



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
May 27, 2009  
Agenda Item: 1

## STAFF REPORT

**To:** Members of the Planning Commission

**From:** Director of Community Development ~~SA~~

**Subject:** Paradise Drive Rezoning and General Plan Amendment project: Consider making a recommendation to the Town Council regarding rezoning of approximately 85 assessor parcels totaling approximately 230 acres of land located at the southeastern end of the Tiburon peninsula & amendments to the Tiburon General Plan Land Use Map affecting 22 of those assessor parcels and making error corrections to General Plan text and maps; Town of Tiburon-initiated; Files R2008-01 and GPA2008-01

## BACKGROUND

In April 2008, the Town received applications from property owners of several properties scattered over the southeastern end of the Tiburon Peninsula for rezoning of their properties. On May 28, 2008, after holding a public hearing, the Planning Commission voted to initiate the rezoning process and established a boundary for the rezoning study area. Following analysis and the preparation of an environmental review document for the project, the matter now returns to the Planning Commission for hearing and recommendation to the Town Council.

## ANALYSIS

### Rezoning

Rezoning is a process whereby territory is assigned a zoning designation by a municipality while that territory remains unincorporated. Rezoning establishes a future zoning designation for property in the event that the territory is annexed into that municipality in the future. Municipalities may choose to rezoning unincorporated territory within their Planning Area at any time and do not require a property owner application to do so. Rezoning must be consistent with a municipality's general plan. This means that the Town should apply a rezoning designation that closely matches the general plan's ultimate intended use of the property. It is also the Town's practice to rezoning developed parcels in ways that would avoid the creation of non-conforming uses and respect current County of Marin zoning to the extent practicable.

The rezoning study area established by the Planning Commission in 2008 is depicted in Exhibit 1. It encompasses 85 assessor parcels totaling about 230 acres and includes unincorporated territory on both sides of Paradise Drive, forming a rational and logical boundary for the purposes of rezoning study.

The rezoning study area is a mixture of developed and undeveloped lands. Developed land in the rezoning area is typically either single family residential or two-family residential. Undeveloped land is typically designated for single family residential use established through planned residential districts. The study area also includes tidal parcels and public agency-owned parcels. Therefore, the proposed rezoning is for a mix of single family residential, two-family residential, public, marine, and planned single family residential zoning. A detailed list of the proposed rezoning designations, by assessor parcel and street address, is included as an attachment to Exhibit 2, the draft resolution.

Staff has determined that the rezoning would be consistent with the Tiburon General Plan, as amended by the proposal.

### General Plan Amendments

The purpose of the proposed General Plan Amendments is to match Tiburon pre-zoning as closely as practicable to existing County of Marin zoning, and to correct a few minor text and mapping errors unrelated to the rezoning. During review of the rezoning study area, it was noted that Tiburon rezoning for several parcels would more closely match existing County of Marin zoning if the Tiburon General Plan Land Use Map were amended to adjust the residential density to more closely conform to that County zoning. A breakdown of the various proposed General Plan amendments for parcels being rezoned is as follows:

- *Fourteen (14) parcels would change from Medium High Density Residential (MH) to "High Density Residential" (H), which is equivalent to a change from R-1 single family zoning to R-2 two-family zoning;*
- *Six (6) parcels would change from "Medium Density Residential" (M) to High Density Residential (H), which is equivalent to a change from a single family zoning with a 20,000 square foot lot minimum size to a single family zoning with a 10,000 square foot lot minimum;*
- *One (1) parcel would change from "Medium Density Residential" (M) to "Public" (P) to reflect its current and reasonably foreseeable use as a sewer pump station for Sanitary District No. 5;*
- *One (1) parcel would change from "Low Density Residential" (L) to "Medium-High Density Residential" (MH), which is equivalent to a change from a single family zoning with a 2-acre minimum lot size to a single family zoning with a 10,000 square foot lot minimum.*

Other proposed General Plan Amendments include a map legend typographic correction, a typographic correction in one of the Downtown Element policies, and a mapping error correction for a governmentally-owned tide lot located near the Romberg Tiburon Center. A detailed list of the proposed general plan amendments, by assessor parcel and street address or by graphic depiction, is included as an attachment to Exhibit 2, the draft resolution.

## **ENVIRONMENTAL REVIEW**

The Town of Tiburon retained the firm of Impact Sciences Incorporated to prepare an initial study pursuant to the California Environmental Quality Act (CEQA). The initial study concluded that the project would not result in a significant impact on the environment with mitigation measures. A draft mitigated negative declaration was prepared and released for public review and comment on April 20, 2009.

The initial study and draft mitigated negative declaration (IS/MND) were previously distributed to the Planning Commission. The IS/MND analyzed the environmental implications of the project through potential annexation of the rezoning study area by the Local Agency Formation Commission (LAFCO), should that occur at some point in the future. The document indicated that the project had the potential to create one additional dwelling unit in the rezoning area when compared with baseline development potential allowed under the Tiburon General Plan, and that the differential was environmentally insignificant. The IS/MND also concluded that mitigation measures adopted in the 2005 Tiburon General Plan Update Environmental Impact Report remained applicable to this project. Additional mitigation measures involving cumulative climate change impacts and adequate provision of emergency access for new development are proposed in the IS/MND.

The IS/MND comment period ended on May 20, 2009. Four letters were received, two of which addressed merits issues and two of which addressed the IS/MND. These letters are attached As Exhibits 3 through 6. The final letter is a lengthy comment letter on the IS/MND that was received too late to be addressed in this report. Staff and Town consultants intend to address the letter at the meeting.

## **ROLE OF THE PLANNING COMMISSION**

The role of the Planning Commission is strictly advisory and is to make a recommendation to the Town Council on the proposed general plan amendments and rezoning designations. In doing so, the Commission shall review and consider the environmental documentation prepared for the project, but need make no formal determinations with respect to that environmental documentation.

## **FUTURE ACTIONS**

It is the role of the Town Council to take action on the project and to adopt, as needed, the environmental document prepared for the project. Such actions would take place following a public hearing before the Town Council.

Upon rezoning, property owners interested in annexation to the Town of Tiburon could file an application with Marin LAFCO, which is the agency charged with approving modifications to town and special district boundaries. Provisions of state law and Marin LAFCO policies govern the processing of any such annexation applications; the Town of Tiburon has no direct role.

