

FILED
Superior Court of California
County of Marin
09/19/2024
James M. Kim, Clerk of the Court
A. Andres, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

COMMITTEE FOR TIBURON

Plaintiff,

vs.

TOWN OF TIBURON,
Defendant.

Case No.: CV0000086

ORDER

For the reasons discussed in detail below, the Court finds the Final Environmental Impact Report ("Final EIR") prepared for adoption of the General Plan and Housing Element, and later relied upon in the rezoning decision, fails to comply with the requirements of the California Environmental Quality Act ("CEQA") to the extent it fails to include feasible analysis of the reasonably foreseeable impacts of adding 93-118 residential units at 4576 Paradise Drive ("Site H"). Accordingly, the Petition for Preemptory Writ of Mandamus is GRANTED.

LEGAL STANDARD

CEQA is codified at Division 13 of the Public Resources Code, beginning with section 21000. As an aid to carrying out the statute, the State Resources Agency has issued a set of regulations, called Guidelines for the California Environmental Quality Act ("Guidelines").

CEQA embodies our state's policy that "the long-term protection of the environment ... shall be the guiding criterion in public decisions." (Pub. Res. Code, § 21001, subd. (d); *See Davidson Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112.) The overriding purpose of CEQA is to ensure that

1 agencies regulating activities that may affect the quality of the environment give primary
2 consideration to preventing environmental damage. (*Save Our Peninsula Committee v. Monterey*
3 *County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117.)

4 ***The Three-Step CEQA Process***

5 As outlined in *San Lorenzo Valley Cmty. Advocs. for Responsible Educ. v. San Lorenzo*
6 *Valley Unified Sch. Dist.* (2006) 139 Cal.App.4th 1356, 1372, CEQA involves a three step process.

7 *Threshold Determination of CEQA's Applicability*

8 “The first tier is jurisdictional, requiring that an agency conduct a preliminary review in order
9 to determine whether CEQA applies to a proposed activity. (Guidelines, §§ 15060, 15061.)”
10 (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 112.) CEQA applies if the activity is
11 a “project” under the statutory definition, unless the project is exempt. (Pub. Res. Code, §§ 21065,
12 21080.) “If the agency finds the project is exempt from CEQA under any of the stated exemptions, no
13 further environmental review is necessary.” (*Davidon Homes*, p. 113.) In such cases, the agency may
14 file a notice of CEQA exemption. (Guidelines, § 15062, subd. (a); see *Apartment Assn. of Greater*
15 *Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171.)

16 If the project is not exempt—either because it does not fall within an exempt category or
17 because an exception makes the exemption unavailable—then the agency must proceed to the second
18 tier and conduct an initial study. (*Santa Monica Chamber of Commerce v. City of Santa Monica*
19 (2002) 101 Cal.App.4th 786, 792; see Guidelines, § 15063.)

20 *Initial Study*

21 The second tier of the process, the initial study, serves several purposes. One purpose is to
22 inform the choice between a negative declaration and an environmental impact report (“EIR”).
23 (Guidelines, § 15063, subd. (c)(1); *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131
24 Cal.App.4th 1170, 1180.)

25 “CEQA excuses the preparation of an EIR and allows the use of a negative declaration when
26 an initial study shows that there is no substantial evidence that the project may have a significant
27 effect on the environment.” (*San Bernardino Valley Audubon Society v. Metropolitan Water Dist.*
28 (1999) 71 Cal.App.4th 382, 389–390, citing Guidelines, § 15070; see also Pub. Res. Code, §§ 21064,

1 21080, subd. (c).) In certain situations where a straightforward negative declaration is not
2 appropriate, the agency may permit the use of a mitigated negative declaration. (Pub. Res. Code, §
3 21064.5; Guidelines, § 15064, subd. (f)(2); *San Bernardino Valley Audubon Society v. Metropolitan*
4 *Water Dist.*, *supra*, at p. 390.)

