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FRIENDS OF MUIR WOODS PARK,
WATERSHED ALLIANCE OF MARIN,

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

FRIENDS OF MUIR WOODS PARK;
WATERSHED ALLIANCE OF MARIN,

Petitioners/Plaintiffs,

V.

COUNTY OF MARIN, BOARD OF SUPERVISORS OF THE COUNTY OF MARIN and DOES I through X,

Respondents/Defendants.

DANIEL WEISSMAN, an individual, and , a California Corporation and DOES, XI through XX,

Real Parties in Interest.

Case No.: CIV2003248

UNLIMITED CIVIL CASE

PETITIONERS FRIENDS OF MUIR WOODS PARK, WATERSHED ALLIANCE OF MARIN OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

[CALIFORNIA ENVIRONMENTAL QUALITY ACT, Pub. Res. Code Section 2100 et seq.; PLANNING AND ZONING CODE, Gov't Code Section 65000 et seq.; Code of Civ. Pro. Sections 1084 et seq. 1094.5]

Petition Filed: November 04, 2020
Judge: Andrew E. Sweet
Department: E
Trial Date: December 17, 2021
Time: 1:00PM

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I. INTRODUCTION

The Marin County Board of Supervisors acted in violation of the California Environmental Quality Act (CEQA"), Cal. Pub. Res. Code $ 21000 *et seq.* and the Subdivision Map Act, Cal. Gov't Code $ 66410 *et seq.* ("SMA") when it approved a subdivision of 455 Panoramic Highway ("Dipsea Ranch Land Division" or Project") without the required preparation of an Environmental Impact Report ("EIR"). The Court should set aside the invalid subdivision approval and Mitigated Negative Declaration ("MND"), and enjoin the Real Party in Interest from proceeding with the County approved subdivision. Dipsea Ranch is located in a world-renowned biodiversity hotspot, part of Muir Woods National Monument's Redwood Creek watershed, and contains 1500 feet of headwater streams of California's endangered Coho Salmon population. The subdivision jeopardizes public health and safety for County residents and visitors, creates and increases impacts which endanger protected wildlife and wetlands, and is inconsistent with its neighboring parklands and density policies for that fragile and unique part of Marin County.

Count One: The Board of Supervisors Violated CEQA.

The California Supreme Court ruled in *No Oil, Inc. v City of Los Angeles*, 13 Cal. 3d 68, 75 (1974) that an EIR should be prepared "'whenever the action arguably will have an adverse environmental impact.'" *Id.* at 86. That low threshold was met here after Petitioners, Friends of Muir Woods Park and Watershed Alliance of Marin, Petitioner's experts, the Tam Valley Design Review Board and government regulatory agencies presented the County with substantial evidence that the Project and its future foreseeable development will cause significant environmental impacts. First, the Initial Study failed to consider the impacts of reasonably foreseeable future development of up to eight second units. These eight units would be exempt from any future CEQA review because state law allows them to be built "by right."

Further, the County ignored evidence in the record presented by the Project Developer's own consultants regarding the Project's adverse environmental conditions relating to land stability, water quality and endangered species in Redwood Creek. For instance, the County repeatedly – in the Initial Study and its statements at the Board of Supervisors - ignored and misstated the Geological Technical Report's ("GeoTech Report") warnings about soil instability due to the Developer's illegally constructed access road (AR 1842). The County also ignored the Consultant's own biologist's finding of potential downstream impacts from earth movement to endangered Coho Salmon. *See e.g.* AR 64, 78, 111, 112-113, 117, 131-133.

The Developer, Mr. Weissman, had previous illegally graded the Property, and the Initial Study failed to disclose and assess land instability from that illegal grading. The Initial Study also failed to adequately identify and discuss the Project's impacts due to substantial grading and fill placement, grading for future

foreseeable homes, and housing and road construction, including sediment deposition, polluted runoff and irreversible harm to Redwood Creek water quality and its ecosystems, and endangered species, including Northern Spotted Owl ("NSO"), Coho Salmon, Steelhead and other wildlife that use the Property's streams and wetlands as habitat and a wildlife corridor. (AR 242, 1271, 1294, 1716, 1811, 4366-4367, 4468-4470.) The County further violated CEQA by not disclosing and assessing: the increase in safety risks due to possible landslides arising from illegal road construction and unquantified grading; project impacts to a riparian corridor and jurisdictional wetland (AR 94, 207); and increases in fire hazard risk traffic safety on Panoramic Highway. AR 55, 115, 208.

Count Two: The Board of Supervisors Violated the Subdivision Map Act.

The County violated Subdivision Map Act, Cal. Gov't Code § 66410 *et seq.* ("SMA") requirements because the County failed to ensure the subdivision is consistent with all applicable County and community plan policies. *See* Cal. Gov't Code §§ 66474 and 66473.5. The County admitted that it intentionally failed to address a key, specific land use density policy in the 2007 Countywide Plan, CD-5.e, before approving the subdivision. AR 24, 223, 1616, 1712. Local agencies, however, cannot simply ignore their own policies, no matter how inconvenient, and must reconcile differences, even if one policy is more specific than the other. *Sierra Club v. Bd of Supervisors of Kern Cty*, 126 Cal. App. 3d 698 (1981).

The County also failed to address specific land use policies in the Countywide and Tamalpais Area Community Plan for this parcel, regarding its biodiversity hotspot location in the headwaters of Redwood Creek above Muir Woods National Monument and adjacent to Mount Tamalpais State Park. Dipsea Ranch has pivotal ecosystem significance for the area, and the County should not have taken its short cut and allowed development of up to 12 homes without the full and adequate consistency determinations under the SMA. By failing to thoroughly assess the Project's significant impacts to water quality and biological resources, among other considerations, the County failed to make the required findings under the SMA for project approval. *Spring Valley Lake Assn. v. City of Victorville*, 248 Cal. App. 4th 91 (2016).

Thus, we urge this Court to void the County's approvals of this project due to lack of compliance with the governing statutes.

II. FACTS

Real Party in Interest Daniel Weissman ("Weissman" or "Developer") owns the property, which is located in and around 455 Panoramic Highway, Mill Valley, further identified as Assessor's Parcel 046-161-11 ("Property"). AR 1782-1804. In 2016, the Developer applied to the Homestead Valley Sanitary District for sewage hookups for 13 to 16 units and at one point to the County for 13 units on the Property. AR 3690, 3722, 4524. On May 6, 2016 Homestead Valley Sanitary District Director Bonner Beulher

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issued a Letter to Mr. Weissman providing a "will serve" letter for sewer service to Mr. Weissman for 16 units. AR 4524.

On December 8, 2016 the Marin Local Area Formation Commission ("LAFCO "), as a result of Developer's application, held a Public Hearing with Request to Amend the Sphere of Influence of the Homestead Valley CSD for 455 Panoramic Hwy. (APN 046-161-11) and conditionally approved annexation. AR 4503-4524. *See also* AR 1561-1562. This LAFCO decision document recognized 4 additional lots plus any second units. AR 4505. Three Members of the County Board of Supervisors are members or alternates on the LAFCO. AR 4503.

On various dates in 2015, 2017 and 2018, the applicant and property owner, Daniel Weissman ("Weissman" or "Developer"), submitted proposals to the County to subdivide parcels on steeply sloped acres (including parcels of 8.29 acres and 1.8 acres) of property adjacent to Mt. Tamalpais State Park in the County of Marin. AR 3723, 4505, 1561. In 2017 Mr. Weissman applied for up to as many *as 28 homes,* including the possibility of an additional density bonus, additional dwelling units ("ADU") and senior units (10 market rate, 4 affordable and each of those units would have been entitled to an ADU). AR 1561-1562.

On February 28, 2017, a member of Petitioner Watershed of Alliance of Marin sent a letter to Planning Director Crawford with CC to Supervisor Rodoni, informing the County that there was no notice or attempt made to contact the community regarding the Marin LAFCO matters. AR 236.

In 2018, the Developer applied again to subdivide and develop a central portion of his property, currently developed with one single-family residence, into three single-family residential lots with proposed building envelopes on each lot. The County identifies this Subdivision and Project as ID P1589.

In 2018, the County's Tamalpais Design Review Board ("TVDRB") and the Petitioners communicated to the County that the Developer's subdivision application could result in up to four lots because state law allows each parcel an second units, and the Developer could build not just three but *twelve* (12) homes on the Property without further any further County permitting due to state law allowing for "by-right" development of second and third units. AR 707.

From 2016 to 2018, residents within the Redwood Creek watershed, members of the public, scientists and technical experts, the California Department of Fish and Wildlife, and the National Park Service, commented that the Project will cause significant unmitigated environmental impacts. Those impacts include to geology and soils, wildfire hazards, hydrology and water quality, land use and planning, traffic safety, and biological resources, including salmonid species listed by the Federal government as endangered, including Steelhead (*Oncorhynchus mykiss*) and Coho Salmon (*Oncorhynchus kisutch*). AR

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3742, 3744, 3807, 3825-4057, 4208-4483. Redwood Creek has been declared critical habitat for both Steelhead and Coho Salmon. AR 4128, 4449, 4465.

In 2019, The County chose to only prepare an Initial Study/Mitigated Negative Declaration ("Initial Study") for the Project instead of a more comprehensive Environmental Impact Report ("EIR").

On July 27, 2020, the Marin County Planning Commission held a hearing in which dozens of community members opposed the project. The Planning Commission approved the Dipsea Ranch Land Division, AKA Dipsea Ranch Tentative Map ("Dipsea Ranch Subdivision" or "Subdivision" or "Project") and accompanying Initial Study and MND. AR 7, 20, 1582.

