

Dotty E. LeMieux
Attorney at Law
173 E. Blithedale, Suite 3
Mill Valley, CA 94941
(415) 383-3715
FAX (415) 383-3718

Patti DuMont
Environmental Co-ordinator
Cal. Dept. of Parks and Recreation
One Capitol Mall Suite 500
Sacramento, CA 95814

December 31, 2002

Via fax: (916) 445-9100
Original to follow

Re: Proposed Coastal Trails Rehabilitation Project at Mt. Tamalpais State Park. Neg. Dec.

Dear Ms. DuMont:

As you know, I have been retained by the Tamalpais Conservation Club to comment on the recently completed Mitigated Negative Declaration (MND) for the proposed Coastal Trails Rehabilitation Project at Mt. Tamalpais State Park. I have reviewed the document and find it to be legally deficient in several crucial ways. First and perhaps most importantly, the document fails to inform the reader of the scope of change this project signals for recreational use within the Mount Tamalpais State Park (MSTP). A conversion of Fire Roads into narrow trails that continues to allow vehicular usage marks a dramatic change of policy for this fragile environment. Neither the so-called Notice of Availability sent on November 25 nor the MND itself discusses this historic and potentially environmentally consequential change in use.

The California Environmental Quality Act (Pub. Res. Code section 21080 et seq. - CEQA) requires an adequate Project Description that provides actual notice to the public and an opportunity to comment on the potential adverse environmental impacts of a Project. The faulty notice, as well as the deficient MND, has effectively robbed environmental groups, hikers, equestrians and other interested members of the public of any meaningful chance to be heard, as discussed in detail below.

The Project Description is Inadequate:

The Project Description in the Mitigated Negative Declaration (MND) for this Project states that it is to decommission approximately 3.1 miles of existing fire roads, and restore the natural drainage patterns, convert .5 miles of fire roads to a narrow trail, construct 4.8 miles of new shared use narrow trails. (MND p. 6.) On page 8, the Summary of the proposed work claims it will decommission 4.8 miles of the Lone tree and Coastal fire roads and "construct new trails to replace the poorly aligned portions of the existing roads that are contributing to drainage problems and erosion of the road surface." These statements offer contradictory information, which fails to accurately describe the project so that the reader can understand its true implications.

The fire roads currently are the only shared use trails within the Mt. Tamalpais State Park. The Fire Roads are currently at least seven feet wide in all places. The new trails would have a 48 inch minimum width. This conversion will mark the first time multiple users, including mountain

bicyclists, are permitted on trails narrower than 7 feet in width. Such a major change must be examined thoroughly for environmental, safety and enforcement consequences.

The Project Description fails to discuss this change in policy and in actual use. Instead it speaks only of the conversion process. While it admits the new trails would be "shared use and barrier free" it does not describe what that means. At no point in the MND is the word bicycle or cyclist used.

This major omission cannot be mere oversight. The omission colors the whole of the MND, so that potential environmental impacts resulting from the addition of bicycle use on narrow trails are completely ignored throughout the document.

To be legally sufficient, an Initial Study must contain an "accurate and complete" Project Description. (CEQA Guidelines section 15063, subdivision (d)(1).)

The Negative Declaration must contain a full environmental analysis that informs the reader of the potential impacts which may result from the Project:

"The negative declaration is inappropriate where the agency has failed to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action. 'Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.'" (City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 406-407, quoting County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d at pages 192-193, emphasis added)

Here, as in Redlands, "[d]espite this benign description, the changes themselves reveal far broader consequences." (Id. at 407.)

In Redlands, the Project consisted of changes in "land use policies relating to unincorporated territory within a city's sphere of influence and to clarify the County's authority and discretion relating to land use planning and development." (Ibid.) There, the amendments constituted "substantive changes to the County's policies and procedures in making land use and development decisions involving unincorporated territory within a city's sphere of influence. In essence, the amendments eliminated the requirement that the County give substantial weight to and even implement the standards provided in an affected city's general plan." (Id. at 408.)

Similarly, here, the description of a rehabilitation of existing fire roads into narrower trails following the contour of the hillsides sounds benign and even environmentally enhancing. Although the MND states that the same user groups would be permitted on the reconfigured trail, it fails to note that this constitutes a change in policy for use of narrow trails on Mt. Tamalpais. It is this change in policy, not simply the change in configuration, that should trigger full environmental review, because the potential impacts of high intensity multiple use of the narrow trails differs radically from those on wider fire roads.

