

June 30, 2011

Patricia DuMont  
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Northern Service Center  
One Capitol Mall – Suite 410  
Sacramento, CA 95814



Subject: Draft Environmental Impact Report: Trail Change in Use and Improvement Project, Samuel P. Taylor State Park

Dear Ms. DuMont:

Marin Conservation League (MCL) appreciates that the Department of Parks and Recreation (DPR, or Department) has prepared a Draft Environmental Impact Report for this project and has extended the comment period on the subject DEIR to July 11, 2011 (revised Notice of Availability, June 20, 2011). The purpose of this letter is to submit comments on the public process through which the DEIR was made available for review, and on the adequacy of DEIR.

**1. DPR failed to provide 30 days for response from responsible and trustee agencies to the Notice of Preparation before circulating the draft EIR for public review, and did not include agency responses in the DEIR.**

CEQA Guidelines Section 15082 (a) requires the lead agency to send the Notice of Preparation (NOP) to the Office of Planning and Research and each responsible and trustee agency that an EIR for a project will be prepared. Each responsible and trustee agency has 30 days to respond. Section 15082 (a)(4.) states that “. . . A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired. The Notice of Availability of the DEIR is dated April 19, 2011, just 19 days after the NOP was filed. According to these dates, DPR failed to allow the required 30 days for review. If DPR requested shortened Clearing-house review pursuant to Appendix K of the CEQA Guidelines, the record provided to the public does not show this. Nor does the project present exceptional circumstances nor meet the five criteria listed in Appendix K that might justify shortened review.

The DEIR on Page 11 states that a copy of the NOP, distribution list and written responses to the NOP are contained in Appendix B. In fact, a copy of the NOP, dated April 1, 2011, is found in Appendix A, not Appendix B, of the DEIR, along with the list of recipients. However, the DEIR does not provide the written responses from the recipient responsible and trustee agencies. In the DEIR on Page 52, recommendations of the Regional Water Quality Control Board (RWQCB) are referenced, but these are not provided to the reader in the DEIR. We can only assume that RWQCB responded to the NOP with specific recommendations concerning the project.

**2. DPR failed to inform the public that the DEIR was available for review in a timely fashion.**

MCL has already informed DPR by letter (May 20, 2011) that members of the public, including MCL, did not receive notice that a DEIR was being prepared nor learn until May 16, indirectly, that

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a DEIR had been completed and was available for public review on April 19. In consideration of MCL's well-documented interest in this project, it is surprising that DPR, the Marin District, or the Northern Service Center made no attempt to communicate with MCL and other interested parties, before, during, or on completion of the DEIR.

Section 15087 (a) of the Guidelines directs the lead agency to provide public notice of the availability of a draft EIR by several means: publication at least one time by the public agency in a newspaper of general circulation; posting of notice by the public agency on and off the site in the area where the project is to be located; posting in the office of the county clerk. . . for a period of at least 30 days. MCL requests a record of all such postings of the availability of the subject DEIR.

### **3. DPR provided erroneous and/or incomplete information on two Notices of Availability**

The Notice of Availability, dated April 19, 2011, states that "the Initial Study/Mitigated Declaration (sic) is being circulated for public review and comment for a period of 45 days, beginning April 19, 2011. Later in the same notice, reference is again made to "copies of the Initial Study/Mitigated Declaration. . ." A second Notice of Availability dated June 20, 2011, extended the deadline for public comment to July 11, 2011. This notice presents as the Subject: "Notice of Availability and Intent to Adopt an Initial Study/Negative Declaration for the proposed Water System Improvement Project." The misidentification of the subject in the second Notice and the consistent misidentification of the type of document available for review are misleading and inexcusable errors.

### **4. DEIR does not acknowledge the background or that the project description has shifted over time.**

The project – "Bill's Trail Change in Use" should be viewed in the broader context of efforts to implement DPR policy to expand multiuse trails in the Marin State Parks, and not simply as an isolated project. MCL recognizes that California's increasing population has created, and continues to create, a demand for differing types of trail uses. The most rapidly growing user group consists of mountain bikers, whose numbers have increased exponentially in recent years. These growing numbers have been supported by aggressive lobbying by the mountain bike industry and the user group to all public land managers to expand trail access for mountain bikes. As a consequence, DPR 2002 Trails Plan established as one of its 12 Goals: *Provide the maximum opportunities for the public use of trails by encouraging the appropriate expansion of multi use trails.* On several occasions, the Marin District has attempted to implement this policy. China Camp State Park is a prime example of implementing this policy in the Marin District.