On August 5, 2020, Petitioners, including Friends of Muir Woods Park's 150 community members and the Watershed Alliance of Marin, signed a Petition and appealed the County Planning Commission's approval of the MND and Subdivision to the County Board of Supervisors. AR 4300.

On October 6, 2020, after extensive public controversy over the County's repeated failure to provide public notice to the neighbors and post local site notice as required by the Government Code (AR 235), the Board of Supervisors held a hearing on the Project and accompanying Initial Study. AR 22, 39, 222, 1696. The Board heard oral and written testimony and evidence presented or filed regarding the Initial Study and the Project. Petitioners' members attended the public hearing. AR 1696-1782. Issues raised in the Board hearing by Friends of Muir Woods Park and others included: the violation of CEQA due to failure to prepare an EIR due to remaining potential *significant* impacts to wetlands, habitat, and species in Redwood Creek; fire hazards related to increase structures and traffic in a urban wildland interface, surface water quality; geologic feasibility and landslide hazards; traffic and safety on Panoramic Highway; cultural resources; and lack of consistency with the Marin Countywide Plan ("CWP ") and Tam Area Community Plan ("TACP"). The Board of Supervisors approved the Project by a vote of 4 to 1 and a Notice of Determination was filed with the Marin County Clerk on October 13, 2020. AR 22, 39.

This action was timely filed within 30 days as required by Pub. Res. Code § 21167.5.

III. STANDARD OF REVIEW

A. WHETHER THE COUNTY PROCEEDED IN THE MANNER REQUIRED BY LAW.

An agency abuses its discretion when it fails to proceed "in a manner required by law or if the determination is not supported by substantial evidence." Pub. Res. Code §§ 21168, 21168.5; *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.*, 47 Cal. 3d 376, 392 (1988) (hereinafter "*Laurel Heights I*"); *Communities for a Better Env't v South Coast Air Quality Mgmt. Dist.*, 48 Cal. App. 4th 310 (2010). Similarly, an agency abuses it discretion when it fails to comply with CEQA's procedural requirements. *Save Tara v City of W. Hollywood*, 45 Cal. 4th 116, 122 (2008); *Oakland Heritage Alliance*

v City of Oakland, 195 Cal. App. 4th 884 (2011). California courts apply independent, *de novo* review when the issue is, as here, whether the agency has followed statutory procedures in reaching its challenged decision. *Sierra Club v County of Fresno,* 6 Cal. App. 5th 502 (2018). This *de novo* standard of review applies to two critical elements of the County's inadequate CEQA evaluation of the Project: (1) the County's complete failure to determine impacts of future reasonably foreseeable related future projects for key resource areas; and (2) the County's refusal to consider whether the Project was consistent with all local plans and policies, specifically CWP Policy CD-5.e.

B. THERE IS A LOW THRESHOLD FOR AN ENVIRONMENTAL IMPACT REPORT REQUIRING ONLY A "FAIR ARGUMENT" OF SIGNIFICANT IMPACT.

There is a "low threshold requirement for initial preparation of an EIR [that] reflects **a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted."** *League for Protection of Oakland's Arch. Resources v. City of Oakland*, 52 Cal. App. 4th 896, 905 (1997). Under CEQA, the County has a duty to prepare an EIR for any project that "***may*** have a significant effect on the environment." Pub. Res. Code §21151 (emphasis added); *No Oil, Inc. v City of Los Angeles*, 13 Cal. 3d 68, 75 (1974); *Sierra Club v. County of Sonoma*, 6 Cal. App. 4th 1307, 1322-1323 (1992). As the California Supreme Court has ruled, the governmental body **must** prepare an EIR when there is nothing more than a "fair argument" of significant impacts. *No Oil, Inc. v City of Los Angeles*, 13 Cal. 3d 68, 75 (1974). It is an abuse of discretion for an agency to fail to do so, and any approval must be overturned. *Id.* As the Court recognized in *No Oil*, an EIR should be prepared "'whenever the action *arguably* will have an adverse environmental impact.'" *Id.* at 86 (emphasis in original).

An EIR "demonstrate[s] to an apprehensive citizenry" that a public agency has analyzed and considered the impacts of its actions. *No Oil, Inc. v. City of Los Angeles,* 13 Cal. 3d 68, 86 (1974). A mitigated negative declaration is justified only in instances where "*clearly* no significant effect on the environment would occur, and … there is no substantial evidence, in light of the whole record" that significant impacts may occur as a result of project approval, taking into account any adopted mitigation measures. Pub. Res. Code § 21080, subd. (c), emphasis added. The CEQA Guidelines, Title 14, California Code of Regulations, §§ 15000 *et seq.* ("CEQA Guidelines") echo the statute, requiring that mitigation measures be sufficient to reduce potentially significant impacts "*to a point where clearly no significant effects would occur*." CEQA Guidelines, § 15070(b)(1), § 15064(f)(2)); *Keep Our Mountains Quiet v. Cnty. of Santa Clara*, 236 Cal. App. 4th 714 (2015).

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1. **EIRS Are Required If There is a "Fair Argument" That Significant Environmental Impacts May Occur.**

CEQA's low threshold triggers an EIR rather than a negative declaration whenever substantial evidence in the record supports a **"fair argument"** by ***Petitioners*** that significant impacts may occur, even if there is also substantial evidence supporting an agency's conclusion. *Friends of "B" Street v. City of Hayward*, 106 Cal. App. 3d 988, 1000-1003 (1980); 14 CCR § 15064(f)(l). In *Sierra Club v. County of Sonoma,* 6 Cal. App. 4th 1307 (1992), the Court explained that "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id*. at 1318. When the evidence is competing, the fair argument standard requires the agency to pursue an EIR and not weigh competing evidence on the merits. *Save the Agoura Cornell Knoll v City of Agoura Hills,* 46 Cal. App. 5th 665, 690 (2020); *Architectural Heritage Ass'n v County of Monterey*, 122 Cal. App. 4th 1095, 1109 (2004).

2. **Facts and Opinions of Significant Impact Support a Fair Argument.**

Courts consider "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" that support a fair argument of a project's significant environmental impact. (Pub. Res. Code § 21082.2(c).) The CEQA Guidelines further define substantial evidence as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 CCR § 15384(a); *League for Protection*, *supra*, 52 Cal. App. 4th at 905.) Under governing case law, the fact-based opinions **of regulatory** agencies (e.g. CDFW) with knowledge of environmental matters qualify as substantial evidence. *Stanislaus Audubon Society v. Cnty. of Stanislaus,* 33 Cal. App. 4th 144 (1995).

3. **CEQA – Where There is Conflicting Evidence, the Agency Must Prepare an EIR.**

Where there is *opposing expert credible evidence* of significant impacts, CEQA requires agencies to prepare an EIR. *City of Carmel-by-the-Sea v. Board of Supervisors,* 183 Cal. App. 3d 229, 247-249 (1986). In *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles,* 134 Cal. App. 3d 491, 504 (1982), the Court held that when qualified experts present conflicting evidence on the nature or extent of the Project's impacts, the agency must accept the evidence tending to show that the impact might occur. *See also Rominger v. County of Colusa*, 229 Cal. App. 4th 690, 721 (2014): ["Rather, the question is whether Smith's opinion *constitutes substantial, credible evidence that supports a fair argument* that such development may occur …."]; See also *Oro Fino Gold Mining Corporation v. Cnty. of El Dorado*, 225 Cal. App. 3d 872, 883 (1990). A finding of no environmental impact "can be upheld only when there is no credible evidence to the contrary." *Sierra Club v. County of Sonoma, supra*, 6 Cal. App. 4th at 1317-1318.

IV. ARGUMENT

A. FIRST CAUSE OF ACTION: THE COUNTY'S RELIANCE ON AN INITIAL STUDY INSTEAD OF AN EIR VIOLATED THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CEQA only allows for Initial Studies where a determination can be made that ***no*** significant environmental effects will *may* or *potentially* occur unless all potentially significant impacts are assessed and reduced to less than significant levels. 14 CCR § 15064(f)(l). *Sierra Club v. County of Sonoma,* 6 Cal. App. 4th 1307 (1992). The County's Initial Study fails to meet this CEQA standard on numerous grounds.

1. The Initial Study is Legally Inadequate Because It Did not Comply with CEQA Requirements to Assess Potential Impacts from Reasonably Foreseeable Future Projects.

The Initial Study only discusses the impacts of two homes, instead of the combined impacts of 12 total potential homes on the Developer's property. These homes include, one existing home, two additional homes approved in the subdivision map, a fourth main home that would result from a lot split of Lot 3, and the eight (8) potential ADUs and Jr. ADUs that the builder can develop "by right" with no additional environmental review.

a. The Approvals Mean that Development of More Than Two Homes Is Permitted "By Right:" The County Failed To Assess Development Beyond Those Two Homes.

The Initial Study only assesses the environmental impacts of 2 additional homes (AR 61) and fails to disclose and assess the potential environmental impacts for up to 12 homes on the Property for the following resource areas: water quality, safety – traffic and fire hazards, wildlife, infrastructure, stormwater polluted runoff, and wetlands (See e.g. AR 113, 149-163, 165-173, 179-184, 192, 196-199.) [1]

This assessment is inadequate under CEQA because an initial study must consider ***all*** phases of project planning, implementation, and operation, including phases planned for future implementation. 14 Cal Code Regs §15063(a)(1). This rule follows logically from the principles that the "whole of the action" that may result in a physical change must be considered (14 Cal Code Regs §15378(a); see §6.31) and that environmental analysis should not be deferred (see Pub Res C §21003.1). Under this rule, a lead agency may not limit environmental disclosure by ignoring the development or other activity that will ultimately result from an initial approval. *See City of Antioch v City Council*, 187 Cal. App. 3d 1325 (1986) (piecemeal review of development of infrastructure for undeveloped site resulting in negative declaration was improper); *see also Arviv Enters., Inc. v South Area Planning Comm'n*, 101 Cal. App. 4th 1333 (2002).

