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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

_____)	
Tamalpais Conservation Club	)	No.
)	
Petitioner,)	
	)	Petition for
	)	Writ of Mandamus;
vs.	)	Administrative
	)	Mandamus (CCP 1085;
California Department of	)	1094.5); Pub. Resources
Parks and Recreation;	)	Code section 21000, et seq;
	)	Declaratory Relief.
DOES 1 through 10, inclusive,	)	Date:
	)	Time:
Respondents.	)	Court:
_____)	

Petitioner alleges as follows:

I.
PARTIES

Petitioner, Tamalpais Conservation Club (TCC), is a California non-profit corporation, whose principal offices are in the County of Marin. Its members are citizens and taxpayers in and around the County of Marin and the State of California. Petitioner's members live, work, recreate and enjoy the environment affected by the Project. Petitioner brings this action on behalf of itself, its members, other individuals and groups affected by the Project and the

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general public.

Respondent California Department of Parks and Recreation (DPR, is an Agency of the State of California and is the Lead Agency for and responsible for approving the Project and certifying the Mitigated Negative Declaration (MND) for the Project.

The true names and capacities of the DOE respondents and defendants are unknown to petitioners. Petitioner will amend this petition to name each DOE and its capacity as soon as same has become known to petitioners.

II.

VENUE AND JURISDICTION

Venue is proper in the County of Marin because the Petitioner has its main office in the County and the site of the Project is wholly located within the County of Marin.

Jurisdiction in the Superior Court is proper as the action is one for Mandamus and equitable relief.

III.

INTRODUCTION AND FACTS

This action challenges the certification and approval by Respondent of a Final Mitigated Negative Declaration (FMND) for a Road to Trails Conversion Project within the Mt. Tamalpais State Park (MTSP). This action is based on provisions of the California Environmental Quality Act (CEQA) and calls for the preparation of a full Environmental Impact Report (EIR).

In the alternative, due to new information and omitted documentation, the FMND is required to be recirculated for review.

The action also alleges procedural violations of CEQA in its failure to timely and adequately notify Petitioner and other similarly situated persons interested in the Project, either of the preparation of the MND or of its certification. Petitioners further allege that the Notice of Determination was filed prior to the completion of the MND, the document it purported to certify, and that CEQA requirements for the NOD were not met.

This Project concerns the decommissioning of several miles of popular Fire Roads in the Mt. Tamalpais State Park, and the reconstruction of these roads as narrow trails. The conversion

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anticipates the same user groups using the narrow trails as use the existing wider Fire Roads. Currently, with a single known and very limited exception, only existing Fire Roads are available for use to all of the groups who frequent the Park: hikers, runners, equestrians and mountain bicyclists. The new trails will be far narrower than the existing Fire Roads, but will continue to be available to all these user groups.

County and State policy has to this date discouraged mountain bicycles from the narrow trails in MTSP. Adjacent lands managed by the Marin Municipal Water District and the Marin County Open Space District adhere to these policies as well.

The DPR determined to develop this Project in when funding sources became available through the State's Environmental Enhancement and Mitigation Program (EEMP). The DPR submitted an application for funding stating the purpose of the project was to **“increase the opportunity for users to have a more aesthetically pleasing, safer and environmentally friendly, multi-use trail experience.”** (Application, at p. 1, Emphasis in original; attached hereto as Exhibit A.)

In November, 2002, DPR held a meeting on the Project at which time Petitioner noted its concerns. Petitioner is informed and believes that DPR failed to notify many other user groups or interested parties of the intention to approve the Project, with the exception of bicycle user groups. (See Declaration of Larry Minikes, and supporting documentation, attached hereto as Exhibit B.)

On December 2, 2002, a letter from Senior Parks Ecologist and Project Manager Dave Boyd was sent to Petitioner stating that a Draft MND had been filed and would be available for a thirty day review period.

It came to Petitioner's attention that, in fact, a notice had been posted prior to this date setting December 24, 2002, as the cutoff date for public comment on the MND. At that time, Petitioner protested the contradictory notice and the DPR “extended” the time for comment until January 1, 2003, in accordance with the Boyd letter.

Petitioner filed letters of objection to the project by its individual members and through Counsel. These letters are attached hereto as Exhibit C.)