5 Environmental Impact Report

6 If the project does not qualify for a negative declaration, “the third step in the process is to
7 prepare a full environmental impact report [(“EIR”)]....” (*Davidon Homes, supra*, 54 Cal.App.4th at
8 p. 113, citing Pub. Res. Code, §§ 21100 and 21151, and Guidelines, §§ 15063, subd. (b)(1) & 15080;
9 *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1372.)

10 The California Supreme Court has “repeatedly recognized that the EIR is the ‘heart of
11 CEQA.’ ” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th
12 1112, 1123, (*Laurel Heights II*).)

13 REQUEST FOR JUDICIAL NOTICE

14 Petitioner requests Judicial Notice of: 1) the Articles of Organization of The Committee to
15 Preserve the Paradise Cove Salt Marsh, Tidelands, and Neighborhood Safety, LLC, filed June 20,
16 2023; 2) the Amendment of Articles of Organization of The Committee to Preserve the Paradise
17 Cove Salt Marsh, Tidelands, and Neighborhood Safety, LLC to The Committee for Tiburon, LLC,
18 filed July 7, 2023; and 3) the Tiburon Bicycle and Pedestrian Plan, adopted July 20, 2016.

19 “Requests for judicial notice are rarely appropriate in CEQA cases.” (See *Yerba Buena*
20 *Neighborhood Consortium, LLC v. Regents of Univ. of California*(2023) 95 Cal.App.5th 779, 790, as
21 modified on denial of reh'g (Oct. 20, 2023), review denied (Dec. 27, 2023) citing *Western States*
22 *Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 573. (“*Western States*”).) There are certain
23 exceptions to this general rule, but Petitioner fails to establish how these documents fit into *Western*
24 *States*’ narrow exceptions. As such, this extra-record evidence is not properly considered at this
25 juncture.

26 The Requests for Judicial Notice Nos. 1-3 are therefore DENIED.

27 BACKGROUND

1 Each municipality and county in California is required to adopt “a comprehensive, long-term
2 general plan for the physical development” of the jurisdiction that includes eight required
3 elements, one of which is housing. (Gov. Code, §§ 65300; 65300.5, 65302(a)-(h).) In 2020,
4 respondent the Town of Tiburon (“Respondent” or “Tiburon”) commenced a wholesale update of its
5 general plan (the “General Plan”), which was last comprehensively revised in 2005. (1 AR 6648.)

6 Local governments are required to update their respective housing elements every eight years
7 by a state-mandated deadline to plan for projected housing needs, with review and approval of the
8 element conducted by the California Department of Housing and Community Development (“HCD”).
9 (Gov. Code, §§ 65580, et seq., 65588(e)(3)(A).)

10 The number of units a jurisdiction must plan for in its housing element (the “regional housing
11 needs allocation” or “RHNA”) is determined by each regional Council of Governments (“COG”) in
12 consultation with HCD. (Gov. Code, § 65584.04.) The RHNA is divided into four household income
13 categories: very-low income, low-income, moderate-income, and above-moderate income, and every
14 jurisdiction must plan for housing in each income category. (Gov. Code, § 65584.) Among other
15 things, housing elements must identify specific sites on which new housing can be developed to
16 accommodate the jurisdiction’s RHNA for the upcoming 8-year planning cycle. (Gov. Code, §§
17 65583(a)(3), 65583.2.)

18 For the 2023-2031 housing element cycle, the COG for the Bay Area region allocated 639
19 units to Tiburon. (1 AR 6660.) Out of the 639 units, 193 units are allocated for very low-income
20 households, 110 units for low-income households, 93 units for moderate-income households, and 243
21 units for above-moderate income households. (1 AR 6664.) The statutory deadline for Tiburon to
22 accomplish its housing element update was January 31, 2023. Under State law, jurisdictions that fail
23 to timely obtain HCD’s approval of a housing element are subject to penalties, including the loss of
24 the ability to deny housing development applications on the basis of inconsistency with applicable
25 general plan or zoning code standards (the “builder’s remedy”), the requirement to rezone to allow
26 for more housing on an accelerated timetable, streamlined ministerial review of qualifying housing
27 projects, and potential enforcement actions by the State. (Gov. Code, §§ 65589.5(d)(5),
28 65588(e)(4)(C)(i), 65913.4, 65585(j).)