[1] The Initial Study includes a few sentences regarding potential impacts of future ADUs in areas not at issue here: AR 165, 175 (division of the community), AR 85 (air quality), and AR 187 (population).

A lead agency must include in its environmental review potential later phases or later expansions of a project that are reasonably foreseeable consequences of the approval. *Laurel Heights I*, *supra*, at 396. The same standard applies to the appropriateness of negative declarations. *See El Dorado Cty Taxpayers for Quality Growth v Cty of El Dorado,* 122 Cal. App. 4th 1591, 1599 (2004).

*Laurel Heights I (*47 Cal. 3d 376, 396) concludes that a CEQA document must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope of the initial project or its environmental effects. A CEQA document is inadequate if it there is no evidence that a foreseeable future expansion was studied. *City of Maywood v. Los Angeles Unified School District*, 208 Cal. App. 4th 362, 295 (2012).

The County's October 6, 2020 approval was for two new lots. However, another lot exists, and the County acknowledged the Developer can split Lot 3. Thus, the Developer and/or future landowners *have been essentially granted entitlements for a total of 11 new homes,* ***9 more homes than considered in the Initial Study review***. This is because state housing law and the Marin County Municipal Code, both allow for the Developer to build those additional units "by right."

State law passed before the approvals were made arguably allows the owner to build 2 additional units on each of the four potential lots. 2019's Assembly Bills 881 and 68 (Government Code §§ 65852.2 and 65852.22), require a jurisdiction to ministerially approve a permit application for building two ADUs (one of which can be detached) in addition to the primary residence. Government Code Section 65852.2(a)(1)(D)(xii)(3). A local agency "shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision." Government Code § 65852.2(a)(4).

AB 881 and 68 also greatly relax ADUs' development standards (E.g. parking, size requirements, setbacks, etc.) restricting local agencies from deviating from the state standards. Government Code Section 65852.2(a)(1)(D)(vii). AB 881 provides the specific and total regulatory authority to regulate ADUs and that authority does not include authority to require stream setbacks. Gov. Code, § 65852.2. Essentially, the County *must* approve such future ADUs if they meet minimal back and side yard setback and bulk requirements.

The County states or admits that state law governs ADUs, not the County. AR 1226, 1687, 3945. County Staff also informed the Tamalpais Valley Design Review Board ("TVDRB") that ADUS for the approved units were "by right." AR 707 (Line "3J".) Further, Marin County Municipal Code ("MCMC")

§§ 22.10.30, 22.32.120, 22.56.030 allow for Residential Accessory Dwelling Units ministerially or, "by right." Section 22.56.030 makes clear that discretionary review does not apply to ADUs.

Therefore, there will be no future CEQA review of environmental impacts or any other discretionary review of the ADUs, except possibly design review, which is not at issue in the case at hand.

The County was aware of this fact (AR 1571, 1717) and that its own Marin County Development Code, Sections 22.10.30, 22.32.120, allow for Residential Accessory Dwelling Units essentially "by right." AR 4357-59. Two County Staff members, however, nonetheless, told the Board of Supervisors that ADUs are subject to discretionary review and that future CEQA review would be required for ADUs. AR 1727, 1728. CEQA only concerns itself with an agency's discretionary decisions, not ministerial ones such as ADUs and building permits. Pub. Res. Code 21080(a), 21080(b)(1); 14 CCR § 15268(b). These key mistakes, misstatements, and self-contradictions misled the Board on this crucial issue and the Board was not even aware of the development rights permitted by its approvals. Board President Katie Rice stated: "right now, it would be if we approve this, if we deny the appeal, we are -- are approving the -- basically, the tentative map, not yet the houses, any proposed development itself." AR 1727. But since there will be no more discretionary review, the County is permitting development of two ADUs per main home, as long as the Developer complies with minimal state standards.

Therefore, the Developer or future homeowners will have the ministerial right to develop 11 new homes on the property, 9 more than were considered in the Initial Study. See AR 3946. This is also acknowledged in the Initial Study which states that the approved subdivision; "would be the first step in enabling development of the two newly-created residential lots where there is currently no residence, *the development of the lots is considered a reasonably foreseeable consequence of approval,* and therefore a part of the Project." AR 3781, emphasis added.[2] The Initial Study also states: "The Project site is currently developed with a single-family residence and the Project would enable development of up to three additional future residences on the new lots [two primary residences and two accessory dwelling units…]" AR 175. Yet the County limited its analysis to two homes, not eleven future foreseeable homes.

b. Eight Additional Future Homes Are Permitted and are not Speculative, Unforeseeable, or Difficult to Assess.

Lead Agencies must use their best efforts to find out and disclose all that they reasonably can. (CEQA Guidelines § 15144.) If a precise technical analysis of an environmental impact is not practical, ***the agency must make a reasonable effort to pursue a less exacting analysis.*** *Citizens to Preserve the Ojai v. County*

[2] The Project approvals also include construction of two new septic systems and the extension of an existing driveway which serves the current residence as well as addition of a stop sign and new acceleration lane within double blind curves on Panoramic Hwy. AR 3946.

of Ventura, 176 CA 3d 421, 432 (1985). The County knew the site, scale and potential range of intensity of the future foreseeable development of the Property and yet failed to require that the Developer consider the consequences of that development. AR 1602. For example, the Hydrological Report admits that the *Report did not determine the location and grading in each building envelope, the actual grading or impervious surfaces allowed*, nor specific hydrologic performance criteria nor the development design or scenario of any homes much less any additional ADUs or Jr. ADUs. AR 1884, 1891. Similarly, the MND admits that, "[t]he Grading Plan does not include grading of building pads or other grading that may be required for development of proposed lots 2 and 3." AR 64. These shortcuts are not consistent with the requirement that a project description be sufficiently detailed for environmental analysis. (14 CCR §§ 15063, 15071).

In addition, CEQA documents must include some forecasting in evaluating a project's environmental impacts. (CEQA Guidelines § 15144.) The principle that CEQA requires foreseeable forecasts is well established in case law. (CEB, Practice Under the CEQA, § 11.32, citing *San Francisco Ecology Center v. City and County of San Francisco,* 48 Cal. App. 3d 584, 595 (1975).

The future development is foreseeable because the Developer made several previous applications to develop more homes on the property and the record shows that the County and other agencies have knowledge of and addressed the Developer's efforts to add up to 13 and/or 16 units on the property. AR 223, 3690, 3722. In fact, in 2017 Mr. Weissman applied for up to as many *as 28 homes.* AR 1561-1562. Despite the County being fully aware of this development potential, the County has steadfastly refused to acknowledge this reality for purposes of CEQA review and misled the Board: "the applicant has neither signified intentions to pursue future subdivision nor requested that such development potential on proposed Lot 3 be eliminated with this project." AR 4358. This misrepresentation by County Staff is soundly repudiated by the record:

(i) In a "Status Letter to the Applicant," the County communicated such knowledge of future plans to the Developer on April 2, 2018:

> "[I]n your application materials, you indicate that four of the 13 lots proposed on the larger lot, APN 046-161-11, are intended to be developed with affordable senior housing units….
> As reflected in your application materials, following Master Plan approval, you intend to subdivide the larger lot into 13 separate lots. Twelve new single-family residences (the lot is currently developed with one residence), including nine market-rate units and four affordable housing units, would then be constructed on the newly created lots.
>
> Further, in your application materials, you indicate that four of the 13 lots proposed on the larger lot, APN 046-161-11, are intended to be developed with affordable senior housing units. AR 3722.

(ii) The applicant has obtained approvals for sewer hookups from the LAFCO and Community Services District. The former concluded that the County can potentially approve four units "**along with accompanying intensity allowances, such as second units.**" AR 4505-6. Three members of the County Board of Supervisors are members of the LAFCO (AR 4503) and were made aware of development plans because County Supervisors themselves, acting as LAFCO commissioners, approved the annexations requested by the Developer, "along with accompanying intensity allowances, such as second units." Id.

County Staff (AR 1571) and the Initial Study both acknowledge potential future development of ADUs but do not mention Jr. ADUs (AR 61) and only include sparse analyses of the impacts from additional units for three resource areas: aesthetics (AR 63), population (AR 186-187), and air quality (AR 85). Even then, it only considers impacts from 3 total units (AR 589, 685, 969), and does not consider the foreseeable buildout of 12 units. *See e.g.* AR 540 only assessing four units impacts to evacuation issues and not 11 potential additional homes. The County, despite admitting that greater development is probable and foreseeable (AR 61, 3722, 1561), ignores the potential future Project impacts, including biological, hydrological, geological, light and noise pollution and traffic and fire hazards. AR 1602. For instance while CEQA requires agencies to look at fire evacuation (AR 144, 147), there is absolutely no analysis whether the Project will worsen evacuation of thousands of users and residents of the Muir Beach, Mt. Tam, and Muir Woods Park Communities from wildfires. AR 532, 538.

Despite the lack of analysis of the ADUs in the Initial Study, County Staff misinformed the Board on October 6 that the Initial Study *did* include assessment of future possible ADUs. "The initial study examined the impacts of developing two principal residences and two ADUs." AR 1731.[3] Thus, County Staff appeared to either be unfamiliar with their own Initial Study, or misinformed the Board about the scope of the Initial Study.

This statement appears to acknowledge that the Initial Study <u>*should have assessed the impacts of the ADUs*</u>, Second, it misinforms the Board that such analysis took place when in fact it did not.

