

LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

HEARING DATE: April 9, 2015

Project Description:

AGENDA ITEM: 4

Vicinity Map N↑

APNs:	0304-082-16, 17, 21, 22, 24, 25, 26 and 27
Appellant:	Friends of Big Bear Valley and the Center for Biological Diversity
Community:	Fawnskin/Third Supervisorial District
Location:	South side of North Shore Drive (Hwy. 38) at Canyon Road
Project No.:	P201500007
Staff:	Chris Warrick
Rep.:	Friends of Big Bear Valley and the Center for Biological Diversity
Proposal:	Appeal of Staff's Approval of a Minor Revision to Approved Action for the Marina Point Final Development Plan which includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units for the project.



Report Prepared By: Chris Warrick

9 Hearing Notices Sent On: March 25, 2015

SITE INFORMATION:

Parcel Size: 12.5 Net Acres

- Terrain: Generally level, descending gradually from east to west at a slope of approximately 2 percent.
- Vegetation: Primarily void of vegetation due to recent grading activities. Site contains pine trees along the eastern boundary.

SURROUNDING LAND DESCRIPTION:

AREA	EXISTING LAND USE	LAND USE ZONING/OVERLAY DISTRICTS
Site	Vacant	Bear Velly Special Development-Residential (BV/SD-RES
North	Single Family Residential	Bear Valley Single Residential (BV/RS)
South	Big Bear Lake	Bear Valley Floodway (BV/FW)
East	Single Family Residential and Vacant	Bear Valley Single Residential (BV/RS) and Bear Valley Rural Living (BV/RL-40) 40-acre min. lot size
West	Big Bear Lake	Bear Valley Floodway (BV/FW)

	AGENCY	COMMENT
City Sphere of Influence:	N/A	N/A
Water Service:	Big Bear Lake Dept. of Water and Power	Will Serve
Septic/Sewer Service:	County Special Districts Department	Will Serve

STAFF RECOMMENDATION: That the Planning Commission **DENY** the appeal of the Minor Revision to an Approved Action for the Marina Point Final Development Plan, which includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units for the Project.

In accordance with Section 86.08.010 of the Development Code, any action of the Planning Commission may be appealed to the Board of Supervisors.

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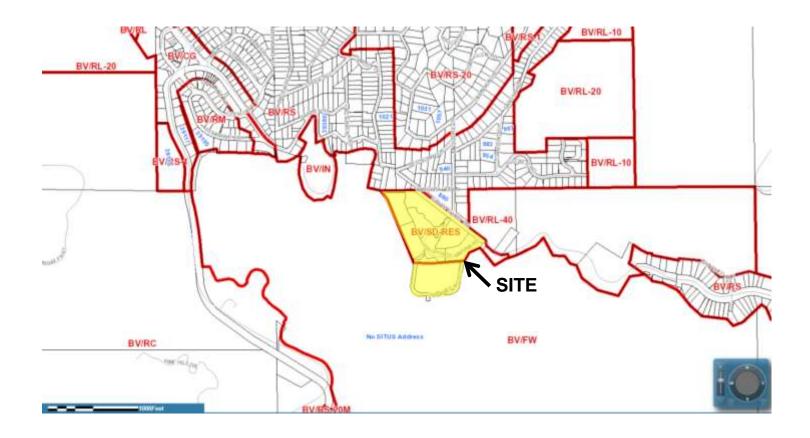
VICINITY MAP



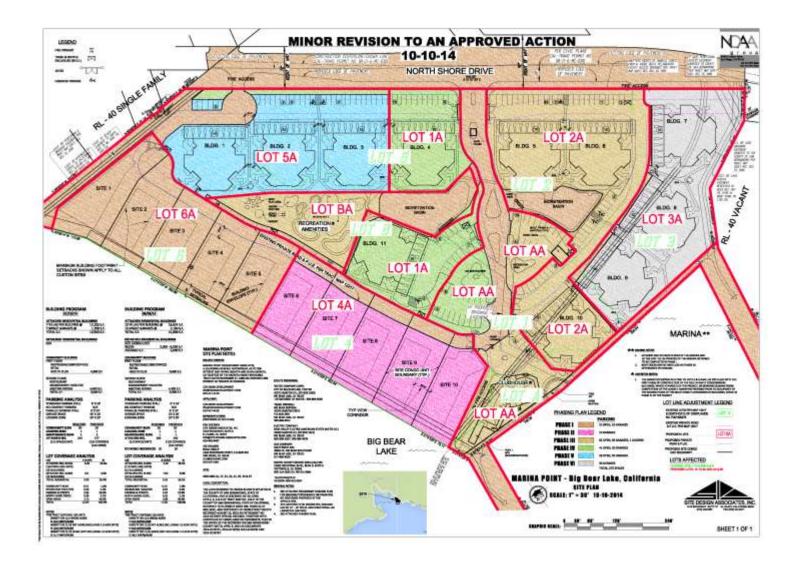
AERIAL MAP



OFFICIAL LAND USE DISTRICT MAP



PLANNED DEVELOPMENT SITE PLAN



SITE PHOTOS



Looking west along the north property boundary



Looking southwest from North Shore Drive

SITE PHOTOS



Looking southwest from North Shore Drive



Project Entrance at North Shore Drive





Looking west from North Shore Drive



Project Entrance at North Shore Drive

PROJECT DESCRIPTION AND BACKGROUND:

On March 11, 2014, Marina Point Development (Applicant) submitted an application for a Revision to an Approved Action (Revision) to revise the Development Plan (Project) that was approved in 1991 by the Board of Supervisors (Board). The Project included a Preliminary and Final Development Plan to establish 133 Condominium units in 6 phases; a Tentative Tract Map (No. 12217) to create an eight lot subdivision for 133 Condominium units in 6 phases on 28.2 acres; and an update to the original Environmental Impact Report (EIR), prepared for an even earlier version of the Project that had expired. The Applicant's proposed Revision to the Project reduces the total number of condominium units to 120 by adding 10 single-unit condominium sites and reducing the number of multi-unit condominium buildings (each containing 10 units) to eleven. A 9,000 square foot clubhouse, boat marina and other open space and recreational amenities remain in substantial conformance with the Project's original design. The Project site is located on the south side of North Shore Drive (Hwy. 38) at Canyon Road in the community of Fawnskin.

On December 30, 2014, the San Bernardino County (County) Planning Division approved the Revision and on January 9, 2015, the Friends of Big Bear Valley and the Center for Biological Diversity timely filed a joint appeal of the Planning Division's approval. If the appeal is approved and the Revision therefore denied, the Applicant could proceed with construction based on the Projects approved design for 133 condominium units.

To provide further background, in 1966 the Project site was approved and developed as a Recreational Vehicle Park and Campground, and continued to operate as such through 1981. In 1983, the original 133-unit Planned Development was approved by the Board. This approval expired on March 17, 1990. On May 1, 1990, the Applicant filed a new application for another Planned Development and Tentative Tract Map 12217, both of which were approved by the Board on December 9, 1991. This 1991 approval serves as the most recent effective entitlement for the Project site. Tentative Tract 12217 was subsequently recorded on December 21, 2000. The Applicant obtained a grading permit on September 9, 2010. This grading permit remains active.

GENERAL PROJECT ANALYSIS:

<u>Current Status of Permits and Entitlement.</u> The Applicant has completed many of the conditions of approval from the Project approval, including grading, and continues to perform work on the Project site. However, pursuant to the Project conditions of approval, exterior construction activities are prohibited between December 1 and April 1 of each year, to minimize disturbance to the Bald Eagle, which is a fully protected bird under California law.

The Applicant has also obtained the necessary permits from the Army Corps of Engineers, the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board and the Big Bear Municipal Water District (BBMWD) (which is responsible for the management of the lake itself). All permits from these agencies are currently active. The Applicant has also obtained approval from The California Department of Transportation for the construction of road improvements on North Shore Drive (Hwy. 38). The Board has continued to approve extensions of time for the infrastructure improvement bonds, which were recently extended in December, 2014 for an additional year.

<u>Environmental Review</u>. As noted, an EIR was prepared for the precursor to the Project and approved by the Board in 1983. An Initial Study was prepared in 1991 to reassess impacts from the Project, particularly for traffic and water, and from it the EIR was updated and recirculated through the State Clearinghouse (SCH No. 91082092). At that time it was determined that there were significant and cumulative adverse impacts of the Project that could not be mitigated to a less than significant level, requiring the preparation and adoption of a Statement of Overriding Considerations.

The changes to the Project proposed by the Revision were deemed to be minor in nature, but are still subject to the California Environmental Quality Act (CEQA). However, in consideration that the project density is decreasing from 10.6 to 9.6 units per acre, thereby lessening every impact proportionately, and that there are no other substantial changes to the project or in the circumstances under which the project will be undertaken that would otherwise require the preparation of a Supplemental or Subsequent EIR, the Planning Division has prepared an Addendum to the EIR. Section 21166 of the Public Resources Code provides that, when environmental review has been performed, no subsequent or supplemental EIR shall be required by the lead agency or any responsible agency unless (1) substantial changes are proposed in the project that will require major revisions of the EIR, or (2) substantial changes occur with respect to the circumstances under which the project will be undertaken that will require major revisions in the EIR, or (3) new information, which was not known and could not have been known when the EIR was certified, becomes available. These legislative provisions prohibit requiring further environmental review unless the stated conditions are met. An addendum to an EIR need not be circulated for public review but may be included in or attached to the final EIR. Preparation of an addendum is a way to make minor corrections to an EIR without recirculating the EIR for further review. An addendum to an EIR may also be prepared to evaluate changes to a project, changes in circumstances, or new information, and to document the agency's determination that a subsequent or supplemental EIR is not required.

<u>Minor Revision.</u> Per Section 85.12.030 of the County Development Code, a Minor Revision may be used to approve minor changes to an already approved project based on the following criteria:

- 1. An approved plot plan is on file in the Land Use Services Department.
- 2. The proposed use is consistent with the current land use zoning district regulations.
- 3. Parking and design standards are not affected., and
- 4. The proposal includes no expansion, or very minor expansion of the use up to 1,000 square feet or 10 percent of the ground area covered by the use or square footage of the structure.

The Project holds a current entitlement from the 1991 approval, so there is an approved site plan on file in Land Use Services. The Revision proposes no change in the approved use and the current approved use is consistent with the County's existing land use regulations. Neither parking nor design standards are affected by the Revision, nor is the square footage of structures being increased. Therefore, the Revision does meet the criteria to be processed as a Minor Revision.

BASES OF THE APPEAL:

The Appellant raises six issues in support of its appeal, which will be considered in the order presented, along with Staff's response.

<u>Appellant's Argument No. 1: Permits Expired.</u> The Appellant claims that the Project has expired and therefore cannot be revised.

This claim has been raised through various legal challenges and has not prevailed, and is currently pending again in existing litigation. In addition, the argument has been raised during hearings before the Board of Supervisors, such as hearings on the extension of the public improvement securities, and not been found persuasive.

<u>Appellant's Argument No. 2: Additional Environmental Review.</u> The Appellant claims that the Revision cannot be approved without additional environmental review.

CEQA includes a strong presumption against requiring any further environmental review once an EIR has been prepared for a project. Based in part on this policy, CEQA prohibits agencies from requiring

additional environmental review (new, supplemental or subsequent EIR) after an initial EIR is certified unless certain specified conditions are met. Because the Revision represents an across the board reduction in the impacts of the Project due to a decrease in density, such conditions were deemed not to have been met. An addendum to the existing EIR is all that is required.

Appellant's Argument No. 3: The Revision is not a "minor revision" and therefore cannot be approved by County Staff.

See discussion above under the "Analysis" section.

<u>Appellant's Argument No. 4: Omitted Information.</u> The appellant contends that there is information that was not presented in the project application, such as the construction of additional boat docks, the construction of "lock-off" units and the use of individual units as timeshare units.

Staff's Response: The Project includes, and has been approved for a boat marina, which may include boat docks, subject to issuance of permits from BBMWD and possibly CDFW. No additional boat docks, beyond those approved for the marina in the original development plan, have been approved by the County, BBMWD or any resource agency. Before any such additional boat docks can be constructed the Applicant would be required to obtain the appropriate permits and approvals from the County, BBMWD and the CDFW.

This project includes a maximum of 120 units. Each unit shall be built in conformance with the County Development Code. A Dwelling unit is defined as "Any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation as required by the California Building Code, for not more than one family, including domestic employees of the family."

With respect to timeshares, the Development Code does not differentiate between Condominium Units and Condominium Timeshare Units.

<u>Appellant's Argument No. 5: Elimination of Condition of Approval No. 2A.</u> The 1991 development plan includes the following condition of approval No. 2a: *"Time limitations for Tentative Tracts: This approval shall become null and void if all conditions have not been complied with and the occupancy or use of the land or recordation of a final map has not taken place within 36 months of the effective date. One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration."*

This condition of approval has been eliminated, which was accomplished through the Minor Revision process. The appellant contends that the elimination of Condition 2a amounts to a significant change to the project, which cannot be accomplished with a Minor Revision.

Staff's Response: Condition No. 2a was applied to the project in 1991, and more specifically this condition applied to the Tentative Tract Map for the Project, which was recorded on December 21, 2000. Since the Tract Map has been recorded, this condition is no longer necessary and it has therefore been deleted through the Minor Revision process.

<u>Appellant's Argument No. 6: New Mitigation.</u> The Appellant claims that additional or different mitigation has been included in the Revision without analyzing whether that mitigation is appropriate or adequate.

The environmental mitigation measures imposed upon the Project remain unchanged.

APPLICANT'S CLAIMS ON APPEAL:

The Revision to Approved Action was submitted to address relatively minor changes to the Development Plan, as outlined previously in this report. Regardless of the extent of the revisions, when a new land use application is submitted, County staff is required to update the entitlement approval to include conditions of approval that reflect current Code requirements and other current County policies. Accordingly, the processing of the Revision included updating the Conditions of Approval for the Project from the previous conditions that were established in 1991. However, most of the conditions that are specific to the Project, and especially the environmental mitigation measures, have remained the same. Most of the conditions that the Applicant is contesting are standard conditions of approval, which apply to all projects.

Prior to the Revision to Approved Action being approved, staff sent the Draft Conditions of Approval to the Applicant for its information. The Applicant took this gesture as license to provide editorial suggestions, and although that was not the intent of staff, staff circulated these suggestions to Land Development, County Fire, Environmental Health, County Survey, Building and Safety and Planning. However, most of the Applicant's requested changes could not be accommodated.

In a recent letter (Exhibit H) to Greg Devereaux, dated March 25, 2015, the Applicant is again requesting changes to the Conditions of Approval. Staff has reviewed the letter and given careful consideration to the Applicant's requested changes. Staff does agree that Condition No. 116 should be revised as follows: "<u>Amenities.</u> The amenities shown as part of Lots A and B shall be installed with the <u>Third first</u> phase of construction or bonding guaranteeing completion of the subject amenities shall be provided prior to occupancy of Phase III." Staff had previously agreed to allow the project amenities to be constructed with the third phase of construction, which is the first phase of the multi-family portion of the project. However, after further consideration of the Applicant's requested changes, staff does not recommend any further changes to the Conditions of Approval.

CEQA AND PUBLIC COMMENTS:

<u>California Environmental Quality Act (CEQA)</u>. In compliance with the CEQA, consistent with the discussion on this topic above, an addendum to the Marina Point Planned Development EIR has been prepared. The Addendum reflects the independent judgment of the County.

<u>Public Comments.</u> Project notices were sent to 39 surrounding property owners within 300 feet of the Project site, as required by Development Code Section 84.27.070, for project sites of 20 acres or less. The Planning Division received 44 emails and letters in opposition to the Project Revision (Exhibit E). The letters of opposition have requested that the County not approve the proposed revision for many reasons. The primary reasons include:

- 1. The Project does not meet the definition of a Minor Revision;
- 2. A new Environmental Impact Report is necessary; resulting from potentially-significant impacts to the Bald Eagle, as well as impacts related to increased domestic water use, and
- 3. Lock-off units and new boat docks are proposed without proper approvals.

The Planning Division also received three emails and letters in support of the Minor Project Revision (Exhibit F). One of which included a petition with 50 signatures in support of the Minor Project Revision. Very recently, the Planning Division also received a letter from Anthony Kornaren and Lisa Saperstein, dated April 1, 2015 (Exhibit J) and the Appellant has filed two additional letters, dated March 20, 2015 (Exhibit G) and March 31, 2015 (Exhibit J).

<u>RECOMMENDATION</u>: That the Planning Commission:

DENY the appeal of the Minor Revision to Approved Action for the Marina Point Final Development Plan which includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units for the project.

ATTACHMENTS:

- Exhibit A: Findings
- Exhibit B: Conditions of Approval
- Exhibit C: Addendum to the EIR
- Exhibit D Appeal filed by the Friends of Big Bear Valley and the Center for Biological Diversity
- Exhibit E Letters of Opposition
- Exhibit F Letters of Support
- Exhibit G Letter from Appellant, dated March 20, 2015
- Exhibit H Letter from Marina Point to County CEO, Greg Devereaux, dated March 25, 2015
- Exhibit I Letter from Appellant, dated March 31, 2015
- Exhibit J Letter from Anthony Kornaren and Lisa Saperstein, dated April 1, 2015

EXHIBIT A

Findings

Effective Date: TBD Expiration Date: TBD

FINDINGS: Planned Residential Development Permit (PRD)

A Minor Revision to Approved Action for the Marina Point Final Development Plan which includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units (Project).

1. The proposed development is consistent with the General Plan and any other applicable plan, because the Project conforms to the General Plan land use zoning designation, which is Special Development Residential (SD-RES). The proposed Project is consistent with the Maximum Population Density Average for the SD-RES District. The Project density is decreasing from 10.6 units per acre to 9.6 units per acre, where a maximum of 20 units per acre could be permitted, and with the integration of single-unit condominiums the density along the lake shore is being reduced, which further protects the scenic qualities of the area. The proposed Project is in substantial conformance with the current Development Plan and promotes the following General Plan Goals and Policies by providing a well-integrated residential Project:

<u>GOAL LU 2.</u> Residential land uses will be provided in a range of styles, densities, and affordability and in a variety of areas to live, ranging from traditional urban neighborhoods to more "rural" neighborhoods.

<u>POLICY LU 2.1</u> Promote varied approaches to residential development to foster a variety of housing types and densities and more efficient use of the land.

<u>POLICY M/LU 1.8.</u> The County shall regulate the density and configuration of residential development along the shore of all mountain lakes in order to protect their scenic qualities.

<u>POLICY M/LU 1.12.</u> Through the development review process, permit new development only when new public services required to safely provide for the development are existing or assured.

- 2. The physical characteristics of the site have been adequately assessed and the site for the proposed development is adequate in terms of shape and size to accommodate the use and all landscaping, loading areas, open spaces, parking areas, setbacks, walls and fences, yards, and other required features because the proposed development has been designed to adequately address the development standards of the County Development Code. The proposed Project is consistent with the Maximum Population Density Average for the Special Development (SD-RES) District and the site is adequate in shape and size to accommodate the proposed residential uses along with all required landscaping, open space, setbacks, walls, fences, yards, noise attenuation measures, fuel modification measures, access roads, drainage improvements and other features.
- 3. The site for the proposed Planned Development has adequate access, in that the site design and development plan conditions consider the limitations of existing streets and highways and provides improvements to accommodate the anticipated requirements of the proposed development, because the proposed Project has been designed with adequate internal circulation and has been conditioned to provide adequate access to the nearest publicly maintained road. This includes requirements to construct half-width street

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improvements on North Shore Drive (Hwy. 38). The site design and development plan considers the limitations of the existing streets and highways and provides improvements to accommodate the anticipated requirements of the proposed development.

- 4. Adequate public services and facilities exist, or will be provided, in compliance with the conditions of the development plan approval, to serve the proposed development and the approval of the proposed development will not result in a reduction of public services to properties in the vicinity to be a detriment to public health, safety, and general welfare, because water service is provided by the City of Big Bear Lake Department of Water and Power and sanitary sewer is provided by County Special Districts.
- 5. The proposed development, as conditioned, will not have a substantial adverse effect on surrounding property or their allowed use, and will be compatible with the existing and planned land use character of the surrounding area because the proposed multi-family residential Project is located in an area planned for a mix of commercial and residential land uses.
- 6. The improvements required by the proposed conditions of the Planned Residential Development Plan approval, and the manner of development adequately address all natural and manmade hazards associated with the proposed development and the Project site including fire, flood, seismic, and slope hazards, because these and other potential hazards have been adequately addressed through the development review process by incorporating as mitigation measures and conditions of approval the recommendations proposed in the various studies, and by incorporating the requirements and standards of the County Development Code.
- 7. The proposed development carries out the intent of the Planned Development Permit provisions by providing a more efficient use of the land and an excellence of design greater than that which would be achieved through the application of conventional development standards, because the proposed Project is a Planned Development that has been designed as a private gated community that incorporates open space and recreational amenities, and architectural design features that have achieved a more efficient use of land through the Planned Development Permit process.
- 8. There is no substantial evidence that the Project will have a significant effect on the environment because an Environmental Impact Report (EIR) was prepared for this project with the original Planned Development Permit and was subsequently updated when the current development plan was approved. An Addendum to the EIR has been prepared for the purpose of addressing any potential impacts associated with the proposed minor revision to the Planned Development and it is determined, on the basis of staff's independent evaluation, that the Project will not have a significant adverse impact on the environment with the implementation of all the conditions of approval and environmental mitigation measures. The Addendum for this Project reflects the County's independent judgment in making this decision.

EXHIBIT B

Conditions of Approval

CONDITIONS OF APPROVAL

Minor Revision to Approved Action Planned Residential Development (PRD)

Marina Point

GENERAL REQUIREMENTS

Conditions of Operation and Procedures

LAND USE SERVICES/ Planning (909) 387-8311

- 1. <u>Project Description</u>. This Minor Revision to Approved Action for the Marina Point Planned Residential Development is approved to be constructed and operated in compliance with the San Bernardino County Code (SBCC), the Marina Point Final Development Plan, the following conditions of approval, the approved site plan and any other required and approved reports and/or displays (e.g. elevations, floor plans). This project includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units for the project. The project also includes a 9,000 square foot clubhouse, a boat marina and other open space/recreational amenities on 28.5 acres generally located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be developed in (6) phases as shown on the approved site plan. Project APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27, Project Number P201400106.
- 2. <u>"Developer" Defined</u>. The term "developer" as used in these conditions of approval for this project and for any development of this project site, includes all of the following: the applicant, the property owner and any lessee, tenant or sub-tenant, operator and/or any other agent or other interested party of the subject project and/or project site and/or any heir or any other successor in interest in the project site or project land use by sale or by lease of all or of a portion of the project site or project land uses and/or any other right given to conduct any land use in any or all of the project structures or any area on the project site.
- 3. <u>Revisions.</u> Any proposed change to the approved use/activity on the site; or any increase in the developed area of the site or any expansion or modification to the approved facilities, including changes to structures building locations, elevations, signs, parking allocation, landscaping, lighting, allowable number of occupants (clients and/or employees); or a proposed change in the conditions of approval, including operational restrictions from those shown either on the approved site plan and/or in the conditions of approval shall require that an additional land use application (e.g. Revision to an Approved Action) be submitted to County Planning for review and approval obtained.
- 4. <u>Continuous Effect/Revocation</u>. All of the conditions of this project are continuously in effect throughout the operative life of the project for the use approved. Failure of the property owner, tenant, applicant, developer or any operator (herein "developer") to comply with any or all of the conditions at any time may result in a public hearing and revocation of the approved land use, provided adequate notice, time and opportunity is provided to the property owner or other party to correct the non-complying situation.

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- 5. <u>Expiration.</u> This project permit approval shall expire and become void if it is not "exercised" within three (3) years of the effective date of this approval, unless an extension of time is approved. The permit is deemed "exercised" when either:
 - A. The permittee has commenced actual construction or alteration under a validly issued building permit, or
 - B. The permittee has substantially commenced the approved land use or activity on the project site, for those portions of the project not requiring a building permit. (SBCC §86.06.060)

Occupancy of completed structures and operation of the approved and exercised land use remains valid continuously for the life of the project and the approval runs with the land, unless one of the following occurs:

- A. Construction permits for all or part of the project are not issued or the construction permits expire before the structure is completed and the final inspection is approved.
- B. The land use is determined by the County to be abandoned or non-conforming.
- C. The land use is determined by the County to be not operating in compliance with these conditions of approval, the County Code, or other applicable laws, ordinances or regulations. In these cases, the land use may be subject to a revocation hearing and possible termination.

PLEASE NOTE: This will be the ONLY notice given of the approval expiration date. The "developer" is responsible to initiate any Extension of Time application.

- 6. <u>Development Impact Fees</u>. Additional fees may be required prior to issuance of development permits. Fees shall be paid as specified in adopted fee ordinances. (Replaces Condition No. 5 from previous conditions dated 4-28-92).
- 7. Indemnification. In compliance with SBCC §81.01.070, the developer shall agree, to defend, indemnify, and hold harmless the County or its "indemnitees" (herein collectively the County's elected officials, appointed officials (including Planning Commissioners), Zoning Administrator, agents, officers, employees, volunteers, advisory agencies or committees, appeal boards or legislative body) from any claim, action, or proceeding against the County or its indemnitees to attack, set aside, void, or annul an approval of the County by an indemnitee concerning a map or permit or any other action relating to or arising out of County approval, including the acts, errors or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim, except where such indemnification is prohibited by law. In the alternative, the developer may agree to relinquish such approval.

Any condition of approval imposed in compliance with the County Development Code or County General Plan shall include a requirement that the County acts reasonably to promptly notify the developer of any claim, action, or proceeding and that the County cooperates fully in the defense. The developer shall reimburse the County and its indemnitees for all reasonable expenses resulting from such actions, including any court costs and attorney fees, which the County or its indemnitees may be required by a court to pay as a result of such action.

The County may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the developer of their obligations under this condition to reimburse the County or its indemnitees for all such reasonable expenses.

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This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The developer's indemnification obligation applies to the indemnitees' "passive" negligence but does not apply to the indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

- Project Account. The Job Costing System (JCS) account number is P201400106. This 8. is an actual cost project with a deposit account to which hourly charges are assessed by various county agency staff (e.g. Land Use Services, Public Works and County Counsel). Upon notice, the "developer" shall deposit additional funds to maintain or return the account to a positive balance. The "developer" is responsible for all expenses charged to this account. Processing of the project shall cease, if it is determined that the account has a negative balance and that an additional deposit has not been made in a timely manner. A minimum balance of \$1000.00 shall be in the project account at the time of project approval and the initiation of the Condition Compliance Review. Sufficient funds shall remain in the account to cover all estimated charges that may be made during each compliance review. All fees required for processing shall be paid in full prior to final inspection, occupancy and/or operation of each approved use in each approved structure or land use activity area. There shall be sufficient funds (\$500.00) remaining in the account to properly fund file closure and any other required postoccupancy compliance review and inspection requirements (e.g. landscape performance).
- 9. <u>Condition Compliance.</u> In order to obtain construction permits for grading, or any new building, final inspection, the developer shall process a Condition Compliance Release Form (CCRF) for each respective building and/or phase of the development through County Planning in accordance with the directions stated in the Approval letter. County Planning shall release their holds on each phase of development by providing to County Building and Safety the following:
 - A. Grading Permits a copy of the signed CCRF for grading/land disturbance and two "red" stamped and signed approved copies of the grading plans.
 - B. Building Permits a copy of the signed CCRF for building permits and three "red" stamped and signed approved copies of the final approved site plan.
 - C. Final Inspection a copy of the signed CCRF for final inspection of each respective building, after an on-site compliance inspection by County Planning.
- 10. <u>Additional Permits.</u> The property owner, developer, and land use operator are all responsible to ascertain and comply with all laws, ordinances, regulations and any other requirements of Federal, State, County and Local agencies as are applicable to the development and operation of the approved land use and project site. These may include:
 - A. Federal: Army Corps of Engineers, United States Forest Service.
 - B. State of California: California Department of Transportation, California Department of Fish and Wildlife, Regional Water Quality Control Board (RWQCB).
 - C. County of San Bernardino: Land Use Services Code Enforcement; Building and Safety, Public Health-Environmental Health Services, Special Districts, Public Works. County Fire, and
 - D. Local: Big Bear Municipal Water District, Big Bear Department of Water and Power, Big Bear Valley Unified School District, Local Agency Formation Commission (LAFCO).

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- 11. <u>Continuous Maintenance.</u> The property owner and "developer" shall continually maintain the property so that it is visually attractive and not dangerous to the health, safety and general welfare of both on-site users (e.g. employees) and surrounding properties. The "developer" shall ensure that all facets of the development are regularly inspected, maintained and that any defects are timely repaired. Among the elements to be maintained, include but are not limited to:
 - A. Annual maintenance and repair inspections shall be conducted for all structures, fencing/walls, walks, parking lots, driveways, and signs to assure proper structural, electrical and mechanical safety and a properly operating irrigation system.
 - B. Graffiti and debris shall be removed immediately with weekly maintenance.
 - C. Landscaping shall be maintained in a continual healthy thriving manner at proper height for required screening. Drought-resistant, fire retardant vegetation shall be used where practicable. Where landscaped areas are irrigated, it shall be done in a manner designed to conserve water, minimizing aerial spraying.
 - D. Erosion control measures shall be maintained to reduce water runoff, siltation, and promote slope stability.
 - E. Architectural controls shall be enforced by the property owner to maintain compatibility of theme, materials, unfaded colors, building mass, size and height.
 - F. Signage. All on-site signs, including posted area signs (e.g. "No Trespassing") shall be maintained in a clean readable condition at all times and all graffiti and vandalism shall be removed and repaired on a regular weekly basis. Signs on the site shall be of the size and general location as shown on the approved site plan or an approved sign plan.
 - G. Parking and on-site circulation requirements, including surfaces, all markings and traffic/directional signs shall be maintained in an unfaded condition as identified on the approved site plan. Any modification to parking and access layout requires County review and approval. The markings and signs shall be clearly defined and legible. These include parking spaces, disabled space and access path of travel, directional designations and signs, stop signs, pedestrian crossing, speed humps "No Parking" "carpool" and "Fire Lane" designations.
 - H. Garage Parking Spaces. All garage (enclosed) parking spaces shall be provided with automatic garage door openers and shall at all times remain clear and uncluttered so as to accommodate the parking of vehicles.
- 12. <u>Lighting.</u> The glare from any luminous source, including on-site lighting shall not exceed one-half (0.5) foot-candle at property line. All lighting shall be limited to that necessary for maintenance activities and security purposes. This is to allow minimum obstruction of night sky remote area views. No light shall project onto adjacent roadways in a manner that interferes with on-coming traffic. All signs proposed by this project shall only be lit by steady, stationary, shielded light directed at the sign, by light inside the sign, by direct stationary neon lighting or in the case of an approved electronic message center sign alternating no more than once every five seconds.
- 13. <u>Clear Sight Triangle.</u> Adequate visibility for vehicular and pedestrian traffic shall be provided at clear sight triangles at all 90 degree angle intersections of public rights-of-way and private driveways. All signs, structures and landscaping located within any clear sight triangle shall comply with the height and location requirements specified by County Development Code (SBCC§ 83.02.030) or as otherwise required by County Traffic.

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- 14. <u>Underground Utilities.</u> There shall be no new above ground power or communication lines extended to the site. All new utilities shall be placed underground in a manner, which avoids disturbing any existing/natural vegetation or the site appearance. Existing utilities around the site perimeter shall also be placed underground in coordination with the utility provider.
- 15. <u>Exterior Construction</u>. Exterior Construction activity shall be prohibited from December 1 to April 1, to minimize disturbance to Bald Eagle habitat.
- 16. <u>Interior Construction.</u> If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall employ a wildlife biologist to evaluate the level of disturbance and the effect on the wintering Bald Eagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to the Environmental Team of the county Planning Department in advance of the anticipated construction.
- 17. <u>Marina Use.</u> The marina shall not be used from December 1 to April 1, to protect wintering Bald Eagles.

LAND USE SERVICES/Code Enforcement (909) 387-4044

18. <u>Enforcement.</u> If any County agency is required to enforce compliance with the conditions of approval, the property owner and "developer" shall be charged for such enforcement activities in accordance with the County Code Schedule of Fees. Failure to comply with these conditions of approval or the approved site plan design required for this project approval shall be enforceable against the property owner and "developer" (by both criminal and civil procedures) as provided by the San Bernardino County Code, Title 8 - Development Code; Division 6 - Administration, Chapter 86.09 - Enforcement.

PUBLIC HEALTH/ Environmental Health Services (DEHS) (800) 442-2283

- 19. <u>Noise</u>. Noise level shall be maintained at or below County Standards, Development Code Section 83.01.080. For information, please call DEHS at 1-800-442-2283.
- 20. <u>Refuse Storage/Removal.</u> All refuse generated at the premises shall at all times be stored in approved containers and shall be placed in a manner so that environmental public health nuisances are minimized. All refuse <u>not</u> containing garbage shall be removed from the premises at least 1 time per week, or as often as necessary to minimize public health nuisances. All refuse containing garbage produced or accumulated in or about a residence shall be removed from the premises at least 1 time per week, or as often as necessary to minimize public health nuisances. All refuse containing garbage produced or accumulated in or about a residence shall be removed from the premises at least 1 time per week, or as often if necessary to minimize public health nuisances. All refuse containing garbage produced or accumulated in or about hotels, food establishments, or other businesses shall be removed from the premises at least 2 times per week, or as often as necessary to minimize public health nuisances, by a permitted hauler to an approved solid waste facility in conformance with San Bernardino County Code Chapter 8, Section 33.0830 et. seq. For information, please call DEHS/LEA at: 1-800-442-2283.

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LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 21. <u>Tributary Drainage</u>. Adequate provisions should be made to intercept and conduct the tributary off site on site drainage flows around and through the site in a manner, which will not adversely affect adjacent or downstream properties at the time the site is developed.
- 22. <u>FEMA Flood Zone.</u> Portion of the Project is located within Flood Zone <u>A</u> according to FEMA Panel Number <u>7290H</u> dated 08/28/2008 and will require structures within this zone's first floor to be elevated a minimum 2 feet above natural highest adjacent ground in compliance with FEMA/SBC regulations. (Elevation Certificate is required.)
- 23. <u>Natural Drainage</u>. The natural drainage courses traversing the site shall not be occupied or obstructed.
- 24. <u>Additional Drainage Requirements.</u> In addition to drainage requirements stated herein, other "on-site" and/or "off-site" improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office.
- 25. <u>Continuous BMP Maintenance.</u> The property owner/"developer" is required to provide periodic and continuous maintenance of all Best Management Practices (BMP) devices/facilities listed in the County approved Water Quality Management Plan (WQMP) for the project. This includes but is not limited to, filter material replacement and sediment removal, as required to assure peak performance of all BMPs. Furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods in effect at the time such maintenance occurs.
- 26. <u>BMP Enforcement.</u> In the event the property owner/"developer" (including any successors or assigns) fails to accomplish the necessary BMP maintenance within five (5) days of being given written notice by County Public Works, then the County shall cause any required maintenance to be done. The entire cost and expense of the required maintenance shall be charged to the property owner and/or "developer", including administrative costs, attorney's fees and interest thereon at the rate authorized by the County Code from the date of the original notice to the date the expense is paid in full.

COUNTY FIRE/ Community Safety (909) 386-8465

- 27. Jurisdiction. The above referenced project is under the jurisdiction of the San Bernardino County Fire Department herein ("Fire Department"). Prior to any construction occurring on any parcel, the applicant shall contact the Fire Department for verification of current fire protection requirements. All new construction shall comply with the current Uniform Fire Code requirements and all applicable statutes, codes, ordinances and standards of the Fire Department. [F01]
- 28. <u>Construction permits</u>, including Fire Condition Letters, shall automatically expire and become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Suspension

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or abandonment shall mean that no inspection by the Department has occurred with 180 days of any previous inspection. After a construction permit or Fire Condition Letter, becomes invalid and before such previously approved work recommences, a new permit shall be first obtained and the fee to recommence work shall be one-half the fee for the new permit for such work, provided no changes have been made or will be made in the original construction documents for such work, and provided further that such suspension or abandonment has not exceeded one year. A request to extend the Fire Condition Letter or Permit may be made in writing PRIOR TO the expiration date justifying the reason that the Fire Condition Letter should be extended.

PUBLIC WORKS/ Solid Waste Management (909) 386-8968

- 29. <u>Recycling Storage Capacity</u> The developer shall provide adequate space and storage bins for both refuse and recycling materials. This requirement is to assist the County in compliance with the recycling requirements of AB 2176.
- 30. <u>Mandatory Commercial Recycling</u> Beginning July 1, 2012 all businesses defined to include a commercial or public entity that generates 4 or more cubic yards of commercial waste a week or is a multi-family residential dwelling of 5 units or more to arrange for recycling services. The County is required to monitor commercial recycling and will require businesses to provide recycling information. This requirement is to assist the County in compliance with AB 341.

PUBLIC WORKS - Survey Division (909) 387-8145

- 31. Lot Line Adjustments. The "Lot Line Exhibit" that was included in the referral package indicates altering the location of 6 existing lots. This will require sequential Lot Line Adjustments to be filed and recorded to adjust the configuration of the lots as desired, as Section 66412 (d) of the Subdivision Map Act allows for the adjustment of only 4 or fewer existing adjoining parcels in a single Lot Line Adjustment process.
- 32. <u>Tract Map In Lieu.</u> In lieu of filing the Lot Line Adjustments noted above, a Final Map may be filed and recorded to subdivide and adjust the lot lines as desired.
- 33. <u>Monumentation.</u> If any activity on this project will disturb <u>any</u> land survey monumentation, including but not limited to vertical control points (benchmarks), said monumentation shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer authorized to practice land surveying <u>prior</u> to commencement of any activity with the potential to disturb said monumentation, and a corner record or record of survey of the references shall be filed with the County Surveyor (Section 8771(b) Business and Professions Code).
- 34. <u>Record of Survey.</u> A Record of Survey/Corner Record shall be filed in the following instances:
 - Legal descriptions or construction staking based upon a field survey of the boundary or building setbacks.
 - Monuments set to mark the property lines.
 - Pursuant to applicable sections of the Business and Professions Code.

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PRIOR TO ISSUANCE OF GRADING PERMITS OR LAND DISTURBING ACTIVITIES

The following shall be completed:

LAND USE SERVICES/ Building and Safety (909) 387-8311

- 35. <u>Tree Removal.</u> A tree removal plan, permit and preconstruction inspection, in compliance with the County's plant protection and management ordinance, shall be approved prior to any disturbance and/or removal of any protected tree or plant.
- 36. <u>Quality Control Engineer.</u> A grading Quality Control Engineer is required for this project.
- 37. <u>Retaining Wall Plans:</u> Submit plans and obtain separate building permits for any required walls, retaining walls or trash enclosures.
- 38. <u>Geology Report:</u> A geology report shall be submitted to the Building and Safety Division for review and approval by the County Geologist and fees paid for the review prior to final project approval.
- 39. <u>Geotechnical (Soil) Report</u>: When earthwork quantities exceed 5,000 cubic yards, a geotechnical (soil) report shall be submitted to the Building and Safety Division for review and approval prior to issuance of grading permits.
- 40. <u>Grading Plans:</u> Grading plans shall be submitted to Building and Safety for review and approval prior to grading/land disturbance of more than 50 cubic yards.
- 41. <u>Demolition Permit:</u> Obtain a demolition permit for any building/s or structures to be demolished. Underground structures must be broken in, back-filled and inspected before covering.
- 42. <u>Erosion & Sediment Control Plan:</u> An erosion and sediment control plan and permit shall be submitted to and approved by the Building Official prior to any land disturbance.
- 43. <u>Erosion Control Installation:</u> Erosion control devices must be installed at all perimeter openings and slopes. No sediment is to leave the job site.
- 44. <u>NPDES Permit:</u> An NPDES permit Notice of Intent (NOI) is required on all grading of one (1) acre or more prior to issuance of a grading/construction permit. Contact your Regional Water Quality Control Board for specifics. <u>www.swrcb.ca.gov</u>
- 45. <u>Regional Board Permit Letter:</u> CONSTRUCTION projects involving one or more acres must be accompanied by a copy of the Regional Board permit letter with the WDID #. Construction activity includes clearing, grading, or excavation that results in the disturbance of at least one (1) acre of land total.

LAND USE SERVICES/ Planning (909) 387-8311

46. <u>Timberland Permit.</u> Prior to any tree removal, the applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit (s) from the California Department of Forestry and a 1601-1603 permit from the California Department of Fish

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and Wildlife. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.

47. <u>Trustee Agency Permits.</u> Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Wildlife in accordance with Sections 1601-1603 of the state Fish and Wildlife Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. Copies of these permits shall be filed with the Planning Department or submit evidence from the Trustee Agency that a permit is not required.

PUBLIC HEALTH - Environmental Health Services (DEHS) (800) 442-2283

- 48. <u>Vector Control.</u> The project area has a high probability of containing vectors. DEHS Vector Control Section will determine the need for vector survey and any required control programs. A vector clearance letter shall be submitted to DEHS/Land Use. For information, contact Vector Control at (800) 442-2283.
- Existing Wells. If wells are found onsite then evidence shall be provided that all wells are (1) properly destroyed under permit from that County. Contact DEHS/Water Section for approval. Contact DEHS/Water Section for more information at (800) 442-2283.

LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 50. <u>Topo Map.</u> A topographic map shall be provided to facilitate the design and review of necessary drainage facilities.
- 51. <u>FEMA Flood Zone.</u> Portion of the Project is located within Flood Zone <u>A</u> according to FEMA Panel Number <u>7290H</u> dated 08/28/2008 and will require structures within this zone's first floor to be elevated a minimum 2 feet above natural highest adjacent ground in compliance with FEMA/SBC regulations. (Elevation Certificate is required.)
- 52. <u>Grading Plans.</u> Grading plans shall be submitted for review and approval obtained. A \$520 deposit for grading plan review will be collected upon submittal to the Land Development Division.
- 53. <u>Natural Drainage</u>. The natural drainage courses traversing the site shall not be occupied or obstructed.

COUNTY FIRE/ Community Safety (909) 386-8465

- 54. <u>Fire Fee.</u> The required fire fees are due at time of submittal; and paid to the San Bernardino County Fire Department/Community Safety Division. This fee is in addition to fire fees that are paid to other City or County offices. [F40]
- 55. <u>Water System Commercial.</u> A water system approved and inspected by the Fire Department is required. The system shall be operational, prior to any combustibles being stored on the site. All fire hydrants shall be spaced no more than three hundred (300) feet apart (as measured along vehicular travel-ways) and no more than three hundred [300) feet from any portion of a structure. [F54]

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56. <u>Primary Access Paved.</u> Prior to building permits being issued to any new structure, the primary access road shall be paved or an all-weather surface and shall be installed as specified in the General Requirement conditions (Fire # F-9), including width (26ft), vertical clearance (13.6), unless otherwise shown on the approved Development Plan, and turnouts, if required. [F89]

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PRIOR TO ISSUANCE OF BUILDING PERMITS

The following shall be completed:

LAND USE SERVICES/ Building and Safety (909) 387-8311

- 57. <u>School Fees.</u> Prior to issuance of building permits, the developer shall provide certification from the Bear Valley Unified School District that any fee charge, dedication or other form of requirement levied by the governing board of the district has been satisfied.
- 58. <u>Demolition Permit:</u> Obtain a demolition permit for any building/s or structures to be demolished. Underground structures must be broken in, back-filled and inspected before covering.
- 59. <u>Construction Plans</u>: Any building, sign, or structure to be constructed or located on site will require professionally prepared plans for review and approval by the Building and Safety Division.

LAND USE SERVICES/ Planning (909) 387-8311

- 60. <u>Landscape and Irrigation Plan</u>. Landscape and Irrigation Plans shall be prepared in conformance with Chapter 83.10, Landscaping Standards, of the County Development Code. The developer shall submit two copies of a landscape and irrigation plan to County Planning for review. Landscaping shall consist of indigenous, drought tolerant, fire- resistant vegetation capable of surviving the soil and climatic conditions native to the mountain environment.
- 61. <u>Building Elevations.</u> Prior to the issuance of building permits the developer shall submit plans and obtain approval from County Planning for the exterior elevations of all proposed buildings.
- 62. <u>Forest Conservation Plan.</u> As part of the required Landscape Plan, the applicant/owner shall retain a qualified Registered Professional Forester (RPF), acceptable to the County, to prepare a forest conservation plan and insect infestation prevention program to include guidelines for tree preservation both during and after construction.
- 63. <u>Compliance with Forest Conservation Plan.</u> All tree removal and site revegetation shall be in accordance with the Forester's report as submitted with the development plan. The removal and replanting shall be supervised by an individual to be approved by the San Bernardino County Planning staff.
- 64. <u>Maintenance Plan.</u> A maintenance plan for the required landscaping and the complex water features proposed by the developer shall be approved by the Planning Department. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period. The maintenance of graded slopes, landscaped areas and water features shall be the responsibility of the developer until the transfer to the Homeowners Association.

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- 65. <u>Wastewater Service</u>. Commitment shall be obtained in writing from the sewering agency indicating that the agency has the capacity to furnish said service to the subject property. A copy of the commitment shall be provided to the Planning Department.
- 66. <u>Planning/Composite Development Plan (CDP).</u> A revised Composite Development Plan ("CDP"), incorporating the changes proposed on the revised site plan shall be submitted for review and approval by the County Surveyor and filed with County Building & Safety and County Planning prior to issuance of a building permit.
- 67. <u>HOA required.</u> The Developer shall establish a Homeowners' Association (HOA) for the purpose of monitoring and maintaining common area amenities and where applicable, private lot areas with HOA maintenance easements. The HOA shall include all lots in Tentative Tract 12217 and shall be formed to the satisfaction of County Planning.
- 68. <u>Final CC&R's.</u> The following changes and corrections shall be incorporated into the final CC&R's which are part of the subdivision tract:
 - A. The boat marina shall not be used from December I to April I to protect wintering bald eagles.
 - B. No individual owners or lessees of individual condominiums shall have the authority to initiate any changes to any structure on the property or to make any changes involving the landscape that will adversely affect the bald eagle, either directly or indirectly. Any minor modifications proposed that are determined not to affect the bald eagle must still have the prior express written approval from the Board of Directors, and such changes shall conform to the architectural provisions of this Declaration.
 - C. A Homeowners Association shall assume responsibility for maintaining the on-site water features.
 - D. The boating marina shall be maintained by the owner/developer in accordance with the Big Bear Municipal Water District permits.
 - E. The shoreline access/pedestrian easement shall be referenced and retained as accessible to accomplish its intended purpose.
- 69. <u>CC&R's Final Approval.</u> A copy of the CC&R's shall be submitted for Planning Director final review and approval. The CC&R's shall also include other applicable items specified in these conditions of approval.
- 70. <u>HOA.</u> A Homeowners Association shall be established for the purpose of carrying out the intent of the Planned Development Application.
- 71. <u>Planned Development Corrections.</u> The Planned Development report text shall be revised by addendum to incorporate any additional corrections and omissions required by Planning staff or the Planning Commission.

 P201400106
 Conditions of Approval

 APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27
 Marina Point

 Board Hearing: December 9, 1991
 Kevised: TBD

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- 72. <u>Installation/Finance of Water and Sewer System.</u> The following are the steps that must be completed to meet the requirements for installation and/or finance of the on-site/off-site water system and/or sewer system.
 - A. Where the water and/or sewer system is to be installed prior to recordation, it is the developer's responsibility to submit to the TRANSPORTATION/FLOOD CONTROL DEPARTMENT, SURVEYOR DIVISION, a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.
 - B. Where a bond is to be posted in lieu of installation of the improvement, the developer shall submit the approved plans and determined amount or a signed statement from an acceptable governmental entity, that financial arrangements have been completed and submitted to the TRANSPORTATION/FLOOD CONTROL DEPARTMENT, SURVEYOR DIVISION. (Replaces Condition No. 60 from previous conditions dated 4-28-92).

