

From: bsilvestri
To: [Fernandez, Xavier@Waterboards](mailto:Fernandez_Xavier@Waterboards)
Cc: [Michael Graf](mailto:Michael.Graf)
Subject: Comment on 410 Application for the Corte Madera Inn Rebuild - with exhibits 1 through 11
Date: Friday, January 27, 2017 11:16:26 AM
Attachments: [012717_CVP Comment to RWOCB on Corte Madera Inn Rebuild - Comment on Application.pdf](#)
[Exhibit 1 - 010317 - CVP CM Inn RDEIR Comment Letter.pdf](#)
[Exhibit 2 - 012015 E.Yates Comment Letter.pdf](#)
[Exhibit 3 - 081915 E.Yates Comment Letter.pdf](#)
[Exhibit 4 - 121915 E.Yates Comment Letter.pdf](#)
[Exhibit 5 - 020916 Audubon Canyon Ranch comment BCNH CorteMadera 20160209 \(2\).pdf](#)
[Exhibit 6 - 021516 - Peter Baye - Corte Madera Inn wetland & aquatic wildlife habitat.pdf](#)
[Exhibit 7 - 022516 - G.R. Kamman Hydrology comments.pdf](#)
[Exhibit 8 - 061616 - M. Graf 404 Comment Letter.pdf](#)
[Exhibit 9 - 123116 - Peter Baye - Corte Madera Inn Recirc EIR memo wigeongrass SAV & wetlands.pdf](#)
[Exhibit 10 - 120916 - Audubon Canyon Ranch comment BCNH CorteMadera RDEIR .pdf](#)
[Exhibit 11 - Robert Silvestri CV.pdf](#)

Dear Mr. Fernandez:

Attached please find our comment letter and attached Exhibits 1 through 11, on The San Francisco Bay Regional Water Quality Control Board (404(b)(1) review of the Notice of Application for a Clean Water Act Section 401 Water Quality Certification (the "Application"), for the Corte Madera Inn Rebuild Project; in response to the Application for the Project, posted on 01/11/17, and available for public review at:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/CorteMadera.shtml
with comments due by end of day February 2, 2017.

Thank you for your consideration.

Best regards,

Bob Silvestri

President

Community Venture Partners

A Catalyst for Sustainable Solutions

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Community Venture Partners, Inc.

A Catalyst for Sustainable Solutions

January 27, 2017

Xavier Fernandez
SF Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA, 94612

Re: Comment on The San Francisco Bay Regional Water Quality Control Board (404(b)(1) review of the Notice of Application for a Clean Water Act Section 401 Water Quality Certification (the “Application”), for the Corte Madera Inn Rebuild Project; in response to the *Application for the Project*, posted on 01/11/17, and available for public review at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/CorteMadera.shtml with comments due by end of day February 2, 2017.

Dear Mr. Fernandez:

Community Venture Partners, Inc. (“CVP”) is a 501(c)(3) nonprofit organization that facilitates and assists community based projects, programs and initiatives that demonstrate the highest principles of economic, social and environmental sustainability. We work to bring the community’s voice to local government decision-making in matters related to planning, development, social and environmental justice, and other matters of general public interest.

CVP submitted comments on the RDEIR referenced in the Application, to the Town of Corte Madera on January 3, 2017. Those comments are attached as **Exhibit 1**, which include discussion of how the Application fails to conform to the environmental protection requirements of the Corte Madera General Plan, and which are incorporated herein by reference. In addition, CVP has worked with experts in biology and wetlands (Dr. Peter Baye), hydrology (Greg Kamman), and wildlife (John Kelly, PhD), who have also submitted comments (See **Exhibits 5, 6, 7, 9, 10** attached). Our legal counsels, Edward Yates and Michael Graf, both acknowledged experts in land use law, CEQA and NEPA have also submitted timely commentary over the past three years of public review. (See **Exhibits 2, 3, 4, 8**).

We are submitting our comments on behalf of ourselves, and of Peter Hensel, Marla Orth, Peter Orth, and other residents of the Town of Corte Madera. CVP is an active participant in local planning and development matters in Marin County and has been submitting comments to the Town of Corte Madera, regarding the Corte Madera Inn rebuild, for three years. I submit our comments as a resident of Marin, as president of Community Venture Partners, Inc., and an acknowledged expert in planning, real estate development, and as a licensed architect and former real estate developer and broker (see **Exhibit 11** for my CV).

CVP also recently submitted extensive comments for the RWQCB comment period ending January 13, 2017, on the project’s *Alternatives Analysis* documentation by the Corte Madera Inn developer. All of those comments, citations and attachments are hereby incorporated into this comment letter by reference.

There are a number of inter-related issues that weigh on a careful and fair evaluation of the Application, which need to be considered.

OVERRIDING CONSIDERATIONS

The Applicant's Proposal is fundamentally flawed in a number of important ways, which precludes it being approved by your agency.

1. The Application's analysis and conclusions are based on shifting, erroneous and self-serving definitions of the project's basic and overall purpose (See our comment letter of January 13, 2017 for more detailed discussion).
2. The Application's analysis and conclusions are based upon erroneous and self-serving definitions of what is "practicable" within the 404(b)(1) Guidelines, and supported only by the opinions of paid consultants, not evidence (See our comment letter of January 13, 2017 for more detailed discussion).
3. The federal Guidelines are clear that "The burden to demonstrate compliance with the Section 404(b)(1) Guidelines rests with the permit applicant."¹ The Application fails to meet that test (See our comment letter of January 13, 2017 for more detailed discussion).
4. The documents submitted by the Applicant are replete with inaccuracies, partial facts, outdated data and outright falsehoods that the record shows were known to the applicant to be false at the time of making this application, and which are used to support its pre-determined conclusions. For example, documents by Zentner and Zentner, repeatedly state that the Corte Madera Inn pond "is not a wetland." Yet, numerous studies and documents in the record clearly establish that it is both a wetlands and a special aquatic site (See our comment letter of January 13, 2017 for more detailed discussion).
5. The developer submitted their Application to the Army Corps of Engineers in the spring of 2016. That Application has been put on "inactive" status as of November of 2016. Per Roberta Morganstern, Permit Manager at the Army Corps of Engineers, in her email to CVP, on

Monday November 7, 2016 I notified the applicant and Town that I had withdrawn the project from "active" status. The applicant had not requested an extension and the application is not complete because the alternatives analysis, National Marine Fisheries Service (NOAA) consultation response², public comments responses and sacred lands research have not been satisfied.

We question the legitimacy of the Application in light of the information requested by the Army Corps that has yet to be undertaken by the Applicant. For example, how can

¹ *The Federal Wetland Permitting Program: Avoidance and Minimization Requirements*, the Environmental Law Institute, March 2008.

² Note that the NMFS review is critical because the Corte Madera Inn wetlands is defined by law as a vital habitat for spawning of Pacific salmon, which is a keystone species recognized to be experiencing significant decline.

RWQCB review the Application without prior NMFS review? (See our comment letter of January 13, 2017 for more detailed discussion).

6. The Application is incomplete and lacking the requisite analysis, documentation, data, context or history, to allow RWQCB to undertake a fair or reasonable evaluation of its merits or to use as the basis for a response. (See our comment letter of January 13, 2017 for more detailed discussion).
7. The Town of Corte Madera, working in concert with the applicant, noticed a new Recirculated Draft Environmental Impact Report (“RDEIR”), which was circulated for a public comment period ending January 3, 2017. This is the fourth EIR that has been circulated for this project (DEIR, January 2015, REIR, August 2015, FEIR, December 2015). The information included in those historical documents and the comments received from experts and the general public has significant bearing on any decisions or determinations that RWQCB might make in this matter. Without the benefit of this critical information in our opinion, it would be improper for RWQCB to approve the Application (See our comment letter of January 13, 2017 for more detailed discussion).
8. The Application and the RDEIR fail to adequately assess the cumulative impacts of filling of a wetland, loss of the wildlife habitat, the addition of impervious surfaces in a hazardous floodplain area, which will exacerbate hazardous flood conditions, particularly in light of sea level rise considerations, and other environmental considerations noted in numerous public comment letters, all of which impacts are significant (See our comment letter of January 13, 2017 for more detailed discussion).
9. The Regional Water Quality Control Board's review of this project is not exempt from the requirement of the California Environmental Quality Act (CEQA). The Applicant's Proposal is a “project” under CEQA, Pub. Res. Code § 21065, and thus requires full CEQA review. The Regional Board's 401 Certification review does not appear to fall within the certified regulatory program for the Regional Board's Water Quality Control (Basin)/208 Planning Program, as set forth at 14 Cal. Code Regs. § 15251(g). Even if the Board's 401 Certification Program were considered a part of the agency's certified program, the Board's CEQA review would still be required to comply with CEQA policies. Pub. Res. Code § 21080.5(d). At this juncture, however, we have not seen any attempt by the RWQCB to comply with CEQA's requirements as set forth in the Public Resources Code, including but not limited to a thorough evaluation of project impacts and avoidance of significant impacts based on feasible mitigation or project alternatives and responses to public comments. In addition please also note that the various Exhibits attached with this comment (EIRs, studies and independent analysis, expert opinions, legal comment letters, public comments, etc.) contain numerous citations, descriptions and references to unmitigated significant impacts and requirements under CEQA, all of which are hereby made a part of this comment letter and incorporated herein by reference.
10. As can be seen by the incorporated comments and exhibits, the Proposal here will have significant cumulative impacts on the environment in eliminating one of the few remaining special aquatic sites in Corte Madera, offering a unique habitat of brackish

freshwater wetlands that provide high quality roosting and foraging habitat for rare and declining bird species such as the black crowned night heron. In addition to the Board's own requirements, CEQA does not permit an agency to approve a project with significant impacts if there are feasible alternatives or mitigation that will avoid those impacts. *See* Pub. Res. Code § 21002. Here, the record shows that there are feasible onsite and offsite building alternatives that would allow the pond habitat to be retained. Further, the significant loss of this pond habitat will not be mitigated by the purchase of offsite credits in the Burdell Ranch Mitigation Bank, which in no way offers equivalent habitat at that of the Corte Madera pond. *See e.g.*, Comments of Peter Baye dated December 31, 2016.

11. The Applicant's proposal does not meet the Town of Corte Madera's own General Plan and code requirements that strongly disfavor offsite mitigation as a means to offset the filling of wetlands, allowing such an approach only when other options are infeasible and where the offsite mitigation provides the same habitat 'function' and 'values' as the lost wetlands. *See e.g.*, Comments of Peter Baye dated December 31, 2016, pp. 3-6.; Corte Madera General Plan, Implementation Program RCS-8.2.a-b.

In order to ensure that RWQCB has the benefit of sufficient data, documents, comments and other information required under the 404(b)(1) Guidelines to evaluate the Corte Madera Inn Rebuild Application, we have attached several of the key comments referenced above. Again, the comments, citations and all the attachments CVP submitted for the RWQCB comment period ending January 13, 2017, including but not limited to comments by CVP to the Army Corps of Engineers (061616-CVP-Army Corps Public Notice 2000-255330N), which were previously submitted to RWQCB, in June of 2016 and during the January 13, 2017 comment period, are hereby incorporated into this comment letter by reference.

It is our opinion that the Applicant has failed to adequately address numerous environmental review requirements of the 401 permitting process, including but not limited to failure to provide evidence that the proposed project is the LEDPA, failure to consider more practicable alternatives, failure to consider or address the cumulative impacts of the development proposal, and other significant unmitigated impacts. We therefore respectfully request that the Application be denied by RWQCB.

Respectfully submitted,



Bob Silvestri
President
Community Venture Partners, Inc.

ATTACHED EXHIBITS

- 1 - Exhibit 1 – 010317 - Community Venture Partners Comment to Corte Madera on Corte Madera Inn Rebuild Recirculated DEIR
- 2 - Exhibit 2 - 012015 - E.Yates Comment Letter
- 3 - Exhibit 3 - 081915 - E.Yates Comment Letter
- 4 - Exhibit 4 - 121915 - E.Yates Comment Letter
- 5 - Exhibit 5 - 020916 - ACR_comment_BCNH_CorteMadera
- 6 - Exhibit 6 – 021516 – Peter Baye - Corte Madera Inn wetland & aquatic wildlife habitat
- 7 - Exhibit 7 - 022516 - G.R. Kamman Hydrology comments
- 8 - Exhibit 8 - 061616 - M. Graf Comment Letter
- 9 – Exhibit 9 – 123116 – Peter Baye - Corte Madera Inn Recirculated DEIR memo widgeon grass SAV & wetlands
- 10 - Exhibit 10 – 120916 – Audubon Canyon Ranch Comment on BCNH Corte Madera RDEIR
- 11 - Exhibit 11 - Robert Silvestri CV

ATTACHED ARTICLES

The following published articles contain relevant comments by CVP, regarding the Corte Madera Inn Rebuild Application (linked by the title and mailed in hard copy)

- 12 - [Marin 2016 - Part IV: Dispatches from the front – Corte Madera](#)
- 13 - [Region IX of the EPA comments on the application to fill in Edgewater pond at Corte Madera Inn](#)
- 14 - [The Corte Madera Inn developer puts property up for sale - Part I](#)
- 15 - [The Corte Madera Inn developer puts property up for sale - Part II](#)
- 16 - [The Corte Madera Inn developer puts property up for sale - Part III](#)
- 17 - [The Corte Madera Inn developer puts property up for sale - Part IV](#)
- 18 - [Feb. 2016 - Comments to the Corte Madera Planning Commission on the Redevelopment of the Corte Madera Inn](#)

Community Venture Partners, Inc.

A Catalyst for Sustainable Solutions

January 3, 2017

Corte Madera Town Council
Copied to: Adam Wolff, Planning and Building Director
Town of Corte Madera Planning Department
300 Tamalpais Drive
Corte Madera, CA 94925-1418

Re: Recirculated Draft Environmental Impact Report: Corte Madera Inn Rebuild Project

Dear Corte Madera Town Council Members:

Community Venture Partners, Inc. is submitting the following comments on the Recirculated Draft EIR for the Corte Madera Inn Rebuild proposal, on behalf of Peter Hensel, Marla Orth, Peter Orth, and other residents of Corte Madera, in the hope that you will give these comments your immediate attention.

I am submitting these comments directly to you (copying Adam Wolff and the Corte Madera Planning Department as our DEIR comment), because we question the way Corte Madera has been processing the application for the rebuild of the hotel and want to bring a number of important points to your attention. I apologize in advance for the length of this commentary, but this project has been under review for years and the issues surrounding it are complex, which require detailed explanation.

Introduction: General Plan Amendments are not a right

Throughout this project's multi-year review process, the Town of Corte Madera has failed to disclose to the public that a city is not required to consider or process a General Plan Amendment request by a developer. No developer has a right to expect that such an amendment, and particularly one that is driven primarily by profit demands, will even be heard. In fact, The Town has the right to deny consideration of a General Plan Amendment *without making any findings and regardless of any arguments presented*. A General Plan Amendment is a gift of public assets and its request can be denied without cause.

This considered, the public needs to ask, why the Town of Corte Madera has spent years and countless hours promoting the requests of the Corte Madera Inn developer. Why is the Corte Madera Planning Department seemingly intent on getting this project approved without any substantive changes to the developer's proposal since the first day the project was submitted? The developer has steadfastly refused to seriously consider alternatives that would reduce the size of the project: alternatives that have been fully demonstrated to be feasible in previous EIRs.

In my professional experience, for a development project of this type to not undergo significant adjustments in size and scope during its planning stages, is completely unprecedented.¹

I wish to remind the Town Council that there are no regulations that require the extraordinary level of “cooperation” town planners have granted the Corte Madera Inn developer. The Town is charged with representing the interests of the general public, not the developer, even if he is paying the costs of review and studies. It makes an objective observer wonder if there isn’t something else going on here. The public deserves a response to these questions.

The Town of Corte Madera is not hostage to the opinions of paid consultants. The Town can make its own determinations and simply mandate that the wetlands pond and wildlife habitat at the Corte Madera Inn be preserved and make that a condition of approval for any hotel proposal on that site. In fact, as discussed below, your General Plan demands it.

The General Plan is the constitution of the city. Its principles and values *are in addition to the requirements of state and federal law*, and are not required to meet any other test to be enforced. You, the Town Council, are in control. You have those powers. I urge you to please use them for the good of your community, which is what you’ve been elected to do.

The DEIR and the LSA EIR Third Party Assessment appear to be an effort by the Town of Corte Madera to defeat public opposition

The Town of Corte Madera has spent more than two years ignoring public criticism of this project. The issuance of yet another EIR, at the worst possible time of the year to invite public engagement, is a case in point. The intentional noticing of a public comment period over the biggest holiday weekends of the year appears to be an attempt to avoid public oversight. Need I remind you that the Planning Department is in full control of when a notice is made and they have no legal obligation to do it on a schedule that is beneficial to the applicant? They do, however, have an obligation to do it on a schedule that assists residents in their ability to participate and comment.

Furthermore, the Town has no obligation to allow the developer endless chances to make his case for approval. Just because the developer is paying for all these studies doesn’t mean the Town has to approve those requests. The Town can simply say enough is enough: your project fails to meet the requirements for approval. LSA, the third consultant hired by the Town and paid for by the developer, is the same group that produced the Larkspur Landing Station Area Plan EIR and its ringing endorsement for that disastrous project. In my experience, LSA has never written a study, assessment or EIR that did not fully endorse the desires of the entity that paid them. In this instance, that entity is the developer of the proposed hotel, working in close collaboration with the Corte Madera Planning Department.

¹ The other notable recent exception being the WinCup project approval.

The conclusions arrived at in the DEIR and the LSA Peer Review make no sense

The LSA review confirms the argument that CVP has consistently made about the submerged aquatic vegetation (“SAV”) at the Corte Madera pond and even expands on that argument, contradicting the original assessment by Zentner (which twice denied the existence of the SAV in official Town documents). LSA also confirms that the pond qualifies as wetlands and the CEQA significance based on vegetation classification and CDFW guidelines, again disputing Zentner.

However, the LSA review concludes by ignoring its own findings and makes an illogical leap in favor of destroying the wetlands based on nothing more than unsubstantiated opinion that the impacts of eliminating one of the last wetlands of this type in the Town's jurisdiction will not be 'significant. The LSA assessment also perpetuates the debunked fiction, which the developer has been promoting, that the Burdell Ranch mitigation credits provide equivalent wetlands. They do not.

As in past studies and EIRs, there is no evidence provided that the proposed Burdell Ranch mitigation bank property is in any way compensatory for the loss of the pond at the Corte Madera Inn. As biologist Peter Baye has pointed out in his letters on February 15, 2016 and December 31, 2016 (attached), the Corte Madera Inn pond wetlands and the Burdell property represent completely different habitat types that cannot be substituted for one another. Indeed, wildlife experts John Kelly and Scott Jennings submitted similar comments in their letter, dated February 9, 2016 (attached), and their letter, dated December 7, 2016 (attached), regarding habitat loss.

While the CM Inn pond is a perennial wetland, Burdell is only a seasonal wetland that is dry for a good portion of the year. These differences, as more fully discussed by Dr. Baye, demonstrate that the Burdell Ranch site does not offer the same wetland functions, values or habitat type as the pond proposed to be eliminated. The values of the pond, offering a year round source of wigeon grass habitat with adjacent nesting structures for rare birds in the area, are not present at Burdell Ranch, which does not provide these habitat functions. In sum, there is no conceivable way anyone could claim that both provide the same biological utility, function, or environmental benefits or support for the same kinds or quality of vegetation or habitat for wildlife, as required by General Plan polices. The LSA analysis is insufficient and lacking evidence for its claims or the conclusions it reaches. It is the Town's Planning Department's responsibility to recognize that failing, not the developer's or third party consultants that the developer pays. Why is the Town staff simply parroting what the developer and consultants say, without question?

Finally, the LSA assessment is flawed in that it never addresses the significant cumulative environmental impacts that would result from the loss of the Corte Madera Inn pond. In short, the LSA study appears to be a thinly veiled attempt to justify the developer's predictable bias toward approving this project, regardless of any facts to the contrary.

The DEIR and the LSA Review disregard the significance of the Corte Madera Inn pond's habitat for wildlife

As stated by wildlife experts John Kelly, PhD, and Scott Jennings, in their comment letter, dated December 7, 2016 (attached), the LSA assessment avoids analysis of the significant impacts and significant cumulative impacts to local wildlife, including the roosting and foraging necessities of Black-crowned Night Herons.

The pond and its surrounding area provide significant habitat functions for the Night Herons, a species that has been in significant decline. There is no evidence whatsoever that the Burdell property provides the same amount or quality of habitat functionality for Night Herons, and there is certainly no evidence that local heron populations could in any way benefit from the Burdell “mitigation” purchases.

To reiterate two key comments made by Kelly and Jennings:

The statement in the RDEIR (Impact BIO-4 on page 4.3-29) that elimination of the roost site “would not contribute to a significant cumulative impact on the black-crowned night heron populations,” is made without scientific justification. Similarly, the implication that ornamental landscape trees in the area—even if not near ponds or estuaries—would provide viable alternative sites for roosting is made without supporting evidence.

They further state:

The assertion in the RDEIR (Impact BIO-4 on page 4.3-29) that, if the roost site is destroyed, the birds would simply “disperse to other locations during construction and, when the trees are removed, would roost in alternative locations” is highly speculative and fails to consider impacts of incremental habitat loss and the importance of roost site quality and location.

This pattern of LSA simply making declaratory statements of no impact without evidence is consistent with the tone and tenor of the entire LSA analysis. Their approach seems to be that if they say it is not so enough times, it will become the truth. However, as I'm sure you are well aware; CEQA requires an evidence-based, decision-making process.

The DEIR, the LSA review, and the Town of Corte Madera has failed to acknowledge the requirements of its own General Plan to protect and restore wetlands and wildlife habitat

The Town of Corte Madera needs to carefully consider the proposed project, the DEIR, and LSA Assessment in the context of the requirements of its General Plan:

Section 2.0 Land Use, page 2-22 defines “Wetlands and Marshlands” as:

This land use designation permits uses that relate to and enhance wetland habitat. A variety of properties may be included in this designation including, but not limited to, tidal and seasonal wetlands, miscellaneous open water areas, streams, sloughs, filled areas and developed or undeveloped uplands. Restoration areas are included for their potential for conversion into more ecologically valuable habitat. Areas with this designation may also be used as wetland mitigation sites for projects undertaken within Corte Madera or throughout the region.

Comment: The Corte Madera Inn pond clearly falls within this definition.

Section 2.0 of the Corte Madera General Plan, Land Use, pages 2-7 and 2-8 states:

The Regional Water Quality Control Board (RWQCB) regulates surface water pollution (wastewater discharge and stormwater runoff), dredging, and filling. RWQCB issues permits and requires monitoring for all activities that could impair the beneficial use of receiving waters.

And:

The US Army Corps of Engineers (USACE) enforces the Clean Water Act and the Rivers and Harbors Acts. The Corps regulates the dredging or filling of the nation’s navigable waters and wetlands. The Corps is the primary federal agency responsible for making wetland determinations and issuing permits for wetlands or water fill.

Comment: The application documentation for the Corte Madera Inn Rebuild has never adequately apprised the public or the Planning Commission of the critical permitting requirements, regarding “practicable”² alternatives. The project simply cannot proceed unless both of these agencies approve the proposal, separately. Unless that happens, all of the time, effort and expense of this project’s review process have been a waste of time.

In addition, the Town planners have been made fully aware that neither of these agencies has shown any inclination to approve the destruction of the wetlands pond, in fact, quite the opposite. Indeed, the Region 9 Office of the Environmental Protection Agency has weighed in against the proposal. In June of 2016, Jennifer Siu, Life Scientist, Wetlands Section, of the U.S. Environmental Protection Agency, Region 9, sent the following comment to Sahrye Cohen, Permit Manager, at the Army Corps of Engineers, regarding Reneson Hotel's application for a permit to fill in the Edgewater pond at the Corte Madera Inn.

² As defined under the Federal Code.

Sahrye,

Thank you for the opportunity to comment on the proposed Corte Madera Inn Rebuild (PN 2000-255330N) in Marin County, CA. In addition to the PN we have reviewed the applicants' Alternatives Analysis (AA) from the CEQA Revised Environmental Impact Report (REIR). EPA has the following comments and suggestions on the project pursuant to the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act.

Reneson Hotels, Inc. (applicant) proposes to demolish an existing hotel and adjacent restaurant to construct a new hotel facility on the site. The applicant proposes to impact a 0.64-ac brackish pond by completely filling the feature. As mitigation for fill of the wetland, the applicant proposes to purchase 1.20-ac non-tidal wetland credits at the Burdell Mitigation Bank. Although the applicant has submitted a 404(b)(1) Alternatives Analysis for eight off-site alternatives, no on-site alternatives were included.

At this point in time, the proposed project does not comply with EPA's 404(b)(1) Guidelines. First, the project purpose as stated is too narrow in scope and intent per the Guidelines. The basic and overall project purpose is to provide commercial hotel rooms in southern Marin County, CA. The intent, as stated in the PN, to 'build additional commercial hotel rooms' unduly limits the scope of analysis. We highly recommend the Corps ensures the applicant's Project Description is consistent with the Guidelines. Second, there are significant flaws in the 404(b)(1) AA submitted to the Corps, such that the Corps ability to accurately determine the Least Environmentally Damaging Practicable Alternative (LEDPA) is impaired. We find it curious that the applicant would submit an onsite alternative (Alternative 4) during the CEQA process that would completely avoid direct impacts to the pond; yet, the 404 AA does not include this onsite avoidance alternative. This inconsistency indicates that the applicant has deprived the Corps of full available information and that there are indeed practicable alternatives to the proposed discharge that would accomplish the basic project purpose and have a less adverse effect on the aquatic environment. The applicant must submit appropriate avoidance or minimization alternatives before proceeding with the 404 permit process.

Lastly, while this wetland may be small in acreage, it is connected to the tidal system and provides wildlife habitat values and water quality functions within the watershed. EPA highly encourages the applicant to consider sea level rise considerations and potential watershed benefits of this wetland. We do not support the proposed mitigation plan of purchasing credits at the Burdell Mitigation Bank, as it is a seasonal freshwater wetland complex

and would not be appropriate compensation for this tidally-influenced wetland.

Thank you for considering our concerns and recommendations. Please contact me if you have any questions or would like to discuss our comments.

*Regards,
Jennifer Siu*

Section 3, Resource Conservation and Sustainability, 3.1 Introduction states:

...this Chapter is based on the understanding that conserving significant natural resources and biological diversity improves recreational opportunities, sustains natural systems, reduces negative environmental impacts, and improves overall quality of life.

And

Section 3.3 goes on to describe the importance of Corte Madera's wetlands:

Wetlands provide plant and wildlife habitat that aid in water purification by assimilating waste, and trapping and neutralizing pollutants from urban runoff. Wetlands contribute to groundwater recharge, ... enhance recreational values as open space and wildlife sanctuaries. Vegetation ... contributes plant materials that form the critical base of watery food chains. ...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.

Comment: Based on these facts and principles, the General Plan goes on to create specific policies (some of which are noted below) that have so far never been discussed or adequately addressed during the review process for this project. In addition, even the LSA assessment acknowledges that the pond acts as part of Corte Madera's flood management system, as was also pointed out, previously, by the comments of hydrology expert, Greg Kamman, in his letter of February 4, 2016 (attached). To date, the applicant has not provided substantial evidence that the proposed development will not significantly reduce the flood management functionality that will be lost.

Implementation Program RCS-6.2a: Resource Protection states:

Protect sensitive biological resources, including wetlands and other waters of the United States and other wetland habitat areas, and habitat corridors, and sensitive natural communities through environmental review of development applications in compliance with CEQA provisions,Protect wetlands and other waters of the United States in accordance with the regulations of the U.S. Army Corps of

Engineers and other appropriate agencies as well as consistent with Implementation Program RCS-8.2.a. Protect other habitat areas, habitat corridors, and sensitive natural communities consistent with program RCS-6.3.a

Implementation Program RCS-6.2.b: Restoration Objectives states:

Where feasible (as defined under State CEQA Guidelines Section 15364), restore lost or damaged habitat. Support restoration objectives for local habitat types identified by the California Department of Fish and Game and in other regional environmental planning documents.

Comment: This General Plan requirements thoroughly defeat the argument made by the developer, contending that the wetlands are in poor condition and therefore not worth saving. The owner / developer and the Town have been neglecting their obligations to maintain the quality and functionality of the Corte Madera Inn wetlands, for years. The Town's own consultant, Jim Martin, has testified in public hearings at the Planning Commission that the natural flushing of the pond has been intentionally denied and cut off due to actions taken by the owner and the Town (e.g., shutting down the flood gates). This requirement to preserve and restore wetlands remains unacknowledged by the developer, the Town, or their consultants.

Implementation Program RCS-6.3.a: Environmental Review states:

*... require environmental review of development applications pursuant to CEQA to assess the impact of proposed development on species and habitat diversity, **particularly special-status species, sensitive habitat areas, wetlands and other wetland habitats, and habitat connectivity.**[Emphasis added] Require adequate mitigation measures for ensuring the protection of sensitive resources and achieving **“no net loss” of sensitive habitat acreage, values and function.** [Emphasis added and in particular as it relates to habitat “function”] Require specific mitigation measures for wetlands and waters of the United States (see Implementation Program RCS-8.2.a for mitigation standards for wetlands and waters of the U.S.).*

Comment: These requirements remain unacknowledged by the developer, the Town, or their consultants, in spite of the fact that a variety of comments have been submitted by experts on this subject. The “evidence” produced by the proponents of the project consists of simply stating an incorrect opinion that these requirements are not applicable.

POLICY RCS-7.1 Conserve, restore and enhance areas containing important habitat, wetlands (as defined herein) and special-status species. Implementation Program RCS-7.1.a, Protect Biodiversity states:

Protect areas ...that may contain species known to be rare or protected under the State or Federal Endangered Species Acts. These include the Town's tidal wetlands, freshwater wetlands....

Comment: These requirements are particularly relevant regarding Black-crowned Night Heron habitat, yet are dismissed by LSA, the developer, the Town, and their other consultants in spite of the fact that a variety of comments have been submitted by experts on this subject.

Implementation Program RCS-7.2.c Limit Impacts, states:

*As part of the development review process, restrict or modify proposed development in areas that contain essential habitat for special-status species, sensitive habitat areas or wetlands as necessary to ensure the continued health and survival of these species and sensitive areas. **Development projects preferably shall be modified to avoid impacts on sensitive resources, or impacts shall be mitigated by providing on-site or (as a lowest priority) off-site replacement** [Emphasis added].*

Comment: These requirements are relevant in light of the fact that the developer applicant has failed to provide sufficient or comparable on-site or off-site mitigation or replacement, and because the developer has only stressed offsite mitigations, which the General Plan clearly considers a last resort that may only be utilized in the event that onsite alternatives are shown to be 'infeasible.' As discussed below, that showing has *never* been made, nor could it, given the many development options available for renovation of the hotel without loss of the adjacent wetland area (See Exhibit 5, attached, and the CVP *Comment on Public Notice: Project: Corte Madera Rebuild; Public Notice Number: 2000-255330N*, during the Army Corps' June 2016, attached).³

POLICY RCS-8.1; Protect wetlands through careful environmental review of proposed development applications. Implementation Program RCS 8.1.a: Wetland Data states:

*Pursuant to CEQA, when sites with potential wetlands (as defined herein), other waters of the U.S., or other wetland habitat areas are proposed for development, require detailed assessments **to demonstrate compliance with State and Federal regulations** [Emphasis added]. Assessments will delineate and map jurisdictional wetlands, waters of the United States, other wetland habitat areas open-water*

³ Attachments to this letter to the Army Corps that have been previously submitted to the Town of Corte Madera in comments on previous EIRs are incorporated by references.

habitats, and upland habitats and will make recommendations for avoidance. Delineation studies shall be submitted to the U.S. Army Corps of Engineers and other resource agencies to determine the boundaries of wetlands and waters of the United States.

Comment: The record of correspondence with the Army Corps indicates that differences of interpretation in these matters are not contested and that at this time the proposal does not comply with the requirements of those State and Federal agencies. So, why is the Town continuing to spend time and money to process the proposal as if it does?