The DEIR provides only one brief paragraph on this background on Page 18. The Project Objectives on Page 21 only partially reflect the change-in-use "project" in the Marin District that has evolved since 2006, when Access4bikes presented a proposal to the Superintendent to open four trails to mountain bikes. Two trails were in Mt. Tamalpais State Park – Easy Grade and McKennan; one was at Olompali State Historic Park; and one was in Samuel P. Taylor State Park – Bill's Trail. In 2006, the District hosted workshops on the proposal and undertook study of the feasibility of changing the use of the four trails to accommodate mountain bikes. All four trails had (have) substantial environmental constraints for multi-use.

Focusing on Bill's Trail, Access4bikes' proposal offered the following justifications for the change

in use:

- Allow multi-use on Bill's Trail
- Open trails to horses and bicycles previously closed
- Allow legal horse use opportunity for a loop trail while staying at the horse camp
- Opportunity to test on a one-year trial basis bicycles and hikers use on odd-numbered days, and horses and hikers on even-numbered days ("park staff will enforce this regulation"); evaluate to see if successful
- Provide a safer route to bicyclists traveling through the park on Mt. Barnabe Fire Road.

Access4bikes did not consult with the equestrian community before offering the proposal. The Marin District received letters of concern over the proposal from equestrians who have maintained the horse camp in Devil's Gulch for many years, citing the unsafe conditions of mixing bicycle use with hikers and equestrians on a narrow trail that traverses unusually steep slopes. The District also received letters from MCL as well as from Jean Berensmeier, past president of MCL, who, as a long-time resident of the eastern slope of Mt. Barnabe, is particularly knowledgeable of trail use in the area. Ms. Berensmeier noted that Bill's Trail is neither a necessary nor safer route through the Park, given steep gradients on Mt. Barnabe Road and the availability of the level Cross Marin Trail. Without exception, all correspondents opposing the conversion questioned how an odd/even day regimen to separate users could be enforced with limited staff resources.

Throughout 2008, District staff conducted surveys of Easy Grade Trail (Mt. Tamalpais SP) and Bill's Trail (as well as McKennan and Olompali Trails). In 2009, the District fully intended to approve the Bill's Trail project under an exemption from CEQA, describing it as "minor alterations . . . to accommodate all users", install 100 pinch points, "routine maintenance," and a "pilot program . . . establishing alternating day use schedule. . ." (Notice of Exemption, dated May 21, 2009). District staff filed the NOE under the exemption classes of minor alteration to land, and information collection (CEQA Guidelines Sections 15304 and 15306). Marin Conservation League challenged the NOE, and DPR rescinded both the project and the NOE.

The *current* project description in the DEIR, Page 39, is summarized as follows: in addition to trail maintenance and installation of pinch points, substantial repair to bridges, gravel surfacing, removal of non-native eucalyptus, signage to "inform user groups how to have a safe and fun trail experience without conflict," and "improve and rehabilitate limited sections of Gravesite Fire Road" (Figure 2.3 shows that sections of Gravesite Road would be not only "improved and rehabilitated" but also rerouted and converted from road to four-foot wide trail.)

MCL contends that the "project," whose leading objective is to *meet departmental policy to provide a multiuse trail for mountain bikes* (DEIR Page 51), is not stable and has shifted since 2006 from a "proposal" with four alternative locations, to a singular focus on Bill's Trail. It has dropped the element of a "pilot program" to test alternate day use that was part of the 2009 project, and added improvement and reconfiguration (rehabilitation) of Gravesite Road to the current DEIR project. These shifts have constrained the range of alternatives considered in the DEIR: no alternate locations are considered, although four were originally proposed and no doubt others exist in the Marin District state parks; no review of alternative programs or policies to separate users on a multi-use trail, even on a pilot basis, is included. The only alternatives discussed other than the mandatory "no project" are alternative improvement and rehabilitation actions that are deemed

infeasible because they do not meet the project objective of multi-use (see also Comment 6., below).

**5. Existing conditions described in the DEIR do not reflect changes to the trail since its construction in the 1970s and, as a consequence, impacts are understated.**

Bill's Trail is described as having the constructed width of a 48" trail, the standard for multi-use trails in State Parks (DEIR, Page 39), and as having "*average 48" trail edge*" (Emphasis added; DEIR, Page 49); "Aside from normal sloughing on the inside hinge and narrowing of the tread with vegetation overgrowth, Bill's Trail has aged relatively well over the years." In a reconnaissance of the trail in June, 2009, Clearwater Hydrology described the trail as follows: "... narrower (than 4-ft-wide) trail width, typically 2-3 feet, but occasionally less, currently prevails over much of the trail length. These measured widths do not include the existing slough fans or the vegetated outer edges and/or minor fill berms."

