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January 11, 2016

Adam Wolff, Planning and Building Director
Town of Corte Madera Planning Department
300 Tamalpais Drive
Corte Madera, CA 94925-1418
Email to: AWolff@tcmmail.org

RE: Environment Impact Report (EIR) for the Corte Madera Inn

Dear Mr. Wolff;

The following comments on compliance with planning and zoning law and CEQA for the Corte Madera Inn are submitted by me on behalf of Community Ventures Partners.

We request that the Planning Commission delay its recommendation to the City Council

CVP is currently conducting technical review of the EIR by an expert hydrologist and expert biologist. These reports will focus on impacts to flooding and biological resources that would be caused by adoption of Alternative 1. These reports should be completed by January 20. These reports will be part of the project's record, but we urge the Planning Commission to delay its final recommendation and review these reports before providing the City Council with recommendations on such an important decision.

Alternative 2 may not require recirculation of the EIR

Because the EIR does not contain a complete review of Alternative 1's impacts, the EIR must be re-circulated for public review and comment pursuant to CEQA Guidelines Section 15088.5. However, Alternative 2, because of its reduced footprint and bulk and because of its retention of the pond, may not require recirculation, and would allow the developer to move ahead with the project in the near future instead of possible extensive delays.

The EIR does not adequately assess impacts regarding flooding, polluted runoff and wetlands.

The comments below reflect the reality that flooding of Corte Madera Creek and Highway 101 and loss of freshwater wetlands in Marin are both continuing problems *significantly exacerbated* by Alternative 1's filling in of the pond and increase of permeable surfaces.

1. The Proposed Project violates the General Plan by not restricting or modifying the project to avoid wetlands. The Zoning Ordinance of Corte Madera limits fill of wetlands in the overlay zone.

My January 20 letter points out that the DEIR does not assess the lack of vertical consistency of wetlands zoning regulations and the General Plan with the Zoning ordinance overlay regarding identification and protection of wetlands.

Additionally, the EIR on page 4.3-24 argues that the General Plan policies applicable to wetlands do not apply to the pond habitat because there is no wetland habitat to mitigate:

As summarized above under “Regulatory Framework,” although the site is contained within the Baylands Risk Zone and Natural Habitat (BRZNH) Overlay District on the map of overlay zoning districts in the Town’s Zoning Ordinance, the site is not designated as “Wetlands and Marshlands” in the General Plan. Based on the definition of wetlands contained in the General Plan and Municipal Code, the majority of the on-site pond is considered a regulated “other waters of the U.S.,” not a wetland as determined by the Corps. The area of approximately 500 square feet (0.01 acre) of wetland vegetation at the northwestern edge of the pond (see Figure 4.3-2) was determined by the Corps in their jurisdictional delineation to be a regulated wetland under Section 404 of the Clean Water Act. As such, the provisions in the Town’s General Plan and Municipal Code related specifically to wetlands protection and avoidance would not apply to the on-site pond.

The DEIR nonetheless goes on to explain why impacts will be avoided:

Program RCS 8.1.b calls for restricting development in areas that contain wetlands or waters of the United States. Development projects are preferably to be modified to avoid impacts on sensitive resources, or to adequately mitigate impacts by providing on-site replacement or (as a lowest priority) off-site replacement at a higher ratio. Most of the on-site pond is not technically jurisdictional wetland, and off-site mitigation would require review and authorization by resource agencies to ensure adequacy of the mitigation. Mitigation Measure BIO-3a above would ensure that the off-site mitigation is provided at a higher ratio, consistent with relevant implementation programs. The compensatory mitigation and permanent habitat protection provided under Mitigation Measure BIO-3a would serve to address conformance with Policies RCS-6.1, RCS-6.2, RCS-7.1, and RCS-7.2 to protect and restore natural habitat.

But the EIR nor the (Biotic Resources Assessment (BRA) support these conclusions because as stated above, they do not provide any support that compensating wetlands loss with purchase of a different habitat will reduce impacts to the plant and animal species using the pond and freshwater marsh. The BRA lists several bird species that have been sited at the pond. The EIR and BRA, however, provide no quantification of the impacts of the pond removal nor does they include any information at all on why replacement of freshwater habitat is mitigated by replacement with tidal habitat.

The EIR concludes on page 4.3-6 that, “no sensitive natural community types are present on the site. The open water and mudflat habitat associated with the on-site pond is considered a jurisdictional water by regulatory agencies, as discussed below, but does not represent a

sensitive natural community type.” Yet, this conclusion is contradicted by the EIR page 4.3-9, which points out that the wetland is a palustrine wetland with specific habitat values.