Implementation Program RCS 8.1.b: Wetland Avoidance, states:

*Restrict or modify proposed development in areas that contain wetlands as defined herein or waters of the United States, as necessary to ensure the continued health and survival of special status species and sensitive habitat areas. **Development projects shall preferably be modified to avoid impacts on sensitive resources,** [Emphasis added] *or to adequately mitigate impacts by providing on-site replacement or (as a lowest priority)* [Emphasis added] *off-site replacement at a higher ratio. Modification in project design shall include adequate avoidance measures to ensure that no net loss of wetland acreage, function, water quality protection, and habitat value occurs.* [Emphasis added and in particular as it relates to habitat “function” and “value”]*

Comment: All of the requirements emphasized are directly applicable to the proposed Corte Madera Inn Rebuild and clearly disqualify consideration of the developer’s preferred plan and fully support Alternative 2, which proposes a slightly smaller hotel and preservation of the pond. Why have Town planners continued to ignore these General Plan requirements? Since the DEIR lacks sufficient evidence to support its conclusions, on what grounds does the Town plan propose to amend these requirements for this particular developer?

Implementation Program RCS 8.1.c: Wetland Permits states:

The Town shall require the project proponent to obtain all necessary permits pertaining to affected waters of the United States, including wetland habitat and stream channel and pond habitat regulated by the California Department of Fish and Game and/or the San Francisco Bay Regional Water Quality Control Board prior to construction.

Comment: The Town Council should recognize that not only does the General Plan require a developer to obtain these additional permits but the Town's General Plan in fact, incorporates the regulations of these agencies into its own standards for protecting wetlands. *See Implementation Program RCS-6.2a: Resource Protection* ("Protect wetlands and other waters of the United States in accordance

with the regulations of the U.S. Army Corps of Engineers.") Here, the developer's permit application to the Army Corps has been "withdrawn from active consideration⁴" since November of 2016, for its failure to comply with the requirements for an on-site alternatives analysis and consultation with National Marine Fisheries Service⁵, and since the developer has yet to even submit an application to RWQCB, why is the Town acquiescing to the demands of the developer and continued to process the proposal application's approval?

Implementation Program RCS-8.2.b: Wetlands Mitigation Standards - Amend the zoning ordinance to implement the following mitigation standards for jurisdictional wetlands and waters of the United States, requires:

No net losses shall occur in wetland acreage, functions, and values [Emphasis added in particular as it relates to habitat "function" and "values"] *consistent with the mitigation standard set forth under Implementation Program RCS-8.2.a. This shall include both direct impacts on wetlands and essential buffers, and consideration of potential indirect effects of development due to changes in available surface water and non-point water quality degradation on wetlands retained.*

Comment: It is clear that the Corte Madera General Plan puts great emphasis on protecting all wetlands without any qualifications of size or location. The Town has failed to enforce these repeatedly stated requirements.

Implementation Program RCS-8.3.a: Flood Basins states:

Utilize natural or managed flood basins to provide seasonal habitat for waterfowl and shorebirds, and avoid development in these basins to protect habitat values.

Comment: The Corte Madera General Plan not only emphasizes the importance of wetlands but in fact, recognizes that its requirements extend to those which comprise a part of "natural or managed flood basins," which the Corte Madera Inn pond clearly qualified as. It specifically calls for protection of "waterfowl and shorebirds" without any qualification as to rarity or endangered status. And, it emphasizes not only protecting the habitat but the "habitat values," which again becomes important because the proposed Burdell mitigation does not provide equivalent habitat values (lack of trees) and is therefore unacceptable as mitigation regardless of ratios applied. Again, the Town has failed to enforce the principles and requirements of its own General Plan. Why?

⁴ Roberta A. Morganstern, Army Corps of Engineers Permit Manager

⁵ The NMFS has identified the pond as "essential fish habitat" for Pacific Salmon, whose population is in rapid decline.

The DEIR, the LSA review, and the Town of Corte Madera have failed to acknowledge the requirements of its own General Plan to carefully assess on-site alternatives to the developer's preferred proposal

The Corte Madera General Plan and the DEIR acknowledge the authority of the rules, regulations, and requirements of regional, state and federal agencies with regard to the evaluation and approval of any development proposal for the Corte Madera Inn Rebuild. The LSA biological assessment's acknowledgment of the different types of vegetation and conditions that confirm the pond's environmental significance now makes the discussion of "no net loss of wetlands," as required by the General Plan, more relevant and important for the Town to recognize and adhere to.

In addition, please note:

Implementation Program RCS-6.2a: Resource Protection states:

*Protect sensitive biological resources, including wetlands and other waters of the United States and other wetland habitat areas, and habitat corridors, and sensitive natural communities through environmental review of development applications in compliance with CEQA provisions,**Protect wetlands and other waters of the United States in accordance with the regulations of the U.S. Army Corps of Engineers and other appropriate agencies as well as consistent with Implementation Program RCS-8.2.a.** [Emphasis added]. Protect other habitat areas, habitat corridors, and sensitive natural communities consistent with program RCS-6.3.a*

And

Implementation Program RCS-7.2.a: Environmental Assessment states:

Require applicants to provide an environmental assessment in compliance with CEQA provisions for development proposed on sites that may contain sensitive biological or wetland resources including jurisdictional wetlands, waters of the United States, and other wetland habitats. Require the assessment to be conducted by a qualified professional to determine the presence of any sensitive resources, to assess the potential impacts, and to identify measures for protecting the resource and surrounding habitat (see Implementation Program RCS-8.2.a for mitigation standards for wetlands and waters of the U.S.

Those agency rules and regulations are incorporated by law into the every project review process performed by the Town. However, in spite of this, the DEIR and the LSA assessment completely ignore those rules, regulations and requirements. This is particularly true with regard to the DEIR's and all previous EIR's analysis of the feasibility of alternatives to the developer's preferred proposal, based on the Army Corps requirement

that the proposal chosen must be the one which is the least environmentally damaging practicable alternative (“LEDPA”).

The DEIR and the LSA assessment fail to meet these criteria.

As noted by John Schulz, *The Steepest Hurdle in Obtaining A Clean Water Act Section 404 Permit: Complying with EPA’s 404(b)(1) Guidelines’ Least Environmentally Damaging Practicable Alternative Requirement*,

*An applicant for a 404 permit must demonstrate to the Corps that, among other things, the proposed project is the least environmentally damaging practicable alternative (“LEDPA”) to achieve the project's purpose.*⁶

Further,

*The 404(b)(1) Guidelines establish four prerequisites to approval, one of which, the basis for the LEDPA requirement, requires that there are no practicable alternatives to the proposed discharge that would have a less adverse effect on the aquatic environment.*⁷

It is understood that under 40 C.F.R. Section 230.10(a), "if destruction of an area of water of the United States may be avoided, it should be avoided,"⁸ and that The Corps may only approve a project that is the LEDPA,⁹ and that the LEDPA must be both practicable and the least environmentally damaging.

The LEDPA’s purpose is "avoiding significant impacts to the aquatic resources and not necessarily providing either the optimal project location or the highest and best property use."¹⁰

⁶ *The Steepest Hurdle in Obtaining A Clean Water Act Section 404 Permit: Complying with EPA’s 404(b)(1) Guidelines’ Least Environmentally Damaging Practicable Alternative Requirement*, 2005, John Schulz, B.A. Brigham Young University; J.D. University of California, Davis.

⁷ 40 C.F.R. § 230.10(a) (2005).

⁸ 45 Fed. Reg. 85336, 85340 (Dec. 24, 1980); *see also* 45 Fed. Reg. 85336, 85340 (Dec. 24, 1980); U.S. Army Corps of Engineers, *HQUSACE Review and Findings, Old Cutler Bay Permit 404(q) Elevation* (1990) 4 [hereinafter *Old Cutler*], at 5; U.S. Army Corps of Engineers, U.S. Army Corps of Engineers, *Plantation Landing Permit Elevation Decision* (1989) 2 [hereinafter *Plantation Landing*]; Yocom et al, *Protection Through Impact Avoidance: A discussion of the 404(b)(1) Alternatives Analysis, Wetlands: Volume 9, No. 21 1989*, by Thomas G. Yocom, Robert A Leidy and Clyde A Morris [hereinafter *Wetlands*].at 286.

⁹ U.S. EPA and U.S. Army Corps of Engineers, Memorandum to the Field, *Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements* (Aug. 23, 1993) 2, 3 [hereinafter *Appropriate Level of Analysis*], at 1; *see also* 40 C.F.R. §230.12(a)(3)(i) (2005).

¹⁰ Yocom et al., *supra* note 3, at 283,295, and *Appropriate Level of Analysis, supra* note 4. The Corps has stated that the LEDPA determination "clearly is intended to discourage unnecessary filling or degradation of wetlands...." *Plantation Landing supra* note 3, at 2.

The DEIR, the LSA review, and the Town of Corte Madera have failed to acknowledge the requirements of the Army Corps 404(b)(1) criteria, applicable in *this* proceeding due to the General Plan requirements (*See Implementation Program RCS-6.2a*) for evaluating financial feasibility in arriving at the least environmentally damaging “practicable” alternative.

As noted, the discussion of practicable alternatives, with regard to alternatives sites to consider or on-site mitigation requirements (i.e., alternative project designs) is a part of the required analysis of any proposals and alternatives under state and federal regulations. The DEIR, all previous EIRs, and the LSA assessment completely ignore this requirement.

With regard to other alternatives sites, please note that as stated in 40 CFR. § 230.10(a)(3),

If the activity associated with a discharge is proposed for a “special aquatic site” and does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not “water dependent”), “practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. [Emphasis added.]

This means that any argument made by the developer that no other site exists for his project is extinguished by law.

With regard to the LEDPA, as noted above, alternatives analysis must be fair, balanced, and objective, “and not used to provide a rationalization for the applicant’s preferred result (i.e., that no practicable alternatives exist).”¹¹ And, that “the applicant bears the burden of demonstrating to the Corps that no less environmentally damaging practicable alternative is available and that the project complies with the 404(b)(1) Guidelines.”¹²

Region IX EPA guidance on the issue of project alternatives is extensive.¹³ EPA guidance suggests that under the “practicability presumption,” the Corps will presume that practicable alternatives exist where the project is non-water dependent¹⁴ and will cause a discharge in a special aquatic site.”¹⁵ The presumption is intended to “increase the burden on an applicant for a non-water dependent activity to demonstrate that no practicable alternative exists to his proposed discharge in a [SAS].”¹⁶

¹¹ U.S. Army Corps of Engineers, *Permit Elevation, Hartz Mountain Development Corporation* (1989) 2 [hereinafter *Hartz Mountain*].

¹² *Old Cutler*, *supra* note 3, at 5; *Plantation Landing*, *supra* note 3, at 7; *Yocom*, *supra* note 4, at 283.

¹³ *Wetlands*, *supra* note 3

¹⁴ The current proposal evaluated in the DEIR is non-water dependent by definition.

¹⁵ 40 C.F.R. § 230.10(a)(3) (2005); 45 Fed. Reg. 85339. This presumption is intended to avoid impacts to the extent practicable. *EPA/Corps MOA (1990)*,

¹⁶ 40 C.F.R. § 230.1(d) (2005).

Further, the Corps has stated that the

*Army Corps of Engineers is serious about protecting water of the United States, including wetlands, from unnecessary and avoidable loss... Further, the Corps should inform developers that special aquatic sites are not preferred sites for development and that non-water dependent activities will generally be discouraged in accordance with the Guidelines.*¹⁷

*To rebut this [practicability] presumption and obtain approval for the proposed alternative, the applicant must show by clear and convincing evidence that there are no practicable alternatives which will not cause a discharge into a SAS.*¹⁸

Finally, it is our understanding that “any project that achieves the basic project purpose practicably should be considered.”¹⁹ Under this guidance, Alternative 2 and Alternative 4 must be considered as the LEDPA. And, where the project proposed by the applicant is not the LEDPA, “the availability of a LEDPA, where it is truly available, is an adequate basis for EPA's determination that unacceptable adverse environmental effects will result.”²⁰

The Town of Corte Madera has completely disregarded all of these considerations in their multi-year processing of the proposal for the rebuild of the Corte Madera Inn.

Financial Feasibility

An applicant's financial wherewithal or desired profits are not to be considered as a factor in determining whether an alternative is “practicable” or “financially feasible,” and development costs must be examined from the perspective of what are reasonable costs for the proposed project, for any developer, not whether the applicant can afford the cost of the alternative.²¹ *See also See Preservation Action Council v. City of San Jose* (2006) 141 Cal. App. 4th 1336 (city's finding that reduced-size alternative was infeasible because it would produce a competitive disadvantage was not supported by substantial evidence.)

Community Venture Partners, Inc., commissioned the attached *The Corte Madera Inn Redevelopment: Market Survey and Financial Feasibility Evaluation* (Exhibit 5), which was submitted to the Army Corps during its public comment period of June 2016. It analyzes the issue of practicability in depth and concludes that a review of existing market

¹⁷ *Hartz Mountain, supra* note 8, at 11.

¹⁸ *Plantation Landing, supra* note 3, at 9, 12, 13-14; 45 Fed. Reg. 85336, 85339 (Dec. 24, 1980); see Department of the Army, South Pacific Division, Corps of Engineers *Review of Sundance Plaza Project Permit Denial* (Feb. 5, 2001), 1, 8.

¹⁹ *Wetlands, supra* note 3, at 294

²⁰ See 56 Fed. Reg. 76-02 (Jan. 2, 1991) (stating that one of the reasons EPA denied the proposed Two Forks dam was because it would cause unacceptable loss and damage; the damage the dam would cause was unacceptable because the damage was avoidable. The damage was avoidable because the proposed project was not the LEDPA).

²¹ *Wetlands, supra* note 6. 294-295, *Yocom, supra* note 4, at 5.

conditions substantiates the practicability and financial feasibility of the development of on-site alternatives that preserve the wetlands pond. This report concludes that Alternative “2” (rebuild the hotel and increase the number of rooms to approximately 145, without the loss of the pond) qualifies as the most practicable and financially feasible, under state and federal regulations.²²

Room rental rates and therefore anticipated operating revenues have increased, in some cases significantly, since this original survey and analysis was done. However, as noted in the study, the information the developer has submitted to both the Army Corps and recently to RWQCB significantly understates the present and anticipated room rental rates and overall operating revenues in their analysis. In fact, the developer is contending that the newly completed dual branded, Marriott Residence Inn / Springhill Suites hotels will rent for less per night, on average, than the owner is presenting charging for the existing hotel that will be replaced. Such arguments presented to defeat the spirit and letter of the 404(b)(1) analysis requirements are patently absurd. Yet, the Corte Madera Planning Department has never once questioned the developer’s financial feasibility assertions. Why?

In addition, several successful, local hotel developer/operators have expressed interest in purchasing the Corte Madera Inn property (it is currently listed for sale) with the intention of building a new hotel on the site, in accordance with the restrictions of Alternative 2, and which preserves and enhances the wetlands pond and wildlife habitat (*See Exhibit 5*, attached). The owner / developer has failed to respond to their inquiries.

In considering “practicable alternatives,” it is also important to note that according to the *Memorandum to the Field: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking* (Aug. 23, 1993 – Dec. 31, 1998, Department of the Army and Environmental Protection Agency):

“The preamble to the Army Corps Guidelines also states that “[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not, 'practicable.'" Guidelines Preamble, "Economic Factors", 45 Federal Register, 85343 (December 24, 1980).

Therefore, to the extent that the individual homeowners and small businesses may typically be relevant consideration in determining what constitutes a practicable alternative. **It is important to emphasize, however, that it is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.** [Emphasis added].

²² See attached; *The Corte Madera Inn Market Study & Financial Feasibility Evaluation*, prepared by Maurice H. Bennett, manager of RHSW, LLC.

“The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued.”
40 CFR 230.12(a)(3)(iv). [Emphasis added].

CVP submitted an extensive comment letter to the Corps on these issues, *Comment on Public Notice: Project: Corte Madera Rebuild; Public Notice Number: 2000-255330N*, during the Army Corps’ June 2016 public comment period, which is relevant to your deliberations, and its comments are attached and incorporated herein. As discussed, the Army Corps Regulations being interpreted here are incorporated into the Town’s General Plan policies and therefore must be adhered to.

The DEIR and the LSA Review appears to be an attempt to divert the public’s attention from the Army Corps and RWQCB permit approval process

The applicant has been arguing for two years that the proposal submitted is the only proposal that is acceptable and financially feasible under the terms of his agreements with Marriott Corporation. However, the developer has consistently failed to provide any credible evidence of this claim. Instead, the developer has submitted so-called financial feasibility analysis that severely understates the actual room rate revenues in Marin and is not consistent with any known accounting standards used in the real estate development profession. These analyses have been produced for a fee by various consultants and brokers under the developer’s employ, yet the Town planners have failed to question or audit the developer’s financial calculations in any way. Why?

All of the developer’s financial analysis submitted to date, has been decisively refuted by Community Venture Partners and other third party analysis, during previous EIR comment opportunities.²³

The Army Corps has withdrawn the developer’s application for the Corte Madera Inn Rebuild it from active status. The applicant had more than six months to provide the “alternatives analysis” information required by the Corps to prove that its preferred project was the LEDPA, but did not because the evidence required simply does not exist.

Since CVP sent the Army Corps copies of all the previous EIR studies in June of 2016, which contain a number of practicable alternatives to the developer’s (and the Town’s) preferred proposal,²⁴ the developer has been faced with justifying his fictional financial analysis. Please note that the developer and Corte Madera planning director, Adam Wolff,

²³ See letters of [March 27, 2016](#), [May 26, 2016](#), [June 16, 2016](#), [September 24, 2106](#), [November 16, 2016](#), and [November 26, 2016](#).

²⁴ See [Marin 2016 - Part IV: Dispatches from the front – Corte Madera](#) re: The Town’s failure to preserve its legal rights to contest and Army Corps decision.

failed to inform the Army Corps that other, on-site alternatives existed until Community Venture Partners exposed those facts, by submitting copies of all the previous EIRs to the Army Corps, during their June of 2016 public comment period.

In response to this project history, the developer recently approached the San Francisco Bay Area Regional Water Quality Control Board (“RWQCB”) to attempt to obtain a “soft” approval to fill the pond. Apparently, the developer is pursuing this tactic so it can use any favorable indications as leverage to get the Army Corps to look the other way and not enforce their own permitting regulations with regard to doing proper alternatives analysis. However, the developer has hedged his bets by not yet submitting a formal application for a permit with RWQCB.

This is a highly unusual tactic attempted to circumvent public noticing of his RWQCB submittals and the public’s ability to respond intelligently. Fortunately, the RWQCB issued a public notice in spite of the developer’s protest.

In addition, the developer chose to do this concurrently with the recirculation of the new DEIR. It is inconceivable that Planning Director Adam Wolff was not aware that the RWQCB notice and the Corte Madera’s DEIR public comment period coincided, or that the outcome of latter approval depends on the former (The Town Planning Department has never adequately disclosed this fact to the public or the Planning Commission).

Of greater interest, RWQCB issued its notice for public comment on December 8, 2016, but curiously, the Town did not inform the public until December 22, 2016. When the Town finally did send out an email notice, it was incorrect and noted the public comment period to be shorter by a full week (in the interim, there had been a second notice issued by RWQCB that extended the original comment period until January 13th).

One has to ask why the Town has been so negligent in informing the public of the status of the decision-making processes at the Army Corps and at RWQCB, when those decisions are so critical to this project’s approval outcome. Why has the Town continued to orchestrate this entire process biased toward benefitting the developer’s needs rather than those of the residents of Corte Madera?

Is this seemingly endless subterfuge being carried out at the behest of the developer under the watch of Adam Wolff’s planning department, designed to simply wear down public opposition? When is enough, enough? Were the tables reversed and the applicant a single family homeowner wanting to remodel, I doubt the Town planners would show such deference to their desires.

This multi-year campaign to approve Marriott Corporation’s preferred alternative, essentially unchanged from day one, has cost the public uncountable time and expense, in having to file counter arguments to maintain legal standing for future action.

And finally residents have to ask, where has the Town Council been throughout all this?

There are absolutely no rules or regulations restricting elected officials from bringing oversight and giving direction to their hired staff about how to conduct the Town's business. Yet, the Town Council has chosen to distance itself from this project with false claims about not having officially "seen" the project before the Council, even though everyone knows that by the time that happens it will be a fait accompli.

Need we remind the Town that this approach is exactly what led to the approval of WinCup.

We respectfully ask that the Town Council intervene immediately and reject the developer's preferred project proposal, require any proposal to include the eminently feasible option of preserving the wetlands pond and important wildlife habitat, and restore community confidence in the Corte Madera planning and project approval process.

Thank you for your consideration and this opportunity to submit our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Silvestri". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bob Silvestri
President
Community Venture Partners, Inc.

Cc: Adam Wolff; Michael Graf

Attachments

Submitted via email and hand delivery on January 3, 2017

Law Office of Edward E. Yates

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January 20, 2015

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: Draft Environment Impact Report (DEIR) for the Corte Madera Inn

Dear Mr. Wolff;

INTRODUCTION

The following comments on compliance with planning and zoning law and CEQA for the Corte Madera Inn are submitted by me on behalf of Friends of Corte Madera. Friends of Corte Madera members use, frequent, and enjoy the Corte Madera Inn area and are adversely affected by the proposed project. I also submit these comments on behalf of individuals adversely affected by this project: Marla Orth, Peter Orth, Susan Kirsch, Joan Bennett, and Jennifer Larsen.

The deadline for comments on the Draft Environment Impact Report (DEIR) was January 19, which was a holiday. However, courts have held that comments must be accepted the next day in such a situation. *Rominger v. County of Colusa* C073815 (Cal. Ct. App. 2014)

Corte Madera Must Withdraw or Recirculate DEIR

Because Corte Madera's and California state planning and zoning law and CEQA requirements have been not been complied with and because the DEIR is so legally inadequate, the City should withdraw and start the entire process anew. The City should implement a more transparent planning approach that complies with both the Corte Madera General Plan and Zoning Ordinance and with CEQA. If the Town of Corte Madera will not withdraw the DEIR, then at a minimum, the DEIR must be re-circulated for public review and comment pursuant to CEQA Guidelines Section 15088.5 because the DEIR is so functionally and basically inadequate that it precludes meaningful public review.

MAIN POINTS REGARDING THE PROJECT'S LEGAL COMPLIANCE

- The Project's proposal to fill wetlands violates policies in and is inconsistent with Corte Madera's General Plan and Zoning Ordinance.
- The DEIR does not – as required by CEQA - identify these inconsistencies or mitigate the impacts. The DEIR remarkably, brushes off the lack of vertical consistency of wetlands zoning regulations and the General Plan with the Zoning ordinance overlay regarding identification and protection of wetlands.
- The DEIR's Impact Analysis is legally inadequate and does not provide substantial evidence for its conclusions and improperly:
 - Fails to include feasible measures to avoid impacts to wetlands and floodplains.
 - Defers almost all mitigation measures,
 - Fails to adequately address cumulative impacts to circulation and air quality given the recent traffic increases due to economic growth and future traffic growth due to cumulative projects such as WinCup.
 - Fails to adequately assess the impacts of additional impervious surfaces in a hazardous floodplain area; the project contributes to existing hazardous flood conditions and ignores sea level rise considerations.
- The DEIR proposes mitigation banking without assessing project impacts or considering avoidance or on site mitigation, thus not meeting either CEQA or the Clean Water Act's requirements to avoid and/or minimize impacts.
- The DEIR's Alternatives Analysis is inadequate due to narrow project objectives and the elimination of reasonable alternatives. The DEIR must consider more reasonable alternatives such as an L shape with slightly higher occupancy that avoids impacts to wetlands, floodplains and traffic.

COMMENTS ON GENERAL PLAN AND ZONING ORDINANCE CONSISTENCY AND DEIR ADEQUACY

- 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.**

General Plan (“GP”) Implementation Policies that must be adhered to for this project include the following:

GP Implementation Program RCS 8.1.b: Wetland Avoidance:

Restrict or modify proposed development in areas that contain wetlands as defined herein or waters of the United States, as necessary to ensure the continued health and survival of special status species and sensitive habitat areas.

GP Implementation Program RCS 8.1.b: Wetland Avoidance

Where complete avoidance of wetlands and waters of the United States due to filling is not feasible (as defined under State CEQA Guidelines Section 15364), require provision of replacement habitat on site through restoration and/or habitat creation at a minimum 2:1 ratio that would ensure no net loss of wetland acreage, function, water quality protection, and habitat values occurs. Allow restoration of wetlands off - site only when an applicant has demonstrated that no net loss of wetlands would occur and that on – Site.

GP Implementation Program RCS - 8.2.b: Wetlands Mitigation Standards.

No net losses shall occur in wetland acreage, functions, and values consistent with the mitigation standard set forth under Implementation Program RCS-8.2.a.

Mitigation sites shall be permanently protected and managed for open space and wildlife habitat purposes.

Restoration of wetlands is preferred to creation of new replacement wetlands, due to the greater likelihood of success.

Chapter 18.18.200 of the Municipal Code regulates development in the Baylands Risk Zone and Natural Habitat (BRZNH) Overlay District.

Approval of the project would violate the above sections because: 1) any fill of the wetlands cannot be allowed because the preferred alternative would not restrict or modify proposed development to protect species and habitat and 2) the applicant nor Corte Madera have provided any data or the required analysis demonstrating that avoidance is not feasible and that no net loss of wetlands would occur on-site; and 3) no showing has been made that wetlands cannot be restored. Thus, there is no support for either a finding that allows fill of the wetlands or approval of the preferred alternative. (DEIR, Section 4.3.)

The DEIR does not – as required in Section 18.20.220 - identify these inconsistencies or mitigate the impacts. The DEIR remarkably, brushes off the lack of vertical consistency of wetlands zoning regulations and the General Plan with the Zoning ordinance overlay regarding identification and protection of wetlands. The DEIR includes almost 20 pages on describing the regulatory background. But aside from a boilerplate compensation measure, the DEIR includes less than two pages describing project impacts and compliance and consistency with those wetlands requirements. (DEIR, p. 4.20-21.)

Corte Madera Zoning Ordinance Section 18.18.220 - Findings for approval of development states that:

Prior to approval of any development in the BRNH overlay district, the following findings shall be made:

- (1) The project protects and preserves saltwater and freshwater wetlands and related habitats, and protects and preserves the water quality of wetlands;
- (2) The project provides an acceptable level of risk related to possible damage to structures and improvements, including underground utilities, resulting from subsidence, differential settlement, seismic event or other failure and flood hazard.

These findings cannot be made because there is no evidence to support the conclusion that filling in of wetlands and 2:1 replacement protects wetlands or protects the surrounding area from flood hazard.

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

CEQA Guidelines Section 15126.4 under “Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects” states, “(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.” The 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)).

These regulations set out rules for considering permits to dredge and fill wetlands require that project applicants assess how to avoid or minimize impacts before considering less favorable methods of mitigation. 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.)

Regarding discussion and mitigation of impacts CEQA case law holds that specific project impacts must be assessed; simply proposing mitigation measures without impact assessment violates CEQA. *Citizens for Quality Growth v. City of Mt. Shasta*, 198 Cal. App. 3d 433 (1988); *San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus*, 27 Cal. App. 4th 713 (1994).

Specifically regarding wetlands, where a project filled wetlands adjacent to development, an agency must specifically measure and analyze impacts before simply proposing mitigation and declaring the impacts less than significant. *Mira Monte Homeowners Assn. v. County of Ventura*, 165 Cal. App. 3d 357 (1985).

Impact BIO – 2 (DEIR, p. 4.3-19-20) discusses impacts to special status species but includes no data or analysis regarding the potential impacts to these species due to the permanent loss of aquatic habitat.

Impact BIO – 3: Regulated Waters (DEIR, p. 4.3-20-23). The DEIR lists several authorities and concludes without any reasonable discussion that: “Proposed development would result in filling of the existing pond, eliminating an estimated 0.64 - acre of jurisdictional waters on the site. “

The DEIR makes a conclusion of no significant impacts to wetlands without first doing any in depth analysis of the hydrology or wetlands impacts as required under CEQA. (DEIR, p. 4.20.) The DEIR also makes this conclusion without any analysis, data, support or evidence for its conclusion that avoiding the pond or minimizing impacts to the pond is feasible. The DEIR essentially only cites the compensation, or replacement standard in the Zoning Ordinance, without the required attempts to analyze or avoid wetlands impacts as required by CEQA regulations and case law cited above.

The City’s reliance on later regulatory approval by the Corps of Engineers – without project specific analysis - has been held to violate CEQA. A determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project specific analysis of potential impacts and effect of regulatory compliance. *Californians for Alternatives to Toxics v. Department of Food & Agriculture* 136 Cal.App.4th 1 (2005). Thus, simply presuming an impact would not occur if mitigation measure approved by agency is inadequate.

Storm water Impacts. The DEIR impermissibly relies completely on later compliance with environmental regulations to avoid any quantitative analysis of the storm water impacts. This area is in a flood hazard zone and the direct, indirect and cumulative impacts of the project’s new impervious surfaces runoff into Corte Madera Creek and its adjacent wetlands must be discussed in this EIR.

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 DEIR lists the General Plan on-point 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 DEIR also fails to address how development would minimize or eliminate flooding hazards or assess how the project will cause no adverse flooding impacts. Further, the DEIR does not discuss the application flood prevention aspects of Municipal Code Article 16.10 to this project.

The entire stretch of Corte Madera Creek, as well as many of its tributaries, have experienced extreme flooding due to impervious surfaces in the watershed, development in the floodplain, inappropriate infrastructure and inadequate stream maintenance. Damage to Ross Valley cities was enormous as recently as 2005 and 2006. Yet the DEIR contains almost no discussion of the flooding hazard issues or the actual impacts of the project on flooding. There is an enormous amount of documentation of Corte Madera's flooding problems. The Corte Madera General Plan EIR includes 41 pages of discussion, analysis and mitigation measures regarding flood hazards in the Corte Madera Creek yet this DEIR – while claiming to reference that EIR - does not cite or analyze that document regarding flood hazards. The project is located in a floodplain and thus subject to and affects flood hazards. (DEIR, p. 4.8-4.) The DEIR fails to adequately assess the impacts of additional impervious surfaces in a hazardous floodplain area; the project contributes to existing hazardous flood conditions and ignores sea level rise considerations.

The preferred project and the DEIR however, fail to consider the impact on flood hazards of filling the pond. The DEIR in Section 4.8 states that:

This would increase impervious surfaces at the site to slightly more than 176,700 square feet approximately 4.0 acres)(CSW/Stuber -Stroeh, 2013), an increase of approximately 30,500 square feet (0.64-acre) relative to existing conditions. A conceptual hydrologic analysis determined that by incorporating bioretention planters to treat runoff from building roofs and parking lots in accordance with MCSTOPP guidelines would reduce the overall volume and discharge rate of stormwater from the project site....”

The DEIR however, contains no analysis on either recent flooding or the cumulative incremental impacts of the project combined with other projects in the area, such as the SMART train station and construction of the WinCup project as required by CEQA. (CEQA Guidelines Sections 15130, 15355.) Also, FEMA published updated Flood Hazard Maps for the project area on

March 7, 2014. The DEIR should be revised to include these maps. These maps show the entire project area as subject to either the 100 or 500-year flood hazards, or both.

Given that the preferred alternative will contribute to the flood hazards in an already hazardous floodplain, the DEIR must include a detailed study of the floodplain and the flood patterns and analysis of the impacts of creating more impervious surfaces and development in the floodplain. The DEIR must include a discussion of the areas of the already hazardous floodplain that will be adversely affected by approval the project.

Sea Level Rise. The DEIR mentions climate change but contains no analysis on the subject. (DEIR, p. 4.8015.) The DEIR fails to consider putting new impervious fail to consider sea-level rise in locating project development, fails to cluster development outside of the likely flood areas, fails to develop engineering or design solutions to this major issue, fail to conduct a risk assessment before planning to locate new residents in a hazard area, fail to consider resiliency to sea level rise, and fail to include any real mitigation for sea level rise.

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

Under CEQA, mitigation may not be deferred. Mitigation measures for flood hazards, air quality and impacts to biological resources, including aquatic habitat and wetlands are deferred. As a matter of law, an agency cannot defer consideration or adoption of mitigation measures to a later date. (CEQA Guidelines §15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296. Deferral 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.]

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

CEQA requires that an EIR contain a reasonable range of feasible alternatives that meet most or all project objectives while reducing or avoiding one or more significant effects of the project. (CEQA Guidelines Section 15126.6(f).) Where project applicants attempt to void or defeat CEQA's substantive alternatives analysis mandate by adopting an overly narrow project objective statement or contending that otherwise feasible alternatives are simply not appropriate, Courts have overturned the decisions. See, *Preservation Action Council v. City of San Jose* 141 Cal.App.4th 1336 (2006); *Uphold Our Heritage v. Town of Woodside* 147 Cal.App.4th 587 (2007).

