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August 19, 2015

Adam Wolff, Planning and Building Director
Town of Corte Madera
300 Tamalpais Drive
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 'E. Yates', with a long horizontal line extending to the right.

Edward Yates