## **RECOMMENDATION**

Staff recommends that following the presentation of the staff report, the Planning Commission:

1. Opens the public hearing and accepts all comments.
2. Closes the public hearing.
3. Is prepared to deliberate and take action by adopting the resolution attached as Exhibit 2.

## **EXHIBITS**

1. Map showing extent of rezoning study area
2. Draft Resolution
3. Letter from Sanitary District No. 5 dated 4/23/2009
4. Letter from Robert Buich dated 5/5/2009
5. Letter from Chris Coulter dated 5/18/2009
6. Letter from Hanson-Bridgett dated 5/20/2009.

## **PREVIOUSLY-DISTRIBUTED DOCUMENTS**

- Initial Study and Draft Mitigated Negative Declaration

Prepared by: Scott Anderson, Director of Community Development

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# PRE-ZONING, SOUTHEASTERN TIBURON PENINSULA

Exhibit "A"

Vicinity Map



**Legend**

- Pre-Zoning Requested
- Proposed Pre-Zoning Area
- Town Limits
- Tiburon Zoning Districts
  - R-1 Single Family Residential
  - R-1-B A/B/C/Aire Single Family Residential
  - R-1-B 2 Modified Single Family Residential
  - RO-1 Residential Open (40,000 Sq. Ft.)
  - RO-2 Residential Open (20,000 Sq. Ft.)
  - R-2 Two-Family Residential
  - R-3 Multi-Family Residential
  - RPD Residential Planned Development
  - RMP Residential Multiple Planned
  - RMP/AHO Residential Multiple Planned/AHO
- M Marine
- O Office
- NC Neighborhood Commercial
- NC/AHO Neighborhood Commercial/AHO
- VC Village Commercial
- P Public/Quest-Public
- OS Open Spaces
- P & R Parks & Recreation

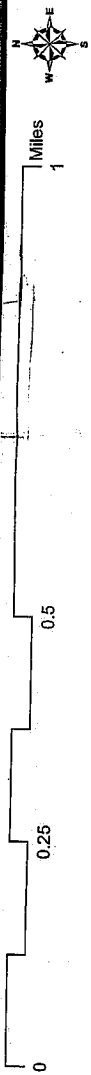


EXHIBIT NO. 1

**RESOLUTION NO. 2009-XX**

A RESOLUTION OF THE PLANNING COMMISSION  
OF THE TOWN OF TIBURON RECOMMENDING TO THE TOWN COUNCIL ADOPTION  
OF AMENDMENTS TO THE TIBURON GENERAL PLAN AND ADOPTION OF  
PREZONING FOR NUMEROUS PARCELS IN THE UNINCORPORATED PARADISE  
DRIVE PORTION OF THE TIBURON PLANNING AREA NEAR THE SOUTHEASTERN  
END OF THE TIBURON PENINSULA

WHEREAS, the Town of Tiburon has initiated amendments to the Land Use Element and the Downtown Element of the Tiburon General Plan (File GPA 2008-01), and is processing applications for prezoning of unincorporated territory in the Tiburon Planning Area (File R 2008-01); and

WHEREAS, a display ad notice of the public hearing on the amendments was published in the The Ark newspaper on April 22, 2009 and other noticing was provided as required by law; and

WHEREAS, the Planning Commission did hold a duly noticed and advertised public hearing on May 27, 2009, at which testimony was received from the public, and

WHEREAS, the Planning Commission finds that the proposed amendments and prezoning designations are consistent with the goals, policies, and objectives of the Tiburon General Plan; and

WHEREAS, the Planning Commission has reviewed and considered the initial study and proposed draft mitigated negative declaration prepared for the project.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Town Council:

1. Adopts the amendments to the Tiburon General Plan as set forth in the attached Exhibits A, B, and C.
2. Adopts the prezoning designations as shown on the attached Exhibit D.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon held on \_\_\_\_\_, 2009, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

\_\_\_\_\_  
EMMETT O'DONNELL, CHAIRMAN  
Tiburon Planning Commission

ATTEST:

\_\_\_\_\_  
SCOTT ANDERSON, SECRETARY (ACTING)

*S:\Planning\Staff Folders\sanderson\Projects\Paradise Drive Rezoning\Paradise Drive GPA and Rezoning Resolution.doc*

**EXHIBIT "A"**  
**General Plan Land Use Diagram 2.2-1 Amendments**

Parcel Number	Address	Current Tiburon General Plan Designation	Amended Tiburon General Plan Designation
059-191-10	2393 Mar East St	MH	H
059-191-11	2387 Mar East St	MH	H
059-191-12	2381 Mar East St	MH	H
059-191-15	55 Linda Vista Av	MH	H
059-195-21	2392 Mar East St	MH	H
059-195-22	2396 Mar East St	MH	H
059-195-23	2398 Mar East St	MH	H
059-201-17	2440 Spanish Trail Rd	M	MH
059-201-18	2450 Spanish Trail Rd	M	MH
059-201-61	2495 Paradise Dr	M	H
059-201-65	2490 Spanish Trail Rd	M	MH
059-201-79	2485 Paradise Dr	M	H
059-201-80	2420 Spanish Trail Rd	M	H, MH
059-204-01	2400 Mar East St	MH	H
059-204-02	2420 Mar East St	MH	H
059-204-10	2486 Mar East St	MH	H
059-204-13	2472 Mar East St	MH	H
059-204-15	(none)	MH	P
059-204-20	2448 Mar East St	MH	H
059-204-21	2442 Mar East St	MH	H
059-204-22	2476 Mar East St	MH	H
059-251-03	2641 Paradise Dr	L	MH

*H = High Density Residential (up to 11.6 du/acre) (Equivalent to R-2 zoning)*  
*MH = Medium High Density Residential (up to 4.4 du/acre) Equivalent to R-1 zoning)*  
*M = Medium Density Residential (up to 3.0 du/acre) (Equivalent to RO-2 zoning)*  
*ML = Medium Low Density Residential (up to 1.1 du/acre) Equivalent to RO-1 zoning)*  
*L = Low Density Residential (up to 0.5 du/acre) (Equivalent to RPD-0.5 zoning)*  
*P = Public/Quasi-Public*

