

July 7, 2014

Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, CA 94903



***Subject: Proposed Whaler's Point Hotel and Spa: Vacation of Street Rights-of-Way***

Dear President Kathrin Sears and Supervisors:

Marin Conservation League has reviewed the Planning Staff report, dated July 8, 2014, concerning the request for vacation of streets surrounding the site of the subject proposal and concurs with the recommended Option #1. We agree that the requested vacation of streets should be taken up at such time as a public hearing can consider this request together with the merits of the proposed project, in that the two requests cannot be separated.

It follows that it would be premature to consider street vacation for a project for which there is not yet a complete application on file. As stated by others, if the Board gives "direction" to further explore street vacation at this time, it is essentially working towards enabling a project that does not have a complete application on file. Any action taken by the board would be based on incomplete information. Your Board needs a completed project submittal to assess if, or which, vacations might be appropriate and to assess their compliance with existing Plans.

MCL has several concerns pertaining to the merits of the proposed project itself that argue for deferring action on the request for vacations until the project can be reviewed in detail:

- First, there remain substantial questions as to whether Littoral Development has ownership of paper streets surrounding the property, as claimed. (See 1990 letter from the State's Attorney General affirming "that the Default Judgment has not force or effect against the County of Marin or the State of California," and 1990 letter from BCDC stating that written advice from the Attorney General's office to them affirms that "the State of California does not agree that he [Littoral Development, the 1990 applicant] has any ownership interest in these lands [adjacent paper streets]." (These are attached to the July 3, 2014, letter from the Tamalpais Planning Area Bayfront Coalition (TPABC).)
- Second, we are concerned that the justification for the proposed street vacation is to enable the Whaler's Point project by increasing its dry land square footage, without which the FAR of the proposed project would exceed requirements of the Tamalpais Area Community Plan, as pointed out by staff and confirmed in the letter from TPABC. This is not the only issue in which the proposed project does not conform to the Community Plan.
- Third, the applicant has suggested orally the possibility of placing a public easement over parts of the vacated areas, ostensibly to protect public access while simultaneously

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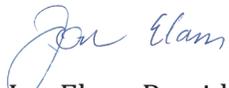


suggesting possible security measures to enhance safety. Such an approach could result in a *decrease* in public access as a result of proposed street vacations, despite statements to the contrary.

- Finally, the most recent estimates by BCDC and further modeling of Richardson Bay forecast a 3-foot sea level rise in this area by mid-century, which would put significant portions of the project underwater. Even if structures were elevated, access could be affected. At this time, the County of Marin has no specific policies that address adaptation to sea level rise; certainly the County has no policy that restricts private investment in lands vulnerable to sea level rise that would at some time in the future require public investment in protective or other adaptive measures. This will be another important consideration in reviewing the merits of both the project and vacation of streets.

In conclusion, it is apparent that numerous unknowns and problems with the project itself obligate the Board to defer considering the requested vacations until these can be addressed together. This recommendation is supported by state code regulations that require a project to be evaluated and its compliance with applicable general plans be assessed by the planning agency prior to consideration of street vacation. MCL, therefore, strongly urges you to agree to Option #1 as the only appropriate response to the requested street vacations.

Sincerely,



Jon Elam, President

cc: Marin Audubon Society  
Ben Berto, Marin County Community Development Agency  
Marin County Department of Public Works