The presence and boundaries of wetlands are determined by “wetlands delineations” approved by the Corps of Engineers. The 2008 Draft EIR on the Town of Corte Madera General Plan Update maps the on-site pond as a palustrine system based on data from the National Wetlands Inventory (NWI) of the USFWS (see Figure 4.9-2 in 2008 Draft EIR). The palustrine system consists of non-tidal wetlands dominated by trees, shrubs, persistent emergent vegetation, and all such wetlands that occur in tidal areas where salinity is due to ocean derived salts. The palustrine system also includes marsh, swamp, bog, fen, prairie and ponds. Given the general lack of vegetation within the on-site pond, it was presumably mapped in the NWI as part of the palustrine system as a non-tidal pond.

This no conclusion about no sensitive habitat also contradicts the General Plan, which describes the environmental setting as follows:

The transition area from the San Francisco Bay tidal wetlands and marshes to the upland grassy hillsides and oak woodlands has created many ecological niches in the Corte Madera region. Wetlands provide plant and wildlife habitat that aid in water purification by assimilating waste, and rapping and neutralizing pollutants from urban runoff. Wetlands contribute to groundwater recharge, protect the shoreline from wave action, and enhance recreational values as open space and wildlife sanctuaries. Vegetation in estuarine mudflats and the adjacent alluvial plains contributes plant materials that form the critical base of watery food chains and provides more oxygen per acre than any other natural ecosystem. Local marshlands assist flood control by providing a buffer between the Bay and developed portions of Corte Madera, and act as retention ponds for storm water overflow.

The EIR does not assess or demonstrate how an already purchased conservation easement on a salt marsh mitigates the filling of a freshwater 'palustrine' wetland system. This conclusion and the use of non freshwater wetlands also violates Policy RCS-8.2: Implementation Program RCS-8.2.a:

Allow restoration of wetlands off-site only when an applicant has demonstrated that no net loss of wetlands would occur and that on-site restoration is not feasible. Off-site wetland mitigation preferably will consist of the same habitat type as the wetland area that would be lost.

The EIR conclusion of no impacts also conflicts with Corte Madera Zoning Ordinance Section 18.18.220 which requires that the flowing finding must be made:

(1) The project protects and preserves saltwater and freshwater wetlands and related habitats, and protects and preserves the water quality of wetlands.

These findings cannot be made because there is no evidence to support the conclusion that filling in of freshwater wetlands is compensated by the Burdell Ranch tidal wetlands.

2. Consideration and Discussion of Environmental Impacts and Mitigation of Impacts to Wetlands and Aquatic Habitat is Inadequate

My January 20 letter CEQA points out that CEQA and the Clean Water Act (CWA) require agencies to first consider on site preservation and mitigation before deciding to use off site compensation, such as the off-site mitigation bank purchase of wetlands at Burdell Ranch. CEQA Guidelines Section 15370 and the U.S. EPA, Corps of Engineers Regulations under Section 404(b) of the Clean Water Act set out the requirements for fill of wetlands (33 U.S.C. 1344(b)).

As stated in my letter of January 20, 2015, the EIR does not comply with these regulations. First, the decision to purchase the wetlands was made well before any determination regarding feasibility of on-site wetland retention. This indicates that the decision to do off site compensation was not subjected to required analysis under CEQA or the CWA Section 404(b)(1) guidelines. See *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal. App. 4th 382.

This view is not simply CVP's; the agency that is charged with permitting this project, the San Francisco Regional Quality Control Board, has said almost precisely the same thing in its DEIR comment letter. That letter states:

Because the EIR only evaluates one alternative that avoids filling the pond and does not indicate that it will be implemented moving forward, the only permissible alternative (i.e., the LEDPA) may not have been included in the EIR. To rectify this situation, we recommend evaluating additional alternatives that avoid filling the pond, including, but not limited to: (1) renovating the existing hotel; (2) using a multi-story garage and shifting the position of the hotel to avoid the pond; (3) reducing the number of units to reduce the footprint of the hotel thereby avoiding the pond; (4) altering the types of rooms offered by the hotel to reduce the footprint thereby avoiding the pond; and (5) eliminating or reducing the size of some of the amenities offered by the hotel.