On or about April 11, 2003, a Notice of Determination was filed by DPR with the Governor's Office of Planning and Research State Clearinghouse. On or about May 2, 2003, Petitioner obtained a copy of the NOD at the OPR website. It contained the date of 1/19/1900 and referenced a Final EIR rather than a Negative Declaration, thereby failing to notify the public of the action taken or time for review as required by CEQA. Another version was later mailed to Petitioner following several requests sometime after May 1st. (Attached hereto as Exhibits D and E; also see Declaration of Dotty E. LeMieux, and supporting documentation, attached hereto as Exhibit F.)

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Despite requests for notice of all documents, hearings, or notices relating to this Project, Petitioner was not notified of this filing. Petitioner was sent by certified mail a response to letters sent to the DPR. (See Exhibit F.)

Following several calls to the local DPR office, Petitioner was notified on or about April 25, that an NOD had been filed on April 11.

Petitioner was also notified that the FMND would not be completed until April 28. On or about April 29, Petitioner's Counsel received a copy of a 2 volume FMND, one volume undated, the second containing an Addendum, dated and signed April 28.

Petitioner is informed and believes and so alleges that the presence of mountain bicycles create a particular type of hazard on these narrow trails and adjacent areas and in opposition to this project offered significant evidence to support that view. The objections were ignored or inadequately addressed in the approval process.

Opening narrow trails to multiple user groups sets a precedent in the Mt. Tamalpais State Park, and needs a thorough environmental review. The environmental review for the this project is sketchy, based on heresay, rather than scientific analysis and unlike comparisons.

Respondent failed to adequately notify Petitioner and others similarly situated with an interest in this Project of the preparation of the MND and their opportunity to comment. No public hearings were held, nor was notification sent to environmental groups who routinely receive such notices.

Responses to comments submitted by Petitioner and others, virtually ignored any mention of the Application for funding, which provides significant evidence of potential environmental impacts ignored or glossed over in the FMND.

Petitioner has exhausted its administrative remedies in that its members have commented on the MND, presented evidence, written letters to the DPR on both the substance and process and submitted comments on the MND, raising the issues addressed in this Petition.

Petitioners have notified DPR of the pendency of this action as required by CEQA. A copy of this action has been served on the Office of the Attorney General as required by CEQA. (See Exhibits G and H, attached hereto.)

IV. SUMMARY OF ISSUES

1. The FMND is Inconsistent with Land Use Plans having Jurisdiction over the Project Area:

The Initial Study and FMND are at odds with established plans including both the Marin Countywide Trails Plan of 1984 and the Mt. Tamalpais State Park General Plan of 1980.

2. The Conversion from Roads to Trails May Result in Significant Environmental Impacts and a Full EIR is Required

The conversion of Fire Roads to trails marks a significant change in policy for much of the Park. The DPR relies on conclusory language, unidentified, unsubstantiated claims and unlike comparisons to support its findings that no significant environmental affects will occur.

The documents relied on the DPR are contradictory and inconclusive. Petitioner has offered substantial evidence of potential environmental damage which has not been mitigated in the FMND.

Accordingly a full EIR is required to be done for this Project.

3. The MND Omits Sources for its Findings of no Significant Environmental Impact

The conclusory language in the Initial Study and MND is not supported by documented evidence. In response to Petitioner's objections filed with the DPR, additional documents were cited, but not provided in the MND for public review as required. Thus, the public was deprived of the ability to review documents relied on by the Agency, which may or may not have been relevant to this Project.

4. Recirculation of the FMND is required

Recirculation is required when significant changes are made in a project following public review that may themselves have significant environmental effects. Here, the change in width, while apparently intended as mitigation, fails to address the issues raised by Petitioners. It will entail a different type of trail configuration from the four foot width and no discussion is offered to account for such differences.

The FMND for the first time discusses the fragility of the new trial surfaces and the intent to defer allowing multiple users for the first post-construction season. (See FMND at p. 8.)

The FMND references new material not included in the Draft and never available for public review.

5. CEQA Notice Violations

The initial Notice of Preparation was faulty and misleading information was sent to Petitioner as to the time to comment.

No NOD was provided to Petitioner, despite requests, as required by CEQA until several weeks following its filing; the NOD was filed prior to completion of the FMND calling into question the approval process.

The NOD posted at the OPR website contains an erroneous date and references a FEIR, not a Petition for Writ of Mandamus; Administrative Mandamus; Complaint

FMND, rendering it ineffective for review purposes, although an “official” NOD was provided to Petitioner some weeks after the website posting.

Due Process requires renotification and a new full review period.

