

Law Office of Edward E. Yates

1000 Fourth Street, Suite 800
San Rafael, CA 94901
415-526-6314
eyates@marinlandlaw.com

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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