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (909) 866-5050

73. The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project. The DWP will attempt to assist the developer in investigating financing alternatives for capital improvements such as Mello-Roos reimbursement agreements, etc.

LAND USE SERVICES – Land Development Division – Drainage Section (909) 387-8311

- 74. <u>Drainage Facility Design.</u> A Registered Civil Engineer shall investigate and design adequate drainage facilities to intercept and conduct the off-site and on-site drainage flows around and through the site in a manner, which will not adversely affect adjacent or downstream properties. Submit a revised drainage study for review and obtain approval. A \$520 deposit for drainage review will be collected upon submittal to the Land Development Division.
- 75. <u>Drainage Easements.</u> Adequate San Bernardino County Drainage Easements (minimum fifteen [15] feet wide) shall be provided over the natural drainage courses, drainage facilities/or concentration of runoff from the site to dewaters into private property.
- 76. <u>FEMA Flood Zone</u>. Portion of the Project is located within Flood Zone <u>A</u> according to FEMA Panel Number <u>7290H</u> dated 08/28/2008 and will require structures within this zone's first floor to be elevated a minimum 2 feet above natural highest adjacent ground in compliance with FEMA/SBC regulations. (Elevation Certificate is required.)
- 77. <u>WQMP.</u> A revised Final Water Quality Management Plan (WQMP) shall be submitted for review and approval obtained.
- 78. <u>WQMP Inspection Fee.</u> The developer shall deposit an inspection fee for WQMP in the amount of \$3600 to Land Development Division.

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LAND USE SERVICES - Land Development Division - Road Section (909) 387-8311

- 79. <u>Caltrans Approval.</u> Obtain comments and approval from Caltrans for access requirements and working within their right-of-way. (Replaces Condition No. 86 from previous conditions dated 4-28-92).
- 80. <u>Slope Easements.</u> Slope rights shall be dedicated, where necessary.
- 81. <u>Turnarounds.</u> Turnarounds at dead end streets shall be in accordance with the requirements of the County Department of Public Works and Fire Department.
- 82. <u>Transitional Improvements.</u> Right-of-way and improvements (including off-site) to transition traffic and drainage flows from proposed to existing, shall be required as necessary.
- 83. <u>Road Improvements.</u> The developer shall submit for review and obtain approval from the Land Use Services Department the following plans and permits for the listed required improvements, designed by a Registered Civil Engineer (RCE), licensed in the State of California. These shall be submitted to the Land Use Services Department, located at 385 N. Arrowhead Ave, San Bernardino CA 92415-0187. Phone: (909) 387-8311.

Private Street (Private - 40')

- <u>Road Dedication.</u> A 40 foot grant of easement is required to provide a full-width right-of-way of 40.
- <u>Curb Return Dedication</u>. A 20 foot radius return grant of easement is required at the intersections of all interior streets.
- Street Improvements. Design a minimum 26' paved road section for all interior roads.
- <u>Driveway Approach.</u> Design driveway approach per San Bernardino County Standard <u>128A</u>, and located per Standard <u>130</u>.
- Curb Returns. Curb Returns shall be designed per County Standard 110.
- <u>Cul-de-sac Design</u>. The proposed cul-de-sac shall be designed and constructed full width to County Standards and the map revised as necessary to accomplish this.
- 84. <u>Private Roads.</u> Private roads to be constructed within this development shall be in accordance with the Private Road Standards in the San Bernardino County Transportation Road Planning and Design Standards Manual and they shall not be entered into the County Maintained Road System.
- 85. <u>Street Improvement Plans.</u> The developer shall submit for review and obtain approval of street improvement plans.
- 86. <u>Utilities.</u> Final plans and profiles shall indicate the location of any existing utility facility or utility pole which would affect construction, and any such utility shall be relocated as necessary without cost to the County.

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DEPARTMENT OF PUBLIC WORKS - Traffic Division (909) 387-8186

87. <u>Project Entrance Improvements.</u> On state Highway 38 (North Shore Drive) at the project entrance, a left turn lane shall be required for both east bound and west bound traffic (opposite canyon Road).

PUBLIC HEALTH - Environmental Health Services (DEHS) (800) 442-2283

- 88. <u>Water Purveyor.</u> Water purveyor shall be City of Big Bear Department of Water and Power. (Replaces Condition No. 57 and 59 from previous conditions dated 4-28-92).
- 89. <u>Water Verification Letter</u>. Applicant shall procure a verification letter from the water agency with jurisdiction. This letter shall state whether or not water connection and service shall be made available to the project by the water agency. This letter shall reference the Assessor's Parcel Number. For information, contact the Water Section at 1-800-442-2283.
- 90. <u>Water Quality.</u> Source of water shall meet water quality and quantity standards. Test results which shown source meets water quality and quantity standards shall be submitted to DEHS.
- 91. <u>Wastewater Purveyor</u>. Method of sewage disposal shall be County Service Area 53B or EHS approved.
- 92. <u>Sewer Verification Letter</u>. Applicant shall procure a verification letter from the sewering agency with jurisdiction. This letter shall state whether or not sewer connection and service shall be made available to the project by the sewering agency. The letter shall reference the Assessor's Parcel Number.
- 93. <u>LAFCO Approval.</u> Submit verification of annexation to DEHS for any project that requires water or sewer connection outside a purveyor's jurisdiction. For information, contact LAFCO at: 909-383-9900.
- 94. <u>Acoustical Study</u>. An acoustical study shall be performed to assess noise levels at the development and shall be reviewed and approved by the Department of Environmental Health Services. Detailed noise analysis and precise mitigation measures shall be submitted to the Department of Environmental Health Services for review and approval prior to issuance of building permits. Specifically addressing, 1) North Shore Drive, 2) marina, 3) tennis courts, 4) pool/health club, 5) tram/bus loading area, 6) pond pumps/motors, and 7) any other noise generating sources. Prior to the issuance of building permits the recommended mitigation measures have been implemented shall be submitted to the Department of Environmental Health Services and the building plans shall be so certified by the acoustical engineer. A fee will be charged for review of the acoustical study and payment will be required prior to issuance of approval/denial letter.
- 95. <u>Food Establishments.</u> Plans for food establishments shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at: 1-800-442-2283.

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96. <u>Swimming Pools.</u> Plans for swimming pool(s) and associated restroom facilities shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at: 1-800-442-2283.

COUNTY FIRE/ Community Safety (909) 386-8465

- 97. <u>Fire Flow Test.</u> Your submittal did not include a flow test report to establish whether the public water supply is capable of meeting your project fire flow demand. You will be required to either produce a current flow test report from your water purveyor demonstrating that the fire flow demand is satisfied or you must install an approved fire sprinkler system. This requirement shall be completed prior to combination inspection by Building and Safety. [F05B] Fire Flow must meet 1500 GPM at 20 psi for 3 hours.
- 98. <u>Fire Alarm.</u> A manual, automatic fire alarm system complying with the California Fire Code, NFPA and all applicable codes is required. Club House and any other Assembly areas.
- 99. <u>Fire Sprinkler-NFPA 13:</u> An automatic fire sprinkler system complying with NFPA Pamphlet #13 and the Fire Department standards is required.
- 100. <u>Fire Sprinkler NFPA # 13D:</u> An automatic life safety fire sprinkler system complying with NFPA Pamphlet #13D and the Fire Department standards is required.
- 101. <u>Fire Sprinkler NFPA #13R:</u> A automatic fire sprinkler system complying with NFPA Pamphlet #13R and the Fire Department standards for light Hazard Occupancies under 5,000 sq. ft. and Multi-Residential Occupancies.
- 102. <u>UFC Requirements.</u> All new construction shall comply with the existing Uniform Fire Code Requirements and all applicable statutes, codes, ordinances, or standards of the Fire Department.
- 103. <u>Flammable Vegetation</u>. Prior to any construction occurring, all flammable vegetation shall be removed from each building site a minimum distance of thirty (30) feet from any flammable building material, including a finished structure.
- 104. <u>Fire Hydrants.</u> Prior to Building permits being issued approved fire hydrants and fire hydrant pavement markers shall be installed. Fire hydrants shall be 6" diameter with a minimum one 411 and one 2 1/2" connection. The hydrant and fire hydrant markers shall be approved by Fire Department. All fire hydrant spacing shall be 300 feet with the exception of single family residential which may be increased to 600 feet maximum.
- 105. <u>Fuel Mod. Zone.</u> Prior to issuance of building permit a fuel modification zone in compliance with county standards is required.
- 106. <u>Building Plans.</u> Not less than three (3) complete sets of Building Plans shall be submitted to the Fire Department for review and approval.

PUBLIC WORKS/ Solid Waste Management (909) 386-8968

107. <u>Construction Waste Management Plan (CWMP) Part 1</u> - The developer shall prepare, submit, and obtain approval from SWMD of a CWMP Part 1 for each phase of the

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project. The CWMP shall list the types and weights or volumes of solid waste materials expected to be generated from construction. The CWMP shall include options to divert from landfill disposal, materials for reuse or recycling by a minimum of 50% of total weight or volume. Forms can be found on our website at <u>www.sbcounty.gov/dpw/solidwaste</u>. An approved CDWMP Part 1 is required before a demolition permit can be issued.

Upon completion of construction, the developer shall complete SWMD's CDWMP Part 2 and shall provide documentation of diversion of materials including but not limited to receipts, invoices or letters showing material type(s) and weights or volume from diversion facilities or certification of reuse of materials on site. An approved Part 2 of the CDWMP is required prior to issuance of occupancy.

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PRIOR TO FINAL INSPECTION OR OCCUPANCY PERMITS The Following Shall Be Completed:

LAND USE SERVICES/Building and Safety (909) 387-8311

- 108. <u>Construction Debris Removal.</u> The applicant shall remove any paving, asphalt and construction debris from the lakefront area in front of the site.
- 109. <u>Plumbing Fixtures.</u> The applicant shall install EPA High Efficiency plumbing fixtures in all units. (Replaces Condition No. 131 from previous conditions dated 4-28-92).
- 110. <u>Woodburning Fireplaces.</u> All woodburning fireplaces in new construction shall be equipped with catalytic reduction equipment.
- 111. Planning Sign-off: All Planning Division requirements and sign-off's shall be completed.

LAND USE SERVICES/ Planning (909) 387-8311

- 112. <u>Parking Lot Installed:</u> On-site parking and circulation requirements shall be installed, inspected and approved as being in compliance with the approved Final Development Plan. The following shall be completed:
 - A. Markings. All circulation markings shall be clearly painted and permanently maintained, including arrows painted to indicate direction of traffic flow.
 - B. Crosswalks. All on-site internal pedestrian crosswalks shall be delineated with a minimum 3" white or yellow painted line stripe. All pedestrian crossings in public right-of–way shall be per County Standards.
 - C. Stops. All internal parking lot driveway intersections shall be installed with a painted stop limit line and shall have either a breakaway pole "STOP" sign and/or painted "STOP" lettering on the paving in front of the limit line.
 - D. Parking Space Striping. All paved parking stalls shall be clearly striped and permanently maintained. All paved parking stalls shall be striped with double/hairpin lines with the two lines being located an equal nine inches on either side of the stall sidelines.
 - E. Multi-modal. All required multi-modal amenities (e.g. bike stands, motorcycle parking, mass transit access, carpool preferred parking, vanpool passenger pickup etc.) shall be installed per approved plans.
- 113. <u>Disabled Parking Installed</u>. Parking for the disabled with paths of travel to the main building entries shall be installed per SBCC §83.11.060. Disabled access parking spaces shall be clearly and continually designated with pavement markings and signs.
- 114. <u>Landscaping & Irrigation Installed</u>. All landscaping, dust control measures, walls/fences, pedestrian walkways, irrigation systems, etc. as delineated on the approved landscape plan shall be installed. The developer shall submit verification as required in SBCC Section 83.10.100. Supplemental verification may include photographs.
- 115. <u>Signage.</u> No sign shall interfere with a driver's or pedestrian's view of public rights-ofway or in any other manner impair public safety, or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.

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- 116. <u>Amenities.</u> The amenities shown as part of Lots A and B shall be installed with the Thirdfirst phase of construction or bonding guaranteeing completion of the subject amenities shall be provided prior to occupancy of Phase III.
- 117. <u>Required Parking.</u> A minimum of 261 parking spaces shall be provided. One hundred twenty (120) of these required spaces shall be in enclosed garages and a minimum of seven (7) parking stalls shall be provided for the disabled. Parking for the disabled with paths of travel to the main building entries shall be installed per SBCC §83.11.060. Disabled access parking spaces shall be clearly and continually designated with pavement markings and signs.
- 118. <u>Wheel Stops.</u> If wheel stops are installed in parking space, the distance from the end of the space to the rear of the wheel stop shall not exceed two (2) feet.
- 119. <u>Parking Striping.</u> Individual parking stalls shall be clearly striped and permanently maintained with double or hairpin lines on the surface of the parking facility, with the two (2) lines being located an equal nine (9) inches on either side of the stall sidelines. Arrows shall be painted on paving to indicate direction of traffic flows.
- 120. <u>"No Parking" Areas.</u> "NO PARKING" shall be clearly designated in areas of bus parking and turnaround and shall be posted at fire lane turnarounds Fire turnaround areas shall be striped for "FIRE LANE.
- 121. <u>Access Drives.</u> All access drives shall be a minimum of twenty-four (24) feet wide to facilitate two-way traffic except as shown on the approved Development Plan Map.
- 122. <u>Exterior Lighting.</u> All lights used to illuminate the site shall be hooded and designed so as to reflect away from adjoining properties, public thoroughfares and Big Bear Lake.
- 123. Outdoor Storage. All outdoor storage and refuse shall be screened from public view.
- 124. <u>Roof Top Equipment.</u> All roof top mechanical equipment is to be screened from ground vistas.
- 125. <u>Underground Utilities.</u> Utility lines shall be placed underground in accordance with the requirements of County Ordinance.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (909) 866-5050

126. The developer must pay the appropriate connection fee pursuant to the DWP regulations at the time water service is provided. The connection fees will be calculated providing a credit for the costs the developer has spent constructing the other water facilities to serve the tract. The connection fee is intended to be related to the impact the tract has on the existing Fawnskin Water System.

PUBLIC HEALTH - Environmental Health Services (DEHS) (800) 442-2283

127. <u>Certificate of Use.</u> Prior to occupancy of a newly constructed or remodeled apartment complex, hotel, motel, resort, pursuant to San Bernardino County Code 33.101 et. seq., a Certificate of Use request shall be submitted to the Division of Environmental Health

Mitigation Measures are Italicized

Comment [E1]: All amenities shall be installed upon completion of the third phase of construction, which is the first phase of the multi-family structures. Change is recommended to reflect the Development Plan approved by staff.

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Services. For information, call DEHS/Community Environmental Health at: 1-800-442-2283.

LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 128. <u>Drainage and WQMP Improvements</u>. All required drainage and WQMP improvements for each phase shall be completed by the applicant, inspected and approved by County Public Works.
- 129. <u>WQMP Final File</u>. An electronic file of the final and approved WQMP shall be submitted to Land Development Division, Drainage Section.
- 130. <u>Elevation Certificate</u>. An Elevation Certificate of structure located within flood zone A shall be completed, approved, and on file with County Building and Safety.

LAND USE SERVICES - Land Development Division - Road Section (909) 387-8311

- 131. <u>LDD Requirements</u>. All LDD requirements shall be completed by the applicant prior to occupancy.
- 132. <u>Caltrans Approval.</u> Obtain sign-off from Caltrans to show that all required road and drainage improvements have been fully completed and accepted.
- 133. <u>Private Roads/Improvements.</u> Construction of private roads and private road related drainage improvements shall be inspected and certified by the engineer.
- 134. <u>CMRS Exclusion</u>. Roads within this development shall not be entered into the County Maintained Road System (CMRS).
- 135. <u>Parkway Planting.</u> Trees, irrigation systems, and landscaping required to be installed on public right-of-way shall be approved by State Department of Transportation (Caltrans District 8) and Current Planning and shall be maintained by the adjacent property owner or other County-approved entity.
- 136. <u>Phased Projects.</u> Projects within any phase of a phased project shall have all required on-site and off-site public road and drainage improvements required for such a phase sufficiently completed by the applicant, inspected and approved for construction of that phase, prior to final inspection or occupancy for any buildings or other structures in that phase.

The term "phase" as used here shall mean the following: "The block of building permits drawn on less than the whole project" or "A plan of building construction which indicates blocks of construction of less than the whole project."

In each phase, the installation of any on-site or off-site public road improvements shall be sufficiently completed so as to assure protection from storm or drainage run off, a safe and drivable access for fire and other emergency/safety vehicles, and the ordinary and intended use of the buildings or structures. The Building Official, with the concurrence of the Land Development Division may approve any plan or approve a change to an approved plan, which complies with the intent of this policy.

Mitigation Measures are Italicized

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COUNTY FIRE/ Community Safety (909) 386-8465

- 137. <u>Commercial Addressing.</u> Commercial and industrial developments of 100,000 sq. ft. or less shall have the street address installed on the building with numbers that are a minimum six (6) inches in height and with a three quarter (3/4) inch stroke. The street address shall be visible from the street. During the hours of darkness, the numbers shall be electrically illuminated (internal or external). Where the building is two hundred (200) feet or more from the roadway, additional non-illuminated contrasting six (6) inch numbers shall be displayed at the property access entrances. Standard 901.4.4 [F82]
- 138. <u>Additional Requirements.</u> In addition to the Fire requirements stated herein, other on-site and off- site improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office. [F01A]
- 139. <u>Residential Addressing.</u> The street address shall be installed on the building with numbers which are a minimum of 4 inches in height and with a one half inch stroke.
- 140. <u>Key Box:</u> An approved Fire department Key Box is required. The key box shall be provided with a tamper switch and shall be monitored by a Fire Department approved central monitoring service. Knox Lock
- 141. <u>Fire Extinguishers.</u> Hand portable fire extinguishers are required. The location, type, and cabinet design shall be approved by the Fire Department

PUBLIC WORKS/ Solid Waste Management (909) 386-8968

142. <u>Construction Waste Management Plan (CWMP) Part 2</u> - The developer shall complete SWMD's CWMP Part 2. This summary shall provide documentation of actual diversion of materials including but not limited to receipts, invoices or letters from diversion facilities or certification of reuse of materials on site. The CWMP Part 2 shall provide evidence to the satisfaction of SWMD that demonstrates that the project has diverted from landfill disposal, materials for reuse or recycling by a minimum of 50% of total weight or volume of all construction waste.

END OF CONDITIONS

Mitigation Measures are Italicized

EXHIBIT C

Addendum to the EIR

STATE CLEARING HOUSE # 91082092

ADDENDUM TO THE 1991 ENVIRONMENTAL IMPACT REPORT FOR THE MARINA POINT PROJECT FAWNSKIN, CALIFORNIA

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1.0 INTRODUCTION

1.1 PURPOSE OF THIS REPORT

This report has been prepared by the County of San Bernardino ("County") as the Lead Agency as an Addendum to the December 9, 1991 Final Environmental Impact Report ("EIR") for the Marina Point Project ("EIR Project") pursuant to Section 15164 (Addendum to an EIR or Negative Declaration) of the California Environmental Quality Act (CEQA) Guidelines. This Addendum describes the changes to the EIR necessary to achieve CEQA compliance for the currently proposed revisions to the Project evaluated in this Addendum, which is a reduced version of the project described in the EIR.

On December 9, 1991, the County certified the Final Environmental Impact Report ("EIR") for the Marina Point Project. The EIR addressed the environmental implications of a proposed project comprised of 133 condominium units, and a 9,000 square foot commercial clubhouse and marina on 28.2 acres located on North Shore Drive in Fawnskin, California. The County has prepared this Addendum to the EIR to examine the potential environmental effects of the proposed revisions to the EIR Project.

The Marina Point Project EIR addressed the following environmental topics:

Geologic Hazards Flood Hazards Fire Hazards Wind/erosion Hazards Noise **Aviation Safety** Hazardous Material Natural Resources **Biological Resources**, Cultural and Historic Resources Air Quality Water Supply and Water Quality Open/Space/Recreation/Scenic Soils and Agriculture **Mineral Resources** Utilities/Infrastructure Transportation and Circulation Energy Housing/Demographics/Socioeconomics Public Services Land Use Mandatory Findings of Significance Alternatives to the Proposed Project

A complete listing of the impact and mitigation conclusions of the EIR has been prepared for each environmental topic and is available for review at the County of San Bernardino 385 North Arrowhead Avenue, San Bernardino, California, 92415.

1.2 ADDENDUM DETERMINATION

Based on the analysis of the proposed minor revisions ("Revised Project') to the Project EIR, there will be no new significant environmental impacts not previously disclosed in the EIR, nor substantial increases in the severity of any previously identified significant effects, nor do the changes constitute substantial changes to the project. Moreover, pursuant to CEQA Guidelines section 15164, "none of the conditions described in CEQA Guidelines section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred." Therefore, pursuant to CEQA Guidelines sections 15162 and 15164, an Addendum to the previously certified EIR is the appropriate environmental document for the County's consideration of the proposed modifications.

In compliance with the California Environmental Quality Act ("CEQA"), the County of San Bernardino ("County"), as lead agency, prepared an Environmental Impact Report ("EIR") describing the environmental effects that would be caused by the Marina Point Project ("Project EIR").

CEQA recognizes that, between the date that projects are approved and the date they are implemented, one or more of the following changes may occur: 1) the scope of the project may change, 2) the environmental setting in which the project is located may change, 3) certain environmental laws, regulations, or policies may change, and 4) previously unknown information can come to light. CEQA requires that lead agencies evaluate these changes to determine whether or not they are significant.

The mechanism for assessing the significance of these changes is found in CEQA Guidelines sections 15162 – 15164. Further environmental review (in the form of a Subsequent or Supplemental Environmental Impact Report) would be warranted pursuant to CEQA Guidelines sections 15162 and 15163, if

- substantial changes are proposed to the project which will require major revisions of the previous EIR due to the changes involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified show that
 - (a) the project will have one or more significant effects not discussed in the previous EIR,

- (b) significant effects previously examined will be substantially more severe than shown in the previous EIR,
- (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or,
- (d) mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. If the changes do not meet these criteria, then an Addendum, pursuant to CEQA Guidelines section 15164, is prepared to document any resulting changes to environmental impacts or mitigation measures.

The County has determined that preparation of an Addendum to the EIR pursuant to Section 15164 of the CEQA Guidelines is the most appropriate method for evaluation of the proposed changes to the Marina Point project. Section 15164(a) of the CEQA Guidelines states: *The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 [of the CEQA Guidelines] calling for preparation of a subsequent EIR have occurred.* Section 15162(a) of the CEQA Guidelines states:

1.3 SUMMARY OF ADDENDUM CONCLUSIONS

Section 2 of this Addendum describes the specific differences between the Revised Project and the EIR Project. Section 3 of this Addendum describes how the differences between the (Project Relationship to EIR Conclusions) Revised Project and the EIR Project affect the impact and mitigation conclusions of the EIR. This confirms that the revisions incorporated in Revised Project would not result in new significant environmental effects or a substantial increase in the severity of the significant effects identified in the certified EIR. This conclusion results primarily because the Revised Project is substantially reduced from the previously approved EIR Project.

The EIR concluded that the Marina Point Project proposed at that time would have resulted in a total of 2 significant unavoidable impacts in the following environmental areas.

- Cumulative Traffic
- Water Supply

Upon certification of the EIR, however, the County Board of Supervisors determined that these significant impacts were unavoidable and therefore, adopted a Statement of Overriding Considerations that mitigated the significant unavoidable impacts. This revised Addendum concludes that, while the project is substantially reduced (e.g., 13 fewer residential units, reduced lot coverage, and scale, the Revised Project would still result in the same 2 significant unavoidable impacts. Consistent with Section 15162(a) of the CEQA Guidelines, these significant unavoidable impacts identified in this revised Addendum is not a new or more severe impact than that identified in the EIR.

1.4 POTENTIAL IMPACTS AND MITIGATION MEASURES AS APPLIED TO THE APPROVED PROJECT RELATIONSHIP TO THE EIR CONCLUSIONS.

Natural Hazards:

1. **Geological Hazards:** Potential unstable earth conditions or changes in geologic substructure. Exposure to people or property to geologic hazards such as earthquakes, ground failure or similar hazards.

Mitigation: Soils report and geologic hazard investigation will address detailed aspects of site fill and stability. A registered engineering geologist or geotechnical engineer is required to prepare detailed, design level geotechnical investigations to guide the design of all project grading and stabilization activities. The detailed, design-level geotechnical investigations shall be performed for each of the structures proposed for the project site. Subsurface conditions shall be explored and laboratory tests conducted on selected soil samples to establish strength parameters for foundation design and perimeter slope stability, and for corrosivity potential of fill on foundation elements. Specific recommendations shall be developed for foundation support for each building, slab-on-grade floors, raised foundations pavements, bulkheads, and slope inclinations for permanent slopes. Final grading plans shall be submitted to Land Development Engineering/Drainage Section, for review and approval. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

2. Flood Hazards: The Project may have potential significant environmental impacts related to changes in deposition, erosion or siltation that modify Big Bear Lake ("Lake"); changes to the surface water of the Lake, changes in absorption rates, drainage patterns and the rate and amount of surface runoff; or exposure to people or property to water related hazards such as flooding or dam inundation.

Mitigation - Building areas will be elevated above the high water level of the Lake with the minimum floor elevation of 6747. Onsite and offsite drainage flows to be designed per building department to minimize potential for inundation where structures are constructed. All necessary permits for taking material from the lake shall be obtained prior to permit issuance. This shall include a shoreline alteration permit from Big Bear Municipal Water District. Proof that the lake owners have approved the proposed filling shall be supplied to this department Implementation of these measures would reduce these impacts to a *less-than-significant level*.

3. Fire Hazards: The Project may have potential significant environmental impacts related to exposure to people or property to wildland fires.

Mitigation - The water system and fire hydrants shall be installed in accordance with requirements of the State Health and safety code, and in accordance with plans approved by the governing fire protection authority. The plans shall be reviewed by a civil engineer, registered in the State of California, and contain required certificates and approval signatures. It is the developer's responsibility to submit to the Land Development Engineering Division a copy of the approved plan and a signed statement from the jurisdiction confirming that the improvement has been installed and accepted. The applicant shall ascertain and comply with requirements the Fire Warden, Building and Safety, and the State Fire Marshall. Buildings are to have full sprinkler systems. Implementation of these measures would reduce these impacts to a *less-than-significant*

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level.

4. Wind & Erosion: The Project may have potential significant environmental impacts related to increase in wind or water erosion of soils either on or off the site.

Mitigation - Written clearance shall be obtained from the designated California Regional Water Quality Control Board and a copy forwarded to DEHS for storm water drainage/runoff from landscaping. In accordance with National Pollution Discharge Elimination System (NPDES) regulations, require the project applicant to file a Notice of Intent with the State Water Resources Control Board (SWRCB), Division of Water Quality. The filing shall include a description of erosion control and stormwater treatment measures to be implemented during and following project construction, as well as a schedule for monitoring of performance. These measures are referred to as Best Management Practices (BMPs) for the control of point and none point source pollutants in stormwater and constitute the Stormwater Pollution Prevention Plan (SWPPP). Project grading shall not commence (no grading permit shall be issued by the County) until an NPDES permit is issued, demonstrating that project erosion control and storm water treatment measures, including the project SWPPP, meet SWRCB requirements. Apply the following siteappropriate Best Management Practices (BMPs) or their equivalents as part of the project Stormwater Pollution Prevention Plan (SWPPP), including measures required to comply with the regulations of the County's Water Quality Management plan. Implementation of these measures would reduce the construction-related soil erosion and sedimentation impacts to a less-than-significant level. The project shall be required to fully implement the erosion control and other water guality measures cited in the SWPPP and to monitor these measures during a specified period following completion of project construction. The RWQCB would be responsible for inspecting these measures, typically on an annual basis, while the sponsor would be responsible for implementing any remedial measures if the Board indicated that site stormwater quality objectives were not being met. The County Land Development Division would also be responsible for post-construction inspection of all measures that would eventually become part of the maintained infrastructure of the project, including source control and water quality treatment measures. Work below the high water level of the lake is also subject to approvals and permits by Big Bear Municipal Water District, California Department of Fish and Wildlife and U.S. Army Corps of Engineers.

<u>Manmade Hazards:</u>

5. **Noise levels:** The Project may have potential significant environmental impacts related to an increase of existing noise levels.

Mitigation - An acoustical study shall be performed to assess noise levels at the development and shall be reviewed and approved by the Department of Environmental Health Services. Detailed noise analysis and precise mitigation measures shall be submitted to the Department of Environmental Health Services for review and approval prior to recordation. Specifically addressing, 1) North Shore Drive, 2) marina, 3) tennis courts, 4) pool/health club, 5) tram/bus loading area, 6) pond pumps/motors, an 7) any other noise generating sources. Prior to the issuance of building permits, a report stating that the recommended mitigation measures have been implemented shall be submitted to the Department of Environmental Health Services and the building plans shall be so certified by the acoustical engineer. A fee will be charged for review of the acoustical study

and payment will be required prior to issuance of approval/denial letter. Implementation of these measures would reduce the impacts to a *less-than-significant level*.

- 6. Aviation Safety: No Impact is expected to occur.
- 7. Hazardous/Radioactive Materials: The Project will not have any potential significant environmental impacts related to hazardous materials but conditions of approval require proper handling of any hazardous material.

Requirement- The applicant shall remove any paving, asphalt and construction debris from the lakefront area in front of the site. A Hazardous Materials Handler Permit and/or Hazardous Waste generator permit shall be required. The applicant shall install a standard grease trap to intercept surface runoff carrying petroleum products. It shall be connected to a clarifier/interceptor as part of a separate subsurface disposal system built to U. P. C. standards.

Natural Resources:

8. Biological Resources: The original EIR indicates that the site is in a key habitat for wintering bald eagles but concluded that no mature trees for perching existed on the site at the time and that foraging was not of prime quality. The low quality was attributed to the lack of ideal shallow lake bottom, which provides better fish foraging, and due to a lack of mature shoreline vegetation which attracts water fowl as an eagle food source. The proposed Project may have however potential significant environmental impacts related to the cumulative impacts that will contribute to an overall degradation of bald eagle habitat in and around the Lake, and loss of potential on-site habitat. The proposed Project may also have potential significant environmental impacts related to tree removal and possible wetlands

Bald Eagle Mitigation – Consultation with the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Services resulted in the following proposed mitigation measures to be included in the County Conditions of Approval. To minimize disturbance to Bald Eagle habitat, exterior construction activity shall be prohibited from by December 1 to April 1 and the marina shall not be used from December 1 to April 1. If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall employ a wildlife biologist to evaluate the level of disturbance and the effect on the wintering Bald Eagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to the Environmental Team of the county Planning Department in advance of the anticipated construction. No individual owners or lessees of individual condominiums shall have the authority to initiate any changes to any structure on the property or to make any changes involving the landscape that will adversely affect the bald eagle, either directly or indirectly. Any minor modifications proposed that are determined not to affect the bald eagle must still have the prior express written approval from the Board of Directors, and such changes shall conform to the architectural provisions of this Declaration. A Homeowners Association shall assume responsibility for maintaining the on-site water features. The boating marina shall be maintained by the owner/developer in

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accordance with the Big Bear Municipal Water District permits. The shoreline access/pedestrian easement shall be referenced and retained as accessible to accomplish its intended purpose. Implementation of these measures would reduce the impacts to a **less-than-significant level**.

Vegetation Mitigation - Prior to any tree removal, the applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit(s) from the California Department of Forestry and a 1601-1603 permit from the California Department of Fish and Wildlife. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department. As part of the required Landscape Plan, the applicant/owner shall retain a qualified Registered Professional Forester (RPF), acceptable to the County, to prepare a forest conservation plan and insect infestation prevention program to include guidelines for tree preservation both during and after construction. All tree removal and site revegetation shall be in accordance with the Forester's report as submitted with the development plan. The removal and replanting shall be supervised by an individual to be approved by the San Bernardino County Planning staff. Implementation of these measures would reduce the impacts to a *less-than-significant level*.

Wetland Mitigation - Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Wildlife, in accordance with Sections 1601-1603 of the State Fish and Game Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. Copies of these permits shall be filed with the Planning Department or submit evidence from the Trustee Agency that a permit is not required. A tree removal plan, permit and preconstruction inspection, in compliance with the county's plant protection and management ordinance, shall be approved prior to any disturbance and/or removal of any protected tree or plant. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

- 9. Cultural/Paleontological Resources: No Impact is expected to occur.
- **10. Air Quality:** The proposed Project may also have potential significant environmental impacts related to substantial air emissions or deterioration of ambient air quality.

Mitigation - Project must comply with current emissions control regulations. Catalytic converters are required on wood fireplaces. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

11. Water Supply/Water Quality: The proposed Project will have potential significant environmental impacts related to: (i) changes in the quantities of ground water either through direct additions or withdrawals or through interception of an aquifer by cuts or onsite excavations; (ii) substantial reduction in the amount of water otherwise available for public water supplies. The proposed Project may have potential significant environmental impacts related to discharge into surface waters or any surface water quality including but not limited to temperature, dissolved oxygen or turbidity.

Mitigation - The applicant shall provide a reliable and assured water supply adequate in quantity and quality to meet health and safety code requirements and in compliance with the County's Assured Water Implementation Plan. The applicant shall comply with the

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requirements of County's Assured Water Program by participating in the DWP's approved program. Source of water shall meet water quality and quantity standards. Test results which shown source meets water quality and quantity standards shall be submitted to DEHS. The operation of a public water supply system shall be subject to the condition that entity or association acceptable to DEHS assumes responsibility for maintenance and operation. Provide a letter from the Sanitary Engineering Section, State Health Department, stating they have reviewed the water system and concur with Big Bear Water and Power findings that additional supplies of adequate quality and quantity of water are available to meet Health and Safety Code requirements. The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990. The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project. The DWP will attempt to assist the developer in investigating financing alternatives for capital improvements such as Mello-Roos reimbursement agreements, etc. The developer must pay the appropriate connection fee pursuant to the DWP regulations at the time water service is provided. The connection fees will be calculated providing a credit for the costs the developer has spent constructing the other water facilities to serve the tract. The connection fee is intended to be related to the impact the tract has on the existing Fawnskin Water System. The applicant shall install state-of-the-art water conservation devices/fixtures in all units. Implementation of these measures would reduce most of these impacts to a *less-than-significant levels*. The project's contribution to the overall cumulative depletion of ground water supplies however is an unavoidable significant *impact* that required the adoption of Statements of Overriding Considerations.

12. Open Space: The proposed Project may have potential significant environmental impacts related to the obstruction of any scenic vista or view open to the public.

Mitigation - The existing open space providing views from the highway is largely in public ownership as National Forest and thereby reduces the potential significance of the Project in the context of the entire expanse of the shoreline on the north shore of Big bear lake. Project design standards further mitigate intrusion of structures into the scenery/viewscape. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

- **13.** Soils/Agriculture: No Impact is expected to occur.
- 14. Mineral resources: No Impact is expected to occur.

Manmade Resources:

15./16. Utilities/Infrastructure: The proposed Project may have potential significant environmental impacts related to water and sewer systems.

Mitigation – Developer to construct and borne the costs of all new sewer and water systems that will be designed to standards that may be turned over to respective district for maintenance and operation. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

17. Transportation / Circulation: The proposed Project will have unavoidable significant environmental impacts related to generation of substantial additional vehicular movement,

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and on existing transportation systems. The proposed Project may have significant environmental impacts related to increase in traffic hazards to motor vehicles bicyclists, equestrians or pedestrians.

Mitigation - Vehicular access rights shall be dedicated on State Highway 38. Dedication shall be granted on North Shore Drive, S.H. 38 as necessary to concur with the Master Plan of Highways. This dedication is to be coordinated with the State Department of Transportation (Cal Trans, District 8). Any change to this project (as currently proposed) which may be necessitated by the State Department of Transportation recommendations, must be incorporated prior to recordation to the Final Map. On State Highway 38 (North Shore Drive) at the project entrance, a left turn lane shall be required for both east bound and west bound traffic (opposite Canyon Road). The developer shall obtain comments and approval from Caltrans for access requirements and working within their right-of-way. Implementation of these measures would reduce these impacts to a *less-than-significant level*. The project's contribution however to the overall cumulative traffic impacts in the area of Stanfield Cutoff well as the commercial center of Big Bear Lake is an *unavoidable significant impact* that required the adoption of Statements Overriding Considerations.

- **18.** Energy: No Impact is expected to occur.
- **19.** Housing/Demographics/Socioeconomics: Not Applicable. The prior RV-park was not subject to the special provisions of the State subdivision Map Act with regards to mobile home park conversions.
- **20. Public Services:** The proposed Project may have significant environmental impacts related to fire protection and schools.

Mitigation – Prior to issuance of building permits, the developer shall provide certification from the Bear Valley Unified School District that any fee charge, dedication or other form of requirement levied by the governing board of the district has been satisfied. School impact fees will be paid. Fire protection will be provided by connecting the Project to the existing water system and contributing towards water storage facilities required for fire flow requirements. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

- **21.** Land Use: Not Applicable. The existing site has been extensively used and disturbed by the RV-park and construction activities. The Project represents a substantial alteration to the RV-park land use although the new use and density are consistent with the General Plan.
- 22. Project Alternatives: As required by CEQA, the EIR also included a description and comparative evaluation of a range of alternatives to the project. Seven alternatives were described and evaluated. Alternative 2 represents a reduced density that is a proposed change to the Project that results in the same impacts as the Project but of a lesser magnitude. Alternative 3 represents the inclusion of single family homes that is a proposed change to the EIR Project. This use is possibly more consistent with surrounding land use but results in the same impacts as the EIR Project.

2.0 PROPOSED CHANGES TO THE EIR PROJECT

2.1 Site Plan Changes: The EIR Project included a Preliminary and Final Development Plan to establish 133 Condominium units in 6 phases; a Tentative Tract Map (12217) to create an eight lot subdivision for 133 Condominium units in 6 phases on 28.2 acres. The applicant is proposing to revise the project, which will now include 10 single-unit condominium sites and eleven condominium buildings (each containing 10 units) for a total of 120 condominium units. The overall land use differences between the EIR Project and the revised Project are summarized below.

2.1.1 Density. The number of condominiums are reduced from 133 units in 19 buildings (7-units per building) to 110 units in 11 buildings (10-units per building), and 10 site condominiums for single family homes are incorporated along the site's westerly shoreline upon which 49 condominium units in 7 buildings are located in the EIR Project The new total of 120 units (9.6 units/acre) represents a reduction of 13 units, which is a 10% reduction in density.

2.1.2 Condominium Buildings. The shape of the revised condominium buildings is similar to the EIR project. Each building has a slightly larger footprint with 10 single-car garages instead of 7 garages. Maximum height of buildings remains unchanged and setbacks between buildings are consistent with the EIR Project.

2.1.3 Site Condominium Units. The proposed 10 site condominiums range in size from approximately 12,000 to 14,000 square feet with buildable footprints of approximately 4,500 square feet. Mandatory setbacks include 30 feet between units to preserve views of the lake and fire protection. Homes greater than single story are to be designed wherein the additional story and roof will be not to exceed 75% of the ground floor to achieve appropriate bulk and scale.

2.1.4 Open Space. The reduction of condominium buildings and inclusion of the site condominiums account for an overall reduction of building coverage over the entire development site from 3.30 acres to 3.26 acres and an increase in open space from 5.75 acres to 5.83 acres.

2.1.5 Commercial Clubhouse/Marina. The clubhouse is slightly reconfigured to provide better functionality and aesthetic appeal, and incorporates a large open plaza that will contain a lookout, fire pit(s) and seating areas. The requisite parking is unchanged but is in closer proximity to the facilities. There is no change to the marina facilities.

2.1.6 Roadways & Parking. The roadways are essentially the same configuration as the EIR Project other than minor adjustments for accessibility, parking and preservation of trees. There are 17 fewer parking spaces but the parking ratio of 2 spaces per unit is the same as the EIR Project that represented an increase from the originally approved 1.85 spaces per unit.

The above project revisions are reflected throughout this revised Addendum as necessary to comprehensively evaluate potential environmental impacts in light of the previously certified Marina Point Project EIR.

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2.2 Jurisdictional Approvals. Permits and approvals have been issued by Trustee and Responsible agencies including the U.S. Army Corps of Engineers, Ca. Dept. of Fish and Wildlife, Regional Water Quality Control Board (RWQCB), Big Bear Municipal Water District and Caltrans. The following is the list of County issued permits for the construction work currently in process.

(1) Planned Development (PD)

(2) Final Subdivision Tract Map (Tract 12217)

(3) Improvement Plans

(4) Grading Permit

(5) Retaining Wall Permit

3.0 REVISED PROJECT RELATIONSHIP TO PROJECT EIR CONCLUSIONS

This section describes the changes or additions to the EIR conclusions necessary for consideration of the recent revisions to the EIR Project. A complete listing of the impact and mitigation conclusions of the EIR has been prepared for each environmental topic described in the EIR

The County has determined that preparation of an Addendum to the EIR pursuant to Section 15164 of the CEQA Guidelines (Addendum to an EIR or Negative Declaration) is the most appropriate method for evaluation of the Revised Project to Section 15164(a) of the CEQA Guidelines states:

The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 [of the CEQA Guidelines] calling for preparation of a subsequent EIR have occurred. Section 15162(a) of the CEQA Guidelines (Subsequent EIRs and Negative Declarations) states:

(When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

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(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

In accordance with the CEQA Guidelines sections 15164 and 15162, for each environmental topic addressed in the EIR, the discussion in this Addendum chapter indicates whether changes or additions to the previously certified EIR for the EIR Project are necessary to adequately address the impacts and mitigation measures of the Revised Project, and if yes, whether:

- the changes result in new significant environmental impacts or a substantial increase in the severity of the significant impacts identified in the 2003 EIR;
- the changes require new mitigations not identified in the 2003 EIR that the applicant declines to adopt; or
- changes have occurred in project circumstances (environmental setting) with respect to the environmental issue which result in new significant environmental impacts or a substantial increase in the severity of a previously identified significant impact.

For some of the environmental impacts identified as potentially "significant" in the EIR, this Addendum concludes that the changes included in the Revised Project would result in reduced but still "significant" impacts and therefore warrant associated similar mitigation measures in order to reduce the impact to a "less-than-significant" level.

3.1 The relationships of the Revised Project to the previously certified EIR Project impact and mitigation conclusions are as follows:.

<u>Natural Hazards:</u>

3.1.1 Geological Hazards: The EIR indicated that unstable earth conditions or changes in geologic substructure, or exposure to people or property to geologic hazards such as earthquakes, ground failure or similar hazards could result in potential significant impacts related to perceived public health and safety effects.

Conclusion - The mitigation identified in the EIR for Geological Hazards impacts for the EIR Project remains applicable to the Revised Project and would reduce the impact to a less-than-significant level.

3.1.2 Flood Hazards: The EIR indicated that the Project may have potential significant environmental impacts related to changes in deposition, erosion or siltation that modify Big Bear Lake ("Lake"); changes to the surface water of the Lake, changes in absorption rates, drainage patterns and the rate and amount of surface runoff; or exposure to people or property to water related hazards such as flooding or dam inundation.

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Conclusion - The mitigation identified in the EIR for possible Flood Hazards impacts in the EIR Project remains applicable to the Revised Project and would reduce the impact to a less than-significant-level.

3.1.3 Fire Hazards: The EIR indicated that the Project may have potential significant environmental impacts related to exposure to people or property to wild-land fires.

Conclusion - The mitigation identified in the EIR for potential Fire Hazards from the EIR Project remains applicable to the Revised Project and would reduce the impact to a less than-significant-level.

3.1.4 Wind & Erosion: The EIR indicated that the Project may have potential significant environmental impacts related to increase in wind or water erosion of soils either on or off the site.

Conclusion - The mitigation identified in the EIR for potential Wind & Erosion hazards remains applicable to the Revised Project as in the EIR Project and would reduce the impact to a less than-significant-level.

Manmade Hazards:

3.1.5 Noise levels: The EIR indicated that the Project may have potential significant environmental impacts related to an increase of existing noise levels.

Conclusion - The EIR indicated that the Project may have potential significant environmental impacts related to potential Noise Hazards. While the 10% reduction in density may lessen noise levels, the Revised Project may still have potential significant environmental impacts as the EIR Project related to potential Noise Hazards. Implementation of the EIR mitigation in the EIR Project would reduce the impact to a less than-significant-level.

- **3.1.6** Aviation Safety: No impact is expected to occur.
- **3.1.7 Hazardous/Radioactive Materials:** No impact is expected to occur. The once existing underground tank was removed over 15 years ago by a certified hazardous material contractor. All old asphalt paving, asphalt and construction debris was removed from the lakefront and site. The 5 square feet of asbestos that was discovered by an asbestos survey when demolishing the 2 small deteriorated washrooms and shed has been contained and secured for removal in accordance with a procedure 5 plan prepared by a certified asbestos consultant.

Natural Resources:

3.1.8 Biological Resources: The EIR indicates that the EIR Project may have potential significant environmental impacts related wintering bald eagles, tree removal and wetlands

Conclusion on Bald Eagles – The mitigation identified in the EIR for impacts to Bald Eagle remains applicable to the Revised Project and would reduce the impact to a **less-than-***significant level.*

Conclusion on Vegetation - The mitigation identified in the EIR for impacts to trees remains applicable to the Revised Project and would reduce the impact to a **less-than-significant level**.

Conclusion on Wetlands - The mitigation identified in the EIR for Geological Hazards impacts

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remains applicable to the Revised Project and would reduce the impact to a less-than-significant level. Implementation of these measures would reduce these impacts to a *less-than-significant level*.

- 3.1.9 Cultural/Paleontological Resources: No impact is expected to occur.
- **3.1.10 Air Quality:** The Revised Project may have potential significant environmental impacts related to substantial air emissions or deterioration of ambient air quality.

Conclusion - The mitigation identified in the EIR for impacts to Air Quality remains applicable to the Revised Project and would reduce the impact to a less-than-significant level. Implementation of these measures would reduce these impacts to a **less-than-significant level**.

3.1.11 Water Supply/Water Quality: The Revised Project will have significant unavoidable significant environmental impacts related to: (i) changes in the quantities of ground water either through direct additions or withdrawals or through interception of an aquifer by cuts or onsite excavations; (ii) substantial reduction in the amount of water otherwise available for public water supplies. The Revised Project may have potential significant environmental impacts related to discharge into surface waters or any surface water quality including but not limited to temperature, dissolved oxygen or turbidity. Implementation of the EIR mitigation measures would reduce these impacts to a *less-than-significant level*.

Conclusion – The 10% reduction in density of the Revised Project would decrease water use by approximately the same 10% but the contribution to the overall cumulative depletion of ground water supplies is still an *unavoidable significant impact* that required the adoption of Statements of Overriding Considerations. The mitigation identified in the EIR for impacts to Water Supply/Water Quality remains applicable to the Revised Project and would reduce the impact to a *less-than-significant level*.

3.1.12 Open Space: The Revised Project may have potential significant environmental impacts related to the obstruction of any scenic vista or view open to the public.

Conclusion – The Revised Project design, with a reduction in the number of single unit condominiums on the western shoreline will mitigate intrusion of structures into the scenery viewscape. Implementation of the mitigation measures identified in the EIR would reduce these impacts to a *less-than-significant level*.

- 3.1.13 Soils/Agriculture: No impact is expected to occur.
- **3.1.14 Mineral resources:** No impact is expected to occur.

Manmade Resources:

3.1.15/16 Utilities/Infrastructure: The Revised Project may have potential significant environmental impacts related to.

Conclusion – The 10% reduction in density of the Revised Project would decrease utility use but would still require implementation of mitigation measures in the EIR to reduce these impacts to a *less-than-significant level*.