V.
FIRST CAUSE OF ACTION

The FMND is Inconsistent with Land Use Plans having Jurisdiction over the Project Area

The allegations contained in paragraphs 1 through ___ above are incorporated herein by reference as if set forth in full.

The Initial Study finds no conflict with any “applicable land use plan, policy, or regulation of any agency with jurisdiction over the project...” (FMND at V. I, 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 1980.

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 and creation of illegal trails.

No supporting documentation is provided to support the DPR’s contention that the FMND is consistent with existing Plans. The FMND 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.”)

In its Response to Petitioner’s objection to this inconsistency, DPR states:

“All elements of the proposed project are in compliance with the Mt. Tamalpais SP
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General Plan, a publicly available document listed in the MND under References - Chapter 3, page 66. The General Plan does note that, at the time it was adopted (October 1979), there were no established bike trails in the park and that the ‘topography of the park and surrounding areas is so steep as to discourage construction of trails outside of roadways...’ (Mt. Tamalpais SP GP, p. 38.) However, there is nothing prohibiting construction of such trails and, in this case, construction will occur along existing roadways. There is nothing prohibiting conversion of roads to trails or multi/shared use of those resulting trails in the park’s General Plan.” (Final MND Public Comments and Response to Comments, V. II, p. 25.)

The fact that the General Plan does not “prohibit” something does not make it consistent. The more important fact is that the Plan references the fragile nature of the park, anticipated mostly foot traffic out side of the fire roads. The addition of mountain bicycles is a relatively new phenomenon, one that should be addressed in an updated Plan, not snuck in because it was not prohibited.

In fact, the General Plan does state at p. 32 that: Hiking throughout many areas in the park is the principal recreational activity. Other major uses include picnicking, running, rock-climbing, rest, and meditation.” A major concern at the time of adoption of the Plan was “that overdevelopment and overuse of the park may occur.” (Ibid.)

It is in great part because the proliferation of the now popular bicycle use is incompatible to these principal activities, that bicycle use has been restricted to the wider fire roads. To allow a greater proliferation at this time without adequate environmental review makes this concern into a self-fulfilling prophecy and defeats the natural environment of the park setting.

Insofar as the 1980 General Plan sets the policy for the park, it is improper to start changing uses without first amending the Plan. Since that has not been done, and is not done as part of this Project, no consistency can be found.

A similar problem exists with regard to the Marin Countywide Plan Trails Element. The DPR references a letter from County staff opining that since the Countywide Plan currently shows the existing Fire Roads as multi use, ““so in essence you are bringing those roads into full conformance with the plan.”” (Letter from David Hansen, County Planning and Acquisition Manager of the Marin County Parks, Open Space and Cultural Services, quoted at FMND V. II, p. 25.)

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The comments of a staff person do not substitute for the planning process. The County Trails element discourages multiple use on narrow trails. It is disingenuous to say that because the project will change existing fire roads into narrow trails, but keep the same user groups, it is therefore in “conformance” with the Plan.

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).)

VI.

SECOND CAUSE OF ACTION

The Conversion from Roads to Trails May Result in Significant Environmental Impacts and a Full EIR is Required

The allegations contained in paragraphs 1 through ___ above are incorporated herein by reference as if set forth in full.

This Project will decommission 3.1 miles of Fire Roads, currently wide dirt roads, used by multiple user groups, including pedestrians, horse enthusiasts and bicyclists. The Roads to be decommissioned are the historic Lone Tree and Coastal. They will then be rebuilt as narrow (60-72 inch) trails, totaling 4.8 miles in length. The Park currently differentiates between the fire roads and trails, by limiting the user groups on trails, to exclude mountain bicyclists and other wheeled vehicles. With one, very limited, exception, fire roads are the only places mountain bicyclists are allowed to travel within the State Park. This is done for reasons of safety, protection of the resource and the type of tranquil experience that a narrow trail affords users as opposed to the opportunity for speed and increased noise level offered by the inclusion of mountain bicyclists on the fire roads.

The Final MND calls for a minimum trail width of 60 inches (five feet) and to a width of a maximum of 72 inches where passing is difficult. This change (from four feet in the Draft) results in a trail width that is still inadequate for multiple users. No evidence is provided in the FMND that a change from four to five feet is adequate for the change in use anticipated. Further evidence of the necessity for a full environmental review is provided by the DPR in its response to Petitioner’s comments.

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“However, much of the design criteria and trail use determinations are based on the experience of state park trail staff who build, maintain, and manage state park trails. They are aware that trail use by the public has the potential for causing various degrees of environmental impact, such as soil erosion, compaction, trail widening, and changes in vegetation density.” (FMND, V. II, at p. 23.)

