

March 5, 2014

Supervisor Kate Sears, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903



RE: Certification of Easton Point Amended Final EIR

Dear President Sears and Supervisors:

The Marin Conservation League has followed the Easton Point development process since 1992. Two previous EIRs were withdrawn prior to certification. We are now addressing a third round of CEQA documents. In reviewing the Bob Berman memo, dated February 13, 2014, we find that little has changed from the previous inadequate Amended FEIR. Issues we raised in our October 18, 2013 letter remain outstanding.

The role of an EIR is to describe the environmental conditions of a project site, identify the potentially significant environmental impacts of proposed development, provide *feasible* mitigation for significant impacts and/or ways to avoid or reduce impacts by comparing alternates to the project that *will substantially lessen significant impacts*.

This FEIR provides an adequate site description—its topography, geology, hydrology, biology, and aesthetic qualities. The analysis of traffic and associated impacts has been augmented by further study of school-related traffic, with a conclusion of no significant impact. The FEIR continues to fall short of CEQA standards for adequacy in two fundamental ways: (1) It fails to provide any alternative that would substantially lessen significant project impacts and thereby qualify as an environmentally superior alternative; and (2) It proposes mitigation measures of questionable feasibility, in that they rely on undetermined outside agency approvals and enforcement to mitigate significant impacts far into the future.

Conclusion: Until the issues presented here are resolved, Marin Conservation League recommends that the FEIR not be certified. If these issues are not resolved, some impacts should be reclassified as Significant Unmitigable prior to EIR certification. This would apply to impacts addressed by mitigations of questionable feasibility, including those dealing with the Keil Spring and provision of a corridor that are likely to result in take of the endangered red-legged frog, those relying on speculative outside agency approval, and others addressing the safety of the construction road.

Background:

Provision of Alternatives. The 2007 Stipulated Judgment is explicit that the project requires an EIR in conformity with CEQA. The applicant's Development Agreement¹ (associated with Alternative 2) states: "... nothing contained herein is intended to limit or restrict the discretion of the County to comply with CEQA." CEQA Guidelines (15126.6) states that "the discussion of alternatives to the project shall (emphasis added) focus on alternatives to the project which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede

¹ Alternative 2 Development Agreement, p. 31, Sec. 6.3

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to some degree the attainment of the project objectives.” The FEIR Amendment opines that the alternatives provided are adequate since they were devised to meet the 43-lot development requirements of the Stipulated Judgment.²

The FEIR makes it evident that all alternatives have almost the identical degree of impact as the Project for all issues evaluated. No alternative meets the stated CEQA standard to reduce even a single significant effect, despite the EIR preparer’s best efforts. The parties to the Judgment appear to have made it impossible to comply with CEQA! It is noteworthy, and puzzling, that the EIR rejects the possibility of eliminating lots as a way to reduce impacts in its creation of alternatives, yet accepts this approach in the mitigation monitoring plan, as well as expanding it to suggest lot elimination in mitigations that don’t explicitly include elimination, but may in fact require it (see Mit. 5.6-1a & 5.6-3(a)).³ In creating a reasonable range of alternatives, it appears that an *a priori* decision was made to accept a predetermined density regardless of CEQA requirements. MCL believes the County is obligated to meet the CEQA standard for alternatives, as required by both the CEQA statute and the terms of the Judgment. Without proper alternatives, the FEIR cannot be deemed adequate.

Determination of the Environmentally Superior Alternative. Remainder lot. The project applicant’s geotechnical engineer, Miller Pacific, recommends that development of Remainder lot requires complete repair of landslide 23⁴, with removal and recompaction of 6,500 cy of soil.⁵ This grading is not factored into the FEIR’s impact assessment. These 10.74 acres are protected as open space for the Project and all other alternatives and accrue impacts only for Alternative 2. An incomplete assessment of this 10% of the site is what allows this to be the “environmentally superior” alternative, subverting fair comparison by not factoring in access, water and sewer provision, grading for slide repair, and biological impacts for this entitled lot, as for all others. Without a full and comprehensive comparison with other alternatives, this cannot be considered an environmentally superior alternative. A reassessment of the environmentally superior alternative should be required prior to FEIR certification.