**EXHIBIT B**  
**ADDITIONAL MISCELLANEOUS GENERAL PLAN AMENDMENTS**

- 1) Correction of a typographical error in the legend of General Plan Land Use Diagram 2.2-1. The proposed amendment would change the legend from “VH Very High Density Residential (up to 11.6 du/acre)” to “VH Very High Density Residential (up to 12.4 du/acre).” See attached Exhibit “C” for a graphic representation.
- 2) Correction of the shading in General Plan Land Use Diagram 2.2-1 for a portion of a parcel of tidal land owned by the federal government. The parcel is currently shaded with a color that does not represent any identified land use in the diagram color code. It would be corrected to be shaded blue, representing the Marine land use district, to match the remainder of the parcel. See attached Exhibit “C” for a graphic representation.
- 3) Correction of a policy reference in Policy DT-15 of the Downtown Element that incorrectly cites Policy DT-7 rather than DT-6. Downtown Policy DT-15 would be amended to read as follows:

*DT-15 The The Village Commercial land use designation (Main Street/Ark Row) may be comprised of tourist-oriented and resident-oriented uses, as well as residential uses. The maximum allowable intensity for lands designated Village Commercial is an FAR of 0.28, except in accordance with Policy ~~DT-7~~ DT-6 or where a Transfer of Intensity is approved consistent with Policy DT-9.*



**EXHIBIT "D"**  
**Prezoning of Unincorporated Parcels**

Parcel Number	Address	Town of Tiburon Prezoning
059-191-10	2393 Mar East St	R-2
059-191-11	2387 Mar East St	R-2
059-191-12	2381 Mar East St	R-2
059-191-14	2390 Paradise Dr	R-2
059-191-15	55 Linda Vista Av	R-2
059-195-19	2386 Mar East St	R-2
059-195-20	(none)	R-2
059-195-21	2392 Mar East St	R-2
059-195-22	2396 Mar East St	R-2
059-195-23	2398 Mar East St	R-2
059-201-17	2440 Spanish Trail Rd	R-1
059-201-18	2450 Spanish Trail Rd	R-1
059-201-25	2371 Vista del Mar Ln	R-2
059-201-47	2389 Paradise Dr	R-2
059-201-54	2370 Vista del Mar Ln	R-2
059-201-55	2401 Paradise Dr	R-2
059-201-56	2395 Paradise Dr	R-2
059-201-59	2400 Vista del Mar Ln	R-2
059-201-60	2402 Vista del Mar Ln	R-2
059-201-61	2495 Paradise Dr	R-2
059-201-62	2380 Spanish Trail Rd	R-2
059-201-64	2441 Paradise Dr	R-2
059-201-65	2490 Spanish Trail Rd	R-1
059-201-79	2485 Paradise Dr	R-2
059-201-80	2420 Spanish Trail Rd	R-2, R-1
059-203-03	2480 Paradise Dr	R-2
059-203-04	2483 Mar East St	R-2
059-203-07	2475 Mar East St	R-2

Parcel Number	Address	Town of Tiburon Prezoning
059-203-08	2461 Mar East St	R-2
059-203-11	2431 Mar East St	R-2
059-203-12	2401 Mar East St	R-2
059-203-18	2440 Paradise Dr	R-2
059-203-19	2450 Paradise Dr	R-2
059-203-21	2460 Paradise Dr	R-2
059-203-23	2430 Paradise Dr	R-2
059-203-24	2459 Mar East St	R-2
059-203-25	2457 Mar East St	R-2
059-203-26	2485 Mar East St	R-2
059-203-27	(none)	R-2
059-203-28	2400 Paradise Dr	R-2
059-204-01	2400 Mar East St	R-2
059-204-02	2420 Mar East St	R-2
059-204-10	2486 Mar East St	R-2
059-204-13	2472 Mar East St	R-2
059-204-15	(none)	P
059-204-16	2506 Mar East St	R-1
059-204-17	(none)	R-1
059-204-18	(none)	R-1
059-204-19	2500 Mar East St	R-1
059-204-20	2448 Mar East St	R-2
059-204-21	2442 Mar East St	R-2
059-204-22	2476 Mar East St	R-2
059-211-01	5 Mar Centro Dr	R-1
059-211-04	2530 Paradise Dr	R-1
059-211-10	(none)	R-1
059-211-11	2550 Paradise Dr	R-1
059-211-12	2517 Mar East St	R-1
059-211-13	2540 Paradise Dr	R-1
059-212-01	2514 Mar East St	R-1
059-212-06	2550 Mar East St	R-1

Parcel Number	Address	Town of Tiburon Rezoning
059-212-07	2580 Mar East St	R-1
059-212-09	(none)	R-1
059-212-10	(none)	R-1
059-212-11	(none)	R-1
059-212-12	2530 Mar East St	R-1
059-213-02	(none)	R-1
059-213-03	(none)	R-1
059-213-04	(none)	R-1
059-221-03	(none)	Marine
059-221-04	(none)	Marine
059-221-05	(none)	Marine
059-231-02	(none)	RPD-0.3
059-231-03	(none)	Marine
059-231-06	2620 Paradise Dr	RPD-0.13
059-241-01	2900 Paradise Dr	RPD-0.5
059-241-02	2960 Paradise Dr	RO-1
059-241-03	2980 Paradise Dr	RO-1
059-241-06	(none)	RO-1
059-241-07	(none)	Marine
059-241-08	3030 Paradise Dr	RO-1
059-241-09	3000 Paradise Dr	RO-1
059-251-02	(none)	RPD-0.4
059-251-03	2641 Paradise Dr	R-1
059-251-04	(none)	Public
059-251-05	(none)	RPD-0.4

R-1 = Single family Residential zone

R-2 = Two-family Residential zone

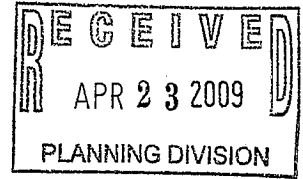
RO-1 = Residential Open zone

Public = Public/Quasi-Public zone

Marine = Marine zone

RPD = Residential Planned Development zone at the dwelling unit per acre density shown

SANITARY DISTRICT NO. 5 OF MARIN COUNTY  
2001 PARADISE DRIVE  
P.O. BOX 227  
TIBURON, CALIFORNIA 94920  
TELEPHONE (415) 435-1501  
FAX (415) 435-1502



April 23, 2009

Scott Anderson  
Community Development Department  
Town of Tiburon  
1501 Tiburon Blvd.  
Tiburon, CA 94920

Subject: Initial Study Comments – Paradise Drive Area Rezoning and General  
Plan Amendment Project

Dear Scott,

The information under section 6.16 Utility and Services System is incorrect. Here are the corrections


Sanitary District No.5 of Marin County owns and Operations two treatment facilities, 23 pump station, 6 miles of pressure line and approximately 33 miles of gravity sewer line. The Main Treatment Facility located at 2001 Paradise Drive was design for 0.98 MGD Dry Weather Flow with an Average Dry Weather Flow for 2008 of 0.656 MGD. During Storm events in 2008 the Main Treatment Facility, Average Daily flow was 0.963 MGD. The treatment facility is designed to handle wet weather flows of up to 7.5 MGD and wet weather infiltration currently averages 1.5 to 2.0 MGD. During storm events the peak flow range from 2.0 MG to 3.5 MG depending on the storm. The peak flow are for a 2 to 3 hours period.