In addition to these unidentified park personnel, the DPR references a study done in Montana (Wilson and Seney, 1994) which “found that mountain biking impacts such as soil compaction and sediment yield, were actually less than those of walking.” (*Ibid.*)

Neither of these sources provide site specific evidence of no environmental impact to justify the failure to require a full EIR for this project. To the contrary, they are completely unsubstantiated vague conclusory statements.

The park personnel cited are not identified. Nor is the State Park they work in. There is no evidence that the same conditions pertain to the Mt. Tamalpais State Park as to other State Park locations, including soil, topography, intensity and type of use, vegetation or habitat types.

The Montana study is even less relevant, especially since it is not even listed as a reference in the bibliography as required by CEQA.

In fact, one need look no further than new language inserted into the FMND for evidence that conditions in the Mt. Tamalpais State Park warrant special consideration because of their unique qualities:

“Immediately following construction, during the first post-construction season, all road to trail conversions and newly constructed trails should be open to hikers only. The new trail tread surfaces are fragile during this first season, and could be damaged by hooves and tires. Subsequent wet or winter seasons could also involve short-term multi-use trail closures. California State Park trail professionals would monitor these trail surfaces and evaluate their condition. A substantial volunteer trail patrol effort would also occur to ensure that the condition of the new trails is fully understood, and park managers can respond appropriately. In addition, a first-season trail tread maintenance effort would fine-tune trail tread drainage structures as the newly constructed trail surfaces become

established.” (Final MND V. I, p. 8-9.)

While this language is apparently intended as a mitigation, it raises more questions than it resolves and makes clear that there is insufficient information to find that no significant environmental impacts will result from the project.

A portion of these new shared use trails will intersect with and become incorporated into the historic Dipsea Trail, which is the site of the well attended, historic Dipsea Race each year. Numerous runners and hikers use this footpath and train on it all year long in anticipation of the race.

Although a portion of the Dipsea Trail does currently coincide with portions of the existing Fire Road, this cannot be compared to now adding bicycle users to the trail itself, with the attendant safety hazards posed by the new use. At least one-half mile, possibly more, of this fragile footpath will be affected. (See FMND at V. II. p. 19.) The MND only states these impacts will be minimal, without quantifying or even identifying the changes.

Without more information, it is impossible to tell whether a significant impact may result, and a full EIR is the only way to assess the impact to this historic footpath.

Petitioner has provided extensive documentation and other evidence of potential substantial impacts resulting from this conversion of roads to trails. Ironically, the DPR dismisses much of Petitioner’s evidence as “anecdotal” (in the document “antidotal”) while using its own anecdotal “experience” of unidentified park personnel. (See FMND at V. II. 31.)

In response to comments received by Les Nightingill, the Final MND admits that the DPR has failed to conduct any “counts or surveys of user numbers, make-up or distribution...” (FMND at p. V. II. 37.) Instead it relies on “observations by Park Rangers and maintenance staff, and comments from visitors” to give them a “good general knowledge of these factors.” These factors are the current use and impact on the existing fire roads, including the proportion of user groups, for example bicycle users as opposed to hiker users. The FMND continues to assert that, in spite of no surveys or counts ever having been attempted, the DPR believes “use is generally light to moderate and does not excessively favor any one type of user - condition that is not expected to change significantly following conversion of the roads to trails.” (Ibid.)
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The very fact that the DPR has failed to gather evidence to support its findings should be seen as substantial evidence that a fair argument can be made that a significant environmental impacts *may* occur. ("The agency [will] not be allowed to hide behind its own failure to gather relevant data.... CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record." (Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 311.)

VII.

THIRD CAUSE OF ACTION

The MND Omits Sources for its Findings of no Significant Environmental Impact

The allegations contained in paragraphs 1 through ___ above are incorporated herein by reference as if set forth in full.

CEQA requires that a lead agency provide the location of the record that documents the findings that no adverse environmental impacts will result from the project. (Pub. Res. Code section 21081.6 subd. (a)(2); 14 Cal. Admin. Code (CEQA Guidelines) 15074 (c).)