Traffic/Safety Related Issues. A number of mitigations rely on actions by agencies which may or may not approve them. Eliminating parking and scheduling 12-hour/day, 7 days/week flag trucks/flag men on neighborhood streets during construction rely on Tiburon’s cooperation and enforcement. Widening of Tiburon Blvd. in the area of Trestle Glen requires Caltrans’ approval. The Tiburon Fire Protection District has called the critical Construction Road “a safety hazard”. Adequate widening of portions of Paradise Dr. relies on development of a nearby parcel (the Swahn property - offered for sale at \$39 million), the development of which is speculative in any timeframe. Traffic counts for construction traffic through Old Tiburon/Hillhaven or to the

² FEIR Amendment, 10/13, p. 16 (p. 18 online)

³ DEIR, p. 725 (p.848 online). **Mitigation Measure 5.6-2(a)** requires redesign of the PDP to remove, relocate, reduce or reconfigure lots within the Forest Glen area to reduce impacts to dispersal movements of the CA red-legged frog.

- 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. This requires redesign or elimination of lots 1-3 according to FEIR Amendment.

- DEIR p.36 (p. 46 online) **Mitigation 5.6-3(a)**. “Mitigation measure 5.6-3(a) [to preserve serpentine bunchgrass habitat] may require the relocation or elimination of proposed Lots 1 through 3 as well as the reconfiguration of Lots 6 and 19. Due to the site’s environmental constraints, it may be found not feasible to redesign the PDP as discussed in Mitigation Measure 5.6-3(a) without causing other impacts.”

⁴ 10/13 FEIR Amendment, p. 9, p. 11 online

⁵ 6/13 FEIR, p, 104 (p. 110 online)

Construction Road continue to be undercounted (The count was doubled after public comments pointed out that truck capacity of 10 cy, not 20 cy, would use these roads. The count should be further increased by 20% since Ghilotti's Construction Management Plan indicates 8 cy trucks would be used). Taken together, one must question if the mitigation measures premised on scheduling of construction time frames and associated flag-men, approvals and enforcement by outside agencies, and inadequate street widening are feasible means to avoid neighborhood road jams and provide reasonable safety to local traffic and pedestrians over an indefinite period of time.

Questionable protection for special status Marin dwarf flax/serpentine reed grass/serpentine bunchgrass. Proposed project development would eliminate 75% (flax & reed grass) and 86% (bunchgrass) of these native plant communities. Mitigation 5.6-1(a) and 5.6-3(a) call for redesign of the Precise Development Plan to preserve on-site populations. Eliminating lots is precluded by the Stipulated Judgment, yet the FEIR Amendment says elimination of Lots 1-3 may be necessary⁶, since offsite mitigation not an option, and that redesign may not be feasible (stated repeatedly in the DEIR)⁷. No data are provided to demonstrate that redesign is feasible and if so, whether it might generate secondary impacts. This information should be provided prior to FEIR certification. This kind of covert mitigation (lot elimination acknowledged as the only way to avoid SU impacts, but not included in the mitigation language) is an end run around CEQA and should not be permitted.

Impacts to Keil Spring and potential take of threatened red legged frog. The 2007 Stipulated Judgment (p. 3) says "it is not the parties' intent hereby to allow the unmitigated taking of any endangered, threatened, listed, or otherwise protected species..." The FEIR Amendment states: "The environmental analysis for Impact 5.5-6 (and 6.5-6 for Alt. 2) 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."⁸ The FEIR states that without Keil cooperation, the impact is Significant and Unavoidable (SU). This could potentially result in a taking, in contradiction to Stipulated Judgment direction. Mr. Keil declares he will not cooperate. As a consequence, the FEIR is inconsistent with the explicit language of the Stipulated Judgment.

The Marin Conservation League, in its long history of working with this Board and your predecessors, supports your strong environmental awareness and efforts to promote and protect the natural assets of this county. We ask that you demonstrate this by insisting that the FEIR comply with CEQA and that the *a priori* development plan for the Easton Pt. project not take precedence over or otherwise compromise full compliance with the State's preeminent environmental protection law.

Sincerely,



Jon Elam, President

⁶ e.g. DEIR, p. 438 (p. 457 online): Mitigation Measure 5.6-1(a) may require the relocation or elimination of Lots 1 through 3. DEIR, p.95 (p. 107 online). Exh. 4.0-2: "However, mitigation measures 5.6-1(a) and 5.6-3(a) may require the strategic elimination and/or relocation of Lots 1 - 3.

⁷ DEIR p. 100 (p. 112 online). BIO 2.2 As stated in **Section 5.6 Biological Resources**, implementation of Mitigation Measures 5.6-1(a) and 5.6-3(a) may not be feasible.

⁸ 10/13 FEIR Amendment, p. 23-24 (p. 25-26 online)