2. <u>The Initial Study Project Description Fails to Provide Crucial Information about Soil Excavations and Fill.</u>

Every Initial Study must contain a project description of a project's technical, economic, and environmental characteristics. (14 CCR §§ 15070, 15071.) CEQA requires the analysis of potential impacts to be "reasonably thorough" and specific at the project level. Accordingly, a project description

[3] The same County Staff member had previously advocated in strident manner, criticizing Petitioners' members and other community members supposed lack of knowledge. AR 1663.

must be sufficiently detailed for environmental impact analysis to determine technical compliance with CEQA. (14 CCR §§ 15063, 15071.) The Project description in the instant case lacked this detail.

According to the Initial Study, the proposed Project would be built upslope from Redwood Creek, which provides documented habitat for Central California Coastal coho salmon (*Oncorhynchus kisutch*), a species federally and state listed as endangered, and Central California Coastal steelhead (*Oncorhynchus mykiss irideus*), a species federally listed as threatened. AR 67, 95-96, 242, 1271, 1294, 1716, 4468-4470. According to the Initial Study, the "average slope [on the Project site] is 36.76 percent," a gradient which is considered "steep" under the Countywide General Plan. AR 55. The impact on Redwood Creek is direct: "streams, both tributar[ies] to Redwood Creek, flow along the western and eastern edges of the Project site, and meet just south of the Project boundary." *Id.* Soil erosion anywhere on the site will introduce sediment into these tributaries of Redwood Creek, and over time, ultimately into Redwood Creek itself, degrading its salmonid habitat. AR 4449.

The proposed development of this site will also involve substantial cutting (1,709 cubic yards) and filling (1,565 cubic yards) of soil (AR 64), generating excess soil that must be placed somewhere. Id. But the Initial Study fails to specify where this excess material will be placed. This is significant quantity of soil, and the consequences of its placement must be disclosed and examined, not ignored.

The Developer's prior illegal grading had a significant impact on the environment and must be fully considered both as a baseline condition and for cumulative impacts. According to the Initial Study, in 2014 the Project applicant deposited "about 1,200 cubic yards of fill" on the Project site—roughly 240 standard 5 cubic yard dump truck loads—without a grading permit. *Id.* The County admits that this massive unpermitted "grading may have resulted in some delivery of sediment to the stream system." AR 117. Although the Initial Study claims (AR 54 and 64) that the impacts of this unpermitted grading are addressed as part of this Project in the Initial Study, in fact they are not. Indeed, the most important impact–sedimentation of Redwood Creek and its ephemeral tributaries—is never quantified, let alone analyzed. Instead, the Initial Study dodges the issue by pretending that the impact may be dismissed with the meaningless words "may" and "some." AR 55, 117, 125. But this consequential issue may not be casually swept under the rug. Instead, as Petitioners documented, and as confirmed in the GeoTech Report,

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contemporaneous heavy rainfall transported much of this unconsolidated fill downslope, and very probably into the adjacent streams, and thence into Redwood Creek. AR 64, 131, 1824.[4]

The County's attempt to downplay this significant Project impact on Redwood Creek, including documented slope failures on the property (AR 1824) violates CEQA. CEQA demands specificity and certainty, not generalities and speculation. *Kings County Farm Bureau Federation v. City of Hanford*, 221 Cal. App. 3d 692, 736 (1990) (an EIR must contain "facts and analysis" rather than mere conclusory words); *Sierra Club v. County of Fresno*, 6 Cal. 5th 502, 519 (2018) (an EIR must explain the "nature and magnitude of the impact"). Hence, the Project as a whole *does* pose a potential for slope failure and erosion, which in turn poses a potential for sedimentation of the streams that flow into Redwood Creek below the Project site, and thus of Redwood Creek itself. The Initial Study failed to disclose or assess these Project components and their potential impacts.

3. <u>The County Failed to Accurately Describe the Existing Environment, which Undercuts the Initial Study Impact Assessment Conclusions.</u>

CEQA requires that review documents include descriptions of the physical environmental conditions in the vicinity of the project in order to determine whether an impact is significant. 14 CCR §§ 15063, 15071(b); *see also, CREED-21 v. City of San Diego,* 234 Cal. App. 4th 488, 504 (2015). Generalized references are not sufficient; the description must include the exact the location and extent of riparian habitat on or near the project property. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus,* 27 Cal. App. 4th 713 (1994). Existing conditions must be identified to "compare what will happen if the project is built with what will happen if the site is left alone." *Woodward Park HOA v. City of Fresno,* 150 Cal. App. 4th 683, 707 (2007).

a. Soil Structure, Slope Instability, Soil Runoff and Hydrology: The Initial Study Conflicts with the County's Own Expert.

(i) *Geology and Soil Instability.* The GeoTech Report concludes that current instability due to the Developer's 2014 *illegally, red tagged* constructed fire road could create geological problems on its own and could be exacerbated by use by construction, resident use, property maintenance services and fire

[4] The site's steep slopes are unstable and prone to erosion. According to the Initial Study, "[t]here are areas of slope instability on the Project site, namely the old landslide in the eastern portion and slump failure along the southern slopes adjacent to the drainages and roads." AR 131, 1824. Although according to the same document these unstable areas "are not . . . expected to adversely impact slope stability conditions within the building envelopes of the proposed lots," in fact, the "fire roads" which are proposed to be used for "vegetation management" do overlap these unstable areas. *Id.* The Initial Study acknowledges that "[t]he area where the unpermitted grading for the Fire Road occurred overlies an old landslide identified by previous regional mapping and confirmed by [geologist] Herzog's geotechnical investigation" in 2015. *Id.*

truck traffic. AR 64, 1824. The County Fire Marshall reported that "the owner inserted fill without permits and was caught." AR 4177. See also AR 54, 64, 483 (Photos of Violation: March 26, 2014 -- AR 493, AR 731, AR 1131, AR 3850). The Fire Chief also stated that the road was not engineered for fire trucks, further providing doubt to the Developer's claims. AR 653.

The Developer was required to submit the 2015 GeoTech Report, which assessed the soil stability conditions on the property, including the fire road. AR 1820-1824, 2192. The GeoTech Report found unstable soil conditions due to the fire road. Herzog Engineers drilled a boring (numbered 1 on their boring map AR) that is located where the fire road was filled. The report specifically states that the downslope sides of the road are unstable.

> The existing roads traversing the site were generally created by excavating into the hillside on the upslope sides and by placing fill along the downslope edges. *The existing cuts are steeper than permitted by current engineering standards, and typically expose weak colluvial soils and deeply weathered and highly fractured bedrock which have experienced varying degrees of sloughing and sliding. The fill banks on the downslope sides of the dirt roads consists of varying thicknesses of relatively poorly compacted fills which are not keyed or underdrained, and which are subject to yielding and* ***instability.*** In areas where these roads extend across proposed lots or where the risk of instability will not be acceptable, it will be necessary to support roadway cuts with engineered retaining walls, and to remove or overexcavate and reconstruct fills as properly compacted and subdrained fill buttresses which are keyed and benched into bedrock. AR 1826. (Emphasis added.)

Such instability could result in downslope soil stability on neighboring properties and watercourses, including potential for landslides, erosion, soil movement, e.g. subsidence. AR 78, 130-133. The Initial Study, however, claimed **exactly the opposite**; that the fire road did not create any instability and even improved stability:

> While the fill for the Fire Road was placed on the debris of a former landslide, the grading of the Fire Road appears not to have increased the potential for future landsliding. *Conversely, it is likely that grading the road bed for the Fire Road created a stable terrace on the slope* that, in addition to channelizing and routing of storm flows through the culvert under the road, stabilizing the fill soils, and revegetating the slope, reduced the potential for further landsliding in this area. Therefore, impacts to slope stability on the Project site from the unpermitted grading of the Fire Road are less than significant. AR 131-132 (emphasis added).

This misrepresentation of a key GeoTech Report finding is repeated over and over (See e.g. AR 78, 111-113, 117, 133), and renders a huge part of the Initial Study legally inadequate because it is based on false information. A CEQA document is legally inadequate that "is incorrect, incomplete, or misleading in a material way, or is insufficient to evaluate significant environmental effects." *Sierra Club v. Board of Forestry,* 7 Cal. 4th 1215 (1994). The TVDRB and a County Public Works Department Engineer also expressed concern about this very issue of resident use of the fire road and possible geological and hazard issues and requested that the CEQA document study the road instability and limit fire road use to fire truck

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and maintenance. AR 1573, 1574, 1763. The County however improperly rejected such a required mitigation measure , contending that limiting vehicles traveling over the road was not related to road stability or sediment production. AR 224, 225.[5] CEQA Guidelines, §§ 15070(b)(1), 15064(f)(2); *Keep Our Mountains Quiet*, *supra*, 236 Cal. App. 4th 714. The GeoTech proves this claim is false.

(ii*)* *Hydrology and Landslides.* Whenever, as here, "there is disagreement among expert opinion supported by facts over the significance environmental effects, the Lead Agency **shall treat the effect as significant and shall prepare an EIR.**" *Keep Our Mountains Quiet v. County of Santa Clara,* 236 Cal. App. 4th 714, 729 (2015) (quoting 14 CCR § 15064(g), emphasis added). CEQA provides that in reviewing initial studies**,** when qualified experts disagree *the agency must assume a significant impact and prepare an EIR.* See *City of Carmel By-The-Sea*, *supra*, 183 Cal. App. 3d 229 (1986), *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 CA 3d 491, 504.