The DEIR's Alternatives Analysis is inadequate due to narrow project objectives and elimination of reasonable alternatives. The DEIR must consider more reasonable alternatives that meet

most project objectives yet also follow Corte Madera, CEQA and the Clean Water Act requirements. Such a reasonable alternative could include an L shape with slightly higher occupancy that avoids impacts to wetlands, floodplains and traffic. (DEIR, pp. 5-1 to 5-4.)

CONCLUSION

The DEIR is so legally inadequate the City should withdraw and start the entire process anew with a more transparent planning approach that complies with both the Corte Madera General Plan, Zoning Ordinance and CEQA. If the Town of Corte Madera will not withdraw the DEIR, then at a minimum, the DEIR should be re-circulated for public review and comment.

In addition, the project fills .64 acres of wetlands and the Corps of Engineers must grant a permit to fill them. The Corps will require an analysis and then mitigation. Project opponents can use this process to further object to the project.

Sincerely,



Edward Yates

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August 19, 2015

Adam Wolff, Planning and Building Director
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Corte Madera, CA 94925-1418
Email to: AWolff@tcmmail.org

RE: Recirculated Environmental Impact Report (REIR) for the Corte Madera Inn

Dear Mr. Wolff;

INTRODUCTION

The following comments regarding the approval process for the Corte Madera Inn development and CEQA compliance regarding are submitted on behalf of Community Ventures Partners, whose members use, frequent, and enjoy the Corte Madera Inn area and are adversely affected by Alternative 4. I also submit these comments on behalf of Jennifer Larson, Peter Hensel, and Andre Pessis, individuals and residents of Corte Madera adversely affected by the Development. I incorporate by reference my letter of January 20, 2015 regarding the DEIR.

The Recirculated Environmental Impact Report's (REIR) assessment of a new alternative appears to be either a quickly generated afterthought to the Town of Corte Madera's ("Town") approval process or a clumsy attempt to show the Developer's proposal in a better light. Alternative 4 wisely eliminates the fill of the pond, but curiously raises the height and mass of the proposed structure when such buildings have been broadly criticized by the community in the recent past.

Other factors bring up the question why Alternative 4 was added to the REIR. Alternative 4 does not have an application deemed complete by the Town and thus, cannot be built for some time because it would violate the Town building moratorium. Further, Alternative 4 serves no CEQA purpose because Alternative 4 *increases* many project impacts. Thus, the actual intended purpose of Alternative 4 is unclear except possibly to demonstrate to the public how much worse another proposal like Alternative 4 would be. As it is, Alternative 4 appears to act as a threat to coerce residents to accept the developer's original proposal.

Unfortunately, even if Alternative 4 is currently only a straw man, the public is forced to spend time and money addressing Alternative 4 now because the developer might later submit an application for Alternative 4 and claim that CEQA was already complied with by this current EIR. This way of conducting a public planning process was heavily criticized by the Marin

Grand Jury and mirrors the approach employed for WinCup and Larkspur Station Area Plan, of not disclosing that a current CEQA approval may cover a subsequent, controversial proposal.

Regarding Alternative 4 itself, the quick cure for the obvious design problems with Alternative 4 appears to be extensive amendments to the General Plan and Zoning Ordinance (“ZO”). The California Environmental Quality Act (“CEQA”), however, requires assessment of the impacts of these General Plan and ZO amendments.

Also, CEQA and good public policy require that the Town disclose why such a large structure with such enormous bulk and mass and aesthetic impacts would be approved based essentially on the developer’s stated desired economic return. In addition, the REIR does not remedy the DEIR’s failures to adequately assess impacts to wetlands, hydrology, floodplains, sea level, circulation, and alternatives.

These legal failings dictate that the Town should revise and recirculate the DEIR and REIR to comply with CEQA because the DEIR/REIR is so functionally and basically inadequate that it precludes meaningful public review.

MAIN POINTS REGARDING THE PROJECT’S LEGAL COMPLIANCE

- The DEIR has not addressed the comments in my previous letter and it remains legally inadequate.
- The REIR does not – as required by CEQA – assess the visual impacts of the increased bulk and mass of the building proposed in Alternative 4. Remarkably, the REIR brushes off Alternative 4’s visual impacts by claiming that traditional landscaping and General Plan and Zoning Ordinance (ZO) amendments will somehow drastically reduce visual impacts of this huge building.
- Alternative 4 exceeds Corte Madera’s FAR regulations and thus, is inconsistent with Corte Madera’s current General Plan and ZO. CEQA requires an assessment of any amendments to the General Plan and ZO to change the FAR and mitigate impacts.
- Alternative 4’s proposal to exceed Corte Madera’s height limitations is inconsistent with Corte Madera’s General Plan and its existing and proposed Zoning Ordinance and therefore, requires a variance.
- The DEIR and REIR Impact Analyses are legally inadequate because they continue to fail to adequately assess the following impacts: filling of a wetland, addition of impervious surfaces in a hazardous floodplain area; exacerbation of hazardous flood conditions; and sea level rise considerations.
- The REIR references a new traffic study and proposes mitigation measures for pedestrians and nearby traffic congestion, but the REIR does not analyze the cumulative

traffic impacts caused by the decrease in parking and the changed parking lot configuration as required by CEQA.

- The DEIR and REIR eliminate smaller alternatives from consideration, essentially because of the developer's desired financial return. CEQA finds such financial considerations insufficient to eliminate alternatives. Corte Madera should be transparent that its motive is to provide additional hotel tax revenue, if that is the case.

1. AESTHETICS ANALYSIS IS LEGALLY INADEQUATE

Alternative 4 will substantially increase aesthetic resources impacts from those identified in the DEIR and CEQA requires that an EIR be recirculated when the draft EIR is so fundamentally inadequate and conclusory that meaningful public review and comment are precluded. (CEQA Guidelines Section 15088.5). More specifically, CEQA requires that such increases in aesthetic resource impacts be examined in supplemental CEQA documents. *Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal. App. 4th 396.

These new impacts of Alternative 4 are caused by the increased bulk in the hotel structure, but the *increase* in these new impacts is not analyzed in the REIR. The REIR does include some very general text with no support for these contentions. For instance, the REIR states that the existing vegetation near the adjacent pond will screen what will be a four story building. (Page 3.4- 3-5.) The REIR provides no support for this outlandish claim. For example, the REIR states that it "assumes" that new landscaping will mitigate Alternative 4's visual impacts, but provides absolutely no discussion of growth, screening coverage or data regarding such landscaping.

It should also be noted that the "landscaping to obscure mass and bulk" provision has been approved before by the Town of Corte Madera with wholly unsatisfactory results. Almost 2 years ago, The Village/Macerich submitted plans for expansion, including expansion of the parking lots. The Town approved the project based on a provision that landscaping would be included that would obscure the storefront signage and block the view of cars from 101. Nearly 2 years later, there has been *no* successful attempt by the Town to enforce installation of agreed landscaping by the developer.

Second, regarding the WinCup project, there has been *no* successful attempt by the Town to enforce the Public Improvements agreed on by the developer, including agreed aesthetic undergrounding of utilities.

Thus, the conclusions in the DEIR and REIR that "landscaping would lessen the impact of the project mass" have no successful historical precedent. In fact, this aesthetic 'solution' brings to mind still unmitigated issues with other projects and lack of oversight/accountability once developers received approvals.

The REIR also precludes meaningful review because it does not include any analysis or figures that are necessary for the decision makers and the public to either review Alternative 4's aesthetic impacts or to make any knowledgeable comments on design review. There are no

renderings or landscaping figures for Alternative 4, therefore, there is no context for commenting or for informed decision making. This lack of analysis and figures is especially striking given the recent approval and construction of a nearby building with similar bulk and mass – the Tamalpais Ridge/WinCup project.

The REIR should be revised to include both written analysis and figures so that decision makers and the public may make an informed review of Alternative 4. The EIR for this Alternative 4 must include figures, such as pre and post Alternative 4 renderings or simulations from vantage points such as Highway 101 or on the pedestrian trail on the east side of 101. Design review discussions without this analysis and figures will not be useful in determining the best design.

2. DEIR AND REIR FAILED TO ADDRESS LAND USE IMPACTS

A. Zoning Ordinance Permit Requirements.

The proposed project and Alternative 4 require a conditional use permit (CUP) and changes to and exemptions from existing and proposed height limits, yet there is no discussion of these impacts. Regarding a CUP, Corte Madera ZO Section 18.26.050(c)(3) requires that “[t]he proposed conditional use will comply with the general plan and with each of the applicable provisions of this title.” Currently, such a finding cannot be made. The EIR should describe the conflict and the mitigation or project measure intended to address this conflict. If it is to amend the General Plan and ZO, the REIR must evaluate the impacts of that amendment.

Regarding a variance, the REIR states: “It is assumed that the permissible height could be addressed at the time of the Precise Plan approval and would not require a variance.” (REIR, p. 4.9-9.) Upon discussion with Town staff, it appears that the Town intends to address any such issues in the project’s required preliminary and precise plans - as provided for in overlay districts, such as the Bay Overlay District the project is located in. This contention – that the Town has complete discretion about FAR and height - should be made clear in the EIR. In any case, the EIR must assess the impacts of the changes whether specifically allowed for in the zoning code or whether the Town has discretion to increase the height and FAR.

B. Height.

The Corte Madera Zoning Ordinance, Section 18.12.335, states, “No structure shall exceed 35 feet in height, as defined in Section 18.24.060.” The project will violate that standard by almost 30 percent, yet there is no discussion of the impacts of that violation.

The REIR states that the ZO will be amended to increase the height for Alternative 4. It is not clear if such a change in the ZO is a project measure or a mitigation measure, but in any case, there is no discussion of *the impacts* of this change in the zoning code as required by CEQA. CEQA does not allow an agency to simply propose a mitigation measure and call it a day; CEQA requires a discussion of the impacts of all project and mitigation measures. (See *Trisha Lee Lotus et al. v Department of Transportation et al.* (1st Dist., Div. 4, 1/30/14 A137315), which holds

that CEQA requires separate evaluation of mitigation measures and alternatives, even when mitigation measures are incorporated into project design.)

While the Town contends no variance is needed due to overlay zoning, the proposed project and Alternative 4's potential lack of consistency with the existing C-3 zoning should be discussed in the REIR.

C. FAR.

Currently, the Corte Madera General Plan provides for a .34 FAR for Mixed use commercial - .34. (GP, Page 2-21.) The DEIR stated, "The project would be inconsistent with the existing zoning that allows a FAR of 0.34. The project would require a General Plan amendment and a rezoning to allow the proposed FAR of 0.55." (Page 2-1.)

Now, the REIR states that "Alternative 4 would require a General Plan amendment and a rezoning to allow an increase in the allowable floor area ratio (FAR) for the site from 0.34 to 0.67." (REIR, p. 4.9-9.)

So it appears that as the developer changes his proposal, the Town of Corte Madera is simply increasing the FAR to accommodate the developer. There is no REIR analysis regarding the impacts of these changes and no analysis or context regarding why the FAR is increasing almost 45%. The only justification offered for such changes is the developer's desired economic return. (See Alternatives Section below.)

Similar to the height limitation change, the REIR proposes an amendment to the FAR limitation, but does not assess the impacts of this zoning change. Again, CEQA requires that the impacts of the zoning change, whether termed a project or mitigation measure, must be assessed.

3. HYDROLOGY CONCLUSIONS REMAIN UNSUPPORTED

The REIR does not address the hydrology issues raised in my comment letter on the Corte Madera Inn DEIR sent, January 20, 2015. (See "Consideration and Discussion of Environmental Impacts and Mitigation of Impacts Regarding Floodplains and Sea Level Rise is Inadequate.") Even though Alternative 4 will not include fill of the wetland pond area, it will have potentially significant impacts to the floodplain and sea level rise as explained in the January 20 letter; those impacts remain unanalyzed for Alternative 4 and mitigation measures have not been identified.

For instance, the DEIR or REIR still fail to include any detailed study of the floodplain and flood patterns or analysis of the impacts of creating more impervious surfaces in the floodplain and possible impacts related to sea level rise. Further, the DEIR and REIR contain no analysis of the cumulative, incremental floodplain impacts of Alternative 4 combined with other projects in the area, such as the SMART train station and construction of the WinCup project. CEQA Guidelines Sections 15130, 15355 require that such cumulative impacts be assessed.

4. CUMULATIVE TRANSPORTATION IMPACTS NOT ASSESSED

Despite the addition of mitigation measures in the REIR regarding pedestrian safety and nearby traffic congestion, the REIR does not analyze the cumulative traffic impacts due to the decrease in parking and the changed parking lot configuration. None of the previously examined alternatives include the lower number of parking spaces included in Alternative 4. This lower number of parking spaces will potentially have impacts on congestion due to cars circling in the area to park and due to wait times for cars entering the parking lot. These project factors must be identified and their cumulative impacts on circulation must be determined.

5. ALTERNATIVES IMPROPERLY CONSIDERED AND ELIMINATED

A. Alternative 4 Serves No Purpose but to Confuse the Public

The *REIR* has a purpose - presenting the new circulation analysis and mitigation measures. But the new Alternative 4 appears to be presented only to demonstrate to the public how much worse another hotel proposal would be. This is due to the fact that Alternative 4 serves no CEQA purpose of avoiding or reducing impacts because: a) there already is an alternative avoiding the pond (Alt 2) and b) Alternative 4 substantially increases other impacts. Therefore, inclusion of Alternative 4 is not required by CEQA (CEQA Guidelines Section 15126.6(a).) and the developer has no duty to pay for the additional CEQA analysis. But this is not made clear in the REIR and thus, the public is left with the impression that the developer is proposing a new alternative when instead the Town itself is presenting a different alternative that has substantially higher visual impacts. This should be clearly disclosed and justified.

Just as important, Alternative 4 cannot be built because the Town enacted an urgency extension moratorium on projects in the project area whose applications were not complete as of November 2014. (Town Ordinance 943, November 18, 2014). There is no complete application for Alternative 4. Thus, while a smaller version of the project contemplated in the developer's application could be built, a completely different project such as Alternative 4 would require new design and building plans to be submitted, reviewed and determined complete.

Presenting Alternative 4 as if it is a true alternative misleads the public and twists the purpose of CEQA, which is to present alternatives and mitigation measures to **reduce** impacts.

B. The Town Improperly Cedes its Responsibility to Determine Objectives to the Developer.

Page 3-1 of the DEIR list several project objectives after stating that: "The following objectives for the project have been identified by the applicant..." The Town, therefore, is acknowledging that it is limiting alternatives by simply following the financial and design objectives of the developer. But CEQA makes it clear that the "lead agency is responsible for selecting a range of alternatives..." ((CEQA Guidelines Section 15126.6(a).) The Town has improperly abdicated that responsibility and thus there is no substantial evidence for its elimination of alternatives.

C. Alternatives for a rebuild or more reasonable sized increases in size were improperly eliminated.

Both the DEIR and the REIR list various rationales for eliminating the alternative under the guise of being project objectives. Yet these objectives are the developer's objectives and thus, self-serving. Even the existing objectives (e.g. dual purpose, meeting rooms) can be met by most any alternative. Since pond consideration seems not to be an actual criteria for any alternative, the only remaining true rationale for eliminating smaller alternatives and for approving such large buildings – in both the proposed project and Alternative 4 - is that the developer contends that his financial return requires such a large building: “[m]oreover, they require sufficient scale for each brand to be competitive and efficient,” (DEIR p. 3-1); “...meeting the market demand and providing economic stability to the project;” (DEIR page p. 5-5); “the [density] restriction makes any development practically economically infeasible,” (Statement by developer, August 13, 2014 Planning Commission Minutes.)

CEQA finds such financial considerations insufficient on their own to eliminate alternatives. Thus, the Town needs to better explain why a large structure is actually the preferred alternative under CEQA. State and Federal planning and takings' law allow municipalities to approve a smaller reasonable sized project that does not meet the financial goals of a developer. If the Town wants additional development fees or hotel tax revenue, the Town and the EIR should disclose that factor and make it a project objective.

CONCLUSION

The DEIR and REIR are so legally inadequate that the Town should withdraw the DEIR/REIR and start the approval process anew with an approach that complies with both State planning law, the Corte Madera General Plan, and CEQA. At a minimum, the REIR should be re-circulated for public review and comment with the additional analysis required by CEQA.

Sincerely,

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

Edward Yates

Law Office of Edward E. Yates

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December 19, 2015

Adam Wolff, Planning and Building Director
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Corte Madera, CA 94925-1418
Email to: AWolff@tcmmail.org

RE: Final Environmental Impact Report (FEIR) for the Corte Madera Inn

Dear Mr. Wolff;

The following comments regarding the FEIR Responses to Comments are submitted on behalf of Community Ventures Partners. I incorporate by reference my letters of January 20, 2015 and August 8, 2015.

After a review of the responses to comments in the FEIR, it is apparent that the Town of Corte Madera has not adequately responded to many of the comments made on the Draft and Recirculated Environmental Impact Reports, including those comments in my letters of January 20 and August 8.

CEQA Guidelines, Section 15088 requires that a lead agency make an evaluation of and response to environmental issues comments. Subsection C requires that:

The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted.

In general, the FEIR responses simply repeat text from the EIR or state that the EIR is adequate. Neither type of response complies with Section 15088(c)'s requirements to give reasons and address in detail why specific comments and suggestions were not accepted. Examples of such inadequate responses include, but are not limited, to the following:

Response C1-2: Regarding the need to assess on site alternatives, the FEIR does not respond at all to the comment (including in Response C2-12 and C2-13.) The FEIR only states that CEQA does not require a similar alternatives analysis to the Clean Water Act. This statement is inaccurate and does not address why the Town did not consider on site wetlands impacts reductions or mitigation or include such an alternative.

Response C1-3: Regarding the EIR's lack of disclosure of the projects' potential flooding impacts, the FEIR is nonresponsive. The FEIR response does not in fact respond about impacts except to make an unsupported contention that there will be no impacts and mitigation will be sufficient. Regarding mitigation, the FEIR strangely contends that future required floor height elevations and a General Plan policy for coordinating with local regulatory agencies will mitigate the impacts. Neither addresses impacts and neither has any real world relation to the comment which requests assessment of and identification of substantive mitigation.

Response C1-4: The FEIR does not respond to the comment that the project's wetlands and floodplain impacts were inadequate except to essentially reject the comment and say the FEIR analysis is adequate. The FEIR response does not address the actual comment regarding loss of wetlands but instead references the BRA special status species text.

Response C1-5: The FEIR response to the request for quantification of site specific storm water runoff is not responsive as it does not address the loss of the pond but only assesses the new pervious surfaces design changes from existing conditions.

Response C1-6: This response does not relate to the comment regarding quantification of increased flooding but instead simply contends that floor elevation of future buildings will solve all potential project flooding problems.

Response C1-7: This response merely states that the EIR is adequate because it cites a general plan policy. However, it does not reference any EIR analysis that actually addresses floodplain impacts in a climate change scenario.

Response C1-8: Regarding CEQA's prohibition of deferred impacts, the response claims that performance standards may be used. However, neither the EIR, nor the response not identify any performance standards for biological resources, wetlands, or floodplains. General promises regarding acreage and general plan policy implementation are not performance standards.

Response C1-9: Regarding project objectives and alternatives, the FEIR (Response C1-2) does not respond at all to the comment regarding an impermissibly narrow set of objectives and the related lack of consideration of a reasonable range of alternatives.

Response RC23-6: This response essentially says "yes, we did do sufficient CEQA impacts analysis." But this response does not mention the actual subject matter of the comment and provides no required detail or a substantive response.

Response RC23-7: The comment requests parking impact information. The response says there are no impacts because the project meets Town requirements. Such an analysis does not comply with CEQA and thus the response is inadequate.

Response RC23-8: This response essentially says, "no we didn't depend solely on financial criteria" but the response provides no support for that conclusion nor does it include any substantive response to the actual comment. The response also includes information on the alternatives that is not relevant to the comment.

Response RC23-9: This response essentially says, “we don’t have to include quantified specifics or simulations” in an EIR regarding visual impacts. This response is not true and it does not respond to the comment regarding the feasibility of landscaping mitigation measures.

Response RC23-10: The comment requests a consistency analysis with the existing zoning. The response is that the zoning will be changed but that does not somehow wish the existing conditions – current zoning - away. Changing the zoning is a project measure or a mitigation measure – the EIR must examine the impacts of either.

The EIR continues to be so legally inadequate that the Town should withdraw the FEIR and start the approval process anew with an approach that complies with both State planning law, the Corte Madera General Plan, and CEQA. At a minimum, the EIR should be re-circulated for public review and comment with the additional analysis required by CEQA.

Sincerely,



Edward Yates



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February 9, 2016

Adam Wolff, Director of Planning
Town of Corte Madera Company
300 Tamalpais Drive
Corte Madera, CA 94925

RE: Proposal by Reneson Hotels, Inc., for reconstruction of the Best Western Corte Madera Inn

Dear Mr. Wolff,

ACR owns and manages a system of wildlife sanctuaries in Marin and Sonoma counties. Since the early 1970's, we have conducted scientific research, stewardship of natural areas, and education activities to help ensure the long-term protection of San Francisco Bay area wetlands. We have published numerous scientific articles on the ecology and conservation of herons and egrets (www.egret.org/scientific_contributions), including an annotated atlas of heron and egret nesting colonies in the San Francisco Bay area (Kelly et al. 2006; www.egret.org/atlas).

We are very concerned that the proposed filling and development of the wetland pond area behind the Best Western Corte Madera Inn would destroy a valuable wetland habitat area occupied by a roosting colony of Black-crowned Night-Herons. This species is one of the resident species of colonially nesting herons that depends on the protection of remnant wetlands surrounding the San Francisco Bay, such as the wetland area considered in this proposal. Annual results from the Southern Marin County Christmas Bird Count confirm that the roost site at the proposed development site is actively used by this species. Numerous scientific investigators have demonstrated that this species is an indicator of healthy wetlands (Hothem et al. 2010), and that protecting populations of such species aides effective management of these important habitats. In addition, please consider these concerns regarding the importance of protecting this wetland roosting site:

- Communal roosting sites provide important functions needed by herons, including enhanced foraging access and efficiency, thermoregulatory benefits, and reduction of predation risk (Beauchamp 1999).
- Wetland habitat in the San Francisco Bay Area is regionally and globally important for several species of wading birds—including Black-Crowned Night-Heron (Mikuska et al. 1998, Kelly et al. 2007).
- Although the loss of a single roost site is unlikely to have an acute negative impact on local or regional Black-Crowned Night-Heron abundances, the protection of individual sites such as this one contributes to a valuable variety of habitat alternatives needed to ensure the persistence of these

birds in the region. Together, the protection of individual roosting sites allows birds to adjust to varying levels of predation pressure and disturbance, unpredictable changes in weather, and increasing water levels associated local flooding and sea level rise. Therefore, the loss of any active Black-crowned Night-Heron roost represents the incremental loss of valuable habitat that may contribute to cumulative impacts over more extensive areas of the San Francisco Bay area.

- To our knowledge, the scientific literature on herons or egrets does not provide any evidence that can substantiate an effort to successfully translocate a roosting site or, similarly, that can justify appropriate mitigation for the loss of a roosting site.

We urge you require full protection of the valuable wetland habitat and pond area used by Black-crowned Night-Herons behind the Best Western Corte Madera Inn. Thank you for considering this comment.

Sincerely,



John P. Kelly, PhD
Director of Conservation Science



Scott Jennings
Avian Ecologist

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MEMORANDUM

To: Community Venture Partners (attn.: Bob Silvestri) 73 Surrey Avenue
Mill Valley, CA 94941 <http://www.communityventurepartners.org>

Date: February 15, 2016

SUBJECT: Review of Corte Madera Inn Final Environmental Impact Report: wetlands, wildlife, and aquatic habitat impacts

I reviewed Appendix H (biological data) and DEIR Section 4.3 (Biological Resources) regarding wetlands and aquatic habitats at the proposed project site. My findings regarding potential significant impacts and mitigation are summarized here, and discussed below.

Summary: The Corte Madera Inn “pond” habitat complex consists of three distinct elements that together support a persistent, important roost site of black-crowned night herons, contiguous with to foraging (feeding) habitat for black-crowned night herons and other wading birds. The Corte Madera Inn pond habitat complex comprises:

- (a) riparian upland non-native trees bordering the pond and fringing wetlands;
- (b) submerged perennial aquatic vegetation beds (SAV, or “vegetated shallows” – wigeongrass, *Ruppia maritima*) extending across the brackish pond bed, influenced by seasonably variable salinity (brackish to fresh-brackish salinity range);
- (c) perennial fringing brackish marsh composed of extensive to patchy saltgrass (*Distichlis spicata*) and alkali-bulrush (*Bolboschoenus maritimus*) wetland zones above the permanently submerged aquatic vegetation zone (*Ruppia maritima*).

Both the SAV beds and the fringing brackish marsh are jurisdictional waters of the United States and both qualify as jurisdictional “Special Aquatic Sites” subject to regulations of the Clean Water Act Section 404(b)(1): vegetated shallows (40 CFR §230.43), occupying most of the pond area, and wetlands (40 CFR §230.41). The types, status, and ecological functions of these jurisdictional waters are incorrectly and incompletely described in the DEIR., which erroneously identifies them as mere “other waters”. The DEIR omits analysis of potentially significant impacts to the important special aquatic site resources of SAV beds, which it incorrectly identifies as (nuisance) “algal blooms”.

The entire pond (SAV beds and lower marsh zones) provide *perennial* aquatic habitat for small fish that are the important aquatic prey base for wading birds (egrets and herons), which access fish at their shallow (wading depth) margins. The habitat structure and functions of adjacent perennial aquatic vegetated shallows and terrestrial/riparian roosting (tree) could not be mitigated by an off-site fresh-brackish *seasonal* non-tidal wetland mitigation bank, since (a) *seasonal* wetlands lack *perennial* shallow water fish habitat necessary for a rich prey base for egrets and herons, and (b) large tree or shrub roost habitat suitable for egrets or herons cannot practically be established in fresh-brackish seasonal wetland soils in diked baylands. Even if adequate off-site compensatory mitigation habitat

were successfully established in San Pablo Bay, it would not provide mitigation for loss of site-faithful heron roosts in the San Rafael Bay area wetlands. The loss of the Corte Madera Inn pond would be a potentially significant impact to an integrated aquatic, wetland, and riparian habitat complex, and wetland-dependent wildlife. This impact is not mitigated by a seasonal non-tidal wetland mitigation bank, regardless of the acreage ratio or credits transferred.

1. Wetlands and other special aquatic sites. The “biotic resources assessment” dated October 2013 claims that the pond at Corte Madera Inn is a “water of the United States but not a wetland”. This conclusion is inconsistent with previous evidence provided by Wetlands and Water Resources (2005) and previous biological assessments they cite, indicating that pond wetland-aquatic vegetation zonation includes two federal Clean Water Act jurisdictional habitats that qualify as “special aquatic sites”:

(a) A vegetated **wetland** zone (40 CFR § 230.41.) composed of discrete patches of alkali-bulrush fringing low brackish marsh (*Bolboschoenus maritimus* in current taxonomic treatments; synonymous with obsolete names *Scirpus maritimus*, *S. robustus* (misapplied), and *Schoenoplectus maritimus*) and more extensively distributed saltgrass high brackish marsh (*Distichlis spicata*). 40 CFR § 230.41.

(b) A **submerged aquatic vegetation bed** (vegetated shallows; 40 CFR §230.41). The aquatic vegetation was tentatively identified by WWR in 2005 as a linear-leaved pondweed species (*Potamogeton* sp.), but it is most likely salt-tolerant wigeongrass (*Ruppia maritima*), or possibly brackish-tolerant sago pondweed (*Stuckenia pectinata*) or variable mixtures of both that fluctuate with salinity. Page 7 of the DEIR shows a summer photograph of the pond described as “algae on the surface”. This algal mat pattern is typical of late summer growth of shallow-submersed leaves and stems of *Ruppia maritima* that support filamentous green algae in warm summer months. *Ruppia* holds the attached algal mat in place and restricts wind-stress current transport of free-floating algae. Otherwise, a free-floating algal mat would be transported by wind-stress currents to the shoreline. When *Ruppia* canopies die and degrade, floating algae tend to sink or beach along the shore. *Ruppia* colonies are frequently mistaken for “algae” by casual observers or inexperienced field biologists.

Both “wetlands” and “vegetated shallows” are Special Aquatic Sites, with equal special status under the Clean Water Act Section 404(b)(1) guidelines, and they are not generic “other waters” of the United States, which lack special regulatory policies for impact assessment, mitigation, and alternatives analysis. The DEIR and Biotic Assessment (appendix H) misidentify the pond as mere “other waters”. The Biotic Assessment fails to identify or assess impacts to these special aquatic sites regulated under Section 404 of the Clean Water Act. WWR (2005) concluded that the previous Section 404 delineation performed by Zentner and Zentner failed to mention the presence of saltgrass (a native wetland grass species indicator of saline wetlands), which has dominated much of the Pond’s lower banks since biological investigations at the site were initiated in the late 1980s. WWR stated that “Saltgrass is not mentioned in either the delineation’s text or data sheets, despite the fact that one of the delineation’s maps displays a thick, dashed line around the perimeter of the Pond labeled “SALTGRASS”. The map WWR cited was based almost entirely on a map produced by Western Ecological Services Company (WESCO) in 1989. WWR noted that WESCO stated in even back in 1989 that saltgrass “is able to dominate the lower banks of the pond”, a condition that persisted to 2005 despite omission by Zentner and Zentner. The DEIR (page 4.3-2) states that this fringe contains pickleweed, another salt marsh wetland indicator plant when it is dominant to co-

dominant along a pond edge. The current (2013) Zenter and Zentner wetland delineation cited in the Biotic Assessment (Appendix H, DEIR) on page 8 describes the presence of saltgrass growing along the water's edge. This fringe of wetland plants along the "water's edge" meets EPA/Corps criteria for wetlands. Indeed, Appendix H states explicitly that wetland vegetation occurs at the pond (page 9), as a "scattered fringe" or "thin fringe". This is also indicated on the wetland delineation figure, which does not account for the claimed lack of jurisdictional wetlands despite reference to map legend of "scattered wetland vegetation". There is no wetland regulatory exemption or definition for "scattered". Thinness or discontinuity of wetland do not eliminate either wetland status or jurisdictional status under current or all past Corps of Engineers/EPA wetland delineation criteria. No quantitative data on extent or distribution of this wetland vegetation is given by Appendix H. Appendix H also fails to discuss previous observations of saltgrass and alkali-bulrush marsh, and fails to discuss its present condition or why it would not be a "wetland", jurisdictional or otherwise.

The DEIR (p. 4.3-6) describes sensitive natural communities as "natural community types considered by the CDFW to have a high inventory priority because of their rarity and vulnerability to disturbance and loss." However, the DEIR goes on to state that "[n]o sensitive natural community types are present on the site. This is another example of the erroneous and misleading characterization of the sensitive, special-status (Special Aquatic Site) submerged aquatic vegetation/vegetated shallows and fringing wetlands of the pond habitat complex.

This inconsistent and incoherent information regarding wetlands habitat at the project site precludes the public from understanding the correct magnitude, context, type and intensity of impacts to aquatic, wetland, and riparian habitats. The failure to correctly identify the type of jurisdictional wetland and aquatic habitats, and their distinctive ecological functions, precludes meaningful public comments on the adequacy of compensatory mitigation in seasonal wetland mitigation banks (see 2, below).

The repeated omission of both saltgrass marsh and alkali-bulrush marsh from the 2013 wetland jurisdictional delineation and biotic assessment is not consistent with the evidence that stable, persistent, fringing brackish marsh exists at the project site. Fringing marshes may be temporarily unobservable during high water pond stands in winter when above-ground marsh vegetation is submerged or senesced or both. The EIR preparer and lead agency should verify the extent of submerged aquatic vegetation (vegetated shallows) when they may be observable from about April to August. Similarly the EIR preparer and lead agency should verify the extent of saltgrass and alkali-bulrush marsh (wetlands). Omission of these special aquatic sites would likely result in failure to assess potentially significant unmitigated impacts. DEIR lacks any analysis of the impacts of filling and destroying the pond's special aquatic sites (vegetated shallows and wetlands).