3.1.17 Transportation/Circulation: The proposed Project will have unavoidable significant environmental impacts related to generation of substantial additional vehicular movement, and on existing transportation systems. The proposed Project may have significant environmental

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impacts related to increase in traffic hazards to motor vehicles bicyclists, equestrians or pedestrians.

Conclusion - The 10% reduction in density of the Revised Project would proportionately reduce vehicular use but would still require implementation of mitigation measures in the EIR to reduce these impacts to a *less-than-significant level*. The project's contribution however to the overall cumulative traffic impacts in the area of Stanfield Cutoff as well as the commercial center of Big Bear Lake is an *unavoidable significant impact* that required the adoption of Statements Overriding Considerations.

- **3.1.18 Energy: -** No impact is expected to occur.
- **3.1.19 Housing/Demographics/Socioeconomics:** Not Applicable. The prior RV-park was not subject to the special provisions of the State Subdivision Map Act with regards to mobile home park conversions.
- **3.1.20 Public Services:** The Revised Project may have significant environmental impacts related to fire protection and schools.

Conclusion – The 10% reduction in density of the Revised Project could proportionately decrease the burden on public services but the Revised Project may still have significant environmental impacts related to public services. Implementation of the mitigation identified in the EIR for impacts to public services remains applicable to the Revised Project and would reduce the impact to a **less-than-significant level**.

- **3.1.21 Land Use: Not Applicable.** The site has been extensively used and disturbed by the RV-park and construction activities. The Project represents a substantial alteration to the RV-park land use although the new use and density are consistent with the General Plan.
- **3.1.22 Project Alternatives:** As required by CEQA, the EIR also included a description and comparative evaluation of a range of alternatives to the project. Seven alternatives were described and evaluated. Alternative 2 represents a reduced density that is a proposed change to the Project that results in the same impacts as the Project but of a lesser magnitude. Alternative 3 represents the inclusion of single family homes that is a proposed change to the EIR Project. This use is possibly more consistent with surrounding land use but results in the same impacts as the EIR Project.

4.0 BIBLIOGRAPHY

- 1. Final December 1991 Environmental Impact Report for the Marina Point. State. Clearinghouse #2002022076; San Bernardino County.
- 2. Preliminary and Final Development Plan for Marina Point Dated June 1991
- 3. Notice of Completion Dated August 1991
- 4. County of San Bernardino 1991 Conditions of Approval
- 5. Notice of Determination December 10, 1991
- 6. State Regional Water Quality Control Order March 11, 1992

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- 7. County Grading Permit Dated December 12, 1999
- 8. Marina Point Final Subdivision Map Dated December 16, 2000
- 9. County Grading Permit No B200200029 Dated June 6, 2002
- 10. County Stockpile and Dredge Permit No B200306635 Dated July 1, 2003
- 11. County Grading Permit No B200200029 Dated March 22, 2004
- 12. Marina Point Development Biological Resources Report; Merkel & Associates, Inc. Dated September 3, 2004.
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- 14. Routine Onsite Jurisdictional Wetland Delineation Report; Merkel & Associates, Inc. Dated December 1, 2006
- 15. Merkel & Associates, Inc. on-site biological monitoring with 900 hours of in consultation with the U.S. Fish & Wildlife Service 2003 2006.
- 16. Ordinary High Water Mark Delineation; Merkel & Associates, Inc. Dated April 30, 2007
- 17. Biological Assessment Marina Point Shoreline and Marina Work; Merkel & Associates, Inc. Dated May 7, 2007 for U.S. Army Corps of Engineers
- 18. U.S. Department of the Army Corps' Jurisdictional Determination July 22, 2007
- 19. Wetland Investigation and Restoration Plan; Merkel & Associates, Inc. Dated January 7, 2008
- 20. Ca. Superior Court Entry of Judgment SCVSS 111660, Dated February 2, 2007
- 21. U.S. Ninth District Court of Appeal's August 6, 2008 CV-04-07036-R
- 22. U.S. Ninth District Court of Appeal's May 15, 2009 CV-04-07036-R
- 23. U.S. Department of the Army Corps' Environmental Assessment and Statement of Finding for Permit Application SPL-2010-00838-GS Jan 2011.
- 24. County Grading Permit Dated September 2012
- 25. Ca Dept. of Forestry and Fire Protection Fire Timber Harvesting Permit August 2010
- 26. U.S. Department of the Army Corps' Section 404 Permit March 30, 2012
- 27. Caltrans Encroachment Permit For Highway Improvements, June 2014
- 28. Ca. Dept. of Fish and Wildlife Streambed Alteration Agreement dated March 2, 2012
- 29. Big Bear Municipal Water District Shorezone Alteration Permit dated November 2011
- 30. Ongoing biological monitoring reports during construction in the lake.

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- 31. Ongoing weekly SRWQCB reports
- 32. On-going County Mitigation Monitoring Checklist and Compliance Program

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EXHIBIT D

Appeal filed by the Friends of Big Bear Valley and the Center for Biological Diversity Appeal form continuation:

Appeal form Items 3 and 4.

WHAT IS BEING APPEALED, REASONS AND DOCMENTATION

We are appealing the approval of this revision to the Marina Point Final Development Plan. This appeal is based on the following:

a. The Marina Point Final Development Plan permit has expired and therefore cannot be revised.

The County determined this project to be a phased planned development under the Development Code. The Development Code and the conditions of approval of this project both outline stringent timeframes in which an applicant must complete a phased planned development project. In addition to complying with all time limits within any applicable conditions of approval, an applicant must adhere to the timeframes within the code and the conditions of approval:

Development code 86.06.060(a)(5)(B) states: "a conditionally approved Planned Development Permit for a phased project shall be subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain Building Permits for at least one phase of the project within five years of the Development Plan conditional approval and, as applicable, **within each succeeding five-year period.** Each five-year period shall begin with the last County approval action that was accomplished (e.g., recordation of a tract map, obtain a Building Permit."

Condition of approval #2A (as revised by staff on 4-28-92) aligns with the section of the code, stating "Time limitations for Planned Developments: A conditionally approved Planned Development for a phased project shall be subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

The developer recorded a tract map for the Project on December 21, 2000. Since then the developer has neither recorded any further tract maps for this site nor obtained any building permit for the Project. Thus, by operation of the Development Code and the 1992 revised conditions of Approval, the 1991 Planned Development Permit expired on December 21, 2005.

In addition, according to Development Code section 86.06.060(b)(2)(E), extensions of time on Planned Developments are not allowed: "This subsection

shall not be applied to extend the time limits provided in Subsection 86.06.060(a)(5)(B) above.

Therefore, this project is expired and cannot be revised.

 b. This revision cannot be approved without additional environmental review. Previous environmental review was done in 1983 with a minor update in 1991. Substantial new information and changed circumstances require the preparation of an SEIR for the Project.

The area around the Project site has changed dramatically in the last twenty years. As just one example, endangered Southern bald eagles have become year-round residents in the area. Twenty years ago, bald eagles were just seasonal visitors and previous environmental reviews proposed to limit the Project's construction activities and marina usage only during the eagles' migratory period. This mitigation is no longer sufficient due to the year-round presence of bald eagles which remain a state-protected species. More importantly, although some eagles are now permanent residents of Fawnskin, the overall number of eagles in the Big Bear Lake area has declined significantly in recent years. (see Attachment A, "Bald Eagle Count Summary" and Attachment B, "Declaration of Timothy Krantz, Ph.D.") The Project's impact on this delicate habitat must be reconsidered in light of these new facts.

Significant changed circumstances also include increases in lake pollution to the point that Big Bear Lake has now been declared an "impaired water body", traffic patterns and density, and extreme drought conditions throughout California forcing water rationing in communities throughout the Big Bear Valley and increasing the risk of wildfires throughout the area. Also, the threat of PM2.5 emissions (which will result from the construction and operation of the Project), as well as the increasing threat of global climate change were not well understood or properly analyzed prior to the 1991 approval.

In addition to the above, there are several projects that have been built or introduced since this project was approved and the cumulative impacts of those projects must be taken into account with this revision.

Please note that Judge Gilbert Ochoa of the San Bernardino Superior Court in his November 24, 2014 order granting in part a motion for preliminary injunction against the project, stated that "However, in light of the fact that the original EIR was prepared in 1983, and the last environmental review was conducted in 1992, the County should carefully consider whether climate change is new information." And "However, similar to the climate change claims, California's water situation has likely changed substantially since the last environmental review was conducted on the Project in 1992. Therefore, as with the climate change claims, since further discretionary approval is necessary as to Marina Point's Revisions Application, County should also carefully consider whether the current drought is new information of substantial importance to the Project that might trigger additional environmental review." (See Attachment C, "Minute Order")

c. The changes to the original plan in this revision application do not constitute a 'minor revision' and therefore cannot be approved by County Staff.

Due to the great potential for increased outdoor activity around single family homes along the western shoreline, compared with the activity around a multiunit building, it cannot be assumed that this revision would reduce the impact, especially to bald eagle habitat, noise and night skies, of this project.

In addition, as noted in detail in paragraph d below, the developer has proposed additional changes to other agencies and has advertised and made statements to the public about changes that would actually increase the project density and cause increases to the potential impacts accordingly.

d. The application omitted several pieces of information that the developer has presented to other agencies or in other areas.

The developer has advertised on their website (See Attachment D, Map with extra docks) and presented to the Big Bear Lake Municipal Water District the plan to add docks outside of the enclosed Marina and beyond what was approved in the original plan. The developer also has stated at various times that he has lake rights to develop additional docks and another commercial marina should he choose to do so. None of this was presented or discussed in the Revision Application submitted to the County.

In addition, the developer's advertising and public statements have presented each condominium as having a "lock-off" unit which would be separately rentable to additional residents. This design feature virtually doubles the number of condo units from 110 to 220, thereby greatly increasing the project capacity. Since this was not included as part of the original project, the revised project actually is larger and more dense than the original plan and therefore, not a minor revision.

The developer has also stated on numerous occasions that the units will be "timeshare condominiums." Since this was not in the original project approval and since timeshare condominiums would have a nearly 100% occupancy rate throughout the year, compared with a normal second home type of condominium, this change is far from minor.

Again, the revisions to this project have not been thoroughly considered and when all are taken into account, do not constitute a 'minor revision.'

e. The condition of approval #2A of the original conditions of approval, placing the time limits on this project as specified in the County Code [Subsection 86.06.060(a)(5)(B)] has been deleted from the conditions of approval in the

revision approval. (See Attachment E, "Revised Conditions of Approval (04-28-92)")

This deletion significantly changes the original approval and cannot be done as a minor revision or without CEQA review.

f. New mitigations have been included in the revision approval without analyzing whether these mitigations are appropriate or sufficient for the area. For example, the new condition #12, Lighting. (See Attachment F, New Conditions of Approval.)

Attachment G: For all of the above items, please also see details outlined in the following documents:

Verified Petition for Writ of Mandate...

Letters in response to notice of Revision Application:

from Friends of Fawnskin from The Center for Biological Diversity from Shute, Mihaly & Weinberger LLP (attachments to this letter are already in County records)

CHANGE WE SEEK:

We ask that the approval of this revision be denied.

In addition, we ask that the original project approval be declared expired, as per County Development Code and the projects Conditions of Approval.

At a very minimum, this revision requires additional CEQA review prior to any approval of this revision.

ATTACHMENT A - Bald Eagle Count Summary

Big Bear Lake & Baldwin Lake Bald Eagle Count Summary Month December January February March April Average						High	
Year			. containly		трін	Average	Count
<u> 1978 - 79</u>	7	27	27	18	9	17.60	27
1979 - 80	20	22	13	11	3	13.80	22
1980 - 81	11	19	25	No Count	No Count	18.33	25
1981 - 82	15	27	22	6	3	14.60	27
1982 - 83	7	27	18	11	No Count	15.75	27
1983 - 84	14	28	18	10	No Count	17.50	28
1984 - 85	27	8	3	3	No Count	10.25	27
1985 - 86	20	24	No Count	9	No Count	17.67	24
<u> 1986 -</u> 87	20	24	No Count	9	No Count	17.67	24
1987 - 88	9	17	21	16	No Count	15.75	21
1988 - 89	12	6	4	12	No Count	8.50	12
1989 - 90	15	11	19	17	No Count	15.50	19
1990 - 91	6	16	22	17	No Count	15.25	22
1991 - 92	19	19	13	9	No Count	15.00	19
1992 - 93	6	15	3	3	No Count	6.75	15
1993 - 94	9	17	15	8	No Count	12.25	17
1994 - 95	10	10	20	No Count	No Count	13.33	20
1995 - 96	6	14	15	10	No Count	11.25	15
1996 - 97	10	15	5	9	No Count	9.75	15
1997 - 98	8	14 - 15	15	12	No Count	11.67	15
1998 - 99	8	17	15 - 17	9	No Count	11.33	17
1999 - 00	8	13	3	13	No Count	9.25	13
2000 - 01	13	13	14	12	No Count	13.00	14
2001 - 02	7	9	11	9	No Count	9.00	11
2002 - 03	6	13	15	9	No Count	10.75	15
2003 - 04	4		11	7	No Count	9.00	10
2004 - 05	6	1	4	5	No Count	4.00	6
2005 - 06	7	4	6	No Count	No Count	5.67	7
2006 - 07	4	8	5	5	No Count	5.50	8
2007 - 08	4	3	6	3	No Count	4.00	
200809	No Count	6	No Count	5	No Count	<u>4.00</u> 5.50	6
2009 - 10	4	6	9	5	No Count		
2010 - 2011	2	5	5	3	No Count	6.00 3.75	<u>9</u> 5
2011-2012	4	6-8	6	6	No Count	5.5-6	<u> </u>
2012-2013	No Count	5	No Count	No Count	No Count	5*	o 5*
2013-2014	6	5	10	5	No Count	6.5	10
Monthly Average	9.9	13.4	11.9	8.6			
					16.3		
Vinimum						<u>18.33</u> 3.75	2

576403.1

ATTACHMENT B – Declaration of Timothy Krantz, Ph.D.

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~		SUBEDICE				
1 2	RACHEL B. HOOPER (State Bar No. 98569 AMY J. BRICKER (State Bar No. 227073) EDWARD T. SCHEXNAYDER (State Bar I SHUTE, MIHALY & WEINBERGER LLP	SOFERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO CIVIL DIVISION				
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5	Hooper@smwlaw.com Bricker@smwlaw.com Schexnayder@smwlaw.com					
6 7	Attorneys for Friends of Fawnskin					
8 9 10 11	ADAM KEATS (State Bar No. 191157) ARUNA PRABHALA (State Bar No. 278865) CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 AKeats@biologicaldiversity.org					
12 13	APrabhala@biologicaldiversity.org Attorneys for Center for Biological Diversity					
14	SUPERIOR COURT OF THE STATE OF CALIFORNIA					
15	COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT					
16	FRIENDS OF FAWNSKIN and CENTER FOR BIOLOGICAL DIVERSITY,	Case No. CIVDS14090159				
17 18	Petitioners,	[California Environmental Quality Act ("CEQA") Case]				
19	v.	DECLARATION OF TIMOTHY KRANTZ, Ph.D. IN SUPPORT OF				
20	COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS FOR THE	PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION				
21	COUNTY OF SAN BERNARDINO, and DOES 1-20,	Date: September 23, 2014				
22	Respondents.	Time: 8:30 am Dept.: S23 3(Q Judge: Hon. Donald R. Alvarez				
23	MARINA POINT DEVELOPMENT	Judge: Hon. Donald R. Alvarez				
24	ASSOCIATES, IRVING OKOVITA, BEAR VALLEY PAVING, SITE	By Fax				
25 26	DESIGN ASSOCIATES, KENNETH DISCENZA, and DOES 21-50,	J = CLA				
20 27	Real Parties in Interest.					
28	DECLARATION OF TIMOTHY KRANTZ IN SUPPORT CASE NO. CIVDS14090159	OF MOTION FOR PRELIMINARY INJUNCTION				

DECLARATION OF TIMOTHY KRANTZ

2 I, Timothy Krantz, Ph.D., declare as follows:

3 1. I have personal knowledge of the following facts, and if called as a witness
4 could and would testify competently thereto.

5 I received my Doctor of Philosophy in Geography from the University of 2. California at Berkeley in 1994. I am currently an Associate Professor of Environmental 6 Studies at the University of Redlands. I have also served on the Board of Directors of the 7 San Bernardino Valley Audubon Society ("Audubon Society") for the period from 1997-8 2009. I also served as the San Bernardino County Planning Commissioner for the First 9 District from 1983-1988 (the First District included all of the unincorporated area of Big 10Bear Valley at that time). In the 1970's and 1980's I worked as a biological consultant in 11 the Big Bear Valley. A copy of my Curriculum Vitae is attached as Exhibit A. 12

3. I began studying wintering bald eagles in the Big Bear Valley in 1978.
Along with Kimball Garrett, who was at the time completing his post-graduate work on
the winter ecology of bald eagles, I established the first systematic winter censuses and
surveys for the bald eagle in the Big Bear Valley. Working together with the U.S. Forest
Service, I developed and supervised the wintering bald eagle censuses from 1978 to
1988. In 1988, the census system we established was taken over and continued by the
U.S. Forest Service.

4. In preparing this declaration, I relied upon the following documents and
information:

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a. A comparison of Exhibits B through F below.

a. Exhibit B: Photo dated 08/17/1972;

b. Exhibit C: Photo dated 06/24/1994;

5. True and correct copies of the decadal aerial photos I reviewed are attached
as follows, together with the Bald Eagle census data cited below:

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26 27

28 DECLARATION OF TIMOTHY KRANTZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159

1 c. Exhibit D: Photo dated 11/05/1998; 2 d. Exhibit E: Photo dated 08/27/2002 3 e. Exhibit F: Google Earth image dated March 21, 2013. 4 f. Exhibit G: Big Bear Lake and Baldwin Lake Bald Eagle Count Summary, 5 2014 6 I am very familiar with the project area known as Marina Point that is the 6. 7 subject of this lawsuit. I am familiar with the site from my work running the bald eagle censuses, my work as a Planning Commissioner, my work as a biological consultant, and 8 9 my activities as a Board Member of the San Bernardino Valley Audubon Society. In the past, I have led Audubon Society bird tours during the winter months to observe bald 10 11 eagles. 12 7. The statements made in this declaration represent my professional opinion.

8. Wintering bald eagle habitat census data (Krantz and Malcolm, 1983)
 indicates frequent use of the Grout Bay habitat as one of most critical areas in Big Bear
 Valley; with occasional use of Marina Point and Moon Camp properties for perching in
 older trees with large limbs or "windows" between branches, and foraging habitat on
 shallow lakefront areas (personal observations).

9. However, the population of wintering bald eagles in Big Bear Valley and in
Grout Bay has continued to decline from maximum population estimates of 20-27
individuals in the 1980s through 1994-95, to estimated maxima ranging from 5-10
individuals between 2004-2005 and the most recent census season, 2013-2014. This
decline has occurred over the decades and has substantially decreased since the 2004-05
season, concurrent with the significant shoreline modifications and tree removals on the
Marina Point property.

10. In addition to wintering bald eagles, Grout Bay is now habitat for a pair of
year-round bald eagles and their fledglings. These year-round bald eagles nest within a

28 DECLARATION OF TIMOTHY KRANTZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159

2

mile of Marina Point on an adjacent site and were first observed to establish a nest in 1 2011. The year-round bald eagles have been observed using trees on Marina Point to 2 perch and forage in the shallows near and around Marina Point. Exhibit E clearly shows 3 the extent of the shallow-water foraging habitat, extending from off-shore of the Moon 4 5 Camp property immediately below (east of) the Marina Point levees and extending to the shore at Windy Point and the bald eagle perching and nesting habitat across Grout Bay. 6 7 The obtrusion of the Marina Point lakeshore modifications is visibly obvious, representing a very significant impact on the entire Grout Bay foraging habitat for 8 9 resident and wintering bald eagles.

10 11. While the wintering bald eagles and year-round eagles are found in Grout
11 Bay at different times, the needs of both populations are the same. Bald eagles need both
12 shallow-water foraging habitat and perch trees within the sight line of the shallows. See
13 Exhibit E, as noted above.

14 12. Marina Point and Moon Camp function as refugia for bald eagle perching
15 and foraging habitat, primarily on overcast mornings, and weekend days when snow play
16 and other human disturbance factors preclude use of Grout Bay Picnic Grounds or other
17 south shore (City of Big Bear Lake) habitats, such as Eagle Point and Castle Glen.

18 The Moon Camp Draft Environmental Impact Report (March 2004) 13. identified eight perch trees on the adjacent property to the east of Marina Point. Five of 19 20 the trees are situated on the knoll immediately east of the Marina Point project, overlooking the shallow water foraging habitat of the lake. During early morning hours, 21 when the solar angle is low from the east, the Moon Camp perch trees afford clear lines 22 of sight over foraging habitat, but for the presence of the marina's large jetties. In 23 particular, the large perch trees on Moon Camp provide clear, glare-free lines of sight to 24 25 would-be prey in the shallow lakefront portion of Marina Point, were the fill material not 26 placed in that area.

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- 28 DECLARATION OF TIMOTHY KRANTZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159

1 14. The Marina Point project site is important habitat for the bald eagle. I
 2 believe that bald eagle use of the Grout Bay/Marina Point area has increased over time
 3 because other suitable habitat has been destroyed by development along the south shore
 4 within the City of Big Bear Lake and dredging and deepening of shallow water habitat
 5 elsewhere around the lake.

6 15. Continued construction of a marina/condominium project on the Marina 7 Point site will clearly harm the bald eagle. Dredging and deepening the lake and constructing dock slips will eliminate shallow water foraging habitat for the species. 8 Erosion and sedimentation from dredging activities and placement of fill materials will 9 lead to further bank destabilization. The planned dredging activities occurring on the site 10 and anticipated to occur on the site lie directly in the middle of the shallow-water 11 foraging habitat within the lines-of-sight for perch trees on both the Marina Point site and 12 adjacent Moon Camp site. 13

14 16. Removing the existing trees will eliminate perching sites that are used by wintering and year-round eagles. Perch trees are important to the health and long-term 15 viability of bald eagle populations in the area. Bald eagles require trees of sufficient 16 stature to afford line-of-sight views over the foraging habitat, typically older specimens 17 with large, dead-topped crowns or "windows" between large branches. Such trees are 18 often centuries old; and are removed much more rapidly in the urban forest areas around 19 the lake than natural recruitment would create another centuries-old tree, hence 20continuing removal of trees on the Marina Point property a represents a cumulative 21 adverse impact on bald eagle habitat. While bald eagles generally use mature trees to 22 perch, the loss of younger trees means there will be fewer and fewer perch trees available 23 24 to bald eagles in the future.

17. The Project site includes many trees that could one day become perch trees,
unless they are cut down during construction for the Project. Although not as reliable as

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28 DECLARATION OF TIMOTHY KRANTZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159

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an on-the-ground tree survey, a comparison of Exhibit F with previous aerial photographs
 of the property indicate a significant reduction in the number of trees on the Marina Point
 property than in previous photographs, especially Exhibit E, taken in 2002. Previous
 estimates of numbers of conifers on the property were on the order of 160 trees,
 compared with an estimated 100 trees based on the recent 2013 image.

6 18. Construction activities will also bring additional noise, heavy machinery
7 and pollution to the area, likely resulting in a complete exclusion of bald eagles from the
8 Project site. Disturbance from construction will also likely impact bald eagle use of
9 adjacent sites including Moon Camp and Grout Bay.

10 19. Constructing condominiums and recreational areas will further alter the
11 habitat and increase human disturbance to the birds. In sum, construction of the
12 marina/condominium project at Marina Point will result in bald eagles no longer being
13 able to utilize the site. This represents a significant adverse impact for the species overall
14 in Big Bear Valley, where the amount of suitable habitat has rapidly decreased due to
15 development.

16 20. I believe that the cumulative impact of development at Marina Point along
17 with other developments on the North and South Shore of the lake and in the vicinity will
18 greatly reduce the capacity of the Big Bear Lake area for use by wintering bald eagles
19 and year-round bald eagles, resulting in a reduction of the number of bald eagles that can
20 be supported there.

21 21. Suitable bald eagle foraging habitat is very limited in Big Bear Valley, and
22 the most significant foraging habitat areas have experienced cumulative adverse
23 environmental impacts as a result of numerous development projects over the past 35
24 years that I have been observing bald eagles in Big Bear Valley. Specifically, water
25 diversions and more intensive pumping of groundwater have caused Baldwin Lake, a
26 large, shallow basin that was full most of the years from 1978-1990, is now permanently

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²⁸ DECLARATION OF TIMOTHY KRANTZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159

dry, eliminating one-third of total potential bald eagle foraging habitat in the valley.
 Additional dredging of shallow-water foraging habitat on Big Bear Lake and removal of
 suitable perch trees represents a cumulative adverse environmental impact on bald eagles.

4 22. Bald eagle habitat in southern California is extremely limited, confined to large bodies of water with adequate fish and waterfowl populations for foraging. One can 5 count the number of lakes that regularly support several or more bald eagles on one's 6 7 fingers: Big Bear Lake (20+ during 1980s, but <20 since 1995), Baldwin Lake (5-10 8 during 1980s, but now dry most years as a result of municipal water projects and 9 supporting no eagles), Lake Arrowhead (<5), Lake Silverwood (<5), Lake Mathews (5-10 during most years), Lake Hemet (several at most, but successful nest last few years), 10 11 and all others supporting only a few eagles at most at any one time. Clearly, Big Bear 12 || Lake's importance value in support of the southern California wintering bald eagle population is disproportionately large, and therefore the cumulative impacts on bald eagle 13 habitat in and around Big Bear Lake are even more significant. 14

15 23. Unfortunately, human disturbance happens on a regular basis wherever 16 concentrated human activity is introduced into bald eagle habitat. Bald eagles around Big Bear Lake cannot simply fly someplace else because there are so few places left for them 17 to fly to. Any new place for bald eagles to fly to must not only have all of the requisite 18 19 features of abundant fish, waterfowl, perching and foraging habitat, but must also be a place where the eagles can remain long enough to obtain some sustenance before being 20 flushed away again to yet another location. A basic principle of biology is that natural 21 selection will remove individuals of a population if they cannot obtain sufficient energy 22 23 resources relative to the individual's expenditure of energy. If an individual is continually flushed from one location to another and another, this needless expense of critical energy 24 resources during winter months can literally be a matter of life or death. 25

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28 DECLARATION OF TIMOTHY KRANTZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159

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EXHIBIT A

CURRICULUM VITAE

TIMOTHY PAUL KRANTZ

1216 Monterey Street Redlands, California 92373 (909)705-6707 Cell tim_krantz@redlands.edu University of Redlands 1200 E. Colton Avenue Redlands, CA 92373-0999 (909)748-8590 Direct Line

EDUCATION

Ph.D. Department of Geography, University of California at Berkeley, 1994.M.A., Latin American Studies, Stanford University, 1991.B.A., University of Redlands, California, 1977.

PROFESSIONAL EXPERIENCE

- 1997-2014 Full Professor and past-Chair of the Environmental Studies Program, past-Chair of the Latin American Studies Program (AY2007-2009), University of Redlands; First Director of the Redlands Institute for Environmental Design, Management, and Policy; Program Director for the Salton Sea Database Program, a \$4.7 million U.S. EPA federal assistance grant program. Dr. Krantz served on the Salton Sea Science Subcommittee for seven years, established under the authority of U.S. Secretary of Interior Bruce Babbitt and is still actively involved in Salton Sea restoration planning efforts.
- 2009-2010 Distinguished Fulbright Scholar. Appointed to facilitate the Memorandum of Understanding for Environmental Cooperation between Austria and California; based at the Technische Universität Wien, Vienna, Austria; primarily working on renewable energy environmental technology transfer programs between Austria and California, the U.S. and European Union.
- 1995-1997 Senior Associate Scientist, Levine-Fricke, an environmental engineering firm specializing in hazardous waste remediation. Dr. Krantz developed and managed the Ecological Services Division for the nationwide firm; supervising ecological remediation and restoration programs including several highly-acclaimed constructed wetlands and treatment wetlands projects.
- 1979-1995 Environmental consultant, Principal of Bio-Tech, an environmental analysis and planning consultant firm in California specializing in endangered species conflict resolution, mitigation and recovery programs.
- 1983-1988 Member and Vice-Chairman of the San Bernardino County Planning Commission, representing the First Supervisorial District.
- 1986-1987 Senior Ecologist, Michael Brandman Associates, a major environmental consulting firm in Santa Ana, California.

Areas of Expertise

- <u>National Environmental Policy Act/California Environmental Quality Act Compliance</u> Dr. Krantz has prepared more than 150 NEPA/CEQA documents; teaches Environmental Impact Assessment classes at the University of Redlands; and has consulted on hundreds of applications for a very wide range of projects.
- <u>Clean Water Act Compliance</u>-Dr. Krantz has performed and supervised numerous formal wetlands delineations and jurisdictional determinations for projects dealing with Section 400 CWA permit applications; has served as an expert witness in Federal court on Section 400 issues.
- <u>Endangered Species Act Compliance</u>-Dr. Krantz is a recognized authority on endangered plant and animal species, with particular regional expertise in the Southwestern United States and Hawaii. He has authored or been cited as an authority on 15 petitions to list endangered or threatened plant species; and has consulted on numerous Section 7 and Section 10 consultations under the Federal ESA.
- <u>Habitat Restoration</u>-Dr. Krantz has designed and supervised several highly acclaimed ecological restoration projects; most notably the Arrowhead Marsh at the Martin Luther King East Bay Regional Park (Oakland, California), Oro Loma Marsh (San Leandro, California), Pier 98 Saltmarsh (San Francisco, California), and Goleta Slough (Santa Barbara, California).
- Regional Preserve Systems and Wildlife Corridor Design-Dr. Krantz is the founder of • the Big Bear Regional Preserve System, a California Critical Area of The Nature Conservancy, incorporating 16 different preserve areas under private, federal and state jurisdictions; preserve assembly utilized fee title acquisitions, Forest Service land exchanges, conservation easements, transfer of development rights, private owner management agreements and other conservation mechanisms; founder and principal landscape planner for the "Calimesa Vision", a 2,000+-acre habitat corridor connecting the San Timoteo Canyon and Wildwood Canyon State Park Units through the City of Calimesa; Wilson Creek Corridor, working with the Dangermond Group and the Endangered Habitats League, established implementation goals and mechanisms for preserve assembly under the auspices of the Riverside County Multiple Species Habitat Conservation Plan; City of Redlands Emerald Necklace, worked on corridor delineation. route selection, and parcel configuration through a grant between the City and the Redlands Institute, establishing the first major private land contributions to the Emerald Necklace Program.
- <u>Land Trust Management</u>—Dr. Krantz founded the Friends of Big Bear Valley Preserve, a 501(c)3 land trust; and has served as Chairman of the Crafton Hills Open Space Conservancy for 10+ years, under whose leadership the land trust has grown from assets of \$10,000 to over \$2,000,000.

- <u>Expert Witness Representation</u>-Dr. Krantz has served as an expert witness on several federal and state endangered species and wetlands-related cases, two of which were settled in favor of the plaintiffs for whom he testified, one of which was suspended due to defendant passing away before hearing, another before the State Water Resources Board regarding the Salton Sea restoration planning efforts, and another case is still pending before the California State Appellate Court.
- <u>Public Hearing Representation</u>—Dr. Krantz has testified before dozens of local agency, state, and congressional hearings, representing a wide array of interests ranging from development and environmental advocacy groups, private constituents, and other interested parties.
- Local Agency Representation—Dr. Krantz has worked closely with the City Councils of Redlands, Yucaipa, Calimesa, Colton, San Bernardino, Big Bear Lake, the counties of Riverside and San Bernardino, Coachella Valley Association of Governments, and other local boards and planning commissions for more than thirty-five years; and has developed a reputation for being a pragmatist who can work with both developers and environmental organizations to achieve reasonable compromises and better-designed projects as a result of his mediations. Through these efforts, Dr. Krantz has nurtured first-name relationships with many mayors, council persons, and state and federal elected officials; while developing a position of authority and credibility with state and federal regulatory and responsible agency representatives.
- <u>Botanical Expertise</u>–Dr. Krantz is widely recognized as one of the leading authorities on the botany of Southern California, with particular authority on the flora of the San Bernardino Mountains and California deserts; Dr. Krantz's Ph.D. dissertation was on the *Phytogeography of the San Bernardino Mountains*, comprising a 170-page analysis of the physical geography of the flora of the range, with a 250-page annotated flora based on more than 15,000 collection records and comprising nearly 1,600 species and subspecies of plants.
- <u>Native Landscaping Programs</u>—Dr. Krantz has helped design and implement several innovative landscape programs for large-scale development projects (Chapman Ranch, Summerwind Ranch, East Branch Extension, *et alus*) incorporating native and droughttolerant plantings and natural slope restoration (topsoil salvage and redistribution) for multiple benefits for wildlife, fuel modification and fire protection.
- <u>Biological Expertise</u>-Dr. Krantz has conducted and directed hundreds of biological investigations and surveys for development applications, designing numerous successful biological mitigation and monitoring programs for a wide array of species, including bald eagles, clapper rails, tiger salamanders, red-legged frogs, unarmored three-spined sticklebacks (fish), salt marsh harvest mice, and many other special status species.
- <u>International Experience</u>-Dr. Krantz has worked extensively abroad on projects in Central and South America, French Polynesia, Indonesia, Southeast Asia and Europe. He was one of 10 U.S. delegates to Austria in the first George C. Marshall Visit to Austria

program in Vienna, October, 2008, and was one of four U.S. delegates at the Trans-Atlantic Research and Development Interchange on Sustainability (TARDIS) in Seggau, AT, October, 2009. Dr. Krantz was centrally-involved in drafting the California-Austria Environmental Technology Exchange Agreement—a Memorandum of Understanding signed by California Secretary of Resources, Michael Chrisman, and Secretary of Environmental Protection Agency, Linda Adams, on behalf of then-Governor Arnold Schwarzenegger, and by Minister of Lebensministerium, Josef Pröll, on behalf of the then-Chancellor Gusenbauer of Austria on 16 Mai 2008.

- <u>U.S. Fulbright Lecturer</u>—Dr. Krantz was awarded a Distinguished Fulbright Lecturer grant, where he was based at the Technical University of Vienna from October-February, 2009-2010. He presented guest lectures at the Technical University, and was an invited speaker before the U.S. Embassy, the Wirtschaftskammer Österreich (the National Chamber of Commerce), the United Nations Economic Commission for Europe and several international congresses on the topics of U.S.-California environmental policy, carbon cap and trade programs, renewable energy technologies in the U.S. and European Union, and promoting the Austria-California MOU.
- <u>Tetiaroa Geodatabase Project</u> Principal Investigator overseeing a rapid environmental assessment of the Tetiaroa Atoll, French Polynesia. Tetiaroa is the private atoll owned and managed by the Marlon Brando Estate. A new six-star luxury resort is being constructed on the island chain that will be largely energy independent, utilizing an innovative deep sea water air conditioning system, photovoltaics, biodiesel from coconuts and other renewable energies. Dr. Krantz is directing the long-term geographic information database for physical, biological and cultural resources for the atoll in conjunction with the Tetiaroa Society.
- <u>Other Research in French Polynesia</u>—Dr. Krantz first began work as a Research Assistant to Dr. David Stoddart, Dept. of Geography, U.C. Berkeley, in 1993, where he was based at the Richard B. Gump South Pacific Research Station on Moorea. He conducted research on using infra-red photography as a means of mapping and early detection of the invasive Central American tree, *Miconia calvescens*; he has since taken five Interim/May Term classes to French Polynesia, focusing on the natural and cultural history of the islands.
- <u>Salton Sea Expertise</u>—Dr. Krantz is a recognized authority on the Salton Sea, having founded and directed the Salton Sea Database Program for 16 years. He is widely published on the Salton Sea, ranging from three encyclopedia entries, to articles on prehistoric Lake Cahuilla and developing fish and wildlife monitoring programs.

EXHIBIT B



EXHIBIT C

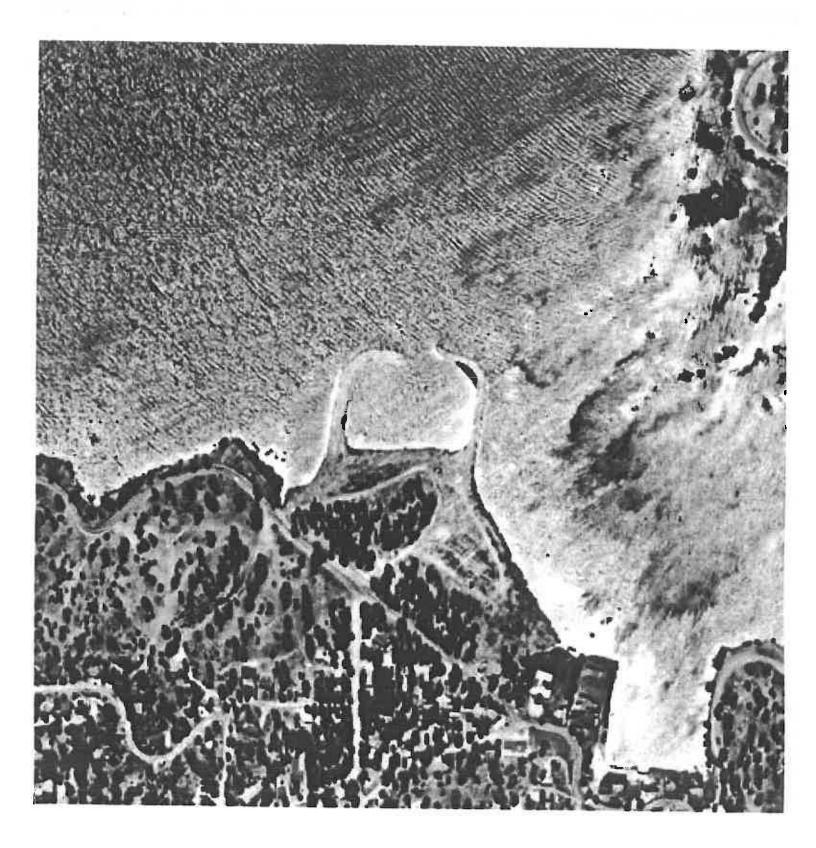


EXHIBIT D

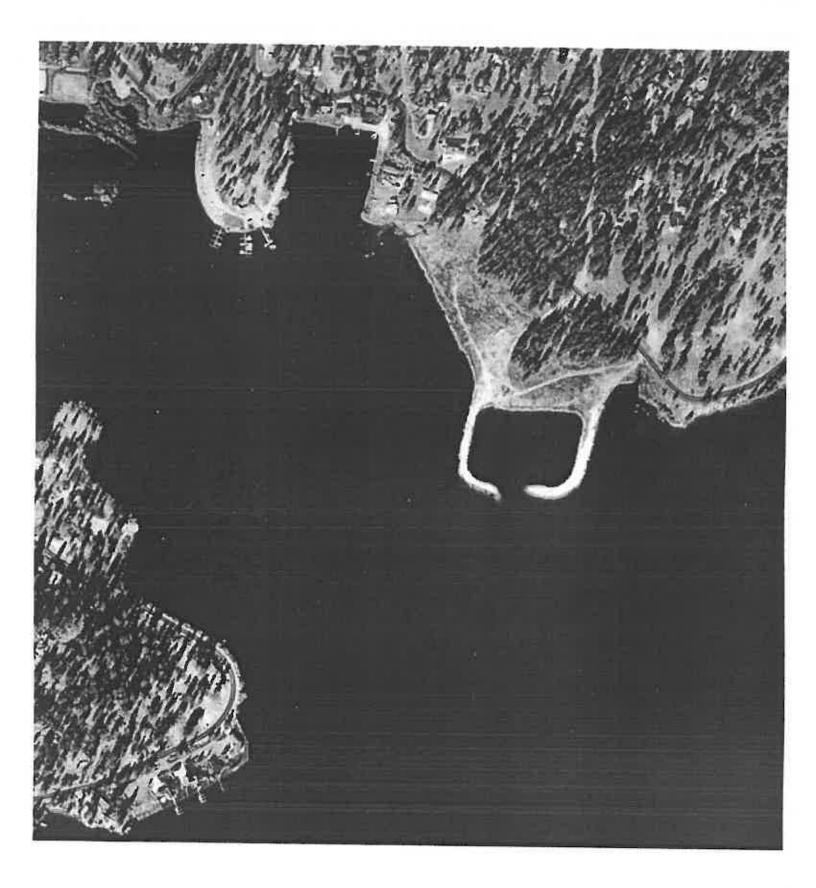


EXHIBIT E

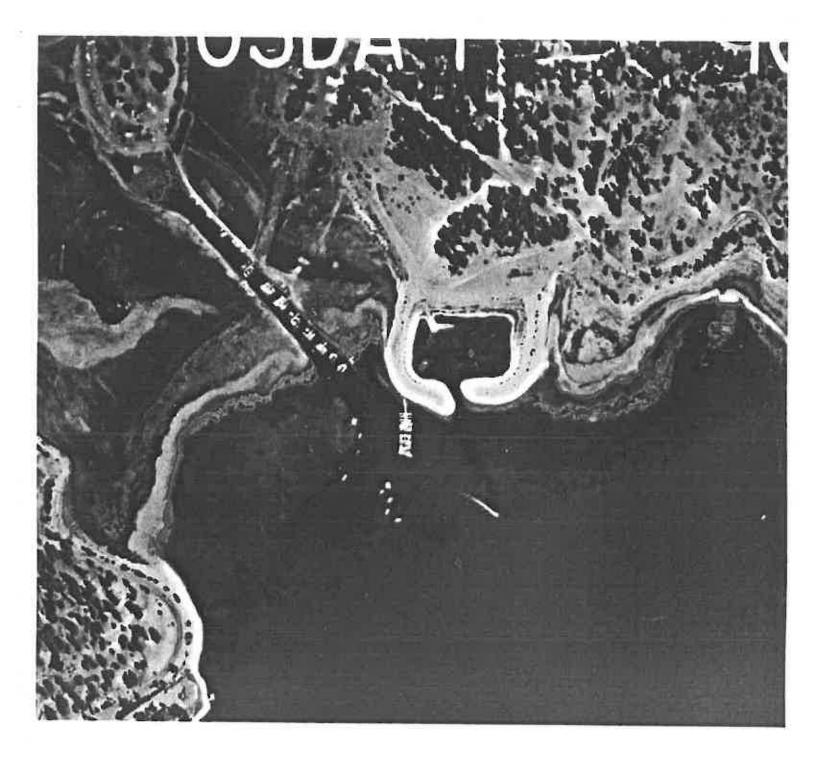


EXHIBIT F

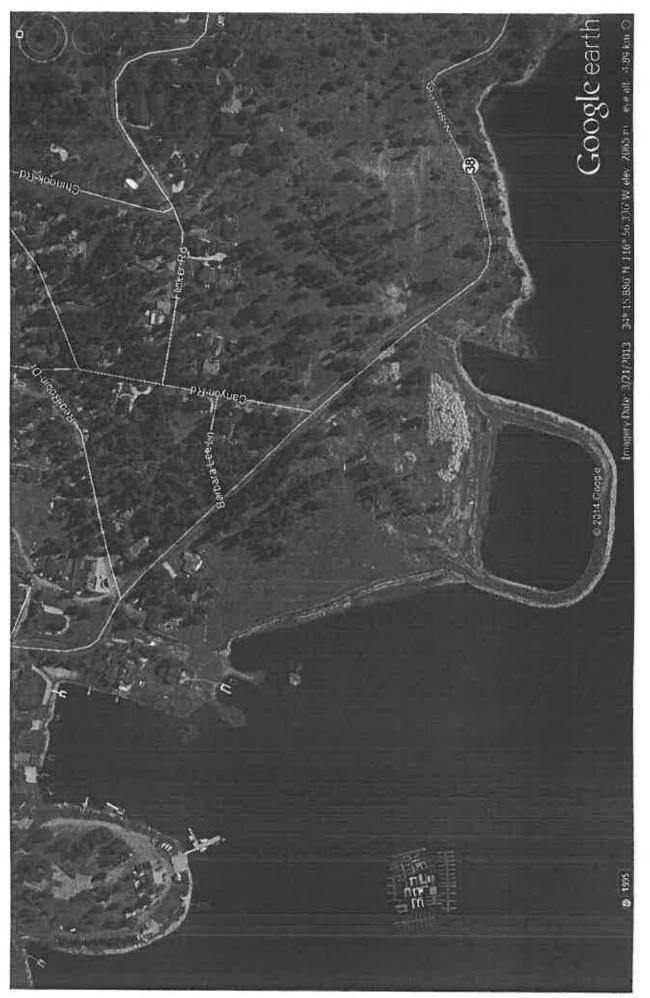


EXHIBIT G

Big Bear Lake & Bal Month	December		February	March	April	Average	High
Year					0 (93		Count
1978 - 79	7	27	27	18	9	17.60	27
1979 - 80	20	22	13	11	3	13.80	22
1980 - 81	11	19	25	No Count	No Count	18.33	25
1981 - 82	15	27	22	6	3	14.60	27
1982 - 83	7	27	18	11	No Count	15.75	27
<u> 1983 - 84 </u>	14	28	18	10	No Count	17.50	28
1984 - 85	27	8	3	3	No Courit	10.25	27
1985 - 86	20	24	No Count	9	No Count	17.67	24
1986 - 87	20	24	No Count	9	No Count	17.67	24
<u> 1987 - 88</u>	9	17	21	16	No Count	15.75	21
1988 - 89	12	6	4	12	No Count	8.50	12
1989 - 90	15	11	19	17	No Count	15.50	19
1990 - 91	6	16	22	17	No Count	15.25	22
1991 - 92	19	19	13	9	No Count	15.00	19
1992 - 93	6	15	3	3	No Count	6.75	15
1993 - 94	9	17	15	8	No Count	12.25	17
1994 - 95	10	10	20	No Count	No Count	13.33	20
1995 - 96	6	14	15	10	No Count	11.25	15
1996 - 97	10	15	5	9	No Count	9.75	15
1997 - 98	8	<u>14 - 15</u>	15	12	No Count	11.67	15
1998 - 99	8	17	15 - 17	9	No Count	11.33	17
1999 - 00	8	13	3	13	No Count	9.25	13
2000 - 01	13	13	14	12	No Count	13.00	14
2001 - 02	7	9	11	9	No Count	9.00	11
2002 - 03	6	13	15	9	No Count	10.75	15
2003 - 04	4	14	11	7	No Count	9.00	14
2004 - 05	6	1	4	5	No Count	4.00	6
2005 - 06	7	4	6	No Count	No Count	5.67	7
2006 - 07	4	8	5	5	No Count	5.50	8
2007 - 08	4	3	6	3	No Count	4.00	6
2008 - 09	No Count	6	No Count	5	No Count	5.50	6
2009 - 10	4	6	9	5	No Count	6.00	9
2010 - 2011	2	5	5	-3	No Count	3.75	5
2011-2012	4	6-8	6	6	No Count	5.5-6	8
2012-2013	No Count	5	No Count	No Count		5*	5*
2013-2014	6	5	10	5	No Count	6.5	10
Monthly Average	9.9	13.4	11.9	8.6	5.00	11.1	16.3
Maximum						18.33	2
Minimum						3.75	

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ATTACHMENT C - Minute Order

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER 247 WEST THIRD STREE'T SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1409159

CENTER FOR BIOLOGICAL DIVERSITY 351 CALIFORNIA ST. SUITE 600 SAN FRANCISCO CA 140492

IMPORTANT CORRESPONDENCE

From the above entitled court, enclosed you will find:

minute order dated 11/7/14

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

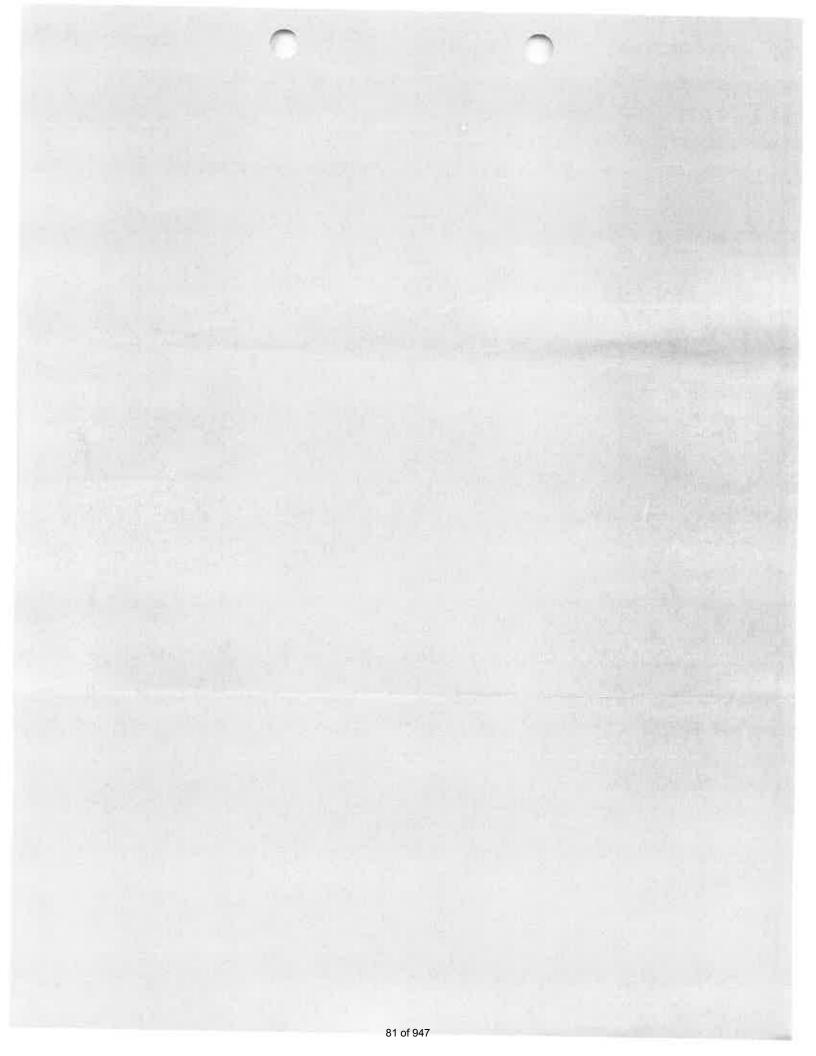
() Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.

() Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.
() A copy of this notice was given to the filing party at the counter
() A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 11/07/14 I declare under penalty of perjury that the foregoing is true and correct. Executed on 11/07/14 at San Bernardino, CA

BY: KIMBERLY POLAND

MAILING COVER SHEET



COUNTY OF SAN BERNARDINO SUPERIOR COURT STATE OF CALIFORNIA MINUTE ORDER

CASE NO: CIVDS1409159 DATE: 11/07/14 CASE TITLE: FRIENDS OF FAWNSKIN -V- COUNTY OF SAN BERNARDINO ____ DEPT: \$36 11/07/14 TIME: 2:45 Ruling on Submitted Matter

COMPLAINT TYPE: WOM

GILBERT OCHOA, JUDGE Clerk: Kimberly Poland

Court rules as follows on submitted matter:

SEE ATTACHED MINUTE ORDER

Moving party to prepare Order.

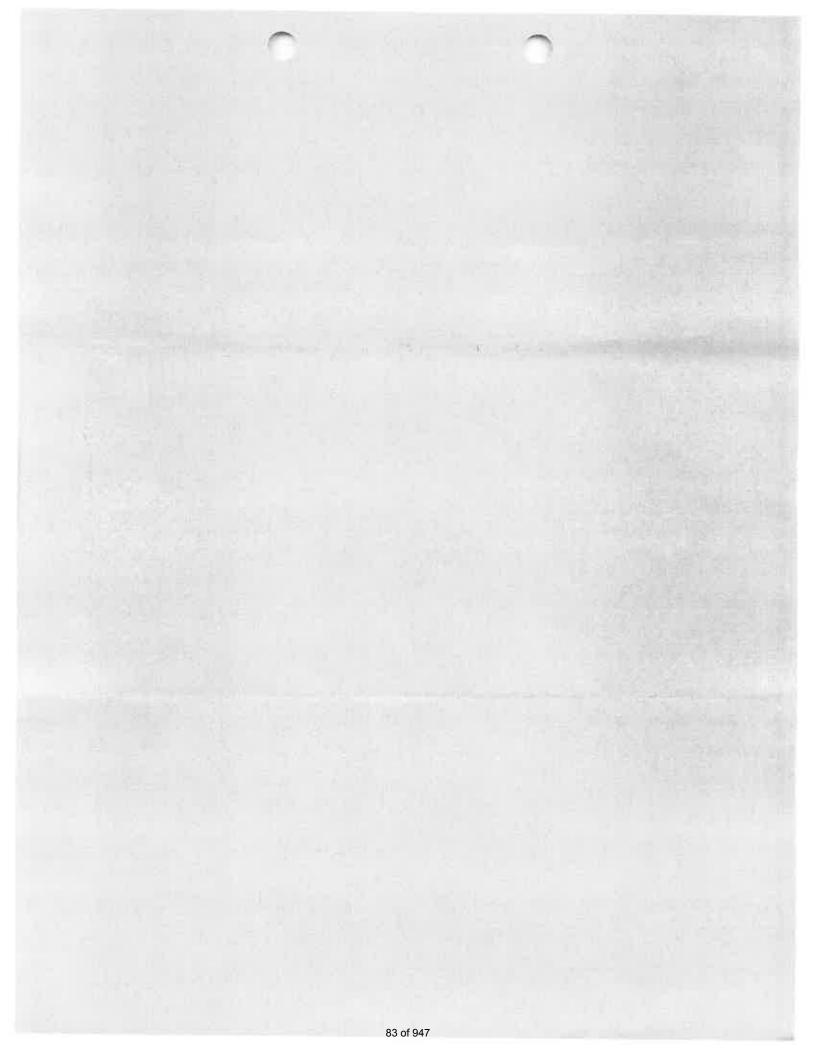
Notice given by Judicial Assistant

Correspondence coversheet generated to mail minute order dated 11/7/14 to counsel of record.

Action - Complete

=== MINUTE ORDER END ====

=== MINUTE ORDER END ===



FRIENDS OF FAWNSKIN and CENTER FOR BIOLOGICAL DIVERSITY

v.

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COUNTY OF SAN BERNARDINO and BOARD OF SUPERVISORS FOR THE COUNTY OF SAN BERNARDINO

Real Parties in Interest: MARINA POINT DEVELOPMENT ASSOCIATES and IRVING OKOVITA

Motion:Preliminary Injunction on Writ of Mandate (CEQA) and ComplaintMovant:Petitioners Friends of Fawnskin and Center for Biological DiversityRespondent:Real Parties in Interest Marina Point Development Assocs. and Irving Okovita

Having taken the matter under submission, the issues the following ruling:

In the current litigation, Petitioners are basing their claim that supplemental environmental review is necessary on three separate assertions: (1) the 2014 demolition permits should not have been issued without supplemental review; (2) the proposed revisions to the Project trigger the need for supplemental review; and (3) changes in the bald eagle population, and other environmental changes, require supplemental review.

2014 Demolition Permits. Regarding Petitioners' first basis – the 2014 demolition permits – Respondents have conceded that they began demolishing the existing buildings on the site before they obtained the demolition permits in April 2014. [Okovita Decl., ¶ 22.] Respondents have also conceded that asbestos was present in the buildings, friable asbestos was found in the demolition debris, and abatement measures were necessitated. [*Id.*, ¶ 23.]

However, the issuance of a demolition permit is usually a ministerial act, there were certain conditions of approval regarding the Project that were part of the 1991 approval of the final development plan. Indeed, under the 1991 development plan, Marina Point represented that "[a]ll existing structures will be removed from the property." [See, Steers Decl., Exh. B., p. I-3.] In 1992, revised conditions of approval were promulgated, including the following:

- A Hazardous Materials Handler Permit and/or Hazardous Waste generator Permit shall be required.
- Prior to issuance of a Demolition Permit, a vector control survey must be conducted to identify any vector problems and implement mitigation measures.

[Steers Decl., Exh. E, ¶¶ 15-16 at p. 4.]

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Therefore, the demolition of the existing facilities buildings on the site has always been a part of Marina Point's plan. In addition, County placed certain conditions on the approval of the Project that contemplated the acquisition of demolition permits – presumably for those buildings – and the mitigation measures required. Accordingly, having placed these conditions on the demolition portion of the Project, County and Marina Point were obligated to comply with them.

Public Resources Code section 21002.1, subdivision (b) states: "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Furthermore, "[a] public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements or other measures." (*Pub. Res. C.*, § 21081.6, subd. (b).) Courts have held that "[t]he purpose of these requirements is to ensure that feasible mitigation measure will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508, quoting *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.Ap.4th 1252, 1261.)

Yet, here, County failed to proceed according to law by permitting Marina Point to proceed with the demolition of the existing buildings without complying with the stated conditions. In addition, County has not stated a reason for ignoring those mitigation measure, nor has it prepared and circulated a supplemental EIR wherein it was determined that the mitigation measure was no longer feasible, and thus should be deleted. (See, e.g., *Lincoln Place, supra*, at pp. 1508-1509; see also, *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358; and see discussion in 1 Kostka & Zischke, *supra*, section 14.24, pp. 580.6-580.7.) As a result, it is likely that Petitioners will prevail on their claim that the 2014 demolition permits are unlawful and invalid.

Since Petitioners have demonstrated a reasonable probability of prevailing on their claim as to the 2014 demolition permits, an injunction to prevent further demolition should be imposed until Marina Point complies with the existing preconditions on demolition, or County modifies or deletes these conditions through a supplemental EIR.

Proposed Revisions to Project. As noted above, Marina Point submitted a Revisions Application to County in March 2014. [Steers Decl., Exh. G.] In this application, Marina Point represents that it proposes to make the following "minor site plan revisions": (1) reduce the number of condominiums from 133 units to 110 units in 11 buildings; (2) increase the number of parking spaces per unit from 1.85 to 2; (3) build 10 single-car garages with each building instead of 7 garages, and reduce the overall footprint of the condominium buildings from 3.30 acres to 3.26 acres; (4) build 10 site condominium units ranging in size from 12,000 to 14,000 square feet, with buildable footprints of approximately 4,500 square feet, and where the custom homes built on these sites that are more than a single story will be designed where the additional story and roof will be limited in size and shall not exceed 75% of the ground floor, with each building providing a minimum of one enclosed parking spaces and one guest parking space on the road; (5) reconfigure the clubhouse and marina to improve views to the lake, (6) construct a large open

plaza containing a lookout, pool and spa, fire pits, and seating areas, with the parking built in closer proximity to the facility; and (7) expand the recreational amenities to include children play areas, a gazebo with water feature and picnic areas, pitch and putting greens, bocce ball courts, horseshoe areas, reflecting ponds that convert to an ice skating rink, whirlpool spas, and a special events gate house. [See, Steers Decl., Exh. G.]

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County properly noticed the Project revisions and invited public comment. [*Ibid.*] Yet, there is nothing in the record to show that County has made any discretionary decisions regarding this Revisions Application. Under the CEQA statutes and case law, in light of the type of revisions that are proposed, County must make a determination whether the Project changes trigger the need to conduct supplemental environmental review. However, since it appears County has not yet made this determination, nor has it approved the application, Petitioners' claim on this issue is premature and not yet ripe. Therefore, without knowing if County will determine that supplemental environmental review is not necessary, or even if County will approve the Project revisions before making that determination, Petitioners cannot demonstrate a reasonable probability of prevailing on this claim.

New Environmental Information. Generally, new information appearing after all discretionary approvals have been granted does not require reopening the approval. (CEQA Guidelines § 15162(c); California Oak Foundation v. City of Santa Clarita (2005) 133 Cal.App.4th 1219, 1243.) Indeed, once all discretionary approvals have been granted for a project, no further CEQA review is required even if important new environmental information develops. (2 Kostka & Zischke, *supra*, at § 19.32, p. 902.) However, if further discretionary approvals are needed, then the need for further CEQA review may be reopened. (*Ibid*) Moreover, new information may require the preparation of a supplemental EIR if the new

information raises significant questions about the key assumptions relied on in the previous environmental review. (Security Envi'l Sys. v. South Coast Air Quality Mgmt. Dist. (1991) 229 Cal.App.3d 110, 124.)

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Here, Petitioners contend that there is new information about the bald eagle population, water resources, and climate change impacts. Regarding the bald eagle population, Petitioners proffer the declaration of Timothy Krantz, Ph.D. Although Krantz makes certain attestations regarding the current state of the bald eagle population, it appears that he does not provide any new information that is of substantial importance to the Project. Krantz attests that a small year-round bald eagle presence has been noticed near the Project site since 2011. [Krantz Decl., ¶ 10.] However, he also attests that the needs of wintering bald eagles and year-round bald eagles are the same. [*Id.*, at ¶ 11.] In the 1983 EIR, the impact of the Project on the wintering bald eagle population was considered, and certain mitigation measures were put in place as conditions for approval. [*See*, Steers Decl., Exh. A at p. 14.] In addition, in 1992, certain revised conditions of approval were put in place regarding the removal of trees from the site, as well the alteration of any wetland habitats. [Steers Decl., Exh. E, p. 3.] Therefore, as to the bald eagle population, it appears that the original approvals considered the impact of the Project on these birds, and Petitioners have not provided any new information of substantial importance that would trigger additional environmental review on this issue.

As for Petitioners' claims regarding climate change impacts, they are vague and Petitioners have not provided any evidence. Moreover, although the subject of climate change has had higher visibility in recent years, scientific reports on this issue have set forth these conclusions for several years. (See, 2 Kostka & Zischke, supra, at § 19.21, p. 894.) However, in light of the fact that the original EIR was prepared in 1983, and the last environmental review

was conducted in 1992, the County should carefully consider whether climate change is new information. (*Ibid.*)

Similarly, regarding Petitioners' claims regarding the current drought conditions and its impact in the Big Bear Lake area, Petitioners have not proffered any evidence on this issue. However, similar to the climate change claims, California's water situation has likely changed substantially since the last environmental review was conducted on the Project in 1992. Therefore, as with the climate change claims, since further discretionary approval is necessary as to Marina Point's Revisions Application, County should also carefully consider whether the current drought is new information of substantial importance to the Project that might trigger additional environmental review.

Yet, as discussed above, since it does not appear that County has taken any action regarding the pending Revisions Application and/or made any determination as to whether supplemental environmental review is necessary, Petitioners' challenge on this ground may be premature. Once County takes action on the Revisions Application, then depending on the determinations made, Petitioners' claims may be ripe and properly addressed in this writ proceeding.

A. <u>Relative Harms</u>

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As discussed above, Petitioners have demonstrated a likelihood of success on some of their claims. As for the relative harms in this matter, Petitioners argue that the environment will suffer irreparable harm if the injunction is denied. According to Petitioners, under the current permits, Marina Point is logging mature trees, grading the landscape, and altering the lakefront, thus significantly impacting the surrounding habitat and permanently altering the environment around the Project site. Petitioners further argue that Respondents will suffer no irreparable harm if the injunction is granted, other than temporary financial harm that does not outweigh the permanent damage that is being done to the environment.

In opposition, Respondents contend that the balance of harms weighs in their favor. According to Respondents, a stay of construction on the Project, even for a short period, will cause the demobilization of the subcontractors, additional loan payments without the offset of revenue from sales of the condos, and material cost increases. Respondents assert that an injunction could result in a one-year delay in completion of the Project, as well as loan defaults and possible foreclosure. [Okovita Decl., ¶ 17.] In addition, Respondents contend that Petitioners are not likely to suffer any greater harm from denial of the injunction than Respondents will suffer if it is granted.

All arguments have been considered. The Court has tried to reach a middle ground on the injunction. Therefore, it should be found that the greater harm lies with Petitioners, and the preliminary injunction should be issued as to the 2014 demolition permits only. As a result, any further demolition on the site should be enjoined. However, since Petitioners have not demonstrated a reasonable probability of prevailing as to its other claims, the injunction should be denied as to the validity of the Planned Development Permit and the grading permits. In addition, the injunction should be denied on the issue of the necessity of a supplemental EIR. These claims are not ripe since County has not yet made a determination as to the Revisions Application.

<u>RULINGS</u>

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1. The Court GRANTS the preliminary injunction as to the 2014 demolition permits, on the ground that Petitioners have demonstrated a reasonable probability of prevailing on this claim and the relative harms weigh in their favor. The injunction is narrowly tailored to prevent any further <u>demolition</u>, until Marina Point complies with the existing preconditions on demolition, or County modifies or deletes these conditions through a supplemental EIR. The injunction will also include the destruction of any old growth trees but will not include trees infested with the Bark Beetle that have been determined by mutually agreeable qualified arborist to be untreatable/not capable of being saved.

2. The Court DENIES the preliminary injunction as to the alleged violations of the County Development Code, on the ground that these claims are time-barred.

3. The Court DENIES the preliminary injunction as to the CEQA claims, on the ground that these claims are not ripe.

4. Petitioners are required to provide an undertaking of \$25,000.00 to cover any foreseeable damages incurred by Marina Point due to any potential delay in construction.

5. The Court GRANTS Petitioners' Request for Judicial Notice.

6. The Court GRANTS Respondents' Request for Judicial Notice, with the caveat that the Court is not judicially noticing the truth of the matters asserted in Exhibits 1, 2, 3, 4, 5, 7, 10, 11, or 12.

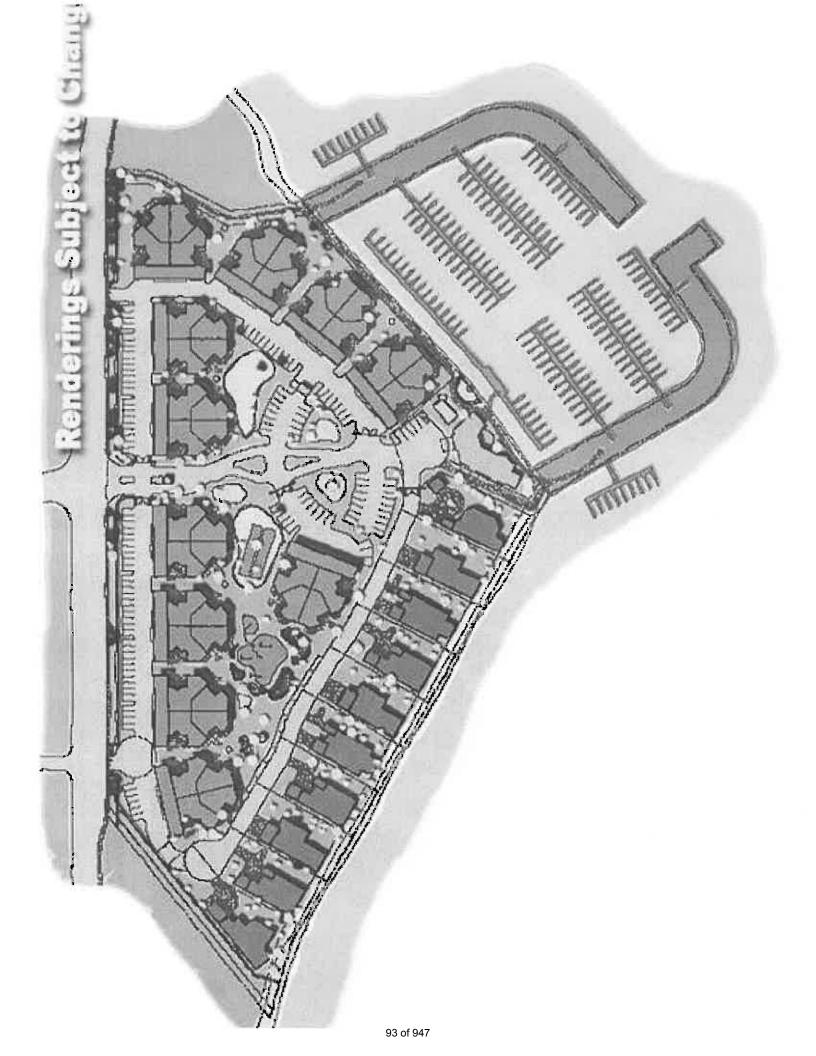
Moving party to prepare order.

Clerk to give notice.

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ATTACHMENT D - Map with Extra Docks

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ATTACHMENT E – Revised Conditions of Approval (04-28-92)

GENERAL ON-GOING CONDITIONS

Revised by

PLANNING DEPARTMENT (714) 387-4155

This conditional approval is for a Planned Development 1. consisting of an eight (8) lot Subdivision, including 133 condominium units, 2-man-made ponds, and boat marina with other open space/recreational amenities on 28.2 acres generally located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be a six (6) phase development, with each of the six (6) phases being constructed in sequence and coinciding with the six (6) numbered lots of subdivision Tract 12217.

Time limitations for Planned Developments: A conditionally *2. approved Planned Development for a phased project shall be subject to a time limitation not to exceed that specified by Staff 4-28-92 the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

- Time limitations for Tentative Tracts: This approval shall 2a. become null and void if all conditions have not been complied with and the occupancy or use of the land or recordation of a final map has not taken place within 36 months of the effective date. One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration. PLEASE NOTE: This will be the only notice given of the above specified expiration date. The applicant is responsible for initiating extension requests.
- The applicant shall ascertain and comply with requirements 3. of all State, County and local agencies as are applicable to the project area. They include, but are not limited to the Transportation/Flood Control, Fire Warden, Building and Safety, and the State Fire Marshall.
- 4.. In compliance with San Bernardino County Development Code Section 81.0150 the applicant shall agree to defend at his sole expense any action brought against the County, its agents, officers, or employees, because of the issuance of such approval, or in the alternative, to relinquish such The applicant shall reinburse the County, its approval.

+ NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

> agents, officers, or employees, for any Court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition.

**5. The County is in the process of developing and implementing development impact fees for various infrastructure and capital facilities needs generated by new development. These fees will provide for various capital facilities including, but not limited to, roads, libraries, museums, parks (local and regional), open space, flood control, drainage, water sewer, courts, jails, other law enforcement facilities, fire fighting facilities and equipment and geographic mapping database development. This project shall be subject to all such development impact fees which are in effect prior to the issuance of final development permits (i.e., occupancy permit).

**6. Exterior Construction activity shall be prohibited from Revised by December 1 to April 1, to minimize disturbance to Bald Eagle 30S 12-09-91 habitat.

**6a. Revised by BOS 12-09-91 If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall employ a wildlife biologist to evaluate the level of disturbance and the effect on the wintering Bald Zagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to the Environmental Team of the County Planning Department in advance of the anticipated construction.

**7. The marina shall not be used from December 1 to April 1, to protect wintering Bald Hagles.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 8. Noise levels shall be maintained below County Standards, Development Code Section 87.0905(b).
- 9. Refuse disposal service shall be provided by a DEHS approved and permitted waste hauler.
- 10. A Special Use Permit may be required to monitor the operation

* NON-STANDARD CONDITION(S)

**ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

to insure the protection of the public's health, safety and welfare.

Service Street in substances

CONCURRENTLY WITH THE BOARD OF SUPERVISORS ACTION ON THE PROPOSAL, THE FOLLOWING CONDITIONS SHALL BE MET:

11. Revised by BOS 12-09-91

Pursuant to California State Assembly Bill 3158, the applicant shall pay a fee of \$850.00 to the Department of Fish and Game. The fee shall be submitted to the Clerk of the Board of Supervisors upon filing of the Notice of Determination along with any filing fee required by the Clerk. The applicant should be aware that Section 21089(b) of the Public Resources Code provides that any project approved under CEQA is not operative, vested or final until the required fee is paid. Proof of fee payment may be required prior to issuance of building permits or final recordation of a map.

PRIOR TO ANY LAND DISTURBANCE, THE FOLLOWING CONDITIONS SHALL BE NET:

PLANNING DEPARTMENT (714) 387-4155

- **12. Prior to any tree removal, the applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit(s) from the California Department of Forestry and a 1601-1603 permit from the California Department of Fish and Game. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.
- **13. Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Game, in accordance with Sections 1601-1603 of the State Fish and Game Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. Copies of these permits shall be filed with the Planning Department or submit evidence from the Trustee Agency that a permit is not required.

BUILDING & SAPETY DEPARTMENT (714) 387-4246

*14. A tree removal plan, permit and preconstruction inspection, in compliance with the county's plant protection and management ordinance, shall be approved prior to any disturbance and/or removal of any protected tree or plant.

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 15. A Hazardous Materials Handler Permit and/or Hazardous Waste generator Permit shall be required. For information, call Hazardous Materials Field Services at (714) 387-3080.
- 16. Prior to issuance of a Demolition Permit, a vector control survey must be conducted to identify any vector problems and implement mitigation measures.

PRIOR TO RECORDATION THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

- **17. The owner shall provide a reliable and assured water supply adequate in quantity and quality to meet health and safety code requirements and in compliance with the County's recently approved Assured Water Implementation Plan. The Big Bear Department of Water and Power requirements are shown as Conditions of Approval (No.'s 26-28 & 82).
 - *18. A Composite Development Plan shall be required to show the following items:
 - A. Building setback lines shall be as shown on the Final Development Plan and on the Composite Development Plan.
 - B. Setbacks from drainage areas.
 - C. Structures shall not extend into Lake Management easement, unless otherwise quitclaimed, or a valid encroachment permit shall be obtained.
- Revised by D. A statement shall be added to the Composite Development staff 4-28-92 Plan that in the event the applicant (or its successor) determines to operate the project for timeshare use, then the following requirements apply:
 - 1. The applicant (or its successor) shall be required to provide documentation satisfactory to the County that proper arrangements have been made to insure all buildings and common area landscaping and improvements will be maintained in a manner acceptable to the County and consistent with other conditions of project approval.
 - 2. The project shall be subject to any regulations governing timeshare uses which may be enacted on a countywide or areavide basis, and the applicant (or its successor) shall comply with all such regulation.

* NON-STANDARD CONDITION(8)
**ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CP2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- *19. Easements of record not shown on the tentative map shall be relinquished or relocated. Lots affected by proposed easements or easements of record, which cannot be relinquished or relocated, shall be redesigned or a valid encroachment permit shall be obtained.
- *20. The applicants shall abate the existing structural encroachment from the parcel to the west or obtain a Lot Line Adjustment prior to Final Map recordation.
 - 21. All access drives shall be a minimum of twenty-four (24) feet wide to facilitate two-way traffic, except as shown on the approved Development Plan Map.

**22. The following changes and corrections shall be incorporated Revised by into the final CC4R's which are part of the subdivision tract: PC 11-21-91

- A. The boat marina shall not be used from December 1 to April 1 to protect wintering bald eagles.
- B. No individual owners or lessees of individual condominiums shall have the authority to initiate any changes to any structure on the property or to make any changes involving the landscape that will adversely affect the bald eagle, either directly or indirectly. Any minor modifications proposed that are determined not to affect the bald eagle must still have the prior express written approval from the Board of Directors, and such changes shall conform to the architectural provisions of this Declaration.
- C. A Homeowners Association shall assume responsibility for maintaining the on-site water features.
- D. The boating marina shall be maintained by the owner/developer in accordance with the Big Bear Municipal Water District permits.
- E. The shoreline access/pedestrian easement shall be referenced and retained as accessible to accomplish its intended purpose.
- 23. A copy of the CC&R's shall be submitted for Planning Director final review and approval. The CC&R's shall also include other applicable items specified in these conditions of approval.
- 24. A Homeowners Association shall be established for the purpose of carrying out the intent of the Planned Development Application.

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* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

25. The Planned Development report text shall be revised by addendum to incorporate any additional corrections and omissions required by Planning staff or the Planning Commission.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 866-5050

**26. Revised by PC 11-21-91

The developer must comply with the requirements of County's Assured Water Program by participating in the DWP's approved program. The current cost for the additional 50% Assured Water is \$284.00 per unit. For this project, the ratio of program components shall be 1/2 retrofit and 1/2 Wastewater recharge.

- **27. The developer must provide (at his cost and at DWP specifications) for 100% of the project's estimated water demand at maximum day demand usage by providing a new operational well to the DWP (or a portion of a new well's capacity) and the necessary piping to connect to the DWP system.
- **28. The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

- 29. Two points of ingress and egress will be required to each phase.
- **30. The developer shall participate with their fair share in mitigating the regional traffic problems in the Big Bear area, including a contribution to signals at the Stanfield Cutoff/State Highway 18 intersection. In the event that the proposed "Transportation Fee Program for Big Bear" is adopted prior to the issuance of building permits, the developer shall participate in this program in lieu of the above.
 - 31. Trees, irrigation systems and landscaping shall not be installed on public right-of-way and shall be as specified in County Transportation/Flood Control Department standards for tree planting.
 - 32. Construction of private roads and private road related drainage improvements shall be inspected and certified by the engineer.

* NON-STANDARD CONDITION(\$) **ENVIRONMENTAL MITIGATIVE MEASURE(\$)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 33. Existing utility poles shall be shown on the improvement plans and relocated as necessary without cost to the County.
- 34. Slope rights shall be dedicated on the final tract map where necessary.
- **35. Vehicular access rights shall be dedicated on State Highway 38.
 - *36. An approved type wall/barrier shall be required along the rear of <u>any</u> double frontage lots and shall be constructed outside of the public road right-of-way.
- **37. Dedication shall be granted on North Shore Drive, S.N. #38 as necessary to concur with the Master Plan of Highways. This dedication is to be coordinated with the State Department of Transportation (Cal Trans, District 08).
- **38. Any change to this project (as currently proposed) which may be necessitated by the State Department of Transportation recommendations, must be incorporated prior to recordation to the Final Map.
 - 39. The applicant shall present evidence to the Land Development Engineering Division that he has tried to obtain a letter of non-interference from any utility company that may have rights of easement within the property boundaries.
 - *40. Private roads to be constructed within this development shall be to Planned Development (PD) road standards per County Transportation/Flood Control Department policies and requirements or as approved, and shall not be entered into the County Maintained Road System.
 - 41. All required road and drainage improvements shall be bonded in accordance with the County Development Code unless constructed and approved prior to recordation of Final Map.
 - 42. Turnarounds at dead end streets shall be in accordance with the requirements of the County Transportation/Flood Control Department and the Forestry and Fire Warden Department.
 - **43. On State Highway #38 (North Shore Drive) at the project entrance, a left turn lane shall be required for both east bound and west bound traffic (opposite Canyon Road).
 - 44. Street type entrance(s) shall be provided to the entrance(s) of this development at North Shore Drive.

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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- 45. Emergency access roads shall be designed to provide legal vehicular access to the County Maintained Road System to standards acceptable to the County Transportation/Flood Control Department and Forestry and Fire Warden Department. This will entail design (and construction) of channel crossings for 100-year Q with bulking. These shall be shown on the Final Map and confirmation of maintenance arrangements satisfactory to the County shall be provided before approval of the Final Map.
- 46. Trees, irrigation systems, landscaping required to be installed on public right-of-way within this tract area shall be maintained by other than the County Transportation/Flood Control Department, and shall be as specified in County Transportation/Flood Control standards for tree planting. Maintenance procedures acceptable to Transportation/Flood Control Department shall be instituted prior to recordation.

LAND DEVELOPMENT ENGINEERING/DRAINAGE SECTION (714) 387-4040

- 47. Adequate San Bernardino County Drainage Easements (minimum 15 feet wide) shall be provided over the natural drainage courses and/or drainage facilities. The easements shall be designed to contain the 100-year frequency storm flow plus bulking and freeboard per County Standard Criteria.
- 48. Minimum finish floor elevations shall be 6747 feet.
- **49. Grading plans shall be submitted to Land Development Engineering/Drainage Section, for review.
 - 50. Adequate rolls shall be provided on the entrance roads to the site at North Shore Drive to minimize the possibility of street flow entering the site.
 - 51. In addition to the Drainage Requirements stated herein, other on-site or off-site improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this department.
- ##52. All necessary permits for taking material from the lake shall be obtained prior to recordation. This shall include a shore line alteration permit from Big Bear Municipal Water District.
- ##53. Proof that the lake owners have approved the proposed filling shall be supplied to this department.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4246

54. Written clearance shall be obtained from the designated California Regional Water Quality Control Board (listed below) and a copy forwarded to DEHS for storm water drainage/runoff from landscaping.

> Santa Ana Region, 6809 Indiana Avenue, Riverside, CA 92506, 714/782-4130.

- 55. The location of trash enclosures shall be indicated on the Development Plan for proper handling and collection of solid wastes generated by the development.
- 56. Sewage disposal shall be by connection to County Service Area 53-B. The applicant shall submit evidence of installation and/or service to DEHS for approval and submit evidence of service to Building and Safety at the time of construction plan submittal.
- **57. The water purveyor shall be City of Big Bear Department of Water and Power. Submit evidence of installation and/or service to DEHS for approval.
- **58. Source of water shall meet water quality and quantity standards. Test results which shown source meets water quality and quantity standards shall be submitted to DEHS.
- **59. The operation of a public water supply system shall be subject to the condition that entity or association acceptable to DEMS assume responsibility for maintenance and operation.
- **60. The following are the steps that must be completed to meet the requirements for installation and/or finance of the on-site/off-site water system and/or sever system:
 - A. Where the system is to be installed prior to recordation:

The water system, fire hydrants, and/or sever system shall be installed in accordance with requirements of the State Health and Safety Code, and in accordance with plans approved by the water and/or severing utility and the governing fire protection authority. The plans shall be reviewed by a Civil Engineer, registered in the State of California, and contain required certificates and approval signatures. It is the developer's responsibility to submit to the <u>LAND DEVELOPMENT ENGINEERING</u> <u>DIVISION</u> a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.

NON-STANDARD CONDITION(8)
**ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

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- B. Where a bond is to be posted in lieu of installation of the improvement:
 - 1. The domestic water plan and/or sewer plan which meets the requirements of the State Health and Safety Code shall be reviewed by a Civil Engineer, registered in the State of California, and approved by the water or sewering utility and the governing fire protection authority. The plans shall contain the required certificates and approval signatures. A copy of the approved plan shall be submitted to the <u>LAND DEVELOPMENT ENGINEERING</u> DIVISION.
 - 2. Said engineer shall determine the amount of bond necessary to install the improvements.
 - a. This amount plus ten percent shall be posted with the County of San Bernardino. A statement signed by the engineer stating that the amount of bond recommended is adequate to cover the cost of installation of the improvement shall be included with the estimate and submitted to the <u>LAND DEVELOPMENT</u> <u>ENGINEERING DIVISION</u>.
 - b. Or, in cases where the water agency or severing agency is a governmental subdivision, the bond in the amount of 110 percent of the cost of installation of the improvement may be placed with the agency. A signed statement from that agency stating that financial arrangements have been completed shall be submitted to the <u>LAND DEVELOPMENT ENGINEERING</u> DIVISION.
 - 3. Prior to release of the bond for the improvement, the utility of jurisdiction shall submit a signed statement confirming that the improvement has been installed and meets the requirements of all appropriate State and County laws pertaining to such improvement. It is the developer's responsibility that such signed statement is filed with the LAND DEVELOPMENT ENGINEERING DIVISION.
- **61. Provide a letter from the Sanitary Engineering Section, State Health Department, stating they have reviewed the water system and concur with Big Bear Water and Power findings that additional supplies of adequate quality and

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* NON-STANDARD CONDITION(8)
**ENVIRONMENTAL MITIGATIVE MEASURE(8)

> quantity of water are available to meet Health and Safety Code requirements.

An acoustical study shall be performed to assess hoise **62. levels at the development and shall be reviewed and approved by the Department of Environmental Health Services. Detailed noise analysis and precise mitigation measures shall be submitted to the Department of Environmental Health Services for review and approval prior to recordation. Specifically addressing, 1) North Shore Drive, 2) marina, 3) tennis courts, 4) pool/health club, 5) tram/bus loading area, 6) pond pumps/motors, an 7) any other noise generating sources. Prior to the issuance of building permits, a report stating that the recommended mitigation measures have been implemented shall be submitted to the Department of Environmental Health Services and the building plans shall be so certified by the acoustical engineer. A fee will be charged for review of the acoustical study and payment will be required prior to issuance of approval/denial letter.

BUILDING & SAFETY DEPARTMENT (714) 387-4246

**63. A preliminary soils report shall be filed with and approved by the Building Official prior to recordation of the final map.

- 64. For projects where grading is to be done, grading plans are to be submitted to and approved by the Building and Safety Department prior to recordation.
- 65. Submit plans and obtain building permits for required walls.

FORESTRY AND FIRE WARDEN (714) 387-4213

- 66. Construction plans shall comply with FIRE REVIEW AREA 2 requirements.
- 67. Private road maintenance, including but not limited to grading and snow removal, shall be provided for prior to recordation or approval. Written documentation shall be submitted to the fire agency having jurisdiction. Private fire access roads shall provide an all weather surface with minimum paving width of twenty (20) feet.

PRIOR TO GRADING PERMITS THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

**68. Prior to any tree removal, applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit(s)

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

> from the California Department of Forestry and a 1601/1603 permit from the California Department of Fish and Game. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

69. An encroachment permit, or authorized clearance, shall be obtained from the County Transportation/Flood Control Department prior to issuance of a grading permit by the Building and Safety Department.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 70. Plague has been shown to be endemic to the San Bernardino Mountain area. The disease is carried by fleas on wild rodents, including ground squirrels. It is known that ground squirrels are currently in the San Bernardino mountain area; therefore, for land development, the following control measures shall be completed prior to grading:
 - A. A survey of the subject area by a qualified vector biologist or biologist for the presence of ectoparasites and ground squirrel numbers.
 - B. If it is determined by the survey that the number of ground squirrels is high, then prior to grading, a control program to include ectoparasite suppression immediately followed by a rodent suppression program would be performed.
- 71. Any abandoned wells on the property or similar structures that might result in contamination of underground waters shall be destroyed in a manner approved by DEHS prior to grading.

BUILDING AND SAFETY DEPARTMENT (714) 387-4246

72. An erosion and sediment control plan and permit, shall be submitted to and approved by the Building Official prior to any land disturbance.

PRIOR TO BUILDING PERMITS THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

* NON-STANDARD CONDITION(8)
**ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 73. Easements of record not shown on the tentative map shall be relinquished or relocated. Lots affected by proposed easements or easements of record, which cannot be relinquished or relocated, shall be redesigned or an encroachment permit shall be acquired.
- 74. A final grading plan shall be required. Said grading plan shall be submitted to the Building and Safety Department for review and approval. All on-site cut and fill slopes shall:
 - A. Be limited to a maximum slope ratio of 2 to 1 and a maximum vertical height of thirty (30) feet. Setbacks from top and bottom of slopes shall be a minimum of one-half the slope height from top and bottom of slopes shall be a minimum of one-half the slope height.
 - B. Be contour-graded to blend with existing natural contours.
 - C. Be a part of the downhill lot when within or between individual lots.
- 75. A copy of the final grading plan, approved by Building and Safety, shall be submitted to the Planning Department when graded cut slopes exceed five (5) feet in height and fill slopes exceed three (3) feet in height.
- 76. Four (4) copies of a landscape and irrigation plan for the planting (indigenous landscaping shall be utilized to minimize water consumption) and permanent irrigation system for the development, including setback areas and parkways, shall be submitted to the Planning Office prior to issuance of building permits for review and approval, to include the following:
 - A. Voltage boxes, mailboxes, trash enclosures, maintenance structures, backflow devices, automatic controls, air conditioning/heating units, etc., to a shown on the plan and screened with landscaping and/or decorative fencing/trim.
 - B. A permanent automatically-controlled irrigation system.
 - C. Landscaping shall consist of drought tolerant, fireresistant vegetation capable of surviving the soil and climatic conditions natives of the mountain environment.
 - **D. As part of the required Landscape Plan, the applicant/owner shall retain a qualified Registered Professional Forester (RPF), acceptable to the County,

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

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to prepare a forest conservation plan and insect infestation prevention program to include guidelines for tree preservation both during and after construction.

Trees, shrubs and ground covers in the following E. quantities shall be required as follows:

All tree removal and site revegetation shall be in **1. accordance with the Forester's report as submitted with the development plan. The removal and replanting shall be supervised by an individual to be approved by the San Bernardino County Planning staff.

Shrubs (50% 1 gallon/50% 5 gallon), minimum average of one (1) per each one hundred (100) square foot of total landscaped area. 2.

- Ground cover from flats at a minimum spacing of 3. eight (8) inches on center.
- Consult the Mountain Planning Team (714/387-4155) **4. for recommended species suitable for planting in the mountain area. . .
- Parking areas screened with landscaping where practical. 7.
- The units shall be screened or partially masked from the viewshed on the lake and from the south shore, by fast-G. growing pines or other conifers that accomplish the intended purpose.
- Landscape detail of trash enclosures on landscape plan. Ħ.
- The sign lettering copy, location and elevations for any on-site identification sign shall be shown on the 1. plan.
- The method of screening of outdoor storage shall be J. specified.
- Four (4) copies of an irrigation plan shall be submitted for Planning Department review and approval when slope planting 77. is required. Slopes required to be planted shall be provided with an approved system of irrigation, designed to cover all portions of the slope. A functional test of the system may be required. The maintenance of graded slopes and landscaped areas shall be the responsibility of the developer/property owner until the transfer to individual ownership or until the

· NON-STANDARD CONDITION(8) ≝(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

> maintenance is officially assumed by a County Service Area. All irrigation systems, where required, shall be designed on an individual lot basis unless commonly maintained in an approved manner.

- *78. A maintenance plan for the required landscaping and the complex water features proposed by the developer shall be approved by the Planning Department. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period. The maintenance of graded slopes, landscaped areas and water features shall be the responsibility of the developer until the transfer to the Homeowners Association.
 - 79. Commitment shall be obtained in writing from the severing agency indicating that the agency has the capacity to furnish said service to the subject property. A copy of the commitment shall be provided to the Planning Department.
 - 80. Applicant shall submit the approved site plan (brownline or original) with an application for a Land Use Compliance Review, prior to the issuance of building permits.
- **81. Prior to issuance of building permits, the developer shall provide certification from the appropriate school district as required by California Government Code Section 53080(b) that any fee charge, dedication or other form of requirement levied by the governing board of the district pursuant to Government Code Section 53080(a) has been satisfied.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 833-5050

**82. The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project. The DWP will attempt to assist the developer in investigating financing alternatives for capital improvements such as Mello-Roos reimbursement agreements, etc.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

83. Roads within this development shall not be entered into the County Maintained Road System.

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* NON-STANDARD CONDITION(8)
**ENVIRONMENTAL MITIGATIVE MEASURE(8)

- *84. Road sections bordering the tract shall be designed and constructed to Road Standards of the State Department of Transportation, and to the policies and requirements of the County Transportation/Flood Control Department and in accordance with the Master Plan of Highways.
 - 85. An encroachment permit, or authorized clearance, shall be be obtained from the State Department of Transportation prior to issuance of a grading permit by the Building and Safety Department.
- **86. An encroachment permit shall be required from the State Department of Transportation prior to any construction within their right-of-way.
 - 87. Road improvement plans for State Highway 38 shall be submitted to the State Department of Transportation by a register civil engineer. Left turn lane to be installed per traffic report and Caltrans requirements.
 - 88. Any grading within the road right-of-way prior to the signing of the improvement plans shall be accomplished under the direction of a Soil Testing Engineer. Compaction tests of embankment construction, trench backfill and all subgrades shall be performed at no cost to San Bernardino County and a written report shall be submitted to the Contracts Division of the Transportation/Flood Control Department, prior to any placement of base materials and/or paving.
 - 89. Final Plans and profiles shall indicate the location of any existing utility facility which would affect construction.
 - 90. A thorough evaluation of the structural road section, to include parkway improvements, from a qualified materials engineer, shall be submitted to the Transportation/Flood Control Department.
 - 91. Right-of-way and improvements (including offsite) to transition traffic and drainage flows from proposed to existing, shall be required as necessary.

LAND DEVELOPMENT ENGINEERING/DRAINAGE SECTION (714) 387-4040

92. Adequate provisions shall be made to intercept and conduct Withe offsite tributary drainage flow around or through the site in a manner which will not adversely affect adjacent or downstream properties.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 93. Permanent channel improvements shall be required for the natural drainage course traversing the southwest portion of the site. The channel shall be designed to contain 100year storm flow plus bulking and freeboard, per County standard criteria.
- 94. Adequate provisions shall be made to intercept and conduct upstream overflow from the natural drainage course around the site into Big Bear Lake in a manner which will not adversely affect adjacent properties.

FORESTRY AND FIRE WARDEN DEPARTMENT (714) 387-4213

- 95. All new construction shall comply with the existing Uniform Fire Code Requirements and all applicable statutes, codes, ordinances, or standards of the Fire Department.
- 96. Prior to any construction occurring, all flammable vegetation shall be removed from each building site a minimum distance of thirty (30) feet from any flammable building material, including a finished structure.
- 97. Prior to Building permits being issued approved fire hydrants and fire hydrant pavement markers shall be installed. Fire hydrants shall be 6" diameter with a minimum one 4" and one 2 1/2" connection. The hydrant and fire hydrant markers shall be approved by Fire Department. All fire hydrant spacing shall be 300 feet with the exception of single family residential which may be increased to 600 feet maximum.
- 98. Prior to issuance of building permit a fuel modification zone in compliance with county standards is required.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES

- 99. Plans for swimming pool(s) and restroom facilities shall be approved by DEHS prior to construction.
- 100. Plans for refuse storage areas and collection which meet guidelines of DEHS shall be submitted prior to construction.
- 101. Verification of application for sign registration and plot plan approval by DEHS must be submitted prior to the issuance of a building permit for the installation, wiring, remodeling or reconstruction of any freestanding sign or portion thereof which has an area of eighteen (18) square feet or greater and/or which has a height of six (6) feet or greater.