The DPR provides a list of documents relied on at pages 66-68 of the FMND. However, in its Response to Comments received, it references two additional documents it fails to make available to the public. These are the Wilson & Seney study done in Montana in 1994 (FMND, V. II, p. 23, Responses), and Conflicts on Multiple-Use Trails: Synthesis of the Literature and State of the practice, sponsored by the Federal Highway Administration and the National Recreation Trails Advisory Committee. (Id. at p. 24.) Without being able to access and review these documents, neither the public, not any interested agency can determine whether the information contained therein is relevant or even accurate in its application to the project.

VIII.

FOURTH CAUSE OF ACTION

New Information has been Added to the FMND and Recirculation is Required

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The allegations contained in paragraphs 1 through ___ above are incorporated herein by reference as if set forth in full.

When new information is presented in a Negative Declaration following the review period but before adoption that requires substantial changes in the document, recirculation for public and agency review is required. (CEQA Guideline 15073.5 (a)).

Here, the Draft MND was circulated in December 2002. Subsequently, in response to many comments received, the Final MND was substantially revised to change the width of the trails from four to five feet, to add a discussion of the fragility of the trails in wet season so as to require closure and monitoring, not previously discussed, to add new documentation supposedly supporting the conclusion of no significant environmental impacts, and to add a Mitigation and Monitoring Program.

All of these changes are substantial and require recirculation. What emerges most significantly from the revised FMND is that the environmental impacts are certain to occur without mitigation, due to the newly admitted fragility of the trails during the wet seasons. No such discussion exists in the original document.

The reason the trail fragility presents a new environmental impact, is the addition of bicyclists to the heretofore off-limits narrow trails. At pages 8-9 in the FMND and as part of Mitigation Measures Geo-1 at page 34, language is added that recognizes these problems, however tangentially as follows:

- “Immediately following construction, during the first post-construction season, all road to trail conversions and newly constructed trails would be open to hikers only. Short term multi-use trail closures would also be implemented as necessary during subsequent wet or winter seasons.
- “A trail tread maintenance plan would be designed and implemented to identify and correct problems related to design or use. California State Parks trail professionals, supplemented by volunteer trail patrols, would monitor trail surfaces for damage or deterioration. Adaptive management techniques would be employed to correct problems and fine-tune drainage structure for optimum trail and resource protection.”

Accordingly, these newly identified impact and mitigation measures constitute new information requiring recirculation of the FMND.

IX.

FIFTH CAUSE OF ACTION

Failure to Include Part of the Record

The allegations contained in paragraphs 1 through ___ above are incorporated herein by reference as if set forth in full.

In addition to the failure to provide an opportunity for the public to review the additional documents relied on in the FMND discussed above, the DPR has ignored the existence of a document providing evidence of potential environmental impacts, an Application for funding under the State's Environmental Enhancement and Mitigation Program (Application) submitted for funding the Project. That documents is included here as Exhibit A.

The Application describes the project that is the subject of the MND, and states its purpose is to **“increase the opportunity for users to have a more aesthetically pleasing, safer and environmentally friendly, multi-use trail experience.”** (Application at p. 1, emphasis in original.)

Comments on the MND referring to the Application were ignored in the Final MND. (See FMND V. II, at 15.) But a review of the Application shows the recognition of the DPR that “the new trails will attract greater visitation as park visitors 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.)

This statement is significant, because it reveals the DPR's understanding that more users will be attracted to these trails once the work is done. In fact, the funding application is for moneys available as part of the mitigation measures for slide repair work to Highway One in the vicinity of the Project. In fact, the Application references the enhanced access opportunities for these new Park users as a result of the Highway work done. No mention of

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this is included in the FMND.

Further statements in the Application include the following:

“Once completed, this project will increase visitation through improved access, and will enhance the scenic qualities of the park.” (Page 6.)

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

“Experience gained at State Park staff during the implementation of similar projects located within Annadel State Park, demonstrates that visitation of all user groups is greatly increased when safer less degraded trail corridors are provided.” (Ibid.) Not only does this statement show that the DPR *intends* increased visitor usage, it is once again comparing unlike circumstances to support its contentions. There is no evidence that the terrain, geology, soils, number of visitors, habitat, vegetation, etc. at Annadel State Park can be compared to the conditions found at Mt. Tamalpais State Park.

Again, at page 7: International visitor attendance at [Muir Woods National Monument]. These individuals will also be attracted to the project site area.”

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.)

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

It is apparent that the DPR does not intend to include this document in the Administrative Record for the Project. (It should be noted that the Response to Comments section fails to include the comments themselves, so that only one reference to the Application is mentioned as described above.