The Paradise Cove treatment plant is not near capacity, the average daily flow in 2008 was 8,644 GPD. The district current NPDES permit allows for 20,000 GPD. The two new package

treatment plants have been installed of which the district is only operating one. When 80% of the permitted DWP is reached, which is 16,000 GPD, the district will contact the SWRQB for an amendment to the current NPDES permit. The new treatment facilities are designed for 40,000 GPD which will handle all of the residents along Paradise Dr.

Please do not hesitate to call me if you have any questions

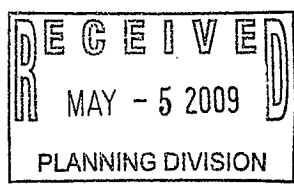
Sincerely,

A handwritten signature in black ink, appearing to read 'RLynch', written in a cursive style.

Robert L. Lynch  
District Manager

#2

ROBERT T. BUICH  
BOX 561  
TIBURON, CALIFORNIA 94920



May 5, 2009

Re: Draft Mitigated Negative Declaration/Initial Study

Scott Anderson  
Director of Community Development  
1505 Tiburon Blvd.  
Tiburon, CA 94920

Dear Mr. Anderson,

For the record I am not in favor of my property being annexed by the Town of Tiburon.

Sincerely,

A handwritten signature in cursive script that reads "Robert T. Buich".

Robert T. Buich  
2390 Paradise Dr.

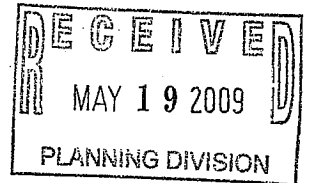
EXHIBIT NO. 4

#3

3030 Paradise Drive  
Tiburon CA 94920

May 18, 2009.

Mr. Scott Anderson,  
Director of Community Development,  
Town of Tiburon,  
1505 Tiburon Boulevard  
Tiburon CA 94920.



**RE: Paradise Drive Area Rezoning and General Plan Amendment Project**

Dear Mr. Anderson,

I wish to record my objection to any move to incorporate my property into the Town of Tiburon. This project results from nine property owners (thirteen parcels) filing rezoning applications. The Town of Tiburon has taken it upon itself to extend this to cover 85 parcels of land, which seems to be at the least a significant overreach.

Further, the request from the owners was based on wishing to receive police and planning services from the Town of Tiburon. In the first instance our policing needs are taken care of by the County Sheriff, the Highway Patrol AND the Tiburon Police department under an arrangement which has worked perfectly well for many years. In the second instance I believe that the County of Marin is more attuned to the type of environment we have on Paradise Drive than would be the Town of Tiburon. Tiburon is by and large a densely built up town and has planning needs quite different from the more sparsely developed and typically much larger parcels in the proposed Rezoning area.

Lastly, if the Town is determined to press ahead with this project, then a proper Environmental Impact Review should be conducted, as it appears would be required by California law (CEQA).

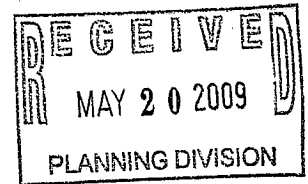
Yours Sincerely,

A handwritten signature in black ink, appearing to read "Chris Coulter". The signature is fluid and cursive.

Chris Coulter.

EXHIBIT NO. 5

MARY K. MCEACHRON  
PARTNER  
DIRECT DIAL 415 925 8406  
DIRECT FAX 415 995 3463  
E-MAIL mmceachron@hansonbridgett.com



May 20, 2009

*Via Electronic Transmission*  
*Original via Hand Delivery*

Scott Anderson, Director  
Community Development Department  
Town of Tiburon  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Re: *Paradise Drive Rezoning & General Plan Amendment Project:*  
*Opposition to Adoption of Mitigated Negative Declaration*

Dear Mr. Anderson:

In response to the Initial Study prepared by the Town of Tiburon for the Paradise Drive Area Rezoning and General Plan Amendment Project, Martha Co. submits the following as comment on and objection to the proposed adoption of a mitigated negative declaration.

An Initial Study is a preliminary analysis tool intended to be utilized by a lead agency to assist in determining whether an environmental impact report ("EIR") or a negative declaration is needed for a particular project. 14 Cal. Code Reg. § 15063(c)(1); 15365. The California Environmental Quality Act ("CEQA") requires preparation of an EIR whenever a project "may have a significant effect on the environment." Cal. Pub. Resources Code §§ 21100, 21151. An agency's determination that no EIR is required must be supported by substantial evidence in the record. Cal. Pub. Resources Code §§ 21168, 21168.5; Remy, Thomas, Moose, *Guide to CEQA* (11th ed. 2007) at 181. "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." 14 Cal. Code Reg. § 15384(b). It does not include argument, speculation, unsubstantiated opinion, or evidence which is clearly erroneous or inaccurate. 14 Cal. Code Reg. § 15384(a). Moreover, under the "fair argument" test by which negative declarations are evaluated, courts will "not defer to the lead agency's exercise of discretion" and there is no presumption in favor of the agency. *The Pocket Protectors v. City of Sacramento* (3d Dist. 2004) 124 Cal.App.4th 903, 933-34.

In this case, because it can be fairly argued on the basis of substantial evidence that the proposed Paradise Drive Rezoning and General Plan Amendments may have a significant environmental impact, the proposed project cannot proceed on the basis of a mitigated negative declaration, but instead requires a comprehensive EIR. 14 Cal. Code Reg. §15023(c).