CEQA Guidelines, Section 15125 (a) state: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, *as they exist at the time of the Notice of Preparation*" (emphasis added). MCL contends that Clearwater Hydrology's description more accurately captures the current condition of Bill's Trail (NOP, April 1) than the DEIR description. As a consequence, the DEIR understates the structural changes that will be required to restore the trail to Class 1 standard of 48". (It also understates the impacts of hauling and installing up to 200 logs or rocks for the specified 100 pinch points, bridge reconstruction, and other rehabilitation of the trail in a working situation in which steep upslope and down slope do not allow off-trail staging areas or even equipment turn around.)

Converting Bill's Trail to a Class 1 trail will involve far more significant impact to the environment than suggested by the term "... 'catch up' with deferred maintenance that has narrowed the trail, reduced drainage function, allowed exotic species to flourish and reduced user safety" (Detailed Project Description, DEIR Page 39, Para. 2). Deferred maintenance has not reduced the safety of existing users, for whom the existing condition poses no safety issues. Relatively minor 'catch up' maintenance could correct minor problems of wear. It is the addition of an indeterminate number of bikes to the trail that does warrant concern for the safety of future users and serves to justify the need for significant environmental disruption and consequent impacts to almost four miles of trail alignment and adjacent habitats.

**6. Alternatives are unreasonably limited**

The objectives offered by the DEIR to dictate selection of alternatives to the project are: (1) meet departmental policy to provide a multiuse trail, (2) provide additional opportunities for mountain bikers, (3) reduce the threat of illegal trail use, (4) reduce the potential for illegal trail development in other parts of the park, and (5) reduce the pressure on DPR to create use-specific new trails in pristine areas. Based on these five objectives, the DEIR offers only one "alternative"—the project as presented in the DEIR—plus the required No Project Alternative! On the basis that they would not meet these objectives, the DEIR rejects as infeasible four alternatives: maintenance to Bill's Trail, with and without maintenance to Gravesite Fire Road; Exclude Equestrian Use and maintain to a Class II trail standard for hikers only; and Close and Rehabilitate Bill's Trail.

Missing from the range of alternatives is any consideration of a less sensitive location for a

multi-use trail (four trails were originally considered as candidates in 2006), such as a fire road that could be improved. Missing also is any rigorous analysis of alternative policy or programmatic means of separating users, or any analysis of enforcement alternatives as a necessary tool to address objectives 3 and 4, which involve illegal trail use and trail development.

The Environmentally Superior Alternative identified in the DEIR is, in fact, not environmentally superior among the alternatives; it does not reduce or eliminate impacts to the greatest degree, even though it meets the basic project objective. An “environmentally superior alternative” that allows public access to the Mt. Barnabe/Devil’s Gulch area while ensuring adequate protection of natural or cultural resources could consist of minimum rehabilitative measures sufficient to retain Bill’s Trail in improved Class II condition, and rehabilitation of Gravesite Road to reduce sedimentation to Devil’s Gulch from that source and improvements to Mt. Barnabe fire road as a connection already open to bicycle use.

### **7. Aesthetics/Visual Resources analysis is incomplete and conclusory**

The analysis of impacts of the project on the visitor experience is confusing and incomplete. After describing the conditions of visitor experience (in using the trail) in terms of visual and sound qualities, the DEIR lists four thresholds of significance against which to evaluate impacts. Only one is applicable to this project during the construction period, and only marginally applicable following construction – i.e., over the long-term. Threshold of Significance AES 3 states: “Substantially degrade the existing visual character or quality of the site and its surroundings” (Page 58). The Section goes on to describe the Methodology used in the DEIR, primarily in terms of views and “visual sensitivity” of the viewer. Para. 2 states that “. . .the potential for change in visitor experience was evaluated by identifying projected increases or decreases in recreational trail use on Bill’s Trail and determining whether these projected changes would affect the desired visitor experience and result in greater safety concerns.” *Note that this is the only section in the DEIR that suggests that there may be increases or decreases in visitor use from converting the trail to multi-use, and here it is mentioned only in relation to visual perceptions.*

In the ensuing discussion under Impact Statement AES 3: **“Construction activities associated with the proposed project could potentially degrade the existing visual character or quality of the site and its surroundings,”** there is no mention of increased recreational trail use (or the unlikely possibility of decreased use) or whether increased use would affect the desired visitor experience or result in greater safety concerns. Any concerns about safety are dismissed by stating that the trail surface would be improved, with more level surface, “several” pinch points would be installed to slow ( bike) traffic, lines-of-sight would be improved, and repaired surface and improved drainage would provide a stable, consistent trail tread of safe width. None of these design features are necessary for the safety of existing users. Apparently the intent of the DEIR is to reassure the hiker or equestrian that, with these features installed, bicycles coming down the trail will be under full control, and the visitor experience will be one of feeling safe; –that is, no impact on perceptions of safety will result from increased use.

In failing to evaluate the impact of increased recreational trail use as promised in the Methodology section, the DEIR is fundamentally flawed and conclusory in stating: “The long term impact on visitor experience would be *local, beneficial, and moderate*”.