2. Wetland and vegetated shallows wildlife habitat mitigation. Compensatory mitigation of these aquatic and wetland habitats at remote mitigation banks would not compensate for setting-specific impacts to sensitive or special-status wildlife species. Submerged aquatic vegetation beds and wetlands provide important foraging habitat for locally roosting black-crowned night herons, as well as other wading birds that visit the pond to forage. As regional heron and egret experts John Kelly and Scott Jennings noted (2016), the energetic efficiency of foraging at a food-rich site, with thermal protection of a tree canopy roost adjacent to foraging habitat, is an important ecological

function for heron conservation. Black crowned night herons have recurrently roosted in the trees bordering the pond for over a decade. WWR observed 20 black-crowned night herons roosting or foraging at the pond in fall 2005, and this species is site-faithful (re-occupying preferred locations for roosts). . Roosting reportedly occurs in apparently non-native riparian vegetation (ornamental trees) along the pond edge (WWR 2005).

I agree with heron experts John Kelly and Scott Jennings of Audubon Canyon Ranch, who identify the important value of the wetlands/aquatic habitat at Corte Madera pond for the active roosting colony of Black-crowned night herons. The conservation significance of this individual colony, as they explained, inheres in its role as a component of a complex of roost sites that enables the larger population to respond to ecological variability in predation, food availability, or disturbances. I agree with their expert opinion that the destruction of this long-established roost site would constitute a significant long-term cumulative (incremental) impact to the regional population, even if the “acute” (direct, short-term) impact of its destruction was not detected. The distinction between short-term direct impacts versus long-term cumulative impacts is relevant here.

The Appendix H states only that black-crowned night herons do not nest at the site, but it fails to disclose that they roost and feed there, and have done so for over a decade. This is misleading, because the DEIR’s omission of ecologically important heron roosting, and its exclusive emphasis on lack of heron nesting suggests that there are no potential significant impacts to herons if there are no nests. This is not a reasonable or biologically justifiable threshold of significance in a CEQA context. The long-term presence of a heron roost next to a stable, productive perennial aquatic foraging habitat (pond SAV and wetland) is a biologically significant resource, and its destruction would be a threshold for significant impacts in eastern Marin County, where heron roost sites, and potentially suitable roost sites, are scarce. .

Appendix H fails to provide the DEIR with any basis for assessing potentially significant impacts to the pond foraging habitat (vegetated shallows and wetlands within wading depth of egrets). The regional distribution of black-crowned night heron roosting and foraging habitats, and the relative importance or size of the site’s roost (significance) is not assessed. The DEIR is completely deficient in assessment of impacts to black-crowned night herons and their habitat.

My understanding is that the project proposes to mitigate the loss of the pond and habitat through the purchase of credits at the Burdell Ranch Wetland Conservation Bank, an existing 82 acre wetland located 17 miles north of the project area. In my opinion, money towards restoration work at the Burdell Ranch wetland does not adequately compensate for the elimination of the wetlands at the project site. The Burdell Ranch mitigation bank is a non-tidal “freshwater” (in fact, predominantly fresh-brackish) *seasonal* wetland complex that necessarily lacks large trees or tall canopy shrubs suitable for heron roosts, because large trees and shrubs cannot grow in fresh-brackish (slightly saline) wetland soils of diked baylands. The Burdell Ranch wetlands are *seasonal* wetlands that necessarily lack perennial “vegetated shallows” (submerged aquatic vegetation) or other extensive, perennial shallow aquatic habitats providing year-round rich prey base for herons and egrets. The Burdell wetlands are “seasonal” wetlands because of habitat management objective requirements of the Burdell Mitigation Bank Memorandum of Agreement among state and federal resource agencies (MOA, p. 12). The description of the mitigation bank at its website (www.burdellranch.com) identifies its suitability for mitigation of wetlands, but *not* submerged aquatic vegetation/vegetated shallows.

The Burdell Ranch mitigation bank cannot provide either the type (vegetated shallows) or wildlife habitat functions (year-round adjacent heron roost habitat and foraging habitat) of the Corte Madera Inn pond. Moreover, it is located in San Pablo Bay, which implies a disadvantageous, long energetically costly flight distance between potential heron foraging and roost sites (Kelly *et al.* 2007), compared with the integrated habitats of the project site (Kelly and Jennings 2016). Finally, mitigating heron habitat or populations in San Pablo Bay would not offset the local decline in heron habitat in Corte Madera or San Rafael Bay vicinity wetlands.

Regarding the potential water quality of the pond, I agree with WWR's conclusion that conclusion that hypoxia and hydrogen sulfide emissions (likely to occur in summer stratified pond conditions with warm temperatures and brackish organic bottom sediments) would be highly feasible to correct with simple measures to enhance DO, such as very few bubblers that create weak vertical currents (mixing, overcoming stratification) and provide dissolved oxygen throughout the water column. This simple water quality enhancement potential should be considered in assessment of pond impacts and alternatives.

3. Conclusions. The DEIR findings regarding wetlands and wetland jurisdiction are based on conflicting, inconsistent evidence. The DEIR appears to omit all disclosure and impact analysis of perennial submerged aquatic habitat beds (vegetated shallows) The DEIR premise that no jurisdictional wetlands or other wetlands are present is not credible, since all information sources identify the presence of wetland vegetation in shallow aquatic habitat. Finally, the off-site compensatory mitigation approach for wetlands and aquatic habitats would likely result in unmitigated significant impacts due to the loss of the full integrated pond habitat complex supporting site-faithful foraging and roosting black-crowned night herons.

My conclusions are based on my professional experience as senior staff biologist at the U.S. Army Corps of Engineers (San Francisco District), and U.S. Fish and Wildlife Service, where I was responsible for wetland jurisdictional delineations and their review, wetland impact assessments, wetland restoration plans and mitigation plans, and joint NEPA/CEQA impact assessments, including EIR/EIS document management. I have over 36 years professional experience in management, restoration of coastal habitats, with specialization in wetlands and other shoreline habitats.

Literature Reviewed and Cited

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February 4, 2016

Mr. Bob Silvestri, President
Community Venture Partners
73 Surrey Avenue
Mill Valley, CA 94941

Subject: Review of Final, Recirculated and Draft Environmental Impact Reports
Corte Madera Inn Rebuild Project, Marin County, California

Dear Bob:

I am a hydrologist with over twenty five years of technical and consulting experience in the fields of geology, hydrology, and hydrogeology. I have been providing professional hydrology services in California since 1991 and routinely manage projects in the areas of surface- and groundwater hydrology, flood hazard assessment, water quality, water resources management, and geomorphology. Most of my work is located in the Coast Range watersheds of California, with emphasis on Marin County. My areas of expertise include: characterizing and modeling watershed-scale hydrologic and geomorphic processes; evaluating surface- and ground-water resources/quality and their interaction; assessing hydrologic, geomorphic, and water quality responses to land-use changes in watersheds and causes of stream channel instability; and designing and implementing field investigations characterizing surface and subsurface hydrologic and water quality conditions. I co-own and operate the hydrology and engineering consulting firm Kamman Hydrology & Engineering, Inc. in San Rafael, California (established in 1997). I earned a Master of Science in Geology, specializing in Sedimentology and Hydrogeology as well as an A.B. in Geology from Miami University, Oxford, Ohio. I am a Certified Hydrogeologist (CHg) and a registered Professional Geologist (PG).

I have reviewed the Final, Recirculated and Draft Environmental Impact Reports for the Corte Madera Inn Rebuild Project (State Clearinghouse No. 2014042069), prepared by Amy Skewes-Cox between November 2014 and November 2015. In addition to reviewing the DEIR, I have reviewed the following documents and rely on information contained in these documents to help formulate my opinions.

- Federal Emergency Management Agency (FERC), 2016, (Pending) Flood Insurance Study, Marin County, California and Incorporated Areas. Flood Insurance Study Number 06041CV001C, Volumes 3 of 3, Second Revision, March 16.
- Town of Corte Madera, 2009, General Plan for the Town of Corte Madera. Chapter 7.0 Flooding and Floodplain Management, April, 18p.
- Town of Corte Madera, 1999, Corte Madera, California – Code of Ordinance, Supplement 17, Title 16 – Protection of Flood Hazard Areas. Retrieved from https://www.municode.com/library/ca/corte_madera/codes/code_of_ordinances

Based on my review of these materials, it is my professional opinion that the EIR has failed to demonstrate that the project will have no potential adverse impact on local groundwater resources, flood hazards, and surface/ground-water quality. In addition, the EIR does not provide technical hydrologic analyses or project descriptions that comply with CEQA and City policies and ordinances associated with groundwater, flooding and flood hazard management. The rationale for these opinions is provided below.

1. Potential Impact on Groundwater Recharge: The EIR states that there are existing and potential beneficial uses for local groundwater resources. Page 4.8-1 of the DEIR states, “*Existing and potential beneficial uses of the Ross Valley Groundwater Basin include municipal and domestic water supply, industrial process water supply, industrial service water supply, and agricultural water supply.*” The EIR significance criteria state that interference with groundwater recharge is a significant effect on hydrology (pg. 4.8-10). Specifically, this criteria states, “*Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.*”

Groundwater recharge to the local project area aquifer comes from infiltration of rainwater through pervious soil as well as infiltration of water through local area canals, lagoons, drainage ditches and ponds. Currently, there is undoubtedly infiltration of water through the earthen base of the Inn Pond that recharges the local groundwater aquifer and unpaved areas. Reduction of surface water infiltration reduces the available supply in the underlying aquifer and impacts the potential beneficial uses listed above.

The EIR claims that, “*The project would not substantially deplete groundwater resources or interfere with groundwater recharge. Changes in impervious surface as part of proposed project would be minor compared to the 24.7 square miles of the Ross Valley Watershed, and no significant changes in groundwater recharge would be expected as a result of development associated with the project.*” There are many independent and hydrologically disconnected groundwater basins/aquifers within the 24.7 square mile Ross Valley watershed. This variability is reflected in the different geologic rock types/deposits and physical environments in which they form throughout the watershed. As such, groundwater conditions (recharge, water level, storage volume, etc.) will behave different and independent between the hydrologically disconnected groundwater subbasins that underlie the Ross Valley watershed. Changes in groundwater recharge associated with the project has the potential to significantly affect LOCAL groundwater conditions. The EIR does not present any technical analyses on how the loss of groundwater recharge from the existing Inn Pond will affect the local water table, groundwater storage volume, and surrounding beneficial uses. For example: no water budget was prepared or presented in the EIR to quantify the change in recharge volumes due to filling and paving of the pond and increasing the area of impervious surfaces; the EIR does not perform or

cite any site-specific studies or field data that evaluate if reduced infiltration and recharge will effect (i.e. lower) underlying groundwater levels and storage volumes; and there is no mention of any attempt to inventory surrounding wells, pumping rates and the effect changes in groundwater conditions will have on those wells. Therefore, without an analysis that demonstrates otherwise, the effect of the project on local groundwater (i.e., reduced groundwater recharge due to filling of the pond and increased impervious surface area) remains unresolved and a potentially significant impact.

2. Potential Impact on Groundwater Quality: As stated above, beneficial uses of the Ross Valley Groundwater Basin include municipal, domestic, industrial and agricultural water supply. The degree of these activities within the area of project influence are not identified in the EIR. It's also important to note that, due to the close proximity to San Francisco Bay, groundwater pumping from wells in the vicinity of the project is subject to salt water intrusion from the Bay and its underlying saline aquifer. Scenarios that could lead to salt water intrusion include over-pumping or changes in recharge to the underlying aquifer. Much of the water contained in the Inn Pond is likely fresh to brackish water and low in salinity during much of the year. Therefore, the pond is likely a seasonal source of fresh groundwater recharge, which may help alleviate impacts of stated salt water intrusion. The EIR only evaluates the presence of wells on the project property and has not identified potential supply wells within the project vicinity that would be influenced by changes in pond recharge and potential enhanced salt water intrusion. Thus, the effect of the project on local groundwater quality and impacts to surrounding wells may be significant.

In summary, the EIR does not present or cite any studies that identify surrounding groundwater conditions and uses, therefore no determination about how the project may effect an individual well or contribute to the possible cumulative effects (e.g., groundwater over-pumping) by other local area wells. In my opinion, a responsible analysis would include a detailed water budget of pre- and post-project conditions; inventory or surrounding wells and wells uses; characterization of existing and historic water levels and aquifer storage volume; and characterization of groundwater quality and presence/potential for salt water intrusion.

3. Loss of Flood Water Storage: The following section from the FEMA Flood Insurance Study (FIS; pages 12-13)) provides a good description about the causes for flooding in the project area.

All floods of any consequence in the Town of Corte Madera have occurred in the low areas that have been reclaimed from the bay's marsh and tidal lands. Generally speaking, these reclaimed areas encompass everything in and east of the Madera Gardens and the lands north of Paradise Drive. These areas constitute one-half of the present town area.

Flooding can result from either of two phenomena. The first is from storm runoff originating within the Town of Corte Madera and flooding low lands due to inadequate drainage channels and pipes necessary to transport this water into San Francisco Bay (sheet flooding). The second cause is from high water in the bay that in turn pushes salt water up into the stream channels and inundates all lands below the tide level that are not leveed. The elevation of the water surface in the bay is dependent upon the tide, local runoff, and wind and wave effects.

The extent of flooding has been further complicated by the fact that some of the originally reclaimed tidal lands were not filled high enough. The clay materials in the bay mud are so unstable that land subsidence takes place over periods of 30 years to 50 years. Thus, certain areas in the Town of Corte Madera have subsided to elevations that now cannot be drained with the existing storm drainage system.

Another flood complication is the gradual filling of the tidal lands that served originally as natural ponding areas. The storm waters that would have drained to these areas must now proceed down the channels and into the bay, or to other low lands where ponding can occur.

A significant conclusion stated by FEMA FIS (page 44) is, “*The major flooding of the Town of Corte Madera considered is due to tidal flooding from San Francisco Bay.*” Model results from a hydraulic study completed by the U.S. Army Corps of Engineers (USACE) cited in the FIS, indicates that a flood having a 1-percent annual chance recurrence (100-year flood) interval in Corte Madera Creek will not create an inundation problem as severe as that created by the estimated 1-percent annual chance tide (100-year tide) in San Francisco Bay.

The FEMA FIS also provides a summary of the flood protection measures that have been developed for the project area. The following section comes from pages 22-23 of the FIS.

A Marin County ordinance controlling tidal areas states that the first floor of a structure must be at an elevation of at least 9.69 feet (assumed to be NAVD 88).

In order to control the substantial amount of storm water runoff from the steep slopes of Corte Madera Ridge and the impervious surfaces in the developed areas of town, and to prevent flooding of the lowlands, developers in the past found it necessary to build a system of lagoons and drainage canals. Most of the storm water runoff is discharged into Corte Madera Creek but San Clemente Creek, east of the Redwood Highway, drains a large portion of the eastern half of the town to San Francisco Bay.

Foreseeing the need for additional drainage works to facilitate new development, the town adopted a comprehensive drainage plan in April 1956. The plan designates certain areas for the “high level” fill method and other areas for the “low level” fill method. The developer has the choice of alternatives on certain other properties. The “high level” method involves filling low areas to elevations that are high enough to drain properly against the highest probable tides. The “low level” method involves protection of the area to be developed by use of levees, so that fills are placed at a much lower elevation than with the high level method. The low level method also calls for a holding pond or a lagoon so as to hold storm water during high tide periods until the water can be discharged into the bay through use of pumps or culverts equipped with tide gates.

A comprehensive drainage plan has been in effect in the Town of Corte Madera. The drainage problems have become much more severe, and areas built in conformance with the drainage plan recommendations have also experienced flood damage. The rapid increase in population and the accompanying development of housing facilities during this period have served to accentuate the damage problems.

All drainage ways and channels that carry runoff in the Town of Corte Madera have been partially or fully modified from their natural state. These modifications have been in the form of straightened channels or pipelines. Each channel originates at the ridge on the southern boundary of the Town of Corte Madera and traverses northerly so as to empty into Corte Madera Creek, San Clemente Creek, or San Francisco Bay.

The channels are dry in the summer, except for small quantities of irrigation return waters. When the winter rains begin, the channels again carry water during and after each storm. There are no stream gaging stations for the channels in the Town of Corte Madera.

There are two manmade lagoons in the Madera Gardens area, designated as Lagoon No. 1 and Lagoon No. 2. These lagoons were constructed as part of the Madera Gardens subdivision for the purpose of collecting and holding storm runoff during high tide periods and then discharging the collected water into Corte Madera Creek during periods of low tide.

The Inn Pond is part of City’s floodwater storage as it is tied directly to Lagoon No. 1 in Watershed 1. The City lowers levels of Lagoon No. 1 and Inn Pond in winter to maximize floodwater storage capacity. As affirmed in the FEMA FIS, the loss of floodwater storage in a flood-prone area located within the 100-year flood zone (i.e., filling of Inn Pond) would increase the risk of flood hazards. Yet, the EIR states (page 3-9): “According to a 2005 flood control capacity analysis [uncited], the storage capacity of the pond is not necessary for flood control purposes, even during the worst-case scenario of a 100-year rainfall event.”

Arguably any loss of flood storage in an area prone to severe flooding, in this case more from rising tide waters than rainfall runoff, is certainly an adverse impact. Taken in combination with the displacement of floodwater storage due to the placement of project fill to raise the building pads out of the floodplain (“high level fill”), the project will displace flood water storage to surrounding low-lying areas. Again, the EIR fails to present any project specific information that characterize how existing flood storage and drainage patterns will be altered by the project or project alternatives and quantify the amount of floodwaters displaced by filling of the pond, raising building foundations and increasing runoff volume. The findings from these types of analyses are necessary to determine the magnitude, fate and impact of floodwaters forced onto surrounding areas by construction of the project.

4. Increase in Stormwater Runoff: The EIR states less than significant impact associated with the loss of flood storage associated with the filling of the Inn Pond 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, I assume that due to the increase in impervious surface area, particularly under the Proposed Project and Alternative 3, which eliminate the pond, there will be a net increase in the TOTAL volume of water running off the site during any given storm. The rate (discharge) at which water runs off won't be higher, but, the EIR does not quantify/present 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 except other surrounding low lands (due to high tides and existing propensity for flooding). The main point here is that 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 further compounds the risk of flooding when considered in combination with the loss of flood storage from filling the Inn Pond and displacement of flood storage from importing and placing fill to raise site grades out of the current flood zone.

The EIR does not present an analysis of how the total volume of runoff from the project will change (likely increase) due to increased impervious surface area. Such an analysis includes modeling or analytical solutions that quantify and account for how rainfall-runoff changes between pre- and post-project conditions. This type of analysis must have been started, if not completed, in order to quantify the change in peak discharge rates from the site, as cited in the EIR and discussed above. Yet, the EIR does not present data or analytical results on changes in flooding volume on-site or displaced from the site. Therefore the EIR does not contain sufficient information on changes in flood conditions to inform a conclusion of no significant impact.

5. Lack of Project Drainage Plan: The EIR does not answer or address how existing or increased drainage will be directed away from the site once the project is

constructed, including filling the Inn Pond, placing fill within an existing flood zone and generating increased runoff volumes from increased impervious surfaces. Without the storage associated with the Inn Pond or other site areas currently in the designated floodplain, will runoff from the project be able to flow to Lagoon #1? Where will project runoff be directed/displaced – west towards Lagoon #1 or east under Hwy 101? I would assume the pond 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 or other surrounding low-lying areas? The EIR does not provide an adequate project description (drainage plan) to evaluate these potential impacts to flooding.

6. Impacts of Sea Level Rise: The disparity between the severity of creek and tidal flooding in the project area will only increase with future sea-level rise (SLR). Rising sea level will translate to higher water levels in San Francisco Bay and increased flood hazard risk from tidal flooding. The EIR presents a reasonable description of estimated sea level rise rates and conclusion that additional measures may be required in the project vicinity to address increasing flooding hazards in the future.

However, the EIR does not include any studies that quantify potential flood conditions or descriptions of how the project will mitigate for: a) increased runoff volume, b) decreased on-site retention (filling of Inn Pond), and c) construction of storm drainage facilities that will reduce or alleviate flood hazard conditions, for either current or future SLR hydrologic conditions. Thus, the EIR has not complied with local City policies and ordinances (esp. City Policies F-2.1, F-2.2, F-3.2, and F-4.3) specific to conducting flood studies or project planning that demonstrate the project will not increase flood hazards on the site or within the vicinity surrounding the project site. Nor does the EIR adequately address through study or mitigation the recognized and admitted increase in flood hazard due to sea level rise. Instead, the EIR implies that such measures may be deferred to the future.

7. Potential Impact on Surface Water Quality: The Inn Pond likely provides the opportunity for settling of sediment from turbid flood waters. The EIR does not address or answer how the loss of this water quality benefit (by filling of the Inn Pond) could adversely impact adjacent water bodies, esp. SF Bay and Corte Madera Creek, by allowing higher concentrations of suspended sediment (and organic urban contaminants that commonly adhere to fine sediment) to remain in local waterways that discharge to SF Bay.
8. Inadequate Mitigation Measures: The stated mitigation measure HYDRO-2 proposes to mitigate flood hazard by submitting verification that the project design complies with Corte Madera Municipal Code Chapter 16.10 and ensuring that all finished floor grades are at least 1 foot above the 100-year Base Flood Elevation (BFE). Currently, the project site grades are between 5- and 8-feet in elevation and lie within the FEMA flood zone. Proposed finish floor grades for the proposed project will be at 11-feet in elevation or 1 foot above the FEMA

base flood elevation of 10-feet. This will require importing and placing 14,600 cubic yards (cy) of earthen fill to raise finished floor grades out of the flood zone. Approximately 9,700 cy of fill material will be needed to fill the on-site pond.

As described above, the EIR does not present sufficient hydrologic study results or drainage plans that demonstrate that the project will not adversely impact flood hazards or mitigate for potential impacts. To state that the EIR will comply with these requirements in the future defers any potential mitigation that should be presented and evaluated in the EIR.

Without more detailed description of project fill and drainage plans, mitigation HYDRO-2 (raising finished floor elevations) could logically generate a potential adverse impact in-itself. Presumably, by raising the elevation of existing site grades out of the BFE, these areas will need to be filled or constructed in a way that displaces existing floodwaters. These displaced flood waters need to go somewhere, and most likely will be displaced to adjacent low-lying areas, increasing the flood hazard in those areas. Thus, the EIR should be considered inadequate as it has not adequately characterized and quantified potential flood impacts, defers mitigation for these potential impacts, and proposes a mitigation measure that could exacerbate flooding in on-site and surrounding low-lying areas. As discussed above, the EIR has not demonstrated that other potential adverse impacts to water resources and flooding have been avoided either, including:

- Substantial interference with groundwater recharge that may lead to declines in water levels, storage volume and groundwater quality impacts;
- Altered drainage patterns that increase the amount of surface runoff that could result in flooding on- or off-site; and
- Exposing people or structures to increased risk of flooding as a result of the project.

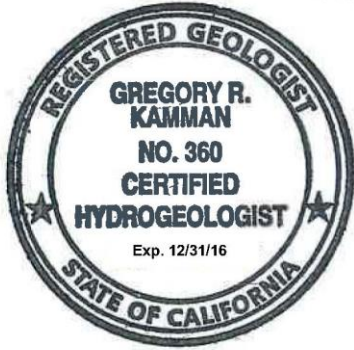
9. State Lands Commission Jurisdiction: The Inn Pond is historic Baylands and currently connected to tidal action from San Francisco Bay via Shorebird Marsh. Based on our experience in working on restoration and flood control projects around San Francisco Bay, I suspect that the project site falls under jurisdiction of the State Lands Commission. I did not see any mention of this in the “Regulatory Framework” section of the EIR.

Please feel free to contact me with any questions regarding the material and conclusions contained in this letter report.

Sincerely,



Greg Kamman, PG, CHG
Principal Hydrologist



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June 16, 2016

Sahrye Cohen
Permit Manager
US Army Corps of Engineers
San Francisco District, Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

Re: Public Notice: Project: Corte Madera Rebuild, Public Notice Number: 2000-255330N

Dear Ms. Cohen:

I am writing on behalf of Community Venture Partners, Inc. ("CVP") regarding the application to the Army Corps of Engineers ("Corps") filed by Reneson Hotels, Inc. ("Developer") through its agent, John Zentner, for a Section 404 permit to fill a 0.64 acre pond and wetland habitat on the 5.47-acre Best Western Corte Madera Inn site at 56 Madera Boulevard in Corte Madera, California. The Developer's proposal to fill the pond is part of a proposed demolition of an existing 110 room hotel and restaurant and the construction of a new luxury 174-room hotel ("Project").

The record demonstrates that the pond is a special aquatic site with submerged aquatic vegetation, frequent wildlife use and adjacent habitat for sensitive bird species such as black crowned night herons that use the area for regular roosting and foraging.

The Project proposes to fill this habitat based on the design of its preferred alternative for a 174 room luxury hotel, which the Developer claims renders preserving the pond an infeasible option. However, this assertion is contradicted by the record as well as independent analyses conducted by CVP, and experts who have examined the facts of this proposal. *See* Comments of Community Venture Partners, Corte Madera Project Rebuild, dated June 16, 2016 ("CVP Comments"); CVP Comments, Exhibit 5, Corte Madera Inn Redevelopment: Market Study & Financial Feasibility Evaluation ("Feasibility Evaluation").

As a result, the Corps cannot make the findings that the Project is the least damaging practical alternative, as required by the Section 404 regulations. *See* 40 C.F.R. § 230.10(a). This is particularly true given that in this case the Developer has been less than forthcoming with Corps' officials about the alternative *onsite* Project designs that would preserve the Pond while also

achieving the Developer's project purposes.

A. Background on Project

1. The Pond is a Special Aquatic Site.

The Corps' Notice for the Project describes the pond as follows:

The project site also has a 0.64 acre brackish pond that is jurisdictional waters of the U.S. This pond consists of open water with algae and submerged aquatic vegetation (widgeon grass -*Ruppia maritime*) and a fringe wetland of saltgrass (*Distichlis spicata*) and alkali-bulrush (*Bolboschoenus maritimus*). The waters have a constricted connection to San Pablo Bay and the site was historically tidal baylands.

The Corps' description of the pond and its surrounding wetland area is incomplete. As noted by Peter Baye, a local ecologist with longtime expertise in wetland identification and delineation, the Wetlands and Water Resources (2005) and previous biological assessments (*See CVP Comments, Exhibits 15-17*) identified the "pond wetland-aquatic vegetation zonation" as including two federal Clean Water Act jurisdictional habitats that qualify as "special aquatic sites:"

(a) a vegetated wetland zone composed of discrete patches of alkali-bulrush fringing low brackish marsh.... and more extensively distributed saltgrass high brackish marsh...

(b) a submerged aquatic vegetation bed (vegetated shallows) tentatively identified by WWR as a linear-leaved pondweed species (*Potamogeton* sp.), but most likely salt-tolerant widgeongrass (*Ruppia maritima*), or possibly brackish-tolerant sago pondweed (*Stuckenia pectinata*) or mixtures. *Ruppia* colonies are frequently mistaken for "algae" by casual observers or inexperienced field biologists.

See CVP comments, Exhibit 6, p. 1. Baye further identifies the significant impacts of filling the pond on rare black-crowned night herons that forage and roost there:

Submerged aquatic vegetation beds and wetlands provide foraging habitat for black-crowned night herons which have recurrently roosted in the trees bordering the pond for over a decade. WWR observed 20 black-crowned night herons roosting or foraging at the pond in fall 2005, and this species is site-faithful (re-occupying preferred locations for roosts). [The DEIR] *fails to disclose* that they roost and feed there, and have done so for over a decade. Roosting reportedly occurs in apparently non-native riparian vegetation (ornamental trees) along the pond edge (WWR 2005).

Significant impacts may occur to essential foraging and roosting habitat of site-faithful black crowned night herons; significant impacts are not limited to nesting sites. [The DEIR] fails to provide the DEIR with any basis for assessing potentially significant impacts to the pond foraging habitat (vegetated shallows and wetlands within wading depth of egrets). The regional distribution of black-crowned night heron roosting and foraging habitats, and the relative importance or size of the site's roost (significance) is not

assessed. The DEIR is completely deficient in assessment of impacts to black-crowned night herons and their habitat.

Id., pp. 2-3. This view is corroborated by Audubon Canyon Ranch researchers, who found that the loss of the wetland area could have significant impacts on the local night heron population:

We are very concerned that the proposed filling and development of the wetland pond area behind the Best Western Corte Madera Inn would destroy a valuable wetland habitat area occupied by a roosting colony of Black-crowned Night-Herons. *This species is one of the resident species of colonially nesting herons that depends on the protection of remnant wetlands surrounding the San Francisco Bay, such as the wetland area considered in this proposal.* Annual results from the Southern Marin County Christmas Bird Count confirm that the roost site at the proposed development site is actively used by this species. Numerous scientific investigators have demonstrated that this species is an indicator of healthy wetlands (Hothem et al. 2010), and that protecting populations of such species aides effective management of these important habitats.

See CVP Comments, Exhibit 13. (emphasis added.) The ARC researchers also found that “[c]ommunal roosting sites provide important functions needed by herons, including enhanced foraging access and efficiency, thermoregulatory benefits, and reduction of predation risk,” and that [w]etland habitat in the San Francisco Bay Area is regionally and globally important for several species of wading birds, including Black-Crowned Night-Heron.” Most critically, the ARC researchers noted that:

[T]he protection of individual sites such as this one contributes to a valuable variety of habitat alternatives needed to ensure the persistence of these birds in the region. Together, the protection of individual roosting sites allows birds to adjust to varying levels of predation pressure and disturbance, unpredictable changes in weather, and increasing water levels associated local flooding and sea level rise. *Therefore, the loss of any active Black-crowned Night-Heron roost represents the incremental loss of valuable habitat that may contribute to cumulative impacts over more extensive areas of the San Francisco Bay area.*

See CVP Comments, Exhibit 13 (emphasis added.)

Finally, the important habitat status of the pond was confirmed by the San Francisco Regional Water Quality Control Board, which reviewed photos of the site showing demonstrating submerged aquatic vegetation and concluded that “the pond is a special aquatic site that needs to be preserved to the maximum extent practicable.” See CVP Comments, Exhibit 14 (emphasis added.)

In sum, the Corps’ notice does not provide adequate information regarding the regulatory status or ecological value of the pond proposed to be filled by the Developer for a luxury hotel.

2. CEQA Review of Project to Date Including Consideration of Onsite Alternatives.

The Corps' notice does not disclose the substantial review process of the Project undergone under the California Environmental Quality Act ("CEQA"), Pub. Res. Code §§ 21000 *et seq.*,

As part of CEQA review process, the Developer has prepared two environmental impact reports, none of which have disclosed that the pond constitutes a special aquatic site due to its submerged aquatic vegetation and transitional wetland habitat valuable for wildlife.

Further, the CEQA review process for the Project in fact identified *two onsite project alternatives* that would increase the number of hotel rooms on the site while still preserving the pond. These include Alternative 2: - 147-Room Hotel; Alternative 3: and Alternative 4 - 187-room hotel (130,326 square feet of gross floor area) and retention of the on-site pond. *See* CVP Comments, Exhibits 3A-B.

For Alternative 2, the draft Environmental Impact Report ("DEIR") states:

Alternative 2 would leave the pond in its current location. A new hotel would be built on the remaining site area (see Figure 5-1) with an FAR of 0.52.....The hotel would include 147 rooms in a three-story building as shown in Figure 5-1.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.* (emphasis added)

See CVP Comments, Exhibits 3A (DEIR p. 5-2) (emphasis added.) Despite the apparent feasibility of the 147 room Alternative 2, the DEIR goes on to state that this alternative "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.*" *Id.* (emphasis added.)

For the 187 room Alternative 4, the Recirculated DEIR ("RDEIR") states:

Retaining the existing pond and establishing a minimum 20-foot-wide buffer around this feature would avoid the significant impacts associated with filling of the 0.64-acre of

jurisdictional waters and would allow for substantial improvement to its current condition to address odor, aesthetic, and safety concerns and improve existing wildlife habitat values as well....Alternative 4 would require further detailed study but could include a number of modifications to the existing bank configuration and improved management of water levels and circulation. In addition, the buffer zone created under this alternative would allow for additional native enhancement plantings around this feature not available under the No Project Alternative. Increasing water circulation and aeration during the warmer months when anaerobic conditions develop as a result of poor water quality and higher water temperatures could help address the concerns about odor and aesthetic problems. With proper management and controls, options to be explored to improve water quality and circulation include using the existing culvert with slide gate to the tidally influenced ditch along the west side of Highway 101 and the culvert to Lagoon No. 1 for improved water circulation, and using spray fountains in the pond to improve aeration....To further improve the existing limited habitat values, the perimeter of the pond could be revegetated with native marsh riparian and upland plant species including substantial plantings in the upland 20-foot buffer and adjacent areas along the cross-site roadway in this alternative.

