



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Town Council Meeting
September 16, 2009
Agenda Item:

STAFF REPORT

To: Mayor and Members of the Town Council

From: Community Development Department
Office of the Town Manager
Office of the Town Attorney

Subject: Discussion of Proposed Settlement Concept for *the Martha Company v. Town of Tiburon* Litigation; Review of Status of Martha Company's 43-lot Development on 110 acres Currently Pending before the County of Marin; Proposed Reduced Development EIR Alternative

Reviewed By: _____

BACKGROUND

Project History

The Martha Company, a private family-owned company, owns 110 acres at the southeastern end of the Tiburon Peninsula, in an unincorporated portion of the Peninsula. The family acquired the property early in the 20th century, and there is a long history associated with efforts to seek development approvals for it. Although the property is not within the Town, the Town has long taken a keen interest in its ultimate development. The reasons are straightforward: the property abuts existing Town neighborhoods and the burdens of any significant development on the site would largely fall on Town residents. Moreover, any development of the property would require annexation into the sewer district and therefore into the Town.

Following a down-zoning of its property by the County of Marin in 1974, Martha Company sued the County of Marin for (among other things) an unlawful "taking" of the property. The United States District Court for the Northern District of California held in favor of Martha Company and the parties agreed to settle the case. In December of 1976, the County and the Martha Company entered into a Judgment Pursuant to Stipulation ("1976 Judgment") that provided for certain development rights for the property. Key elements of the 1976 Judgment included:

- The County would approve a minimum of 43 single-family lots of at least one-half acre in area.
- The County would allow development within the Ridge and Upland Greenbelt portion of the site.
- Martha Company would offer approximately 50% (but not less than 48%) of the property to the County for dedication as public open space.
- The County could develop a hiking trail in the open space area (assuming the offer of dedication is accepted). Martha Company would provide reasonable access to the trail.

The Martha Company did not pursue any development of the property for many years.

In 1992, Martha Company applied to the Town for development of 44 single family homes on the 110-acre site. The applicant withdrew the application after the Town had prepared a Draft Environmental Impact Report.

In 1999, Martha Company submitted a new application to the Town for development of 34 single family homes on the 110-acre site. Following release of a Draft Environmental Impact Report for that project, the applicant ceased processing the application, and the Town later deemed it withdrawn.

In 2005, Martha Company filed an application with the County of Marin for 40 residential units. The County declined to accept the application and instead filed a lawsuit seeking to have the 1976 Judgment invalidated for prospective use and seeking a declaration as to the rights of the Town of Tiburon and several individuals who live near the property.

The federal court, in a second stipulated judgment issued on November 8, 2007 (“2007 Judgment”), upheld the original judgment for at least 43 units on minimum half-acre lots, with some development within the Ridge and Upland Greenbelt area. Martha Company also won several critical new concessions from the County, including the following:

- All 43 lots are to be placed on geologically safe portions of the site, without the necessity for extensive landslide repair.
- Any development alternative or mitigation measure that does not accord Martha all the rights granted by the 1976 Judgment is legally infeasible unless required to assure health and safety (i.e., aesthetics and the general welfare are not a sufficient basis).
- Martha Company is not required to provide any affordable housing on-site or off-site, or to provide payment of in-lieu fees for failure to provide such housing.
- The Marin County Planning Commission is limited to a “one-day advisory hearing” on the project applications prior to the item being forwarded to the County Board of Supervisors for a decision.
- Martha Company and the County of Marin agree that in order to implement the 1976 Judgment, the Town of Tiburon should not annex the property until after a Final Subdivision map has been recorded (i.e., after the 43 lots have already been created).
- Martha Company must mitigate impacts on endangered, threatened or otherwise protected species.
- The County must complete its CEQA review and take action on the project within 14 months of submittal of the application (which equates to a deadline of February 2, 2010).

In summary, the 2007 Judgment left the County of Marin in a weaker position with respect to regulation of development of the Martha Company property than had existed pursuant to the 1976 Judgment.

Pre-zoning & Annexation

As the County began processing the Martha Company application (also known as the Easton Point Project), neighbors in the vicinity of the property petitioned the Town for pre-zoning of their properties. At staff's recommendation, the Town expanded the pre-zoning to include approximately 230 acres of land comprising the entire southeastern tip of the Tiburon Peninsula, including the 110-acre Martha property, for eventual annexation to Tiburon. The Tiburon Planning Commission and Town Council considered the matter and approved pre-zoning of the properties on July 1 of this year. The neighbors who petitioned the Town may now, if they so wish, petition the Marin Local Agency Formation Commission for annexation to Tiburon. No petition has been filed as of this writing, although the neighbors have indicated they are moving forward with one shortly. In the meantime, Martha Company has brought suit against the Town and the pre-zoning applicants, asserting that the environmental document used by the Town in approving the pre-zoning was inadequate.

