

Oral Comments on Easton Pt.(Martha Co.) FEIR, Planning Commission, July 22, 2013

Marin Conservation League has been following the progress of this highly complex project for many years. Two years ago, we raised a number of questions on the Draft EIR, and, as have many, found the responses to be frustrating and insufficient.

I have two points to make on your role in today's meeting.

- 1) Our understanding is that, in this highly unusual process, the Planning Commission has this one opportunity to consider whether the Final EIR on the Easton Pt. Residential Development Project contains all the information necessary for the County to act on the merits of the project. If it does, you have the option to recommend certification.

You will hear today many comments, backed by written comments for the record that it does not. The Responses to Comments on the Draft failed to acknowledge the need for important information.

For example, reducing house size and lot size to the minimum ½ acre required by the Judgment – a mitigation measure or alternative that would reduce *many* impacts, is not seriously considered. It is suggested in the DEIR only in relation to fire-flow and visual impact. That was the response we received in the Response to one of our Comments in the FEIR. Others are being cited today.

At this point, we don't know whether the County will choose to amend the FEIR to incorporate this missing information or not. We think key information is missing, that the many responses simply circle back to the Draft EIR and do not fill gaps.

- 2) In our view, you have another opportunity – that is to take a hard look at mitigation measures and consider whether, in your view, they are really sufficient in reducing impacts. The FEIR is unlikely to change its position.

It is important to remember, however, that, while the EIR uses language like “the applicant *shall* implement” certain measures, the EIR is not *prescriptive*. Until mitigation measures are adopted by the lead agency (the County), or a responsible agency as appropriate, and agreed to by the applicant, they are advisory only.

Whereas agency staff and consultants may *recommend* mitigation measures in the EIR, only the County decision makers (the BOS) can determine whether proposed measures are feasible or infeasible, or determine that a particular mitigation measure at issue would *not* be sufficient to mitigate an impact to less-than-significant level. You can

forward valuable comments to the BOS on mitigation measures that you feel are questionable -- insufficient in your view to mitigate impacts.

A prime example is the reliance on the Property Owners Association (POA) to carry out CC&Rs – to take responsibility for numerous, critical, long-term maintenance programs such as the landslide stabilization program, for the life of the project. This program includes:

- Periodic geologic inspections;
- Monitoring of geotechnical and hydrologic mitigation measures to assure effectiveness;
- Routine cleaning and maintenance of drainage devices;
- Recommendations for additional erosion control or mitigation of any unforeseen hazards which develop in the future; and
- A regular reporting schedule.

Report to whom? The County, who is named as having the *right* to implement these conditions but bears no obligation? These are serious, long term obligations, fraught with liability.

How will the applicant assure funding for this program? And when the first residence is begun, will that one property owner be responsible as the “POA”?

We have the same concern about the delegation of responsibility for implementing a Resource Management Plan for Parcels A and B to the POA for long-term maintenance of sensitive resources. Does this measure really reduce impacts to less-than-significant levels?

These are examples only. Whether you consider these and other mitigation measures to be inadequately studied (prompting at least an amendment to the FEIR), or simply infeasible or wholly inadequate, you need to give the BOS the benefit of your opinions before they consider certifying the FEIR.

Nona Dennis