1 Site H, located at 4576 Paradise Drive, was identified as one such site for new development.
2 It is approximately 9.3 acres in size. (1 AR 06, Ex. A p., 31.) The property is owned by the real party
3 in interest, Sierra Pines Group, LLC (1 AR 34383), which purchased it for \$1.8 million in April 2019
4 (1 AR 34444). Tiburon previously zoned the property as “residential planned development” (“RPD”).
5 (1 AR 7183.) RPD zoning allowed open-space uses and single-family residences without a permit,
6 but prohibited multi-family housing. (Tiburon Code of Ord., § 16- 21.030, Table 2-1.)

7 Tiburon prepared an EIR for adoption of proposed amendments to the General Plan and
8 Housing Element, which included up to 118* Net Units on Site H. (1 AR 896.) (*This is the number
9 of units analyzed in the EIR and is based on the maximum permitted density for the General Plan
10 2040 land use designation.) (*Ibid.*) The Final EIR was certified by Tiburon and on this basis, the
11 current General Plan and Housing Elements were adopted, and the decision to rezone Site H to R-3-
12 10 was approved.

13 Petitioner The Committee for Tiburon LLC (“Petitioner”) seeks a peremptory writ of
14 mandamus compelling Tiburon to set aside its General Plan and current Housing Element, to the
15 extent they designate Site H for very-high-density above-moderate income residential development,
16 and its decision to rezone Site H to R-3-10. The motion is made under Code of Civil Procedure
17 sections 1094.5 and 1085, Public Resources Code sections 21168 and 21168.5, and Government
18 Code sections 65300.5, 65301.5, and 65302(b)(1) on the grounds that (i) Tiburon prejudicially abused
19 its discretion by adopting the General Plan on May 22, 2023, the Housing Element on September 20,
20 2023, and the rezoning decision on December 6, 2023 without complying with CEQA requirements
21 and (ii) Tiburon’s General Plan and Housing Element are internally inconsistent.

22 DISCUSSION

23 ***CEQA Violation***

24 The core of this issue is whether Tiburon violated CEQA when it elected to prepare a
25 “program EIR” and declined to disclose any “site-specific analysis” (1 AR 1880) of the
26 environmental impacts of its decision to designate and zone Site H for very-high-density residential
27 development at up to 118 additional units.

28 *Standard of Review*

1 Petitioner's allegation that Tiburon failed to include sufficient analysis regarding Site H in the
2 General Plan EIR is reviewed under the abuse of discretion standard. (See, e.g., *Stanislaus Natural*
3 *Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 192, *as modified on denial of*
4 *reh'g* (Sept. 6, 1996) ("*Stanislaus*") ["In [CEQA cases brought under Code Civ. Proc., §§ 1094.5 or
5 1085], the issue before the trial court is whether the agency abused its discretion"].)

6 An agency abuses its discretion when it fails to proceed in a manner required by law or when
7 its determination or decision is not supported by substantial evidence. (*Citizens for a Sustainable*
8 *Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App4th 1036, 1045 ("*Treasure*
9 *Island*").)

10 Judicial review of these two types of error differs significantly. The de novo standard is
11 applied when the issue is whether the agency has proceeded in a manner required by law and the
12 substantial evidence standard applies when the dispute centers around the appropriateness of the
13 conclusion reached. (*Treasure Island, supra*, at p. 1045.) Here, the parties disagree over which type
14 of error is at issue and whether the proper standard is de novo review or substantial evidence.