**I. THE INITIAL STUDY FAILS TO COMPLY WITH EVEN THE TECHNICAL REQUIREMENTS OF CEQA GUIDELINES**

CEQA Guidelines detail the formal requirements for preparation of an adequate Initial Study. 14 Cal. Code Reg. §15063 *et seq.* Among these are the requirements for an adequate project description, the names of the person or persons who prepared or participated in the Initial Study, and analysis of consistency with all applicable land use controls. 14 Cal. Code Reg.

Hanson Bridgett LLP  
Wood Island, 80 E. Sir Francis Drake Blvd., Suite 3E, Larkspur, CA 94939 hansonbridgett.com

EXHIBIT NO. 6

§15063(d)(1),(5),(6). The Paradise Drive Initial Study fails to adequately comply with any of these requirements.

**A. The Project Description is Fatally Flawed**

The Initial Study provides the following Description of Project:

The proposed project includes rezoning of approximately 230 acres of land, located at the southeast end of the Tiburon Peninsula in unincorporated Marin County. In addition, the Tiburon General Plan would be amended to change the land use designations of 22 parcels (3.4 acres) within the rezoning area to correspond to those of the Marin Countywide Plan and Zoning Map to avoid the creation of non-conforming uses.

Initial Study at p. 1. This is only minimally expanded upon in Section 3.1, Project Summary:

The proposed project consists of rezoning approximately 85 parcels of land, comprising roughly 230 acres of unincorporated territory located at the southeast end of the Tiburon Peninsula. In addition to rezoning, the General Plan land use designations of 22 of the 85 assessor's parcels would be amended to better match the current County of Marin land use and zoning designations and to avoid the unnecessary creation of nonconforming uses that could otherwise occur if rezoned in accordance with the current Tiburon General Plan designations.

What these project descriptions fail to address is that the *purpose and intent* of the project is *annexation* of these 230 acres into the Town of Tiburon, and that rezoning and a General Plan amendment are merely the technical antecedents to annexation. The failure to accurately describe the project results in the strange non sequitur that part of the project description is "to avoid the creation of non-conforming uses": non-conforming uses are created only if the property is *annexed* from County jurisdiction without such rezoning, yet annexation is not even mentioned in the Description of Project.

The fact that annexation is one of the intended purposes of the project can certainly be gleaned from a full reading of the entire Initial Study, but it belongs in the Project Description – not only for the sake of clarity, but also because the failure to acknowledge that the project as described is no more than an initial first step along a proposed path of development (or opposition to development) of these parcels allows the Initial Study to treat zoning as though it were merely an abstract concept, an entry in the Town Code with no environmental consequences of its own. This is the ultimate piece-mealing of a project: entering letters or numbers into the Town Code in fact has no environmental consequences, but *implementing* such zoning districts has huge environmental consequence. The newly-designated uses become *permitted* uses within the Town of Tiburon, with development intended to be in accord with such permitted uses.<sup>1</sup>

<sup>1</sup> See, *Guide to CEQA, supra*, at 185 (footnotes and citations omitted):

For an effect to be significant, the projected physical change need not be forthcoming immediately. Thus, the amendment of a general plan may produce significant effects "ultimately," if not directly. Similarly, although "projects" such as ... the approval of an annexation proposal, and the revision of "sphere of influence guidelines" are, in some sense, the creation of mere "pieces[s] of paper," such projects nevertheless may "culminat[e] in significant impacts."

Moreover, the project description fails to identify who is applying for what. It lists the Town of Tiburon among a list of nine project applicants without specifying which portion of the project the Town itself is seeking. One must resort to Figure 2, the Proposed Rezoning Project Area, to surmise that the Town itself is likely the applicant for the rezoning of all parcels not shown in cross-hatching, as well as the applicant for the General Plan amendment, but this cannot be ascertained from the project description.

In addition, the information provided in the Project Background (Section 3.2) portion of the Project Description is contradicted by Figure 2. The Project Background concedes that only 45 of the 230 acres for which annexation will be sought are owned by project applicants, but asserts that the applicants' parcels "are not contiguous and are scattered across a wide area in the southeastern portion of the Tiburon Peninsula." Figure 2, however, does not bear out that assertion, instead showing all of the "Pre-Zoning Requested" parcels on the Bay side of Paradise Drive with the exception of the Chapman property, which is immediately across Paradise from – and therefore contiguous to – other properties for which annexation is sought. The Project Description provides no rationale, no reason, no purpose, no need stated for the project's intended annexation of the Martha property – even though such property comprises the vast bulk of the non-marine acreage included within project boundaries.

The project description further asserts that a purpose of the project is to avoid the "creation of non-conforming uses" and "de-facto down-zoning." Such description is contradicted, however, by the fact that several of the properties included in the project area are already developed with estates that, upon annexation, would result in legal non-conforming uses. For example, both the Keil and Drever properties are developed with more than one home on one lot. Both properties also have homes much larger than the Tiburon Codes and General Plan permit. Therefore, rezoning of these properties by the Town would result in legal non-conforming uses, again, in direct contradiction to what the project description purports to achieve.

Another example of the inconsistency between the asserted purpose of the project to avoid non-conforming uses and de-facto down-zoning is the Salvatore/Swahn property currently in the process of seeking permits from the County to build a home twice as large as would be permitted under the Town of Tiburon Code. This creates the untenable position that if the owner receives approvals from the County, such approvals would be inconsistent with the Town of Tiburon's designations and could not be built upon annexation. On the other hand, if County approvals are granted and the home is built prior to annexation, the structure would immediately become a "legal non-conforming" use along with the others discussed above.

#### **B. The Initial Study Fails to Clearly Identify All the Relevant Parties**

The CEQA Guidelines require that the Initial Study state the "name of the person or persons who prepared or participated in the Initial Study." 14 Cal. Code Reg. §15063(d)(6). The purpose of this requirement is to allow for transparency and clear accountability for the preparation of and determinations of the Initial Study.

The "Report Preparers" and "Persons Contacted" are purportedly shown at page 91, but no employee or official of applicant Town of Tiburon is listed. Yet it defies belief that the applicant

Town of Tiburon was not contacted in preparing this report, even though Tiburon is lead agency, and Mr. Anderson signed the determination letter on page 19 of the Initial Study.

