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June 22, 2009

**Via Facsimile, U.S. Mail & Email**

Kathryn Tobias  
Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, California 94296-0001  
Facsimile: (916) 653-1819  
Email: ktobias@parks.ca.gov

Re: Bill's Trail in Samuel P. Taylor Park

Dear Ms. Tobias:

This firm represents Marin Conservation League in connection with the Department of Parks and Recreation's ("State Parks") project to modify and expand the use of Bill's Trail in Samuel P. Taylor Park in Marin County ("Bill's Trail Project" or "Project"). The purpose of this letter is to follow up on our telephone conversation of June 8, 2009 and my email to you of the same date (see attached). As I indicated, my client would like to resolve its concerns regarding CEQA compliance for this Project without filing litigation; MCL has a longstanding, positive relationship with State Parks, and is considering court action against the agency only as a last resort. Inasmuch as the statute of limitations for any CEQA lawsuit would run on June 26, we urge State Parks to let us know by close of business on Tuesday, June 23, whether the agency will enter into a tolling agreement to facilitate such a resolution. Due to the impending close of the statute of limitations period, our client has no alternative but to file a legal challenge if we cannot reach such an agreement.

We appreciate that State Parks has finally released some of the documents that we and our client requested relating to the Bill's Trail Project. However, a review of these documents, together with our own investigation of the issues, only deepens our concern that State Parks erred in relying upon CEQA exemptions to approve this Project.

To begin with, according to our legal research, neither the Class 4 nor the Class 6 exemption could apply to this Project. It is undisputed that the Project includes not merely an alteration in the condition of land, but also a significant change in use of the land. Changes in use do not fall within the Class 4 exemption as a matter of law. *See Myer v. Bd. of Supervisors of Santa Clara County* (1976) 58 Cal.App.3d 413, 423. State Parks' reliance on the Class 6 exemption is even more far-fetched: the "experimental management" and "data collecting" aspects of this Project will not lead to a future approval by the Department, but rather are an integral part of a project that is *already* approved. In such a circumstance, the Class 6 exemption is simply unavailable. *See Guidelines* § 15306.

Even if the Class 4 and Class 6 categorical exemptions were available, they cannot be used when a project is located in an area where it may impact an environmental resource of critical concern (*Guidelines* § 15300.2(a)), or when there is a reasonable possibility of a significant environmental effect due to unusual circumstances (*Guidelines* § 15300.2(c)). In the present case, the Department appears to have overlooked evidence indicating that these "exceptions to the exemptions" apply to the Bill's Trail Project.

MCL is particularly concerned that implementation of the Project could impact Devil's Gulch Creek, which flows in the valley below the hill on which Bill's Trail lies. Devil's Gulch Creek is a "designated, precisely mapped . . . resource of . . . critical concern" for purposes of *Guidelines* § 15300.2(a)), due to its designation as critical habitat for two species listed under the federal Endangered Species Act -- the Central California Coast Steelhead and Central California Coast Coho Salmon. Furthermore, Devil's Gulch Creek flows into Lagunitas Creek, which is also listed as critical habitat for both species. Critically, Bill's Trail crosses a number of drainages that flow directly into Devil's Gulch Creek and is upslope and in the watershed of both creeks. Our investigation indicates that erosion from the Project—both from its construction and from the change in use—could lead to increased sedimentation of the creeks, impairing this critical habitat area.

In addition, we note that the Department has approved various mitigation measures to reduce or minimize the environmental and safety impacts of the Project. For example, the Department plans to effectuate seasonal closure of Bill's Trail for resource management, and to enter into agreements with user groups to address trail maintenance and safety issues. The Department's approach in this regard violates CEQA: if a project includes mitigation measures, an agency may not approve the project on the basis of a

Ms. Kathryn Tobias  
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categorical exemption. *See Salmon Protection and Watershed Network v. County of Marin* (2005) 125 Cal.App.4th 1098, 1007. The basis for this rule is straightforward—if a project requires mitigation to avoid or minimize environmental effects, then that mitigation must be subject to scrutiny by the public through the process that CEQA provides. *Id.*

Given that a project determined to be within a categorical exemption is excused from any further compliance with CEQA, courts “construe the exemptions narrowly in order to afford the fullest possible environmental protection.” *See, e.g., Azusa Land Reclamation Co., Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1193-94; “[E]xemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language.” *Save Our Carmel River v. Monterey Peninsula Water Mgmt.* (2006) 141 Cal. App. 4th 677, 697. Thus, only “the clearest cases of categorical exemptions” will avoid environmental review. *Id.* This is not such a case.

We hope that the above discussion of CEQA’s application to this Project enhances your understanding of our client’s concerns with the approval of the Bill’s Trail Project. Again, we urge State Parks to agree to toll the statute of limitations, so that we can work together in an attempt to resolve these issues outside of court.

Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Rachel B. Hooper

Enclosure

cc: Nona Dennis, Marin Conservation League

## Rachel B. Hooper

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**From:** Rachel B. Hooper  
**Sent:** Monday, June 08, 2009 4:10 PM  
**To:** ktobias@parks.ca.gov  
**Subject:** Bill's trail

Kathryn,

Thanks for speaking with me today about the Notice of Exemption pertaining to the "Bill's Trail Modifications." I just wanted to follow up on your offer to make available your agency's evaluation form for the project. You mentioned it might be on DPR's website, but I was unable to locate it there. I would greatly appreciate reviewing that form as soon as possible, so if you could email or fax it to me, that would be very helpful. My fax number is 415-552-5816. (It would also be very helpful to see the trail use survey that State Parks relied on for this project.)

Thanks also for considering our request for a tolling agreement relating to CEQA litigation challenging the NOE. As I mentioned, this would enable our clients to review the pertinent agency documents, and also have a discussion with State Parks regarding the underlying substantive issues. Since speaking with you, I learned that on April 9, Jennifer Comilang had mentioned to Roger Roberts of the Marin Conversation League that State Parks was planning to set up a meeting of "stakeholders" in June, to discuss the proposed project and the review process going forward. My clients would welcome such a meeting. Again, I would urge your agency to consider a tolling agreement to facilitate possible resolution of the NOE issues without resort to litigation.

Best regards,

Rachel