In Christward Ministry v. Superior Court (1986) 184 Cal.App.3d 180, 196-197, a project described as a "waste-to-energy" plant omitted crucial information, mischaracterized the project, and failed to acknowledge evidence of significant environmental impacts. There, a City adopted a

General Plan Amendment's "definition of a solid waste management facility designation [which] includes uses which did not exist at the landfill site at the time the amendment was adopted, e.g., transfer stations, and waste-to-energy facilities. The amendment does not, as City contends, merely ratify an existing use for which an EIR had been prepared in the past, but authorizes potential new uses at the site." (Ibid. at 190, emphasis added.)

Because the Project Description fails to adequately describe the Project, the potential impacts are minimized. There is no discussion, for example, of how allowing multiple user groups, including mountain bicyclists, on the narrow trails may result in a different type of environmental impact than allowing them on the fire roads. Those differences are discussed below.

Failure to Provide Documentation for the Assertion that the Project will Result in Less than Significant Environmental Impacts:

An Initial Study relied upon by the lead agency in determining that no environmental impacts will result must "[p]rovide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment." (Guidelines section 15063, subdivision (c)(5).)

Conclusory language will not substitute for a reasoned analysis supported by documentation. The MND fails to provide such analysis.

Section IX Land Use and Planning:

The Initial Study finds no conflict with any "applicable land use plan, policy, or regulation of any agency with jurisdiction over the project..." (MND p. 44.) It states that the project is consistent with both the Marin Countywide Trails Plan of 1984 and the Mt. Tamalpais State Park General Plan of 1984.

Both of these documents identify the Lone Tree and Coastal Fire Roads as appropriate for multiple users. "Fire Roads" is the operative phrase. By this conversion, the two roads will be turned into narrow trails. The guidelines for trail use differ from those for fire roads for several reasons, among them safety considerations (narrower trails provide little opportunity for multiple users to avoid mishaps), potential for erosion from single track bicycle tires, especially through high speed use, displacement of the more passive users in favor of the more aggressive bicyclists, potential for increased use through creating an attraction for bicyclists from outside the area, and demonstrated increase in the building of illegal trails. (See articles and letters attached and submitted.)

No supporting documentation is provided. The MND merely cites the two Plans and states the Project is consistent. This kind of conclusory statement provides "no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives." (People v. County of Kern (1974) 39 Cal.App.3d 830, 841-842, quoting Silva v. Lynn (1973) 482 F.2d 1282, 128; see also Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 404: "but neither can we countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials;" and City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 415 " The County's conclusory evaluation of the amendments fail to support its decision to adopt a negative declaration.")

The MND fails to provide a factual basis for the finding and therefore the MND must be set aside in favor of a full EIR. (Guidelines 15063 (c) (5).)

Section XIV. Recreation:

The MND finds that there would be no substantial increase in use or demands to this or any other park or recreational facility in the area. It states that "more visitor use of these trail routes may occur, but overall trail use in the park is not expected to increase." (MND p. 54.)

These statements are in direct contradiction with the Application made by DPR for funding to create this project. In that Application the following statements anticipating increased use are made:

"It is anticipated that the new trails will attract greater visitation as park users seek more aesthetically pleasing pathways that provide the intimate experience of meandering through the countryside, following the natural contours of the hills, while taking in the world class views of the San Francisco Bay Area." (Application, p. 3-4.)

"Once completed, this project will increase visitation through improved access..." (Application, p. 6.)

"MTSP has yet to realize its full recreational potential." (Ibid.)

The Application also notes that new access will be afforded to other areas of the Park by these trails:

"Access to areas of MTSP such as the Frank Valley Horse Camp and nearby hiking equestrian trails will provided by the project." (Application, p. 5.)

"Currently the multi-use trail system within MTSP is very limited and involves short distance travel only. Construction of this project provides important links to city, county and state roadways that lead to other recreational use areas and the surrounding communities..." (Application, p. 6.)

"The new Lone Tree Trail will provide access to the popular Rocky Point area of the park that contains a public campground and cabins overlooking the Pacific." (Application, p. 7.)

"Many different loops and connections are available from the proposed trails." (Ibid.)

No discussion of the potential environmental impacts caused by either the increased use or improved access is provided in the MND. Specifically, there is no discussion of the impacts of bicycle usage on these new trails. Since the creation of these new trails marks the first time bicycles will be allowed on any trails (as opposed to Fire Roads) within the MTSP, the omission is all the more glaring.