15 In evaluating an EIR for CEQA compliance, a reviewing court must adjust its scrutiny to the
16 nature of the alleged defect, depending on whether the claim is predominantly one of improper
17 procedure or a dispute over the facts. For example, where an agency failed to require an applicant to
18 provide certain information mandated by CEQA and to include that information in its environmental
19 analysis, the reviewing court held the agency "failed to proceed in the manner prescribed by CEQA."
20 (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; see also *Santiago Cnty. Water*
21 *Dist. v. Cnty. of Orange* (1981) 118 Cal.App.3d 818, 829 [EIR legally inadequate because of lack of
22 water supply and facilities analysis].) In contrast, in a factual dispute over "whether adverse effects
23 have been mitigated or could be better mitigated" the agency's conclusion would be reviewed only
24 for substantial evidence. (*Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988)
25 47 Cal.3d 376, 393, *as modified on denial of reh'g* (Jan. 26, 1989) ("*Laurel Heights I*").)

26 This standard was also discussed by the Sixth Appellate District in *California Native Plant*
27 *Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986-987, which concluded as follows:

1 To sum up, the omission of required information constitutes a failure to proceed
2 in the manner required by law where it precludes informed decision-making by
3 the agency or informed participation by the public. We review such procedural
4 violations de novo. By contrast, we review an agency's substantive factual or
5 policy determinations for substantial evidence.

6 (Internal citations omitted.)

7 Here, the Court finds that the gravamen of Petitioner's claims revolves around whether
8 Tiburon failed to proceed in the manner prescribed by law when it declined to include feasible site
9 specific analysis of the reasonably foreseeable impacts of designating Site H for up to 118 additional
10 residential units in the EIR.

11 Was EIR's Failure to Conduct Site-Specific Analysis an Abuse of Discretion

12 As the court in *Laurel Heights I* explained:

13 "The EIR is the primary means of achieving the Legislature's considered
14 declaration that it is the policy of this state to 'take all action necessary to protect,
15 rehabilitate, and enhance the environmental quality of the state. The EIR is
16 therefore 'the heart of CEQA.' An EIR is an environmental 'alarm bell' whose
17 purpose it is to alert the public and its responsible officials to environmental
18 changes before they have reached ecological points of no return. The EIR is also
19 intended 'to demonstrate to an apprehensive citizenry that the agency has, in
20 fact, analyzed and considered the ecological implications of its action.' Because
21 the EIR must be certified or rejected by public officials, it is a document of
22 accountability. If CEQA is scrupulously followed, the public will know the basis
23 on which its responsible officials either approve or reject environmentally
24 significant action, and the public, being duly informed, can respond accordingly
25 to action with which it disagrees. The EIR process protects not only the
26 environment but also informed self-government."

27 (*Laurel Heights I, supra*, at p. 392, internal citations omitted.)
28

1 Rather than focusing on the particular label, the proper inquiry is whether the EIR provides
2 decisionmakers with sufficient analysis to intelligently consider the environmental consequences of a
3 project. (Guidelines, § 15151; see *Treasure Island*, *supra*, 227 Cal.App.4th at p. 1047; *Dry Creek*
4 *Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26 (“*Dry Creek Citizens*
5 *Coalition*”)) [EIR must be “prepared with a sufficient degree of analysis to provide decisionmakers
6 with information which enables them to make a decision which intelligently takes account of
7 environmental consequences.”].)

8 CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate
9 perfection, nor does it require an analysis to be exhaustive. (*Treasure Island*, *supra*, at p. 1046-1047,
10 internal citations omitted.) The determination of EIR adequacy is essentially pragmatic. (*Ibid.*) An
11 EIR must be upheld if it “reasonably sets forth sufficient information to foster informed public
12 participation and to enable the decision makers to consider the environmental factors necessary to
13 make a reasoned decision.” (*Ibid.*)

14 Consequently, the “absence of information in an EIR does not per se constitute a prejudicial
15 abuse of discretion.” (*Ibid.*) Instead, a prejudicial abuse of discretion occurs if the failure to include
16 relevant information precludes informed decision-making and informed public participation, thereby
17 thwarting the statutory goals of the EIR process. (*Ibid.*)

18 In determining whether the absence of information amounted to an abuse of discretion, the
19 court considers the type of EIR at issue.