PRIOR TO OCCUPANCY THE FOLLOWING CONDITIONS SHALL BE MET:

NON-STANDARD CONDITION(S)
 **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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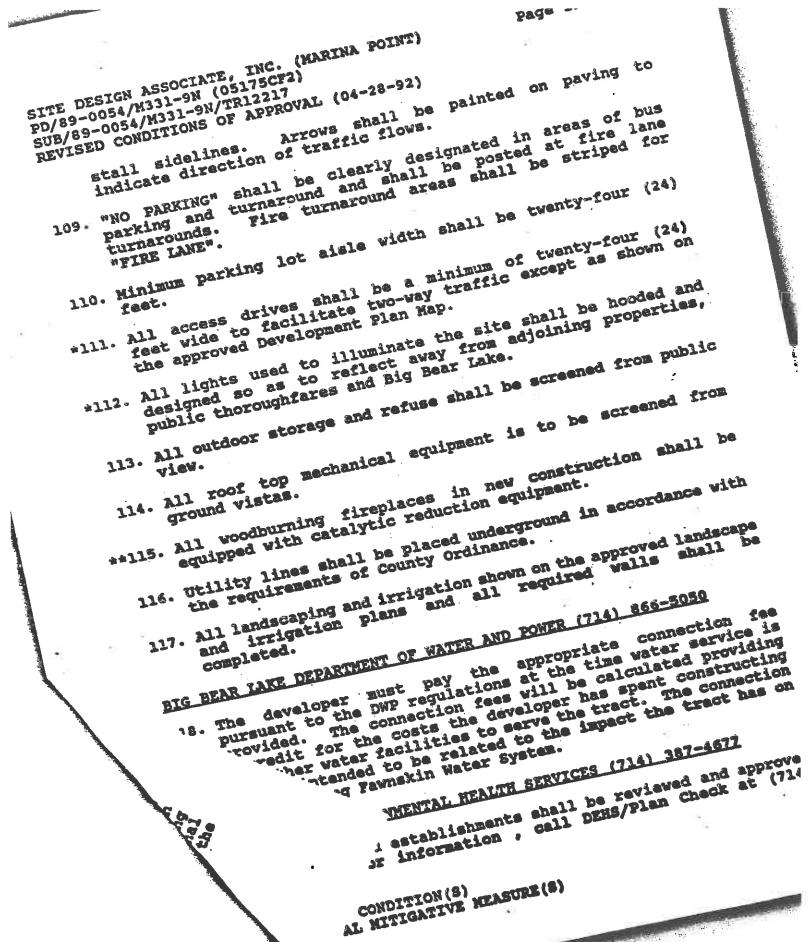
SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

PLANNING DEPARTMENT (714) 387-4155

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- 102. No sign shall interfere with a driver's or pedestrian's view of public rights-of-way or in any other manner impair public safety, or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.
- *102a. The amenities shown as part of Lots A and B shall be installed with the first phase of construction or bonding guaranteeing completion of subject amenities provided prior to occupancy of Phase II.
 - 103. Off-street parking, loading and access drives shall be surfaced with a minimum of two (2) inches of road-mixed surfacing, County Department of Transportation and Flood Control Specification No. 38. Landscaping shall be provided for the parking area(s).
 - 104. One (1) permanently maintained loading space, measuring not less than ten (10) feet in width and twenty (20) feet in length, shall be provided.
- *105. A minimum of 264 parking spaces shall be provided. One hundred thirty-three (133) of these required spaces shall be in enclosed garages. The space sizes shall be a combination of full size spaces (9' X 19') and compact spaces (7 1/2' X 15') per the Final Development Plan. A minimum of two (2) handicapped spaces to be fourteen (14) by nineteen (19) in size, and outlined to show a nine (9) foot parking area, and a five (5) foot loading/unloading area. The arrangement and design of this space shall be subject to Chapter 2-71 of Title 24 of the California and shall be identified as required in Section 22511.8 of the California Vehicle Code.
- *106. Handicapped parking spaces shall be located as near as practical to the primary entrance of the clubhouse or shall be located to provide for safety and optimum proximity to the entrance(s) of the building.
 - 107. If wheel stops are installed in parking space, the distance from the end of the space to the rear of the wheel stop shall not exceed two (2) feet.
 - 108. Individual parking stalls shall be clearly striped and permanently maintained with double or hairpin lines on the surface of the parking facility, with the two (2) lines being located an equal nine (9) inches on either side of the

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)



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- 120. Plans for swimming pool(s) and restroom facilities shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at (619) 243-8141.
- 121. Plans for underground tanks shall be reviewed and approved by DEHS. For information, call DEHS/Hazardous Materials Field Services at (714) 387-3080.
- **122. The applicant shall install a standard grease trap to intercept surface runoff carrying petroleum products. It shall be connected to a clarifier/interceptor as part of a separate subsurface disposal system built to U.P.C. standards. Separate plans shall be submitted to the Building and Safety Department for approval.
 - 123. Prior to occupancy, a "Business Plan" as defined in Chapter 6.95 of the Health and Safety Code, detailing the plan for emergency release or threatened release of hazardous materials and wastes, may/shall be required. Obtain clearance from DEHS/Hazardous Materials Section. For information, call Emergency Response/Enforcement at (714) 387-3044.
 - 124. If necessary, the applicant shall obtain a "Permit to Construct" and/or any appropriate permits from the local Air Pollution Control District (listed below). A copy of any written clearance shall be provided to DEHS.

Air Pollution Control District (Desert Basin), 15428 Civic Drive, Victorville, CA 92392, (619) 243-8200.

125. Prior to any occupancy of the resort, a Certificate of Final Completion shall be issued by the Building & Safety Department, after which an application shall be submitted to DEHS for a Certificate of Occupancy.

FORESTRY AND FIRE WARDEN (714) 387-4213

126. The street address shall be posted with a minimum of four (4) inch numbers, visible from the street and during the hours of darkness the numbers shall be low voltage internally electrically illuminated. Posted numbers shall contrast with their background and be legible from the street in accordance with the Uniform Fire Code. Where building setbacks exceed 100 feet from the roadway, additional contrasting four (4) inch numbers shall be displayed at the property access entrance.

* NON-STANDARD CONDITION(S)
**ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 127. Prior to final inspection or occupancy the development and each phase thereof shall have two (2) points of vehicular access for fire and other emergency equipment, and for routes of escape which will safely handle evacuations as required in the development code.
- 128. Prior to final inspection or occupancy, private roadways which exceed 150 feet in length shall be approved by the Fire Department having jurisdiction, and shall be extended to within 150 feet of, and shall give reasonable access to all portions of the exterior walls of the first story of any building. An access road shall be provided within 50 feet of all buildings if the natural grade between the access road and the building is in excess of 30 percent. Where the access roadway cannot be provided, an approved fire protection system or systems shall be provided, as required and approved by the Fire Department.
- 129. Prior to final inspection or occupancy, this development shall comply with Fire Safety Overlay conditions as adopted in County Ordinance Number 3341. The development is located in Fire Review Area 2 (FR-2).

BUILDING AND SAFETY DEPARTMENT (387-4246

- **130. The applicant shall remove any paving, asphalt and construction debris from the lakefront area in front of the site.
- **131. The applicant shall install state-of-the-art water conservation devices/fixtures in all units.
- *132. A grading quality control engineer is required for this project.

* NON-STANDALLD CONDITION(S) **ENVIRONMENT'AL MITIGATIVE MEASURE(S)

ATTACHMENT F - New conditions of approval

CONDITIONS OF APPROVAL

Minor Revision to Approved Action Planned Residential Development (PRD)

Marina Point

GENERAL REQUIREMENTS Conditions of Operation and Procedures

LAND USE SERVICES/ Planning (909) 387-8311

- 1. <u>Project Description.</u> This Minor Revision to Approved Action for the Marina Point Planned Residential Development is approved to be constructed and operated in compliance with the San Bernardino County Code (SBCC), the Marina Point Final Development Plan, the following conditions of approval, the approved site plan and any other required and approved reports and/or displays (e.g. elevations, floor plans). This project includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units for the project. The project also includes a 9,000 square foot clubhouse, a boat marina and other open space/recreational amenities on 28.5 acres generally located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be developed in (6) phases as shown on the approved site plan. Project APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27, Project Number P201400106.
- 2. <u>"Developer" Defined</u>. The term "developer" as used in these conditions of approval for this project and for any development of this project site, includes all of the following: the applicant, the property owner and any lessee, tenant or sub-tenant, operator and/or any other agent or other interested party of the subject project and/or project site and/or any heir or any other successor in interest in the project site or project land use by sale or by lease of all or of a portion of the project site or project land uses and/or any other right given to conduct any land use in any or all of the project structures or any area on the project site.
- 3. <u>Revisions.</u> Any proposed change to the approved use/activity on the site; or any increase in the developed area of the site or any expansion or modification to the approved facilities, including changes to structures building locations, elevations, signs, parking allocation, landscaping, lighting, allowable number of occupants (clients and/or employees); or a proposed change in the conditions of approval, including operational restrictions from those shown either on the approved site plan and/or in the conditions of approval shall require that an additional land use application (e.g. Revision to an Approved Action) be submitted to County Planning for review and approval obtained.
- 4. <u>Continuous Effect/Revocation</u>. All of the conditions of this project are continuously in effect throughout the operative life of the project for the use approved. Failure of the property owner, tenant, applicant, developer or any operator (herein "developer') to comply with any or all of the conditions at any time may result in a public hearing and revocation of the approved land use, provided adequate notice, time and opportunity is provided to the property owner or other party to correct the non-complying situation.

Mitigation Measures are Italicized

- 5. <u>Expiration.</u> This project permit approval shall expire and become void if it is not "exercised" within three (3) years of the effective date of this approval, unless an extension of time is approved. The permit is deemed "exercised" when either:
 - A. The permittee has commenced actual construction or alteration under a validly issued building permit, or
 - B. The permittee has substantially commenced the approved land use or activity on the project site, for those portions of the project not requiring a building permit. (SBCC §86.06.060)

Occupancy of completed structures and operation of the approved and exercised land use remains valid continuously for the life of the project and the approval runs with the land, unless one of the following occurs:

- A. Construction permits for all or part of the project are not issued or the construction permits expire before the structure is completed and the final inspection is approved.
- B. The land use is determined by the County to be abandoned or non-conforming.
- C. The land use is determined by the County to be not operating in compliance with these conditions of approval, the County Code, or other applicable laws, ordinances or regulations. In these cases, the land use may be subject to a revocation hearing and possible termination.

PLEASE NOTE: This will be the ONLY notice given of the approval expiration date. The "developer" is responsible to initiate any Extension of Time application.

- 6. <u>Development Impact Fees</u>. Additional fees may be required prior to issuance of development permits. Fees shall be paid as specified in adopted fee ordinances. (Replaces Condition No. 5 from previous conditions dated 4–28–92).
- 7. Indemnification. In compliance with SBCC §81.01.070, the developer shall agree, to defend, indemnify, and hold harmless the County or its "indemnitees" (herein collectively the County's elected officials, appointed officials (including Planning Commissioners), Zoning Administrator, agents, officers, employees, volunteers, advisory agencies or committees, appeal boards or legislative body) from any claim, action, or proceeding against the County or its indemnitees to attack, set aside, void, or annul an approval of the County by an indemnitee concerning a map or permit or any other action relating to or arising out of County approval, including the acts, errors or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim, except where such indemnification is prohibited by law. In the alternative, the developer may agree to relinquish such approval.

Any condition of approval imposed in compliance with the County Development Code or County General Plan shall include a requirement that the County acts reasonably to promptly notify the developer of any claim, action, or proceeding and that the County cooperates fully in the defense. The developer shall reimburse the County and its indemnitees for all reasonable expenses resulting from such actions, including any court costs and attorney fees, which the County or its indemnitees may be required by a court to pay as a result of such action.

The County may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the developer of their obligations under this condition to reimburse the County or its indemnitees for all such reasonable expenses. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The developer's indemnification obligation applies to the indemnitees' "passive" negligence but does not apply to the indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

- 8. Project Account. The Job Costing System (JCS) account number is P201400106. This is an actual cost project with a deposit account to which hourly charges are assessed by various county agency staff (e.g. Land Use Services, Public Works and County Counsel). Upon notice, the "developer" shall deposit additional funds to maintain or return the account to a positive balance. The "developer" is responsible for all expenses charged to this account. Processing of the project shall cease, if it is determined that the account has a negative balance and that an additional deposit has not been made in a timely manner. A minimum balance of \$1000.00 shall be in the project account at the time of project approval and the initiation of the Condition Compliance Review. Sufficient funds shall remain in the account to cover all estimated charges that may be made during each compliance review. All fees required for processing shall be paid in full prior to final inspection, occupancy and/or operation of each approved use in each approved structure or land use activity area. There shall be sufficient funds (\$500.00) remaining in the account to properly fund file closure and any other required postoccupancy compliance review and inspection requirements (e.g. landscape performance).
- 9. <u>Condition Compliance.</u> In order to obtain construction permits for grading, or any new building, final inspection, the developer shall process a Condition Compliance Release Form (CCRF) for each respective building and/or phase of the development through County Planning in accordance with the directions stated in the Approval letter. County Planning shall release their holds on each phase of development by providing to County Building and Safety the following:
 - A. Grading Permits a copy of the signed CCRF for grading/land disturbance and two "red" stamped and signed approved copies of the grading plans.
 - B. Building Permits a copy of the signed CCRF for building permits and three "red" stamped and signed approved copies of the final approved site plan.
 - C. Final Inspection a copy of the signed CCRF for final inspection of each respective building, after an on-site compliance inspection by County Planning.
- 10. <u>Additional Permits.</u> The property owner, developer, and land use operator are all responsible to ascertain and comply with all laws, ordinances, regulations and any other requirements of Federal, State, County and Local agencies as are applicable to the development and operation of the approved land use and project site. These may include:
 - A. Federal: Army Corps of Engineers, United States Forest Service.
 - B. State of California: California Department of Transportation, California Department of Fish and Wildlife, Regional Water Quality Control Board (RWQCB).
 - C. County of San Bernardino: Land Use Services Code Enforcement; Building and Safety, Public Health-Environmental Health Services, Special Districts, Public Works. County Fire, and
 - D. Local: Big Bear Municipal Water District, Big Bear Department of Water and Power, Big Bear Valley Unified School District, Local Agency Formation Commission (LAFCO).

P201400106 APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27 Marina Point Board Hearing: December 9, 1991 Revised: December 30, 2014

Effective Date: January 13, 2015 Expiration Date: January 13, 2018

- 11. <u>Continuous Maintenance.</u> The property owner and "developer" shall continually maintain the property so that it is visually attractive and not dangerous to the health, safety and general welfare of both on-site users (e.g. employees) and surrounding properties. The "developer" shall ensure that all facets of the development are regularly inspected, maintained and that any defects are timely repaired. Among the elements to be maintained, include but are not limited to:
 - A. Annual maintenance and repair inspections shall be conducted for all structures, fencing/walls, walks, parking lots, driveways, and signs to assure proper structural, electrical and mechanical safety and a properly operating irrigation system.
 - B. Graffiti and debris shall be removed immediately with weekly maintenance.
 - C. Landscaping shall be maintained in a continual healthy thriving manner at proper height for required screening. Drought-resistant, fire retardant vegetation shall be used where practicable. Where landscaped areas are irrigated, it shall be done in a manner designed to conserve water, minimizing aerial spraying.
 - D. Erosion control measures shall be maintained to reduce water runoff, siltation, and promote slope stability.
 - E. Architectural controls shall be enforced by the property owner to maintain compatibility of theme, materials, unfaded colors, building mass, size and height.
 - F. Signage. All on-site signs, including posted area signs (e.g. "No Trespassing") shall be maintained in a clean readable condition at all times and all graffiti and vandalism shall be removed and repaired on a regular weekly basis. Signs on the site shall be of the size and general location as shown on the approved site plan or an approved sign plan.
 - G. Parking and on-site circulation requirements, including surfaces, all markings and traffic/directional signs shall be maintained in an unfaded condition as identified on the approved site plan. Any modification to parking and access layout requires County review and approval. The markings and signs shall be clearly defined and legible. These include parking spaces, disabled space and access path of travel, directional designations and signs, stop signs, pedestrian crossing, speed humps "No Parking" "carpool" and "Fire Lane" designations.
 - H. Garage Parking Spaces. All garage (enclosed) parking spaces shall be provided with automatic garage door openers and shall at all times remain clear and uncluttered so as to accommodate the parking of vehicles.
- 12. <u>Lighting.</u> The glare from any luminous source, including on-site lighting shall not exceed one-half (0.5) foot-candle at property line. All lighting shall be limited to that necessary for maintenance activities and security purposes. This is to allow minimum obstruction of night sky remote area views. No light shall project onto adjacent roadways in a manner that interferes with on-coming traffic. All signs proposed by this project shall only be lit by steady, stationary, shielded light directed at the sign, by light inside the sign, by direct stationary neon lighting or in the case of an approved electronic message center sign alternating no more than once every five seconds.
- 13. <u>Clear Sight Triangle.</u> Adequate visibility for vehicular and pedestrian traffic shall be provided at clear sight triangles at all 90 degree angle intersections of public rights-of-way and private driveways. All signs, structures and landscaping located within any clear sight triangle shall comply with the height and location requirements specified by County Development Code (SBCC§ 83.02.030) or as otherwise required by County Traffic.

- 14. <u>Underground Utilities.</u> There shall be no new above ground power or communication lines extended to the site. All new utilities shall be placed underground in a manner, which avoids disturbing any existing/natural vegetation or the site appearance. Existing utilities around the site perimeter shall also be placed underground in coordination with the utility provider.
- 15. <u>Exterior Construction</u>. Exterior Construction activity shall be prohibited from December 1. to April 1, to minimize disturbance to Bald Eagle habitat.
- 16. <u>Interior Construction.</u> If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall employ a wildlife biologist to evaluate the level of disturbance and the effect on the wintering Bald Eagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to the Environmental Team of the county Planning Department in advance of the anticipated construction.
- 17. <u>Marina Use.</u> The marina shall not be used from December 1 to April 1, to protect wintering Bald Eagles.

LAND USE SERVICES/Code Enforcement (909) 387-4044

18. <u>Enforcement.</u> If any County agency is required to enforce compliance with the conditions of approval, the property owner and "developer" shall be charged for such enforcement activities in accordance with the County Code Schedule of Fees. Failure to comply with these conditions of approval or the approved site plan design required for this project approval shall be enforceable against the property owner and "developer" (by both criminal and civil procedures) as provided by the San Bernardino County Code, Title 8 - Development Code; Division 6 - Administration, Chapter 86.09 - Enforcement.

PUBLIC HEALTH/ Environmental Health Services (DEHS) (800) 442-2283

- 19. <u>Noise</u>. Noise level shall be maintained at or below County Standards, Development Code Section 83.01.080. For information, please call DEHS at 1-800-442-2283.
- 20. <u>Refuse Storage/Removal.</u> All refuse generated at the premises shall at all times be stored in approved containers and shall be placed in a manner so that environmental public health nuisances are minimized. All refuse <u>not</u> containing garbage shall be removed from the premises at least 1 time per week, or as often as necessary to minimize public health nuisances. All refuse containing garbage produced or accumulated in or about a residence shall be removed from the premises at least 1 time per week, or as often as necessary to minimize public health nuisances. All refuse containing garbage produced or accumulated in or about a residence shall be removed from the premises at least 1 time per week, or as often if necessary to minimize public health nuisances. All refuse containing garbage produced or accumulated in or about hotels, food establishments, or other businesses shall be removed from the premises at least 2 times per week, or as often as necessary to minimize public health nuisances, by a permitted hauler to an approved solid waste facility in conformance with San Bernardino County Code Chapter 8, Section 33.0830 et. seq. For information, please call DEHS/LEA at: 1-800-442-2283.

LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 21. <u>Tributary Drainage.</u> Adequate provisions should be made to intercept and conduct the tributary off site on site drainage flows around and through the site in a manner, which will not adversely affect adjacent or downstream properties at the time the site is developed.
- 22. <u>FEMA Flood Zone.</u> Portion of the Project is located within Flood Zone <u>A</u> according to FEMA Panel Number <u>7290H</u> dated 08/28/2008 and will require structures within this zone's first floor to be elevated a minimum 2 feet above natural highest adjacent ground in compliance with FEMA/SBC regulations. (Elevation Certificate is required.)
- 23. <u>Natural Drainage.</u> The natural drainage courses traversing the site shall not be occupied or obstructed.
- 24. <u>Additional Drainage Requirements.</u> In addition to drainage requirements stated herein, other "on-site" and/or "off-site" improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office.
- 25. <u>Continuous BMP Maintenance</u>. The property owner/"developer" is required to provide periodic and continuous maintenance of all Best Management Practices (BMP) devices/facilities listed in the County approved Water Quality Management Plan (WQMP) for the project. This includes but is not limited to, filter material replacement and sediment removal, as required to assure peak performance of all BMPs. Furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods in effect at the time such maintenance occurs.
- 26. <u>BMP Enforcement.</u> In the event the property owner/"developer" (including any successors or assigns) fails to accomplish the necessary BMP maintenance within five (5) days of being given written notice by County Public Works, then the County shall cause any required maintenance to be done. The entire cost and expense of the required maintenance shall be charged to the property owner and/or "developer", including administrative costs, attorney's fees and interest thereon at the rate authorized by the County Code from the date of the original notice to the date the expense is paid in full.

COUNTY FIRE/ Community Safety (909) 386-8465

- 27. <u>Jurisdiction</u>. The above referenced project is under the jurisdiction of the San Bernardino County Fire Department herein ("Fire Department"). Prior to any construction occurring on any parcel, the applicant shall contact the Fire Department for verification of current fire protection requirements. All new construction shall comply with the current Uniform Fire Code requirements and all applicable statutes, codes, ordinances and standards of the Fire Department. [F01]
- 28. <u>Construction permits</u>, including Fire Condition Letters, shall automatically expire and become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Suspension

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or abandonment shall mean that no inspection by the Department has occurred with 180 days of any previous inspection. After a construction permit or Fire Condition Letter, becomes invalid and before such previously approved work recommences, a new permit shall be first obtained and the fee to recommence work shall be one-half the fee for the new permit for such work, provided no changes have been made or will be made in the original construction documents for such work, and provided further that such suspension or abandonment has not exceeded one year. A request to extend the Fire Condition Letter or Permit may be made in writing PRIOR TO the expiration date justifying the reason that the Fire Condition Letter should be extended.

PUBLIC WORKS/ Solid Waste Management (909) 386-8968

- 29. <u>Recycling Storage Capacity</u> The developer shall provide adequate space and storage bins for both refuse and recycling materials. This requirement is to assist the County in compliance with the recycling requirements of AB 2176.
- 30. <u>Mandatory Commercial Recycling</u> Beginning July 1, 2012 all businesses defined to include a commercial or public entity that generates 4 or more cubic yards of commercial waste a week or is a multi-family residential dwelling of 5 units or more to arrange for recycling services. The County is required to monitor commercial recycling and will require businesses to provide recycling information. This requirement is to assist the County in compliance with AB 341.

PUBLIC WORKS - Survey Division (909) 387-8145

- 31. <u>Lot Line Adjustments.</u> The "Lot Line Exhibit" that was included in the referral package indicates altering the location of 6 existing lots. This will require sequential Lot Line Adjustments to be filed and recorded to adjust the configuration of the lots as desired, as Section 66412 (d) of the Subdivision Map Act allows for the adjustment of only 4 or fewer existing adjoining parcels in a single Lot Line Adjustment process.
- 32. <u>Tract Map In Lieu.</u> In lieu of filing the Lot Line Adjustments noted above, a Final Map may be filed and recorded to subdivide and adjust the lot lines as desired.
- 33. <u>Monumentation.</u> If any activity on this project will disturb <u>any</u> land survey monumentation, including but not limited to vertical control points (benchmarks), said monumentation shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer authorized to practice land surveying <u>prior</u> to commencement of any activity with the potential to disturb said monumentation, and a corner record or record of survey of the references shall be filed with the County Surveyor (Section 8771(b) Business and Professions Code).
- 34. <u>Record of Survey.</u> A Record of Survey/Corner Record shall be filed in the following instances:
 - Legal descriptions or construction staking based upon a field survey of the boundary or building setbacks.
 - Monuments set to mark the property lines.
 - Pursuant to applicable sections of the Business and Professions Code.

PRIOR TO ISSUANCE OF GRADING PERMITS OR LAND DISTURBING ACTIVITIES The following shall be completed:

LAND USE SERVICES/ Building and Safety (909) 387-8311

- 35. <u>Tree Removal.</u> A tree removal plan, permit and preconstruction inspection, in compliance with the County's plant protection and management ordinance, shall be approved prior to any disturbance and/or removal of any protected tree or plant.
- 36. <u>Quality Control Engineer.</u> A grading Quality Control Engineer is required for this project.
- 37. <u>Retaining Wall Plans</u>: Submit plans and obtain separate building permits for any required walls, retaining walls or trash enclosures.
- 38. <u>Geology Report:</u> A geology report shall be submitted to the Building and Safety Division for review and approval by the County Geologist and fees paid for the review prior to final project approval.
- 39. <u>Geotechnical (Soil) Report:</u> When earthwork quantities exceed 5,000 cubic yards, a geotechnical (soil) report shall be submitted to the Building and Safety Division for review and approval prior to issuance of grading permits.
- 40. <u>Grading Plans:</u> Grading plans shall be submitted to Building and Safety for review and approval prior to grading/land disturbance of more than 50 cubic yards.
- 41. <u>Demolition Permit:</u> Obtain a demolition permit for any building/s or structures to be demolished. Underground structures must be broken in, back-filled and inspected before covering.
- 42. <u>Erosion & Sediment Control Plan:</u> An erosion and sediment control plan and permit shall be submitted to and approved by the Building Official prior to any land disturbance.
- 43. <u>Erosion Control Installation</u>: Erosion control devices must be installed at all perimeter openings and slopes. No sediment is to leave the job site.
- 44. <u>NPDES Permit:</u> An NPDES permit Notice of Intent (NOI) is required on all grading of one (1) acre or more prior to issuance of a grading/construction permit. Contact your Regional Water Quality Control Board for specifics. <u>www.swrcb.ca.cov</u>
- 45. <u>Regional Board Permit Letter:</u> CONSTRUCTION projects involving one or more acres must be accompanied by a copy of the Regional Board permit letter with the WDID #. Construction activity includes clearing, grading, or excavation that results in the disturbance of at least one (1) acre of land total.

LAND USE SERVICES/ Planning (909) 387-8311

46. <u>Timberland Permit.</u> Prior to any tree removal, the applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit (s) from the California Department of Forestry and a 1601-1603 permit from the California Department of Fish

and Wildlife. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriato agoncy, shall be submitted to the Planning Department.

47. <u>Trustee Agency Permits.</u> Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Wildlife in accordance with Sections 1601-1603 of the state Fish and Wildlife Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. Copies of these permits shall be filed with the Planning Department or submit evidence from the Trustee Agency that a permit is not required.

PUBLIC HEALTH - Environmental Health Services (DEHS) (800) 442-2283

- 48. <u>Vector Control.</u> The project area has a high probability of containing vectors. DEHS Vector Control Section will determine the need for vector survey and any required control programs. A vector clearance letter shall be submitted to DEHS/Land Use. For information, contact Vector Control at (800) 442-2283.
- 49. <u>Existing Wells.</u> If wells are found onsite then evidence shall be provided that all wells are
 (1) properly destroyed under permit from that County. Contact DEHS/Water Section for approval. Contact DEHS/Water Section for more information at (800) 442-2283.

LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 50. <u>Topo Map.</u> A topographic map shall be provided to facilitate the design and review of necessary drainage facilities.
- 51. <u>FEMA Flood Zone</u>. Portion of the Project is located within Flood Zone <u>A</u> according to FEMA Panel Number <u>7290H</u> dated 08/28/2008 and will require structures within this zone's first floor to be elevated a minimum 2 feet above natural highest adjacent ground in compliance with FEMA/SBC regulations. (Elevation Certificate is required.)
- 52. <u>Grading Plans.</u> Grading plans shall be submitted for review and approval obtained. A \$520 deposit for grading plan review will be collected upon submittal to the Land Development Division.
- 53. <u>Natural Drainage.</u> The natural drainage courses traversing the site shall not be occupied or obstructed.

COUNTY FIRE/ Community Safety (909) 386-8465

- 54. <u>Fire Fee.</u> The required fire fees are due at time of submittal; and paid to the San Bernardino County Fire Department/Community Safety Division. This fee is in addition to fire fees that are paid to other City or County offices. [F40]
- 55. <u>Water System Commercial.</u> A water system approved and inspected by the Fire Department is required. The system shall be operational, prior to any combustibles being stored on the site. All fire hydrants shall be spaced no more than three hundred (300) feet apart (as measured along vehicular travel-ways) and no more than three hundred [300) feet from any portion of a structure. [F54]

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56. <u>Primary Access Paved.</u> Prior to building permits being issued to any new structure, the primary access road shall be paved or an all-weather surface and shall be installed as specified in the General Requirement conditions (Fire # F-9), including width (26ft), vertical clearance (13.6), unless otherwise shown on the approved Development Plan, and turnouts, if required. [F89]

PRIOR TO ISSUANCE OF BUILDING PERMITS The following shall be completed:

LAND USE SERVICES/ Building and Safety (909) 387-8311

- 57. <u>School Fees.</u> Prior to issuance of building permits, the developer shall provide certification from the Bear Valley Unified School District that any fee charge, dedication or other form of requirement levied by the governing board of the district has been satisfied.
- 58. <u>Demolition Permit:</u> Obtain a demolition permit for any building/s or structures to be demolished. Underground structures must be broken in, back-filled and inspected before covering.
- 59. <u>Construction Plans</u>: Any building, sign, or structure to be constructed or located on site will require professionally prepared plans for review and approval by the Building and Safety Division.

LAND USE SERVICES/ Planning (909) 387-8311

- 60. <u>Landscape and Irrigation Plan</u>. Landscape and Irrigation Plans shall be prepared in conformance with Chapter 83.10, Landscaping Standards, of the County Development Code. The developer shall submit two copies of a landscape and irrigation plan to County Planning for review. Landscaping shall consist of indigenous, drought tolerant, fire- resistant vegetation capable of surviving the soil and climatic conditions native to the mountain environment.
- 61. <u>Building Elevations.</u> Prior to the issuance of building permits the developer shall submit plans and obtain approval from County Planning for the exterior elevations of all proposed buildings.
- 62. <u>Forest Conservation Plan.</u> As part of the required Landscape Plan, the applicant/owner shall retain a qualified Registered Professional Forester (RPF), acceptable to the County, to prepare a forest conservation plan and insect infestation prevention program to include guidelines for tree preservation both during and after construction.
- 63. <u>Compliance with Forest Conservation Plan.</u> All tree removal and site revegetation shall be in accordance with the Forester's report as submitted with the development plan. The removal and replanting shall be supervised by an individual to be approved by the San Bernardino County Planning staff.
- 64. <u>Maintenance Plan.</u> A maintenance plan for the required landscaping and the complex water features proposed by the developer shall be approved by the Planning Department. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period. The maintenance of graded slopes, landscaped areas and water features shall be the responsibility of the developer until the transfer to the Homeowners Association.

- 65. <u>Wastewater Service</u>. Commitment shall be obtained in writing from the sewering agency indicating that the agency has the capacity to furnish said service to the subject property. A copy of the commitment shall be provided to the Planning Department.
- 66. <u>Planning/Composite Development Plan (CDP).</u> A revised Composite Development Plan ("CDP"), incorporating the changes proposed on the revised site plan shall be submitted for review and approval by the County Surveyor and filed with County Building & Safety and County Planning prior to issuance of a building permit.
- 67 <u>HOA required.</u> The Developer shall establish a Homeowners' Association (HOA) for the purpose of monitoring and maintaining common area amenities and where applicable, private lot areas with HOA maintenance easements. The HOA shall include all lots in Tentative Tract 12217 and shall be formed to the satisfaction of County Planning.
- 68. <u>Final CC&R's</u>. The following changes and corrections shall be incorporated into the final CC&R's which are part of the subdivision tract:
 - A. The boat marina shall not be used from December I to April I to protect wintering bald eagles.
 - B. No individual owners or lessees of individual condominiums shall have the authority to initiate any changes to any structure on the property or to make any changes involving the landscape that will adversely affect the bald eagle, either directly or indirectly. Any minor modifications proposed that are determined not to affect the bald eagle must still have the prior express written approval from the Board of Directors, and such changes shall conform to the architectural provisions of this Declaration.
 - C. A Homeowners Association shall assume responsibility for maintaining the on-site water features.
 - D. The boating marina shall be maintained by the owner/developer in accordance with the Big Bear Municipal Water District permits.
 - E. The shoreline access/pedestrian easement shall be referenced and retained as accessible to accomplish its intended purpose.
- 69. <u>CC&R's Final Approval.</u> A copy of the CC&R's shall be submitted for Planning Director final review and approval. The CC&R's shall also include other applicable items specified in these conditions of approval.
- 70. <u>HOA.</u> A Homeowners Association shall be established for the purpose of carrying out the intent of the Planned Development Application.
- 71. <u>Planned Development Corrections.</u> The Planned Development report text shall be revised by addendum to incorporate any additional corrections and omissions required by Planning staff or the Planning Commission.

- 72. <u>Installation/Finance of Water and Sewer System.</u> The following are the steps that must be completed to meet the requirements for installation and/or finance of the on-site/off-site water system and/or sewer system.
 - A. Where the water and/or sewer system is to be installed prior to recordation, it is the developer's responsibility to submit to the TRANSPORTATION/FLOOD CONTROL DEPARTMENT, SURVEYOR DIVISION, a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.
 - B. Where a bond is to be posted in lieu of installation of the improvement, the developer shall submit the approved plans and determined amount or a signed statement from an acceptable governmental entity, that financial arrangements have been completed and submitted to the TRANSPORTATION/FLOOD CONTROL DEPARTMENT, SURVEYOR DIVISION. (Replaces Condition No. 60 from previous conditions dated 4-28-92).

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (909) 866-5050

73. The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project. The DWP will attempt to assist the developer in investigating financing alternatives for capital improvements such as Mello-Roos reimbursement agreements, etc.

LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 74. <u>Drainage Facility Design.</u> A Registered Civil Engineer shall investigate and design adequate drainage facilities to intercept and conduct the off-site and on-site drainage flows around and through the site in a manner, which will not adversely affect adjacent or downstream properties. Submit a revised drainage study for review and obtain approval. A \$520 deposit for drainage review will be collected upon submittal to the Land Development Division.
- 75. <u>Drainage Easements.</u> Adequate San Bernardino County Drainage Easements (minimum fifteen [15] feet wide) shall be provided over the natural drainage courses, drainage facilities/or concentration of runoff from the site to dewaters into private property.
- 76. <u>FEMA Flood Zone.</u> Portion of the Project is located within Flood Zone <u>A</u> according to FEMA Panel Number <u>7290H</u> dated 08/28/2008 and will require structures within this zone's first floor to be elevated a minimum 2 feet above natural highest adjacent ground in compliance with FEMA/SBC regulations. (Elevation Certificate is required.)
- 77. <u>WQMP.</u> A revised Final Water Quality Management Plan (WQMP) shall be submitted for review and approval obtained.
- 78. <u>WQMP Inspection Fee.</u> The developer shall deposit an inspection fee for WQMP in the amount of \$3600 to Land Development Division.

LAND USE SERVICES - Land Development Division - Road Section (909) 387-8311

- 79. <u>Caltrans Approval.</u> Obtain comments and approval from Caltrans for access requirements and working within their right-of-way. (Replaces Condition No. 86 from previous conditions dated 4-28-92).
- 80. <u>Slope Easements.</u> Slope rights shall be dedicated, where necessary.
- 81. <u>Turnarounds.</u> Turnarounds at dead end streets shall be in accordance with the requirements of the County Department of Public Works and Fire Department.
- 82. <u>Transitional Improvements.</u> Right-of-way and improvements (including off-site) to transition traffic and drainage flows from proposed to existing, shall be required as necessary.
- 83. <u>Road Improvements.</u> The developer shall submit for review and obtain approval from the Land Use Services Department the following plans and permits for the listed required improvements, designed by a Registered Civil Engineer (RCE), licensed in the State of California. These shall be submitted to the Land Use Services Department, located at 385 N. Arrowhead Ave, San Bernardino CA 92415-0187. Phone: (909) 387-8311.

Private Street (Private - 40')

- <u>Road Dedication</u>. A 40 foot grant of easement is required to provide a full-width right-of-way of 40.
- <u>Curb Return Dedication</u>. A 20 foot radius return grant of easement is required at the intersections of all interior streets.
- <u>Street Improvements</u>. Design a minimum 26' paved road section for all interior roads.
- <u>Driveway Approach.</u> Design driveway approach per San Bernardino County Standard <u>128A</u>, and located per Standard <u>130</u>.
- <u>Curb Returns</u>. Curb Returns shall be designed per County Standard <u>110</u>.
- <u>Cui-de-sac Design</u>. The proposed cui-de-sac shall be designed and constructed full width to County Standards and the map revised as necessary to accomplish this.
- 84. <u>Private Roads.</u> Private roads to be constructed within this development shall be in accordance with the Private Road Standards in the San Bernardino County Transportation Road Planning and Design Standards Manual and they shall not be entered into the County Maintained Road System.
- 85. <u>Street Improvement Plans.</u> The developer shall submit for review and obtain approval of street improvement plans.
- 86. <u>Utilities.</u> Final plans and profiles shall indicate the location of any existing utility facility or utility pole which would affect construction, and any such utility shall be relocated as necessary without cost to the County.

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DEPARTMENT OF PUBLIC WORKS - Traffic Division (909) 387-8186

87. <u>Project Entrance Improvements.</u> On state Highway 38 (North Shore Drive) at the project entrance, a left turn lane shall be required for both east bound and west bound traffic (opposite canyon Road).

PUBLIC HEALTH - Environmental Health Services (DEHS) (800) 442-2283

- 88. <u>Water Purveyor.</u> Water purveyor shall be City of Big Bear Department of Water and Power. (Replaces Condition No. 57 and 59 from previous conditions dated 4-28-92).
- 89. <u>Water Verification Letter.</u> Applicant shall procure a verification letter from the water agency with jurisdiction. This letter shall state whether or not water connection and service shall be made available to the project by the water agency. This letter shall reference the Assessor's Parcel Number. For information, contact the Water Section at 1-800-442-2283.
- 90. <u>Water Quality.</u> Source of water shall meet water quality and quantity standards. Test results which shown source meets water quality and quantity standards shall be submitted to DEHS.
- 91. <u>Wastewater Purveyor.</u> Method of sewage disposal shall be County Service Area 53B or EHS approved.
- 92. <u>Sewer Verification Letter.</u> Applicant shall procure a verification letter from the sewering agency with jurisdiction. This letter shall state whether or not sewer connection and service shall be made available to the project by the sewering agency. The letter shall reference the Assessor's Parcel Number.
- 93. <u>LAFCO Approval.</u> Submit verification of annexation to DEHS for any project that requires water or sewer connection outside a purveyor's jurisdiction. For information, contact LAFCO at: 909-383-9900.
- 94. <u>Acoustical Study.</u> An acoustical study shall be performed to assess noise levels at the development and shall be reviewed and approved by the Department of Environmental Health Services. Detailed noise analysis and precise mitigation measures shall be submitted to the Department of Environmental Health Services for review and approval prior to issuance of building permits. Specifically addressing, 1) North Shore Drive, 2) marina, 3) tennis courts, 4) pool/health club, 5) tram/bus loading area, 6) pond pumps/motors, and 7) any other noise generating sources. Prior to the issuance of building permits that the recommended mitigation measures have been implemented shall be submitted to the Department of Environmental Health Services and the building plans shall be so certified by the acoustical engineer. A fee will be charged for review of the acoustical study and payment will be required prior to issuance of approval/denial letter.
- 95. <u>Food Establishments.</u> Plans for food establishments shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at: 1-800-442-2283.

96. <u>Swimming Pools.</u> Plans for swimming pool(s) and associated restroom facilities shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at: 1-800-442-2283.

COUNTY FIRE/ Community Safety (909) 386-8465

- 97. <u>Fire Flow Test.</u> Your submittal did not include a flow test report to establish whether the public water supply is capable of meeting your project fire flow demand. You will be required to either produce a current flow test report from your water purveyor demonstrating that the fire flow demand is satisfied or you must install an approved fire sprinkler system. This requirement shall be completed prior to combination inspection by Building and Safety. [F05B] Fire Flow must meet 1500 GPM at 20 psi for 3 hours.
- 98. <u>Fire Alarm.</u> A manual, automatic fire alarm system complying with the California Fire Code, NFPA and all applicable codes is required. Club House and any other Assembly areas.
- 99. <u>Fire Sprinkler-NFPA 13:</u> An automatic fire sprinkler system complying with NFPA Pamphlet #13 and the Fire Department standards is required.
- 100. <u>Fire Sprinkler NFPA # 13D:</u> An automatic life safety fire sprinkler system complying with NFPA Pamphlet #13D and the Fire Department standards is required.
- 101. <u>Fire Sprinkler NFPA #13R:</u> A automatic fire sprinkler system complying with NFPA Pamphlet #13R and the Fire Department standards for light Hazard Occupancies under 5,000 sq. ft. and Multi-Residential Occupancies.
- 102. <u>UFC Requirements.</u> All new construction shall comply with the existing Uniform Fire Code Requirements and all applicable statutes, codes, ordinances, or standards of the Fire Department.
- 103. <u>Flammable Vegetation</u>. Prior to any construction occurring, all flammable vegetation shall be removed from each building site a minimum distance of thirty (30) feet from any flammable building material, including a finished structure.
- 104. <u>Fire Hydrants.</u> Prior to Building permits being issued approved fire hydrants and fire hydrant pavement markers shall be installed. Fire hydrants shall be 6" diameter with a minimum one 411 and one 2 1/2" connection. The hydrant and fire hydrant markers shall be approved by Fire Department. All fire hydrant spacing shall be 300 feet with the exception of single family residential which may be increased to 600 feet maximum.
- 105. <u>Fuel Mod. Zone.</u> Prior to issuance of building permit a fuel modification zone in compliance with county standards is required.
- 106. <u>Building Plans.</u> Not less than three (3) complete sets of Building Plans shall be submitted to the Fire Department for review and approval.

PUBLIC WORKS/ Solid Waste Management (909) 386-8968

107. <u>Construction Waste Management Plan (CWMP) Part 1</u> - The developer shall prepare, submit, and obtain approval from SWMD of a CWMP Part 1 for each phase of the

P201400106 Condition APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27 Marina Point Board Hearing: December 9, 1991 Revised: December 30, 2014

Effective Date: January 13, 2015 Expiration Date: January 13, 2018

project. The CWMP shall list the types and weights or volumes of solid waste materials expected to be generated from construction. The CWMP shall include options to divert from landfill disposal, materials for reuse or recycling by a minimum of 50% of total weight or volume. Forms can be found on our website at www.sbcounty.cov/dov/soi/dvasie. An approved CDWMP Part 1 is required before a demolition permit can be issued.

Upon completion of construction, the developer shall complete SWMD's CDWMP Part 2 and shall provide documentation of diversion of materials including but not limited to receipts, invoices or letters showing material type(s) and weights or volume from diversion facilities or certification of reuse of materials on site. An approved Part 2 of the CDWMP is required prior to issuance of occupancy.

PRIOR TO FINAL INSPECTION OR OCCUPANCY PERMITS The Following Shall Be Completed:

LAND USE SERVICES/Building and Safety (909) 387-8311

- 108. <u>Construction Debris Removal.</u> The applicant shall remove any paving, asphalt and construction debris from the lakefront area in front of the site.
- 109. <u>Plumbing Fixtures.</u> The applicant shall install EPA High Efficiency plumbing fixtures in all units. (Replaces Condition No. 131 from previous conditions dated 4-28-92).
- 110. <u>Woodburning Fireplaces.</u> All woodburning fireplaces in new construction shall be equipped with catalytic reduction equipment.
- 111. <u>Planning Sign-off</u>: All Planning Division requirements and sign-off's shall be completed.

LAND USE SERVICES/ Planning (909) 387-8311

- 112. <u>Parking Lot Installed:</u> On-site parking and circulation requirements shall be installed, Inspected and approved as being in compliance with the approved Final Development Plan. The following shall be completed:
 - A. Markings. All circulation markings shall be clearly painted and permanently maintained, including arrows painted to indicate direction of traffic flow.
 - B. Crosswalks. All on-site internal pedestrian crosswalks shall be delineated with a minimum 3" white or yellow painted line stripe. All pedestrian crossings in public right-of-way shall be per County Standards.
 - C. Stops. All internal parking lot driveway intersections shall be installed with a painted stop limit line and shall have either a breakaway pole "STOP" sign and/or painted "STOP" lettering on the paving in front of the limit line.
 - D. Parking Space Striping. All paved parking stalls shall be clearly striped and permanently maintained. All paved parking stalls shall be striped with double/hairpin lines with the two lines being located an equal nine inches on either side of the stall sidelines.
 - E. Multi-modal. All required multi-modal amenities (e.g. bike stands, motorcycle parking, mass transit access, carpool preferred parking, vanpool passenger pickup etc.) shall be installed per approved plans.
- 113. <u>Disabled Parking Installed</u>. Parking for the disabled with paths of travel to the main building entries shall be installed per SBCC §83.11.060. Disabled access parking spaces shall be clearly and continually designated with pavement markings and signs.
- 114. <u>Landscaping & Irrigation Installed</u>. All landscaping, dust control measures, walls/fences, pedestrian walkways, irrigation systems, etc. as delineated on the approved landscape plan shall be installed. The developer shall submit verification as required in SBCC Section 83.10.100. Supplemental verification may include photographs.
- 115. <u>Signage.</u> No sign shall interfere with a driver's or pedestrian's view of public rights-ofway or in any other manner impair public safety, or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.

- 116. <u>Amenities.</u> The amenities shown as part of Lots A and B shall be installed with the first phase of construction or bonding guaranteeing completion of the subject amenities shall be provided prior to occupancy of Phase III.
- 117. <u>Required Parking.</u> A minimum of 261 parking spaces shall be provided. One hundred twenty (120) of these required spaces shall be in enclosed garages and a minimum of seven (7) parking stalls shall be provided for the disabled. Parking for the disabled with paths of travel to the main building entries shall be installed per SBCC §83.11.060. Disabled access parking spaces shall be clearly and continually designated with pavement markings and signs.
- 118. <u>Wheel Stops.</u> If wheel stops are installed in parking space, the distance from the end of the space to the rear of the wheel stop shall not exceed two (2) feet.
- <u>Parking Striping.</u> Individual parking stalls shall be clearly striped and permanently maintained with double or hairpin lines on the surface of the parking facility, with the two (2) lines being located an equal nine (9) inches on either side of the stall sidelines. Arrows shall be painted on paving to indicate direction of traffic flows.
- 120. <u>"No Parking" Areas.</u> "NO PARKING" shall be clearly designated in areas of bus parking and turnaround and shall be posted at fire lane turnarounds Fire turnaround areas shall be striped for "FIRE LANE.
- 121. <u>Access Drives.</u> All access drives shall be a minimum of twenty-four (24) feet wide to facilitate two-way traffic except as shown on the approved Development Plan Map.
- 122. <u>Exterior Lighting.</u> All lights used to illuminate the site shall be hooded and designed so as to reflect away from adjoining properties, public thoroughfares and Big Bear Lake.
- 123. <u>Outdoor Storage.</u> All outdoor storage and refuse shall be screened from public view.
- 124. <u>Roof Top Equipment.</u> All roof top mechanical equipment is to be screened from ground vistas.
- 125. <u>Underground Utilities.</u> Utility lines shall be placed underground in accordance with the requirements of County Ordinance.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (909) 866-5050

126. The developer must pay the appropriate connection fee pursuant to the DWP regulations at the time water service is provided. The connection fees will be calculated providing a credit for the costs the developer has spent constructing the other water facilities to serve the tract. The connection fee is intended to be related to the impact the tract has on the existing Fawnskin Water System.

PUBLIC HEALTH - Environmental Health Services (DEHS) (800) 442-2283

127. <u>Certificate of Use.</u> Prior to occupancy of a newly constructed or remodeled apartment complex, hotel, motel, resort, pursuant to San Bernardino County Code 33.101 et. seq., a Certificate of Use request shall be submitted to the Division of Environmental Health

Services. For information, call DEHS/Community Environmental Health at: 1-800-442-2283.

LAND USE SERVICES - Land Development Division - Drainage Section (909) 387-8311

- 128. <u>Drainage and WQMP Improvements</u>. All required drainage and WQMP improvements for each phase shall be completed by the applicant, inspected and approved by County Public Works.
- 129. <u>WQMP Final File</u>. An electronic file of the final and approved WQMP shall be submitted to Land Development Division, Drainage Section.
- 130. <u>Elevation Certificate</u>. An Elevation Certificate of structure located within flood zone A shall be completed, approved, and on file with County Building and Safety.

LAND USE SERVICES - Land Development Division - Road Section (909) 387-8311

- 131. <u>LDD Requirements</u>. All LDD requirements shall be completed by the applicant prior to occupancy.
- 132. <u>Caltrans Approval.</u> Obtain sign-off from Caltrans to show that all required road and drainage improvements have been fully completed and accepted.
- 133. <u>Private Roads/Improvements.</u> Construction of private roads and private road related drainage improvements shall be inspected and certified by the engineer.
- 134. <u>CMRS Exclusion</u>. Roads within this development shall not be entered into the County Maintained Road System (CMRS).
- 135. <u>Parkway Planting.</u> Trees, irrigation systems, and landscaping required to be installed on public right-of-way shall be approved by State Department of Transportation (Caltrans District 8) and Current Planning and shall be maintained by the adjacent property owner or other County-approved entity.
- 136. <u>Phased Projects.</u> Projects within any phase of a phased project shall have all required on-site and off-site public road and drainage improvements required for such a phase sufficiently completed by the applicant, inspected and approved for construction of that phase, prior to final inspection or occupancy for any buildings or other structures in that phase.