Again, compensation – or off site replacement - is discouraged and only may be considered after a feasibility analysis has been prepared. (40 CFR 230.91 et seq.)

Thus, the EIR fails in its lack of discussion and feasibility analysis of whether the offsite mitigation at Burdell Ranch is appropriate. There is nothing in the EIR or the attached BRA that explains why the mitigation habitat can so easily substituted for the habitat lost due to the filling of the pond.

In fact it's not possible to mitigate any of the location-specific wetland functions at an out-of-area (e.g. Burdell, Petaluma Marsh) mitigation bank, especially for out-of-kind wetlands. Mitigation banks focus on one environmental service, only, like habitat for a narrow suite of species. Mitigation banks can't comply with either public policy or CEQA and CWA requirements when they can't replace significant local (watershed-specific, setting-specific)

ecosystem services other than the ones nominally credited by mitigation banks (usually acreage of species-specific habitat). The EIR contains no reference to these factors.

CEQA requires inclusion of an analysis why mitigation functions in a manner related to the impacts project impacts and why the off-site mitigation supposedly adequately offsets the project impacts. Specifically, the pond at Corte Madera Inn is a freshwater pond while the Burdell Ranch wetland used for compensation is tidal, meaning saltwater or brackish. But these are different ecosystems and the EIR while saying restoration of the freshwater pond at Corte Madera inn *is feasible*, the EIR includes not analysis how to preserve that ecosystem or compensate for the loss of that freshwater ecosystem.

3. Consideration and Discussion of Environmental Impacts and Mitigation of Impacts Regarding Floodplains and Sea Level Rise is Inadequate

Corte Madera GP POLICY F – 2.1 is to “Require new development and redevelopment in areas subject to flooding to minimize or eliminate flooding hazards.

GP Implementation Program F – 2.1.b is the following:

Reduce Flood Hazards Individual development project mitigation shall demonstrate, through qualified engineering analyses, that no adverse flooding impacts are created by development on upstream and downstream properties in the project vicinity.

Section 16.10 of the Corte Madera Municipal Code sets out specific requirements for placing projects in floodplains including making certain findings and obtaining a Flood Plain Development Permit.

The EIR lists General Plan policies but fails to provide any analysis regarding project compliance and consistency with these policies as required by CEQA. (See e.g. Section 4.8.) The EIR fails to address how development would minimize or eliminate flooding hazards or assess how the project will cause no adverse flooding impacts or groundwater impacts for the following reasons.

1. As stated in FEIR, there are existing and potential beneficial uses for local groundwater resources. The EIR, however, provides no data or analysis on the impact of loss of groundwater recharge, esp. from infiltration of pond storage, esp. in summer when the pond contains fresh to brackish water. The pond, unless shown otherwise, is most likely a seasonal source of fresh groundwater recharge, which may help alleviate impacts of stated salt water intrusion.

The FEIR significance criteria for hydrological resources is that interference with groundwater recharge is a significant effect on hydrology (pg. 4.8-10). The FEIR states there will be no impact on groundwater resources as there will be no significant change in ground

water recharge. However, the EIR provides no analysis to substantiate this claim. There are likely many independent groundwater basins/aquifers within the 24.7 Square mile Ross Valley watershed – they have not been evaluated in regard to potential impacts to groundwater recharge – the effect of the project on *local* groundwater may be significant.

2. Loss of Corte Madera Inn Pond flood water storage: The Corte Madera Inn Pond is part of Town's floodwater storage as it is tied directly to Lagoon #1 in Watershed 1. If the Town lowers levels of Lagoon #1 and Inn Pond in winter to maximize floodwater storage capacity. The loss of floodwater storage in a flood-prone area located within the 100-year flood zone would increase the risk of flood hazards.

The FEIR concludes there will be less than significant impact associated with this loss of flood storage because there is no increase in peak stormwater discharge from the site. A decrease in discharge rate alleviates an increased risk of erosion potential. However, due to the increase in impervious surface area, there will be a net increase in the *total* volume of water running off the site. The rate (discharge) at which it runs off won't be higher, but the EIR does not quantify or assess if there will be an *increase* in the total volume of water that runs off the site during any given storm.

This increase in runoff volume would increase the flood potential in this low-lying area, because the water has nowhere to go (due to high tides and existing propensity for flooding). Therefore, the rate of runoff doesn't really matter – it is the net change in total storm runoff *volume* that will lead to increased flooding potential. An increase in total runoff volume compounds the risk of flooding associated with the loss of flood storage by filling the Inn Pond. The EIR analysis only evaluates the impact on flooding associated with loss/filling of Inn Pond; they don't present an analysis of how the total volume of runoff from the project will change (likely increase) due to increased impervious surface area.

