to provide comments on the Easton Point FEIR.

As noted in our letter dated April 22, 2011, Hill Haven immediately abuts the Easton Point site and will form part of the access route for more than half of the residences proposed for this property. The members of our Association are therefore understandably concerned that development of the Easton Point Site proceeds with the minimum possible environmental impacts and in particular without unacceptable increases in the risk to the health and safety of our residents. While we appreciate the responses to our communication provided in the FEIR, it is clear that many of the issues raised remain unaddressed.

Response to Comment 13-1 - Emergency Access and Egress

Our letter dated April 22, 2011, pointed out that, under emergency conditions such as a firestorm, a significant increase in the number of persons and vehicles seeking to access the area through our Hill Haven streets can be expected as a result of the Easton Point Development. Furthermore, the development increases the risk of a wildfire spreading by proposing development in locations that do not meet the minimum fire flow requirements. The only mitigations proposed in the EIR are:

- Prohibition of the parking of dumpsters on the street;
- Requiring purchasers of some of the Easton Point lots to sign releases acknowledging low fire flow (It is difficult to see how this reduces the risk to Hill Haven residents in the event of a firestorm emergency).

The response to our comments is clearly inadequate. The response begins by implying that there would be multiple egress routes from the site. This is incorrect. The only realistic vehicular egress from developed properties on Mt Tiburon Court and the Ridge Road and Mountain View Drive extensions would be via Hill Haven streets. During the construction period, the construction road would be a theoretical alternative but it is difficult to believe that any resident of the above noted streets would choose this route, which is described in the EIR as requiring great care even by carefully controlled

construction traffic. Similarly, TPFD has stated that the construction road exceeds the gradients considered safe for its vehicles, so emergency vehicles would simultaneously be using Hill Haven streets for access, a road system that is described in the DEIR as “narrow and winding”(p173) with multiple difficult intersections.

The EIR contains no analysis of traffic flows under emergency conditions, but the information in the DEIR suggests that the build-out of the Easton Point development will result in an increase of around 50% in normal peak-hour traffic at the Ridge Road/Vistazo West intersection (and a 100% increase in the Vistazo to Ridge traffic in the Peak PM hour). With this kind of increase in normal conditions, the impact on egress and access under emergency conditions is likely to be substantial.

We submit that the FEIR should not be considered complete until:

- A traffic analysis under emergency conditions is included;
- The adequacy of Hill Haven streets to cope with the increased traffic under emergency conditions is confirmed;
- Additional mitigation measures are included, including but not limited to the elimination of lots where fire-flow does not meet standards,

Response to Comment 13-3 - “Road Configuration and Intersections– “Old Tiburon/Hill Haven”

The DEIR and FEIR acknowledge only that the route through Lyford Cove/Old Tiburon and Hill Haven is narrow and winding with multiple intersections, and that the Centro West/Diviso intersection is challenging. However, there are at least three other intersections on this route which represent real hazards:

- Paradise Drive/Solano – poor sight lines exiting from Solano and fast moving bicycle traffic on Paradise Drive;
- Diviso/Vistazo East/St.Bernards Lane/Vistazo West/Ridge – tight curves, poor sight lines and multiple junctions within 30 yards;
- Ridge/Lagoon View – acute angle turn, poor sight lines and grounding of low-loading vehicles.

Accidents and/or near misses have occurred at all these junctions. The DEIR fails to analyze the impact of increased traffic volumes at these intersections (as noted above, reported as a 50% increase at the Ridge/Vistazo intersection), and the FEIR contains no response to this issue which poses a direct threat to the health and safety of our neighborhood residents. Further analysis and additional mitigation measures are required.

Response to Comment 13-4 - “Road Use”

Contrary to the assertion in the response to this comment, the DEIR does not provide a detailed analysis of “roadway use” in the Lyford Cove/Old Tiburon neighborhoods, but only an analysis of vehicular roadway use along certain sections of the route to the Easton Point properties. Page 197 of the DEIR includes a brief reference to pedestrians and acknowledges that even with current traffic, pedestrians are sometimes placed in a hazardous condition. Our letter dated April 22, 2011, pointed out that “the roads in the Old Tiburon neighborhood are used not only by vehicles but also by pedestrians, cyclists and even in-line skaters. There are no sidewalks and few of the streets are lighted at night. Increased vehicular traffic is likely to increase the risk of life-threatening accidents with non-vehicular road users. The DEIR includes no analysis of these issues and suggests no effective mitigations. The FEIR contains no response to this comment. Further analysis and mitigations are required to ensure the safety of our residents.

Response to Comment 13-5 - “On-Road Parking”

The FEIR continues to assume that the interruptions to traffic flow caused by on-road parking are limited to streets such as Diviso and Centro West and Centro East. In fact, a typical remodel project within Hill Haven results in the consecutive parking of 10 -12 vehicles on any stretch of road that is reasonably straight, such as Ridge Road (east of the Lagoon View Drive intersection) or Ridge Road (north or south of the Mountain View intersection). When such vehicles are parked, two-way traffic is impossible along 50 or more feet of the roadway, often adjacent to an intersection. Such conditions

result in dangerous situations which will only be exacerbated by the significant increase in traffic through Hill Haven caused by the Easton Point project. Complete prohibition of on-road parking along these sections is impractical, but further analysis and mitigations are required to ensure the health and safety of local residents.

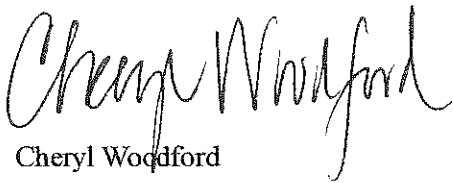
Overall, the traffic analysis for the Lyford Cove/Old Tiburon and Hill Haven streets is lacking in a detailed understanding of traffic patterns within the neighborhood.

Response to Comment 13-7 – Cut and Fill Operations

We are concerned that while the Construction Management Plan may provide adequate safeguards against dust and air pollution during site preparation activities, the cut material stockpile on Lot 5 or an alternative site may be in place for many years until grading for all of the individual properties is complete. Also, there is no stipulation in the DEIR that any cut material remaining after completion of such grading be removed or otherwise landscaped and vegetated. We continue to believe that the FEIR should include additional mitigation measures to ensure that effective dust control procedures are in place until all of the cut material has been used and that any remaining material (that is not required) be landscaped, vegetated or removed at the County's option.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink that reads "Cheryl Woodford". The signature is fluid and cursive, with the first name "Cheryl" and last name "Woodford" clearly distinguishable.

Cheryl Woodford

President
Hill Haven Property Owners Association