The term "phase" as used here shall mean the following: "The block of building permits drawn on less than the whole project" or "A plan of building construction which indicates blocks of construction of less than the whole project."

In each phase, the installation of any on-site or off-site public road improvements shall be sufficiently completed so as to assure protection from storm or drainage run off, a safe and drivable access for fire and other emergency/safety vehicles, and the ordinary and intended use of the buildings or structures. The Building Official, with the concurrence of the Land Development Division may approve any plan or approve a change to an approved plan, which complies with the intent of this policy. P201400106 Cone APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27 Marina Point Board Hearing: December 9, 1991 Revised: December 30, 2014

Effective Date: January 13, 2015 Expiration Date: January 13, 2018

COUNTY FIRE/ Community Safety (909) 386-8465

- 137. <u>Commercial Addressing.</u> Commercial and industrial developments of 100,000 sq. ft. or less shall have the street address installed on the building with numbers that are a minimum six (6) inches in height and with a three quarter (3/4) inch stroke. The street address shall be visible from the street. During the hours of darkness, the numbers shall be electrically illuminated (internal or external). Where the building is two hundred (200) feet or more from the roadway, additional non-illuminated contrasting six (6) inch numbers shall be displayed at the property access entrances. Standard 901.4.4 [F82]
- 138. <u>Additional Requirements.</u> In addition to the Fire requirements stated herein, other on-site and off- site improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office. [F01A]
- 139. <u>Residential Addressing.</u> The street address shall be installed on the building with numbers which are a minimum of 4 inches in height and with a one half inch stroke.
- 140. <u>Key Box</u>: An approved Fire department Key Box is required. The key box shall be provided with a tamper switch and shall be monitored by a Fire Department approved central monitoring service. Knox Lock
- 141. <u>Fire Extinguishers.</u> Hand portable fire extinguishers are required. The location, type, and cabinet design shall be approved by the Fire Department

PUBLIC WORKS/ Solid Waste Management (909) 386-8968

142. <u>Construction Waste Management Plan (CWMP) Part 2</u> - The developer shall complete SWMD's CWMP Part 2. This summary shall provide documentation of actual diversion of materials including but not limited to receipts, invoices or letters from diversion facilities or certification of reuse of materials on site. The CWMP Part 2 shall provide evidence to the satisfaction of SWMD that demonstrates that the project has diverted from landfill disposal, materials for reuse or recycling by a minimum of 50% of total weight or volume of all construction waste.

END OF CONDITIONS

ATTACHMENT G --

Verified Petition for Writ of Mandate... Letters in response to notice of Revision Application: from Friends of Fawnskin from The Center for Biological Diversity from Shute, Mihaly & Weinberger LLP

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	RACHEL B. HOOPER (State Bar No. 98569) AMY J. BRICKER (State Bar No. 227073)	FILED SUPERIOR COURT OF CALIFORNIA	
2	AMY J. BRICKER (State Bar No. 227073) EDWARD T. SCHEXNAYDER (State Bar No SHUTE, MIHALY & WEINBERGER LLP	D. 284494) COUNT ERNARDINO DISTRICT JUN 2 4 2014	
	396 Hayes Street San Francisco, California 94102		
	Telephone: (415) 552-7272 Facsimile: (415) 552-5816	BY STACEY BRANDT, DEPUTY	
	Hooper@smwlaw.com Bricker@smwlaw.com		
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	Attorneys for Friends of Fawnskin ADAM KEATS (State Bar No. 191157)		
9	ARUNA PRABHALA (State Bar No. 278865 CENTER FOR BIOLOGICAL DIVERSITY)	
-	351 California Street, Suite 600 San Francisco, CA 94104		
11	Telephone: (415) 436-9682 Facsimile: (415) 436-9683		
12	AKeats@biologicaldiversity.org APrabhala@biologicaldiversity.org		
13	Attorneys for Center for Biological Diversity		
14	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
15	COUNTY OF SAN BERNARDI	NO, SAN BERNARDINO DISTRICT	
16			
17	FRIENDS OF FAWNSKIN and CENTER FOR BIOLOGICAL DIVERSITY,	Case No. CIVDS1409159	
18	Petitioners,	[California Environmental Quality Act ("CEQA") Case]	
19	ν.	VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR	
20	COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS FOR THE	INJUNCTIVE AND DECLARATORY RELIEF	
21 22	COUNTY OF SAN BERNARDINO, and DOES 1-20,		
22	Respondents.		
23			
25	MARINA POINT DEVELOPMENT ASSOCIATES, IRVING OKOVITA,	0	
26	BEAR VALLEY PAVING, SITE DESIGN ASSOCIATES, KENNETH	BY FAX	
27	DISCENZA, and DOES 21-50,		
28	Real Parties in Interest.	ļ.	
	PETITION FOR WRIT OF MANDATE AND COMPLA	INT FOR INJUNCTIVE AND DECLARATORY RELIEF	
	CASE NO.		

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Petitioners Friends of Fawnskin and the Center for Biological Diversity (collectively "Petitioners") allege as follows:

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INTRODUCTION

In 1991, Respondent San Bernardino County Board of Supervisors approved a
 proposal for a large-scale condominium and commercial development—commonly known as
 the Marina Point development project—in the community of Fawnskin on the northern shore of
 Big Bear Lake ("Project"). This area of Big Bear Lake is sparsely populated and contains vital
 habitat for multiple protected species, including the bald eagle and the southwestern willow
 flycatcher.

2. 10 Following the 1991 approval, the Project applicants-Real Parties in Interest Irving Okovita and Marina Point Development Associates (collectively, the "Developer")-11 12 never completed the Project and the Project site sat idle for roughly a decade. In the early 2000s, the Developer commenced unlawful construction on the site, which was subsequently halted by 13 14 various agency enforcement actions. Now, nearly 23 years after the 1991 approval, that approval 15 has expired under the County's Development Code. Under these circumstances, the 16 Development Code indisputably requires the Developer to obtain a new land use approval from 17 the County before work on the Project can continue. Nonetheless, the County has issued 18 grading, demolition, and related permits for the Project. Issuing these permits in the absence of a 19 valid land use approval prematurely allows destructive activities to take place on the Project site, and is contrary to the clear provisions of the Development Code. Additionally, the Developer 20 has recently applied for County approval of revisions to the Project. The redesigned 21 22 development includes substantial changes from the 1991 proposal and could nearly double the 23 Project's density.

3. Developing the Project would significantly impact the environment of Big Bear
 Lake and the community of Fawnskin. Among other things, operation of the Project would
 threaten prime eagle foraging habitat on the north shore of Big Bear Lake, increase pollution of
 the already-impaired Big Bear Lake, and create new significant traffic, noise, and light pollution
 impacts upon the surrounding community. The California Environmental Quality Act, Public

Resources Codes section 21000 et seq. ("CEQA"), requires the County to properly consider and
 mitigate these environmental impacts before the Developer may move forward with the Project.
 The County's failure to do so constitutes a prejudicial abuse of discretion. Therefore, its actions
 in approving permits for the Project must be set aside until the County fully complies with
 CEQA for the Project.

PARTIES

6

Petitioner Friends of Fawnskin is an unincorporated non-profit association made 4. 7 up of local residents and visitors of Fawnskin, California, along with individuals and groups 8 throughout Big Bear Valley, the San Bernardino Mountains, and Southern California who have 9 come together to protect and preserve the natural habitat of Big Bear Valley, including the 10 Project area, through education, monitoring and advocacy about its value and community 11 12 benefit. Friends of Fawnskin submitted timely comments on the County's ongoing violations of County Ordinances and failure to complete adequate environmental review under CEQA for the 13 Project. Friends of Fawnskin's members frequently use and enjoy Big Bear Lake, including the 14 area where the project site is located, and its natural surroundings for scenic, recreational, and 15 educational purposes. They are therefore directly, adversely and irreparably affected, and will 16 continue to be prejudiced by the Project and its components unless this Court provides the relief 17 prayed for in this Petition. The maintenance and prosecution of this action will confer a 18 substantial benefit on the public by protecting the public from environmental and other harms 19 alleged herein and by ensuring that the County abides by the procedures required by law when 2021 approving projects like the Project at issue here.

5. Petitioner Center for Biological Diversity (the "Center") is a nonprofit, public
interest corporation, with approximately 48,000 members and offices in San Francisco, Los
Angeles, and Joshua Tree, California; Tucson, Arizona; Pinos Altos, New Mexico; Portland,
Oregon; and Washington, D.C. The Center and its members are dedicated to protecting
imperiled species and their habitats through science, policy, education, and environmental law.
Center members reside and own property in San Bernardino County, and use areas surrounding
the Project site and impacted by the Project for recreational, wildlife viewing, scientific, and

1 educational purposes, and intend to continue these uses as permitted. The Center submitted 2 timely comments on the County's ongoing violations of its Development Code and failure to 3 complete adequate environmental review under CEQA for the Project. The Center and its members are directly, adversely and irreparably affected, and will continue to be prejudiced by 4 5 the Project and its components unless this Court provides the relief prayed for in this Petition. 6 The maintenance and prosecution of this action will confer a substantial benefit on the public by 7 protecting the public from environmental and other harms alleged herein and by ensuring that 8 the County abides by the procedures required by law when approving projects like the Project at 9 issue here.

6. Respondent County of San Bernardino ("County"), a political subdivision of the
 State of California, acting through its various departments and officials, is responsible for the
 Project approvals, for complying with the County's Development Code, for implementing and
 complying with provisions of CEQA and the CEQA Guidelines, and for complying with Health
 and Safety Code section 19827.5. The County is the "lead agency" for the Project under CEQA.

Respondent San Bernardino County Board of Supervisors is the governing body of
 the County. The Board of Supervisors conditionally approved the 1991 development
 application, and is also responsible for complying with the requirements of the County Code, the
 Health and Safety Code, and CEQA and the CEQA Guidelines.

8. Petitioners do not know the true names and capacities, whether individual,
 corporate, associate or otherwise, of Respondents DOE 1 through DOE 20, inclusive, and
 therefore sue said Respondents under fictional names. Petitioners allege, upon information and
 belief, that each fictionally named Respondent is responsible in some manner for committing the
 acts upon which this action is based. Petitioners will amend this Petition to show these
 Respondents' true names and capacities if and when they are ascertained.

9. Real Party in Interest Irving Okovita is an individual who is an applicant for the
Project and is the owner of the Project and/or Project property.

27 10. Real Party in Interest Marina Point Development Associates is an owner of the
28 Project and/or Project property. Petitioners are informed, and on that basis allege, that Marina

Point Development Associates is a general partnership located and doing business in the State of
 California.

3 11. Real Party in Interest Kenneth Discenza is an applicant for the Project's grading
4 permits, which are challenged by this action.

5 12. Real Party in Interest Site Design Associates is an applicant for the Project's
6 grading permits, which this action challenges. Petitioners are informed and believe, and on that
7 basis allege, that Site Design Associates is a company incorporated and doing business in the
8 State of California.

9 13. Real Party in Interest Bear Valley Paving is the applicant for the Project's
10 demolition permits, which this action challenges. Petitioners are informed and believe, and on
11 that basis allege, that Bear Valley Paving is a company incorporated and doing business in the
12 State of California.

13 14. Petitioners do not know the true names and capacities, whether individual, 14 corporate, associate or otherwise, of Real Parties in Interest DOE 21 through DOE 50, inclusive, 15 and therefore sue said Real Parties in Interest under fictional names. Petitioners allege, upon 16 information and belief, that each fictionally named Real Party in Interest is responsible in some 17 manner for committing the acts upon which this action is based or has material interests affected 18 by the Project or by the County's actions with respect to the Project. Petitioners will amend this 19 Petition to show these Real Parties in Interest's true names and capacities if and when they are 20 ascertained.

21

JURISDICTION AND VENUE

15. This Court has jurisdiction over the matters alleged in this Petition under Code of
Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168, 21168.5
and 21168.9.

16. Venue is proper in this Court because the causes of action alleged in this Petition
arose in San Bernardino County, where the Project is located and where the County of San
Bernardino acted to implement the Project.

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Petitioners have performed all conditions precedent to filing this Petition and have
 exhausted all available administrative remedies to the extent required by law.

18. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law
unless this Court grants the requested writ of mandate to require the County to set aside its
demolition and grading permits for the Project. In the absence of such remedies, the County's
approval will remain in effect in violation of State Law.

Petitioners have complied with the requirements of Public Resources Code section
21167.5 by serving a written notice of Petitioners' intention to commence this action on
Respondents on June 23, 2014. A copy of the notice and proof of service is attached hereto as
Exhibit A.

20. Petitioners will comply with the requirements of Public Resources Code section
21167.6 by concurrently filing a notice of their election to prepare the record of administrative
proceedings relating to this action.

14 21. Petitioners are complying with the requirements of Public Resources Code section
15 21167.7 by sending a copy of this Petition to the California Attorney General on June 24, 2014.
16 A copy of the letter transmitting this Petition is attached hereto as Exhibit B.

17

STATEMENT OF FACTS

18 22. The Project site is located on the southeastern edge of the unincorporated
19 community of Fawnskin, California. The site sits on the eastern shore of Big Bear Lake's Grout
20 Bay. Grout Bay and the surrounding area provide prime foraging habitat for bald eagles, which
21 are protected under the federal Bald and Gold Eagle Protection Act and the California
22 Endangered Species Act, and are also a California fully protected species. The only bald eagle
23 nest in Big Bear Valley is located less than one mile from the Project site.

24 23. The Project site, originally called "Cluster Pines," was a recreation vehicle
25 campground on Big Bear Lake. The campsite contained hundreds of native trees, including
26 roughly 400 Jeffrey pines. The site also contained three old buildings that provided restroom and
27 shower facilities for the campsite. Petitioners are informed and believe, and on that basis allege,
28 that at least two of these buildings contained pipes insulated with asbestos.

24. In the early 1980s, the Developer proposed a large scale development project on
 the Cluster Pines site. Although the County prepared an Environmental Impact Report ("EIR")
 and approved that project in 1983, by 1991, that approval had expired under the County's
 Development Code because the Developer never recorded a tract map for the site or otherwise
 commenced that project.

In 1991, the Developer proposed a new 133-condominium and commercial 25. 6 "destination resort" for the site. In addition to erecting new condominium buildings, the Project 7 would expand the existing marina from 60 to 175 boat slips, and would provide 264 parking 8 spaces on site. The 1991 development also anticipated new recreational and spa facilities. 9 Constructing the Project would require substantial grading throughout the Project site and 10 demolition of all buildings existing onsite. Under the Project's Final Development Plan, the 11 Developer would preserve 160 of the Project site's original trees. The County never prepared an 12 EIR for the Project but instead relied on the EIR for the 1983 project to meet its environmental 13 14 review obligations under CEQA. On December 9, 1991, the County (1) issued a tentative map 15 || for the Project site, and (2) approved the proposed phased planned development project and issued a Planned Development Permit, subject to numerous conditions. On April 28, 1992, 16 17 County staff revised the Conditions of Approval in key respects, so that they included, inter 18 alia:

a. Condition 2, which requires the Developer to either record a tract map or
obtain building permits within five years of the 1991 approval, and within each succeeding five
year period.

b. Condition 6, which prohibits construction activities on the site between
December 1 and April 1 to minimize disturbances to bald eagles during the winter foraging
season.

c. Condition 14, which requires the Developer to obtain a tree removal plan
from the County's Building and Safety Department before disturbing or removing protected
trees and plants.

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1d.Condition 15, which requires the Developer to obtain permits before2handling hazardous waste and materials.

3 4

e. Condition 16, which requires the Developer to conduct a vector control survey before the County will issue any demolition permits.

5 26. The Developer did little to proceed with the Project after the County's 1991
approval and the Project site sat vacant for the balance of the decade. Even though it never
obtained a new project approval from the County, the Developer recorded a final tract map on
Becember 21, 2000, nine years after the approval of the Planned Development Permit.

9 27. Throughout 2002 and 2003, the Developer and its contractors commenced multiple unpermitted activities at the Project site, prompting various agencies to halt the 10 Developer's work on the Project. For instance, in May 2003, workers began grading the site 11 without performing required vector control, causing the County to suspend the Developer's 12 13 grading permit. The Developer also conducted multiple dredge and fill operations in Big Bear Lake without permits, resulting in the Big Bear Municipal Water District and the Army Corps of 14 Engineers intervening to halt the work. Contractors at the site also performed open-air spray-15 16 painting of construction equipment without taking any precautions to prevent the wind from carrying the paint into the lake or the surrounding Fawnskin community. Petitioners are 17 informed and believe, and on that basis allege, that the South Coast Air Quality Management 18 19 District ("Air District") took enforcement action against the Developer to stop this activity.

20 28. In 2004, Petitioners sued the Developer in federal district court for violating (1) the Clean Water Act through dredge and fill activities in Big Bear Lake and (2) the federal 21 Endangered Species Act by damaging the critical bald eagle habitat. During this litigation, from 22 April 16, 2004 until September 9, 2009, the district court enjoined the Developer's work at the 23 24 Project site. The district court found that work at the Project site violated both the Endangered 25 Species Act and Clean Water Act. The court of appeals overturned the district court's Clean Water Act ruling on jurisdictional grounds, but left the district court's findings of fact in place. 26 27 The Endangered Species Act litigation became moot when the bald eagle was delisted from the 28 federal Endangered Species Act in 2007.

1 29. In 2010, the California Department of Forestry issued a timber harvest permit 2 exemption for the Developer to cut under 3 acres of trees on the Project site. Only days after the Department of Forestry inspected the area marked for tree cutting under the exemption, workers 3 at the site cut a frequently-used bald eagle perch tree outside of the area designated for tree 4 cutting. Similarly, the Developer has regularly violated Condition of Approval 6 by performing 5 construction activities during the bald eagle foraging season. 6

By 2011, the Developers had yet to seek building permits for the Project site or 7 30. 8 obtain a new planned development approval from the County. As a result, the Developer's two-9 decades old phased planned development approval had long expired. Despite this fact, without 10 providing public notice or opportunity to comment, the County issued a new grading permit for the Project site on September 28, 2011 and a revised grading permit on October 2, 2012. The 11 County also issued a boundary wall permit for the site in early October 2012, again without any 12 13 notice to the public.

14 31. In mid-2013, the Developer began advertising condominium units to the public that substantially differed in both size and design from the previously-approved 1991 15 development plan. On March 18, 2014, the Developer submitted a "Site Plan Revision" 16 17 application to the County to obtain approval for its substantial changes to the Project. The application did not disclose many of redesigned project components that the Developer was 18 19 advertising to the public, and instead described the changes as only "minor."

20 32. On April 9, 2014, Petitioners, other concerned environmental organizations, and members of the public submitted comments to the County on the Developer's new application, 21 22 stating that (1) the 1991 development approval had expired and the County was required to issue 23 a new planned development permit for any further work at the site, and (2) that substantial 24 changes to the project and the environment, along with new information about environmental 25 impacts, required the County to conduct new or additional environmental review under CEQA. Petitioners are informed and believe, and on that basis allege, that the County notified the 26 27 Developer that its new application would require supplemental or subsequent environmental review under CEOA. 28

33. In April 2014, the Developer and its contractors began bulldozing and actively
 grading the Project site, including riparian areas adjacent to Big Bear Lake. This activity
 destroyed important riparian habitat, including numerous willows, which provide vital habitat
 for the southwestern willow flycatcher, a federally-listed endangered species.

5 34. On or about April 15, 2014, the Developer and its contractors began demolishing 6 three restroom and shower buildings on the Project site. During the demolition, the Developer 7 took no visible precautions to protect workers or the public from exposure to the asbestos in the 8 buildings, nor did the Developer post any notices about the demolition.

9 35. Shortly after the demolition began, Petitioner Friends of Fawnskin's executive
10 director contacted the County's planning department to determine whether the County had
11 issued a permit for the demolition or was requiring the Developer to take precautions to contain
12 the asbestos on site. The County informed Friends of Fawnskin's executive director that no
13 demolition permits were necessary. Petitioners are informed and believe, and on that basis
14 allege, that County staff never investigated the threat of asbestos exposure from the demolition.

36. On April 16, 2014, Petitioners Friends of Fawnskin also contacted the Air District.
The next day, an investigator from the Air District visited the site and took samples from
demolition debris in a dumpster and from the only building that remained partially standing. The
Air District has since verbally confirmed that the samples it took contained asbestos. Its
investigation of the demolition is ongoing. Contractors demolished an additional building weeks
later.

37. Contrary to their statements that no permit was necessary for the demolition
activity, on April 22, 2014, the County issued two demolition permits to Respondent Bear
Valley Paving to demolish "utility buildings" on the Project site. Petitioners are informed and
believe, and on that basis allege, that the County issued these demolition permits without
required asbestos notifications or other assurances that the asbestos notification was not
applicable. See Health and Safety Code § 19827.5.

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38. Petitioners are also informed and believe, and on that basis allege, that the
 Developer never submitted a vector control plan to the County before obtaining building
 demolition permits, violating Condition of Approval 16.

4 39. In early May, 2014, the Developer commenced a new tree-cutting operation on the 5 site, cutting numerous large pine trees. As a result of the latest tree cutting activities, fewer than 6 150 trees remain on the Project site.

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FIRST CAUSE OF ACTION

(Violations of San Bernardino County Municipal Code and California Health and Safety Code)

40. Petitioners hereby reallege and incorporate paragraphs 1 through 39, inclusive.

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41. The County's Development Code regulates, among other things, "uses of land and
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42. As a prerequisite to receiving any building, grading, demolition or similar permits, the Development Code requires applicants for new land use projects to first have a valid land use approval and to otherwise comply with the requirements of the Development Code. 8 § 81.01.050(a). It specifically prohibits the County's Building Official from issuing "building, grading, or other construction permits" until all applicable requirements of the Development Code are met. § 81.01.050(a).

43. The County has determined that the Project is a phased planned development
under the Development Code. The Code specifically prohibits the County from issuing building
or grading permits for "a site for which a Planned Development Permit is proposed until the
Planned Development Permit has been approved in compliance with this Chapter."
§ 85.10.020(b).

44. The Development Code outlines stringent timeframes in which an applicant must
complete a phased planned development project. In addition to complying with all time limits

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1 within any applicable conditions of approval, an applicant "shall either record a tract map or 2 obtain Building Permits for at least one phase of the project within five years of the 3 Development Plan conditional approval and, as applicable, within each succeeding five-year 4 period. Each five-year period shall begin with the last County approved action that was 5 accomplished (e.g., recordation of a tract map, obtain a Building Permit)." § 86.06.060(a)(5)(B). If these deadlines are not met, the Planned Development Permit approval expires and becomes 6 7 invalid. § 86.06.060(a)(1). Extensions of time are not available for phased projects (§§ 8 85.10.080, 86.06.060(b)(2)(E)) and all work at a site must cease when a development permit 9 expires. § 86.06.060(c).

45. The Developer recorded a tract map for the Project on December 21, 2001. Since
then, the Developer has neither recorded any further tract maps for the site nor obtained any
building permit for the Project. Thus, by operation of the Development Code and the 1992
revised Conditions of Approval, the 1991 Planned Development Permit expired on December
21, 2005.

46. Despite this permit expiration and in violation of the Development Code, County
staff has continued to issue grading, demolition, and other permits for work at the Project site.
Specifically, the County issued a grading permit on September 28, 2011, a revised grading
permit and a boundary wall permit on October 2, 2012, and two demolition permits on April 22,
2014. The issuance of these permits violates Development Code sections 81.01.050(a)
and 85.10.020(b).

47. The County's continuous practice of issuing permits for the Project despite the
Developer's failure to comply with the Conditions of Approval or the Development Code's time
limits has created a real and substantial controversy regarding (1) whether the County's approval
of the 1991 condo development has expired, and (2) whether the aforementioned grading,
demolition, and boundary wall permits are valid under the County Code.

48. In addition to violating the Development Code, the County's approvals have run
afoul of state law governing demolition permitting. Before a local agency issues a demolition
permit to an applicant, California Health and Safety Code section 19827.5 requires the agency to

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obtain a copy of an asbestos notification that was submitted to the United States Environmental
 Protection Agency or a designated state agency or to obtain a declaration from the applicant that
 no such notification was required. Petitioners are informed and believe, and on that basis allege,
 that the County issued demolition permits for the Project without requiring asbestos
 notifications or other assurances that the asbestos notification was not applicable to the
 Developer's demolition activities.

49. In view of the foregoing, Petitioners pray for relief as set forth below.

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SECOND CAUSE OF ACTION

(Violations of CEQA)

50. Petitioners hereby reallege and incorporate paragraphs 1 through 49, inclusive.

51. CEQA is designed to ensure that the long-term protection of the environment be
the guiding criterion in public decisions that may affect the environment. CEQA applies to any
action taken by an agency that may cause a reasonably foreseeable change in the environment.

14 52. Approval of a large condo development like the Project is an act that triggers an
15 agency's obligation to comply with CEQA.

In furtherance of its goal of environmental protection, CEQA requires that the 16 53. agency prepare an Environmental Impact Report ("EIR") for a project whenever substantial 17 evidence in the record supports a fair argument that the project may have a significant effect on 18 the environment. The EIR must comply with the requirements of the statute, including, but not 19 limited to, the requirement to analyze the project's potentially significant environmental 20 impacts. The EIR must provide sufficient environmental analysis such that the decisionmakers 21 can intelligently consider environmental consequences when acting on the proposed project. 22 Additionally, the EIR must analyze feasible mitigation measures and a reasonable range of 23 alternatives to the project. 24

54. CEQA also requires an agency to prepare a new EIR, or a subsequent or
supplemental EIR ("SEIR") where substantial changes are proposed in a project that will require
new analysis or major revisions to an EIR, substantial changes to the circumstance under which

the project is undertaken will require major revisions to an EIR, or new information becomes
 available, which was not known at the time that an earlier EIR was certified as complete.

55. CEQA mandates that the lead agency adopt feasible and enforceable mitigation measures that would reduce or avoid any of the project's significant environmental impacts. If any of the project's significant impacts cannot be mitigated to a less than significant level, then CEQA bars the lead agency from approving a project if a feasible alternative is available that would meet the project's objectives while avoiding or reducing its significant environmental impacts.

9 56. CEQA further mandates that a lead agency may only approve a project that would
10 have significant, unavoidable environmental impacts, if the agency finds that the project's
11 benefits would outweigh its unavoidable impacts.

12 57. CEQA requires that an agency's findings for the approval of a project be
13 (a) supported by substantial evidence in the administrative record, and (b) provide an
14 explanation of how the record evidence supports the conclusions the agency has reached.

58. Because approval of the 1991 condo development has now expired, Respondents 15 must conduct new environmental review before issuing any new approval or entitlement for the 16 17 Project. Respondents violated CEQA by failing to conduct any environmental review before issuing the recent permits for the Project. For instance, by issuing these permits before issuing 18 19 any new land use approval, Respondents failed to consider the whole of the Project as CEQA requires. Moreover, without any environmental review, Respondents failed to adequately 20 disclose, analyze, or mitigate the numerous significant impacts to the environment that will 21 22 result from the Project's construction and operation.

59. Substantial new information and changed circumstances require the preparation of
an SEIR for the Project. These changes include, but are not limited to: (1) the increasing threat
of global climate change and the increase in greenhouse gas emissions from land uses like the
Project; (2) the year-round presence of bald eagles at Big Bear Lake and the overall decline of
the bald eagle population in Big Bear Valley; (3) new information about the threat of PM2.5
emissions, which will result from the construction and operation of the Project; (4) an increased

PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF CASE NO.

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risk of wildfire in San Bernardino County and throughout southern California; (5) the addition
 of Big Bear Lake to the list of impaired water bodies; (6) extreme drought conditions and water
 shortages throughout California, which have caused water rationing in communities along Big
 Bear Lake; and (7) the likelihood of new cumulative impacts from the Project following the
 approval of other development projects within Big Bear Valley.

6 60. Since the 1991 condo development approval, there also have been substantial
7 changes to the Project that require further environmental review. For instance, because of the
8 Developer's extensive onsite tree cutting, fewer than 150 trees remain on the Project site even
9 though the 1991 approval required preservation of 160 trees. Moreover, recent demolition
10 activities have contaminated the Project site with debris containing asbestos. None of these
11 changes have undergone environmental review.

12 61. The Developer's advertised and proposed Project "revisions" also anticipate
13 numerous changes to the now-expired 1991 condo development, including nearly doubling the
14 capacity of the Project with new "lock-off units," reconfiguring the location of buildings,
15 impeding public lakefront access on the site, substantially increasing the size of the planned
16 clubhouse, and extending new docks into Big Bear Lake. These changes have not received
17 environmental review either.

62. Respondents further failed to circulate any notice or hold a public hearing before
issuing the grading permits and demolition permits for the Project. Because Respondents did not
provide any public process before issuing these permits, Petitioners had no actual or constructive
notice that the Project being constructed under these permits materially differed from the 1991
development, which was the subject of previous environmental review.

63. Petitioners did not receive notice of these permits until May 29, 2014, when they
obtained records of the grading, demolition, and boundary wall permits from the County through
an in-person request at the County's records office. The County did not file a CEQA notice of
determination or exemption after approval of the Project permits.

64. Respondents' CEQA violations constitute a prejudicial abuse of discretion. For
instance, by failing to conduct any CEQA review, Respondents' did not apprise the public of the

Project's significant environmental impacts, nor did they consider whether those impacts could
 be properly mitigated or avoided.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:
 For alternative and peremptory writs of mandate directing Respondents to vacate

For alternative and peremptory writs of mandate directing Respondents to vacate
 and set aside the demolition, grading, and boundary wall permits for the Project;

7 2. For alternative and peremptory writs of mandate directing Respondents to comply
8 with CEQA, the CEQA Guidelines, the County Code, all applicable state law, and take any
9 other action as required by Public Resources Code section 21168.9;

3. For a temporary stay, temporary restraining order, and preliminary and permanent
 injunctions restraining Respondents and Real Parties in Interest and their respective agents,
 servants, and employees, and all others acting in concert with Respondents or Real Parties in
 Interest on their behalf, from taking any action to implement the Project, pending full
 compliance with the requirements of CEQA, the CEQA Guidelines, the County Code, and all
 applicable State Law;

For a declaration that (1) the Developer's land use approvals for the Project have
 expired under the County Code and the Conditions of Approval for the Project, and (2) the
 County Code prohibits County staff from issuing building, grading, demolition, boundary wall,
 and other permits for the Project until the County issues new land use approvals for the Project;

5. For costs of the suit;

6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
other provisions of law; and

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For such other and future relief as the Court deems just and proper.

1	DATED: June 24, 2014	SHUTE, MIHALY & WEINBERGER LLP
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3		By: What Shake
4		EDWARD T. SCHIEXNAYDER
5		Attorneys for Friends of Fawnskin
6		Atomeys for Friends of Fawilskin
7		
8	DATED: June 24, 2014	CENTER FOR BIOLOGICAL DIVERSITY
9		$A \mathcal{D}_{L}$
10		By: Mr fulle
11		ARUNA PRABHALA
12		Attorneys for Center for Biological Diversity
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	PETITION FOR WRIT OF MANDATE A	16 ND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
	CASE NO.	

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1	VERIFICATION		
1	I, Sandy Steers, am the Executive Director of Friends of Fawnskin, a Petitioner in		
2 3	this action, and I am authorized to execute this verification on Petitioners' behalf. I have read		
2 4	the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief		
4 5	("Petition"). I am familiar with the contents of the Petition. All facts alleged in the above		
6	is the second se		
7	knowledge, except as to matters stated on information and belief, and as to those matters I		
8	believe them to be true. I declare under penalty of perjury under the laws of the State of		
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EXHIBIT A

SHUTE, MIHALY

396 HAYES STREET, SAN FRANCISCO, CA 94102 T: (415) 552-7272 F: (415) 552-5816 www.smwlaw.com AMY J. BRICKER Attorney bricker@smwlaw.com

June 23, 2014

Via E-mail, U.S. Mail, and Facsimile

County of San Bernardino Chair Janice Rutherford and Members of the Board of Supervisors of County of San Bernardino c/o Laura H. Welch, Clerk of the Board of Supervisors 385 N. Arrowhead Ave., 2nd Floor San Bernardino, CA 92415-0130 cob@sbcounty.gov

Re: Friends of Fawnskin, et al. v. County of San Bernardino, et al

Dear Chair Janice Rutherford and Members of the Board:

This letter follows up on our letter to Tom Hudson dated June 13, 2014, and is to notify you that the Friends of Fawnskin and Center for Biological Diversity will file suit against the County of San Bernardino ("County") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process regarding the issuance of various permits for the Marina Point Development project ("Project"), including but not limited to the issuance of two demolition permits on April 22, 2014. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Umy J. Burlen

Amy J. Bricker

cc. Jean R. Basle, County Counsel 599314.1

June 23, 2014 Page 2

PROOF OF SERVICE

Friends of Fawnskin, et al. v. County of San Bernardino, et al. San Bernardino County Superior Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On June 23, 2014, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE, JUNE 23, 2014

on the parties in this action as follows:

Chair Janice Rutherford and Members of
the Board of Supervisors of County of San
Bernardino
c/o Laura H. Welch, Clerk of the Board
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

Jean R. Basle San Bernardino County Counsel 385 N. Arrowhead Avenue San Bernardino, CA 92415-0120

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY FAX TRANSMISSION: I faxed a copy of the document(s) to the Clerk of the Board at fax number (909) 387-4554 and County Counsel at fax number (909) 387-5462. The telephone number of the sending facsimile machine was (415) 552-5816. No error was reported by the fax machine that I used. I printed out a copy of the record of the fax transmission.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Mulligan@smwlaw.com to the Clerk of the Board at COB@sbcounty.gov and County Counsel at jbasle@cc.sbcounty.gov. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SHUTE MIHALY

June 23, 2014 Page 3

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 23, 2014, at San Francisco, California.

Sean P. Mulligan



EXHIBIT B



396 HAYES STREET, SAN FRANCISCO, CA 94102 T: (415) 552-7272 F: (415) 552-5816 www.smwlaw.com AMY J. BRICKER Attorney bricker@smwlaw.com

June 24, 2014

Via U.S. Mail

Attorney General Kamala Harris Office of the Attorney General 1300 "I" Street Sacramento, CA 95814-2919

Re: Friends of Fawnskin, et al. v. County of San Bernardino, et al

Dear Attorney General Harris:

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition") in the above-captioned action. The Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

any J. Burchen

Amy J. Bricker

Enclosure

599313.1



FRIENDS OF FAWNSKIN Big Bear Valley Environmental Education & Oversight P.O. Box 422, Fawnskin, California 92333 www.friendsoffawnskin.org friendsoffawnskin@gmail.com 909-878-3091

9 April 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

We have become aware of the proposed revisions to the Marina Point development project and would like to express our concerns.

Friends of Fawnskin (FOF) is a non-profit environmental education organization representing a membership of over 500 residents and homeowners of the Big Bear Valley. Residents and visitors come to Big Bear primarily to enjoy the current character of the area and FOF works to preserve and protect these unique environmental surroundings. Our goals are to keep the public informed on issues that may impact their surroundings; to assure proper opportunity for public participation in the decision-making process; to educate the governing agencies regarding concerns of local residents and visitors; and to make certain the environmental laws in place to protect all of us are followed.

The revisions application information submitted for this proposed revision does not match the broadly advertised (website—<u>www.luxuryatmarinapointresort.com</u>, newspaper articles, real estate guides) information. The advertised information includes individual docks outside the enclosed marina, as well as 'lock-off' units associated with each of the condominium and neither of these is mentioned in the application. Before any approval can be given on this proposed revision, all of the actual changes must be clarified, disclosed to the County and noticed to the public for additional comment.

The application document that Marina Point submitted also discusses "custom homes" under "Site Condominium Units" but calls this a minor change that decreases the number of condominium units. Creating "custom homes" instead of condominium units, not a minor change and though it may decrease the number of condominium units, could increase the actual impact of the project. For example, could the "custom homes" add out buildings or additions at any point in the future that would increase the footprint and associated impact? --Please note that having homeowners' association rules that prohibit these items is quite insufficient for limiting impact. The Eagle Point Estates in the City of Big Bear Lake used homeowners' association rules to mitigation significant impacts on bald eagles, then went back to the City Council a year after approval and had those rules changed, thus eliminating the mitigations.-- These issues create much confusion and generate more questions than they answer. This proposal must be clearly defined, disclosed to the County and noticed to the public for additional comment.

Defining ten individual "custom homes" as "single-family condominiums" is, at best, inaccurate, and is, in any case, misleading to the public. The well-accepted definition of a 'condominium' is an individually owned unit within a 'multiple-unit complex' where there is at least one shared wall with another unit. Calling these 'custom homes,' more clearly defines these single family units as single family homes rather than as condominiums. If these homes are in fact 'custom' how can the square footage be defined to determine the actual footprint of the project? Would the exterior of these units belong to the condominium association? If not, then what makes these units condominiums rather than single family homes? Or is this terminology simply being used as pretense in order for major changes to slide through the system as 'minor' or 'incremental'? All of these issues must be clearly defined, disclosed to the County and noticed to the public for additional comment.

Additional docks to the west of this project site or anywhere in this area would have major increased impact on the bald eagles that nest less than one mile from the site and forage at and near the site on a regular basis throughout the year. The circumstances of the bald eagle population has changed in major ways since the previous environmental review on this project. Due to increased development in the past 20 years, the average number of bald eagles in the area during winter months has decreased from 28 to 6. Bald eagles are also now documented year-round residents, as opposed to only winter visitors, as they were at the time of the previous analysis. In addition, a nesting pair has successfully raised one chick and had failed attempts the past two years. This pair, as well as their offspring, regularly forages in and around the Marina Point project, especially including the bay to the west of the project site. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report. The advertising for this development states the 'lock-off units' could also be 'rented out.' This would nearly double the number of families and vehicles that could be using the site at any one time. This would also nearly double the impacts of this project revision, with major increases in traffic, noise, water usage, fire hazard, air pollution, and water pollution. There have already been extensive water shortages with water restrictions throughout the valley and the current statewide drought confirms this to be an ongoing issue. This potential major increase in the number of occupants would also impact fire evacuation in the case of forest fires, now a very real threat to any forested community. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report.

In summary, this project revision has not been clearly defined sufficiently for the County to make accurate determinations of potential impacts is would create or even to determine how much the project is changing. It must be more clearly defined with all details disclosed to the County and notice to the public for additional comment. Based on what can be determined from the revision application and the information that Marina Point is making public through advertising and other outlets, the actual planned revision is much larger than what has been officially disclosed. That, along with major changes to the environmental circumstances since the previous environmental review, requires that a full environmental impact report be done to properly determine the significance of the potential impacts of this proposal.

Please include Friends of Fawnskin on any future notices about this project. Thank you for your consideration.

Sincerely,

Janly Steer

Sandy Steers Executive Director

cc: James Ramos, Supervisor, Third District Chris Carrillo, Deputy Chief of Staff Elizabeth Harris, Field Representative Jeffrey Brandt, California Department of Fish and Wildlife Ed Wallace, Sierra Club, Big Bear Group Drew Feldmann, San Bernardino Valley Audubon Society Adam Keats, Center for Biological Diversity Hugh Bialecki, Save Our Forest Association

167 of 947

CENTER TOP BIOLOGICAL DIVERSITY

via electronic mail and USPS

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April 9, 2014

Chris Warrick Planner for San Bernardino County Land Use Services Planning Division 385 North Arrowhead Ave, First Floor San Bernardino, CA 92415-0182 Chris.Warrick@lus.sbcounty.gov

Re: Planning Project Notice for Revision to Marina Point Development Plan (Project Number P201400106/RMC)

Dear Mr. Warrick:

These comments are submitted on behalf of the Center for Biological Diversity ("the Center") regarding the proposed revision to the Marina Point Development Plan. Specifically, the Center urges that the proposed revision to the development plan undergo thorough and comprehensive environmental review under the California Environmental Quality Act ("CEQA") prior to any County approval. Although labeled as a "minor" change by the Project applicant, the proposed revisions to the Project will potentially result in significant new environmental impacts. These significant environmental impacts, coupled with new information not available at the time of previous environmental review and substantial changes to surrounding environment, warrant a supplemental or subsequent Environmental Impact Report ("EIR") under CEQA. Therefore, the County must complete an updated environmental review of the Project that fully addresses and analyzes the Project's *current* impacts to sensitive species and habitat, air quality, water quality, water supply, traffic, greenhouse gas emissions, potential for growth-inducing impact, cumulative impacts and all reasonable alternatives and mitigation measures, prior to any approval for the Project.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 675,000 members and e-activists throughout the county and California, including San Bernardino County. The Center has worked for many years to protect imperiled wildlife and natural resources, open space, air and water quality, and overall quality of life for people living near Big Bear Lake.

Plaska - Aurona - California - Fiorida - Minnesota - Nevada - New Mexico - New York - Oregon - Vermont - Wissburgton, DC

Anusz Prakłala - Stafi Attorney, Usnas Widlands - 351 California St., Sie. 600 - San Francisco, CA 94104-2404 Posna: (415) 456,9682 x322 - Fac (415) 426,9683 - acc-ch-diat-Diological/Decelly.org

I. The Applicant has Failed to Provide an Accurate and Properly Defined Project Description

Under CEQA, environmental review of a project must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to the project. (Pub. Res. Code § 21061.) These requirements help ensure that the public and decision makers are reviewing and deciding on the project know the full scope of the project and its impacts. (See CEQA Guidelines, §§ 15126, 15358(a).) Environmental review that fails to provide these details undermines the fundamental requirement of public disclosure in CEQA. In particular, an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient environmental review. (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185 (an enigmatic or unstable project description impedes public input); See also San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 730.)

The proposed change to the Project includes plans to "replace 7 multi-unit condominium structures with 10 single-unit condominium structures along the Big Bear Lake shore, reducing the overall density from 133 units to 120 units on 12.5 acres." Although the applicant has presented this revision to the Project as "minor," the proposed changes raises fundamental issues with the Project and that must be resolved through a revised application and comprehensive environmental review. The application fails to include an accurate or reliable project description, making informed decision making by the County impossible.

For example, the application fails to include other changes to the Project that have been advertised elsewhere and have occurred since the last comprehensive environmental review of the Project. (See Marina Point on Big Bear Lake at <u>www.luxuryatmarinapointresort.com</u> (last visited April 9, 2014).) Changes include new docks that will extend into Big Bear Lake and could result in water quality impacts and interfere with foraging habitat of bald eagles, a state listed and fully protected species under California law. (See Fish & Game Code § 3511.) It is unclear if the proposed revision to the Project includes these new docks and what environmental impacts will result from their construction. Other changes to the Project include separate "lockoff suite" that could be rented for independent use, a larger clubhouse, a new "gate house for special events" and an altered layout of buildings. Each of these will likely alter the footprint of the Project and potentially result in new significant environmental impacts.

The Project description provided in the application is inconsistent with previous and current, separate plans for the Project. Nonetheless, the applicant has made no attempt to explain or resolve these inconsistencies. Instead, the public and decisionmakers are left will a vague, ill-defined Project with no possible way to evaluate the revised Project's environmental effects. Until an accurate and complete Project description is made available, the true scope of the Project and its potential environmental impacts will remain uncertain. Therefore, before moving forward with the proposed revisions to the Project, the applicant must provide the public and the County with an accurate Project description. It is only with this information that the County can

complete the necessary environmental review and make an informed decision on whether to the Project or not.

II. CEQA Requires A Supplemental or Subsequent EIR Prior to County Approval

While an agency may rely on a previous EIR when approving a Project, a supplemental or subsequent EIR is required if (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require major EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. (Pub. Res. Code § 21166; CEQA Guidlelines § 15162, 15163.) Courts have found that when changes to the Project results in significant new impacts, "the failure to prepare a subsequent or supplemental EIR deprived the public, who relied on the EIR's representations, of meaningful participation." (*Mira Monte Homeowners Ass'n v. County of Ventura*, 165 Cal. App. 3d 357, 365 (Cal. App. 2d Dist. 1985).) Because each of these conditions has been met here, the County must complete an updated and thorough supplement or subsequent EIR before it considers approval of the revised Project.

A. Substantial Changes to the Proposed Project and Surrounding Environment Require Major Revisions to the EIR

This Project has undergone minimal environmental review, much of which occurred decades ago when the Project was originally approved and did not take account subsequent changes to the proposed Project. In the decades since the environmental impacts of the Project were last analyzed, new information about the surrounding environment has been disclosed and the environment has undergone substantial changes. Additionally, the proposed changes to the Project by the applicant will potentially result in significant new impacts, all of which make clear that an updated environmental review of the Project is warranted.

i. New Information and Changes to the Surrounding Environment Will Require Major Revisions to the EIR

One of the most important changes to the Project site and surrounding environment is the bald eagle population that nest, forage, rest, and perch around Big Bear Lake. Bald eagles now inhabit the area year-round rather than only in the winter. However, increased development in the area has increased pressure on the bald eagle population, resulting in a drop from 28 to 6. This population of birds relies on continued use of the Project site and the surrounding environment. Areas adjacent to the Project site are essential to the continued viability of the bald eagle population. Additional docks, construction and increased residential use at the Project site would represent a significant increased impact on bald eagles.

Other changes to the surrounding environment that warrant further analysis include traffic increases from nearby development. It is unclear when the County last completed traffic analysis for the Project and surrounding area, which has undoubtedly changed since the decades old environmental analysis for the Project. Similarly, water quality and air quality has also changed in and around Big Bear Lake since the last comprehensive environmental review of the

Project. New and proposed development projects near the Project site have altered the surrounding environment. Construction and operation of the Project will only further degrade the air and water quality of the nearby area. The new and more realistic environmental baseline on the Project site and surrounding areas should be used to analyze the Project's impacts rather than outdated, decades old information. Additionally, to analyze and determine the cumulative impacts of the Project, the County must update its environmental review to include the current conditions of the surrounding environment.

Our understanding of the climate change and the contribution greenhouse gas emissions to global warming has also dramatically changed since the previous environmental review of the Project. New statutes and regulations have been put in place to monitor and limit greenhouse gas emissions, including California's Global Warming Solutions Act or AB 32. CEQA also now requires analysis of a Project's individual and cumulative contributions to climate change. (CEQA Guidelines § 15126.2.) The County has an obligation to identify all of the potential sources of GHG emissions that would be generated by construction and operation of the Project and adopt measures to reduce or eliminate these emissions. For example, the Project's land use changes, construction, traffic impacts and water use should all be now analyzed for their contribution to greenhouse gas emissions and, if significant, those emissions should be mitigated.

ii. The Proposed Revisions to the Project Will Require Major Revisions to the EIR

As noted above, the Project has changed since its previous environmental review in ways not limited to those changes detailed in the application. These changes will result in significant new environmental impacts. For example, new proposed "lock-off suites" could potentially double the density of the Project by allowing two users to occupy each condo. This increase in residents at the Project site will have implications for the traffic, air quality, water quality, water supply and noise cause by the Project, all of which need further analysis through an environmental review process. Similarly, proposed new boat slips will require additional fill and increase construction related impacts to the project. Proposed new facilities as the Project site, including a restaurant and expanded gate house have the potential to increase traffic to the Project. Air quality and greenhouse gas emissions from increased vehicle travel to the Project all represent new impacts from the Project that require further analysis. These facilities also represent a change to the Project's footprint and impact on wildlife habitat on the Project site. This revision of the Project is not minor but instead substantial. When considered alongside changed circumstances and new information about the surrounding environment, it is clear an updated environmental review is required by CEQA. The County should complete a comprehensive environmental review of this Project in the form of a supplement or subsequent EIR, prior to any approval of the Project.