Also, the EIR does not contain analysis about how drainage will be directed away from the site once the Inn Pond is filled. Without the storage associated with the Inn Pond, will runoff from the project be able to flow to Lagoon #1? Where does the Town intend to direct runoff – west towards Lagoon #1 or east under Hwy 101? Given the existing flooding threats of Corte Madera Creek, the pond still provides some retention and storage such that it reduces the potential for flooding of Hwy 101 and surrounding properties. How will the project affect the flood hazard to Hwy 101? The EIR does not provide an adequate project description (drainage plan) to evaluate potential impacts to flooding.

3. The Corte Madera Inn Pond is historic Baylands and currently connected to tidal action from SF Bay via Shorebird Marsh. The EIR, however, does not say whether the land is under jurisdiction of the State Lands Commission, including under "Regulatory Framework."

4. The Corte Madera Inn pond likely provides the opportunity for settling of sediment from turbid flood waters. The EIR, however, does not state how the loss of this water quality benefit could adversely impact adjacent water bodies, esp. SF Bay and Corte Madera Creek, by allowing higher concentrations of suspended sediment to remain in local waterways that discharge to SF Bay.

4. The EIR improperly defers mitigation by claiming that a general mitigation bank contribution will apply to this project.

Under CEQA deferral of identification of mitigation measures may only be allowed where there is a reasonable expectation of effectiveness and compliance based on a requirement that the measure meet specific performance standards that are identified in the EIR. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal. App.4th 777 [32 Cal. Rptr.3d 177.]) The FEIR claims that the Town may defer mitigation measures because there are performance standards. But neither the EIR nor the BRA identify those performance standards. Simply acre for acre replacement is not a performance standard.

5. The EIR Improperly Contains a Narrow Range of Alternatives.

My January 20 letter stated why the range of alternatives was unreasonably narrow because the project objectives were too narrow and those objectives met all alternatives except the objective regarding economic return.

Additionally, the EIR refers to the CEQA guidelines 15364, which defines feasible as:

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

The DEIR considers **Alternative 2**, which would leave the pond in its current location. It states;

Similar amenities to the proposed project would be provided such as a fitness room, business center, and swimming pool. Trees would also be removed for this alternative, but the exact number has not been identified. *The aesthetic condition and habitat values of the existing pond could be improved to reduce odor and safety concerns.* Further detailed study would be conducted to determine options for improving conditions associated with the pond, but would most likely involve improved water circulation and aeration during the spring, summer, and fall months. This could possibly be achieved through increased hydrologic connection with the existing culvert and slide gate that connects to the tidally influenced drainage ditch along the west side of U.S. Highway 101, use of permanent spray fountains, and seasonal circulation with Lagoon No. 1. *Reconfiguring the banks of the existing pond to create shallow terraces around the entire perimeter would allow for establishment of native marsh vegetation for natural filtration functions and could reduce the hazard posed by the existing steeply sided banks. This alternative would meet most of the basic project objectives as related to minimizing visual intrusion, serving*

as a community gathering place during times of emergency, providing a convenient hotel lobby entrance, and providing recreational facilities. However, it would not meet objectives related to the number of hotel rooms for both short-term and long-term accommodations, limiting the mass and height of the building on Tamal Vista Boulevard near existing residences, and eliminating the pond.

It is not clear why, given this language, the option of retaining the pond would not be feasible unless the *only actual* criteria is project financial feasibility. Again, such financial criteria cannot be used by an agency to eliminate an alternative.

What is also puzzling is that this section points out that the DEIR's feasibility determination appears to include as one of the criteria for feasibility whether the project 'objective' of eliminating the pond has been met. Of course, such a criteria is nonsensical for several reasons, including the EIR's own finding in the above section that the pond can be retained and enhanced.

CONCLUSION

The EIR remains inadequate in regard to Alternative 1's significant impacts related to flooding, polluted runoff and wetlands and CVP has commissioned reports by experts in these topics that will quantify and analyze those impacts.

CVP urges the Planning Commission to wait for these reports and consider whether selection of Alternative 2 could actually meet most project objectives and avoid the impacts and time and resources related to Alternative 1.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Yates", with a long horizontal flourish extending to the right.

Edward Yates