

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:

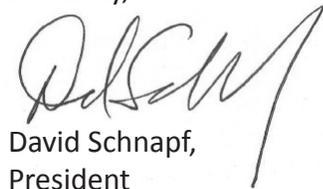
a. Detention systems. FEIR, Page 308 (p. 314 online) Response 22-33 states that road-based and lot-based detention systems and outfall would operate independently of each other. Runoff would be collected and detained in subsurface structures before being discharged at pre-project rates to points downslope 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