B. Supplemental and Subsequent Environmental Review of the Revised Project Must Include Comprehensive Analysis of the Project's Impacts

CEQA requires that an EIR analyze the whole of the Project including associated project components and impacts, and impacts that are further distant in the future. Therefore, in order to

meet the statutory requirement under CEQA, a supplemental or subsequent EIR should include thorough analysis of the following issues.

The proposed Project's footprint lies within an important wildlife habitat areas important to federal and state protected species, including the state-listed and fully protected bald eagles. Bald eagles are known to nest in the surrounding area year round and use the Project site for foraging. Therefore, any known impacts to bald eagles within the Project's footprint must be fully disclosed and analyzed. To that end, careful documentation of the current site resources is imperative in order to analyze how best to site the Project to avoid and minimize impacts and then to mitigate any unavoidable impacts. Updated environmental review of the Project must include thorough, seasonal surveys performed for bald eagles and other potential sensitive animal, plant species and vegetation communities under the direction and supervision of the land management and resource agencies such as the US Fish and Wildlife Service and the California Department of Fish and Wildlife with full disclosure of survey methods and results to the public and other agencies. Adequate surveys covering all likely seasons in likely conditions must be implemented to evaluate the existing on-site conditions.

Environmental review of the Project must also include concrete, enforceable mitigation measures to reduce direct and indirect impacts to bald eagles. The preservation of regional and local scales of genetic diversity is critical to maintaining species in perpetuity especially in light of global climate change and continued urban development in the region. Although the bald eagle is of particular concern, *all* species found at the edge of their ranges or that occur at distinct locations be evaluated for impacts by the proposed Project.

In addition to those issues raised above, environmental review of the proposed revision must also address thoroughly a variety of other related issues. For example, environmental review must fully disclose and analyze the growth-inducing impacts of this Project in light of current environmental conditions, and discuss alternatives and effective mitigation measures to avoid, reduce, and mitigate these impacts. The environmental review must also address the Project's impact on air quality, traffic, noise and aesthetics. Lastly, environmental review of the Project must include a detailed analysis of the cumulative impacts of this project together with other completed, current, and reasonably foresceable development and transportation projects in the area.

Lastly, updated environmental review of the Project must include a robust analysis of all alternatives that would alleviate the Project's harms to the surrounding environment and wildlife. The Center urges adoption of an alternative that would minimize environmental impacts and maintain existing habitat values of conservation land. A supplemental or subsequent EIR should include careful and thoughtful evaluation of alternatives that limit the footprint of the Project and impacts to wildlife and habitat.

A. Conclusion

The environmental effects of the proposed revision of the Marina Point Development Plan may include, but not limited to, direct and indirect impacts to wildlife and habitat, particularly the bald eagle, impacts to air quality and regional growth, green house gases, traffic, water quality and noise. Evaluation of each of these impacts, as well as, analysis of reasonable and prudent alternatives must be included in any future environmental review done on the Project. A CEQA-mandated supplemental or subsequent EIR must occur prior to approval of the Project to ensure that decisionmakers and the public are fully informed and aware of all current environmental impacts of the Project. Thank you for the opportunity to submit comments on this proposed revision to the Marina Point Project and please include me on any future notices about the Project. If you have any questions, please do not hesitate to contact the Center at the number listed below. We look forward to reviewing any further environmental review and documentation on this Project.

Sincerely,

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April 9, 2014

Via E-Mail and U.S. Mail

Chris Warrick, Planner County of San Bernardino Land Use Services - Planning Division 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0182 E-Mail: chris.warrick@lus.sbcounty.gov

Re: <u>Proposed Revision to Approved Action (P201400106)</u>

Dear Mr. Warrick:

On behalf of Friends of Fawnskin, we submit the following comments on the application for a "Minor Site Plan Revision" to the Marina Point planned development ("Project"). Although the Applicant, Irv Okovita, has presented the Project changes as small alterations to a previously-approved project, the County cannot approve the Project without resolving fundamental issues with the revised application and its environmental review.

First, decades have passed since the original Project approval. As a result, the previous approvals for the Project have expired and the Applicant must submit a new application before the County can act on the Project.

Second, the California Environmental Quality Act ("CEQA") requires additional information about the proposed Project. Of critical concern, the Project description in the application is inconsistent with separate plans for the Project. The application makes no attempt to resolve these inconsistencies. Until the Project is accurately defined, it is not possible to evaluate the revised Project's true scope and environmental effects. Additionally, changes to the Project, along with changed circumstances and new information about environmental impacts, require further environmental review. The County should evaluate these issues and impacts in an Environmental Impact Report ("EIR").

Third, the County should provide further notice and hold public hearings for the Project, consistent with the County Code. Finally, we urge the County to carefully consider the issues raised in a new lawsuit filed against the developer, which contends that the developer is building on property that it does not actually own.

I. The County's Original Project Approvals Have Expired.

The San Bernardino County Code of Ordinances requires developers to expeditiously complete planned developments like the Project. An applicant "shall either record a tract map or obtain Building Permits for at least one phase of the project within five years of the Development Plan conditional approval and, as applicable, *within each succeeding five-year period*." County Code § 86.06.060(a)(5)(B) (emphasis added).

The "Development Plan conditional approval" for the original Project occurred on December 9, 1991. *See* Minutes of the Board of Supervisors, December 9, 1991, attached as Exhibit 1. But due to a nearly 23-year delay, that County approval expired long ago. For example, the Applicant had five years following the 1991 approval to either record a tract map for the project or obtain a building permit. But the Applicant obtained no such approvals until December 21, 2000, when it recorded a final map for the project—nine years after the original approval. Thus, the County's planned development approval expired well over a decade ago. Even if the December 2000 approval were somehow timely, the Applicant would have been required to begin obtaining building permits for the project by December 2005. *See* County Code § 86.06.060(a)(5)(B). This did not occur either. To date, the Applicant has not received a single building permit for the Project.¹

The County Code also states that conditionally-approved planned developments "shall be subject to a time limitation *not to exceed that specified by the condition of approval* for the Development Plan approval." *Id.* (emphasis added). The County adopted revised conditions of approval for the original Project on April 28, 1992. Conditions 2 and 2a contain firm deadlines for the original Project's completion. Condition 2's deadline echoes the five year time limit in the County Code. *See* Revised Conditions of Approval, April 28,1992, attached as Exhibit 2 at 1. Condition 2a imposes separate

¹ Between April 16, 2004 and September 9, 2009, federal court orders halted construction at the project site pending resolution of litigation over Clean Water Act and Endangered Species Act violations. The County Code does not suspend planned development time limits for litigation, but if it did, the time for seeking building permits would have expired March 21, 2011.

"[t]ime limitations for Tentative Tracts," under which the "approval *shall become null* and void if [1] all conditions have not been complied with and [2] the occupancy or use of the land or recordation of a final map has not taken place within 36 months" of the approval date. *Id.* (emphasis added). This condition allows for one discretionary 36-month extension. *Id.*

Despite the 72 month time period for complying with "all conditions" of project approval, some project conditions remain unmet 23 years later. For example, Conditions 27 requires the developer to provide "100% of the project's estimated water demand . . . by providing a new operational well." *Id*. The developer has provided no such wells. As a result, the County's tentative tract approval for the Project expired under Condition 2a.

In fact, this is not the first time that approvals for Marina Point development have expired. The County first approved a development proposal for the Project site in 1983. But in 1991, the County recognized that "project approval had expired" because the Applicant had not recorded a tract map or commenced the project. *See* Initial Study Environmental Checklist, revised November 26, 1991, attached as Exhibit 3.

This time, the Applicant's delay is much more significant—the County's planned development approval is nearly 23 years old. Because the Applicant has far exceeded the mandatory time limits in the County Code and the Conditions of Approval for the original Project, the County's 1991 approval is "null and void" and there is nothing that can be revised. The County should therefore require the Applicant to submit a new planned development application for the proposed Project.

II. The County Cannot Approve the Proposed Revisions Without a Complete Project Description.

CEQA requires an applicant to provide a complete and accurate description of the Project. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient" environmental review. San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 727. Here, because the application omits key information about the proposed Project changes, the Project description is far from complete and accurate.

A. The Application Omits Plans for New Docks on Big Bear Lake.

The Project developers are currently advertising units at Marina Point to the general public. These advertisements contain many project features that substantially

differ from the changes described in the application. Key among these are plans showing new docks that extend into Big Bear Lake. One set of plans shows two docks extending from the exterior of the harbor, while other plans shows docks along the western shore of the Project site. *See* Marina Point on Big Bear Lake Advertisement, Sobczyk Group ("Marina Point Advertisement"), attached as Exhibit 4 at 3, 6. Contrary to these publicly advertised plans, the current application never mentions the planned new docks extending into the lake. The County must determine whether the revised Project includes new docks. If so, the County must evaluate the environmental impacts resulting from the construction and use of those docks. The Applicant cannot segment consideration of the dock plans from the County's review by omitting them from this application in the hope that they can be approved later.

B. The Application Omits Substantial Changes to Buildings on the Project Site.

The application notes that the revised Project will contain 23 fewer condominium units and will add 10 new lakefront "condominium site units" which will be 12,000 to 14,000 square feet each. But here again, the application neglects to mention other significant changes to design of the buildings on the Project site. For instance, according to the Marina Point Advertisement, the 110 remaining condo units ("the Villas") will each include a separate "lock-off suite," which will have "private access" and which could be rented for "independent use." Exhibit 4 at 4. The new Project application never mentions these lock-off units, even though they would allow two independent users to occupy each condo, effectively doubling the density for these units. The impact of this density, including impacts on parking requirements and traffic, should be fully considered.

Other aspects of the application's building layout are also inconsistent with previous designs and plans in the Marina Point Advertisement. For instance, the layout of condominium buildings in the Applicant's proposed phasing plan is inconsistent with the building layout that is currently advertised for the Project. Exhibit 4 at 7. Additionally, the clubhouse proposed for the new project will be 9,000 square feet and appears substantially larger than the clubhouse that was approved for the original planned development. *See* Marina Point on Big Bear Lake, Preliminary/Final Development Plan, Landscape Plan, June 1991, attached as Exhibit 5. The application states that the clubhouse has been "reconfigured," but never addresses whether it will have a larger footprint. And the application includes a new "gate house for special events" that does not appear in the original planned development. The County must require the Applicant

to clarify the inconsistencies between the recent application and other plans for the Project.

C. Other Aspects of the Original Planned Development Are Now Uncertain.

The Project changes could include other undisclosed differences from the original approval. For instance, the original Project design contained a public beach at the western corner of the Project site and a lake access easement running along the western shore of the site. These facilities would have allowed public use and enjoyment of the lake. It is unclear, however, whether these important public amenities remain in the new Project plans. *See* Exhibit 4 at 6 (showing that the lakefront docks obstruct shore access). The County must determine if a redesigned Project will alter additional aspects of the previously-approved Project, including plans for public recreational facilities and shore access.

III. The Proposed Project is a New Project Under CEQA, Requiring New Environmental Review.

A project is a "new project" that requires new environmental review under CEQA if it requires substantially new drawings of planning documents, or otherwise requires substantial changes from the originally approve project. *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1056 fn. 7; *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1300-01. For instance in *Lishman*, a project applicant proposed changing a project seven years after its original approval. 140 Cal.App.4th at 1291-93. Although the revised project had almost identical uses as the originally-approved project and actually *reduced* the number of proposed hotel rooms, the court found that the project revision was a new project that required new CEQA review. *Id.* at 1291-93, 1300-01.

While the proposed Project changes will have some similar uses to the originallyapproved Project, like in *Lishman*, the Applicant must obtain new planning documents before the Project may be approved. *See supra* Section I. Additionally, the proposed revisions involve substantial changes from the original project, including new docks extending into Big Bear Lake, new "lock-off" units, a potentially increased development footprint, and potential elimination of public recreation facilities and shore access. As a result, the proposed "revised" Project is actually a new project that requires a new EIR.



IV. Even if the Project Were Not a New Project, CEQA Requires Supplemental or Subsequent Environmental Review.

In cases where a project revision is not a "new project," CEQA still mandates that agencies consider a Project's environmental impacts before granting new discretionary approvals. The County may be considering approval of the revised Project based on prior environmental review, but CEQA requires preparation of a supplemental or subsequent EIR ("SEIR") if (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require major EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. Pub. Res. Code § 21166; *see also* Cal. Code Regs., tit. 14, § 15162.

Contrary to the Applicant's claims, the proposed Project revisions are not "minor," but are substantial revisions that require additional environmental review. Our review of the County's files also indicates a 1983 Focused DEIR and a 1991 revised Initial Study, but neither of these documents are sufficient to support the revised Project. Because the Project's environmental review is over 30 years old, new information and substantial changed circumstances require preparation of an SEIR for the Project.

A. Substantial Changes Are Proposed to the Project Which Require Major Revisions to the EIR.

Although there is insufficient detail about the specific components of the revised Project, the information that has been provided indicates that the revised Project would result in significant environmental impacts that have not been analyzed.

1. The Project Would Result in Additional Wetlands Impacts that Have Not Been Analyzed in Prior Environmental Documentation.

While the environmental documentation for the prior Project analyzed, albeit inadequately, impacts resulting from the development of the marina, it did not analyze the impacts resulting from the development of additional slips located on the western side of the property. *See* Exhibit 4 at 6.

The Army Corps of Engineers ("ACOE") Permit Number SPL-2010-00838-GS authorized the discharge of fill material in and around the marina for the construction of shoreline protections along the western side of the property and for the stabilization of the

existing haul road. *See* ACOE Permit Number SPL-2010-00838-GS, attached as Exhibit 6 at 2. It did not, however, permit the fill that would be required for construction of additional boat slips.

The County must evaluate the environmental effects of this additional fill in an EIR. This analysis must account for the cumulative effects of fill resulting from the construction of the proposed docks, together with the fill permitted by Permit Number SPL-2010-00838-GS.

2. The Project Would Result in Traffic Impacts that Have Not Been Analyzed in Prior Environmental Documentation.

The revised Project has additional components that have the potential to increase traffic. First, it is our understanding that the revised Project now includes the development of a restaurant. Restaurants have the potential to generate significant volumes of vehicular trips. Trip generation rates vary by the type of restaurant. High quality restaurants generate 56.3 trips per 1,000 gross square feet; high turnover restaurants generate 164.4 trips per 1,000 gross square feet; and a drive-in restaurant generates 553 trips per 1000 gross square feet.² If the revised Project includes a restaurant, the County must determine the restaurant's size and type, identify its trip generation and analyze the traffic from the entire Project, i.e., residential, retail, and recreational uses.

The revised Project also includes 11 buildings of 10 units each plus 10 single family units and now may include lock-off units, which can be "rented out." Properties with lock-off units can be divided into two complete sections, and have separate entrances, so that two different parties may occupy either half at the same time. Residential properties that have lock-off units have the potential to therefore double the trip generation compared to conventional units.

The County must analyze the revised Project's traffic impacts. It is entirely unclear whether the County has conducted any traffic analysis for this Project since 1983. Background traffic conditions have undoubtedly changed over the last 30 years. It is appropriate that the County conduct a comprehensive traffic impact study. The appropriate forum for such a study is an EIR.

² See Trip Generation Manual, Institute of Transportation Engineers.

3. Increases in the Size of the Building Footprint Would Result in Environmental Impacts that Have Not Been Analyzed in Prior Environmental Review.

The size of the building footprint appears to have increased since completion of the prior Project application. An increased development footprint can result in increased environmental impacts, including loss of sensitive habitat and increased stormwater runoff. The County must identify the Project's actual development footprint and analyze the associated environmental impacts. This analysis should occur in an EIR.

B. Substantial Changed Circumstances and New Information Since the Original Approval Require Further Environmental Review.

1. Climate Change Crisis and Greenhouse Gas Regulations

Although global warming is considered one of the most alarming environmental issues today, the County has yet to study the climate change consequences of building and operating the Project. Such analysis is required in light of AB 32. As stated in AB 32, the California Global Warming Solutions Act:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

Because global warming significantly impacts the environment, lead agencies must consider their projects' individual and cumulative contributions to this impact in their CEQA analyses.

There is a strong link between land cover and climate, so that changes in land use are important contributors to climate change and variability. In addition, there is a direct correlation between automobile usage and carbon dioxide and other greenhouse gas ("GHGs") emissions. Simply put: more automobiles equals more GHG emissions.

The proposed Project will contribute to global warming both because it will



convert forestland to developed uses and because it will increase automobile travel. The County has an obligation to identify all of the potential sources of GHG emissions that would be generated by construction and operation of the Project and adopt measures to reduce or eliminate these emissions. As the County's Greenhouse Gas Reduction Plan clearly states:

The County can provide local leadership in reducing GHG emissions, for example, through the promotion of policies that reduce vehicle use and by working collaboratively with developers, building owners and residents to achieve energy efficiency and energy savings. In addition, the County, as CEQA lead agency *must ensure* that impacts of GHG emissions are mitigated when discretionary projects go through CEQA review. Through these mechanisms, the County can reduce emissions that occur within its land use jurisdiction. *See* Greenhouse Gas Reduction Plan at 1-12 (emphasis added).

Other environmental documents prepared by San Bernardino County evaluate a Project's impact on climate change by its incremental contribution combined with the cumulative increase of all other sources of GHGs. *See* e.g., Moon Camp RRDEIR at 4.2-17. The County must conduct such an analysis for the Marina Point Project. The appropriate forum for this analysis is an EIR.

2. Southern Bald Eagle

The Project site is within key perching and foraging habitat for the Southern bald eagle, a State-listed endangered and fully protected species. Construction and operation of the proposed Project have the potential to result in significant impacts to the eagle. Two conditions have changed since the prior environmental review. First, new studies indicate that bald eagles are year-round visitors to Big Bear Lake. Second, the number of eagles in Big Bear Lake has declined significantly since the early 1980s.

a. Bald Eagles Are Year-round Residents at Big Bear Lake.

In 1983, the bald eagle was a seasonal visitor to the area. They had been known to "winter" at Big Bear Lake. *See* 1983 DEIR at 14. Studies now show that bald eagles are year-round residents. *See* U.S. Forest Service News Release, March 8, 2014, attached as Exhibit 7. Previously, the County proposed to mitigate construction-related impacts by restricting construction activities during the eagle's residency periods, i.e., December 1 through April 1. *See* 1983 DEIR at 14 and Letter from the Forest Service to San

Bernardino County, April 22, 1982. Yet, as the News Release makes clear, five bald eagles, including breeding pairs, were observed at Big Bear Lake in the middle of this period, on March 8th. *See* Exhibit 7. In fact, the highest number of eagles are typically in February and March. *Id.* Given the eagles' year-round residency, this limitation on construction activities would not effectively mitigate the Project's impact on bald eagles.

Moreover, although the prior environmental review never analyzed the effect that the marina would have on the eagles, the County proposed to mitigate such impacts by closing the marina from December 1 to April 1. Again, because eagles inhabit the area on a year-round basis, simply closing the marina during this four month period would not mitigate the Project's significant impacts on the eagles. Further, the Marina Point Advertisement shows that numerous docks will be outside the marina and the County must consider whether these docks will interfere with eagle activities.

b. The Number of Bald Eagles at Big Bear Lake Has Declined Significantly Since the Early 1980s.

Another significant factor warranting further environmental review is the precipitous decline in the Southern bald eagle since the late 1970s and early 1980s. Bald eagle counts have been conducted at Big Bear Lake since 1978. *See* Exhibit 7. Four monthly counts are conducted between December and March to estimate the number of bald eagles that are wintering in the area. As the Bald Eagle Count Summary shows, the highest number of eagles occurred from 1978 through 1985, with a high of 28 eagles identified in 1983-1984. Since then, he number of eagles has dropped substantially, and now hovers between 5 and 10. *Id*.

This substantial reduction in numbers is alarming. While many factors have played a role in this decline, the most destructive human activity is the development of waterfront property:

Because eagles depend on shoreline habitats and aquatic food sources, human development in these coveted areas poses the greatest threat to the bald eagle's survival. In addition, the cutting of "old growth forests" where bald eagles prefer to nest and perch has conflicted with the interests of people seeking lumber for housing and commercial products. *See* Eagle Survival – Threats to Survival, "The American Bald Eagle: Recovery From Near Extinction," Vanderbilt University, attached as Exhibit 8.

The year-round presence and decline in the number of bald eagles since the prior environmental review warrant analysis of the Project's impacts on this State-listed endangered and fully protected species.

3. The Project is Likely to Result in a Significant Increase in Particulate Matter_{2.5}.

Although the Project would result in an increase in $PM_{2.5}$ emissions, the County has never studied the Project's contribution to this potentially significant environmental effect. Sources of fine particles include all types of combustion activities (motor vehicles, fugitive dust from roads, fugitive dust from construction, wood burning, etc.).³ Particles less than 10 micrometers in diameter (PM_{10}) pose a health concern because they can be inhaled into and accumulate in the respiratory system. Particles less than 2.5 micrometers in diameter ($PM_{2.5}$) are referred to as "fine" particles and are believed to pose the greatest health risks. Because of their small size (approximately 1/30th the average width of a human hair), fine particles can lodge deeply into the lungs.⁴ According to the U.S. Environmental Protection Agency ("USEPA"), $PM_{2.5}$ at the ambient concentrations that presently exist in some areas of the country, including those in compliance with the PM_{10} National Ambient Air Quality Standards, can cause serious health consequences, including premature mortality, exacerbation of respiratory and cardiovascular disease, decreased lung function, increased respiratory symptoms from pre-existing pulmonary disease, and aggravation of symptoms associated with asthma.⁵

The understanding of the health risks associated with $PM_{2.5}$ has grown since the Project's approval. In 1997, the USEPA promulgated a $PM_{2.5}$ standard and, in 2003, the State established an annual standard for $PM_{2.5}$. The South Coast Air basin is in state non-attainment for $PM_{2.5}$. It is vitally important that the County analyze the potential for the Project to significant increase $PM_{2.5}$ emissions. Indeed, the County required such an analysis in the context of the Moon Camp Project. *See* Moon Camp RRDEIR Air Quality Chapter. That EIR's analysis determined that Moon Camp's increase in $PM_{2.5}$ emissions would result in a significant environmental impact. *See* Moon Camp RRDEIR at 4.2-30.

³ See <u>http://www.epa.gov/pmdesignations/faq.htm</u>, accessed April 7, 2014.

⁴ See <u>http://www.epa.gov/pmdesignations/faq.htm</u>, accessed April 7, 2014.

⁵ See <u>http://www.bryancave.com/files/Publication/7e0edf14-dd55-4ac5-8975-452a79ffe3e0/Presentation/PublicationAttachment/185ff3d4-77c8-4f6b-91c2-</u>47bb435fd129/Env%20Article-KarmelEnvLawinCA8-02.pdf, accessed April 7, 2014

4. Increased Risk of Wildfire

The risk of wildfires has increased considerably since the Project's prior environmental documentation was prepared. As is now commonly acknowledged, fire activity is increasing across the western U.S. According to one source, total area burned, number of fires and the size of the largest fires are all increasing. *See* LiveScience, "Climate Change May be Worsening Western Wildfires," December 11, 2013, attached as Exhibit 9.

While the 1991 Environmental Analysis (prepared by the Project Applicant) asserted that the existing site poses a "small fire hazard" (Exhibit 5 at EA 26), according to other EIRs prepared in the Project vicinity, wildland fire hazards are particularly acute in San Bernardino County. *See* Church of the Woods DEIR, San Bernardino County, April 2010, at 3.E-1 and 2. That EIR further discloses that "the San Bernardino Mountain's fire risk in forested areas has been further exacerbated by drought conditions which were followed by a bark beetle infestation." *Id.* Given the extreme fire danger in the area, impacts relating to wildland fire safety deserve extraordinary close scrutiny. The appropriate forum for such an analysis is an EIR.

5. The Project is Likely to Result in a Significant Impact to Water Quality.

Water quality in Big Bear Lake has deteriorated significantly since the 1983 EIR was prepared. In 1990, the Santa Ana Regional Water Quality Control Board ("Regional Board") added Big Bear Lake to California's list of impaired water bodies due to elevated nitrogen and phosphorus concentrations. *See* Big Bear Lake TMDL Task Force, attached as Exhibit 10. These pollutants act as fertilizers and encourage growth of noxious aquatic plants such as Coontail and Eurasion Milfoil that interfere with human recreation and despoil the native freshwater habitat. *Id.* In addition, high nutrient loads cause excess algae growth which, in turn, reduces dissolved oxygen levels in the water and leads to fish kills. *Id.*

Construction and operation of the Project has the potential to further degrade the lake's water quality. The Project includes several land uses (construction/ land development, recreational and tourism activities (boating)) that are some of the worst offenders in causing water quality impairment in local water bodies, particularly for increased sedimentation and nutrients. Importantly, *any* reduction of water quality is a significant impact according to the State's (RWQCB) anti-degradation policy.

The County must analyze the Project's potential to further impair water quality. The appropriate forum for such an analysis is an EIR.

6. The Project Is Likely to Cause Significant Water Supply Impacts.

Water is an extremely scarce resource in southern California. Previous environmental documentation for the proposed Project recognized that the Big Bear region is in groundwater overdraft. *See* July 20, 1982 Initial Study, Appendix 2 at 8; 1983 DEIR at 11; and Letter from Big Bear Municipal Water District, September 2, 1982.

Yet, the water supply situation has changed substantially over the last 30 years. California is now facing severe water shortfalls in what is being called the driest year in recorded state history.⁶ In fact, this January, Governor Brown proclaimed a State of Emergency, directing state officials to take all necessary actions to prepare for drought conditions. *Id.* Extremely dry conditions have persisted since 2012 and are expected to continue beyond this year and more regularly into the future, based on scientific projections regarding the impact of climate change on California's snowpack. *Id.* Consistent with the state's drought emergency status, in February 2014, the Big Bear City Community Services District approved Stage 1 water restrictions.⁷

The County must analyze the ability to serve the revised Project in light of the state and local drought emergency. Moreover, as discussed below, several other development projects are contemplated around Big Bear Lake. The County must identify the cumulative water demand from the Marina Point Project, together with the other proposed development projects, and evaluate whether sufficient supplies exist to serve these developments.

7. The Project Will Likely Cause Significant Cumulative Environmental Impacts.

The County is currently processing several other development applications that have the potential to cause cumulatively significant environmental impacts. These projects include:

⁶ See <u>http://gov.ca.gov/news.php?id=18368</u>, accessed April 8, 2014

⁷ See <u>http://www.bigbeargrizzly.net/news/article_a4bb1198-8dfb-11e3-801e-001a4bcf887a.html</u>, accessed April 8, 2014

- Moon Camp, a proposal to subdivide a 62-acre parcel into 92 residential lots, is located directly east of the Marina Point Project. Development of the Moon Camp Project would result in many of the same impacts as the Marina Point Project, including impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, increased traffic and impacts to local water supply.
- A 30-home project is proposed for 30 acres of undeveloped land directly behind the Moon Camp Project (APN #0304-231-35). Development of that project would result in many of the same impacts as the Marina Point project, including impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, increased traffic and impacts to local water supply.
- A project, including approximately 67 homes on 37 acres, is proposed on the opposite shore of Big Bear Lake (APN #2328-571-01). Development of this project would result in many of the same impacts as the Marina Point project. These include impacts to loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, and impacts to local water supply.
- A project, including eight homes on three acres, known as Shadow Mountain (Tentative tract #16611) is proposed for the city of Big Bear Lake directly across the lake. Development of this project would result in many of the same impacts as the Marina Point project. These include impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, and impacts to local water supply.

None of these projects were proposed when the prior environmental review for the Marina Point Project was undertaken. The County must evaluate the cumulative environmental impacts that would result from these projects, together with the effects from the Marina Point Project.

V. The Board of Supervisors Should Consider this Application Following the Same Procedures Used for the Original Application.

Because the Applicant must seek new approvals and undergo new environmental review, the County should review the Project using its procedures for considering new planned development permits. Even if this were not the case, the County Code section 85.10.090 dictates the County's procedure for considering amendments to planned developments like the Applicant has proposed. The Director of Planning may only approve *minor* changes to a planned development. County Code § 85.10.090(c). Otherwise, changes to a project must "be submitted to the review authority that originally approved the permit" and follow "the same review notice and hearing procedures as required for the original approval." County Code § 85.10.090(a).

Minor changes "do not involve an increase in structure area, an increase in the number of dwelling units, or a change of use." County Code § 85.10.090(c). Despite the Applicant's characterization, the proposed Project changes are not "minor" under the code. For instance, including lock-off units for the proposed condominiums doubles the number of units from 110 to 220. Adding the 10 new "site condominium units," shows that the number of dwelling units has actually increased from the 133 units in the original Project to 230 units.

Similarly, it appears that the condominium buildings and the clubhouse have increased in size in the new application. The Applicant is also proposing a new gate house facility that has not been approved. The application attempts to cast the Project changes as a reduction in size by claiming that the "lot coverage" is slightly smaller. But the Applicant is proposing to significantly reconfigure the Project site's lots, rendering this "lot coverage" claim meaningless. Instead, the County should look closely at the buildings proposed in the application and compare their size to the buildings in the original approval.

Because the Project changes are not "minor," the County should review the application under the procedures for new planned development permits, including a public hearing and consideration by the Board of Supervisors.

VI. The County Should Delay Consideration of the Project Until the Courts Determine the Applicant's Right to Develop the Property.

On March 26, 2014, a neighbor of proposed Project site filed a complaint against the Applicant in San Bernardino Superior Court. See Complaint, Gary J. Polizzi v.

Marina Point Development Associates, et al (Case No. CIV-DS-1403497), attached as Exhibit 11. According to the complaint, the historic 72.4 foot high water line defines the boundary between the Applicant's property and Big Bear Lake, but the Applicant's Project will place fill and improvements on the lake side of this boundary. That is, the Applicant is planning to build on land that he does not own.

The complaint further contends that two easements burden the project site, including a 20-foot publicly-held easement that provides lake access. According to the complaint, this public easement runs through the middle of the proposed development site. If this is correct, the length of the public easement would be unbuildable.

It is therefore uncertain that the Applicant even possesses sufficient property rights to build the Project as proposed. At the very least, the County should refrain from issuing any further approvals for the Project until the courts have resolved these outstanding property issues.

VII. Conclusion

In sum, not only does ongoing litigation cast doubt on the Project's viability, but the current application is inadequate in many respects. The Applicant must seek new planned development and tentative tract approvals, not "revisions" to expired approvals. The County must undertake new environmental review and hold public hearings on the Project. For all of these reasons, the County should not approve the current application.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Edward T. Schexnayder

cc: Adam Keats, Center for Biological Diversity, <u>akeats@biologicaldiversity.org</u> Drew Feldmann, San Bernardino Valley Audubon Society, <u>drewf3@verizon.net</u> Ed Wallace, Sierra Club, Big Bear Group, <u>ednjeanne@charter.net</u> Hugh Bialecki, Save Our Forest Association, <u>habialeckidmd@gmail.com</u> James Ramos, Supervisor 3rd District <u>supervisorramos@sbcounty.gov</u>

> Chris Carrillo, Deputy Chief of Staff, <u>chris.carrillo@bos.sbcounty.gov</u> Elizabeth Harris, Field Representative <u>liz.harris@bos.sbcounty.gov</u>

Exhibits:

- 1. Minutes of the Board of Supervisors, December 9, 1991
- 2. Revised Conditions of Approval, April 28,1992, excerpted
- 3. Initial Study Environmental Checklist, revised November 26, 1991, excerpted
- 4. Marina Point on Big Bear Lake Advertisement, Sobczyk Group
- 5. Marina Point on Big Bear Lake, Preliminary/Final Development Plan, Landscape Plan, June 1991
- 6. ACOE Permit Number SPL-2010-00838-GS
- 7. U.S. Forest Service News Release, March 8, 2014
- 8. Eagle Survival Threats to Survival, "The American Bald Eagle: Recovery From Near Extinction," Vanderbilt University
- 9. LiveScience, "Climate Change May be Worsening Western Wildfires," December 11, 2013
- 10. Big Bear Lake TMDL Task Force
- 11. Complaint (excluding exhibits), Gary J. Polizzi v. Marina Point Development Associates, et al (Case No. CIV-DS-1403497)

576377.5

EXHIBIT E

Letters of Opposition

P.O. Box 409 Fawnskin, CA 92333 April 5, 2014

San Bernardino County Land Use Services Planning Project Notice 385 North Arrowhead Ave, First Floor San Bernardino, CA 92415-0182

Re: Project # P201400106/RMC Proposed Revision Assessor parcel number 0304-082-15 Applicant's Name: Irv Okovita

Dear Sir or Madam:

I am writing to object to the change in the development proposal by Irv Okovita for assessor parcel number 0304-082-15, project number P201400106/RMC. The proposed change from a multi-unit condominium to include "10 single-unit condominium structures" is a major change to the project. It is a not very well-disguised attempt to now have single family residences on the property rather than the condominiums which were originally approved. To quote from Wikipedia, a condominium is defined in part by:

Use of and access to common facilities in the piece such as hallways, heating system, elevators, and exterior areas are executed under legal rights associated with the individual ownership. These rights are controlled by the association of owners that jointly represent ownership of the whole piece.

The term " single-unit condominium structures" clearly means single family homes and as such does not meet the criterion for the condominium development that was approved previously. This description is an contradiction in terms at best, while in reality it is an attempt to change the proposed development substantially to include single family homes.

This major change should not be approved. If the developer wishes to make such a substantial change, a new application with associated environmental impact statement should be filed with the County.

This letter is being sent by FAX but a hard copy with a self-addressed, stamped envelope will be sent by mail so that I am notified of the project decision.

Thank you for your time and consideration.

Yours truly.

File plt

cc: Supervisor James C. Ramos

Warrick, Chris - LUS

From: Sent: To: Subject: garymraskin@gmail.com Monday, April 07, 2014 5:06 PM Warrick, Chris - LUS Marina Point Project - I am against it

Dear Chris,

I have been a home owner in Fawnskin, CA since 1994.

I am against the Marina Point Development and am concerned about the way that the developer has been granted extensions, project revisions and alterations that are not in conformity with the original proposal and the EIR. I am also aware that some of these have been untaken without authorization.

As I have watched the various starts and stops to this project, I am concerned about the major, disruptive effects this project is having and will have on the environment. It seems that the developers plans are continually being revised and are not being updated in conformity with a current EIR. This project needs to have a new one developed.

Please do not allow this project to continue without a current EIR.

Thank you for considering my concerns.

Gary Raskin 1284 Ridge Road Fawnskin, CA 92333

818.415.5359

2014 APR 22 PM 2: 0.

FIRCA SOUTH

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

I would like to voice my concerns about the proposed revision to this project.

First, the project notice does not mention all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for hunting by the bald eagles that nest here. The advertising also talks about each condominium having a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. Making it be so easy for two families to use the same condo space would increase the number of people possible and increase the impacts on our small town, especially noise and traffic.

Second, this project has been in process for decades. In that time, the situations in the area have changed in major ways. There is much more traffic, there are lots more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis needs to be done.

Sincerety, Liz Schestyer Steve + Liz Sebestyen 39624 Oakglen Rd/Box 361 Farmakin, CA 92333

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

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Sincerely, (name) ABBrando Gordon Brande

PoB232/970 Campon Kel Fernskin, CA 92333

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

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Sincerely, Jeannie, Diamond (name) JERNNIE DIAMOND PO BOX 126 Farmskin, Ca. 92333

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

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Please include me on any further notices about this project. Thank you.

Sincerely,

(name) Joseph & Debra Heidmiller Joseph Henlink Debra Gledmeller 39311 Mohawk Dr. P.6. BOX 101 Fawnskin, CH 92333

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

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Sincerely, 1031 Farmshin Or. (name) Jony and Emma Olvera

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

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Sincerely,

(name)

Dayton & Cheryl Gilleland

Dayton - Cheryl Gilleland 1025 Fownskin Dr. Founskin, CA 92333

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2014 APR SOL MELLE IL

8 April 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

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Please include me on any further notices about this project. Thank you.

Sincerely,

(name)

Chenjwheeluck 3978 Mayfield Newbury Park, CA 91320 (39192 Arapahoe Fownstain, CA 92333)

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

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Please include me on any further notices about this project. Thank you.

Sincerely,

(name) Caroli Jehnson 1971 Stabreeze Newbury Park, CA 91320 (39192 Arapahoe, Fawnskin)

From:	Michael Stoll <michael@urban-trend.com></michael@urban-trend.com>
Sent:	Tuesday, April 08, 2014 8:30 AM
То:	Warrick, Chris - LUS
Subject:	RE: Marina Point project - Fawnskin

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Dear Chris,

RE: Marina Point project - Fawnskin

The above project, including the revised version of it, would have a major impact on the environment. This revised project needs to be analyzed with a full environmental impact report.

I have been a home owner in Fawnskin for many years and extremely concerned about the impact of this project and the clear neglect the developer has had for the environment. I ask the county to use this opportunity to question the effect of this project and executing a full environmental impact report

Best regards,

....

Michael Stoll President Urban Trend 1101 Dove Street, Suite 175 Newport Beach, CA 92660 P 949.757.0000

From:	ART GOURDIKIAN <artgourdikian@verizon.net></artgourdikian@verizon.net>
Sent:	Tuesday, April 08, 2014 9:19 AM
То:	Warrick, Chris - LUS
Cc:	Ardash Gourdikian
Subject:	The Marina Point Project

Mr. Chris Warrick, Planner

My name is Ardashes K. Gourdikian (Mr.) and my property is located at 39926 Northshore Dr., Fawnskin, CA 92333. I oppose to Marina Point revision project. The proposed version of Marina Point project will necessitate major impact on environmental studies which is unnecessary at this point in time to rehash the project. Therefore, I oppose to any changes and agree to have their work continue as it was originally approved. Thank you.

Ardashes K. Gourdikian 537 Sombrero Rd. Monrovia, CA 91016 House telephone: 626-305-9295 e mail: <u>artgourdikian@verizon.net</u>

From:	deenibeeni1@gmail.com on behalf of Denise Di Saivo <d@moongraphic.net></d@moongraphic.net>
Sent:	Tuesday, April 08, 2014 9:35 AM
To:	Warrick, Chris - LUS
Subject:	Marina Point

Dear Chris Warrick:

I just heard about the outrageous proposal by the developers of Marina Point Project and am quite alarmed. Obviously their change in plan from the original proposal requires a full Environmental Impact Report, and the developers need to be much more forthcoming about their real plans, not trying to sneak in higher density disguised as a "smaller" footprint and "fewer" condos, and with them the huge impact on native plants, animals, the lake, water supply, the night sky, noise, traffic, etc., than their proposal would suggest. This kind of sneakiness should not be tolerated, and I for one, along with many others, am going to oppose this strenuously and ask very specific questions regarding all of the above.

I am disgusted at this kind of deception and subterfuge. I doubt if this kind of behavior will end here. If they are already being this sneaky toward the county, but with the information splashed all over their website, I can't even imagine what they will try to get away with that is *not* on their website, and it seems to me that anyone who would buy such a condo, whether they know about the destruction that took place to get it there, or whether they don't care enough to find out, is not the kind of person Fawnskin, or the valley in general, needs.

This is an example of developers destroying exactly what they are promoting. The beautiful mountain, its feeling of seclusion and natural beauty. More of that would be gone if such a project were completed, and with it the very thing people come here for. I imagine each condo model will be named after a species it has helped to drive to extinction.

I sincerely hope you will approach this project with the utmost suspicion, as the developers have already demonstrated that this is what they deserve. They need to be accountable for every decision and the effects it will have.

Sincerely,

Denise Di Salvo PO Box 1030 Sugarloaf, CA 92386

From: Sent: To: Subject: Elaine Lasnik-Broida <lasnikbroida@gmail.com> Tuesday, April 08, 2014 12:46 PM Warrick, Chris - LUS Marina Point - Revised Project

Dear Chris-

The County of San Bernardino has issued a Public Notice stating that Marina Point has submitted an application to revise their project. (The Marina Point project is located on the lake side of North Shore Drive at Canyon Dr. in Fawnskin and was originally approved in 1991.) The original project was for 19 condominium buildings with 133 condo units, plus a marina, clubhouse and other facilities. This revision application opens the opportunity for us to comment on this project and request new environmental analysis.

The revised project would replace the 7 west-most condo buildings with 10 'single family condos' but to make up for that, would increase the footprint and size of the remaining buildings so that each of those contains 10 condos rather than 7. While the application they submitted to the county makes it look as though the project would be a tiny bit smaller (footprint coverage of 3.26 acres rather than 3.30 acres and 120 condos rather than 133), they are advertising on a website that each condo would have a lock-off unit (separate bed and bath that could be locked off from the main condo and rented out like a hotel room). They have not disclosed this information on their application to the county and it would actually make the project bigger and have more impact on the environment than the current project. They are also discussing with other agencies the addition of 10 docks to be placed in the bay to th west of the project and outside of the approved marina.. They have not disclosed this to the county either in their application, even though they are discussing it with other agencies. The revision would also add several recreational facilities on the grounds that were not in the original project and would increase the size of the clubhouse.

This development has not had any environmental review since 1991 and there are many changes since then and this project would create even bigger impacts to those-- increases in traffic and population density around the valley, water shortages, lake pollution, and increases in air pollution, increases in noise in this quiet town, increases in ambient light impacting night sky visibility, increases in pollution to the lake. In addition, there are now bald eagles in the valley year round and a nesting pair less than a mile from the project site. Eagles (still listed as an endangered species in California and protected federally) regularly use the Marina Point site and the nearby harbor to forage and would be greatly impacted by this project. This revised project needs to be analyzed with a full environmental impact report.

Thank you for your prompt attention to this matter. Elaine Lasnik-Broida

Elaine Lasnik-Broida President Lasnik-Broida Consultants, Inc. 9454 Wilshire Blvd., Suite 550 Beverly Hills, CA 90212

Bradley L. Winch <blwjalmar@att.net></blwjalmar@att.net>
Tuesday, April 08, 2014 1:57 PM
Warrick, Chris - LUS
blwjalmar@att.net; 'Friends of Fawnskin'
Marina Point

Dear Chris Warrick, I am astounded that the developers of Marina Point have approached the County once again to revise their plan for Marina Point. And I am even more astounded that you would even listen to them after all the delay and falsifications that have been included in their previous applications.

Please require a new Environmental Study from them for the following reasons:

The Marina Point project is located on the lake side of North Shore Drive at Canyon Dr. in Fawnskin and was originally approved in 1991. That project was for 19 condominium buildings with 133 condo units, plus a marina, clubhouse and other facilities.

The revised project would replace the 7 west-most condo buildings with 10 'single family condos' but to make up for that, would increase the footprint and size of the remaining buildings so that each of those contains 10 condos rather than 7. While the application they submitted to the county makes it look as though the project would be a tiny bit smaller (footprint coverage of 3.26 acres rather than 3.30 acres and 120 condos rather than 133), they are advertising on a website that each condo would have a lock-off unit (separate bed and bath that could be locked off from the main condo and rented out like a hotel room). They have not disclosed this information on their application to the county and it would actually make the project bigger and have more impact on the environment than the current project. They are also discussing with other agencies the addition of 10 docks to be placed in the bay to th west of the project and outside of the approved marina.. They have not disclosed this to the county either in their application, even though they are discussing it with other agencies.

The revision would also add several recreational facilities on the grounds that were not in the original project and would increase the size of the clubhouse.

This development has not had any environmental review since 1991 and there are many changes since then. This project would create even bigger impacts to those-- increases in traffic and population density around the valley, water shortages, lake pollution, and increases in air pollution, increases in noise in this quiet town, increases in ambient light impacting night sky visibility, increases in pollution to the lake. In addition, there are now bald eagles in the valley year round and a nesting pair less than a mile from the project site. Eagles (still listed as an endangered species in California and protected federally) regularly use the Marina Point site and the nearby harbor to forage and would be greatly impacted by this project.

In short, this revised project needs to be analyzed with a full environmental impact report.

Respectfully submitted, Bradley and Cathy Winch 1050 Canyon Road Fawnskin, CA 92333

From:	Mr SQF <mr_sqf@yahoo.com></mr_sqf@yahoo.com>
Sent:	Tuesday, April 08, 2014 1:57 PM
То:	Warrick, Chris - LUS
Subject:	Marina Point - Notice?

Hello Mr. Warrick,

I have also just left you a voicemail, hoping to reach someone who can explain to me what might be happening with the proposed Marina Point project in Fawnskin. I understand you are the planner assigned. Marina Point has a long history of problems and I remain very concerned about the social and environmental impacts it will have on the local area and community.

If there are proposed changes to the project, or updates to any of the procedural processes it must follow, as an engaged local citizen I am very interested in learning about any changes of status regarding Marina Point (MP).

As background, I live in the mtns, and received an email today from a friend about "something" (a public notice) that has been issued about modifications to the MP project. I try to follow mountain based developments, and although I have asked to be included in any public notice for projects in this region, I did not get any notice.

The unofficial email I received indicated a deadline for public comment may end today or tomorrow. Obviously I am trying to clarify what's happening as quickly as I can.

Can you please call me at 661 449 2867 (much easier than email back and forth) to share what you know about the project. What this "notice" is about, what it's for, and where I can find a copy?

Thank you,

Steven Farrell

695 Deer Trail PO Box 293 Fawnskin California 92333

April 9, 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

I have become aware of and would like to express comments and my concerns about the proposed revision to this project. The application on file with your department differs in significant ways from what has been advertised to the public and described to a colleague of mine who called the developer's sales agent. I thus think a more extensive review of the application, and an insistence that the application parallel what is being marketed, be required. It looks like the developer is trying to slide in a few changes now and then seek additional ones later, all in the pretense that each change is only incremental. In fact a significant increase in usage from what was originally proposed many years ago is in progress. The County should exercise its authority, and follow its duty under California law, to require a full review of what is, in effect, a new proposal.

First, as mentioned, the project notice apparently does not advise your office about all the changes that have actually been and are being advertised by this developer. There are docks planned to be added for the individual home lots on the west side of the project in an area that is often used for hunting by the bald eagles that nest in Fawnskin. The advertising also talks about each condominium having a separate unit that could be rented out. I had a friend call the developer's sales office and she was assured this was the plan. No mention was made of the County ordinance that requires a conditional use permit for short term rental use. My neighborhood and street have already experienced trouble with such short term rentals, including noise, traffic, trash left around and on street parking. Encouraging an expansion of such use threatens the livelihood of innkeepers who are regulated and pay transient occupancy tax and the developer should not be allowed to do this without a full study. The proposed inclusion of lock off units would greatly increase the number of units rather than lowering it. The advertising also suggests that the buildings will be larger, thereby interfering even more with the public's ability to see the lake from North Shore Drive, a state-designated scenic highway.

Making it be so easy for two families to use the same condo space would increase the number of people using the site, causing parking issues, and increase the impacts on our small town, especially noise and traffic. To say nothing of the increased burden on threatened water supply and sewage systems, and the increased trash from multiple units. Although owners in Fawnskin have permits to use the transfer station in the Big Bear valley, we and our neighbors often have observed renter dumping trash in the boat launches, leaving it in the local park or sneaking it into the dumpsters of local businesses. The advertising includes a restaurant, which if built would add even more noise, traffic and potentially increase the need for law enforcement, as the ill-fated North Shore Tavern did with its loud bands and rowdy patrons.

Second, this project has been in process for decades. In that time, the situations in our area have changed in major ways. Climate change was almost an unknown factor years ago but our recent non-winter demonstrates that impacts on water and other resources need to be rethought. There is much more traffic, and the resulting noise and dust has increased. There are more homes and buildings in Fawnskin, decreasing areas that used to be available for wildlife habitat, reducing forest corridors for wildlife access to the lake and interfering with foraging activity, especially for bald eagles. We have experienced several major wildfires in recent years, which was less the case prior to the project being proposed, and the increased risk, in the case of a need for evacuation, needs to be considered. Will the County be required to increase expenditures for fire protection to accommodate this dense development? If the County does not, who will do so?