Any modifications to jurisdictional waters would require appropriate authorizations from regulatory agencies, including the U.S. Army Corps of Engineers, Regional Water Quality Control Board (RWQCB), and possibly California Department of Fish and Wildlife (CDFW). *This would be a relatively simple process in comparison to the proposed project, however, given that the improvements would greatly improve existing habitat functions and values and could be designed as a habitat improvement and restoration program.*

See CVP Comments, Exhibit 3B (RDEIR, pp. 3-7-3.8) (emphases added.)

3. CEQA Process Halted Due to Regulatory Consensus that Wetland/Pond Area is a Special Aquatic Site despite Developer's Attempt to Conceal This Fact.

During the CEQA process on the Project, citizens and community groups strongly objected to the Developer's characterization of the Pond they wished to fill for their luxury hotel as a 'cesspool' and visually intrusive. Finally, in response to Peter Baye's identification of the pond as in fact a sensitive habitat and special aquatic site due in part to the existence of submerged aquatic vegetation, *see* CVP comments, Exhibit 6, p. 1, the Developer funded its consultants to provide a response on March 11, 2016, which stated:

Mr. Baye is incorrect in his claims that the pond bottom supports a submerged perennial aquatic vegetation bed (SAV) and therefore qualifies as a Special Aquatic Site....The claims by Mr. Baye that the Draft EIR "...omits analysis of potentially significant impacts to the important special aquatic site resources of SAV beds... "is erroneous because the site does not contain SAV beds. Algal blooms are a seasonal problem with the pond and an indication of poor circulation, and they create anaerobic conditions as they decompose that limit available oxygen in the water and reduce the suitability of the pond to support aquatic life.

The Developer's consultant's conclusion was based on a site visit on February 22, 2016, a time

period in the winter well before submerged aquatic vegetation would have a chance to grow and be visible to a casual observer. Nevertheless, relying on its consultant's conclusions, the Developer subsequently published an article in the local Marin Independent Journal, which asserted:

“The independent biologist concluded that the pond is not a wetland or nesting habitat for birds. Specifically, the environmental report noted, ‘The lack of protective emergent vegetation, poor water quality, and relatively small size of the pond collectively limit the habitat value of this feature on the site.’”

See <http://www.marinij.com/opinion/20160415/marin-voice-rebuilding-the-inn-with-an-environmentally-friendly-focus>.

In response to this continued misrepresentation by the Developer and its consultants, concerned citizens sent photos of the submerged aquatic vegetation now visible in the pond to the Regional Board, which led to the Board to notify the Town of Corte Madera that the Developer's characterization was in error:

We were sent the following photographs of the pond at the Corte Madera Inn Rebuild Project Site. The photographs were taken on April 13 when the water in the pond had been drawn down. The photographs clearly show submerged aquatic vegetation growing within the pond at the Corte Madera Inn Site. Based on this, the pond is a special aquatic site that needs to be preserved to the maximum extent practicable. As such, we plan to attend the Town Council meeting to inform the Council that they may be approving *a project that we will not be able to permit under our regulations*.

See CVP Comments, Exhibit 14 (emphasis added.)¹

In response, on May 3, 2016, the Planning Director Adam Wolff notified the Town Council that based on the letter they had received from the Regional Board; the Town would be putting off scheduling a future hearing for the Project to an indefinite time in the future.

Less than two weeks later, on May 16, 2016, the Corps issued its Notice of the Developer's application for a 404 permit to fill the pond and its surrounding wetlands habitat.

B. 404 Regulations and Related Requirements for Evaluating Practical Alternatives to Filling Wetlands.

Under the Section 404 Regulations, the Corps may not permit the filling of a pond “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10(a).

"An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." *Id.*§

¹ See also CVP Comments pp. 7-9 for further discussion of the Developer's mischaracterization of the pond and its special aquatic site status.

230.10(a)(2). (emphasis added.)

Further, if the activity associated with a discharge is proposed for a “special aquatic site” and does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not “water dependent”), “practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.” *Id.* § 230.10(a)(3) (emphasis added).

The 1990 Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency entitled “The Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines” further states:

Section 230.10(a) requires that *no discharge shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.Compensatory mitigation may not be used as a method to reduce environmental impacts* in the evaluation of the least environmentally damaging practicable alternatives for the purposes of requirements under Section 230.10(a). (emphases added.)

Other regulatory guidance on the issue of how the Corps must consider whether there are practical alternatives to filling a wetland comes in several forms. For example, the Preamble to the Section 404 Regulations states the following:

[O]ur revised “water dependency” provision creates a presumption that there are practicable alternatives to “non-water dependent” discharges proposed for special aquatic sites. ...The mere fact that an alternative may cost somewhat more does not necessarily mean it is not practicable (see § 230.10(a)(2) and discussion below). Because the applicant may rebut the presumption through a clear showing in a given case, no unreasonable hardship should be worked. At the same time, *this presumption should have the effect of forcing a hard look at the feasibility of using environmentally preferable sites....*

What is practicable depends on cost, technical, and logistic factors. We have changed the word “economic” to “cost”. Our intent is to consider those alternatives which are reasonable in terms of the overall scope/cost of the proposed project. *The term economic might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines. We consider it implicit that, to be practicable, an alternative must be capable of achieving the basic purpose of the proposed activity.* Nonetheless, we have made this explicit to allay widespread concern. Both “internal” and “external” alternatives, as described in the September 18, 1979 Preamble, must satisfy the practicable test. In order for an “external” alternative to be practicable, it must be reasonably available or obtainable. However, the mere fact of ownership or lack thereof, does not necessarily determine reasonable availability...These waters form a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided..... If an alleged alternative is unreasonably expensive to the applicant, the alternative is not “practicable.” (emphasis added)

See 45 Fed. Reg. 85336 (emphases added.)

Further, the Memorandum to the Field: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking (Aug. 23, 1993 – Dec. 31, 1998, Department of the Army and Environmental Protection Agency) (“Guidance on Flexibility”) document states:

The preamble to the Guidelines also states that “[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not, 'practicable.'" Guidelines Preamble, "Economic Factors", 45 Federal Register 85343 (December 24, 1980)... *It is important to emphasize, however, that it is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued.* 40 CFR 230.12(a)(3)(iv). (emphasis added)

C. Application of Section 404 Regulations to the Proposed Project.

Under the 404 Regulations, an alternative is “practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” 40 C.F.R. § 230.10(a)(2). As noted by a leading publication on the Regulations:

The determination of what constitutes an unreasonable expense should generally consider *whether the projected cost is substantially greater than the costs normally associated with the particular type of project, not the financial circumstances of the applicant.* Debates over the issue of cost often revolve around specific issues of capital costs, operating costs, and funds committed to the project before the permit was issued. As described above, applicants may not limit the scope of the alternatives analysis by spending money on their proposed site and then asserting that alternatives are not feasible. Increases in costs do not necessarily render an alternative infeasible. An alternative that increases costs so as to preclude construction of a project (e.g., would render the project uneconomical) would not normally be feasible.

See Environmental Law Institute, “The Federal Wetland Permitting Program: Avoidance and Minimization Requirements,” March 2008, p. 10 ((emphasis added.) See also Guidance on Flexibility, p. 6 (“It is important to emphasize, however, that it is *not a particular applicant's financial standing that is the primary consideration for determining practicability*, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.”)

Here, the CVP Comments and accompanying Feasibility Evaluation clearly demonstrate the practical feasibility of maintaining a profitable hotel on the Project site, whether as a hotel with the same number of or moderate increase in room number. Indeed, the Feasibility Evaluation notes:

[T]he best comparable and direct competition on all metrics, for a new hotel, is probably the Marriott Courtyards Inn at Larkspur Landing, which is only 1.7 miles north on Highway 101. The Hotel Acqua, located at Highway 101, in Mill Valley, would also remain a competitor mostly due to its unique waterfront location, and its highway visibility and access. Our telephone interview with management of both the Marriott Courtyards at Larkspur Landing and the Hotel Acqua

indicated that they currently enjoy high demand and a high occupancy rate, year round (greater than 80% occupancy).

See Feasibility Evaluation, p. 4. The Hotel Acqua has 48 rooms. The Marriott Courtyards Inn at Larkspur Landing has 147 rooms, precisely the *same number of rooms* evaluated as an alternative (Alternative 2) in the DEIR that would preserve the pond on the Project site.

As demonstrated in the EIR's Alternatives' analyses for the Project, there are at least two alternatives that would meet the overall project purpose as defined by the Corps constructing a new hotel on the site with a greater number of rooms. See Corps' Notice, p. 1 (project purpose identified as "to build additional commercial hotel rooms in the southern area of Marin County.")²

Here, the EIR's prepared in the CEQA process emphasize that both the 147 room and 187 room onsite hotel options that would retain the pond are feasible. See CVP Comments, Exhibits 3A B. Moreover, the EIRs go out of their way to clarify that the ecological, aesthetic and even market values (as an attraction for hotel visitors) of the pond could be *greatly improved* with feasible and proven restoration measures that have been effective in other similar jurisdictions:

It should be noted that there may be ways to improve the overall water quality and habitat value of the pond *through better water circulation, native revegetation, and re-landscaping around the entire feature that could be incorporated into this alternative*. Creating a shelf or terrace around most of the existing pond by importing fills and regrading the perimeter to support wetland vegetation (like the small area of native vegetation at the northern end of the existing pond) would *greatly improve habitat values and aesthetics and would probably reduce odor problems*. One or two fountains could be added to improve aeration, which would improve the odor problems as well. *Such systems have been created in Foster City and Aquatic Park in Berkeley*, which all point to improved water circulation to improve pond health and aesthetics.

DEIR, p. 5-1, fn. 1.

The 404 Regulations and accompanying regulatory interpretative guidelines emphasize that the appropriate barometer for financial feasibility and practicality must be based on what is feasible within the *industry*, not simply what may be desired by a particular developer of a project. Here, the Feasibility Evaluation demonstrates that *any hotel* on the Project site will be feasible and profitable, including both of the alternatives considered in the Town's CEQA process that preserves the pond onsite as a natural environmental amenity for guests and local citizens.

The 404 Regulations also state that if the activity associated with a discharge is proposed for a "special aquatic site" and is not "water dependent," "practicable alternatives that do not involve special aquatic sites are *presumed to be available, unless clearly demonstrated otherwise*." 40 C.F.R. § 230.10(a)(3) (emphasis added.)

In this case the Developer has *completely failed* to meet its burden that there is no practical

² As noted in the CVP Comments, this project purpose statement is itself problematic. Here, there has been no finding or determination that a hotel of the same size and with the *same number of rooms* would not be a practicable and feasible alternative given that the existing hotel has been running successfully for decades, on the site.

alternative to filling the pond. Indeed, according to the Project Notice (p. 2), the Developer has submitted a review of off-site alternatives but no *on-site alternatives or accompanying analysis* as of the date of the Notice:

The off-site alternatives consist of 8 sites in Marin County with similar settings to the proposed project site. These were analyzed for environmental constraints, physical conditions and size, infrastructure requirements, consistent land use and availability/land costs. Four sites were identified in Corte Madera, three in San Rafael, and one in Larkspur.

The Developer's failure to meet its burden here is particularly noteworthy given that the need to examine the feasibility of *onsite* alternatives was raised over a year ago in the Regional Board's earlier comment letter from January 2015:

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 permitable 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.

The Developer's subsequent consideration of additional onsite alternatives (Alternatives 2 & 4) in the CEQA process raises the further question of why the Developer's *subsequent* application for a 404 permit is limited to only offsite alternatives, particularly given the clear priority and importance given to this issue in the regulations, as discussed above. *See* 40 C.F.R. § 230.10(a).

D. Procedural Issues for Public Review.

The Corps' Notice and public review in this case raises two concerns that do not appear to be addressed in the Notice.

First, as discussed, the main issue for the Corps' decision on the 404 permit issuance is whether there is a practical onsite alternative for operating a hotel while also preserving the pond as an environmental and local amenity on the site. However, here the public is being asked to review this proposal without information about why the Developer believes there is no practical alternative. Instead as discussed above, the Corps' Notice dated April 16, 2016 refers only to the Developer's submission of an offsite alternatives analysis dating back to 2014. The Notice goes on to state:

An evaluation pursuant to the Guidelines indicates the project is not dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. *The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.* (emphasis added.)

This approach by the Corps undermines the entire function of public review in that the public is being

asked to provide commentary on the feasibility of onsite options for the future hotel, without being provided any *analysis of project alternatives* that the Developer will presumably submit once the public comment period is closed.

Second, a related problem arises with respect to the Corps' legal obligation to review the potential impacts of issuing a 404 permit to fill the pond in compliance with the National Environmental Policy Act ("NEPA"). As the Corps is aware, NEPA review requires the agency to include a careful consideration of project alternatives that can meet the project purpose as part of its evaluation. *See* 42 U.S.C. §§ 4332(C) & (E); 40 C.F.R. 1508.9(b.); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895-896 (9th Cir. 2002.) *Muckleshoot Indian Tribe v. United States Forest Serv.*, 177 F.3d 800, 810 (9th Cir. 1999).

Here, the Corp's Notice simply states:

USACE has made a preliminary determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project.

We do not agree that this Project to fill in one of the last remnant ponds in the Corte Madera area does not require the preparation of an EIS, or that no public review of the Corps' proposed NEPA analysis – including its examination of alternatives – is warranted. Instead, if the Corps proposes to issue a 404 permit for this Project, it must circulate a draft environmental review document under NEPA and consider public comments on cumulative impacts and alternatives prior to making any final decision.

Very truly yours,


Michael W. Graf



(415) 310-5109

Peter R. Baye, Ph.D.
Coastal Ecologist, Botanist
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MEMORANDUM

To: Community Venture Partners (attn.: Bob Silvestri) 73 Surrey Avenue
Mill Valley, CA 94941 <http://www.communityventurepartners.org>

Cc: Michael Graf

Date: December 31, 2016

SUBJECT: Review of Corte Madera Inn Recirculated Environmental Impact Report:
wetlands and aquatic habitat impacts

I have reviewed the Corte Madera Inn Rebuild Project Draft Recirculated Environmental Impact Report No. 2, SCH 2014042069, prepared for Town of Corte Madera November 2016 by Amy Skewes-Cox, AICP, dated November 2016.

The scope of the REIR No. 2 “addresses new information and new analyses related to conditions at the on-site pond, specifically related to the presence of submerged aquatic vegetation dominated by widgeongrass (*Ruppia maritime*) [sic]” [REIR p. 1-2] and “has been prepared to show changes to the Biological Resources section of the DEIR (Section 4.3) that are necessary to reflect new information that became available after circulation of the DEIR and first REIR”. The new information resulted in identification of a new environmental impact related to sensitive natural communities. (REIR p. 1-1). I originally identified this neglected aquatic resource, submerged aquatic widgeongrass (*Ruppia maritime*) vegetation beds, and impacts to this special aquatic site, in my memorandum of February 15, 2016.

My qualifications to comment are summarized in Attachment A. I qualify as an expert specifically on the ecology Bay Area submerged aquatic vegetation species, particularly linear-leaved pondweeds and widgeongrass. I provide taxonomic and other field investigation consultant technical support for estuary-wide surveys of submerged aquatic vegetation (including widgeongrass) for the Boyer lab at the Romberg Tiburon Center, San Francisco State University. http://online.sfsu.edu/katboyer/Boyer_Lab/Home.html. I have served as thesis advisor on two (2016) San Francisco State University Master’s thesis investigations of estuarine linear-leaved pondweeds that are ecologically associated with widgeongrass.

1. Jurisdictional versus regulatory policy issues regarding aquatic impacts and mitigation.

As a preliminary and general point of clarification, it is important to understand that determination and boundaries of Clean Water Act Section 404 jurisdiction for waters of the United States is an independent, fundamental and separate regulatory status, and is not the same as the “special aquatic site” designation that applies to specific aquatic habitat categories including “wetlands (40 CFR §230.41)”, “vegetated shallows” (40 CFR §230.43; aquatic vegetation beds). The special aquatic site status of “wetlands” and “vegetated shallows” does not

affect jurisdiction, but does affect regulatory policies and review of alternatives, compared with undistinguished “other waters” status of jurisdictional waters of the United States. The LSA memorandum in Attachment A is incorrect in describing these categories as different types “components” of jurisdiction”. There is only one type of Clean Water Act jurisdiction, but many categories of special aquatic sites with special regulatory procedures for evaluation.

The REIR continues to provide a misleading and incomplete statement of biological impacts in Impact BIO-3: “Regulated Waters. Proposed development would result in filling of the existing pond, eliminating an estimated 0.64-acre of jurisdictional waters on the site.”. The term “jurisdictional” does not denote biological status; it denotes legal status (jurisdiction), which is relevant primarily to Land Use Policy, and does not substantively describe biological resources. The special aquatic status of the waters on site are “vegetated shallows” or “submerged aquatic vegetation bed” and “wetland”, each with a distinct and unique quantifiable loss of area.

Both “wetlands” and “vegetated shallows” special aquatic site classifications trigger a more stringent review of alternatives in U.S. Army Corps of Engineers and Environmental Protection Agency regulations for fill permits in 404 jurisdiction. Note that “vegetated shallows” and “wetlands” are categorically distinct aquatic habitats, not equivalents or sub-types of one another. Wetlands are vegetated with emergent wetland plants, and are identifiable by explicit indicators and criteria in the Corps’ wetland delineation manual. Vegetated shallows support only submerged aquatic (not “wetland”) plants, and have no manual for delineation. Both are jurisdictional, but they differ in habitat type, function, and structure. For mitigation policies regarding compensation for unavoidable losses of aquatic resources, wetlands and vegetated shallows (submerged aquatic vegetation beds; SAV beds) are “out of kind”, not in-kind. Compensation of SAV resource loss by wetlands, without supporting analysis of evidence-based ecological functions, does not satisfy compensatory aquatic habitat mitigation policies requiring or prioritizing “in-kind” mitigation.

This is an important point for CEQA assessment of **Land Use Policies**. The REIR identified this regulatory status correctly on page 4.3-13 of the Biological Resources chapter (and in the September 2016 LSA memo), but this is in fact a Land Use policy issue and not a biological characteristic. The REIR failed to analyze this as a land use policy impact for Corps/EPA regulations, or for corresponding General Plan policies including:

- Implementation Program RCS-6.2a: Resource Protection
Protect sensitive biological resources, including wetlands and other waters of the United States and other wetland habitat areas...

- Implementation Program RCS-8.2.a: Wetland Mitigation
Where complete avoidance of wetlands and waters of the United States due to filling is not feasible (as defined under State CEQA Guidelines Section 15364), require provision of replacement habitat on-site through restoration and/or habitat creation at a minimum 2:1 ratio that would ensure no net loss of wetland acreage, function, water quality protection, and habitat values occurs. 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.

- Implementation Program RCS-8.2.b: Wetlands Mitigation Standards
Amend the zoning ordinance to implement the following mitigation standards for jurisdictional wetlands and waters of the United States:
 - No net losses shall occur in wetland acreage, functions, and values consistent with the mitigation standard set forth under Implementation Program RCS-8.2.a. (emphasis added)

The REIR must carry over new analysis of biological impacts into corresponding full and complete analysis of Land Use policy impacts regarding County and City General Plan policies regarding wetlands and other aquatic habitats, noting the SAV beds, though jurisdictional, are categorically and functionally not “wetlands”.

2. Compensatory mitigation for vegetated shallows (special aquatic site)

The REIR must provide an objective, evidence-based account of the functional ecological equivalence justifying compensatory mitigation of Burdell Ranch ditch habitats of wigeo grass for the pond at Corte Madera Inn. It has not done so. Since the REIR continues to propose **compensatory mitigation of seasonal wetlands** (dry or lacking surface water in summer-fall dry season) as substitutes for **perennial (submerged all year) SAV beds**, without distinguishing “wetlands” from the distinct “special aquatic site” category of SAV beds, the omission of Land Use policy impact analysis relating specific, distinct jurisdictional aquatic habitat types, and mitigation policies, may result in significant impacts caused by out-of-kind wetland and aquatic habitat “swaps”. The REIR has provided **no substantive evidence or analysis to support the proposed out-of-kind compensatory mitigation in mitigation measure BIO-3**, which substitutes generic seasonal wetlands at Burdell Ranch mitigation bank for SAV perennial pond habitat losses by substituting would reduce impacts to less-than-significant levels:

Mitigation Measure BIO-3a: If avoidance of jurisdictional wetlands and waters of the US due to filling is not feasible, a **Wetland** Protection and Replacement Program (WPRP) shall be prepared by a qualified **wetland** specialist and implemented to provide compensatory mitigation for the proposed fill of 0.64 acre of **jurisdictional** waters on the site, and any other areas of **jurisdictional** waters affected by the project, and to ensure compliance with Town policies related to wetland protection and mitigation. The WPRP shall contain the following components: If on-site avoidance of jurisdictional waters is not feasible, the WPRP shall provide **compensatory mitigation at a minimum 2:1 ratio** (ratio of mitigation acreage or credits to affected jurisdictional waters), subject to the review and approval by the Town and regulatory agencies. In 2002, the applicant purchased 1.20 acres of wetlands credits from the Burdell Ranch Wetlands Conservation Bank. An additional 1/10th of an acre mitigation credit is needed to achieve the full 2:1 ratio under the Wetlands Protection and Replacement Program. An alternative on-site or off-site method to achieving the full 2:1 ratio may be necessary as part of the WPRP if additional wetland credits are no longer available from Burdell Ranch Wetlands Conservation Bank. (emphasis added)

First, there is no reliable quantitative estimate of wigeo grass extent at the Inn pond to provide a basis for the mitigation debt of project impacts. The REIR presents two conflicting estimates of

SAV habitat extent, differing significantly (about an order of magnitude): an incredibly low estimate by Zentner & Zentner (0.16 acres) and a higher credible estimate by LSA (0.42 acres or approximately 75 percent of the pond.) The REIR, however, does not explain or reconcile these significantly conflicting estimates. LSA's longer-term review of aerial imagery of the pond resulted only in an ambiguous conclusion that "the coverage of widgeon-grass in the pond varies by season and from year to year...", (LSA 2016, p. 3) noting it was absent some years (despite abundance in other years).

The SAV habitat (*Ruppia maritima* beds) at Burdell Ranch mitigation bank identified in the Zentner and Zentner memo of June 30, 2016, p. 6) includes only marginal, seasonal ditch and relict channel colonies of *Ruppia maritima* of unknown unquantified extent and variability. Unlike the perennial wigeongrass pond at the Inn, Burdell ditches and relict channels supporting wigeongrass are subject to seasonal drying and desiccation in summer and fall in non-tidal conditions, and have no supporting evidence of fish or invertebrate prey for wading birds available all year. The REIR fails to account for the ecological non-equivalence of these two hydrologically distinct and geographically remote wigeongrass habitats in the Bay Area, in the context of compensatory mitigation. Based on the distinct hydrology and setting, the two are not equivalent.

The abundance and variability of wigeongrass at Burdell mitigation bank is unquantified and speculative. The Zentner and Zentner account of wigeongrass at Burdell provides a map of speculative "presumed" rather than "observed" or quantified wigeongrass (Figure 3, June 30 2016 memo in Attachment A of REIR), and unquantified presence/absence "contains wigeongrass" boundaries. The Zentner and Zentner memorandum provided no evidence about the quality, quantity, or stability of wigeongrass habitat at Burdell Ranch in the long term and no information about the methods or data collected from the "survey" Zentner and Zentner staff claim to have conducted supporting the Figure 3 map of wigeongrass at Burdell Ranch. The lack of documentation for this mitigation site wigeongrass "survey", and presentation of a map (Figure 3) that represents "presumed" wigeongrass distribution, is unsound evidence to support any conclusions about mitigation adequacy for impacts to wigeongrass habitat.

The unreliability of the Zentner and Zentner estimate of "presumed" and observed (present/absent; no quantification) Burdell Ranch wigeongrass is not corrected or supplemented by the LSA memo, which provided no information on the extent or seasonal to annual variability of wigeongrass at Burdell Ranch mitigation bank. The LSA memo of September 19 2016 notes that "This lack of a confirmed quantification of [SAV and wetland areas at the Inn] creates a technical ambiguity...", and this ambiguity is even greater for the Burdell mitigation site.

There Zentner and Zentner memorandum contained no meaningful or objective basis for assessing the ecological equivalence or stability of the wigeongrass habitat at Burdell Ranch as a substitute for the equivalent area at Corte Madera Inn. The water depth and permanence of SAV habitat at Corte Madera Inn pond with an edge of tree canopy is not comparable to a seasonally dry ditch or relict channel with unknown duration or quantities of wigeongrass or associated invertebrate or fish communities providing significant prey base for wading birds. The Zentner and Zentner memorandum provides no evidence or analysis of the ecological functions, composition, seasonal productivity, or status of the Burdell wigeongrass beds. It provided utterly

irrelevant accounts of wigeongrass from the choked tidal basin of Lake Merritt in Oakland, but no relevant information about the actual ecology of wigeongrass beds at the proposed mitigation site.

The most significant omission of ecological data relevant to compensatory mitigation from Burdell Ranch ditch habitats was about the wading bird foraging habitat productivity. The importance of wigeongrass at Corte Madera Inn is that it was associated with a black-crowned night heron colony, for which it provided potential significant foraging habitat year-round. Do Burdell Ranch ditches provide comparable or equivalent habitat and ecological value? Both the Zentner and Zentner memo and the LSA memo, on which the REIR relies for its conclusions about compensatory mitigation, provide no evidence or analysis. There is no actual ecological evidence (including quantitative data on wigeongrass abundance) from Burdell Ranch, presented in the REIR to justify the conclusion of Zentner and Zentner (June 30 2016 memo, p. 6) of “sufficient wigeongrass mitigation...for loss of the Inn pond” provided by Burdell Ranch mitigation bank credits.

The LSA memo of September 19, 2016 provides unsound ecological assessment of the black crowned night heron habitat mitigation debt incurred by impacts of destroying a colony roost site adjacent to a perennial SAV pond, which can provide efficient proximate foraging habitat with little or no flight distance. Flight distance from the roost to foraging sites influences the energetics of foraging: the farther the foraging sites, the greater the net energetic cost of foraging. Neither the LSA memo, the Zentner memo, nor the REIR provide any consideration of the significance of night heron roost location and adjacency of the SAV pond, in assessing the adequacy of the Burdell Ranch mitigation site. The nearest location of suitable egret or heron roost tree habitat to the Burdell Ranch was not assessed. The flight distance or energetic costs (and potential significant loss of energetic efficiency) of roost relocation were not assessed. In addition, the REIR provides no analysis of the seasonal availability of SAV habitat (foraging) resources for herons or egrets at Burdell Ranch, which draws down and dries seasonally, compared with the Inn pond, which is flooded year-round. This appears to be due to a lack of hydrological data demonstrating the depth and duration of flooding in ditches and relict channels at Burdell, and the seasonal duration of wigeongrass, over a multi-year sampling period. Again, the LSA memo, like the Zentner memo, provides the REIR overall with no objective evidence or analysis supporting any conclusions about the ecological equivalence or adequacy of mitigation at Burdell Ranch for wigeongrass habitats.

The REIR provides no rational basis for the conclusion (proposed by generalist wildlife biologist staff at LSA as a “belief”) that the black crowned night heron colony at the Inn is not a sensitive resource. The only statement LSA made about the relationship between black-crowned night herons and Burdell Ranch wetlands is “Observations at BRWCB included black-crowned night heron”, citing unspecified data or sampling dates from Zentner and Zentner. Stating that “observations include” a species – mere presence/absence data - is not a reasonable argument supporting adequacy of mitigation for a species at a mitigation site. No evidence or arguments in the LSA report or Zentner and Zentner memo rebut the expert conclusion of Dr. John Kelley and Scott Jennings of Audubon Canyon Ranch (regional experts on heron and egret ecology) that “Elimination of the roost site and pond would impose cumulative impacts on night-herons in the surrounding region by contributing to the incremental loss of habitat and reducing the

availability of suitable roost sites.” Kelley and Jennings comments to the Town of Corte Madera dated December 7, 2016).

Finally, it is significant that the REIR has not only provided inadequate compensatory mitigation for aquatic habitats and inadequate evidence supporting it, but it did so without first rigorously analyzing avoidance of impacts. Compensatory mitigation for wetlands or other special aquatic sites is a “last resort”, after exhausting mitigation by avoidance and minimization. The REIR inverts the standard policy of mitigation sequencing with compensatory mitigation as a last resort. This is a requirement of both the Regional Water Quality Control Board (Basin Plan policy regarding the presumption of less environmentally damaging alternatives for non-water-dependent projects sited in jurisdictional special aquatic sites, including wetlands), the EPA, and U.S. Army Corps of Engineers wetland regulations. The Inn pond supports two special aquatic sites, wetlands and vegetated shallows. Accordingly, there should be no analysis of compensatory mitigation until a rigorous analysis of alternatives demonstrates that there are no less environmentally damaging practicable alternatives to filling the Inn pond, based on EPA/Corps criteria for “practicability”. This was not analyzed as a Land Use Policy impact or a biological resources impact in the REIR.

In conclusion, the REIR remains inadequate as a CEQA document because:

- (a) it provides inadequate, inconsistent or incomplete evidence about the extent of wigeongrass habitat at the Inn pond;
- (b) grossly inadequate evidence and analysis of compensatory mitigation at the Burdell Ranch mitigation site; and
- (c) flawed assessment of significant impacts (and mitigation debt) of destroying the Inn pond’s black-crowned night heron colony roost site.

My conclusions are based on my professional experience as senior staff biologist at the U.S. Army Corps of Engineers (San Francisco District), and U.S. Fish and Wildlife Service, where I was responsible for wetland jurisdictional delineations and their review, wetland impact assessments, wetland restoration plans and mitigation plans, and joint NEPA/CEQA impact assessments, including EIR/EIS document management. I have over 36 years professional experience in management, restoration of coastal habitats, with specialization in wetlands and other shoreline habitats.



Peter R. Baye, Ph.D.

ATTACHMENT A

General Statement of Qualifications – Coastal Ecology

Peter Baye is a coastal ecologist and botanist specializing in conservation management of coastal vegetation. He began applied studies of dunes and barrier beaches as an undergraduate at Colby College in Maine in the late 1970s, and expanded to tidal marshes and lagoons in Cape Cod, Canadian Maritime Provinces, Great Britain, and California. He received his Ph.D. from the University of Western Ontario, Department of Plant Sciences, Canada, in 1990. In California, he worked for the U.S. Army Corps of Engineers, San Francisco District, as a senior ecologist specializing in wetlands regulatory projects, from 1991-1997. He prepared endangered species recovery plans for coastal species and ecosystems, including the first draft of the tidal marsh recovery plan covering the San Francisco Estuary, while he worked for the U.S. Fish and Wildlife Service, Sacramento, from 1997-2002. After leaving the Fish and Wildlife Service, Peter continued his diverse wetlands and endangered species conservation work in the Bay Area and Central California as an independent ecological consultant. Adaptation of coastal ecosystems management to accelerated sea level rise and shoreline retreat has been a major focus of his independent consulting work in the Bay and outer coast. His projects include original designs for mixed gravel-sand estuarine beaches as “soft” shoreline and marsh-edge erosion control (alternative to rock armoring), terrestrial transition zones of tidal marshes (including slope wetland “horizontal levees”), high tidal marsh mounds, submerged aquatic vegetation beds, and specialized habitats for endangered plant and wildlife species.



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December 7, 2016

Adam Wolff, Director of Planning
Town of Corte Madera Company
300 Tamalpais Drive
Corte Madera, CA 94925

RE: Recirculated Draft EIR for the Corte Madera Inn Rebuild Project

Dear Mr. Wolff,

ACR owns and manages a system of wildlife sanctuaries in Marin and Sonoma counties. Since the early 1970's, we have conducted scientific research to help ensure the long-term protection of San Francisco Bay area wetlands. We have published numerous scientific articles on the ecology and conservation of herons and egrets (www.egret.org/scientific_contributions), including an annotated atlas of heron and egret nesting colonies in the San Francisco Bay area (Kelly et al. 2006; www.egret.org/atlas).