The Initial Study (AR 150) relies on disputed estimates of rainfall to further justify its finding that there will be no soil stability or landslide issues. AR 4097-4098. Specifically, the September 25, 2020 Lotic Environmental Services Report ("Lotic Report") disputes not just the conclusions in the Initial Study hydrology section but the ***underlying methodology*** of the Hydrology Study (AR 2049-2121) prepared for rainfall analysis. AR 4097-4098. The Lotic Report determines that the Initial Study and Hydrology Study are based on incorrect modeling for precipitation totals and underestimate the precipitation by up to 25%, meaning the Initial Study relies on inaccurate data and models regarding stormwater runoff. AR 4097-4098, 4435-4436. Because the Initial Study is based on unjustified underestimates of stormwater runoff,

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[5] County staff contended that a condition to prevent landslides or water quality pollution due to road instability was supposedly unconstitutional based on a inartful discussion (AR 224) of a Supreme Court takings case, *Dolan v. City of Tigard*, 512 U.S. 374 (1994). *Dolan*, though, is an **exaction** case where the government requires the dedication of land or fees. *Id.* at 377, 386. A condition restricting use, though, is not a dedication or a fee and thus not an exaction and *Dolan* does not apply. Instead, a road use restriction is an SMA approval and CEQA mitigation requirement for which local agencies have substantial powers to impose conditions for health, safety and environmental damage. (Cal. Const., Art. 11, Sec. 7; *Berman v. Parker*, 348 U.S. 26 (1954); Gov't Code §§ 66410–66499.58, 66474(e); *Associated Home Builders, Inc. v. City of Walnut Creek*, 4 Cal. 3d 633 (1971); Pub. Res. Code §§ 21002, 21004, 21064.5; 14 CCR § 15064, 15370(d). Even assuming, *arguendo*, that *Dolan* applied (which it does not), mitigation restricting use of the road has the nexus and relation to potential hazards and environmental damage from road use and easily complies with *Dolan*. The simplest explanation for this inapplicable legal analysis is that the County wanted to avoid a potential Developer lawsuit. As such, the County unnecessarily and irresponsibly surrendered its Constitutional police power authority to regulate health and safety issues such as landslides and other hazards. Cal. Constitution, Art. 11, Sec. 7.

the Initial Study is reliant on inaccurate information in its meager analysis regarding downstream impacts to endangered Coho Salmon and Steelhead in Muir Wood's Redwood Creek. AR 104, 113.[6]

b. ∫The County Failed To Characterize The Existing Biological Resource Conditions And Thus The Initial Study Conclusions Lack Substantial Evidence.

The Biological Resources existing conditions discussion (AR 91-114) regarding riparian areas, wetlands, endangered species and wildlife corridor contains mischaracterizations and lacks scientific surveys as set out below, and fails to reach valid impact conclusions. The County violated CEQA because it did not ensure that there were no effects to fish or wildlife species and thus an MND could not issue. CEQA Guidelines §§ 15064(a)(1), 15369.5; *Save the Agoura Knoll v. City of Agoura Hills,* 46 Cal. App. 665, 687 (2020).

(i) The Initial Study failed to accurately describe and delineate the streambed and riparian corridor that is a Tributary Redwood Creek in Muir Woods National Monument.

The Initial Study (AR 91-114, 501) fails to provide an accurate baseline for surface stream and riparian corridors and fails to provide any standard surveys or detailed description of the watercourse on the property or the property's riparian habitat and hydrological connection as a tributary to Redwood Creek. This issue is vital to Coho Salmon and Steelhead habitat in Redwood Creek because the Countywide Plan warns that "[s]ediment is a major concern countywide, as it can damage aquatic habitat . . . by filling in channels and floodplains. Sediment sources include construction [and] road building. . . ." Countywide Plan at WR 2.5-2. Sediment fills the interstices in spawning gravels, thereby destroying the large gravel and cobble structure required for successful spawning activity. (AR 616.)

The Initial Study failed to disclose the fragile characteristics of the downstream Redwood Creek "designated critical habitat" for Coho Salmon and Steelhead and the impacts of Project produced sediment on salmonid rearing and breeding. AR 242, 1271, 1294, 1716, 4468-4470. First, the Initial Study includes no surveys for or National Marine fisheries Service data on these species/habitats, including Steelhead trout and Coho salmon which are documented to historically occur in Redwood Creek and for which the U.S. National Marine Fisheries Service has established protections. AR 242, 1271, 1294, 1716, 4468-4470.

Second, the Initial Study misclassified and improperly characterized a stream on the property as an "ephemeral" or "intermittent" "drainage," instead of a perennial blue line streambed, with related riparian habitat. AR 150, 891, 4130. The County Assessor, U.S. Fish and Wildlife, and U.S. Environmental Protection Agency maps all show blue line streams and the County was repeatedly advised the Redwood

[6] The Sutro Report, purportedly a peer review of the Hydrology Report, is not a scientific report or peer review at all but instead is simply a crude rebuttal to the Lotic Report's conclusions. AR 3679-3682.

Creek tributary was a perennial blue line stream. AR 248, 4007-4008. The 1600 linear feet of mostly blue line perennial and intermittent creeks on and surrounding the property are considered important Redwood Creek headwaters and are well documented, appearing on the very first subdivision maps for the property going back over 100 years. AR 242, 248.

The Lotic Report confirms this characterization and thus provides substantial evidence that the County's hydrology report and Initial Study's conclusion that there is no permanent streambed are wrong: "The supporting evidence suggest that a channel with a defined bed and bank exists upstream of the riparian vegetation at the confluence of the main channel." AR 4099, 4130. Lotic Environmental criticized the Initial Study's specific methodologies, data and findings regarding stream characterization, riparian habitat and stream connectivity to Redwood Creek, and thus there is a fair argument of significant impacts. AR 4097-4109, 4343, 4371. Since there is a conflict among experts (including among County experts), the County must afford such expert opinion deference. *Brentwood Ass'n for No Drilling v. Cnty. of Los Angeles*, 134 Cal. App. 3d 491, 505 (1982); *County of Inyo v. Yorty*, 32 Cal. App. 3d 795, 814 (1973).

The Initial Study's errors regarding hydrology are compounded the County's failure to assess the potential impacts of residents of the eight additional units, such as ADU construction and grading and increased travel over the fire road creating even more potential for impacts to streambeds.

(ii) The Initial Study failed to accurately describe and delineate the location of the wetland on the property vis a vis the project footprint.

The Initial Study does not include sufficient information regarding existing conditions and delineation of wetland soils, wetlands vegetation and riparian habitat and ***drainages that could affect those wetlands***. AR 94. The LSA study identified a wetland on the site immediately adjacent to the illegally graded fire road and did include limited discussion of the wetland itself. AR 203. LSA concluded that the wetland meets the Federal criteria of water, vegetation and soil conditions for a wetland. AR 1812, 2037-2038. The U.S. Army Corps of Engineers opined that the wetland is potentially jurisdictional wetland for purposes of protection under the Clean Water Act, 33 U.S.C. 1344. AR 4190. Thus, the wetland is an environmental feature that must be described and any potential impacts must be disclosed.

The Initial Study, however, fails to provide this disclosure because there is no accurate wetlands description or delineation as required by the Clean Water Act. *See* 40 C.F.R. Section 230. For instance, the Initial Study states that the "this wetland was impacted by site grading and culvert replacement in 2014." AR 94. That statement acknowledges the Developer's previous damage to the wetland but fails to disclose the existing wetland (damaged) environmental conditions. Thus, the Initial Study falls far short of describing the physical environmental conditions in the vicinity of the project in order to determine whether an impact is significant. 14 CCR §§ 15063, 15071(b).

(iii) The Initial Study failed to accurately describe the terrestrial and avian wildlife corridors that run through the Project.

To be valid under CEQA, any project description must be of the specific location and extent of wildlife habitat on or near the project property. See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus,* 27 Cal. App. 4th 713 (1994). Thus, generalized references are not sufficient to describe and delineate the terrestrial and avian wildlife corridors affected by a project. The incomplete information is fatal for project approval; the County is required to disapprove a project if the information in the CEQA document "is incorrect, incomplete, or misleading in a material way, or is insufficient to evaluate significant environmental effects." *Sierra Club v. Board of Forestry*, 7 Cal. 4th 1215 (1994). The Initial Study was deficient in the wildlife corridor issue in two respects.

First, the Initial Study does not adequately identify existing biological resource conditions, because it does not include any standard protocol field surveys on bird nesting or wildlife corridors, plant surveys, or even a detailed description of the flora and fauna on the Property or neighboring Muir Woods or Mt. Tamalpais State Park. AR 4366-4367. Instead, the Initial Study only lists flora and fauna that *might* exist on the Property. *See* AR 1809, 1811, 4366-4367. The County consultant, LSA, never prepared those Protocol studies but instead simply walked the site. AR 4366-4367. A neighbor, who is a trained environmental scientist, has documented wildlife sightings and observed multiple species using the property, including special status species such as Northern Spotted Owl and Dusky footed wood rat; but LSA never visited the site in those seasons when such species were present. AR 254, 4071 4075-4077, 4366-4367. Despite not conducting any surveys, LSA simply concluded there were no special status (e.g. protected) species on site. AR 1811. There was no evidence to support that conclusion.

Second, the Initial Study and the LSA report conflict on the importance of habitat on the site and the existence of wildlife corridor connectivity from the property to habitat in Mt. Tamalpais State Park. While the Initial Study refers offhand to connectivity (AR 112), the LSA Report dismisses any connectivity to Park wildlife habitat. AR 1810. The LSA Report is clearly in error because an aerial photo, the parcel map, the LSA SCA assessment, a US Fish Wildlife Service stream map, and actual photographs of the streams all reveal wooded and riparian corridors running northwest-southwest through the property and connecting to similar habitat on adjacent parcels and parklands. AR 58, 60, 2019, 4101-4103. Further, Lotic Environmental concluded the watercourses running through the property were classified as permanent, blue line streams (AR 4099).