The Town of Tiburon's dual role as lead agency and project applicant thus blurs the line of responsibility for the Initial Study without providing the requisite transparency. Moreover, there are also several property owners listed as project applicants, but their participation in the Initial Study, if any, is never addressed, as required under the CEQA guidelines.

**C. The Initial Study Fails to Address the Consistency of the Project with "Applicable Land Use Controls"**

CEQA requires an initial study to include an "examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls." 14 Cal. Code Reg. §15063(d)(5).

As discussed above, the Town is proposing to annex existing developed properties, as well as properties currently being processed for entitlement by the County of Marin, which could substantially conflict with existing zoning regulations. Pre-zoning and annexation of these properties could therefore render newly-annexed lots "non-conforming" to density limits, development of more than one dwelling on one lot, house size limits, single-family design guidelines and precise development plan and subdivision regulations, all in contravention to the stated project purpose. None of these issues is adequately addressed in the Initial Study.

Moreover, the failure of the Project Description to include annexation as one of the explicit project purposes means that the Initial Study does not even consider the legal infeasibility of annexing the undeveloped Martha Co. property without the consent and over the protest of the landowner. Because the laws and regulations governing annexation of uninhabited lands are part of the panoply of "applicable land use controls," the Initial Study's failure to address this issue renders it fatally defective.

Finally, the Initial Study fails to address the binding impact of the federal court judgment on development of the Martha Co. property. While the Initial Study references the federal court Judgment, it fails to describe its limitations on proposed actions by the Town of Tiburon. To the extent that restricting development of the Martha Co. property is a motivating reason for this project, then the federal Judgment, which sets precise development criterion for the parcel, articulates precisely the type of "land use controls" that require analysis under CEQA.

Because the Initial Study fails to give an accurate project description, because it does not clearly identify by name the person or persons who prepared and participated in the Initial Study, and because it fails to address the consistency of the project with all applicable land use controls, including the federal court Judgment which binds the Town of Tiburon, the study itself is inadequate even when assessed on technical compliance rather than its merits.

## II. THE INITIAL STUDY RELIES ON AN IMPROPER BASELINE AND INFEASIBLE, UNSTUDIED MITIGATION MEASURES

The inadequacy of the Project Description leads to the astounding and cavalier conclusion that rezoning has no significant environmental consequences because, in total, only one more unit of housing would be allowed under the proposed zoning than under current County zoning. By thus deferring to the historic zoning decisions of a neighboring jurisdiction – without even identifying a comprehensive environmental review of these properties previously conducted by the County – the Town abdicates its responsibility under CEQA to understand the environmental implications of its own zoning decisions.

### A. The Initial Study's Determination of Extent of Environmental Impact Uses the Incorrect Baseline for Analysis

The Initial Study improperly uses current land use designations as a baseline for analysis of potential environmental impacts. For example, the Initial Study finds aesthetic impacts "Less than significant" based on the following reasoning:

The proposed rezoning and General Plan amendments would not lead directly to new development in the project area, and could result in the addition of at most one new residential unit above the number allowed under the existing zoning. This minimal increase in density would not affect scenic vistas or visual character, and the impacts of the rezoning itself would be less than significant.

Initial Study at 22. The discussion goes on to state that *development* pursuant to rezoning in fact could have potentially significant visual impacts, but that those impacts will be considered at a later date. See also, e.g., Initial Study at 61: "[n]ew development within the rezoning area, primarily consisting of (4) large undeveloped or substantially underdeveloped properties, would be somewhat reduced in comparison with maximum densities set forth in the Marin Countywide Plan."

For the purposes of determining whether impacts are potentially significant, thereby requiring an EIR, the CEQA guidelines provide that the baseline will normally be the physical conditions existing at the time environmental analysis is commenced. 14 Cal. Code Reg. §15125(a).<sup>2</sup> Further, when a lead agency is assessing whether an EIR is required for a general plan amendment changing land use designations, the local agency must compare the newly authorized land uses with the existing environmental conditions, and not with the existing land use designations. *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 190. This is because a comparison of potential impacts under the general plan amendment with potential impacts under an existing general plan is "illusory" and misleading in failing to disclose the actual impact on the environment in its present state. *Id.* The courts have therefore

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<sup>2</sup> Although CEQA rules relating to proper baseline for analysis pertain to EIR preparation, the courts have also held that the rules are appropriate when a lead agency is determining whether an EIR is necessary. See, e.g., *Fat et al. v. County of Sacramento* (2000) 97 Cal.App.4th 1270, 1277-1281 (environmental conditions existing at the time the environmental analysis was commenced were proper baseline for evaluating impacts of airport permit).

consistently held that mere conformity of a proposed project with the jurisdiction's general plan does not justify a finding of no-significant-environmental-effect. *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882; *Environmental Planning and Information Council v. City of El Dorado* (3d Dist. 1982) 131 Cal.App.3d 350, 354. Stated differently, conformity alone does not effectively "mitigate" a project's significant environmental effects. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332.

Therefore, it is inappropriate and insufficient for the Initial Study to rely on conformity with either existing County zoning or Tiburon's own General Plan as a basis for making the determination that either no significant impact will occur, or that such impacts can be effectively addressed with the proposed mitigation measures. In fact, it appears that all of the land use analysis flows from the baseline of existing land use controls, not existing conditions, as required under CEQA. In basing the analysis on existing land use controls, the Initial Study concludes that there will be either "no impact" or a "less than significant impact" and therefore not a single mitigation measure is proposed for the land use and planning impacts. This conclusion is illusory, and a complete EIR is required in this case to ascertain the true impacts of the proposed project.

#### **B. The Proposed Mitigation Measures Are Infeasible**

CEQA and its Guidelines permit the preparation of a mitigated negative declaration when an applicant discovers environmental problems following submission of an application and when the applicant can modify the project to resolve these problems. Pub. Res. Code §21064.5. The purpose of allowing a mitigated negative declaration is to efficiently allow for early commitments by the project applicant to avoid significant environmental effects. 14 Cal. Code Reg. §15070.

In this case, the Town of Tiburon has put forth certain mitigation measures to address the environmental impacts that will flow from this project. Initial Study, Appendix C. The Town has also prepared a Consent Agreement for the proposed mitigation measures. Initial Study, Appendix B. However, as the Consent Agreement demonstrates, the proposed mitigation measures are infeasible because the only party bound by the proposed measures is the Town of Tiburon, in its capacity as both the Lead Agency and the Project Applicant. *Id.* The Consent Agreement fails to bind any of the property owners who were also applicants on the project, nor does it purport to bind non-applicant property owners such as Martha. Moreover, the Town has failed to prepare a Mitigation Monitoring and Reporting plan, as required under the Code. 14 Cal. Code Reg. §15074(d).