Settlement Discussions

The Town Attorney and Town Council ad hoc sub-committee for the Martha project, Councilmember Tom Gram and Mayor Alice Fredericks, have met several times with the Town Council in closed session to discuss the lawsuit. The sub-committee has also met with representatives of the Martha Company to explore possible settlements of the lawsuit that might include a resolution of the 35-year old Martha Company development dispute. This dialogue led to Martha Company's creation of a potential reduced density alternative to the court-ordered 43-home development.

The Martha Company representatives have proposed a 32-lot scenario that pulls development off the most publicly valued ridgeline on the site and clusters houses to allow for a substantial swath of unobstructed public open space on the property, including where the existing fire road/walking trail accesses the site from the adjacent Old St. Hilary Open Space Preserve.

The sub-committee has requested that staff place this matter on the Town Council agenda in order to inform the public about the Martha-proposed plan and receive feedback from the public and the balance of the Town Council. It is important to note that any settlement or other agreement between the parties as to development on the site is subject to the CEQA process underway as part of the County of Marin's processing of the pending development application.

PROPOSED PROJECT ALTERNATIVES

Martha Company 43-lot Application

In December 2008, Martha Company filed a 43-lot project application with the County of Marin. The County is currently preparing an environmental impact report for this project. The project site plan is attached as **Exhibit A**. Key characteristics of the 43-lot plan are as follows:

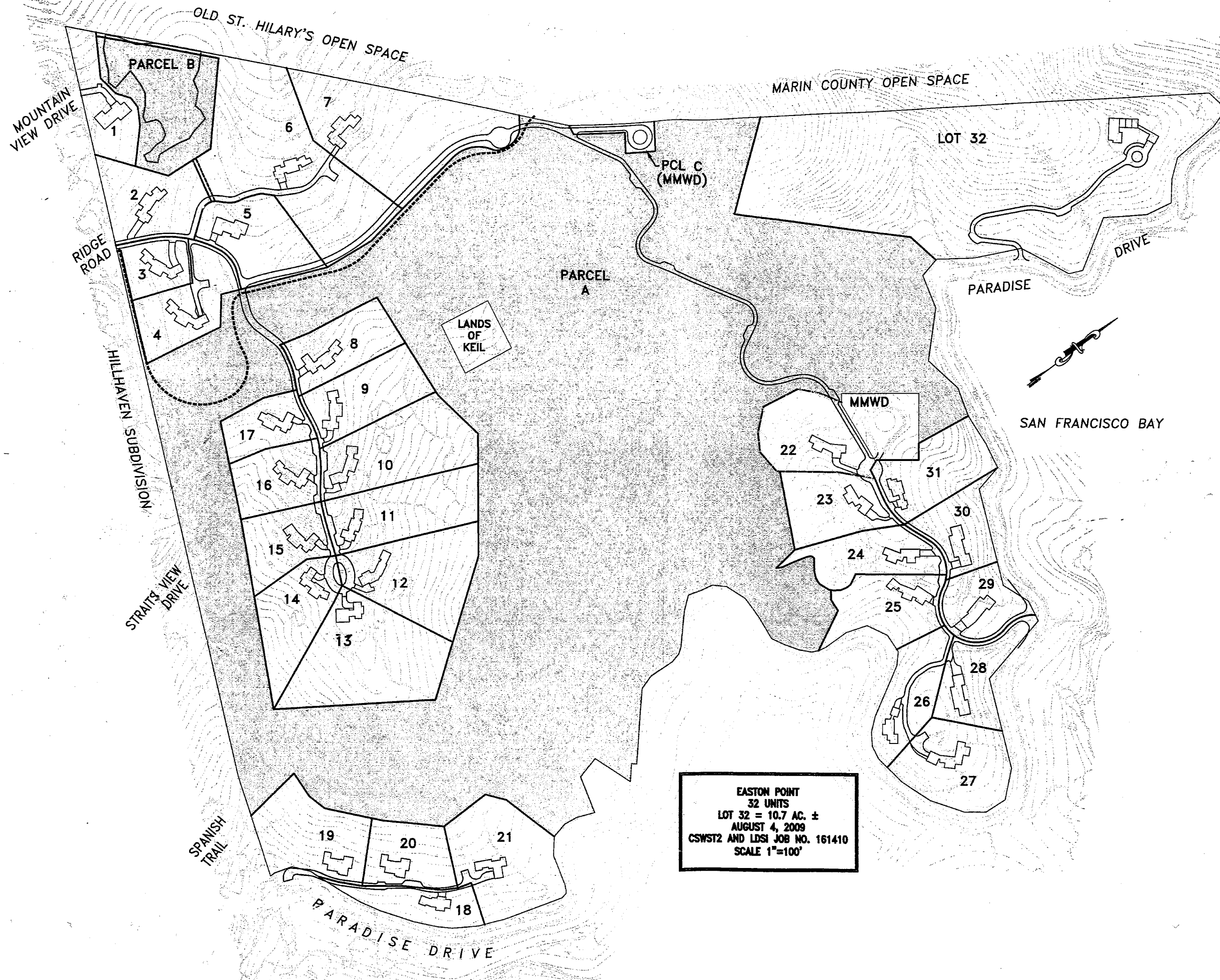
- 3 lots (Lots 1-3) off an extension of Mountain View Drive
- 27 lots (Lots 4-20, 24, and 35-43) off an extension of Ridge Road
- 3 lots (Lots 21-23) off a new roadway opposite the intersection of Mar Centro Street and Paradise Drive