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4. <u>The Initial Study is Inadequate Because It Does not Provide Substantial Evidence for Its Conclusions Regarding Impacts to Geological, Hydrological and Biological Resources and Human Safety.</u>

CEQA requires that an Initial Study identify, evaluate and mitigate the possible significant environmental impacts of the proposed project. Pub. Res. Code §§ 21002, 21080; CEQA Guidelines §§ 15063-15064, 15071. The lead agency is required to conduct a "thorough investigation" with respect to significant impacts, and its conclusion must be based on substantial evidence. See Pub. Res. Code §§ 21168, 21168.5, 21082.2; CEQA Guidelines § 15064(a). Under CEQA, a project's significant effects must be evaluated and mitigated regardless of whether the effects will arise elsewhere if the project does not go forward. See CEQA Guidelines § 15026.6(e)(3)(B). CEQA requires that the agency must consider all information in the record in determining whether to prepare an EIR and not just information in the Initial Study. Pub. Res. Code §§ 21080(c), 21082.2. This includes evidence submitted by project opponents, government agencies and experts. Further CEQA states that where *there is disagreement among experts* – whether by agency experts or submitted by citizens, an agency must prepare an EIR and not just an Initial Study. *See, e.g., Brentwood Ass'n for No Drilling v. County of Los Angeles,* 134 Cal. App. 3d 491, 505 (1982).

a. The Initial Study's Faulty Project Description Undercuts the Impact Assessment.

The Initial Study failed to contain adequate assessment of soil movement and landslides impacts because the Initial Study: (1) mischaracterized the GeoTech Report regarding the fire road (*supra* Section IV.A.3) and (2) failed to estimate the disturbance and placement of substantial fill (supra Section IV.A.2). The GeoTech Report findings contradict the Hydrology Report and Initial Study conclusions regarding erosion from the fire road, and a contradiction between the County's own experts means that the Initial Study's conclusions lack "substantial evidence" as required for issuing an Initial Study. *County of Inyo v. Yorty,* 32 Cal. App. 3d 795, 814 (1973). Since the Initial Study did not adequately describe the GeoTech Report conclusions on fire road instability, the Initial Study lacks evidence to support its own conclusions about potential significant impacts to on-site creeks, wetlands and downstream Redwood Creek habitat.

b. The Initial Study's Faulty Existing Conditions Analysis Undercut the Impact Assessment.

<u>(i) Impacts to Riparian Resources and Endangered Salmonids in Redwood Creek.</u> The Initial Study provided no actual study or analysis of the potential impacts on biological species or their habitat from: 1) storm water movement – from new impervious surfaces - through natural or man-made channels to Redwood Creek, nor 2) the **increased** and on-going erosion and runoff from grading, surface water diversions, road and home construction, and *additional impermeable surfaces*, which could adversely affect the riparian zones of Redwood Creek. This analysis was not prepared even though the Developer's

own consultant concluded that: 1) the Project area has wetlands (AR 2035-2037); and 2) that the Project could cause impacts to endangered Coho Salmon due to sediment traveling downstream from the project are to salmonid spawning beds in Redwood Creek. AR 1811.[7]

In addition, the Initial Study does not mention its own expert's Biological Assessment conclusion that: *"Silt and other materials which wash into this drainage are carried downstream into Redwood Creek. This material could cover or fill in gravel beds used by Coho and steelhead for spawning."* AR 1811. LSA later found that the watercourses on the property were possibly created by the Project earthmoving and that they were "erosion gullies." AR 2018. But the County ignored this evidence by its own consultant, and made no quantification, or even general qualitative estimate of the amount of the Project's cubic feet of sediment removal and fill. Since no such estimate or even qualitative analysis was made, the Initial Study could not and did not include any estimate to address how "the silt and other materials" "could cover or fill in gravel beds used by Coho and steelhead for spawning." AR 1811 (LSA Report). The Master Responses did not address these issues except to deny them. AR 3830-3835,

Petitioner's expert Lotic Environmental takes further issue with the County's dismissal of any impacts to the stream and wetlands and downstream habitat stating further protection was needed and that:

> The stability and health of ephemeral and intermittent headwater streams are crucial to mitigating stormwater impacts from urban development particularly for endangered Coho salmon in Redwood Creek. AR 4106 (emphasis added).

The U.S. Department of the Interior, National Park Service, Acting Superintendent Craig Kenkel, in 2017 also commented regarding the Project's potential impacts to hydrology and biological resources, wildlife, and water quality. "The NPS requests the analysis to also include the potential for significant impacts to the Watershed and Downstream resources protected by the NPS in the Monument and at the end of Redwood Creek at Muir Beach." AR 3711. Despite Petitioners reminding the County to address the National Park Service comments (AR 4135, 4435) the County simply dismissed out of hand all downstream impacts.

<u>(ii) Impacts to Wetlands.</u> The Initial Study concludes there will be no impacts to the wetland area because the wetland falls completely within the Stream Conservation Area ("SCA") and no drainages

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[7] Specifically, the Initial Study itself *acknowledged but did not assess the potential impacts of Project produced silt on Coho and steelhead spawning beds*. AR 104-105. "Increased sediment in Redwood Creek could degrade water quality, exceed water quality standards, and degrade aquatic habitat for salmonids (see Section 4, Biological Resources)." AR 150. But this is a shell game because the referenced Biological Resources section only includes boilerplate references to salmonids in tables and contains absolutely no impact analysis about salmonids. AR 91-120.

within the SCA will be altered. AR 94, 111. The record however reveals the Project's considerable potential impacts to wetlands regardless of whether the SCA is established and enforced.

First, even a cursory review of the Developer's application materials shows drainages running through the SCA and within the wetlands area. AR 1737, 4397. Thus, it appears almost certain that the on-site drainage will run through the SCA and the Initial Study's assumption regarding buffers is incorrect. The Initial Study does not show this because the County did not insert a drainage map into the Initial Study. AR 154-164. However, the Hydrology Report shows drainage will run through the site's natural channels and the wetland area. AR 1942-1943. Those natural channels and a proposed engineered bioswale are within the SCA, of course, and thus the statement that no drainages in the SCA will be altered is demonstrably false.[8] Further, as described supra, state law restricts the County from imposing stream setback requirements on ADUs and as such, reliance on an SCA is unfounded. Supra Section IV(A)(1)(a).

Second, the Initial Study's assumption that the Project would have no impact on the wetlands because on-site drainage systems are supposedly set back at least 100' from the wetlands is illogical and not supported by the record because such an assumption ignores the grading, road construction, culvert location and impermeable surface runoff ***from outside the SCA***. The Findings and Initial Study appears to assume that if you put a demarcated setback circle around the wetland, that any off-site erosion, sediment deposition and runoff can't enter into the circle. AR 8.

But of course, that is completely nonsensical because polluted runoff and sediment will drain into the SCA and the wetland. CEQA requires a discussion of those impacts. *Friends of the Old Trees v. Department of Forestry & Fire Protection,* 52 Cal. App. 4th 1383, 1396 (1997). In fact, the Initial Study admits such external impacts by noting "[t]his wetland was impacted by site grading and culvert replacement in 2014." AR 94. Also, the County's own consultant, LSA, recognized a potential subsurface connection between the residential areas and the homes and additional homes could affect the wetlands. AR 2038. But this crucial runoff analysis and potential wetlands' impacts were never even mentioned in the Initial Study's stunted wetlands discussion. AR 94, 111.

Third, the fact that state regulatory agencies have some regulatory authority over wetlands (AR 111) does not mean the County can ignore project impacts. CEQA does not allow any agency to shrug off impact analysis and simply list certain deferred mitigation possibilities. The County must "first identify

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[8] The measures in the Hydrological Study/Drainage Plan were **not** adopted by the County and therefore, they cannot be relied on to approve an MND because the Developer has not committed to them and they could be changed. *Save the Agoura Cornell Knoll* supra 46 CA 5th at 688. Also, those Drainage Plan measures are not enforceable as required by CEQA. (Pub. Res. Code § 21081.6(b); *Fed'n of Hillside & Canyons Assn v. City of Los Angeles*, 83 Cal. App. 4th 1252 (2000).

the [significant] environmental effects of projects, and ***then*** …. mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." *Sierra Club v. State Board of Forestry,* 7 Cal.4th 1215, 1233 (1994). The environmental consequences of a project should be considered ***before*** any action is taken on the project, not after. *Stanislaus Natural Heritage Project v. Cnty. of Stanislaus,* 48 Cal. App. 4th 182, 196 (1996); Pub. Res. Code § 21061; CEQA Guidelines [14 Cal. Code Regs. ("CCR")], § 15003(f).)

Fourth, even a quick observation of the map shows the fire road is immediately adjacent to the road. AR 111, 2041-2042. Since the Developer and the County both refuse to limit fire road use to fire trucks, it is reasonably foreseeable that the Developer and future residents can use the road for construction and transit, both of which could cause erosion and sediment impacts to the wetland. The Initial Study fails to consider this reasonably foreseeable erosion and petrochemical contamination of the wetlands.

(iii) Impacts to Terrestrial Wildlife. The Initial Study failed to analyze how grading, building, road construction, and introduced nighttime glare and noise would impact terrestrial and avian wildlife. See e.g. AR 78. Without any data or analyses the Initial Study concludes by fiat that there will be no impacts because SCA requirements are met. AR 112. That is completely insufficient. Under CEQA, a project's significant effects must be evaluated and mitigated regardless of whether the effects will arise elsewhere if the project does not go forward. See CEQA Guidelines § 15126.6(e)(3)(B). Neither the Initial Study nor the LSA analyzed what the Project's impacts on wildlife will be and whether the SCA will reduce any impacts below significance. This ignores CEQA's mandate that agencies disclose any potential change in the environment. *Sierra Club v. State Board of Forestry supra,* 7 Cal.4th 1233.