#### **C. The Initial Study Improperly Postpones Consideration of Mitigation Measures**

The proposed mitigation measures contained in Appendix C fail to address potential impacts relating to Visual Quality, including the impacts of the Project on scenic vistas, ridgelines and visual character. Appendix C states in relevant part, "[i]t would be speculative to develop appropriate mitigation measures for project-specific impacts related to development within the scenic viewsheds as the details of potential developments are unknown." Initial Study, Appendix C, 4.10-1; 4.10-2; 4.10-3. In short, the Town is improperly postponing consideration of mitigation measures because the "details of potential developments are unknown." *Id.*

First, this assertion is patently false as the precise details of the Martha Co. development – the majority of non-marine acreage to be rezoned – are well known to the Town of Tiburon, as evidenced by its participation in commenting on completeness of the Martha development application.

Second, deferring consideration of mitigation measures in an Initial Study is in direct conflict with the requirements under CEQA. 14 Cal. Code Reg. § 15070(b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be revised to incorporate these mitigation measures "before the proposed negative declaration is released for public review . . ." (emphasis added). In *Sundstorm v. County of Mendocino* (1st Dist. 1988) 202 Cal.App.3d 296, the California Court of Appeal held that specific mitigation measures should be developed and adopted before, rather than following, project approval. *Id.* at 307. The *Sundstorm* Court stated in no uncertain terms, "the use permit contemplates that project plans may be revised to incorporate needed mitigation measures after the final adoption of the negative declaration. This procedure, we repeat, is contrary to law. By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process." *Id.*; see also, Pub. Resources Code, § 21003.1; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393-1397 (deferring mitigation to recommendation in future biological study was inadequate to support Mitigated Negative Declaration).

### **III. THE TOWN'S OWN RECORDS SUBSTANTIATE THE FAIR ARGUMENT THAT THE PROJECT COULD RESULT IN SIGNIFICANT ENVIRONMENTAL IMPACTS**

#### **A. The Town Itself Has Very Recently Asserted that Development of Just One of the 85 Parcels Slated for Development Could Have Potentially Significant Environmental Impacts**

Substantial evidence exists to contradict the assertion in the Initial Study that the Town's "General Plan 2020 EIR evaluated the potential environmental impacts" from development at the scale proposed, and that the program-level analyses contained in such General Plan EIR are thus adequate "to support certain conclusions related to potential environmental impacts of the proposed project ...." Initial Study at 3.

Less than five months ago, on December 23, 2008, Tiburon's Director of Community Development wrote to the County of Marin to comment on the completeness of Martha Co.'s application to construct 43 units of housing on its 110-acre site, making the following point:

We note the absence of numerous technical studies and data that would address potentially significant impacts resulting from the project, including but not limited to biological, aesthetics, air quality, cultural, hydrological, land use, noise, public services, transportation/traffic, and utilities. We assume that these studies will be prepared as part of the environmental impact report for the project. Since all studies associated with prior development applications for the site are more than five years old, they should be deemed outdated for all but background and

historical purposes. Reliance on analysis prepared for 1996 and 2001 DEIR's that were never made final or certified should not be allowed.

Yet here the Town of Tiburon is proposing to zone the Martha Co. property at an even higher density (44 homes) without the benefit of *any* environmental analysis, much less the comprehensive analysis which the Town so recently asserted was essential. While some of the asserted threatened impacts might be deemed peculiar to the particular proposal pending before the County of Marin (*e.g.*, biological, aesthetics, cultural), others – such as air quality and “land use, noise, public services, transportation/traffic, and utilities” are correlated exclusively to the density of development, not its configuration. The Town's own recent assertion that development of 43 units of housing on the Martha site could potentially result in significant environmental impacts constitutes substantial evidence that development of 44 units on the same site could result in the same environmental impacts.

Moreover, contrary to the Town's assertion, discussed above, that it can tier the Initial Study findings off of its 2005 General Plan EIR, just five months ago the Town noted that *all* environmental studies for this site were more than five years old and therefore unsuitable for reliance. It made no exception for its own 2005 General Plan EIR, despite a land use designation for the Martha property consistent with the currently-proposed rezoning.

**B. Substantial Evidence Exists to Demonstrate that the Fiscal Impacts of the Project Could Themselves Result in Significant Diminution of Town Services and Significant Impacts on the Physical Environment**

In 2006, the Town of Tiburon conducted a study (“Physical Analysis of Paradise Drive”) regarding the fiscal impact on Town services should it decide to annex portions of Paradise Drive. The explicit purpose of the 2006 Physical Study was to “determine possible costs associated with improvements needed and to use these findings in discussions with the County of Marin for possible transfer of ownership” of portions of Paradise Drive. Physical Analysis, page 1. The Physical Analysis evaluated Paradise Drive's geotechnical issues, safety issues, drainage, pavement conditions, easement issues, signage, construction costs, all of which would need to be addressed and paid for by the Town of Tiburon should the proposed project be approved.

The 2006 Physical Analysis concluded that several more studies, such as geotechnical review, are still needed in order to fully understand the fiscal impacts of annexing Paradise Drive. The 2006 Physical Analysis recommends the Town conduct over \$400,000 in further geotechnical and other studies in order to fully understand the fiscal impacts of the proposed project. To date, those follow-up studies have not been performed, with the consequence that the Town's own records demonstrate that the extent of such costs – and the resultant impact on City services as well as the safety of Paradise Drive – are still unknown. Yet there is absolutely no evidence cited in the Initial Study to support the estimate that only \$522,000 in initial improvements and an annual allocation of \$70,000 would suffice to maintain this segment of Paradise Drive, nor for the resulting conclusion that “While these anticipated costs are not insubstantial, they are well within the financial ability of the Town to absorb.” Moreover, if development is indeed limited to the extent contemplated by the Initial Study, it is unlikely that the Town will be able to recover sufficient property taxes to address the increased maintenance

and capital costs associated with annexation. These unaddressed fiscal impacts are real, with the potential to create crippling costs and liabilities for the Town.