As noted in the RDEIR, the proposed development of the Best Western Corte Madera Inn would eliminate the Black-crowned Night-Heron roost site and the associated pond habitat. ACR is concerned that the proposed development would reduce the regional availability of suitable habitat needed to sustain the number of Black-crowned Night-Herons that occupy central San Francisco Bay. The night-herons are a resident, colonially nesting species that depends on the protection of remnant wetlands and roost sites near the Bay shoreline such as the area considered in this proposal. We offer the following responses to the RDEIR.

- Wetland habitat in the San Francisco Bay Area is regionally and globally important for several species of wading birds, including Black-crowned Night-Herons (Mikuska et al. 1998, Kelly et al. 2007).
- Ensuring the presence of top wetland predators such as Black-crowned Night-Herons is likely to be important in sustaining healthy wetlands (Vander Zanden et al. 2006), and numerous scientific investigators have demonstrated that Black-crowned Night-Herons qualify as indicators of healthy wetlands (e.g., Hothem et al. 2010).
- The number of Black-crowned Night-Herons in the central and northern San Francisco Bay area has been in a significant long-term decline since 2001 (Kelly and Robinson-Nilson 2011, Condeso 2013; ACR, unpublished data).
- Communal roost sites such as the night-heron roost in the proposed development site provide important functional benefits related to vital rates of adult and juvenile annual survival. These benefits, which include energetically efficient access to nearby feeding areas, enhanced foraging

efficiency, thermoregulatory benefits, and reduction of predation risk can be critical in sustaining regional populations (Beauchamp 1999).

- The statement in the RDEIR (Impact BIO-4 on page 4.3-29) that elimination of the roost site “would not contribute to a significant cumulative impact on the black-crowned night heron populations,” is made without scientific justification. Similarly, the implication that ornamental landscape trees in the area—even if not near ponds or estuaries—would provide viable alternative sites for roosting is made without supporting evidence. In contrast, heron specialists Kushlan and Hancock (2005) have indicated that roost sites are particularly important habitat features for night-herons, and they have further specified that, although roosts are often established in human environments, essential habitat conditions for roost sites include adequately dense roosting cover near fresh, brackish or saltwater feeding areas. Therefore, the conclusion that removing the night-heron roost would have no impact on the number of night herons in the area is unsubstantiated.
- Elimination of the roost site and pond would impose cumulative impacts on night-herons in the surrounding region by contributing to the incremental loss of habitat and reducing the availability of suitable roost sites. The assertion in the RDEIR (Impact BIO-4 on page 4.3-29) that, if the roost site is destroyed, the birds would simply “disperse to other locations during construction and, when the trees are removed, would roost in alternative locations” is highly speculative and fails to consider impacts of incremental habitat loss and the importance of roost site quality and location. Scientific work on Black-crowned Night-Herons provides evidence that they depend on finding particular roost-site conditions among multiple alternatives within their foraging range to facilitate annual and intraseasonal adjustments in roosting behavior (Perlmutter 1992). Such conditions include changes temperature, wind, predation risk, disturbance, and increasing water levels associated local flooding and sea level rise. In addition, considerable scientific evidence suggests that roost sites near important feeding areas provides herons with important energy benefits (Beauchamp 1999).

We urge you require full protection of the valuable wetland habitat and pond area used by Black-crowned Night-Herons behind the Corte Madera Inn. Thank you for considering this comment.

Sincerely,



John P. Kelly, PhD
Director of Conservation Science



Scott Jennings
Avian Ecologist

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CV Robert Silvestri

Mr. Silvestri the founder of Community Venture Partners, Inc. and the creator of the [Marin Post](#). He is a licensed architect (CO 1986-Present), is NCARB certified and holds a Bachelors of Architecture with honors from the Cooper Union School of Architecture in New York City. In his career, he has been a member of the American Institute of Architects and National Association of Realtors, and a number of national environmental organizations.

In his career, Bob has been extensively involved in the architecture, planning and real estate development. In 1980 he founded Tiburon Group (1980 through 2003) which offered comprehensive architecture, planning and affordable housing development services. Its wholly owned subsidiary Peak Financial offered financial underwriting and real estate brokerage services. Tiburon Group participated in a variety of real estate partnerships and investments and was involved in a variety of capacities in the development of approximately 2,000 units of Section 8 affordable housing using low income housing tax credit financing. Mr. Silvestri acted as managing partner for a variety of major real estate investment and development ventures. Tiburon Group has also acted as a real estate investment advisor to private, corporate and institutional clients.

Tiburon Group, Inc. also specialized in project management and real estate investment analysis and property acquisitions. Clients that Tiburon Group advised included Prudential Insurance, Los Angeles, GE Capital, New York, Property Company of America, Tulsa, Gold Crown Management Corporation, Denver, The Leinbach Company, Oklahoma, Pacific Union Ventures, San Francisco, La Salle Partners, Chicago, Tomlin Properties, Dallas, Gold Crown Management Denver, and Westland Properties, Denver.

Bob has dedicated the past 2 decades to community service and charitable and philanthropic work in Marin County, California, where he resides. Bob has published Op-Ed pieces and commentary in local newspapers and online journals about sustainable local planning and affordable housing solutions. His writings include the recently published book, "[The Best Laid Plans: Our Planning and Affordable Housing Challenges in Marin](#)." Bob has served on planning advisory committees and been active in local community affairs in Mill Valley since 1993. In 2007, he published "The Miller Avenue Alternative Analysis," a comprehensive land use study to help the City identify affordable housing and commercial development opportunities using an innovative market responsive approach.

REAL ESTATE DEVELOPMENT / ARCHITECTURE CV

TIBURON GROUP, INC. – PRESIDENT / CEO: REAL ESTATE DEVELOPMENT: (1980–2003).

Managing partner of LLC affiliates: Land development, multifamily residential development, and single family land development.

- Property selection and evaluation, site inspection, financial proforma and financial feasibility analysis.
- Coordination, preparation and review of legal, survey issues, title and partnership agreements, purchase, acquisition, contract negotiation and closing.

- Partnership / LLC representation with local, state and federal government agencies.
- Coordination of short term and long term financing, including bond sales, bridge financing and permanent funding commitments.
- Hiring, coordination and management of engineers, soils and environmental studies, architects, surveyors and general contractors, property managers and other service providers (title companies, attorneys, etc.).
- Bidding, bid coordination and contract coordination.
- Construction management and oversight, cost accounting oversight, payments approvals, change orders, inspection walk-throughs, substantial completion and certificate of occupancy reviews.
- Coordination with local building agencies, zoning and planning departments, and HUD field officers and housing agencies.
- Monitoring of bonding, insurance, warranties, final cost certification and related items.
- Construction monitoring, Clerk of the Works duties and reporting.
- Coordination with property management entities and sales/marketing staff.
- Marketing planning and implementation.

CLIENT LIST:

- ARAPAHOE, LTD. - Real estate development, Baltimore, MD
- BENTON MORTGAGE COMPANY – Multifamily Coinsurer / mortgage, Knoxville, TN
- BOSTON FINANCIAL GROUP - Tax Credit Syndication, Boston, MA
- CITY OF VICTORIA, TEXAS - Affordable Housing Analysis
- COLUMBIA SAVINGS - Savings and Loan, Denver, CO
- CONAM - Property management, Las Vegas, NV
- COVIA CORPORATION / UA Airlines - Computer distributor, Denver, CO
- GOLD CROWN MANAGEMENT CO. - Property management, Denver, CO
- GRAISTONE REALTY ADVISORS –RTC asset managers, Ft. Lauderdale, FL
- LA SALLE PARTNERS – Real estate asset management, Chicago, IL
- LEINBACH COMPANY - Real estate development, Tulsa, OK
- MASHBURN ENTERPRISES – Real estate development, Oklahoma City, OK
- MILLER & SCHROEDER FINANCIAL – Muni bond underwriters, Minneapolis, MN
- PACIFIC UNION VENTURES - Real estate development, San Francisco, CA
- PCA/ALLIANCE - Property Company of America and General Capital Corporation, Tulsa, OK
- PHILIPS DEVELOPMENT CORP. - Real estate development, Denver, CO
- RSF VENTURES, LLC - Real Estate Development, Denver, CO
- STRIKER PETROLEUM CORP. – Land subdivision sales, Denver, CO
- THE BROE COMPANIES - Property management, San Diego, CA
- THE ROSS GROUP - Property management, Denver, CO
- TIMBERLAND INVESTMENT CO. - Real estate development, Evergreen, CO
- WEINSTOCK BELL - Real estate development, Los Angeles, CA
- WESTCLIFF SEVEN, LTD. - Land Development, Denver, CO
- WESTLAND PROPERTIES - Real estate development, Denver, CO

DEVELOPMENT RELATED SERVICES (1986 – 2002)

DEVELOPMENT & DESIGN REVIEW (1986-1992): Chairman of the Castle Pines Development Company Homeowner's Association Design Review Board. Chairman of the Regulations Subcommittee: revision of the Development Guide, Homeowner's Association

Development Handbook and regulations. Castle Pines Village is a 1500 luxury home development with 2 PGA Championship Golf Courses, located 30 minutes southeast of Denver.

REHAB SYSTEMS, INC. (1988–1991): Rehab Systems, Inc., a subsidiary of Tiburon Group, Inc., provided technical assistance in multifamily renovation to private developers and Public Housing Agencies. The company's proprietary computer database and analysis software tools allowed users to better control the costs and the progress of complex substantial rehabilitation projects. Successfully implemented the renovation of approximately 1,500 multifamily housing units, under various HUD and FHA financing programs. The software programs were specially written to interface and correlate HUD/FHA cost formats with AIA MasterSpec formats for the purposes of cost estimating. Services included scope of work analysis, construction cost estimating and preparation of construction documentation for bidding.

PEAK FINANCIAL SERVICES (1988-1989): Peak Financial, a subsidiary of Tiburon Group, Inc., provided mortgage consulting, financial underwriting and correspondence services on approximately \$25,000,000 in FHA coinsured multifamily loans (221d4 and 223f). Services consisted of underwriting proforma and feasibility, applications, structuring of loan fees and cash requirements, partnership coordination of the sale of GNMA bonds, lender communications, owner's representative in application for Low Income Housing Tax Credits, and tax credit syndication sales with Boston Financial and Paine Webber Financial.

LICENSED REAL ESTATE BROKERAGE, SALES & MARKETING (1984-2002): Residential single family home sales as listing brokers and buyer's brokers, multifamily property acquisitions, land sales, subdivision sales and marketing.

CONSTRUCTION MANAGEMENT SERVICES: Project workout and construction management services:

- ELMWOOD/DEL MAR APARTMENTS (1989) - 96 Unit substantial rehabilitation, Aurora, CO
- FOX RUN APARTMENTS (1988) - 150 Unit substantial rehabilitation, Victoria, TX
- SPRING HILL APARTMENTS (1988) - 127 Unit substantial rehabilitation, Casper, WY
- SIERRA POINTE APARTMENTS (1987) - 160 Unit substantial rehabilitation, Las Vegas, NV

RESIDENTIAL DESIGN / BUILD SERVICES:

- JANOV RESIDENCE (1976) - 1,500 SF addition, Beverly Hills, CA
- ELKIND RESIDENCE (1982) - 10,000 SF custom residence, Cherry Hills Village, CO
- NICHOLSON RESIDENCE (1976) – Renovation, Beverly Hills, CA
- BLACK RESIDENCE (1975) - 7,000 SF historic renovation, Hancock Park, CA
- BRANDO RESIDENCE (1976) – Interior and property renovation, Beverly Hills, CA
- MARTIN RESIDENCE (1981) - 2,000 SF addition, Evergreen, C
- PHILLIPART RESIDENCE (1979) - 1,500 SF addition Evergreen, CO
- ROBINSON RESIDENCE (1979) - 3,500 SF custom residence, Evergreen, CO
- WEBSTER RESIDENCE (1980) - 4,500 SF custom residence, Evergreen, CO

ARCHITECTURE & DESIGN SERVICES: (1977-1994): Residential and commercial design, planning and development related services: public agency presentation, code and zoning analysis, land planning, site planning, construction cost analysis, architecture and interior design, bid coordination, contract negotiations and construction supervision.

ARCHITECTURE - SINGLE-FAMILY: (1975–1992): Architect of record / construction management; custom residences and renovations.

- BENNETT RESIDENCE (1980) - 6,000 SF custom residence, Evergreen, CO
- BLINDER RESIDENCE (1986-87) - 12,000 SF custom residence, Cherry Hills, CO
- EVERGREEN MEADOWS HOUSES (1978) - (2) 1,500 SF spec. residences, Evergreen, CO
- SHWAYDER RESIDENCE (1988-89) - 11,000 SF custom residence, Lakewood, CO
- GUN CLUB HOUSES (1980) - (2) 3,500 SF spec. residences, Aurora, CO
- HAWKINS RESIDENCE (1979) - 5,200 SF custom residence, Evergreen, CO
- TOWNE RESIDENCE (1977) 3,500 SF historic Rindge house renovation, Malibu, CA
- KNOEBEL RESIDENCE (1986) - 5,500 SF addition, Cherry Hills Village, CO
- LANIER RESIDENCE (1990-92) - 10,000 SF new construction, Denver, CO
- LAURITA RESIDENCE (1991-92) - 4,000 SF new construction, Evergreen, C
- PFISTER RESIDENCE (1986) - 5,000 SF custom residence, Larkspur, CO
- SCOTT RESIDENCE (1978) - 4,200 SF custom residence, Evergreen, CO
- WAHRMAN RESIDENCE (1989) - 1,800 SF addition, Los Angeles, CA
- BEATTY RESIDENCE (1975-77) - 11,000 SF custom residence Beverly Hills, CA, Project Architect / Construction manager under Tim Vreeland FAIA.
- WELLS RESIDENCE (1983) - 5,500 SF custom residence, Cherry Hills Village, CO
- WINN RESIDENCE (1987) - 3,500 SF renovation. Red Mountain, Aspen, CO

ARCHITECTURAL SERVICES - RESIDENTIAL: (1980-1993) Architecture, design and development consulting services to contractors and developers of single family and multifamily development.

- CARINTHIA, R.D. – Custom homebuilder, Denver, CO
- FIDELITY CASTLE PINES - Land developer, Denver, CO
- HALLMARK HOMES – Custom homebuilder, Denver, CO
- KUROWSKI DEVELOPMENT – Custom homebuilder, Denver, CO
- LEXUS HOMES – Custom homebuilder, Denver, CO
- NELSON – Private residence, Tulsa, OK
- NEWCASTLE CONSTRUCTION CO. – Custom homebuilder, Denver, CO

ARCHITECTURE - MULTI-FAMILY:

- AURORA EAST APARTMENTS (1987) - FHA Inspecting Architect / Clerk of the Works, 125 Unit rehab, Aurora, CO
- CITRUS VILLAS APARTMENTS (1988) - Consulting Architect, 35 Unit rehab, San Diego, CA
- ELMWOOD/DEL MAR APTS (1989-92) - Architect /Partner, 96 Unit rehab, Aurora, CO.
- FOX RUN APARTMENTS (1988-92) - Architect /Partner, 150 Unit rehab, Victoria, TX
- INDIAN SPRINGS APARTMENTS (1986) – Constr. Supervision, 400 Unit rehab, Tulsa, OK
- LAFAYETTE ST. CONDOMINIUMS (1986) – Architect, 32 luxury condo units, Denver, CO
- MANOR HOUSE/NORTH TRACE (1988) - Architect /Partner, 158 Unit rehab, Richland, WA
- PEACH EMERALD MANOR APTS (1988) - Consulting Architects, 40 Unit rehab, San Diego, CA
- RENAISSANCE APARTMENTS (1989-92) - Architect, 100 Unit renovation, Austin, TX
- SIERRA POINTE APARTMENTS (1987-89) – Constr. Mgmt., 160 Unit rehab, Las Vegas, NV
- SIERRA VISTA APARTMENTS (1986-87) - Architect, 209 Unit rehab, Denver, CO
- SPRING HILL APARTMENTS (1988-92) - Architect/Partner, 127 Unit rehab, Casper, WY

- WINDSOR COURT APARTMENTS (1987-88) – Architect, 144 Unit rehab, Aurora, CO

ARCHITECTURE – COMMERCIAL:

- BROADWAY WATER WORKS (1987) - Architect, Full service car wash, Denver, CO
- MARINA POINTE (1986) - Architect 25,000 SF office building - Littleton, CO
- THE PRIMAL INSTITUTE (1977) - Design/Build, Commercial renovation, Los Angeles, CA

ADDITIONAL DESIGN / DEVELOPMENT EXPERIENCE: Architectural design / project management:

- DAY CARE CENTERS (1971) - (2) 5,000 SF Community Center Day Care Centers, New York, N.Y., Developed for the New York Department of Social Services, Project designer for Frank Williams and Associates, Architects, FAIA.
- FORT GREEN PARK PLAYGROUND (1972) - Playground design for NYC Department of Parks & Recreation; Brooklyn, NY.
- PLANTATION GREEN CONDOMINIUMS (1973) - 475 Unit condominium, new construction, Plantation, FL, Architectural Associate/Project Manager for Frank Williams & Associates, Architects, FAIA.
- SUNRISE APARTMENTS (1974-75) - 375 Unit apartment - new construction, Sunrise, FL, Project Manager for Frank Williams & Associates, Architects, FAIA.
- THE BEVERLY APARTMENTS (1979) - 40 Unit apartment renovation, Beverly Hills, CA, Project Manager for Tim Vreeland FAIA at Kamnitzer Marks Lappin & Vreeland, Architects.
- ENVIRONMENTAL TASK FORCE & DOCUMENTARY WORKSHOP (1972) - City Planning Study for the City of Lockport, New York, in association with Lawrence Halprin & Associates and Hardy Holzman & Pfeifer Architects, New York City, NY.

EDUCATION

- Bachelor of Architecture (1971) - The Cooper Union School of Architecture, New York, N.Y.

FELLOWSHIPS & AWARDS

- Arthur Wolf Design Excellence Award (1969,1971)
- Graham Foundation of Chicago: Fellowship in Urban Studies (1972)
- National Council on the Arts: Travelling Fellowship (1970)

ASSOCIATIONS

- AIA Committee on Education - Member (1970-1972)
- American Institute of Architects - Member (1986-1992)
- Environmental Defense Fund (1968-1988); Benefactor (1989 -1992)
- National Association of Industrial and Office Parks - Member (1989-1992)
- National Association of Realtors - Member (1985-1992)

LICENSES & CERTIFICATIONS

- Licensed Real Estate Broker (1998-2003); Colorado #24907
- Licensed Real Estate Sale; California (1993-2001)
- NCARB Certified; (current) Certificate No. 34,887
- Registered Architect; (current) Colorado #B2277

From: bsilvestri
To: [Fernandez, Xavier@Waterboards](mailto:Fernandez_Xavier@Waterboards)
Cc: [Michael Graf](mailto:Michael.Graf)
Subject: Comment on 410 Application for the Corte Madera Inn Rebuild - referenced Attachments
Date: Friday, January 27, 2017 11:18:20 AM
Attachments: [12 - 092416 - Dispatches from the front - Corte Madera.pdf](#)
[13 - 061616 - Region IX of the EPA comments on the application to fill in Edgewater pond at Corte Madera Inn.pdf](#)
[14 - 052616 - The Corte Madera Inn developer puts property up for sale - Part I.pdf](#)
[15 - 052616 - The Corte Madera Inn developer puts property up for sale - Part II.pdf](#)
[16 - 052616 - The Corte Madera Inn developer puts property up for sale - Part III.pdf](#)
[17 - 052616 - The Corte Madera Inn developer puts property up for sale - Part IV.pdf](#)
[18 - 022116 - Comments to the Corte Madera Planning Commission on the Redevelopment of the Corte Madera Inn.pdf](#)

Dear Mr. Fernandez:

Attached please find the Attachments (12 through 18) referenced in our our comment letter on The San Francisco Bay Regional Water Quality Control Board (404(b)(1) review of the Notice of Application for a Clean Water Act Section 401 Water Quality Certification (the "Application"), for the Corte Madera Inn Rebuild Project; in response to the Application for the Project, posted on 01/11/17, and available for public review at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/CorteMadera.shtml with comments due by end of day February 2, 2017.

Thank you for your consideration.

Best regards,
Bob Silvestri
President

Community Venture Partners

A Catalyst for Sustainable Solutions

73 Surrey Avenue
Mill Valley, CA 94941
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<https://marinpost.org>



Blog Post



CVP

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Marin 2016 - Part IV: Dispatches from the front – Corte Madera

Posted by: [Bob Silvestri](#) - September 24, 2016 - 8:52am

As discussed in [Part III](#), most of us would like to think there's an unwritten agreement that we pay taxes and government does its best to "mind the store." First and foremost, we also expect them to understand all the rules and regulations required to do that. And beneath all that there is the basic assumption that they actually *know* how things work. In fact, we rely on them not just to know the rules but to be experts in them, and to be our "go to" authority.

Maybe we shouldn't.

The case of the Corte Madera Inn redevelopment

The Town of Corte Madera may remain forever infamous for approving the WinCup project on Tamal Vista Boulevard. You would think a planning disaster like that would shake things up in town, and in some ways, it did. They hired a new Planning Director and Town Manager. That said, one wonders why they've spent the past two years trying to push through the approval of another [misguided "developer-led" plan for the rebuild of the Corte Madera Inn](#).

We all understand that a city has the obligation to allow anyone to submit any type of proposal and it must process that proposal thoroughly, and without prejudice. But the obstinacy of this particular

developer, their refusal to change any aspect of their proposal for any reason, and a long list of questionable “facts” presented, made this project suspect early on.

The developer, Reneson Hotels, proposes to increase the size of the present hotel by about 70%, which requires the destruction of the small, wetlands pond, behind it. The developer has continued to claim it is the “only” alternative that is financially feasible if the property is to remain a hotel. The Town planners have never seriously questioned that contention[1].

This is not a situation about being for or against property rights. The developer doesn’t have the zoning rights to do what he wants to do. In fact, he’s asking for a special hotel zoning exception and a General Plan Amendment that only he will benefit from.

The issue at hand is whether or not the pond is actually wetlands, and if so, should it be preserved. Some have asked me, why all the fuss? After all, the wetland is less than an acre in size. So what does it matter if it’s lost?

Well, first off, because it’s illegal,[2] and secondly, because if we allow cities to skirt the rules and regulations, sooner or later you end up with WinCup. And then everyone wonders [how the heck that happened?](#)

Who’s minding the store?

The Town hired no less than two biologists (recommended and paid for by the developer) to evaluate the proposal. Both stated, in writing, that the pond was not wetlands and therefore, it was okay to pave it over[3]. In their Staff Reports, the Corte Madera town planners even went so far as to describe the filling of the pond as a “goal” for the project, in support of the developer’s financial feasibility claims.

The only problem is their opinions weren’t correct.

There was no truth whatsoever to the assertion that a profitable hotel operation required the filling in of the pond. The evidence and the full story have been fully documented in the four part series: [Rook vs. Knight Endgame? The Corte Madera Inn developer puts the property up for sale: Part I, Part II, Part III, and Part IV](#)), and elaborated in various the CVP [comment letter to the Army Corps of Engineers](#).

The proposed Corte Madera Inn rebuild project is a clear case of developers directing town planning; a scenario under which staff presents the developer’s most profitable wish list as fact, and consultants, paid for by the developer, provide “evidence” that supports the developer’s requirements.

This too cozy staff-developer relationship is common, and it’s not just limited to development projects. We see it in the decision making process on all types of issues.

To make matters worse, because our cities have become increasingly dependent on development fees to cover the costs of staff time and operational expenses, they find themselves on a fiscal slippery slope that requires more and more projects to be approved just to keep their doors open. As a result, they've become increasingly reliant on "studies" by developer paid consultants, to the exclusion of common sense.

It's not unusual for a developer to plead ignorance of the law, fudge facts, tell half the story, or do whatever it takes to win an approval. It's always just been part of doing business. All's fair in love and war... and real estate. But does that apply to public employees?

Shouldn't we be able to depend on our public employees to be thoroughly versed in the law and governmental procedures? Isn't that a basic requirement to properly look out for the general health, safety and welfare of the community?

Dealing with federal regulatory agencies

In the case of the Corte Madera Inn, even though the Planning Commission had recommended approval of the project (based on the Staff Report's recommendations), evidence surfaced that proved the pond was in fact a federally protected "special aquatic site," and not a "man-made cesspool," as the developer and staff had claimed. It also came to light that the wetlands had been cut off from waters from the Bay that would naturally flush the pond and keep in vibrant. There was also good reason to believe that floodgate closures by the town and the property owner caused this, and were not accidental.

In response to the evidence that the pond was a special aquatic site, [the San Francisco Regional Water Quality Board sent the town a letter](#) notifying Corte Madera of the consequences of processing the project without their approval. This stopped the project in its tracks.

In response and in an attempt to circumvent local government, and to [override the regulatory authority of the San Francisco Regional Water Quality Board](#) (which shares oversight of the issuance of permits to fill wetlands), the Corte Madera Inn's developer submitted an application to fill the pond, directly to the Army Corps of Engineers. Since the Corps is a federal agency, if they could win their approval to fill the pond, it could open a clear path to build developer's preferred proposal.

During this process, the Corps provided for a 45-day public comment period, in the course of which CVP had conversations with the Sahrye Cohen, the Permit Manager for the San Francisco Bay Area Army Corps.

Since there had already been a two-year planning review process, the Town's project file was pretty thick and included [three separate environmental impact reports](#) (draft, revised and final "EIR's"). It also included layers of Staff Reports and consultant's reports, and volumes of public comments. All of these documents discussed four distinct alternatives to the developer's preferred redevelopment proposal.

These included everything from “no project” to versions with fewer guest rooms or the same number of rooms but with differently configured buildings. All of these preserved the wetlands pond.

However, when I spoke to Sahrye Cohen and asked her about these less impactful alternatives, and about how the Corps would go about evaluating them, to my surprise, her response was, “What alternatives?” She went on to say that the developer had told them that their proposal was the only proposal and that there were no other “on site” alternative solutions.

Then I asked Ms. Cohen if she had ever read the various EIR’s. She responded that she was unaware of their existence. However, as a federal agency, the Corps was not under the authority of the California Environmental Quality Act (“CEQA”). She said that if a developer doesn’t provide that information, the Corps had no obligation to seek it out and they can make their decision solely on the basis of the information provided by that developer.

She is, of course, legally correct. Yet, I doubt most people would assume that this was the case. Still, I found Sahrye to be thoughtful and reasonable, and she seemed concerned to discover that EIR’s existed and that alternative solutions had been thoroughly considered.

CVP immediately sent the Army Corp the entire two-year history of public documents. We also sent the same information to the SF Regional Water Quality Board and to the Region IX offices of the Environmental Protection Agency (“EPA,” which has the power to override any decision by the Army Corps. Needless to say, when the Region IX office of the EPA learned about this, they were not happy.

The EPA wrote to the Army Corps [expressing their dissatisfaction with the applicant’s subterfuge](#).

Who’s looking out for the public’s interests?

In the course of our conversations, I also asked Sahrye if she had ever met with Adam Wolff, the Corte Madera Planning Director, and if so, had she ever asked him about alternative proposals. She told me she had met with Adam and the developer and had discussed the need for “on-site” alternative project proposals, but neither the developer nor Mr. Wolff offered any information in response.

Again, I understand the developer remaining mute in this situation, but why would a public official, whose fiduciary responsibility is to the people of Corte Madera, fail to volunteer information about the EIR alternatives when the opportunity arose?

I contacted Adam Wolf for comment prior to publication of this series. In his response, he suggested that I “appear to be confused” about how the Town and Corps permit approvals processes worked and added:

I’ve personally met with Sahrye on only one occasion earlier this year in May to discuss the Corps’ wetland delineation, and at that meeting I was informed of the Corp’s intention to start their Section 404 permitting process. There were not discussions regarding alternative proposals other than

discussion of the fact that the applicant (Reneson Hotels, Inc.) would need to conduct both off-site and on-site alternatives analyses (the latter of which had not yet been provided), pursuant to Army Corps regulations. I was certainly not asked whether any alternative proposals existed and I certainly never replied that none did. Finally, I have not until this email been aware of the letter from the EPA.

I find his response remarkable in a number of ways. Aside from the fact that it directly contradicts what I was told by the Army Corps Permit Manager, it's a perfect example of the methods of responding to public critics, which I described in [Part I](#) of this series.

First off, the critic is *always* told they are either confused or misinformed. These assertions allow the respondent to side-step the whole point of the critique, and inject a revisionist version of facts and circumstances. But which of us was, in fact, confused?

Although Mr. Wolff admits to being in a meeting where the Army Corps Permit Manager apprised him of the need "to conduct both off-site and on-site alternatives analysis," it would be remarkable for him to attempt to excuse his lack of notifying Ms. Cohen of the existence of the EIR file, simply because it was technically the developer's responsibility to do so "pursuant to Army Corps regulations."[\[4\]](#)

Is he inferring that if someone doesn't ask him a very specific question in precisely the right way, he has no obligation to disclose relevant information? Even though, in this case, he was certainly well aware of the significant implications of that information?

This excuse would miss the entire point of my inquiry, which is that he doesn't work for or under the Army Corps' regulations but rather, is supposed to represent the interests of the residents of Corte Madera.

But, maybe there is yet another reason for why he didn't volunteer the EIR information.

Could it be that Adam Wolff just doesn't know how these types of proceedings work?

On further prodding, Adam admitted that he did not send the *Alternatives* chapters of the DEIR and REIR to the Army Corps during the grading permit application comment period, because notice of the EIRs had been sent to the Corps when they were first published over the past years. He apparently assumed that was sufficient.

Unfortunately, sending pertinent "evidence" to the Corps during the prescribed comment period is *crucial* to the project outcome. Unless evidence and documents are sent to a deliberating agency *at the time of that deliberation*, they will not be part of the legal record and therefore will not be considered in that decision.

These rules apply to all legislative decisions at all levels of government and in all court proceedings. For example, if one doesn't make an argument and cite case law in a petition to the court, it's not the court's

job to make legal arguments or find supporting case law, for the petitioner, even though those laws and cases have been published and are on the books.

Similarly, if a city is holding open a CEQA public comment period, the public or other government agencies, must submit their comments and supporting information during that period, or they can never bring those arguments up in a court proceeding at a later date. That evidence would become inadmissible. However, if that evidence is properly introduced, it *cannot be ignored*.

Every time a municipality publishes an EIR, they *are* required to send a notice of its publication to all local, regional, state and federal agencies. However, those notices do not automatically constitute a part of an Army Corps permit manager's file when they review an application.^[5]

Everyone in government should know this and the Corte Madera city attorney would probably be the first to use this argument to dismiss a legal claim against the town, if brought by a member of the public.

Adam's reason for not notifying the Army Corps about the EIR file may absolve him of intentional wrong-doing, but it clearly indicates his lack of diligence. His lack of unawareness of the EPA's comment letter is also curious since it is his job to update the Town Council on the progress of this project, and because that letter was published on the [Marin Post in June of 2016](#) and widely distributed at that time.

I also wonder if he understands that the EPA can override a permit decision by the Army Corps, and how important that might be in this case.

To question authority

Adam complained that it was unfair of me to judge his actions, harshly, because of how deeply he cares about the Town of Corte Madera. He ended his last email to me by sniffing.

Please do not contact me in the future with an "opportunity to comment" for your blog. It's clear you have no intention to represent facts or present an honest assessment of my actions.

Well, okay, so just what are the "facts?" I think it's great that he cares, but the truth is that *everybody* "cares." Is that really the criterial we want to use to just a public employee's performance?

The *facts* are that when you take a position of considerable public responsibility, such as a planning director, the whole city is depending on you. So, if you really care, wouldn't you want to be sure you're thoroughly educated about all the rules and regulations? Because unfortunately, by failing to know that it was important to submit proper evidence (the EIR documents) to a federal agency during the public comment period, you have likely cost your community the ability to legally challenge the Army Corps decision on the future of the Corte Madera Inn development.

In fact, the only reason the Town of Corte Madera could still legally challenge the developer's proposal, based on the existence of other "practicable"[6] alternatives is because CVP submitted that information in a timely manner.