20 There are two types of EIRs: “program EIRs” and “project EIRs.” (*In re Bay-Delta*
21 *Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143,
22 1169.) The degree of specificity required in an EIR corresponds to the degree of specificity involved
23 in the underlying project. An EIR on the adoption of a general plan need not be as precise as an EIR
24 on the specific projects which might follow. (*Al Larson Boat Shop, Inc. v. Board of Harbor*
25 *Commissioners* (1993) 18 Cal.App.4th 729, 746.)

26 Program EIRs are a type of report prepared for “a series of actions that can be characterized as
27 one large project and are related” in some respect. (Guidelines, § 15168.) A program EIR is
28 appropriate when prepared “[i]n connection with issuance of rules regulations, plans, or other general

1 criteria to govern the conduct of a continuing program.” (Guidelines, § 15168(a)(3).) A program EIR
2 “evaluates the broad policy direction of a planning document, such as a general plan, but does not
3 examine the potential site-specific impacts of the many individual projects that may be proposed in
4 the future consistent with the plan.” (*Treasure Island, supra*, 227 Cal.App.4th at p. 1047.) On the
5 other hand, a “project EIR” is prepared for a construction-level project once specific development
6 plans are available, and “should focus primarily on the changes in the environment that would result
7 from the development project [and] examine all phases of the project including planning,
8 construction, and operation.” (Guidelines, § 15161; *In re Bay-Delta, supra*, 43 Cal.4th at p. 1169.)

9 However, a program EIR intended for use as a first-tier EIR must still comply with CEQA’s
10 standards for an adequate environmental analysis in an EIR for a planning level action. The focus
11 should be placed on secondary effects and the level of detail should correspond to the level of detail
12 of the program that is proposed. (Guidelines, §§ 15146, 15152(b); see *In re Bay-Delta, supra*, 43
13 Cal.4th at p. 1176.)

14 When a lead agency is preparing a first-tier EIR for a broad planning action such as adoption
15 of a general plan, development of detailed, site-specific information may not be feasible. The agency
16 may leave a detailed analysis to later second-tier EIRs prepared for projects that implement the plan.
17 (Guidelines, § 15152(c); See, e.g., *Chaparral Greens v City of Chula Vista* (1996) 50 Cal.App.4th
18 1134; *Koster v County of San Joaquin* (1996) 47 Cal.App.4th 29; *Al Larson Boat Shop, Inc. v Board*
19 *of Harbor Comm’rs, supra*, 18 Cal.App.4th 729; *Rio Vista Farm Bureau Ctr. v County of Solano*
20 (1992) 5 Cal.App.4th 351.) Tiering may be used to defer analysis of environmental impacts and
21 mitigation measures to later phases of a program when impacts or mitigation measures are specific to
22 later phases and are not determined by the first-tier approval decision, as long as deferral does not
23 prevent adequate identification of significant effects of the planning approval at hand. (*In re Bay-*
24 *Delta, supra*, 43 Cal.4th at 1169-1170; *Vineyard Area Citizens for Responsible Growth v City of*
25 *Rancho Cordova* (2007) 40 Cal.4th 412, 431 *as modified* (Apr. 18, 2007) (“*Vineyard Area*”); *Town*
26 *of Atherton v California High-Speed Rail Auth.* (2014) 228 Cal.App.4th 314, 346; *California Clean*
27 *Energy Comm. v City of Woodland* (2014) 225 Cal.App.4th 173, 200.)