CEQA “does not focus exclusively on physical changes, and it is not exclusively physical in its concerns.” Discussion following CEQA Guidelines, § 15131. To the contrary, “if an economic impact will cause physical change, as part of a chain of causation, then the physical impact should be considered.” *Guide to CEQA, supra*, at 185. See, e.g., *Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151 (requiring consideration of possible physical deterioration of downtown area to extent that such might be an indirect consequence of shopping center creation); *Bakersfield Citizens for Local Control v. City of Bakersfield* (5th Dist. 2004) 124 Cal.App.4th 1184 (finding two EIRs inadequate for failure to consider potential that indirect “urban decay” could result from creation of “supercenter” shopping centers).

Moreover, on the state of the current record, LAFCO itself has exempted the Town from LAFCO’s customary requirement that a jurisdiction’s sphere of influence should reflect its probable boundaries, instead acknowledging that the costs of maintaining Paradise Drive make the application of such standard unrealistic:

Policies of the Town of Tiburon, LAFCO and the County all encourage annexation and the extension of the Town’s land use planning authority over new development in the area. [But n]either the Town nor owners of developing land can bear the costs of service.

*Southern Marin Service Review and Sphere of Influence Update, Public Review Draft* (Marin LAFCO, April 26, 2004) at 82.

This substantial evidence – both from its own Physical Analysis report and from its prior representations to LAFCO – that the Town simply cannot, within its budget, “bear the costs” of maintaining Paradise Drive without significantly diminishing Town services raises the likelihood that either Town services will suffer or that Paradise Drive will be improperly maintained, resulting in public safety problems. These physical impacts are part of “a chain of causation” arising from the costs of maintaining Paradise Drive, and they must be studied before the Town can commit to annexing these properties.

#### **IV. THE TOWN OF TIBURON MUST PREPARE AN EIR TO CONSIDER THE POSSIBILITY OF ENVIRONMENTALLY-SUPERIOR ALTERNATIVES PRIOR TO COMMITTING TO THE PROJECT**

Under CEQA, “[a]ll lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment.” Cal. Pub. Res. Code §21100(a). While the statutes do not specify criteria for determining when an agency “approves” a project, both the CEQA guidelines and the interpreting case law have made it clear that “approval” by the agency is the “decision by a public agency which commits the agency to a definite course of action in regards to a project.” 14 Cal. Code Reg. §15325(a). In *Save TARA v. City of West Hollywood* (2008) 45 Cal.4th 116, the California Supreme Court held that where

a city made public announcements supporting the project, made financial contributions to it and demonstrated a "willingness to bind itself" to the project, the city had "committed" itself to that project. More significantly still, in *Save Tara*, the California Supreme Court held that the City was required to perform a full analysis of the environmental effects prior to acting on such commitment.

CEQA of course assumes that an agency contemplates approval of a project whenever it undertakes environmental review. But among the purposes of comprehensive environmental review is to educate decision-makers and the public as to alternatives to the contemplated project as well as the environmental consequences of not only the agency's proposed project but also alternatives which may prove environmentally superior. Here, however, the Town has committed itself to a single course of action – annexation of the uninhabited Martha property – with no consideration whatsoever of other alternatives, such as the annexation of all unincorporated property within its sphere of influence. The Initial Study makes abundantly clear that the Town has simply assumed this conclusion, without environmental analysis of alternatives:

The Town of Tiburon has received rezoning applications from nine property owners holding 13 assessor's parcels within the proposed rezoning area. These parcels have a total area of approximately 45 acres. They are not contiguous and are scattered across a wide area in the southeastern portion of the Tiburon Peninsula. *In an effort to provide guidance to Marin LAFCO in its pursuit of rational boundaries and efficient provision of services*, the boundaries of the rezoning area were expanded by the Tiburon Planning Commission to encompass additional unincorporated territory [i.e., Martha] in the immediate vicinity of those parcels for which rezoning has been requested.

Initial Study at 3. Thus, without further analysis or the study of any alternative, the Town has determined that annexation of Martha's uninhabited 110 acres – which, as Figure 2 graphically demonstrates, are geographically distinct from the inhabited 45 acres for which rezoning applications were received – is required in the "pursuit of rational boundaries and efficient provision of services." LAFCO itself has previously determined that the Town's annexation of the *entire length of Paradise Drive* would better result in rational boundaries and efficient provision of services, *Southern Marin Service Review, supra*, but has exempted the Town from such requirement on the basis of allegedly unbearable costs, which the Town now minimizes in this Initial Study. Initial Study at 80-81.

The California Supreme Court in *Save Tara* declined to enunciate any "bright-line rule" defining when comprehensive environmental review must take place, instead electing to "apply the general principle that before conducting CEQA review, agencies must not take any action that significantly furthers a project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project," 45 Cal.4th at 138 (citations and internal quotes omitted). Here, the Town concedes that part of the Project Need is to "establish the limits of the area to be considered for possible future annexation":

Rezoning would establish the limits of the area to be considered for possible future annexation ... and ultimately allow more efficient delivery of services and

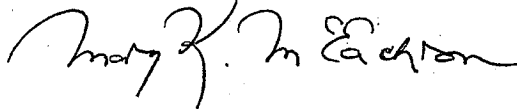
enhanced land use regulation and environmental protection, as noted above. Rezoning will also allow the Town to have zoning in effect immediately upon annexation. It will provide property owners within the rezoning area and other local residents with prior knowledge of the land use regulations that would affect them should annexation occur. In addition, rezoning will provide LAFCO with notice of the Town's land use intentions for adjacent areas.

Yet the project seeks to accomplish all of that without consideration of any alternative configuration or any determination that the 230 acres chosen are the environmentally preferable alternative. CEQA does not permit such result, as the Supreme Court made abundantly clear in *Save Tara*.

## V. CONCLUSION

Under California law, if a proposed annexation might have significant environmental effects, such effects are required to be studied prior to annexation, not after. *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284. Here, the proposed rezoning, General Plan amendment and future annexation is a project covered by CEQA which could result in significant environmental effects, and these effects are not adequately addressed in the proposed mitigation measures. Under these circumstances, the proposed mitigated negative declaration does not comport with the California Environmental Quality Act, and a comprehensive EIR is instead required.

Sincerely,



Mary K. McEachron

cc: Ann R. Danforth, Esq.  
John W. Reed, Esq.