So, Mr. Wolff, how about saying, thank you to community members for being on top of things and discovering that the pond is a federally protected 'special aquatic site,' saving the Town from a legal quagmire? Or, thanking CVP for submitting the EIR information in a timely manner, preserving the right of the Town and its resident to challenge any future decision by the Corps?

The more important question, though, is why does it take this level of constant effort by the public just to get staff to do what we assume they know how to do in the first place?

Perhaps, because "planning" in Marin is actually being driven by something else, entirely.

[Read Part I – Is representative government slipping away?](#)

[Read Part II – Will the suburbs be hunted to extinction?](#)

[Read Part III – Dispatches from the front – Mill Valley](#)

[Read Part V - Dispatches from the front - Hamilton Field](#)

[Read Part VI - Dispatches from the Front - Marin County Government](#)

[Read Part VII - What will you do when Marin is no longer Marin?](#)

[Read Part VIII - Hide the ball](#)

[Read Part IX - Regionalism](#)

[Read Part X - Endgame](#)

[1] The developers presented "financial analysis" that every professional real estate developer we showed it to called it "highly creative", "nonsensical," and worse.

[2] Wetlands have been called the nursery of the oceans. California has already lost 90% of its wetlands in the past 60 years.

[3] In his testimony before the Planning Commission, Jim Martin of Environmental Collaborative did state that no one at the city had ever asked him to study how to save the pond. Its destruction was to be assumed.

[4] To date the EIR Alternatives have not been provided by either the Town or the developer.

[5] Therefore, even though the Army Corps was not responsible for considering the information found in the Corte Madera Inn EIR's, simply because they existed, once CVP submitted this information to the Army Corps, during the public comment period, they could no longer, legally, ignore that information in their deliberations.

[6] The federal standard used to evaluate the feasibility of project alternatives is whether or not those alternatives are practicable for any developer to pursue, not just the applicant.

3 Comments

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Join the discussion...



dadInMV • 4 months ago

Fantastic writeup. Keep up the amazing work!

^ | v • Reply • Share ›



Chris Lang → dadInMV • 4 months ago

having a problem, technical, in joining the discussion, but can comment here, seems like no one really cares about the little body of water where ducks land, etc, seems like developers could turn the pond into a wildlife asset for the benefit of their guests, who may probably be here because of marins green reputation and endless parks,etc (80%) sad to see the cm planner being hostile, does my cousin,david kunhardt read this stuff? is diane furst paying attention? just asking

^ | v • Reply • Share ›



Patricia Ravasio → Chris Lang • 3 months ago

Before we found the significant aquatic grasses growing there, this pond was called "a mud hole" by almost all town leaders, Mr. Lang. Nobody in any public position spoke in favor of saving the pond, except for me and a few other "bird people" as we have become known. These grasses support the growth of shellfish which are a significant source of food for the aquatic birds in the area.

It is the hope of many us, that this plan to pave over paradise has finally been shut down, but it is out fear that it has not.

What is behind this seemingly unfathomably impactful project is the support of several beloved and respected community leaders and volunteers, many of whom have personal relationships with the family which owns the hotel. While these civic leaders are important to our town. their personal relationships should not be



Blog Post



EPA

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Region IX of the EPA comments on the application to fill in Edgewater pond at Corte Madera Inn

Posted by: [Marin Post](#) - June 16, 2016 - 6:22pm

Jennifer Siu, Life Scientist, Wetlands Section, of the U.S. Environmental Protection Agency, Region 9, has sent the following comment to Sahrye Cohen, Permit Manager, at the Army Corps of Engineers, regarding Reneson Hotel's application for a permit to fill in the Edgewater pond at the Corte Madera Inn.

Sahrye,

Thank you for the opportunity to comment on the proposed Corte Madera In Rebuild (PN 2000-255330N) in Marin County, CA. In addition to the PN we have reviewed the applicants' Alternatives Analysis (AA) from the CEQA Revised Environmental Impact Report (REIR). EPA has the following comments and suggestions on the project pursuant to the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act.

Reneson Hotels, Inc. (applicant) proposes to demolish an existing hotel and adjacent restaurant to construct a new hotel facility on the site. The applicant proposes to impact a 0.64-ac brackish pond by completely filling the feature. As mitigation for fill of the wetland, the applicant proposes to purchase 1.20-ac non-tidal wetland credits at the Burdell Mitigation Bank. Although the applicant has submitted a 404(b)(1) Alternatives Analysis for eight off-site alternatives, no on-site alternatives were included.

At this point in time, the proposed project does not comply with EPA's 404(b)(1) Guidelines. First, the project purpose as stated is too narrow in scope and intent per the Guidelines. The basic and overall project purpose is to provide commercial hotel rooms in southern Marin County, CA. The intent, as stated in the PN, to 'build additional commercial hotel rooms' unduly limits the scope of analysis. We highly recommend the Corps ensures the applicant's Project Description is consistent with the Guidelines. Second, there are significant flaws in the 404(b)(1) AA submitted to the Corps, such that the Corps ability to accurately determine the Least Environmentally Damaging Practicable Alternative (LEDPA) is impaired. We find it curious that the applicant would submit an onsite alternative (Alternative 4) during the CEQA process that would completely avoid direct impacts to the pond; yet, the 404 AA does not include this onsite avoidance alternative. This inconsistency indicates that the applicant has deprived the Corps of full available information and that there are indeed practicable alternatives to the proposed discharge that would accomplish the basic project purpose and have a less adverse effect on the aquatic environment. The applicant must submit appropriate avoidance or minimization alternatives before proceeding with the 404 permit process.

Lastly, while this wetland may be small in acreage, it is connected to the tidal system and provides wildlife habitat values and water quality functions within the watershed. EPA highly encourages the applicant to consider sea level rise considerations and potential watershed benefits of this wetland. We do not support the proposed mitigation plan of purchasing credits at the Burdell Mitigation Bank, as it is a seasonal freshwater wetland complex and would not be appropriate compensation for this tidally-influenced wetland.

Thank you for considering our concerns and recommendations. Please contact me if you have any questions or would like to discuss our comments.

Regards,

Jennifer Siu



Blog Post



Marin Post

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Rook vs Knight Endgame? The Corte Madera Inn developer puts property up for sale - Part I

Posted by: [Marin Post](#) - May 26, 2016 - 1:39pm

For the past two years, the owners of the Best Western Corte Madera Inn have been proposing to replace the existing 110 room hotel with a significantly larger 174 room hotel, which would include a combination of a Marriott Springhill Suites and a Marriott Residence Inn.

The contentious issue has been the fate of a small, treed, wetlands pond area in the northeastern corner of the property, known as the Edgewater Lagoon. The Lagoon provides habitat for variety of birds and other wildlife. The developers have been unwavering in their determination to cut down the trees and pave over the pond, which they contend is key to their redevelopment's financial feasibility.

In March of this year, their proposal was recommended by the Planning Commission and scheduled to go before the Town Council for final approval in mid-May. However, the discovery of "[submerged aquatic vegetation](#)" in the pond (proving it was wetlands that required preservation) threw a wrench into the works. The Town Council hearing has been put off indefinitely. The developer hasn't made a public comment about what they intend to do now, but many believe this means they've accepted that their project has little chance of getting approved.

In addition, today we were notified that the owners have put the property up for sale.^[1] At first glance, it looks like they've given up on their proposed plan. For those who've fought to preserve Edgewater Lagoon this would seem to be good news.

I'm not so sure.

Even though the property is now for sale, John Zentner, the developer's biology consultant, has simultaneously filed [an application with the Army Corps of Engineers](#), seeking a permit to fill in the pond. So what is really going on here?

To fully understand the answer to that and many other questions, we need to examine how we got to this point in the first place.

A brief history of the Corte Madera Inn redevelopment project

Since the [project was first submitted](#), the so-called "preferred" project (Alternative 1, for 174 rooms), which is desired by the developer and doggedly endorsed by the Corte Madera Planning Department, has included the paving over of the pond. The unflinching contention is that this is the only proposal that is "financially feasible."

When the Corte Madera Planning Commission made its decision to recommend that the Town Council approve the destruction of the pond, at the March hearing, one would assume it was based on all the information available. But did the Commissioners actually read the voluminous administrative record and all the technical comments submitted by third party experts? And even if they had, as non-professionals, did they understand all of it? Or did they simply rely on the recommendations of the Staff Report?

From the outset, Town planners, the developer, and their biologist consultants have denied that the pond is actually wetlands. Developer supporters have testified that it is a "swamp," a "cesspool," and a "public health hazard." The Corte Madera Planning Department has essentially treated all discussion about the pond as an open and shut case. It must be eliminated.

However, recent photographs show the presence of submerged aquatic vegetation ("SAV" - [see attached photos](#)), which indicates that the pond is, in fact, a "special aquatic site." This recently made headlines when the Town of Corte Madera Planning Director, Adam Wolff, announced that he had received the following email from Xavier Fernandez, a senior environmental scientist at the San Francisco Regional Water Quality Control Board.

Dear Mr. Wolff:

*We were sent the following photographs of the pond at the Corte Madera Inn Rebuild Project Site. The photographs were taken on April 13 when the water in the pond had been drawn down. The photographs clearly show submerged aquatic vegetation growing within the pond at the Corte Madera Inn Site. Based on this, the pond is a special aquatic site that **needs to be preserved to the maximum extent practicable** [Emphasis added]. As such, we plan to attend the Town Council meeting to inform the Council that they may be approving a project that we will not be able to permit under our regulations.*

In plain English, this means that the Corte Madera Planning Department's [two year, review process and recommendations to the Planning Commission](#) have been based on faulty analysis and incorrect assumptions about the classification of Edgewater Lagoon.

Many community members are extremely grateful to the Regional Board for sending this note.

According to the report by Adrian Rodriguez of the Marin IJ, Planning Director, Adam Wolff, reacted quickly, saying, "It's new information," and "It's something that we take very seriously." Similarly, the IJ reported that "Garrett Grialou, president of the hotel company, agreed. When asked if the plant had previously been identified, he said, "No, certainly not."

But is this really true? Is this new evidence really "new" information? In truth, no. The owner, [the Corte Madera Planning Department](#) and the developer's expert consultants, and their legal counsel were repeatedly informed about this, many times, going back to January of 2015.

So the question is what *did* the Corte Madera Planning Department know and what did they choose to do with that information during the public review process that led up to the Planning Commission's recommendation?

Just the facts

One of the fundamental purposes of the California Environmental Quality Act (CEQA) is to require that decisions made by public agencies are based on facts and unbiased, scientific analysis, *not* on unsubstantiated assumptions made before the fact. Yet, that is exactly what appears to be the case with regard to the Corte Madera Inn rebuild plan.

Although the Corte Madera Planning Department had "expert" consultants (chosen and paid for by the developer) and legal counsel to do a proper analysis, members of the public have argued that the analysis has been flawed, and that the Planning Department's review process has been more akin to Kabuki Theater, than objective deliberations. They've charged that the entire process has basically been a charade to arrive at a conclusion that was predetermined by a deal cut between the hotel developer and the town planners, long before the process even began.

There is no way to prove or disprove this allegation. However, the email from the Regional Board, with its "new" information, indicates there are sufficient grounds to be skeptical.

All or nothing

Since the beginning, the hotel developers have taken an "all or nothing" approach. Predictably, this has only increased the controversy surrounding them. Although several alternatives have been proposed, some of which preserve the existing wetlands pond, both the applicant and the Corte Madera Planning

Department have been unflinching in their resolve to build the biggest hotel possible. Again, they claim their plan is the only plan that is financially feasible.

But what if there were an alternative for a slightly smaller hotel, a different design that allowed the pond to be saved, and that was also financially feasible? Wouldn't it be worthy of very careful consideration? Well, in fact, there is one. It is referred to as "Alternative 2," in the Staff Reports.

The developer and the Corte Madera Planning Department, its consultants and legal counsel have dismissed it out of hand. Since day one, they've seemed bound and determined to grant the applicant special treatment in order to maximize development and developer profits.

This is all in spite of the fact that public interest groups, third party biologists, wildlife experts, the Marin Audubon Society, and many others have repeatedly pointed out the importance of saving the pond, its ecological value, and that the developer's proposal has been based on unsubstantiated assumptions.

Although it seems most Corte Madera residents would like to see a newer hotel, a large number of those residents don't agree that the pond must be sacrificed in order to do that.

Meanwhile, the developer's supporters have treated all objections as an affront and claimed that anything less than what the developer demands is some kind of violation of the developer's "rights." Their snarky Internet trolls, operating under pseudonyms in chat rooms, have attacked project critics - defamation that would otherwise be actionable in the real world - in an attempt to silence opposition.

I guess if you can't win on the facts, attack the person.

Property Rights?

To be clear, what is at stake has nothing to do with "property rights." Not a single person or organization which has criticized the project has tried to deny the property owner's right to rebuild the Corte Madera Inn or his right to try to maximize *existing* development rights.

However, in this instance, the Corte Madera Inn developer is not just asking for the ability to exercise existing property rights. They are asking for *extraordinary new property rights* in order to enhance their bottom line. These extraordinary rights include a special General Plan amendment and a zoning change; unique to their hotel, all just so they can build the design proposal they insist they need for the project to be "financially feasible."

They are asking for a significant gift of public rights at the cost of losing important habitat, without any offsetting public benefits for the residents of Corte Madera. Yes, they stress that the new hotel will generate increased tax revenues for the Town. But they fail to mention that a slightly smaller hotel would also generate increased tax revenues.

Feasible, schmeezable

The Corte Madera Inn developer has repeatedly said that their first proposal is absolutely the only thing they can build; that nothing else is financially “feasible.” That’s not unusual. Developers almost always come out of the gate saying that.

However, for the developer to claim that they must have everything they want or they won’t be able to do anything at all is pretty remarkable. What is even more remarkable is that throughout Marin, every time we hear a developer make this claim, not a single elected official or town planner ever asks to see the developer’s financial feasibility numbers, so they can show it to an objective third party expert, for an opinion. Our officials and planners simply take the developer’s word for it, despite the staff’s duty to scrutinize the developer’s claims, and the Town’s right to request such financial information.

In any case, no developer in their right mind would take an all or nothing approach unless they were bluffing. Or in this case, is it possible that the developers have a good reason to believe they’re already going to get what they want if they just hold to that position?

This behavior has caused a growing number of people to wonder out loud if the “fix is in” and some type of backroom deal had already been made with the Town.

In this series, I hope to give readers the information they need to make their own decisions about that.

Bob Silvestri

Editor of The Marin Post

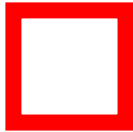
[Read Part II here](#)

[Read Part III here](#)

[Read Part IV here](#)

[1] Listed by [Newmark, Cornish & Carey](#) Real Estate Brokers

R. Silvestri



Blog Post



Reneson Hotels

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Rook vs Knight Endgame? The Corte Madera Inn developer puts property up for sale - Part II

Posted by: [Marin Post](#) - May 26, 2016 - 1:39pm

When is an alternative not an alternative?

CEQA and common sense require that actual analysis be done and that “findings” be made based on evidence, in order for a town to approve a project. So criticism of the developer’s preferred plan is not a case of nitpicking or being anti-development. Rather, it is a good example of why we have laws like CEQA and regulations about wetlands, in the first place.

To protect habitat and species from the insatiable forces of greed.

In his email to Adam Wolff, Xavier Fernandez emphasized that “the pond is a special aquatic site that needs to be preserved to the maximum extent practicable.” Since, as noted earlier, [the Draft Environmental Impact Report \(2015\)](#), [the Revised EIR \(2015\)](#) and [Final EIR \(2016\)](#) all included an alternative proposal (Alternative 2) for a smaller, 147 room hotel, which preserves the pond, isn’t it now a fait accompli that there is a viable alternative solution at hand that is “practicable,” and therefore must be considered?

At this point, why wouldn’t the Town just acknowledge the regulatory correctness of the San Francisco Regional Water Quality Control Board’s comments, and simply move forward with that less impactful

alternative? Unless, of course, the Town really did promise the developer that they would get all they wanted, before the public process ever started.

Is the Town now caught flatfooted because they never really seriously considered any of the other alternatives as being “real,” in the first place?

Over the past year, a number of residents have contacted the Marin Post, and claimed that Jana Haehl, the former mayor of Corte Madera, is still running things in Town. They characterize her role as being one in which she tells the Planning Department and the Town Council to “jump,” and they ask “how high?”

There is no way to know if there’s any truth to this. But one can only hope it’s not the case.

In any event, Jana has made no secret of the fact that the hotel owners are her friends and that she steadfastly supports their preferred project, and that any other alternatives should be dismissed out of hand. She has publicly stated as much and has argued that Corte Madera has lots of wetlands, and has saved enough of them, so it doesn’t matter what happens to this one.

Certainly, she’s entitled to her opinion like anyone else. She and other supporters also constantly bring up that the hotel owners are long term residents, who are very nice people that care deeply about Corte Madera, and claim that is sufficient reason to grant them what they want. The developer has also been playing the “We’re local owners” card very hard, and they have said all along that they intend to continue to own the new hotel.

The news that they’ve put the property up for sale to the highest bidder certainly casts some serious doubt on those sentimental arguments. It’s also curious that the broker’s sales brochure calls the property an “extremely rare...development opportunity” (instead of a “hotel for sale”), suggesting that an approval to build a new hotel on the site is a given.

In any case, as Marin Audubon president, Barbara Saltzman, wrote in the [May issue of *The Rail*](#), “A person’s personality should not have anything to do with approving a development project.”

Financial analysis as creative writing

Marin and the entire SF Bay Area is now arguably the hottest real estate market in the country. The broad statistical data used by the developer in his project financials does not accurately reflect what is or is not financially feasible in Marin. And the methods of analysis presented, do not tell us what we need to know in order to evaluate whether or not the proposed redevelopment is financially feasible.

In Attachment 3 of [the January 12th Staff Report](#), to the Planning Commission, Exhibit C ([attached below](#)) supposedly provides a financial analysis of the project. We assume the developer included it to show why they must have the maximum size hotel. We have to wonder if the Corte Madera Planning Department or anyone on the Planning Commission read it.

Conveniently, the developers only provide one financial scenario; the one they want. There are no comparative numbers offered for Alternative 2, the slightly smaller 147 room hotel scenario that preserves the pond; the one the developers contend they cannot possibly afford to build.

The developers provide a letter from Marriott Corporation saying that if the smaller hotel is built, it would probably be a Residence Inn, not a dual branded hotel with Springhill Suites. The developer contends that this is a deal killer. However, they provide no evidence to substantiate that claim, and the Marriott letter ([Exhibit D, also attached below](#)) *does not say* that such a project is not financially feasible.

So let's take a look at "[Exhibit C.](#)"

First off, there are a couple problems with this "analysis." Number one is that it is not actually a "financial analysis" at all, at least like anyone in the real estate business would use to decide whether to build or not build. They call it a "Hotel Development Residual Value Analysis."

A veteran, local real estate developer I showed this "analysis" to, euphemistically, called it "an interesting concept." In other words, no one knows what "Residual Value Analysis" means and these figures don't actually tell us anything about whether or not the investment is profitable, or the project is financially feasible.

This lack of clarity is not helped by the fact that the information provided is not broken down or otherwise specific to this project (it relies on broad national statistics), and it mislabels things, somewhat nonsensically – it calls the projected project value "potential income."

More odd is that no value is shown for land cost or equity in the deal. Is there debt on the property or is it owned free and clear? This matters because old debt has to be refinanced, which is a cost. And that impacts net revenues. But based on what is submitted and since the developer has owned this property for so many decades, it would be reasonable to assume that they own the land free and clear, and are pledging that as equity in order to get financing.

In any case, the developers are suggesting that all this adds up to a "Total Project Development Cost" of \$54,800,758. They show no developer fees or other profits. They show the land value as "Residual Land Purchase Price," as if to suggest it's an expense.

In other words, they are asking us to believe they are doing all this for free. How charitable.

In addition, the developer's information is far too incomplete to make any kind of determination about financial feasibility.

For example, is there cash required to close the deal? If so, how much and what is the cash on cash return on investment (ROI)? How is that cash invested and over what time frame, and what is the Internal Rate of Return (IRR)? What kind of construction and permanent financing is assumed, at what rate and term,

and what loan to value? Is the land subordinated to the debt and if so on what terms? Is there a schedule of partial releases?

In other words, “profit” is a very flexible term. Sometimes the answers to these questions result in a little profit and sometimes they result in a lot.

In any case, let’s look at what their “analysis” shows.

Net building area: 131,180 square feet. Check.

Number of rooms: 185. Check.

Average room rate: \$175/night. Check.

Occupancy rate: 75%. Hmmm?

Projected Hotel Occupancy: The estimated occupancy rate is very important because it significantly impacts operating revenues and how profitable the project will be (the number of rooms for rent multiplied by average room rental rate multiplied by number of nights per year of occupancy equals gross revenues^[1]).

The developers cite PKF Hospitality Research in their presentation. PKF is a highly respected firm for such data. But PKF’s most recent reports and forecasts do not support the developer’s claims.

75% occupancy is a reasonable “average” room occupancy rate in Marin County. But that has little bearing on this particular project in this particular location, because that average includes a very wide range of types of hotel and motel rooms (from the four star Hilton Embassy Suites in San Rafael to the rooms for rent behind Smiley’s bar in Bolinas), the vast majority of which are significantly older and inferior to what is being proposed at the Corte Madera Inn. The Corte Madera Inn will arguably be one of the best located, highest quality hotels in all of Marin County. It is very likely that its occupancy rate will be higher than the Marin average.

All of the professional real estate brokers and investors we spoke with agreed on this.

In addition, in their [December 2015 “Hotel Horizon”](#) hotel occupancy forecast, PKF states that in hot West Coast markets such as Marin and the SF Bay Area

the growth in demand for lodging accommodations will exceed the change in supply during each of the next two years.

For 2016, PKF-HR is projecting

room rates to increase by 5.5 percent, followed by an even greater 5.8 percent rise in 2017.

And that

At this point in the cycle, the top tier cities are approaching all-time highs, limiting the potential for continued occupancy gains, (and in) the San Francisco market... occupancy level achieved was 90.3 percent.(in 2015)

All this considered, the developers are asking us to believe that the average occupancy rate is all they can achieve. I very much doubt that. If, for example, we increase the occupancy rate by only +5%, to 80% occupancy (vs. 75%), we get an increase in annual gross revenue of almost \$600,000.[2]

However, even if we accept the developer's very conservative occupancy rate of 75%, this project certainly appears to be very profitable. Profitable enough to suggest that a smaller version, Alternative 2, that preserved the pond, would be similarly profitable.

Projected Hotel Value and Cap Rates: Exhibit C shows a "cap rate" of 6%. A cap rate, or "capitalization rate," is the ratio of the net operating income ("NOI") to the property's value. It tells an investor what kind of "yield" the property will provide (the percentage of return on investment based on the project's value) so he can compare it to other investments.

To get the cap rate, you divide the net operating income by the project value and you get a percentage. So, for example, if a property was listed for \$1,000,000 and generated a net operating income of \$100,000, the cap rate would be $\$100,000/\$1,000,000$, or 10%. Conversely, if you know the NOI and have a rate that you think investors are looking for (the 6% suggested by the Inn developers, for example), you can divide the income by that rate and get a projected value or selling price.

Why does this matter?

It matters because the lower the cap rate, the higher the value of the hotel. And that value, that "equity" in the hotel, just like your house, is basically *profit to the developer / owner*.

A 6% cap rate may be a reasonable number for a developer to submit to a lender when they're trying to get financing. But again, it's only an average for hospitality properties in Marin. In the Southern Marin market, however, it's likely that the actual value of this brand new, premium hotel, located on a triple "A" hotel site, could be higher and therefore, the cap rate could be lower (perhaps 5.75%) and the profits significantly greater.

If, for example, we use a slightly more aggressive 5.75% cap rate, we get about *\$4,500,000 more* in property value for the developer, and more than \$100,000 in additional cash flow profit per year.

The bottom line: *Even if we use the developer's financial assumptions, there is nothing that suggests that the redevelopment of the hotel is not very profitable. When this project is completed, there will really be nothing like it in Southern Marin.*

Again, this would suggest that the smaller hotel alternative that preserves the pond will be equally profitable and financially feasible. Yet, for some unexplained reason, it seems that *no at the Town Planning Department or the Planning Commission ever asked the developers to disclose their financial feasibility analysis of Alternative 2!*

A Financial Analysis of Alternative 2:

Alternative 2 is a proposal to build a 147 room hotel that saves the pond. We'll use the same metrics that the developer used for the previous analysis.

Net building area: 104,235 square feet. (131,180 sf / 185 units x 147 units)

Number of rooms: 147

Average room rate: \$175/night.

Occupancy rate: 75%.

This gives us:

Gross annual revenue: \$7,042,188

Operating expenses: \$4,429,556 (62.9%)

Net operating income: \$2,612,632

Cap Rate: 6%

Project Value: \$43,543,873[3]

Frankly, there is nothing about these results that suggests that Alternative 2 (147 rooms) is not financially feasible. So why isn't the Corte Madera Planning Department asking the developer for better information so they can determine for themselves exactly what is financially feasible and what is not?

Good question.

To answer that we have to keep digging.

By Bob Silvestri

Editor of The Marin Post

[Read Part I here](#)

[Read Part III here](#)

[Read Part IV here](#)

[1] There are actually other ancillary revenues associated with hotel operations such as concessions and vending machines, concierge referral fees, etc., but we'll ignore those for now.

[2] \$175 per night multiplied by 185 rooms multiplied by 292 days (80% of 365 days a year) of rental we get \$9,453,500 vs. \$8,862,656 = +\$590.844.

[3] Construction costs, soft costs, taxes, and interest are all proportionate.

Corte Madera Inn Staff
Report Exhibits C and D

3 Comments

Marin Post

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J G Haehl • 8 months ago

Bob, you missed my point. Of course I support the hotel project, because I believe it will be good for Corte Madera. There's no question about that. You seem to object to my speaking in favor of it at two public hearings held by the Planning Commission. Am I not allowed to speak, in your opinion? For the record, I've attended only two Town Council meetings in the past six months.

In your article, you not only took a personal swipe at me, but you disrespected the integrity of Town officials in what you wrote, which was as follows:

"Over the past year, a number of residents have contacted the Marin Post, and claimed that Jana Haehl, the former mayor of Corte Madera, is still running things in Town. They characterize her role as being one in which she tells the Planning Department and the Town Council to "jump," and they ask "how high?"

That's a ridiculous statement, as well as being untrue. You really should stop publishing rumors fed to you by people who are either poorly informed or have some personal axe to grind.

In case you don't know, it's been nearly forty years since I was the Mayor of Corte Madera.

^ | ▾ • Reply • Share ›



bob silvestri Mod • 8 months ago

Jana. I suppose we're the ones who should be flattered that you would take the time to read our "little newspaper." We stand by the report. The comments surrounding your involvement



Blog Post



Bob Silvestri

[CORTE MADERA](#) | [PLANNING & DEVELOPMENT](#)

Rook vs Knight Endgame? The Corte Madera Inn developer puts property up for sale - Part III

Posted by: [Marin Post](#) - May 26, 2016 - 1:39pm

Saving the pond was never even considered -

The purposes of doing an Environmental Impact Report are unambiguous. On Page 19 of the January 12, 2016 Staff Report to the Corte Madera Planning Commission, it states,

The primary purpose of the EIR is to disclose to Corte Madera decision-makers and the public the potential environmental impacts associated with the applicant's proposed project and identify mitigation measures or alternatives to the proposed project that would reduce or avoid the environmental impacts.

At the [Corte Madera Planning Commission hearing on March 22, 2016](#), Jim Martin of Environmental Collaborative, one of the two biologists who evaluated the project, and the one who prepared the biological resource section of the EIR, commented on various issues regarding the pond.

In his comments at the hearing, he incorrectly described the pond, saying, “most of it is un-vegetated ‘other waters’)... there is (only) wetlands along the east edge along the northern portion of the pond... about 500 sf of wetlands verified by the (Army) Corps.” He made this statement in spite of the fact that Peter Baye, Ph.D., and a well-respected, independent biologist hired by Community Venture Partners, had corrected his error, in a February 15, 2016 comment letter (portions of which are noted below).

In any event, Martin's testimony helped convince the Corte Madera Planning Commission to recommend the developer's preferred proposal and the destruction of the pond. Somewhat shockingly, however, the Commission also chose to ignore Jim Martin's testimony about saving the pond.

During his comments, Mr. Martin said that it was perfectly feasible to rejuvenate the pond and ensure its viability. But this testimony was also very revealing in a number of other ways. He said that they "had looked at an alternative... Alternative 2 that would require that the pond (be saved)." But then he contradicted himself and admitted that he really hadn't "looked" at it at all, saying, "doing so (saving the pond) would require further detailed analysis, to look at water quality, hydrology and habitat enhancement to make sure that the problems ...of the pond could be addressed."

Then, after educating the Commission about what it takes to have a viable wetlands pond, he freely admitted that "it is something that *is possible* [Emphasis his] within the parameters discussed in Alternative 2" (to save the pond).

He just wasn't asked to study how to do that (in spite of the fact that the EIR showed that Alternative 2 met the project objectives except maximizing profits for the developer).

Why not?

In the letter prepared by Environmental Planner, Amy Skewes-Cox AICP, and included in the Corte Madera Staff Report for the March 22, 2016 hearing, on page 11, Skewes-Cox explains that Alternative 2 is rejected because it "would not meet many of the project objectives".. the third of which she lists as "eliminating the pond."

What?

This is a catch 22. So the town created an "alternative" that decreases the environmental impacts of filling in the pond, then it rejects that alternative because it doesn't allow for filling in the pond?

On Page 13 she goes on to explain that on page 3-18 of the Draft EIR,

The following objective has been stated by the applicant (see page 3-18 of the Draft EIR). Eliminate the pond for aesthetic, odor and safety reasons.

This is rather preposterous. The developer got to dictate how CEQA was going to be applied and was able to insert an "objective," so that any alternative that did not get rid of the pond would have to be automatically rejected.

Talk about circular logic. This is a verbal Escher drawing.

Jim Martin did not study how to save the pond because the developer predetermined that filling in the pond was a "requirement" of the project. And the Corte Madera Planning Department never even blinked.

They have effectively admitted that the “Alternatives” of the Corte Madera Inn EIR are a sham.

It goes without saying that this is not what CEQA intends. As the Corte Madera Planning Staff knows well, it is not the developer's EIR, it is the Town's EIR. But here it appears that the Town has abdicated its role.

The pond can be saved

In response to further questioning by the Commission’s chairman, Mr. Martin also offered, “I would agree this looks like this is a remnant of an historic slough that went through that area ...that now has been largely isolated.” And that “The culvert that goes into the drainage ditch and then the boxed culvert under the freeway is no longer used by the city.... It’s been closed off... so what’s left is this largely silted 18 inch pipe that’s not functioning and no longer provides the flushing that’s needed there to maintain the water quality conditions.”

So to paraphrase, what he described confirms exactly what project critics have been claiming: That the pond is not entirely “artificial,” and that the hotel owner and the Town have been consciously and purposefully neglecting the pond and doing all they can to destroy its viability, so they could turn around and declare it a “cesspool” and a “smelly swamp” that is beyond redemption in order to get rid of it.

Martin then advised the Commission that there are many other projects, some on larger scales, that have the same circulation problems, but that have been solved. He said, “It’s about improving circulation in that, you want to improve the water quality, you want to improve the ability to support emergent vegetation, and increase the habitat value. “

When asked how long it would take to create such detailed environmental studies to save the pond, he said “probably six months.”

At this point, instead of acknowledging that this information was really significant, and that the Staff Report had failed to provide any of this information, or a study of how to save the pond, as a part of alternative 2, the Commission’s chair came to the astonishing conclusion that six more months was “too much of a burden” *on the developer* to make it worth considering!

Too much of a burden on the developer?! Is that the Commission’s job, to ensure the developer doesn’t have too many burdens on this path to profits?

Even more significantly, the question is why weren’t the developer’s biologists required to study what was required to save the pond, as part of their analysis of EIR alternatives? Isn’t that what CEQA requires alternatives to do?

On page 30, of the January 12, 2016 Staff Report to the Corte Madera Planning Commission, it indicates that in December of 2015, the Planning Commissioners specifically asked, “What would be required to

"flush" the pond and improve water quality?"