1 “However, as the Guidelines explain: ‘Tiering does not excuse the lead agency from
2 adequately analyzing reasonably foreseeable significant environmental impacts of the project and
3 does not justify deferring such analysis to a later tier EIR or negative declaration.’” (*Vineyard Area*,
4 *supra*, 40 Cal.4th at p. 431, internal citations omitted.) Tiering is properly used to defer analysis of
5 environmental impacts and mitigation measures to later phases when the impacts or mitigation
6 measures are not determined by the first-tier approval decision but are specific to the later phases.
7 (*Ibid.*) For example, to evaluate or formulate mitigation for “site specific effects such as aesthetics or
8 parking” may be impractical when an entire large project is first approved; under some circumstances
9 analysis of such impacts might be deferred to a later tier EIR. (*Ibid.*) But the future water sources for
10 a large land use project and the impacts of exploiting those sources are not the type of information
11 that can be deferred for future analysis. (*Ibid.*) An EIR evaluating a planned land use project must
12 assume that all phases of the project will eventually be built and will need water, and must analyze, to
13 the extent reasonably possible, the impacts of providing water to the entire proposed project. (*Ibid.*)

14 Nor are CEQA’s information disclosure requirements satisfied by the simple assertion that
15 information will be provided in the future. (*Vineyard Area Citizens, supra*, 40 Cal.4th at 431; *Santa*
16 *Clarita Org. for Planning the Env’t v County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.)

17 A significant environmental impact is ripe for evaluation in a first-tier EIR when it is a
18 reasonably foreseeable consequence of the action proposed for approval and the agency has
19 “sufficient reliable data to permit preparation of a meaningful and accurate report on the impact.”
20 (*Los Angeles Unified Sch. Dist. v City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028; see
21 *Vineyard Area, supra*, 40 Cal.4th at 431 [analysis of future water sources for large community plan
22 that would be developed over several decades and environmental effects of exploiting those water
23 sources are not type of information that may be deferred for later analysis].)

24 The sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.
25 (*Treasure Island*, 227 Cal.App.4th at p. 1051.)

26 I. *Ripeness in General*
27
28

1 In *Laurel Heights I*, the court rejected as a matter of law the agency's contention that the EIR
2 did not need to evaluate the impacts of the project's foreseeable future uses because there had not yet
3 been a formal decision on those uses. (*Laurel Heights I, supra*, at pp. 393–399.) An EIR evaluating
4 a planned land use project must assume that all phases of the project will eventually be built and will
5 need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the
6 entire proposed project. (*Vineyard Area, supra*, 40 Cal.4th at pp. 429-431 [Nor can the unanalyzed
7 impacts of unknown water sources be mitigated by providing that if water proves unavailable, the
8 project's future phases will not be built]; *Stanislaus, supra*, 48 Cal.App.4th at pp. 199–200 [To defer
9 any analysis whatsoever of the impacts of supplying water to this project until after the adoption of
10 the specific plan calling for the project to be built would appear to be putting the cart before the
11 horse; the project was going to need water from some source or sources].)

12 “Drafting an EIR ... necessarily involves some degree of forecasting. While forecasting the
13 unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it
14 reasonably can.” (*Stanislaus, supra*, 48 Cal.App.4th at p. 206, internal citations omitted.) For
15 example, the burden of identifying likely water sources for a project varies with the stage of project
16 approval involved; the necessary degree of confidence involved for approval of a conceptual plan is
17 much lower than for issuance of building permits. (*Vineyard, supra*, 40 Cal. 4th at p. 434.) The
18 ultimate question under CEQA is not whether an EIR establishes a likely source of water, but
19 whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project.
20 (*Ibid.*) If the uncertainties inherent in long-term land use and water planning make it impossible to
21 confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the
22 degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including
23 alternative water sources and the option of curtailing the development if sufficient water is not
24 available for later phases—and discloses the significant foreseeable environmental effects of each
25 alternative, as well as mitigation measures to minimize each adverse impact. (*Ibid.*)

26 II. *Ripeness as to Site H*
27
28

1 As the Draft EIR stated, it “analyzes potential impacts to the environment associated with
2 implementation and buildout of the General Plan 2040, which includes future development projects,
3 infrastructure improvements, and the implementation of policies and actions included in the General
4 Plan 2040. These General Plan 2040 components are described in greater detail below.” (1 AR 888.)