- 10 lots (Lots 22-31) off a new street leading up to the existing Marin Municipal Water District (MMWD) storage tank off Paradise Drive in the vicinity of 2900 Paradise Drive
- Construction traffic for all 27 lots located off the extension of Ridge Road would be routed over a temporary construction road leading to the existing MMWD water tank access road off Paradise Drive and would not pass through the Hill Haven neighborhood
- The primary ridgeline on the site, leading to the rock outcrop (sometimes called “Founders Rock”) overlooking Angel Island and San Francisco, would be developed with 10 homes
- Average (mean) house size for the project as a whole at 6,900 square feet, not including garages or detached accessory buildings not intended for sleeping purposes such as pool houses. Consequently, the average gross house size would be approximately 7,500 square feet when garages are included, and more if accessory structures are built.
- Construction of a new 180,000 gallon MMWD water tank on the highest elevation of the property

Reduced Density Alternative Site Plan (32-lot Plan)

After discussions with Town Staff and the sub committee the Martha Company has proposed a revised 32-lot Reduced Density site plan for consideration as an “alternative” to their 43-unit plan in the Draft Environmental Impact Report currently under preparation by the County of Marin. They suggest this plan also be considered as the basis of a possible settlement of the pre-zoning litigation and a method to achieve closure on the litigious subject of its property’s development. The site plan for this potential Reduced Density Alternative is attached as **Exhibit B**. The Town Council desires to receive public input on this alternative site plan before considering it as the basis for a possible legal settlement. Key characteristics of the 32-lot plan are as follows:

- 1 lot (Lot 1) off an extension of Mountain View Drive
- 16 lots (Lots 2-17) off an extension of Ridge Road
- 4 lots (Lots 18-21) off a new roadway opposite the intersection of Mar Centro Street and Paradise Drive
- 10 lots (Lots 22-31) off a new street leading up to the existing Marin Municipal Water District (MMWD) storage tank off Paradise Drive in the vicinity of 2900 Paradise Drive
- 1 lot (Lot 32) off a new driveway
- Construction traffic for all 17 lots (Lots 1-17) located off the extension of Ridge Road and Mountain View Road would be routed over a temporary construction road leading to the existing MMWD water tank access road off Paradise Drive and would not pass through the Hill Haven neighborhood at all and would not use any streets in the Lyford Cove/Old Tiburon neighborhood except Paradise Drive
- The primary ridgeline on the site, leading to Founders Rock, would be preserved in public open space. This visually prominent ridgeline is located where 10 lots (Lot 24 and Lots 35-43) are shown on the 43-unit plan, and generally follows the fire road that leads down from Old St. Hilary’s Open Space Preserve onto the Martha Property and to the rock outcrop. This ridgeline forms the “horizon” ridgeline on the Martha Property from the ridge-top on the Old St. Hilary Open Space Preserve and from the end of Heathcliff and Lyford Drives.



EASTON POINT
 32 UNITS
 LOT 32 = 10.7 AC. ±
 AUGUST 4, 2009
 CSWST2 AND LDSI JOB NO. 161410
 SCALE 1"=100'

EXHIBIT B
 32-UNIT PLAN