The Application provides the only discussion of impacts resulting from addition of bicycles to narrow trails by analogy to a similar project in Annadel State Park. That discussion demonstrates the increased use that results, but fails to show how the two projects are similar. It states that visitor use has increased, but accidents have been reduced, with no supporting documentation to back up the statement. The fact that fewer accidents have resulted in a roads-to-trail conversion project in one State Park, assuming the statement to be correct, sheds little light on the

environmental impacts of a project in another State Park, without a discussion of topography, user profiles, attractiveness of the facility, and other factors that may allow the reader to judge whether the comparison is justified.

In any event, NO discussion of potential impacts, not even the favorable Annadel experience is provided in the MND.

The Tamalpais Conservation Club, by its Corresponding Secretary Larry Minikes, in a December 24, 2002, letter and accompanying documents, has provided ample evidence of the adverse environmental impacts that may result from this project to support a fair argument that a full EIR is required. (Pub. Res. Code section 21064.5; 21080 (c); Guidelines 15073.5; City of Redlands, supra, at 405.: "Under this test, the agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment." Quoting *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399-1400.)

Section XV. Transportation/Traffic:

The MND states "A significant increase in overall visitation to Mt. Tamalpais SP is not anticipated as a result of the proposed project...." This statement is contradicted by the Application cited above; as well as the discussion provided in the December 24, 2002, Minikes letter.

The MND concludes that "the impact on congestion resulting from additional visitor or construction vehicles to normal traffic on Hwy 1 or Panoramic Highway would be minimal, therefore the project would result in a less than significant impact." (MND p. 57.)

In light of the statements in the Application, including the demonstrated increases at Annadel State Park, and the discussion in the Minikes letter and accompanying documentation, substantial evidence exists that this project may result in significant traffic increases. That is all that is required for a full EIR to be prepared.

Cumulative Impacts:

Under Chapter 4, Mandatory Findings of Significance, the MND finds no cumulative impacts, while noting that "[o]ther restoration, maintenance and road-to-trail conversions projects are underway or planned within the [nearby] Redwood Creek Watershed on Mt. Tamalpais." (MND, p. 61.)

CEQA requires that a lead agency must discuss "cumulative impacts" of the project. Guideline 15064 (i)(1). This means that the agency must determine whether an impact which may be individually limited, when viewed in connection with the effects of past, present or "probable future projects" the effects may be considerable. (Ibid.)

The MND states that "[i]mpacts from these ongoing and future projects, along with other environmental issues addressed in this evaluation, would not overlap in such a way as to result in cumulative impacts that are greater than the sum of the parts." (Ibid.)

No analysis of this statement is offered. To the contrary, additional similar projects already in the works or planned are exactly the types of cumulative impacts that need to be included in an environmental review for a project. At the very least a discussion and identification of these other projects and their relation to the proposal here needs to be provided.

In *(San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61, 75* the court stated the test for when a cumulative analysis is required: "[W]e find it illogical that an EIR should carefully evaluate the direct impacts of one project which is "under environmental review," but completely ignore the cumulative impacts of that project's siblings in the same category. Nothing makes the EIR's subject project more "probable" or "foreseeable" than any of the other projects under review, just as nothing makes them less so."

Additionally, the TCC has shown evidence of the types of impacts that can occur from such projects, including the construction of illegal trails, additional visitor usage and safety and enforcement problems. (see article packet attached and Minikes letter with accompanying documentation.).

In *City of Antioch v. City Council (1986) 187 Cal.App.3d 1325, 1337*, the court found that approval of a site development permit for construction of a road and sewer lines would have the effect of "opening the way for future development," and that a cumulative impact analysis was required. The changes proposed here for the conversion of fire roads to narrow "trails" is likely to have the effect of "opening the way" for future recreational uses not contemplated in the MND.

It is irresponsible for the DPR to ignore such potential impacts altogether.

Alternatives:

No alternatives are given for this project. There is no discussion of other configurations, such as trails without the addition of bicycle users, decommissioning the roads without rebuilding them as trails or a no-project alternative.

While a Mitigated Negative Declaration does not need to evaluate every possible alternative or mitigation, it must look at those which are "feasible." (*Long Beach Savings and Loan Assoc. v. Long Beach Redevelopment Agency (1986) 188 Cal.App.3d 249, 264.*) Evidence has been produced that other alternatives are feasible, including the ones suggested in the preceding paragraph. Thus, it is error to fail to include a discussion of them.

The TCC has Made a Fair Argument that a significant Environmental Impact may Result from this Project and a full EIR is Required:

Public Resources Code section 21080 (d) states that If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared. (Also see CEQA Guidelines, at Title 14 of the Cal. Code of Regulations, 15064 (a) (1).

