

**PARADISE CAY HOMEOWNERS' ASSOCIATION
P.O. BOX 652
TIBURON, CA 94920**

Date: 26 October 2005

To: Mr Tim Haddad
Environmental Coordinator
Marin County Community Development Agency

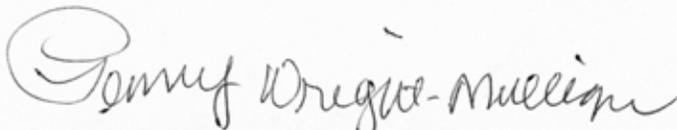
From: Penny Wright-Mulligan, Co-President,
Paradise Cay Homeowners' Association
138 Trinidad Drive
Paradise Cay
Tiburon, CA 94920
Tel. (day): 415-601-8191
E-mail: p.mulligan@comcast.net

Subj: Countywide Plan Update EIR Scoping Hearing
Wednesday, October 26, 2005
6:00 pm-8:00 pm
3501 Civic Center Drive, Room #328
San Rafael, California

Sir:

The residents of the Paradise Cay subdivision of Marin County are concerned about potential adverse effects resulting from inclusion of Paradise Cay in the County's proposed Bayland Corridor. Since the Corridor is one of the environmental issues under review in the EIR, we request that the scope of the CWP Update EIR include consideration of the issues discussed in the attached memorandum.

Please let me know if you have any questions regarding this request. Thank you.



Penny Wright-Mulligan, Co-President,
Paradise Cay Homeowners' Association
Tel (day): 415-601-8191
E-mail: p.mulligan@comcast.net

Introduction – Overview of the Issue

The residents of Paradise Cay, a subdivision with approximately 200 dwellings and a marina located in unincorporated county lands on the northeast side of the Tiburon peninsula, object to the potentially adverse impacts of proposed changes in the Marin Countywide Plan on the uses of their properties. Our objection arises from designation of the subdivision in the Draft CWP Update as part of the County's Baylands Environmental Corridor and part of a Bayfront Conservation Zone. The proposed designations and associated land use and environmental policies and regulations would adversely affect the ability of owners and residents to maintain and improve their properties. The subdivision does not meet the County's criteria for inclusion in the Baylands Corridor, and should be excluded from its scope. It follows that the scope of the CWP Update EIR should include consideration of this issue.

Baylands Corridor Issues – Which Lands Should Be Included?

Our objection focuses on the scope of Goal BIO-5 in the Natural Systems & Agriculture Element of the Draft CWP 2005 (pp. 2-39 ff.), which describes the areas proposed for inclusion in the Baylands Corridor and a number of policies (BIO-5.1 through 5.10) for protection and restoration of environmental assets in the Corridor. Various maps are referred to, providing information on areas to be included and their associated land use policies. Paradise Cay appears on Map 2.5-b, "Baylands Corridor" (Options 1, 2 and 3), and Map 6.5, "Tiburon Peninsula Land Use Policy Map." Copies of these maps are attached as Annexes 1 and 2.

Figure 1 shows an aerial view of the Cay, which, as can be seen, is a virtually built-out suburban waterside community and marina development. The subdivision was created in the late 1950s; development plans for unbuilt areas in the northern part of the Cay, it should be noted, have been filed with the County. Individual parcels are all less than an acre in size (mostly 4-7 dwelling units per acre), and are zoned, with the exception of the marina, for residential development.

None of the lands in the subdivision satisfy the criteria for inclusion in the Baylands Corridor. According to the Draft CWP Update 2005 document, the objective of GOAL BIO-5 is to "Preserve and enhance the diversity of the baylands ecosystem, including tidal marshes and adjacent uplands, seasonal marshes and wetlands, rocky shorelines, lagoons, agricultural lands, and low-lying grasslands overlying historical marshlands." [op.cit., p. 2-39] Paradise Cay has no marshes, no permanent or seasonal wetlands, no diked areas or flood basins, no freshwater streams, nor any agricultural lands or buffer areas. Drainage from built-up and upland areas is entirely via storm drains. Waterside properties are protected from tidal or wave erosion by rip-rapped embankments; there are no natural tideland wildlife habitats within the Cay.