The failure to acknowledge and evaluate an increase in use flies in the face of intense promotion across the country of Bill's Trail by mountain bike associations ("I'm urging mountain bikers across the country to send comments in support of this project," says IMPA Executive Director Mike Van Abel. "It's hard to imagine a more important location than Marin, where mountain bikers have worked incredibly hard to *regain* [emphasis added] access to the very trails that helped bring our sport into the world." [May 17, 2009. Examiner.com] "A successful opening of Bill's Trail will set the stage for bicycle access to several other single-track trails in Marin. . ." [May 28, 2009. BikeRadar.com])

No evidence is given that the long-term impact on current and future non-bicycle users will be "beneficial" to their experience on the trail. Rather, the addition of bicycles, whose numbers have not been estimated or evaluated in the DEIR, clearly will increase use of the trail and will dramatically change the existing visitor experience that is described on Page 57 of the DEIR as ". . . peaceful quiet of the wind whispering through the trees." Bicycles are quiet, but their motion through the environment is hardly comparable to wind whispering through the trees!

#### **8. Biological Resources analysis offers no real protection to special status species and fails to discuss impacts to native wildlife species**

Six thresholds of biological significance are listed in the DEIR, based on Appendix G and Section 15065 of the CEQA Guidelines. Two are of particular interest: BIO-1 (Have a substantial effect on species identified as a candidate, sensitive or special status species); and BIO-4 (Interfere substantially with movement of any native species or migratory fish or wildlife species. . .).

BIO-1. Among the invertebrate, fish, amphibian, bird and mammal species listed as having special status in Appendix B, the project area holds suitable breeding and/or foraging habitat for 19 species. Taken together, these are just one indication of the extraordinary biological richness of the area through which Bill's Trail passes. For numerous species, breeding season extends from February to the end of August or mid-September and imposes restrictions on construction activities during this period. In contrast, the optimum dry construction season lasts typically from April to October 31. Standard Project Requirements for each of the special status species in Table 2.6.1 would allow project activities to proceed even during this sensitive breeding season: "if project activities must be conducted during breeding season"; and, "if construction-related activities must be scheduled during breeding season." It is questionable that a biologist will be present throughout the construction to relocate individuals if necessary, or to ensure that noise-generating equipment above ambient levels would not occur within a ¼-mile radius of a breeding pair of Northern spotted owl, for example. The apparent protections given in Table 2.6.1 as "standard project requirements" can be easily overridden, so it is impossible to say with assurance that, even with these requirements in place, impacts will be less than significant.

BIO-4 threshold ("substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites" is not discussed at all in the DEIR). That is, there is no description of common wildlife that may inhabit the project area, or discussion of whether their movement patterns may be impacted by widening of the trail or by increased use. Bill's Trail was originally constructed with a 48" tread in the 1970s. Since that time, the effective width of the track has narrowed to 2 to 3 feet or less with sloughing and vegetative cover. Slow moving animals

– e.g., amphibians, reptiles, and small rodents – will be particularly vulnerable to exposure to both predation by other animals and road-kill by bicycles if the trail is restored to full 48' width between pinch points.

**9. Hydrology and Water Quality Standard Project requirements are not supported in the DEIR text**

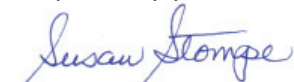
The DEIR on Page 29 lists the elements of Standard Project Requirement HYDRO 1: Erosion, Sediment Control, and Pollution Prevention. Included among the elements is the statement that "Long term revegetation BMPs will be guided by the Project Revegetation Plan (see Bio 10, Revegetation Plan)". There is no "BIO 10" in the Biological Resources Section (which only goes to BIO-6). Other mention of revegetation occurs on Page 29: Standard Project Requirement GEO 1 Best Management Practices: "Where the ground is not mulched, native vegetation shall be planted;" and on Page 30: "After grading is complete the stored material will be spread over disturbed areas intended for revegetation as identified in the Project Revegetation Plan." The DEIR does not provide the referenced Revegetation Plan.

**In conclusion,** MCL finds incomplete analyses and omissions, careless errors, no real alternatives, understatement of impacts, and conclusory statements in this DEIR. Above all, the DEIR makes no attempt to project the increase in use or evaluate the resultant impacts on natural resources and safety of other users that would inevitably follow expanding and reconfiguring Bill's Trail to permit use by mountain bikes.

The Parks Trail Plan (2002), in its preface to the Goal of expanding multi-use trails acknowledges: *"While there has been some integrating or combining of different recreational user needs on individual trails, the efforts have not been universally successful."* The DPR should consider its own cautionary statement carefully before pursuing the Bill's Trail project further.

If you have questions, please address them to Nona Dennis, Vice President, at 415-485-2657

Respectfully yours,



Susan Stompe  
President