5 With respect to Site H, the components were described in greater detail as follows:

6 Site Address: 4576 Paradise

7 Existing Use: 2 residential units

8 Existing GP: PDR

9 Existing Zoning: RPD

10 Proposed GP: VH

11 Proposed Zoning: R-3

12 Parcel Size (Acres): 9.575

13 Net Units: 118 (*This is the number of units analyzed in the EIR and is based on the maximum
14 permitted density for the General Plan 2040 land use designation)

15 Net Nonresidential SF: 0

16 (1 AR 896.)

17 The Draft EIR further explained that it “is a program-level EIR and does not evaluate
18 individual projects that may be allowed under the General Plan 2040 at a site-specific level.” (1 AR
19 897.)

20 It concludes that this is appropriate because “the General Plan 2040 establishes policies, goals
21 and guidelines, and describes potential development that may or may not be built on any particular
22 site, environmental review will necessarily be general.” (*Ibid.*)

23 It goes on to explain:

24 “The General Plan 2040’s inventory of residential sites fulfills a State-
25 mandated requirement to ensure that the Town’s RHNA can be
26 accommodated. In other words, the General Plan 2040 identifies enough
27 land designated at appropriate densities to accommodate the RHNA
28 allocation and ensures the Town will rezone its housing sites consistent

1 with General Plan 2040. However, this Inventory does not include all
2 potential development sites within Tiburon, and does not mean that sites
3 identified for residential development will be developed at the allowable
4 densities. In addition, information about the design and placement of
5 buildings on the sites will not be available unless/until a specific
6 development is proposed.

7 Future development proposals will be reviewed to determine whether
8 their impacts fall within the scope of analysis in this Draft EIR or if
9 additional site-specific environmental review will be required because
10 new potentially significant impacts would result. As provided for in
11 CEQA Guidelines Sections 15152 and 15385, any subsequent
12 environmental document that might be required for a development
13 project could “tier” from this Draft EIR and focus its analysis on any new
14 or more severe significant impacts. A future project could be ministerial,
15 requiring no discretionary action or may require review and approval by
16 the Planning Commission and/or the Town Council, and other agencies
17 as needed.”

18 (*Ibid.*)

19 Here, Tiburon adopted an EIR in support of amending its General Plan and zoning code to
20 pave the way for building a specific range of housing units (93-118) on Site H. Petitioner argues that
21 at the time of the adoption, there were reasonably foreseeable impacts of this development that were
22 feasible to address in the EIR, and the failure to do so amounted to a failure to proceed in the manner
23 required by law.

24 This Court agrees.

25 For example, Respondent was aware of, as of at least 2019, issues relating to environmental
26 issues, access, utilities, fire, and landslides on Site H. (See 2 AR 4573-4574 [describing Town’s
27 objections to potential annexation/development of Site H, citing very old storm drain pipes under the
28 Paradise Drive that would need to be repaired or replaced; that Paradise Drive would need to be

1 widened to meet current standards; that Paradise Drive would need to be repaved; that there are
2 multiple creeks on the property which triggers biological review; that the site is both High and Very
3 High Fire Risk; that there is landslide potential on parts of the site; that portions of the site have level
4 4 seismic shaking amplification; that most of the site has highly expansive soil; and that the existing
5 pump station is insufficient to serve additional connections.) Many similar objections were also cited
6 when Tiburon declined to include Site H in the initial draft Housing Element. (1 AR 4804, 5301.)
7 These issues were therefore foreseeable based on the information the Town had about the project
8 (increasing allowable density on Site H to permit up to 118 additional units) at the time the EIR was
9 drafted.¹