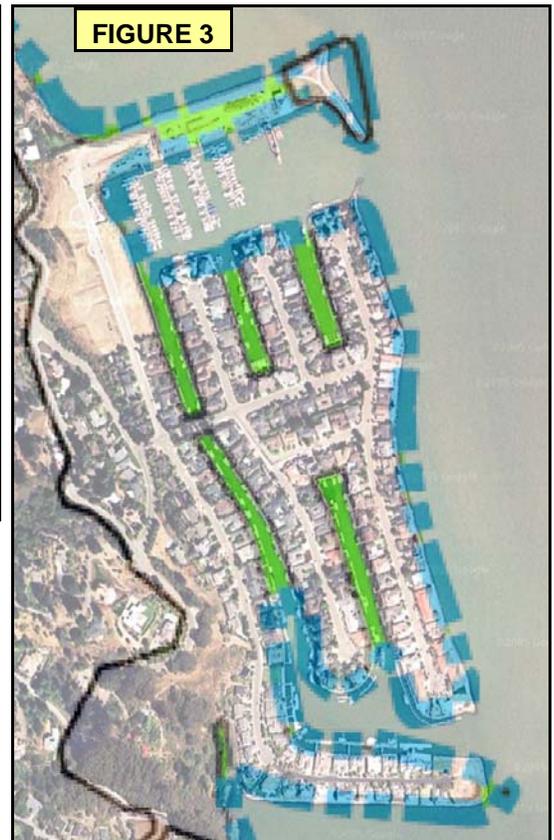
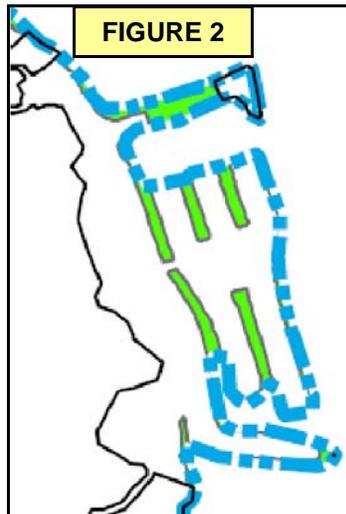
In the Draft CWP Update's discussion of Baylands Conservation Goal BIO-5, the Baylands Option 3, while explicitly naming the Las Gallinas Planning Area as the area of interest, appears to include all county lands touching San Francisco Bay (e.g., Richardson Bay) landward in the Baylands Corridor to a distance of 300 feet. Of the three classes of lands to be included in the Corridor, the third states: "On small parcels (under 2 acres in size, whether developed or undeveloped) the Baylands Corridor includes only the area that is submerged or subject to inundation by tidal action." [op.cit., p. 2-40] This policy would appear to essentially exempt the landside areas of the Cay from the provisions of the Baylands Corridor.

With respect to submerged and tidal areas in the Cay, the County's Development Code 22.14.060 – Bay-front Conservation (-BFC) Combining District, Part F.6 (Design Guidelines; Diking, filling and dredging) states "The County shall prohibit diking, filling or dredging in areas subject to tidal action (Tidelands sub-zone) unless the area is already developed and currently being dredged. Current dredging operations for maintenance purposes may continue subject to environmental review, if necessary" [emphasis added; op. cit. p. 11-64]. Since a County Commission (County Service Area #29 (Paradise Cay)) already exists and has the authority to approve and contract for maintenance dredging of the navigation easements in the Cay, and any construction or maintenance dredging projects must also be approved by a number of federal, state and local regulatory agencies (e.g., Army Corps of Engineers, Regional Water Quality Control Board and the Bay Conservation and Development District), it would appear that the Baylands Corridor designation for the Cay would be redundant. No good purpose is served by including Paradise Cay in the Baylands Corridor. All it does is insert another layer of bureaucracy to existing law.

Maps Are Source of Confusion

Confusion as to the scope of the Baylands Corridor within Paradise Cay arises from inconsistencies in the CWP maps. Figure 2 (right) is a blow-up of the portion of CWP Map 2-5b (Option 3) of the Baylands Corridor encompassing Paradise Cay, which brings out the distribution and extent of areas (colored green) to be included in the Corridor. Figure 3 (far right) repeats the aerial view of the Cay with the CWP map portion superimposed.

As can be seen, the green areas cover only parts of the waterways within the Cay while excluding others (e.g., the marina basin on the north side and the entrance channel and portions of the canals on the south side). Also, a portion of the land area on the north spit of the Cay is included as well as several small pieces of land along the eastern edge of the Cay. This pattern of inclusions and exclusions makes no sense and serves no purpose of environmental protection or conservation. The gaps in areas encompassed by the Baylands Corridor and inconsistencies with respect to the Bayside Conservation Zone policies are puzzling and matters of concern to the residents and property owners of Paradise Cay.



Consideration of Paradise Cay's Issues with the Baylands Corridor must be Included in the Scope of the CWP Update EIR

Designating Paradise Cay as part of the Baylands Corridor raises the risks of unequal treatment of property rights and imposition of unnecessary costs in various parts of the subdivision, as indicated by the areas of the Cay demarcated in green in Figures 2 and 3. The mapping and textual descriptions of the Baylands Corridor and its associated policies for uses of and changes to property parcels must be unambiguous and equitable. This is not evident from the description of the Corridor in the Draft CWP Update EIR.

In our view, existing laws, regulations and institutions completely define and regulate the permissible activities that residents and owners in Paradise Cay may take with respect to maintenance and improvement of their properties. Designation of the subdivision as part of the Baylands Corridor is redundant and unnecessary.

Unless the EIR for the Countywide Plan Update can demonstrate why the Paradise Cay subdivision should be included in the Baylands Corridor despite the absence of wildlife habitat and other environmental conditions necessary to meet the Plan's criteria for inclusion, then the subdivision should be excluded. We object to the Paradise Cay subdivision being included in the Baylands Corridor. The EIR should address this issue explicitly.

Respectfully submitted,

Penny Wright-Mulligan, Co-President,
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E-mail: p.mulligan@comcast.net