The Initial Study dismisses the potential noise, traffic, and nighttime glare impacts of eleven (or even two) new residences by noting a high level of human use already in the Development area. AR 112. But that argument is specious as there is only one home on the Property now. CEQA requires that ***the increase in activity*** be assessed to determine any increase in impacts. CEQA Guidelines § 15355(b) (agency should consider the "incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects"); *accord Environmental Protection Information Center, Inc. v. Johnson*, 170 Cal. App. 3d 604, 625 (1985) (hereinafter, "*EPIC*").

The California Department of Fish and Wildlife (CDFW) sent a comment letter to the County regarding ***potential significant impacts*** on roosting Bats, nesting birds and NSO, special status plants and wildlife. AR 3899-3904.

> [N]oise and activities at the Project site could potentially disturb NSO during nesting season and interrupt breeding or lead to nest failure. Population levels and vital rates for NSO continue to decline, so any reduction in successful nesting is a potentially significant impact. Acceptable botanical surveys

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> must be systematic, floristic surveys, and should occur multiple times within the blooming period of potential special-status plants on-site. Based on the IS/Initial Study, it is unclear what level of botanical survey was conducted, and therefore difficult to conclude that special-status plants are absent. In addition, this survey is outdated as it was conducted five years ago. Potentially significant impacts to special-status plants, such as crushing and burying, are more likely to occur without sufficient survey information. (at 3-4, emphasis added.) AR 3901.

***This** is what an environmental assessment looks like.* The Initial Study does not include such an assessment nor ever addressed whether the project would adversely affect those species. Instead, the County assumed that mitigation measures would reduce all impacts below significance but assumptions do not comply with CEQA. Instead there must be no substantial evidence that the revised project will have potential negative effects on the environment. Pub. Res. Code § 21064.5; 14 CCR § 15064.[9]

Since the County failed to evaluate impacts adequately, it also failed to recognize and adopt adequate mitigation measures to avoid and reduce to insignificance the Project's potentially significant watershed impacts. Since the Initial Study fails to identify adequate mitigation measures the use of an MND here does not satisfy CEQA. Pub. Res. Code § 21080(c)(2); Guidelines § 15070(b), 15064(f). For example, the Initial Study provides no mitigation measures limiting the impacts of the fire road or future ADU grading, construction and traffic. AR 212-216, 222.

(v) *Wildfire, Safety and Traffic Hazards.* CWP Policy EH-2.1 and EH-2.3 require that Hazard Areas be avoided. The Initial Study failed to adequately disclose and discuss the high wildland fire risk because it failed to describe and consider the historically hazardous dry season conditions of the in a very high wildland fire risk severity area. AR 55, 115, 208. The sufficiency of local water supply for residents, increased fire hazard, and increased congestion for fire hazard escape routes on Panoramic Highway were not assessed. Further, the Initial Study discussed only considered 2 units and did not consider the evacuation and congestion impacts of approval of the proposed project with the addition of eleven reasonably foreseeable potential total homes on the narrow, winding, shoulder less, substandard Panoramic Highway.

5. <u>The Initial Study Does not Comply with CEQA Requirements for Analysis of Cumulative Impacts.</u>

Under CEQA, an Initial Study must consider the cumulative impacts of past, present, and foreseeable future projects combined with the incremental impacts of those potentially caused by the project. Pub. Res. Code §§ 21083(b); see CEQA Guidelines §§ 15064(h)(1), 15063(a)(3); *San Bernardino Valley Audubon Soc'y v. Metro. Water Dist.* 71 Cal.App.4th 382, 399 (1999) [summary discussion of cumulative

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[9] County staff ignored later attempts by CDFW to comment on the Project dismissing CDFW's communications as just "political" maneuvers. AR 4072.

effects to biological resources is inadequate]. Adoption of an Initial Study is not appropriate unless evidence shows that all cumulative impacts have been reduced to a level of insignificance. *Id.* at 391.

"The cumulative impacts from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." CEQA Guidelines § 15355(b). Cumulative impacts are "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts ...[they] can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355(b); accord *EPIC*, supra, 170 Cal. App. 3d at p. 625. Such incremental effects must be analyzed whether they fall on-site or off-site. *See, e.g*., *Friends of the Old Trees supra* 52 Cal. App. 4th 1396.

The Initial Study violated this requirement because it dismissed the impacts of the Developer's previous illegal grading on property. AR 112-113. Therefore, the County failed to consider the impacts of existing unstable soil conditions caused by the Developer's illegal grading *combined with* contributions from Project road grading and construction and new placement of impermeable surfaces into the Redwood Creek watershed.

The Initial Study listed several other recent and/or proposed residential projects, but dismissed all of them as of no import. AR 212-214. No relevant data or information was provided on these projects (or the reasonably foreseeable ADUs) whether they are in the Redwood Creek Watershed, whether they required grading and fill, whether they contributed any sediment to a Redwood Creek tributary, or whether they shared potential wildlife corridors. *Id.* The County's unsubstantiated conclusion that no cumulative biological impacts would occur (AR 214) does not comply with CEQA's cumulative impact assessment requirements.

6. <u>The County Violated CEQA's Requirement to Assess Consistency with Local Plans by Refusing to Consider Countywide Plan Policies.</u>

CEQA imposes an obligation that a lead agency conducting environmental review of a project must consider whether the project would "conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over a project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. CEQA Guidelines § 15125(d); Appendix G, §X, Land Use and Planning. An agency must address and "discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans." CEQA Guidelines § 15125(d).

The Initial Study failed to address the Project's inconsistency with the General Plan's watershed protections, despite indisputable evidence that the Project is located in an area with a documented history

of unstable slopes and active landslides, and potential for further instability. AR 130-131. As described in the letter by Andrea Montalbano, Tam Design Review Board Member, to the Board of Supervisors, the County failed to determine and require the Project's consistency with the TACP by: 1) not acknowledging or considering TVDRB recommendations; 2) incorrectly identifying TACP LU31.1 as a density allowance instead of a allowable range; 3) not adequately considering CWP CD 5.1e density restrictions by incorrectly dismissing its applicability; and 4) not considering the consistency of the Project with TACP Policies LU2.1 and LU 2.3. AR 4110.[10]

B. SECOND CAUSE OF ACTION: VIOLATIONS OF THE SUBDIVISION MAP ACT

1. A Project is Inconsistent with the General Plan and Community Plan Where the Project Will Conflict with Plan Policies or Where the Agency Has not Considered Such Conflicts.

Government Code section 65300 requires the legislative body of each county and city to adopt a general plan for the physical development of the county or city. The general plan is a "constitution" for future development to which all other land use decisions must conform. *Lesher Communications, Inc. v. City of Walnut Creek,* 52 Cal. 3d 531, 540 (1990). As the California Supreme Court has noted, "[a] General Plan must not only be internally consistent but vertically consistent with other land use and development approvals such as Specific Plans and the agency's zoning and development regulations." *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d. 553, 570 (1990); *Lesher Communications, supra*, at 545-546 ("The obvious purpose of subdivision [65860](c) is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan."); *Resource Defense Fund v. County of Santa Cruz,* 133 Cal. App. 3d 800, 806 (1982).

2. The County Failed to Consider and Determine the Project's Consistency with CWP Policy CD-5.E.

Government Code section 66474 provides that an agency cannot approve a subdivision if: "the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans." The Marin County Subdivision Ordinance mirrors Gov't Code § 66474. MCMC 22.84.060(a). State law also requires that agencies **reconcile all general plan policies** because all elements of the general plan, including community plans, have equal legal status and must be consistent or reconciled if inconsistent. *Sierra Club v. Board of Supervisors of Kern County,* 126 Cal. App. 3d 698, 708 (1981). This is because

[10] Numbers 1 and 2 are discussed below in more detail under SMA compliance and are incorporated by reference here. See infra Section B. Regarding number 2, since the County failed to consider the consistency of CWP Policy CD-5.e, this aspect of the Initial Study is subject to the non-deferential standard of review for "failure to proceed in the manner required by law" (*See supra* Standard of Review).

no single general plan element is legally subordinate to another (Id.) and local agencies must resolve potential conflicts among its elements through clear language and policy consistency. *Citizens of Goleta Valley v. Board of Supervisors* 52 Cal. 3d. 553, 570, 571 (1990); *Ballard v. Anderson*, 4 Cal. 3d 873, 876 (1971). The County failed to apply and reconcile its plans and policies in this case, including the density policy established by CWP Policy CD-5.e..

Petitioners, members of the TVDRB and other community members notified the County that it failed to consider and apply applicable density policies in the CWP, including CWP Policy CD-5.e and the TACP when considering the Project approvals. AR 4110-4112, 4354-5, 4377. *CD-5.e is especially important because it limits development in the project area to one unit per 10 acres, which may have limited the number of lots the County could approve.* The County, however, refused Petitioners' request to consider CWP Policy CD-5.e, wrongly stating that the County was not required to do so because of the existence of the supposedly more specific TACP Policy LU31.1. AR 24, 222, 822, 4355.