10 Many of these issues were also feasible to address at the time of the draft and final EIRs. (See
11 Respondent Opp. at p. 28:18-29:11.) With its opposition, Tiburon appears to attempt to show that it
12 did consider site accessibility concerns, biological streams, utilities, geologic and seismic hazards at
13 Site H by citing to post-EIR analyses contained in Volume 2 of the Administrative Record (citing 2
14 AR 814-815, 901, 903-934, 2013, 2014, 2016, 5093- 5111, 5976). Respondents Each of these
15 documents is dated *after* the Final EIR (dated May 5, 2023), the public hearing to receive public
16 comments on Final EIR (May 10, 2023), and after the Final EIR was Certified (May 22, 2023).
17 Accordingly, they *cannot* show that the EIR contained information which would rebut the “failure to
18 include information” claims by Petitioner. They do, however, demonstrate that some site specific
19 analysis was feasible at the time the Final EIR was completed. (Most of the documents were
20 generated in or around August 2023, only 2 months after the Final EIR was certified.)

21 In oral argument Respondents argued that notwithstanding the omission of some foreseeable
22 impacts, per *Neighborhoods for Smart Rail v. Exposition Metro Line* (2013)57 Cal.4th 439, 463, this
23 court could find there was no abuse of discretion, as these omissions were insubstantial or were
24 addressed at a later date. The court disagrees. As set forth above, these impacts were foreseeable at
25 the time of the draft EIRs and therefore, should have been included in the EIR prior to certification.

26
27
28 ¹ The amendment of a general plan is a “project” within the meaning of CEQA’s definition of that term. (*Stanislaus*,
supra, 48 Cal.App.4th at p. 202.)

1 Although the Court is sympathetic to Tiburon's legal constraints which required it to
2 designate sites for housing development by a date certain, and the ramifications of not meeting the
3 deadline to do so, it cannot disregard the applicable CEQA requirements. An EIR is intended " 'to
4 demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the
5 ecological implications of its action.' Because the EIR must be certified or rejected by public
6 officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know
7 the basis on which its responsible officials either approve or reject environmentally significant action,
8 and the public, being duly informed, can respond accordingly to action with which it disagrees. The
9 EIR process protects not only the environment but also informed self-government." (*Laurel Heights*
10 *I, supra*, at p. 392, internal citations omitted.)

11 The Court finds that CEQA was not scrupulously followed in this case and that Tiburon failed
12 to proceed in the manner prescribed by law when the EIR failed to include feasible analysis of the
13 reasonably foreseeable impacts of approving Site H for development of an additional 93-118 units.

14
15 NOW, THEREFORE, IT IS ORDERED that:

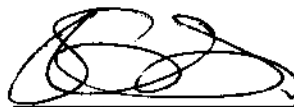
- 16 1. A peremptory writ of mandamus shall issue from the Court, setting aside and decertifying
17 the Final Environmental Impact Report ("Final EIR") with respect to Site H. The Final
18 EIR will remain certified in all other respects.²
- 19 2. Because approval of the General Plan and Housing Element (to the extent they designate
20 Site H for very-high-density above-moderate-income residential development), as well as
21 the decision to rezone Site H to R-3-10 rely on the set aside portions of the Final EIR, they
22 too shall be set aside as to Site H only.
- 23 3. To the extent Respondent seeks to move forward with Site H as a potential site,
24 Respondent shall redraft and recirculate for review and public comment a focused EIR
25 which analyzes the reasonably foreseeable impacts that development of up to 118
26 additional residential units on Site H would have, to the extent feasible.

27
28 ² A trial court has authority to partially decertify an EIR. (*Ctr. for Biological Diversity v. Dep't of Fish & Wildlife* (2017)
17 Cal.App.5th 1245, 1253.)

- 1 4. The writ shall further command that Respondent's actions shall be considered in the light
2 of this Court's Order.
- 3 5. As to entitlement to attorney's fees, Petitioner may file such a motion to be placed on the
4 regular law and motion calendar, such that Respondent shall have the ability to respond.
- 5 6. This Court will retain jurisdiction over Respondent's proceedings by way of a return to
6 this writ until the Court has determined that Respondent has complied with CEQA.
7 Respondent must file a return to this writ no later than May 16, 2025.

8

9 Dated: September 19, 2024



Sheila Shah Lichtblau
Judge of the Superior Court