And: "As CEQA guidelines make clear, an agency "shall adopt the proposed . . . mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the . . . mitigated negative declaration reflects the lead agency's independent judgment and analysis." (Cal. Code Regs., tit. 14, § 15074, subd. (b).)" (*Arviv Enterprises Inc. v. South Valley Area Planning Com. (2002) [__ Cal.App.4th __]*.)

The record, on the whole shows that significant environmental impact MAY result from this project and a complete EIR is required. In summary, the unprecedented conversion of fire roads into narrow mountain pathways for multi-use cannot be considered to have no significant

environmental impact without full study. The cumulative impacts when considered in conjunction with other projects and uses in the area, the potential for increased usage by high impact user groups, soil erosion, wildlife and plant life impacts, must be studied. The MND fails to do this. Instead it makes conclusory statements that no impact or less than significant impact will result. In light of the record as a whole, the requirements of Cal. Code Regs., tit. 14, § 15074, subd. (b) are not met, and a full environmental impact report is required for this project.

"CEQA requires a governmental agency [to] prepare an environmental impact report (EIR) whenever it considers approval of a proposed project that 'may have a significant effect on the environment.' (§ 21100) In addition to the intent to require governmental decisionmakers to consider the environmental implications of their decisions, the Legislature in enacting CEQA also intended to provide certain substantive measures for protection of the environment....

"If there is no substantial evidence a project 'may have a significant effect on the environment' or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no EIR is required. (§§ 21080, subd. (c), 21064.) However, the Supreme Court has recognized that CEQA requires the preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.' [Citations.] Thus, if substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified." (Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1601-1602.)

"The 'fair argument' test is derived from Public Resources Code section 21151. This section 'creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.'" (Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144, 151; quoting Sierra Club v. County of Sonoma (1992) 6 Cal.App.4th 1307, 1316-1317.)

The TCC has amply complied with this test. It has supplied documentation of environmental effects resulting from similar projects; it has provided specific instances of incompatibility of multiple uses on narrow trails; it has shown that cumulative impacts may result which have not been studied, and it has provided anecdotal evidence.

The DPR's own Application for funding of this project shows that adverse environmental impacts may result in the form of additional users of the trails and the Park as a whole. The existence of contrary evidence does not outweigh the amount of evidence of potential environmental consequences.

As shown above, the MND is woefully lacking in actual evidence that the Project will not produce adverse environmental effects, while substantial evidence has been produced to show adverse environmental impacts may result.

Therefore, in light of the record as a whole, substantial evidence requires the preparation of a full EIR for this Project.

Notice was Defective:

CEQA Guidelines at 14 Cal. Code of Regulations section 15072 provide that:

"(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105. [thirty day review period for draft EIR]."

By my prior letters of December 18 and 23, I have explained the confusing and contradictory notice letters which had been received, albeit not in a timely manner, by the TCC. It was only on December 24, 2002, that I or my clients were apprized of an entirely different notice letter apparently sent to the State Clearinghouse and the County Clerk for posting on November 25.

However, even assuming this letter to be the official notification required by CEQA, it too is inadequate to provide actual notice of what the Project is. CEQA Guideline 15072 (f) (1) requires the lead agency provide a "brief description" of the project in its notice to the public.

Here the only description given was to decommission 3.1 miles of fire roads, recontour them to restore natural drainage patterns, convert .5 miles of fire roads to trail and construct 4.8 miles of new trail to accommodate the "average park user."

No mention of allowing vehicular access, i.e. mountain bicycles, on these new trails is mentioned at all. Historical precedent, State Park policy, MMWD policy and the Marin County Trails Element all instruct that hikers and equestrians only are permitted on narrow trails on Mt. Tamalpais.

Nothing in the Notice alerted the public to a change in policy and the potential for significant environmental impacts that may result from it. Accordingly, this notice, assuming timeliness is not an issue, is itself inadequate to put the public on notice of the magnitude of the proposed project.

As you are also aware, a number of user and environmental groups were caught unawares by this MND through lack of adequate notice, and have asked that an extension of time to comment be granted. It would be in the DPR's best interest to at the very least grant such requests.

If a full EIR is not prepared for the Project, the MND should be revised and recirculated to address the issues in this and other letters of concern received by the DPR.

Thank you very much for your consideration.

Sincerely,
(signature on original)

Dotty E. LeMieux
Attorney for the Tamalpais Conservation Club
cc: Shaelyn Raab Strattan, Statewide Environmental Co-ordinator
Dave Boyd, State Parks Ecologist, Marin District
Assemblymember Joe Nation
Clients Press