The County repeatedly refused to consider CWP Policy CD-5.e, stating: "Because of the specificity associated with Policy LU31.1, the proposed 3-lot subdivision is consistent with the community plan, and by extension the CWP." AR 223, 822. County Staff doubled down on this mistaken interpretation, declaring in the Approvals that: "the allowable residential density is specifically governed by the TACP because the community plan provides a more specific provision addressing density for the subject property." AR 24, see also 1601. Petitioner's attorney pointed out that case law required the County to reconcile these plans and policies. AR 1721, 4354-5 However, County Staff *continued* to advise the Planning Commission and Board that they could ignore CWP Policy CD-5.e. AR 1601, 1711-1712. [11]

County Staff admitted that it never attempted to compare or reconcile the two policies, dismissing the obligation with a general, non sequitur statement that completely dodged the issue: "what we understand is that the policies in the countywide plan recognize and acknowledge and respect the policies of more specific community plans." AR 1712, lines 2-4. County Staff provided no logical or supported guidance to the Board and instead, curiously stated: "we *felt* this was the most specific policy in any of the plans and, therefore, the density standard in that policy should govern." AR 1712. Lines 15-18. (emphasis added).

[11] CWP Policy CD-3.4-3 states: "Where there are differences in the level of specificity between a policy in the Community Plan and a policy in the Countywide Plan, the document with the more specific provision shall prevail." The County's action is especially troubling because County Staff never quoted Policy CD-3.4-3 and at times essentially hid the improper precedence rule in language of "specificity." Policy 3.4-3, use of the term prevail, though is an improper precedence policy preempted by state law *Sherwin-Williams Co. v. City of Los Angeles,* 4 Cal. 4th 893, 895 (1993).

The CWP provides no authority to staff or the Board of Supervisors to **disregard** any policy. Instead, it essentially directs that the differences be identified and reconciled. Certainly, if the Board believes it has a conflict, then that decision making body has some discretion to *consider* and apply policies within its discretion.[12] The County's conclusion that it need not consider CWP CD 5.e is without merit for three additional reasons.

First, the County argument that TACP Program LU31.1 ostensibly establishes a home building "maximum density" policy for the property (AR 222) is simply wrong. LU31.1 is not a building or density policy but instead is a statement about possible range of units given the environmental constraints of the area, here septic. It includes no reference to "building," "density" or minimum or maximum FAR or lot size. Instead, it is simply a "possible" "range" for units, as related to groundwater capacity. Thus, the LU31.1 ***range*** can be one to five units. As a County supervising planner stated, LU31.1 provides a septic tank range not a density policy and can be reconciled with the density policies in TACP Policy LU2.1 (AR 1615, lines 22-25).

Second, since CD-5.e actually has a ***density limit***, it is the more specific policy in regard to density limits.

Third, there is no conflict between Program LU31.1 and Policy CD-5.e. Program LU 3.1 is a statement referencing groundwater concerns and suggests a "possible" range of number of units. Policy CD 5.e is a building density limit. The two have different purposes, respectively, and both can be applied to the project without any conflict. (AR 1616-1617,).

In fact, the Planning Department Director, Tom Lai, stated that he assumed Policy CD-5.e applied to the subdivision, and only allowed at the low end 1 unit on the property. AR 3683. Later, Supervising Planner, Jeremy Tejirian instructed the Planning Commission that TACP Policy LU31.1 **was not** a density policy and the County should address the actual density policy in the CWP, which limited the development to 1 unit per 10 acres. AR 1616, lines 1-21.

Therefore, the County has not complied with either Government Code Sections 66473.5 or 66474 because it did not consider project consistency with all general plan policies and did not make all the required findings under either Government Code section. *Selinger v. City Council*, 216 Cal. App. 3d 259, 269-270 (1989); 58 Ops. Cal. Atty. Gen. 21, 28 (1975); *Spring Valley Lake Assn. v. City of Victorville,*

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[12] Under the Planning and Zoning Code (Gov't Code 65000 *et seq.*) the County has discretion to weigh and balance County priorities when applying its general plan policies. *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco,* 102 Cal. App. 4th 656, 678 (2002), but the SMA (Gov't Code §66474), requires that, in exercising that discretion, the County *actually* weigh and balance all those plan policies, not arbitrarily elect to ignore some over others.

supra, 248 Cal. App. 4th at 104-106 ("Should the local governing body fail to make the required affirmative finding on any matter covered by either statute or by both, it must deny approval of the map.").

3. The County Also Violated the SMA by Failing to Determine and Enforce Project Consistency with Other Local Plans and Policies.

Any decision by the County affecting land use and development, including issuance of a subdivision map, must be consistent with the general plan (including applicable community plans). *See* Cal. Gov't Code §§ 66473.5 and 66474; *Neighborhood Action Group v. County of Calaveras*, 156 Cal. App. 3d 1176, 1182 (1984); *Orange Citizens for Parks and Recreation v. Superior Court of Orange Cnty,* 2 Cal. 5th 141, 153 (2016). The California Supreme Court has held that a subdivision must be consistent with the general plan and zoning at the time of the tentative map approval. *Youngblood v Board of Supervisors,* 22 Cal. 3d 644, 654 (1978). Gov't Code §§ 66473.5 and 66474 and the County Subdivision ordinance (MCMC §§ 22.08.030, 22.82.025 and 22.84.050, 22.44.060(a)) require that a tentative subdivision map be consistent with the agency's general plan and related plans. Government Code section 66474 provides that an agency cannot approve a subdivision if it is the case:

> (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
> (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
> (c) That the site is not physically suitable for the type of development.
> (d) That the site is not physically suitable for the proposed density of development.
> (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
> (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

The County cannot make these required findings under Government Code § 66474 and MCMC 22.84.060(a) because:

a. the site "is not physically suitable for the proposed density of development" because the Findings and Initial Study did not consider the future ADUs or the Project property's steep slopes and did not provide discussion of grading and fill, and any sediment and runoff (see Supra Section IV(A)(3));

b. the design of the subdivision or the proposed improvements "are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat" because the County's geological, hydrological and biological resources conclusions are contrary to the GeoTech Report and do not accurately describe the Projects' sediment and polluted runoff into Redwood Creek or adequately disclose wetlands conditions and potential habitat for wildlife species, including endangered species, such as Coho Salmon (see Supra Section IV(A)(4)); and

c. the design of the subdivision or type of improvements "is likely to cause serious public health problems" because the County did not adequately discuss Project property location in a Wildland Urban Interface and the potential for additional residents to add to extreme fire hazard risks to human health (see Supra Section IV(A)(4)). The County also failed to consider CWP Policy EH-2.1 and EH-2.3, which states that projects should avoid Hazard Areas. The Initial Study ignores this requirement by contending that boilerplate building code standards will solve everything. But those standards do not mean the County is exempted from actually determining whether the Project complies with County Plan policies.

The County also failed to consider and apply TACP Policies LU2.1 regarding zoning designations and allowed density and development. TACP Policy LU2.1 states that "All undeveloped properties in the Planning Area should be evaluated in terms of their environmental constraints and rezoned to a density which is compatible with identified constraints." Yet the County barely bothered to discuss "environmental restraints" under LU2:1 (AR 282), such as steep slopes, proximity to a National Monument, location of headwaters for Redwood Creek, and impacts to Coho Salmon and Steelhead critical habitat (see Supra Section A3(b)).

Additionally, the County's findings provide no evidence that the approval was consistent with Policy LU 10.2a: "Developments on lands adjacent to wetlands and bay waters shall be required to provide habitat buffer zones adequate to protect the habitat value of wetlands and bay waters." Instead, as seen above (supra Sections IV 3(B)(ii), 4(C)), the Initial Study and County Staff failed to address the impacts on the wetland from grading and the illegal fire road.. The TVDRB conclusion that the Project is inconsistent with the above environmental policies in the TACP was largely ignored by the County. AR 4110. These TVDRB conclusions, though, are supported by the Initial Study, the CDFW's letter and other parts of the record that the property contains unstable slopes, jurisdictional wetlands, endangered NSO and other nesting birds habitat, wildlife corridors and streams connecting to Redwood Creek's Coho salmon habitat. AR 4113-4483.

Finally, the County's approvals failed to determine consistency with the TACP Policy *LU14.1d:* "Planning staff should work with the State Parks, National Park Service and representatives from the Muir Woods Park neighborhood to identify parcels in this area which may be appropriate for acquisition as open space." There is no evidence in the record, including the Project findings, that the County has worked with the State Parks, the National Park Service, or representatives from the Muir Woods Park neighborhood. Instead, the record indicates that the County ignored the comment letters by the National

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Park Service and the California Department of Fish and Wildlife and dismissed the CDFW efforts to participate in Project approval as "political." AR 4072.

V. CONCLUSION

By reason of the foregoing, Respondents have violated CEQA, the SMA and Code of Civ. Proc. §§ 1085 and 1094.5 by approving Dipsea Ranch Land Division and the related Mitigated Negative Declaration, due to fatal defects described above. Petitioners ask this Court to find that the County failed to comply (1) with the California Environmental Quality Act, Pub. Res. Code, §§ 21000 *et seq.* ("CEQA") and the CEQA Guidelines, 14 CCR §§ 15000 *et seq.*; Marin County Municipal Code ("Muni Code") §§ 22.82.050; 22.84.060; and Code of Civ. Proc. § 1094.5 regarding approval of the Project, the Initial Study, and the MND, and (2) with requirements in the Subdivision Map Act (Gov't Code § 64110 *et seq.*) and the County Municipal Code (*e.g*. § 22.82.050) requiring all tentative maps to be compliant and consistent with the general plans and community plans.

Petitioners further request that this Court issue a writ of mandate setting aside and voiding the County's approval of the Subdivision accompanying Initial Study and MND.

DATED: September 17, 2021 LAW OFFICE OF EDWARD E. YATES

By:____________________________________

EDWARD E. YATES (SBN 135138)

Attorney for Petitioners