The Staff Report's response was

A more detailed hydrological and engineering investigation would be required, but the Town preliminarily believes that a new pump station and force main would be required to adequately circulate water between the pond and Lagoon 1. The slide gate between the pond and the highway culvert is not opened due to the potential for tidal backwater from Shorebird Marsh (which experiences a greater tidal spectrum) to increase the water surface levels in the pond and Lagoon 1, leading to potential flooding of adjacent streets and properties.

But this doesn't answer the Planning Commission's question. This response is not sufficient for the Planning Commission to make a "finding" that it is okay to fill in the pond.

So, why didn't the town just order that study in January? Why did they side step it?

More good questions.

A House of Cards

On January 20th of 2015, Edward Yates, a highly qualified, local land use attorney, sent a letter to the Corte Madera Planning Department, [on behalf of a group of Corte Madera residents called Friends of Corte Madera](#). The group expressed concern about the proposal to rebuild the Corte Madera Inn and the destruction of Edgewater Lagoon, focusing on the inadequacy of the Draft Environmental Impact Report (DEIR) and questioning the legitimacy of its findings about wetlands, and a host of other environmental issues.

That letter was subsequently followed up by other letters challenging the findings of the Revised EIR and the Final EIR, [on August 19, 2015](#) and [on January 11, 2016](#), respectively, again by Mr. Yates, but this time on behalf of Community Venture Partners. Those comments were joined by comments from Barbara Saltzman, president of the Marin Audubon Society, [biologist Peter Baye, Ph.D.](#), [hydrologist Greg Kamman](#), head wildlife expert and Director of Wildlife Science at Audubon Canyon Ranch, [John Kelly, Ph.D.](#), and many others. All of these experts unanimously agreed that the analysis and classification of the pond was faulty and inadequate.

They each enumerated their arguments in great detail, but Peter Baye's letter is particularly important. In the "Summary" of this February 2016 letter, he described the pond as follows [**Emphasis** added]:

The Corte Madera Inn "pond" habitat complex consists of three distinct elements that together support a persistent, important roost site of black-crowned night herons, contiguous with to foraging (feeding) habitat for black-crowned night herons and other wading birds. The Corte Madera Inn pond habitat complex comprises:

(a) riparian upland non-native trees bordering the pond and fringing wetlands;

(b) **submerged perennial aquatic vegetation beds (SAV, or “vegetated shallows” – wigeongrass, *Ruppia maritima*)** extending across the brackish pond bed , influenced by seasonably variable salinity (brackish to fresh-brackish salinity range);

(c) perennial fringing brackish marsh composed of extensive to patchy saltgrass (*Distichlis spicata*) and alkali-bulrush (*Bolboschoenus maritimus*) wetland zones above the permanently submerged aquatic vegetation zone (*Ruppia maritima*).

Both the SAV beds and the fringing brackish marsh are jurisdictional waters of the United States and both qualify as jurisdictional “Special Aquatic Sites” subject to regulations of the Clean Water Act Section 404(b)(1): vegetated shallows (40 CFR §230.43), occupying most of the pond area, and wetlands (40 CFR §230.41). The types, status, and ecological functions of these jurisdictional waters are incorrectly and incompletely described in the DEIR., which erroneously identifies them as mere “other waters”. The DEIR omits analysis of potentially significant impacts to the important special aquatic site resources of SAV beds, which it incorrectly identifies as (nuisance) “algal blooms”.

This is exactly what Xavier Fernandez wrote to Adam Wolff three months later. So it was not “new” information in any way, shape, or form. The Corte Madera Planning Department and the developer’s biology consultants dismissed Peter Baye’s finding out of hand. Basically, they said he didn’t know what he was talking about.

But Peter Baye was not the only voice critical of the developer’s biologists, that the [Town planners chose to ignore](#).

In the [May 2016 edition of *The Rail*](#), the monthly publication by the Marin Audubon Society, President Barbara Saltzman argued that the Corte Madera Planning Commissioners and the Planning Staff “did not seem to care about or question the biological consultant’s evasions, conflicting, incomplete and inadequate reports and biases.”

Her comments were also ignored.

However, perhaps more significantly, in his letter, Dr. Baye also pointed out that the developer’s proffered mitigation plan will not work. Again, Baye [**Emphasis added**]:

The habitat structure and functions of adjacent perennial aquatic vegetated shallows and terrestrial/riparian roosting (tree) could not be mitigated by an off-site fresh-brackish seasonal non-tidal wetland mitigation bank,

In other words, “mitigation” requires that the type of land offered to offset the loss of the pond has to have the same characteristics as the pond, and replace the same type of habitat that is being lost. What

this means is that the Burdell Ranch Wetlands Conservation Bank mitigation credits that the developer has purchased and offered the Town, cannot be used. They are not apples to apples.

At the Planning Commission hearing, Jim Martin informed the Commission that the applicant was still shy the number of credits needed to satisfy the mitigation for the pond (paying money to purchase “mitigation rights” to other marshlands somewhere else), even as it was then mis-characterized. He said, this is something that had to be solved in order to move forward and get a grading permit.

At the moment, with the pond’s new wetlands classification, the developer has no viable mitigation plan.

But without a mitigation plan approvable by State and Regional agencies, does that mean the developer is now “dead in the water,” or perhaps the pond?

It’s important to note that it is still possible for a developer to propose a mitigation plan, using mitigation land bank credits, to Army Corps and the Regional Water Board, even with the site now designated as a “special aquatic site.” The regulatory “tests” one has to overcome to show that no other alternatives exist that are feasible, are certainly harder, and the required ratio of mitigation land to the wetlands being lost will also be higher. But it’s not impossible if someone wants to throw enough money at it.

This brings us to an examination of the developer’s endgame.

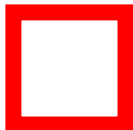
By Bob Silvestri

Editor of The Marin Post

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Blog Post



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Rook vs Knight Endgame? The Corte Madera Inn developer puts property up for sale - Part IV

Posted by: [Marin Post](#) - May 26, 2016 - 1:39pm

The Empire Strikes Back -

When asked about the “new” information and the mischaracterization of the pond by the Marin IJ, Peter Baye said he could not imagine how any trained biologist could have missed the information, on record, to properly categorize the pond as a special aquatic site. The required characteristics are clearly cited in the *Wetlands and Water Resources Report of 2005*. Baye summarized his feelings by saying “I don’t know if it was an omission or amnesia. If it was available to me, it should have been available to the consultants and the city.”

He was being charitable. Frankly, it is inconceivable that two highly trained and experienced biology consultants, such as Jim Martin and John Zentner,^[1] the developer’s main biologist, would not have known the same information that Peter Baye knew.

The developer’s biology consultants did not take this lying down. The Staff Report to the Corte Madera Planning Commission for the March 22, 2016 hearing, contained letters from both Jim Martin and John Zentner.

On page 21 (Staff Report) Jim Martin states

I revisited the pond on Feb 22, 2016. As was described in the wetlands delineation by the applicant's consulting biologist (John Zentner) and consistent with my previous observations, the majority of the pond bottom is completely un-vegetated.

He includes photographs taken from various places on the shore. They show a pond filled with water. How he was able to determine what was or was not underwater standing on the shore, is remarkable. Why not put on hip waders and have a real look? That would make sense unless you really weren't looking to find anything in the first place.

In his letter, Jim Martin goes on to say Baye is "incorrect," and that Baye is wrong "because the site does not contain SAV beds." He spends pages on citations and endless jargon about why Baye was just dead wrong.

Well, we now know who was right. What does that say about Jim Martin's professional abilities?

But as if Jim Martin's rebuttal was not enough, the developer also had his primary consultant, John Zentner, respond to the same list of arguments presented by Martin. But whereas Martin stuck more to the straight and narrow of professional opinion, Zentner launched a more personal attack on Baye, impugning his integrity as a professional.

In his letter of March 14, 2016 to Adam Wolff, Corte Madera Planning Director, Zentner dismissed Baye out of hand, alleged that Baye probably didn't even visit the pond. Then he sarcastically characterized Baye's "scientific approach" as being mere "camouflage for a misleading and inaccurate series of comments."

In his comment letter, Zentner postures himself as the ultimate authority on wetlands and environmental analysis, even offering photographs of what widgeongrass looks like in a pond, on the Petaluma River (which, ironically looks exactly like the photos sent to Adam Wolff by Xavier Fernandez, one month later). Zentner was adamant in defending his report and emphatically claimed the pond is a "man-made/altered pond," contradicting Jim Martin's testimony eight days later that it was a "remnant of" ancient marsh.

Zentner's general tone was that Baye's opinions were biases and somehow corrupted by his passions to save wetlands, whereas his own review was grounded in facts, uncontroversial, and squeaky clean.

But it's questionable that John Zentner can lay claim to such moral high ground.

According to [the U.S. Department of Justice](#), in 2000, John Zentner pled guilty to criminal charges under the Endangered Species Act, for illegally taking threatened California red-legged frogs at a new housing project in Concord, California, for which he was a paid consultant.

The DOJ reported that

Zentner was hired as an environmental consultant to help obtain project-related permits and perform ecological monitoring services on a new six -acre residential development known as the Holly Creek Estates. The company also was hired to ensure compliance with federal and state rules for preserving wetlands and protecting animal species.

On July 27 and July 28, 1999, at John Zentner's direction, more than 50 California red-legged frogs and more than 500 tadpoles were collected by Zentner & Zentner employees and relocated from one portion of the pond that was to be filled in to another portion that was to be preserved.

Zentner denied any wrongdoing.

Zentner was convicted in 2001. According to [The Berkeley Daily Planet](#), Jeff Miller of the Center for Biological Diversity said tht “his group believes the conviction calls into question Zentner's work on other East Bay developments, including the Greenbriar Homes development along Tassajara Creek in Dublin and the Pine Vista Estates subdivision in Alamo.”

Does mitigation really work?

Compensatory mitigation measures such as the ability to purchase mitigation credits is a concept that was developed nationally and regionally to help save precious habitat. The idea is that if a development is going to cause the loss of special habitat (wetlands, forests, etc.), the developer is required to purchase similar habitat somewhere else so that there is no “net loss.” This idea makes great sense from a global, 30,000 foot high point of view.

But what does all this really matter to the people and the wildlife in Corte Madera?

At the local level, the truth is that "off-site mitigation” really only benefits developers. If wetlands are lost, do the people and wildlife of Corte Madera really benefit from that fact that a developer paid money to purchase some land rights 50 miles away? When more land is paved over, will Corte Madera’s quality of life be improved by mitigation at a distance? Will the local birds and other species of Corte Madera really “benefit?” Or will Corte Madera just lose more wildlife and become more urban?

For the developer, this all just means having to pay some more money to satisfy the requirements. For them, it’s just about money, not about the community.

So what now?

Does the fact that the property is now for sale mean that the project is dead? I doubt it. Otherwise, why would the developer still be pursuing an approval from the Army Corps of Engineers to fill the pond.

Their application is now posted on the Corps website, which is seeking public comment. This is their public Notice:

A U.S. Army Corps of Engineers Regulatory Program Public Notice for File No. 2000-255330N, Corte Madera Inn Rebuild is now available on our website:

[CLICK HERE](#) to visit the Army Corps website and make a comment (scroll down on web site page to see "Reneson Hotels" application # 2000-255330).

The comment deadline is June 16. According to the Corps web site: "Reneson Hotels, Inc., through its agent, Zentner and Zentner, has applied to the U.S. Army Corps of Engineers, San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the construction of a 131,000 sq. ft. hotel located at 56 Madera Boulevard, in the Town of Corte Madera, Marin County, California."

We would strongly encourage anyone who has an opinion about the fate of Edgewater Lagoon to go to the Corps website and submit comments to them before the June 16, 2016 deadline.

What is clear is that the Corte Madera Planning Department does not want this project to go back to the Planning Commission. They will look for any possible way to avoid that and move forward. The last thing they need now is more public scrutiny. But the Town also cannot risk getting on the bad side of the Army Corps or the Regional Water Board. They have to deal with these agencies often. So they are caught in somewhat of a quandary because they've been such ardent supporters of the developer's plan.

This would suggest that the Town will either sit and wait, or try to seek a compromise to appease the developer, and perhaps claim that the Town has to move forward toward approval because they could be sued by the developer. This would be nonsense because the developer currently has no zoning rights to build the 174 hotel, so they can't sue for rights they don't have.

On the developer's side, it probably means the developer may now do everything in their power to lobby politically, and play the Army Corps and the Regional Water Board against each other, and try to exploit every legal loophole possible in their attempt to get a permit to fill the pond.

What about the federal and state agencies?

The Corps and the Regional Water Board have the power to deny the developer a permit to fill the pond even if the developer offers to purchase more mitigation land rights. And those who want the pond to be saved very much hope and pray they will do that.

Unfortunately, the Corps and the Board also have the power to allow the pond to be destroyed, thought it would probably have to require more land set aside as mitigation, at a ratio greater than the present ratio of two to one. But as noted above, for the developer that's just money. It won't save the pond.

We can only hope that these agencies will stand firm and not grant a permit to fill the pond.

A “remarkable redevelopment opportunity”

Listing the property for sale is an interesting move by the developer. In some ways, it makes sense. It addresses two challenges the developer is facing: Town approvals and government agency approvals. But it could backfire.

On one hand, listing the property may be a veiled threat issued to the Town of Corte Madera.

The developer has been threatening all along that if they don't get their way, they will sell the land to the highest bidder. And since its zoned commercial, the Town would be hard pressed to stop a more undesirable use, such as a car dealership, from buying it and submitting an application to develop it, with or without saving the pond.

So there is a chance this type of threat might sway the Town to speed up its approval of the preferred project, or even to *join* the developer in appealing to state and regional agencies to find a way to approve a permit to fill the pond. If so, then it's a shrewd move on the part of the developer. With that permit in hand, it will be much harder for the Town to stop the proposed development.

If those agencies don't approve a permit to fill in the pond, the developer is no worse off than they are now. They can always sell it as is. And even if they really do want to sell it at this point, if the Army Corps does approve a permit to fill in the pond, it will only enhance the property value even more, giving them the option of either developing it as planned or selling for an even higher price^[2].

Lastly, what has the developer got to lose by listing it? They're not obligated to sell it unless they get an offer that suits them. And if someone comes along and makes them an offer they can't refuse, they can just cash out and wash their hands of it.

It appears this is and has always been about maximizing profits.

Questions remain

We will probably never know what really happened during this project's application history. What we do know suggests that information that was readily at hand was either dismissed out of ignorance or intentionally buried to bring about a predetermined outcome.

The Regional Water Board is the agency that sent Adam Wolff the heads up email about the misclassification of the pond. Approval by the Regional Water Board is essential to getting a permit to fill the pond. However, the Army Corps must also approve the permit. So each agency will have to review the project, based on federal and state standards, before a permit can be issued.

But the developer has filed an application for a permit with the Corps, first, even though it was the Regional Water Board that blew the whistle on the Town. So if the Corps decides they want to approve a

permit to pave over the pond, will the Regional Board agree, if mitigation offsets are increased? Will either the Corps or the Regional Board bow to political influence if it's applied by the Town or the developer's political contacts?

I guess we'll have to wait and see.

Either way, at the end of the day, the Corte Madera Town Council is the one who will make the final decisions. And please keep in mind that, technically, *they have not even seen this project yet*. Their hearings on the approval or disapproval of the project, as proposed, or its alternatives, will be a "de novo" hearing, literally meaning that it "starts from the beginning."

The Town Council has the power to do the right thing. And they have options.

For example, the Council could decide that the proposed sale of the property is justification for placing this property within the scope of the development moratorium that is already in effect along the rest of Tamal Vista Boulevard. This would preclude any redevelopment for the time being.

The Council might also move forward immediately to craft a new hotel zoning ordinance that would affect all hotel properties in the Town, and zone the Corte Madera Inn property as *only* for hotel use. This would protect the public's interest and remove the threat of more undesirable future development by a different owner.

The Town Council has the power to decide what is best for the long term interests of the Town, and its residents, and its wildlife.

The question is will they seize the opportunity to do that.

It is what it is?

Why do we always have to accept that "progress" ends up equating to loss; loss of our natural environment, loss of our quality of life, loss of places of solitude?

In all of this, the developer has never looked at the value of the pond and its potential as an asset, as something that adds value to the property, instead of something that just takes up space and could be used to park more cars.

There's something very wrong with how too many of us just accept the demise of natural places without even giving it a second thought.

I think we all understand the developer's motivations. It's just how our system works. It's human nature to always try to maximize our situation to our own advantage – to get the best possible deal we can for ourselves. And the developer's argument that maximizing tax revenues is also a public benefit employs

the same logic. But if we continue to narrowly define public benefits only as economic benefits, we will eventually grind our world into dust.

Okay, so now some of you are rolling your eyes and maybe even laughing, saying I'm being overly dramatic and hopelessly naïve. How in the world, you say, could the loss of a .64 acre pond, a few birds and some trees possibly "grind our world into dust?" But, unfortunately, that's exactly how it happens.

One acre at a time. One species at a time. One community at a time.

Until one day while you're stuck in yet another traffic jam, gazing out at the concrete, paved over world around you, you start to wonder, "What happened to Marin?"

By Bob Silvestri

Editor of The Marin Post

[Read Part I here](#)

[Read Part II here](#)

[Read Part III here](#)

[1] According to his web site John Zentner has over 30 years of experience in wetland science, storm water treatment, permit processing and restoration. He specializes in federal and state policies and regulations, wetland boundary determinations, and mitigation programs. John has been a principal project manager for numerous environmental assessments, C3 stormwater plans, habitat boundary and mitigation plans, Section 404 (Clean Water Act) permit approvals and has worked as an expert witness.

[2] Any rights granted will transfer to the buyer of the property.

3 Comments

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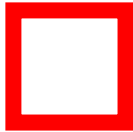
Join the discussion...



Rain Reiya • 2 months ago

Their at it again; let's create a circle of people to protest the Hotel chai and City of Corte Madera. Let's save the pond, this is a can do. reiyalight1@yahoo.com

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Blog Post



Reneson Hotels

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Comments to the Corte Madera Planning Commission on the Redevelopment of the Corte Madera Inn

Posted by: [Bob Silvestri](#) - February 21, 2016 - 4:27pm

The Corte Madera Planning Commission is now conducting its final public hearings on a proposal to tear down the existing, modestly scaled, 110 room Corte Madera Inn, and replace it with a significantly larger 187 room, Marriott Residence Inn and Springhill Suites. A number of residents have expressed concern that this proposal constitutes unnecessary over-development of the property, particularly since less impactful alternatives are available.

Community Venture Partners (“CVP”) is a 501(c)(3) nonprofit organization dedicated to bringing the voice of the community to government decision-making. Toward that end, CVP spends significant time and money to ensure that government decision makers have the best possible data and expert opinions at their disposal, when they make those decisions. We do this as a free public service and our efforts are wholly dependent on the generous support of hundreds of Marin residents.

After undertaking extensive, independent analysis, and consulting with experts in environmental law, hydrology, biology, ecology and wildlife, it is our professional opinion that the proposal presently being considered would result in inappropriately scaled new structures on the site and the unacceptable loss of the existing pond and wetlands marsh area that provides emergency capacity for flood waters and significant habitat for important local bird species.

Furthermore, we concur with Corte Madera residents, who believe that the Corte Madera Planning Commission should recommend a less impactful, modified version of Alternative #2 that provides for no more than 140 rooms and preserves the pond and its surrounding vegetation (which must be restored and cared for, going forward). A more detailed explanation of our recommendations is found below.

Finally, in response to the projected impacts of the WinCup development, the Corte Madera Town Council declared a development moratorium along Tamal Vista Boulevard. However, the proposal by Reneson Hotels, to redevelop the Corte Madera Inn property, was given an exemption to that moratorium because the Town has contended that the developer's application predated that restriction. CVP has commented that it is questionable that the developer's application was, in fact, "complete" prior to the moratorium since that application lacked sufficient design details (renderings, final site plans, etc.) that would have shown the public what was truly intended.

However, so far, the Town has not responded on this question. We ask that this be reconsidered in concert with the other issues raised herein.

Planning and Property Rights

To be clear, the decision before the Planning Commission is not about property rights. CVP fully supports an owner's right to redevelopment property under the terms of the Corte Madera General Plan. However, in this situation, Reneson Hotels is not just asking to be able to do that, but instead is asking for a bonus of property rights of approximately 70 percent more than the existing development on the site. To accomplish this they are requesting a special amendment to the General Plan that would apply to only their property, without consideration for how the Town addresses the overall zoning issues for hotel uses throughout the Town.

This is a situation where a property owner is demanding "extra" property rights, based solely on their wish to maximize their financial gains. This begs the question, if the public grants a single property owner extra development rights, what are the off-setting benefits to the community, in exchange for this gift? And, what kind of precedent does this set for future development proposals in Corte Madera.

Chronology of Public Comment

For several years, Corte Madera has been the epicenter of public debate about growth and city planning, triggered by the now infamous "WinCup" apartments project ("Tamal Ridge"). However, the WinCup debacle has awakened the community to the importance of good city planning, and now that community is more fully engaged than ever. CVP has also participated in this debate, commenting on the WinCup approval process, supporting the current development moratorium on Tamal Vista Boulevard, and meeting with Town Councilmembers about a variety of development issues in the town (e.g., the Cinema property).

The DEIR

In late 2014, the Town of Corte Madera released its Draft Environmental Impact Report (“DEIR”) for the Corte Madera Inn redevelopment proposal. Community Venture Partners was then contacted by Friends of Corte Madera, a group of local residents who were concerned about the proposal. In support of their concerns, we assisted them in retaining legal counsel, which resulted in the submission of a [comment letter of January 20, 2015, on the DEIR](#), by attorney Edward Yates.

To read the full text of that letter, please click on the blue text link or go to:

<https://marinpost.org/blog/2015/4/17/masquerading-as-bob-creating-a-blog-post-for-california?query=friends+of+corte+madera&ion=>

After numerous legal citations and discussion, that letter concluded by stating that

The DEIR is so legally inadequate the City should withdraw and start the entire process anew with a more transparent planning approach that complies with both the Corte Madera General Plan and Zoning Ordinance, and CEQA.

Subsequently, and as evidenced by those who attended the public hearings on the project in the first half of 2015, the public opposition to the developer’s proposal was overwhelming. The proposal was seen to be out of scale with the community and overly impactful on traffic and the environment.

The REIR

As a result, but for reasons that we have never been able to completely understand, the Town then asked the developer to propose an even more impactful development, which was presented in the Revised EIR (“REIR”) in July of 2015. This forced CVP and the community to spend significant time and financial resources to submit a [second legal comment letter, dated August 19, 2015](#), on that new proposal, even though the developer had publicly stated that they would never build it.

To read the full text of that letter, please click on the blue text link or go to:

<https://marinpost.org/blog/2015/8/19/the-corte-madera-inn-reir-comment-letter-on-proposal-deficiencies?query=corte%20madera%20planning%20department%20&ion=&type=>

After providing extensive and detailed comments on the new REIR, this second letter came to the same legal conclusions as the one before it and suggested that

At a minimum, the REIR should be re-circulated for public review and comment with the additional analysis required by CEQA.

The FEIR

Finally, in late 2015, the Town of Corte Madera released its Final EIR (FEIR), which continued to recommend the 187 room design that required the destruction and fill of the existing pond / wetlands, despite overwhelming public comment to the contrary. In response, CVP asked its legal counsel, Edward Yates, to submit yet [another comment letter](#), which was presented on January 11, 2016.

To read the full text of that letter, please click on the blue text link or go to:

<https://marinpost.org/blog/2016/1/11/cvp-submits-comment-on-the-proposed-expansion-of-the-corte-madera-inn?query=corte%20madera%20planning%20department%20&ion=&type=>

In that letter, we requested that the Planning Commission delay its recommendation to the Town Council because CVP was undertaking a full technical review of the FEIR, by experts in hydrology, ecology, biology and wildlife.

In addition, this letter concluded that

The EIR remains inadequate in regard to the 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.

Comments by Experts

The expert opinions noted above have now been completed and have been submitted to the Corte Madera Planning Commission. These include comments by:

Greg Kamman, PG, CHG of Kamman Hydrology & Engineering, Inc., dated February 4, 2016. To read the full text of that letter, please go to:

http://media.wix.com/ugd/0e1612_1fd05a3876cc4cf7bf...

Peter R. Baye, Ph.D., Coastal Ecologist / Botanist, dated February 15, 2016. To read the full text of that letter, please go to:

http://media.wix.com/ugd/0e1612_4c32c440efc34e2db2b6bfef3f35c57e.pdf

John P. Kelly, Ph.D, Director of Conservation Science at the Audubon Canyon Ranch Cypress Grove Research Center, and Scott Jennings, Avian Ecologist at the Audubon Canyon Ranch Cypress Grove Research Center, dated February 9, 2016. To read the full text of that letter, please go to:

Final Comments

As I've noted, one of CVP's fundamental purposes is to bring the community's voice to the local government decision-making process. Doing that in a credible way requires the retaining of a host of experts and legal advisors. Unfortunately, because of the extremely stringent statutory time requirements under CEQA, we must act quickly and be extremely thorough in our examinations, research and comments, in order to be prepared to take legal action in the rare instance that it is required to preserve the public's rights to argue their positions in the future.

However, this requirement for submission of timely and thorough legal commentary has been misconstrued by some as meaning that CVP is litigious. Nothing could be further from the truth. We consider litigation as the very last resort when all attempts to reason with developers and agencies have failed to produce an equitable or legal outcome.

In many ways, our work is a thankless task. We are required by law to exhaust our remedies. This often includes doing an enormous amount of work *for* the cities we are dealing with, free of charge and without any opportunity to be reimbursed for those costs, just to help them *avoid* future litigation and to correct the incomplete or incorrect work of highly paid staff and outside consultants.

We do this all as a public service, doing this for cities to show them what we believe they should be doing on behalf of their residents. In this regard, we have by been advised by two CEQA attorneys: Edward Yates, and Michael Graf.

Along with other experts, these gentlemen have guided our understanding of the public policy, planning and CEQA issues that bear on the decision the Corte Madera Planning Commission is being asked to make. We respectfully urge the Planning Commission and the Town of Corte Madera to carefully consider their comments and recommendations.

Finally, the developer has indicated that they cannot move forward unless they are granted the approvals to build the maximum development they are requesting. They contend that the Town of Corte Madera must help them maximize their financial returns, or it would not be economically feasible to develop the property. Speaking as someone who has been involved in the real estate development business for over 40 years, as an architect, real estate broker, planner and developer, I can assure the Town of Corte Madera that this is nonsensical.

The subject property is a triple A, hotel development site, situated next to a major highway interchange and in the midst of a thriving commercial area. There are literally dozens of hotel developers / operators who I'm sure would jump at the chance to build products of varying sizes in that location.

Perhaps, Marriott Hotel's offer is most lucrative for the property owner. However, we ask that the Planning Commission please be reminded that maximizing financial benefits to an individual developer is not a legitimate argument for approval under CEQA nor is it an equitable rationale for amending the Town's General Plan.

If you would like to comment, please address your comments to:

Adam Wolff

Corte Madera Planning Director

awolff@tcmmail.org

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Read comments by Barbara Saltzman, president of the Marin Audubon Society, in her Letter to the Editor of the Marin IJ at: <http://www.marinij.com/opinion...>

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January 16, 2017

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From: [bsilvestri](#)
To: [Fernandez, Xavier@Waterboards](mailto:Fernandez.Xavier@Waterboards)
Cc: [Michael Graf](#)
Subject: Additional Exhibit 20 to our Comment on 410 Application for the Corte Madera Inn Rebuild
Date: Sunday, January 29, 2017 2:02:32 PM
Attachments: [Exhibit 20 - 01-11-16 E. Yates Comment Letter on CMI-FEIR.pdf](#)

Dear Mr. Fernandez:

Attached please find an additional exhibit to our comment letter regarding The San Francisco Bay Regional Water Quality Control Board (404(b)(1) review of the Notice of Application for a Clean Water Act Section 401 Water Quality Certification (the "Application"), for the Corte Madera Inn Rebuild Project; in response to the Application for the Project, posted on 01/11/17, and available for public review at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/CorteMadera.shtml with comments due by end of day February 2, 2017.

The attached Exhibit 20 to our letter of January 27, 2017.

Thank you for your consideration.

Best regards,

Bob Silvestri

President

Community Venture Partners

A Catalyst for Sustainable Solutions

73 Surrey Avenue

Mill Valley, CA 94941

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415-526-6314
eyates@marinlandlaw.com

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 polices 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 permittable 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 be 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 horizontal line extending to the right.

Edward Yates

From: [Barbara Salzman](#)
To: [Fernandez, Xavier@Waterboards](mailto:Fernandez_Xavier@Waterboards)
Subject: Comments on Corte Madera Inn
Date: Thursday, February 2, 2017 11:41:18 PM
Attachments: [RWOCB comments on CM Inn.docx](#)

Xavier

Marin Audubon's comments on the Corte Madera Inn application are attached.

Barbara Salzman

February 2, 2017

Xavier Fernandez
SF Bay Regional Water Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94
RE3: Comments on Corte Madera Inn

Dear Mr. Fernandez:

Thank you for the opportunity to submit comments on the application to fill a wetland/pond at the Corte Madera Inn in Corte Madera, Marin County. We have been commenting on the applicant's efforts to fill this pond for more than 10 years. We urge that the application be denied for the following reasons:

- As evaluated by Wetlands and Water Resources (see attachment to MAS comment letter of January 12, 2017) and correspondences from Peter Baye, Ph.D., the pond is a wetland and other water and, therefore, is subject to regulation by the Corps and the Regional Water Quality Control Board. The application is for a non-water dependent use which cannot be approved if a less environmentally damaging site exists.
]
- The project would degrade beneficial uses by causing the complete loss of wetlands and other waters of the state that currently function to improve water quality and provide habitat for overwintering shorebirds and waterfowl as well as a roosting colony of Black-crowned Night Herons well as observed on Marin Audubon Society's Christmas Bird Counts and many local residents. The trees on the shoreline of the pond and the pond itself have supported a stable roosting colony of Night Herons for more than ten years (see comments dated November 2015 from Wetlands and Water Resources submitted with MAS comments on the alternative analyses). As many as 35 roosting birds have been observed. Filling of the pond would destroy this important resource, therefore, the application must be rejected as not in the public interest.
- Filling of the pond/wetland for a non-water dependent use would also destroy an aquatic resource that improves water quality and offers flood ponding benefits. Even though the Town of Corte Madera does not view the pond as necessary for its flood protection currently, it could be an important component in the future as sea levels continue to rise and climate becomes increasingly erratic. Communities around Marin are searching for areas to pond floodwaters. The Town, meanwhile, seems motivated primarily by a desire to lessen the workload for its employees who have to occasionally drain and fill the pond.
- The applicant has not demonstrated that there is no alternative less environmentally damaging site for the project. In particular, the project (rebuilding and expanding the motel) could be constructed on-site with minor modifications. Our comments and comments of others on the Alternative Analyses demonstrated that these analyses are flawed, based on erroneous and inadequate information and focused only on profit for the developer which is not an allowable consideration according to 404 guidelines. Therefore, the filling cannot be permitted.

- Even if the applicant were able to demonstrate that there was no alternative less environmentally damaging site, there is no evidence that the proposed mitigation site would in any way mitigate for the impacts of the project. The proposed mitigation is almost 20 miles from the project site and would most certainly not be a site where the heron colony would transfer its roost. It is not certain there are even any trees or a pond/wetland type habitat that are similar to the existing pond. In fact, the condition of the mitigation site is uncertain because there have been several levee breaches since the bank was constructed, the most recent being a few weeks ago. Since the bank is behind the breached levees, it is probably that any wetland features that were constructed no longer exist. This bank should not be allowed as mitigation for any fill without a site visit that verifies that a particular habitat type, or any habitat for that matter, still functions on the property.

Furthermore, the applicant purchased credits even before the CEQA document was prepared, in violation of the CEQA provision that avoidance of an impact be considered first. Unfortunately, the CEQA preparer's failed to uphold this CEQA provision and raised no issue with the premature acquisition. Finally, there were insufficient credits remaining in the bank to satisfy the Town's requirement, and presumably agency requirements for a 2:1 mitigation ratio.

In conclusion, issuing permits or certification for this project is not in the public interest. It would violate the 404 (b) (1) guidelines and degrade beneficial uses of the Pond and the Estuary. The application should be denied by the Regional Board. The project site provides sufficient space for the motel to be expanded while retaining the pond which could be enhanced to be a valuable amenity for the motel.

Thank you for considering our comments.

Sincerely,

Barbara Salzman, Co-chair
Conservation Committee