The Application provides evidence that goes directly to the heart of the potential environmental impacts of the project. This document was prepared by DPR, submitted for purposes of funding this project, and contains rationale for the project. It, therefore, it is not extrinsic evidence and must be included in the Administrative Record. (See Western States Petroleum Assn. v. Superior Court (Air Resources Bd.) (1995) 9 Cal.4th 559, for a discussion of what constitutes “extrinsic evidence.”)

X.

SIXTH CAUSE OF ACTION

CEQA Notification Procedures not Followed

The allegations contained in paragraphs 1 through ___ above are incorporated herein by reference as if set forth in full.

CEQA requires circulation of Negative Declaration for a period sufficient to afford the public and interested agencies time to review the proposed document prior to adoption. (Guideline 15072 (a).) In this case conflicting deadlines were given by the DPR; the time for review was over Christmas and New Year’s and notice was inadequate to provide actual or constructive notice to Petitioner or other interested parties in time to adequately respond.

On or about December 2, 2002, a letter from Senior Parks Ecologist and Project Manager Dave Boyd was sent to Petitioner stating that a Draft MND had been filed and would be available for a thirty day review period. (See attached Declaration of Larry Minikes, and supporting documentation.)

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Following that time, it was learned that an official Notice of Preparation had been posted but not sent to Petitioner who was relying on the assertions of the December 2 letter.

Petitioner and others protested and a new deadline of January 1, 2003, was set by the DPR. However, since the 30 day period had commenced essentially without actual notice or substantial compliance with CEQA, the general public failed to have the opportunity to comment.

In the months following, Petitioner, itself and through counsel, requested notice of any further action being taken on this Project. These requests had been made in writing and orally, and through email. CEQA requires such notice be given to any interested party requesting the information. (Guidelines 15074 (b) (c).)

No further notice was received, until, in response to repeated requests, the information as provided that the NOD had been filed on April 11. However, the Final MND was not available until sometime after April 28.

An NOD is required to provide notice of the location of the document certified so that the public and interested parties may review it (Guideline 15075.) In this case, the FMND contained an Addendum signed and dated on April 28. Since this document had not been completed nor was it available for review, until after April 28, the 30 day limitations period provided in CEQA was effectively reduced to at most a 12 day period and the NOD was out of compliance with CEQA. (Pub. Resources Code section 21167 (b); Guideline 15074 (c).)

The NOD posted at the OPR website contains an erroneous date and references a FEIR, not a FMND, rendering it ineffective for review purposes, although an "official" NOD was provided to Petitioner some weeks after the website posting. (See Declaration of Dotty E. LeMieux attached hereto as Exhibit C, and supporting documentation.)

Accordingly the public had no actual or constructive notice of this filing, no ability to access the FMND until after April 28, and no avenue to pursue legal action in a timely manner.

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Due Process requires renotification with a new full review period to afford the public adequate time to respond to the document.

Wherefore, Petitioner prays as follows:

1. A peremptory writ of mandamus issue directing respondents to set aside its approval of the Project and certification of the Mitigated Negative Declaration and require a full comprehensive and legally adequate Subsequent EIR; and
2. In the alternative remand the matter for further administrative proceedings directing respondents to recirculate the MND, to provide full and legally adequate notice to Petitioner and the general public, and to take any other such action as required by law; and
3. That respondents suspend all activity under the certification of the Mitigated Negative Declaration that could result in any change or alteration in the physical environment until respondents have taken actions that may be necessary to bring the project into compliance with CEQA; and
4. The Court declare that the Administrative Record includes the Application for funding made by Respondent under the State Environmental Enhancement and Mitigation Program and direct Respondent to include that document and other omitted documents in the Administrative Record; and
5. Petitioners be granted reasonable attorney's fees, legal assistant fees and costs pursuant to Government Code section 800, Code of Civil Procedure section 1021.5 and/or any other applicable statutes and for other costs associated with bringing and maintaining this suit according to proof; and
5. Petitioners be granted such other and further relief as this court may deem appropriate and just.

Dated: May 9th, 2003

Respectfully submitted,

Dotty E. LeMieux
Attorney for Petitioners

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VERIFICATION

I, Larry Minikes, am a member of and authorized to sign for Petitioner and Plaintiff in the above entitled action. I have read the foregoing Petition and Complaint and know the contents thereof; that the same is true of my own knowledge, except for those matters alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on May 9th, 2003 in Mill Valley, California.

Signed: _____
Larry Minikes for
Petitioner, Tamalpais Conservation Club