There is much more boat traffic and pollution in the lake and more air pollution. The property is subject to lake access easements and the drawings in what is being advertised appear to cut this off or severely limit it. The project also limits current efforts to develop and establish hiking and biking access to the lake and shore.

This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. At a minimum a public hearing is needed—actually a full new environmental analysis needs to be done.

Please include me on any further notices about this project. Thank you.

Sincerely,

Peter J. Tennyson

From:	Mary Louise Blackstone <maroo3@altrionet.com></maroo3@altrionet.com>
Sent:	Wednesday, April 09, 2014 7:13 AM
То:	Warrick, Chris - LUS
Subject:	Marina Point development plan, APN 0304-082-15

Dear Mr. Warrick:

The 20-year public record of Marina Point reveals many instances of disregard of County requirements. Once again, Marina Point requests the County to approve revisions to this project. However, it fails to disclose fully the scope of the impact of such action. First, the revision will result in doubling the potential occupancy by a system that permits part of each residence to be locked and rented separately. Furthermore, the plan includes the addition of docks in an area in which the bald eagles hunt.

This developer again challenges the County system of requirements that supports orderly, safe development. A new environmental analysis is required.

I would like to receive notices about this project.

Sincerely,

Mary Louise Blackstone

April 9, 2014 817 Coronado Terrace Los Angeles, CA 90026

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Avenue, 1st Floor San Bernardino, CA 92415 VIA EMAIL to: <u>Chris.Warrick@lus.sbcounty.gov</u>

> RE: Revision to approved action to revise the Marina Point development plan APN: 0304-082-15

Dear Mr. Warrick,

The revision for the Marina Point project is very disturbing to me and my wife.

The developer is advertising things on his website that are not mentioned in the proposal. There are lockout units attached to the condominiums which are not divulged within the proposed revision. These additional lockout units impact the number of people which will stress the environment and neighborhood. Additionally, docks outside of the approved marina have been advertised in their marketing and not mentioned within the revision. This area is used year-round by the Bald Eagles on the North Shore. With no disclosure of these plans by the developer to the County, we feel that the developer is again not following necessary protocol.

We ask that a current environmental impact report be required on the Marina Point project. The proposed revisions need to be analyzed to discover the detrimental impacts on the wildlife habitat, traffic, water availability, pollution to both the lake and air, noise within the neighborhood and light pollution.

As the previous EIR was done in 1991, we feel it necessary to require a current analysis of this property and the proposed changes, as well as those additions which have not been disclosed to the County.

We would appreciate notice of any reports or correspondence on this property.

Sincerely,

Joseph and Barbara Francuz 817 Coronado Terrace Los Angeles, CA 90026

From: Sent: To: Subject: Donald Burnett <burnett@gps.caltech.edu> Wednesday, April 09, 2014 10:31 AM Warrick, Chris - LUS Marina Point APN 0304-082-15

Mr Warrick:

The Fawnskin Marina Point development has been a train wreck from the beginning. The latest revision follows a long chain of extensions, revisions, missed deadlines, and noncompliances. This is not even mentioning the new major changes not submitted to you: new docks and ready-to- sub-divide units which could potentially double the occupancy.

The developer is totally incompetent. Many people believe that such developments will help the area economically. This would seem very unlikely in the hands of this developer. He will almost certainly screw it up. Why not urge him to scale back to building just a few nice lakefront single family houses in this area. That way he gets some return on his investment and the rest of us avoid a total economic and environmental disaster in the Marina Point area.

Sincerely

D. S. Burnett 1249 Ridge Road Fawnskin 327 E Lemon Ave, Arcadia, 91006 626-445-6307

From: Sent: To: Subject: Georg Kast <kastgeorgr@aol.com> Wednesday, April 09, 2014 10:52 AM Warrick, Chris - LUS Marina Point Development - Big Bear Lake

8 April 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

Subj: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

I would like to voice my concerns about the proposed revision to the subject project.

First, the project notice has not disclosed all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for hunting by the bald eagles that nest here. Other advertised changes include the option for each condominium having a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. This facilitates subletting the same condo space making it be so easy for two families live there increasing the number of possible residents and imposing additional on our small town, especially noise, traffic and water.

Second, this project has been in process for decades. In that time, the situations in the area have changed in major ways. There is much more traffic, there are lots more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution.

Finally, given the limited water supply at Big Bear, exacerbated by the ongoing drought, strong consideration should be given to limiting the overdevelopment of the basin to a level that cannot be sustained by the local water supply.

This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis needs to be done. Thank you.

Sincerely,

Georg Kast (760) 760-2297 Home (760) 845-4699 Mobile

From:	PEG ALLEN <pegallen@charter.net></pegallen@charter.net>
Sent:	Wednesday, April 09, 2014 11:16 AM
То:	Warrick, Chris - LUS
Subject:	MARINA POINT UPDATE

WE ARE HAROLD AND PEG ALLEN, RESIDENCE OF FAWNSKIN.

WE ARE OPPOSED TO THIS PROJECT IN A BEDROOM COMMUNITY. WE MOVED HERE BECAUSE OF THE QUIET COMMUNITY. WE HAVE BEEN OPPOSED THIS FROM THE BEGINNING AND OPPOSE ANY PRESENT CHANGES. THE OWNER OF THIS PROPERTY IS GREADY AND NOT WELCOME IN THIS COMMUNITY.

HAROLD AND PEG ALLEN 39590 OAK GLEN RD FAWNSKIN, CA 92333

909-878-4028



April 9, 2014

Chris Warrick San Bernardino County Land Use Services 385 North Arrowhead Ave First Floor San Bernardino, CA 92415 Re: Project #P201400106/RMC Revision

Dear Chris,

We are in receipt of your notice to adjacent property owners of the request to revise an approved action for the Marina Point Development.

There are so many things wrong with this request, it is difficult to know where to start. Mr. Okavita is attempting in this request for a revision, to make it sound like he is reducing the overall density of the project, when, in fact, he is actually increasing the density. We have pointed out to many officials in the County Planning Dept, numerous times, that Mr. Okavita's real estate agent has a website, and they are marketing not only the condos that he had original permission to build, but also 10 Lakefront Luxury home sites, which he is deceptively calling "condos" in this request, and they were never part of his original approval for this project. Supervisor Ramos sat in our living room several months ago, and assured us that this project would have to completely start over, if they asked for any changes. Not only is he marketing the new home sites, he is also changing his original plan to have lockout units for the condos, thereby increasing the density of the project, not decreasing it, as stated in the proposal we received. We quote, from the website, "Units range in size between 1,500 and 2,300 square feet with 3 bedrooms and up to 3.5 bathrooms and private garages. The units include a separate lock-off suite with private access for independent use". Mr. Okavita has always tried to skirt the regulations to suit his needs, and he is doing it again. Please look at the website yourself! This is what he is ultimately planning, even though he is not telling you his overall plan, he is asking for changes along the way, and your department needs to be smart about this. http://www.luxuryatmarinapointresort.com The developer plans to have 11 condo buildings, and

add 10 lakefront home sites. Did you plan for this density, in the last revision of your general plan? Did you plan for public use of the marina and proposed spa? Has any provision been made for the necessary additional parking for this public use? Another change he is proposing is to increase the size of the clubhouse to 9000 square feet. This will be directly in the sight line of our guest's view. New environmental studies need to be done for this project, that keeps changing, as so much has changed over the many years since the approval.

These new lakefront home sites the developer is marketing (and has done the grading for), would limit public access to the approved public beach and to the area between the current lake level and high water line. Part of the original approval for the project, was because of this public beach, which is currently not part of the plan he is marketing.

In your letter you state that the proposal would replace 7 multi-unit (5 units each) condo structures, or 35 units, with 10 single unit condominium structures. So where do you get the figure of 133 units to 120 units? We believe the developer is being deceptive.

We urge you to deny this request for a revision. The developer received approvals so long ago (30 years) for this project, and it is ludicrous that he has been given so many extensions (7) when only two are allowed. He has not followed up with any of the conditions of his approval, yet the County continues to let him do what he wants. One of the conditions of his original approval was that the project be completed within ten years. New environmental studies need to be done!

If anyone cared to stop by and see the unsightly mess that we have had to look at since purchasing our beautiful Bed & Breakfast, you would understand our concerns. He has been allowed to have his contractor store huge pieces of construction equipment, for the last 7 or 8 years. Since when does Code Enforcement allow people to do that, when no work is going on? Between December and April, no work can be done because it is a bald eagle habitat. Yet he leaves all the equipment there, all the time. In the past 8 years, we have seen work being done so seldom, that we question whether the developer even has the funds to finish this project. Why else would no work be done for months at a time, in the spring, summer and fall? We have lost upwards of \$50,000-\$100,000 per year in wedding income, due to the unsightliness of the property across the street. Prospective brides visit, and do not book a wedding, because of that eyesore. At the very least, we want to see a very tall, solid construction fence, so that others around the property do not have to subject themselves to the dirt, dust, noise, and unsightliness of this project.

Another area of concern is the sewers that were laid in late November. They are very close to their wells. We know that wells have to be placed at least 50 feet from a sewer line, and in some places, these new sewer lines are as close as 10 feet. He has removed hundreds of trees, without an arborist on site, which was a requirement of his permit to remove the trees. He has spray-painted equipment on the property. He has dredged illegally, he has worked past December 1st during eagle habitat season, he has worked without watering the dirt, thereby enclosing our B&B in clouds of dust for hours at a time....the list goes on and on. Bill has been a real estate broker for over 50 years, and he was a member of the Newport Beach Planning Commission for a four year term. Additionally he was a real estate major at USC, having taken two semesters in city planning and one in property development, and he has never seen a developer get away with so much.

We would like a response from your office of any plans or renderings the developer has submitted to the County to support his request for a revision. We would like to see what the "real" density would be. It sounds very nebulous to us in the letter we received, and we just don't believe it. We would like to receive the staff report on this proposal, before the Planning Commission hearing.

This kind of density on our quiet north shore, where residents and visitors alike, enjoy the peace and quiet the north shore brings is disturbing. Since we have moved here, and the developer has started grading, dredging, and removing trees, and closing off the entrance to the marina, we have seen all the wildlife disappear. It's been years since we have seen a beaver, or a bobcat, or coyotes that used to roam this beautiful piece of property. We are not *against* development, we are *for* responsible development, where the land and wildlife are honored.

Please deny this request.

Very truly yours,

Wein c. 12 ep Mano, C. Malher

William C. Hazewinkel Nancy C. Walker

ROBINS, KAPLAN, MILLER & CIRESI LLF

SUITE 3400 2049 CENTURY PARK EAST LOS ANGELES, CA 90067-3208 TEL: 310-552-0130 FAX: 310-229-5800 www.rkmc.com

ATTORNEYS AT LAW

Roman M. Silberfeld RMSilberfeld@rkmc.com 310-229-5807

April 9, 2014

Via E-mail: Chris.Warrick@lus.sbcounty.gov

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

> Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15xx

Dear Chris:

As you know, we've been monitoring the Marina Point development for a number of years. We have successfully sued in the past and we have insisted, both with the County and other important agencies, that the relevant rules and procedures be complied with.

I now understand that a proposed revision to the development plan has been filed and that this amendment and revision purportedly relates back to an original approval of a plan that issued in 1991. I also understand that the development plan leaves out important details about the developer's actual plan, as found in the promotional materials that the developer is publicly making available about the project.

It is for these reasons that I write to voice my concerns about and opposition to the proposed revision to this project.

First, this project has been in process for decades. In that time, the situation in the Mountain areas have changed in major ways. There is much more traffic, there are more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. The strain on natural resources such as water are far greater today than they were 25 years ago.

This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis needs to be done and reliance on an environmental April 9, 2014 Page 2

analysis that is almost a quarter century old is not a responsible approach in my view.

Second, the project notice does not mention all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for foraging and hunting by the bald eagles that nest here. The advertising and promotional materials also represent that each condominium will have a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. Making it easy for two families to use the same condo space would increase the number of people certainly, the resulting density is an issue, and such an increase impacts our small town, its resources, and especially noise and traffic.

Please include me on any further notices about this project.

Sincerely,

Roman M. Silberfeld

RMS/ri

From:	Claudia <claudiaeads368@aol.com></claudiaeads368@aol.com>
Sent:	Wednesday, April 09, 2014 2:44 PM
То:	Warrick, Chris - LUS
Subject:	Marina Point in Fawnskin CA

Re: Revision to approved action to revise the Marina Point Development plan; APN 0304-082-15

Dear Mr. Warrick:

As full time Fawnskin residents, we would like to voice our concerns about the proposed revision to this project.

First, the project does not mention all the changes that have actually been proposed and are being advertised by this developer: planned docks to be added to individual home lots on the west side of the project in an area often used by bald eagles that nest here year round. The advertising talks about each condo having a separate unit that could be rented out; this would greatly increase the number of units, rather than lowering it. Making it so easy for 2 families to use the same condo apace would also increase the number of residents, thereby increasing the impact on our small town (esp noise and traffic).

Second, this project has been in process for decades. Since then, major changes in the area have occurred: much more traffic, more homes and buildings in areas that used to be available for wildlife habitat, esp bald eagles. There is much more boat traffic and pollution in the lake, more air pollution too. This project and the proposed revisions need to be analyzed properly regarding the impacts they <u>really</u> have on these changed conditions. A new environmental analysis needs to be done.

Please include us on any further notices about this project. Thank you.

Very truly yours,

A. Claudia Eads, MD Donald L. Eads, MD April 9, 2014

SHUTE, MIHALY

396 HAYES STREET, SAN FRANCISCO, CA 94102 T: (415) 552-7272 F: (415) 552-5816 www.smwlaw.com EDWARD T. SCHEXNAYDER Attorney schexnayder@smwlaw.com

April 9, 2014

Via E-Mail and U.S. Mail

Chris Warrick, Planner County of San Bernardino Land Use Services - Planning Division 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0182 E-Mail: chris.warrick@lus.sbcounty.gov

Re: <u>Proposed Revision to Approved Action (P201400106)</u>

Dear Mr. Warrick:

On behalf of Friends of Fawnskin, we submit the following comments on the application for a "Minor Site Plan Revision" to the Marina Point planned development ("Project"). Although the Applicant, Irv Okovita, has presented the Project changes as small alterations to a previously-approved project, the County cannot approve the Project without resolving fundamental issues with the revised application and its environmental review.

First, decades have passed since the original Project approval. As a result, the previous approvals for the Project have expired and the Applicant must submit a new application before the County can act on the Project.

Second, the California Environmental Quality Act ("CEQA") requires additional information about the proposed Project. Of critical concern, the Project description in the application is inconsistent with separate plans for the Project. The application makes no attempt to resolve these inconsistencies. Until the Project is accurately defined, it is not possible to evaluate the revised Project's true scope and environmental effects. Additionally, changes to the Project, along with changed circumstances and new information about environmental impacts, require further environmental review. The County should evaluate these issues and impacts in an Environmental Impact Report ("EIR").

Third, the County should provide further notice and hold public hearings for the Project, consistent with the County Code. Finally, we urge the County to carefully consider the issues raised in a new lawsuit filed against the developer, which contends that the developer is building on property that it does not actually own.

I. The County's Original Project Approvals Have Expired.

The San Bernardino County Code of Ordinances requires developers to expeditiously complete planned developments like the Project. An applicant "shall either record a tract map or obtain Building Permits for at least one phase of the project within five years of the Development Plan conditional approval and, as applicable, *within each succeeding five-year period.*" County Code § 86.06.060(a)(5)(B) (emphasis added).

The "Development Plan conditional approval" for the original Project occurred on December 9, 1991. See Minutes of the Board of Supervisors, December 9, 1991, attached as Exhibit 1. But due to a nearly 23-year delay, that County approval expired long ago. For example, the Applicant had five years following the 1991 approval to either record a tract map for the project or obtain a building permit. But the Applicant obtained no such approvals until December 21, 2000, when it recorded a final map for the project—nine years after the original approval. Thus, the County's planned development approval expired well over a decade ago. Even if the December 2000 approval were somehow timely, the Applicant would have been required to begin obtaining building permits for the project by December 2005. See County Code § 86.06.060(a)(5)(B). This did not occur either. To date, the Applicant has not received a single building permit for the Project.¹

The County Code also states that conditionally-approved planned developments "shall be subject to a time limitation *not to exceed that specified by the condition of approval* for the Development Plan approval." *Id.* (emphasis added). The County adopted revised conditions of approval for the original Project on April 28, 1992. Conditions 2 and 2a contain firm deadlines for the original Project's completion. Condition 2's deadline echoes the five year time limit in the County Code. *See* Revised Conditions of Approval, April 28,1992, attached as Exhibit 2 at 1. Condition 2a imposes separate

¹ Between April 16, 2004 and September 9, 2009, federal court orders halted construction at the project site pending resolution of litigation over Clean Water Act and Endangered Species Act violations. The County Code does not suspend planned development time limits for litigation, but if it did, the time for seeking building permits would have expired March 21, 2011.

"[t]ime limitations for Tentative Tracts," under which the "approval shall become null and void if [1] all conditions have not been complied with and [2] the occupancy or use of the land or recordation of a final map has not taken place within 36 months" of the approval date. *Id.* (emphasis added). This condition allows for one discretionary 36month extension. *Id.*

Despite the 72 month time period for complying with "all conditions" of project approval, some project conditions remain unmet 23 years later. For example, Conditions 27 requires the developer to provide "100% of the project's estimated water demand . . . by providing a new operational well." *Id.* The developer has provided no such wells. As a result, the County's tentative tract approval for the Project expired under Condition 2a.

In fact, this is not the first time that approvals for Marina Point development have expired. The County first approved a development proposal for the Project site in 1983. But in 1991, the County recognized that "project approval had expired" because the Applicant had not recorded a tract map or commenced the project. *See* Initial Study Environmental Checklist, revised November 26, 1991, attached as Exhibit 3.

This time, the Applicant's delay is much more significant—the County's planned development approval is nearly 23 years old. Because the Applicant has far exceeded the mandatory time limits in the County Code and the Conditions of Approval for the original Project, the County's 1991 approval is "null and void" and there is nothing that can be revised. The County should therefore require the Applicant to submit a new planned development application for the proposed Project.

II. The County Cannot Approve the Proposed Revisions Without a Complete Project Description.

CEQA requires an applicant to provide a complete and accurate description of the Project. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient" environmental review. San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 727. Here, because the application omits key information about the proposed Project changes, the Project description is far from complete and accurate.

A. The Application Omits Plans for New Docks on Big Bear Lake.

The Project developers are currently advertising units at Marina Point to the general public. These advertisements contain many project features that substantially

differ from the changes described in the application. Key among these are plans showing new docks that extend into Big Bear Lake. One set of plans shows two docks extending from the exterior of the harbor, while other plans shows docks along the western shore of the Project site. *See* Marina Point on Big Bear Lake Advertisement, Sobczyk Group ("Marina Point Advertisement"), attached as Exhibit 4 at 3, 6. Contrary to these publicly advertised plans, the current application never mentions the planned new docks extending into the lake. The County must determine whether the revised Project includes new docks. If so, the County must evaluate the environmental impacts resulting from the construction and use of those docks. The Applicant cannot segment consideration of the dock plans from the County's review by omitting them from this application in the hope that they can be approved later.

B. The Application Omits Substantial Changes to Buildings on the Project Site.

The application notes that the revised Project will contain 23 fewer condominium units and will add 10 new lakefront "condominium site units" which will be 12,000 to 14,000 square feet each. But here again, the application neglects to mention other significant changes to design of the buildings on the Project site. For instance, according to the Marina Point Advertisement, the 110 remaining condo units ("the Villas") will each include a separate "lock-off suite," which will have "private access" and which could be rented for "independent use." Exhibit 4 at 4. The new Project application never mentions these lock-off units, even though they would allow two independent users to occupy each condo, effectively doubling the density for these units. The impact of this density, including impacts on parking requirements and traffic, should be fully considered.

Other aspects of the application's building layout are also inconsistent with previous designs and plans in the Marina Point Advertisement. For instance, the layout of condominium buildings in the Applicant's proposed phasing plan is inconsistent with the building layout that is currently advertised for the Project. Exhibit 4 at 7. Additionally, the clubhouse proposed for the new project will be 9,000 square feet and appears substantially larger than the clubhouse that was approved for the original planned development. *See* Marina Point on Big Bear Lake, Preliminary/Final Development Plan, Landscape Plan, June 1991, attached as Exhibit 5. The application states that the clubhouse has been "reconfigured," but never addresses whether it will have a larger footprint. And the application includes a new "gate house for special events" that does not appear in the original planned development. The County must require the Applicant

to clarify the inconsistencies between the recent application and other plans for the Project.

C. Other Aspects of the Original Planned Development Are Now Uncertain.

The Project changes could include other undisclosed differences from the original approval. For instance, the original Project design contained a public beach at the western corner of the Project site and a lake access easement running along the western shore of the site. These facilities would have allowed public use and enjoyment of the lake. It is unclear, however, whether these important public amenities remain in the new Project plans. *See* Exhibit 4 at 6 (showing that the lakefront docks obstruct shore access). The County must determine if a redesigned Project will alter additional aspects of the previously-approved Project, including plans for public recreational facilities and shore access.

III. The Proposed Project is a New Project Under CEQA, Requiring New Environmental Review.

A project is a "new project" that requires new environmental review under CEQA if it requires substantially new drawings of planning documents, or otherwise requires substantial changes from the originally approve project. *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1056 fn. 7; *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1300-01. For instance in *Lishman*, a project applicant proposed changing a project seven years after its original approval. 140 Cal.App.4th at 1291-93. Although the revised project had almost identical uses as the originally-approved project and actually *reduced* the number of proposed hotel rooms, the court found that the project revision was a new project that required new CEQA review. *Id.* at 1291-93, 1300-01.

While the proposed Project changes will have some similar uses to the originallyapproved Project, like in *Lishman*, the Applicant must obtain new planning documents before the Project may be approved. *See supra* Section I. Additionally, the proposed revisions involve substantial changes from the original project, including new docks extending into Big Bear Lake, new "lock-off" units, a potentially increased development footprint, and potential elimination of public recreation facilities and shore access. As a result, the proposed "revised" Project is actually a new project that requires a new EIR.

IV. Even if the Project Were Not a New Project, CEQA Requires Supplemental or Subsequent Environmental Review.

In cases where a project revision is not a "new project," CEQA still mandates that agencies consider a Project's environmental impacts before granting new discretionary approvals. The County may be considering approval of the revised Project based on prior environmental review, but CEQA requires preparation of a supplemental or subsequent EIR ("SEIR") if (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require major EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. Pub. Res. Code § 21166; *see also* Cal. Code Regs., tit. 14, § 15162.

Contrary to the Applicant's claims, the proposed Project revisions are not "minor," but are substantial revisions that require additional environmental review. Our review of the County's files also indicates a 1983 Focused DEIR and a 1991 revised Initial Study, but neither of these documents are sufficient to support the revised Project. Because the Project's environmental review is over 30 years old, new information and substantial changed circumstances require preparation of an SEIR for the Project.

A. Substantial Changes Are Proposed to the Project Which Require Major Revisions to the EIR.

Although there is insufficient detail about the specific components of the revised Project, the information that has been provided indicates that the revised Project would result in significant environmental impacts that have not been analyzed.

1. The Project Would Result in Additional Wetlands Impacts that Have Not Been Analyzed in Prior Environmental Documentation.

While the environmental documentation for the prior Project analyzed, albeit inadequately, impacts resulting from the development of the marina, it did not analyze the impacts resulting from the development of additional slips located on the western side of the property. *See* Exhibit 4 at 6.

The Army Corps of Engineers ("ACOE") Permit Number SPL-2010-00838-GS authorized the discharge of fill material in and around the marina for the construction of shoreline protections along the western side of the property and for the stabilization of the

existing haul road. See ACOE Permit Number SPL-2010-00838-GS, attached as Exhibit 6 at 2. It did not, however, permit the fill that would be required for construction of additional boat slips.

The County must evaluate the environmental effects of this additional fill in an EIR. This analysis must account for the cumulative effects of fill resulting from the construction of the proposed docks, together with the fill permitted by Permit Number SPL-2010-00838-GS.

2. The Project Would Result in Traffic Impacts that Have Not Been Analyzed in Prior Environmental Documentation.

The revised Project has additional components that have the potential to increase traffic. First, it is our understanding that the revised Project now includes the development of a restaurant. Restaurants have the potential to generate significant volumes of vehicular trips. Trip generation rates vary by the type of restaurant. High quality restaurants generate 56.3 trips per 1,000 gross square feet; high turnover restaurants generate 164.4 trips per 1,000 gross square feet; and a drive-in restaurant generates 553 trips per 1000 gross square feet.² If the revised Project includes a restaurant, the County must determine the restaurant's size and type, identify its trip generation and analyze the traffic from the entire Project, i.e., residential, retail, and recreational uses.

The revised Project also includes 11 buildings of 10 units each plus 10 single family units and now may include lock-off units, which can be "rented out." Properties with lock-off units can be divided into two complete sections, and have separate entrances, so that two different parties may occupy either half at the same time. Residential properties that have lock-off units have the potential to therefore double the trip generation compared to conventional units.

The County must analyze the revised Project's traffic impacts. It is entirely unclear whether the County has conducted any traffic analysis for this Project since 1983. Background traffic conditions have undoubtedly changed over the last 30 years. It is appropriate that the County conduct a comprehensive traffic impact study. The appropriate forum for such a study is an EIR.

² See Trip Generation Manual, Institute of Transportation Engineers.

3. Increases in the Size of the Building Footprint Would Result in Environmental Impacts that Have Not Been Analyzed in Prior Environmental Review.

The size of the building footprint appears to have increased since completion of the prior Project application. An increased development footprint can result in increased environmental impacts, including loss of sensitive habitat and increased stormwater runoff. The County must identify the Project's actual development footprint and analyze the associated environmental impacts. This analysis should occur in an EIR.

B. Substantial Changed Circumstances and New Information Since the Original Approval Require Further Environmental Review.

1. Climate Change Crisis and Greenhouse Gas Regulations

Although global warming is considered one of the most alarming environmental issues today, the County has yet to study the climate change consequences of building and operating the Project. Such analysis is required in light of AB 32. As stated in AB 32, the California Global Warming Solutions Act:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

Because global warming significantly impacts the environment, lead agencies must consider their projects' individual and cumulative contributions to this impact in their CEQA analyses.

There is a strong link between land cover and climate, so that changes in land use are important contributors to climate change and variability. In addition, there is a direct correlation between automobile usage and carbon dioxide and other greenhouse gas ("GHGs") emissions. Simply put: more automobiles equals more GHG emissions.

The proposed Project will contribute to global warming both because it will

convert forestland to developed uses and because it will increase automobile travel. The County has an obligation to identify all of the potential sources of GHG emissions that would be generated by construction and operation of the Project and adopt measures to reduce or eliminate these emissions. As the County's Greenhouse Gas Reduction Plan clearly states:

The County can provide local leadership in reducing GHG emissions, for example, through the promotion of policies that reduce vehicle use and by working collaboratively with developers, building owners and residents to achieve energy efficiency and energy savings. In addition, the County, as CEQA lead agency *must ensure* that impacts of GHG emissions are mitigated when discretionary projects go through CEQA review. Through these mechanisms, the County can reduce emissions that occur within its land use jurisdiction. *See* Greenhouse Gas Reduction Plan at 1-12 (emphasis added).

Other environmental documents prepared by San Bernardino County evaluate a Project's impact on climate change by its incremental contribution combined with the cumulative increase of all other sources of GHGs. *See* e.g., Moon Camp RRDEIR at 4.2-17. The County must conduct such an analysis for the Marina Point Project. The appropriate forum for this analysis is an EIR.

2. Southern Bald Eagle

The Project site is within key perching and foraging habitat for the Southern bald eagle, a State-listed endangered and fully protected species. Construction and operation of the proposed Project have the potential to result in significant impacts to the eagle. Two conditions have changed since the prior environmental review. First, new studies indicate that bald eagles are year-round visitors to Big Bear Lake. Second, the number of eagles in Big Bear Lake has declined significantly since the early 1980s.

a. Bald Eagles Are Year-round Residents at Big Bear Lake.

In 1983, the bald eagle was a seasonal visitor to the area. They had been known to "winter" at Big Bear Lake. See 1983 DEIR at 14. Studies now show that bald eagles are year-round residents. See U.S. Forest Service News Release, March 8, 2014, attached as Exhibit 7. Previously, the County proposed to mitigate construction-related impacts by restricting construction activities during the eagle's residency periods, i.e., December 1 through April 1. See 1983 DEIR at 14 and Letter from the Forest Service to San

Bernardino County, April 22, 1982. Yet, as the News Release makes clear, five bald eagles, including breeding pairs, were observed at Big Bear Lake in the middle of this period, on March 8th. See Exhibit 7. In fact, the highest number of eagles are typically in February and March. Id. Given the eagles' year-round residency, this limitation on construction activities would not effectively mitigate the Project's impact on bald eagles.

Moreover, although the prior environmental review never analyzed the effect that the marina would have on the eagles, the County proposed to mitigate such impacts by closing the marina from December 1 to April 1. Again, because eagles inhabit the area on a year-round basis, simply closing the marina during this four month period would not mitigate the Project's significant impacts on the eagles. Further, the Marina Point Advertisement shows that numerous docks will be outside the marina and the County must consider whether these docks will interfere with eagle activities.

b. The Number of Bald Eagles at Big Bear Lake Has Declined Significantly Since the Early 1980s.

Another significant factor warranting further environmental review is the precipitous decline in the Southern bald eagle since the late 1970s and early 1980s. Bald eagle counts have been conducted at Big Bear Lake since 1978. *See* Exhibit 7. Four monthly counts are conducted between December and March to estimate the number of bald eagles that are wintering in the area. As the Bald Eagle Count Summary shows, the highest number of eagles occurred from 1978 through 1985, with a high of 28 eagles identified in 1983-1984. Since then, he number of eagles has dropped substantially, and now hovers between 5 and 10. *Id*.

This substantial reduction in numbers is alarming. While many factors have played a role in this decline, the most destructive human activity is the development of waterfront property:

Because eagles depend on shoreline habitats and aquatic food sources, human development in these coveted areas poses the greatest threat to the bald eagle's survival. In addition, the cutting of "old growth forests" where bald eagles prefer to nest and perch has conflicted with the interests of people seeking lumber for housing and commercial products. *See* Eagle Survival – Threats to Survival, "The American Bald Eagle: Recovery From Near Extinction," Vanderbilt University, attached as Exhibit 8.

The year-round presence and decline in the number of bald eagles since the prior environmental review warrant analysis of the Project's impacts on this State-listed endangered and fully protected species.

3. The Project is Likely to Result in a Significant Increase in Particulate Matter_{2.5}.

Although the Project would result in an increase in $PM_{2.5}$ emissions, the County has never studied the Project's contribution to this potentially significant environmental effect. Sources of fine particles include all types of combustion activities (motor vehicles, fugitive dust from roads, fugitive dust from construction, wood burning, etc.).³ Particles less than 10 micrometers in diameter (PM_{10}) pose a health concern because they can be inhaled into and accumulate in the respiratory system. Particles less than 2.5 micrometers in diameter ($PM_{2.5}$) are referred to as "fine" particles and are believed to pose the greatest health risks. Because of their small size (approximately 1/30th the average width of a human hair), fine particles can lodge deeply into the lungs.⁴ According to the U.S. Environmental Protection Agency ("USEPA"), $PM_{2.5}$ at the ambient concentrations that presently exist in some areas of the country, including those in compliance with the PM_{10} National Ambient Air Quality Standards, can cause serious health consequences, including premature mortality, exacerbation of respiratory and cardiovascular disease, decreased lung function, increased respiratory symptoms from pre-existing pulmonary disease, and aggravation of symptoms associated with asthma.⁵

The understanding of the health risks associated with $PM_{2.5}$ has grown since the Project's approval. In 1997, the USEPA promulgated a $PM_{2.5}$ standard and, in 2003, the State established an annual standard for $PM_{2.5}$. The South Coast Air basin is in state non-attainment for $PM_{2.5}$. It is vitally important that the County analyze the potential for the Project to significant increase $PM_{2.5}$ emissions. Indeed, the County required such an analysis in the context of the Moon Camp Project. See Moon Camp RRDEIR Air Quality Chapter. That EIR's analysis determined that Moon Camp's increase in $PM_{2.5}$ emissions would result in a significant environmental impact. See Moon Camp RRDEIR at 4.2-30.

³ See <u>http://www.epa.gov/pmdesignations/faq.htm</u>, accessed April 7, 2014.

⁴ See <u>http://www.epa.gov/pmdesignations/faq.htm</u>, accessed April 7, 2014.

⁵ See http://www.bryancave.com/files/Publication/7e0edf14-dd55-4ac5-8975-452a79ffe3e0/Presentation/PublicationAttachment/185ff3d4-77c8-4f6b-91c2-47bb435fd129/Env%20Article-KarmelEnvLawinCA8-02.pdf, accessed April 7, 2014

4. Increased Risk of Wildfire

The risk of wildfires has increased considerably since the Project's prior environmental documentation was prepared. As is now commonly acknowledged, fire activity is increasing across the western U.S. According to one source, total area burned, number of fires and the size of the largest fires are all increasing. *See* LiveScience, "Climate Change May be Worsening Western Wildfires," December 11, 2013, attached as Exhibit 9.

While the 1991 Environmental Analysis (prepared by the Project Applicant) asserted that the existing site poses a "small fire hazard" (Exhibit 5 at EA 26), according to other EIRs prepared in the Project vicinity, wildland fire hazards are particularly acute in San Bernardino County. *See* Church of the Woods DEIR, San Bernardino County, April 2010, at 3.E-1 and 2. That EIR further discloses that "the San Bernardino Mountain's fire risk in forested areas has been further exacerbated by drought conditions which were followed by a bark beetle infestation." *Id.* Given the extreme fire danger in the area, impacts relating to wildland fire safety deserve extraordinary close scrutiny. The appropriate forum for such an analysis is an EIR.

5. The Project is Likely to Result in a Significant Impact to Water Quality.

Water quality in Big Bear Lake has deteriorated significantly since the 1983 EIR was prepared. In 1990, the Santa Ana Regional Water Quality Control Board ("Regional Board") added Big Bear Lake to California's list of impaired water bodies due to elevated nitrogen and phosphorus concentrations. *See* Big Bear Lake TMDL Task Force, attached as Exhibit 10. These pollutants act as fertilizers and encourage growth of noxious aquatic plants such as Coontail and Eurasion Milfoil that interfere with human recreation and despoil the native freshwater habitat. *Id.* In addition, high nutrient loads cause excess algae growth which, in turn, reduces dissolved oxygen levels in the water and leads to fish kills. *Id.*

Construction and operation of the Project has the potential to further degrade the lake's water quality. The Project includes several land uses (construction/ land development, recreational and tourism activities (boating)) that are some of the worst offenders in causing water quality impairment in local water bodies, particularly for increased sedimentation and nutrients. Importantly, *any* reduction of water quality is a significant impact according to the State's (RWQCB) anti-degradation policy.

The County must analyze the Project's potential to further impair water quality. The appropriate forum for such an analysis is an EIR.

6. The Project Is Likely to Cause Significant Water Supply Impacts.

Water is an extremely scarce resource in southern California. Previous environmental documentation for the proposed Project recognized that the Big Bear region is in groundwater overdraft. See July 20, 1982 Initial Study, Appendix 2 at 8; 1983 DEIR at 11; and Letter from Big Bear Municipal Water District, September 2, 1982.

Yet, the water supply situation has changed substantially over the last 30 years. California is now facing severe water shortfalls in what is being called the driest year in recorded state history.⁶ In fact, this January, Governor Brown proclaimed a State of Emergency, directing state officials to take all necessary actions to prepare for drought conditions. Id. Extremely dry conditions have persisted since 2012 and are expected to continue beyond this year and more regularly into the future, based on scientific projections regarding the impact of climate change on California's snowpack. Id. Consistent with the state's drought emergency status, in February 2014, the Big Bear City Community Services District approved Stage 1 water restrictions.⁷

The County must analyze the ability to serve the revised Project in light of the state and local drought emergency. Moreover, as discussed below, several other development projects are contemplated around Big Bear Lake. The County must identify the cumulative water demand from the Marina Point Project, together with the other proposed development projects, and evaluate whether sufficient supplies exist to serve these developments.

7. The Project Will Likely Cause Significant Cumulative **Environmental Impacts.**

The County is currently processing several other development applications that have the potential to cause cumulatively significant environmental impacts. These projects include:

⁶ See http://gov.ca.gov/news.php?id=18368, accessed April 8, 2014

⁷ See http://www.bigbeargrizzly.net/news/article_a4bb1198-8dfb-11e3-801e-001a4bcf887a.html, accessed April 8, 2014

- Moon Camp, a proposal to subdivide a 62-acre parcel into 92 residential lots, is located directly east of the Marina Point Project. Development of the Moon Camp Project would result in many of the same impacts as the Marina Point Project, including impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, increased traffic and impacts to local water supply.
- A 30-home project is proposed for 30 acres of undeveloped land directly behind the Moon Camp Project (APN #0304-231-35). Development of that project would result in many of the same impacts as the Marina Point project, including impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, increased traffic and impacts to local water supply.
- A project, including approximately 67 homes on 37 acres, is proposed on the opposite shore of Big Bear Lake (APN #2328-571-01). Development of this project would result in many of the same impacts as the Marina Point project. These include impacts to loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, and impacts to local water supply.
- A project, including eight homes on three acres, known as Shadow Mountain (Tentative tract #16611) is proposed for the city of Big Bear Lake directly across the lake. Development of this project would result in many of the same impacts as the Marina Point project. These include impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, and impacts to local water supply.

None of these projects were proposed when the prior environmental review for the Marina Point Project was undertaken. The County must evaluate the cumulative environmental impacts that would result from these projects, together with the effects from the Marina Point Project.

V. The Board of Supervisors Should Consider this Application Following the Same Procedures Used for the Original Application.

Because the Applicant must seek new approvals and undergo new environmental review, the County should review the Project using its procedures for considering new planned development permits. Even if this were not the case, the County Code section 85.10.090 dictates the County's procedure for considering amendments to planned developments like the Applicant has proposed. The Director of Planning may only approve *minor* changes to a planned development. County Code § 85.10.090(c). Otherwise, changes to a project must "bc submitted to the review authority that originally approved the permit" and follow "the same review notice and hearing procedures as required for the original approval." County Code § 85.10.090(a).

Minor changes "do not involve an increase in structure area, an increase in the number of dwelling units, or a change of use." County Code § 85.10.090(c). Despite the Applicant's characterization, the proposed Project changes are not "minor" under the code. For instance, including lock-off units for the proposed condominiums doubles the number of units from 110 to 220. Adding the 10 new "site condominium units," shows that the number of dwelling units has actually increased from the 133 units in the original Project to 230 units.

Similarly, it appears that the condominium buildings and the clubhouse have increased in size in the new application. The Applicant is also proposing a new gate house facility that has not been approved. The application attempts to cast the Project changes as a reduction in size by claiming that the "lot coverage" is slightly smaller. But the Applicant is proposing to significantly reconfigure the Project site's lots, rendering this "lot coverage" claim meaningless. Instead, the County should look closely at the buildings proposed in the application and compare their size to the buildings in the original approval.

Because the Project changes are not "minor," the County should review the application under the procedures for new planned development permits, including a public hearing and consideration by the Board of Supervisors.

VI. The County Should Delay Consideration of the Project Until the Courts Determine the Applicant's Right to Develop the Property.

On March 26, 2014, a neighbor of proposed Project site filed a complaint against the Applicant in San Bernardino Superior Court. See Complaint, Gary J. Polizzi v.

Marina Point Development Associates, et al (Case No. CIV-DS-1403497), attached as Exhibit 11. According to the complaint, the historic 72.4 foot high water line defines the boundary between the Applicant's property and Big Bear Lake, but the Applicant's Project will place fill and improvements on the lake side of this boundary. That is, the Applicant is planning to build on land that he does not own.

The complaint further contends that two easements burden the project site, including a 20-foot publicly-held easement that provides lake access. According to the complaint, this public easement runs through the middle of the proposed development site. If this is correct, the length of the public easement would be unbuildable.

It is therefore uncertain that the Applicant even possesses sufficient property rights to build the Project as proposed. At the very least, the County should refrain from issuing any further approvals for the Project until the courts have resolved these outstanding property issues.

VII. Conclusion

In sum, not only does ongoing litigation cast doubt on the Project's viability, but the current application is inadequate in many respects. The Applicant must seek new planned development and tentative tract approvals, not "revisions" to expired approvals. The County must undertake new environmental review and hold public hearings on the Project. For all of these reasons, the County should not approve the current application.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Und Sola

Edward T. Schexnayder

cc: Adam Keats, Center for Biological Diversity, <u>akeats@biologicaldiversity.org</u> Drew Feldmann, San Bernardino Valley Audubon Society, <u>drewf3@verizon.net</u> Ed Wallace, Sierra Club, Big Bear Group, <u>ednjeanne@charter.net</u> Hugh Bialecki, Save Our Forest Association, <u>habialeckidmd@gmail.com</u> James Ramos, Supervisor 3rd District <u>supervisorramos@sbcounty.gov</u>

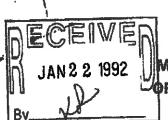
> Chris Carrillo, Deputy Chief of Staff, <u>chris.carrillo@bos.sbcounty.gov</u> Elizabeth Harris, Field Representative <u>liz.harris@bos.sbcounty.gov</u>

Exhibits:

- 1. Minutes of the Board of Supervisors, December 9, 1991
- 2. Revised Conditions of Approval, April 28,1992, excerpted
- 3. Initial Study Environmental Checklist, revised November 26, 1991, excerpted
- 4. Marina Point on Big Bear Lake Advertisement, Sobczyk Group
- 5. Marina Point on Big Bear Lake, Preliminary/Final Development Plan, Landscape Plan, June 1991
- 6. ACOE Permit Number SPL-2010-00838-GS
- 7. U.S. Forest Service News Release, March 8, 2014
- 8. Eagle Survival Threats to Survival, "The American Bald Eagle: Recovery From Near Extinction," Vanderbilt University
- 9. LiveScience, "Climate Change May be Worsening Western Wildfires," December 11, 2013
- 10. Big Bear Lake TMDL Task Force
- 11. Complaint (excluding exhibits), Gary J. Polizzi v. Marina Point Development Associates, et al (Case No. CIV-DS-1403497)

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MINUTES OF THE BOARD OF SUPERVISORS

RECEIVED

DECEMBER 9, 1991

JAN 1 3 1992 SITE DESIGN ASSOCIATES, INC.

PLANNING: HEARINGS: PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR	4450
133-CONDOMINTUM UNITS, MAN-MADE PONDS, MARINA AND OPEN SPACE/REC.	012 -
FACILITIES AND 8-LOT SUBDIVISION WITH 6 LOTS ON 28.2 ACRES: BIG BEAR AREA: APPLICANT-SITE DESIGN ASSOCIATES/KEN DISCENZA: APPROVED;	

The Board conducts a hearing to consider a Preliminary Development Plan and Final Development Plan with 133 Condominium Units, manmade ponds, marina and open space/recreational amenities and an 8-lot subdivision with 6 lots (phases) and EIR on 28.2 acres located southwest side North Shore Drive, approximately 315 feet south of Red Robin Drive, Big Bear Valley area. (M331-9/TR12217). (Applicant: Site Design Associates, Inc.-Ken Discenze).

Notification as required has been made by publication in the Big Bear Life and Grizzly and by mailing to list on file in the office of the Clerk.

Ina Petokas, Deputy Planning Director, presents the staff report, a copy which is on file in the office of the Clerk. She states that the Planning Commission had recommended that the eagle mitigation condition be modified as Condition 6 and 6a (copy of memo on file in the office of the Clerk) regarding wintering Bald Eagle Habitat Mitigation Measures. She indicates that staff recommends that the Planning Commission revised conditions be replaced with one Condition 6 (a copy of the memo is on file in the office of the She says that there is also a revised Condition 11 and Clerk). the Board should consider adding Condition 18D to the Composite Development Plan, also in the memo. She states for the record also that this project had to comply with the Assured Water Policy that the Board has adopted and they have done so with Condition 26 which specifies that they provide 100% of the water to service the site plus they have to provide 50% in addition to that, half of which would be for retrofit and the other half for waste water reuse. She says that the mitigations that are attached to the project include other water mitigation measures and the Planning Commission recommended that this project go forward with these revisions. She says they would be operating the marina in conformance with regulations for the lake.

Peter Medellin has concerns that he never received notice of this particular project. He says he is opposed to the condo development and feels there is not enough water in the area and that the development is too big. He feels the development will also block off the view of the lake to the existing residents.

12/9/91 1w #56

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MINUTES OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA

DECEMBER 9, 1991

PLANNING: HEARINGS: PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR 133-CONDOMINIUM UNITS, MAN MADE PONDS, MARINA AND OPEN SPACE/REC. FACILITIES AND 8-LOT SUBDIVISION WITH 6 LOTS ON 28.2 ACRES: BIG BEAR AREA: APPLICANT-SITE DESIGN ASSOCIATES/KEN DISCENZA: APPROVED;

Philip Kohn, representative for the applicant, addresses Condition 6 and feels that activities like painting and wallpapering should not be prohibited and he asks to modify this condition to limit activities only that disturb the bald eagle habitat. In regard to Condition 18D, he says this is the first time he has known about this issue but states that the applicant is not willing to accept this condition at this time. He says that while it is the intention of the property proponent to market and operate the project as condomimiums and not as a time share, the final marketing decision has not been made and it would be dictated more by what the marketing conditions are at the time.

Irv Okovita reiterates statements made by Mr. Kohn and concurs with all items except Conditions 6 and 18D.

Ken Discenza, engineer with Site Design Associates, Inc., states that he is there if there are any questions.

G. B. Sneed of North Shore Improvement Association, states that his property is right across the street from the project and indicates that he is in favor of the project.

Sandy Acosta speaks in favor of the project.

Supervisor Riordan states that the project has been reviewed very carefully by staff and it appears to be a development that could enhance and not detract from the area. She feels they can accommodate the inside activities such as painting and carpet laying and just prohibit outside types of construction from December 1 to ' April 1.

Ina Petokas suggests then that Conditions 6 and 6a be adopted which would require the services of biologists to be engaged to determine that there will be no adverse affect on the bald eagle if activities take place inside.

Mr. Kohn says that this would be acceptable.

MINUTES OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA

DECEMBER 9, 1991

PLANNING: HEARINGS: PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR 133-CONDOMINIUM UNITS, MAN MADE PONDS, MARINA AND OPEN SPACE/REC. FACILITIES AND 8-LOT SUBDIVISION WITH 6 LOTS ON 28.2 ACRES: BIG BEAR AREA: APPLICANT-SITE DESIGN ASSOCIATES/KEN DISCENZA: APPROVED:

On motion by Supervisor Riordan, seconded by Supervisor Mikels, and carried, the Board:

- Approves the Preliminary Development Plan and Final Development Plan M331-9 for 133 condominium units, 2 man-made ponds, marina and open-space/recreational amenities, subject to the revised Conditions of Approval 6 and 6a, addition of Condition 18D and revised Condition 11 (copy of December 9, 1991 memo on file on the office of the Clark);
- 2) Approves Tract 12217 for 8 lots with 6 lots for condominium purposes;
- .3) Adopts the findings as contained in the staff report;
- 4) Adopts the Statement of Overriding Considerations, certifies the use of a Single Environmental Impact Report and directs the Clerk to file a Notice of Determination.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Bernardino, State of California, by the following vote:

AYES: Turcci, Mikels, Riordan, Walker

NOES: None

ABSENT: Hammock

STATE OF CALIFORNIA COUNTY OF SAN BERNARDINO

I, EARLENE SPROAT, Clerk of the Board of Supervisors of the County of Stilley and the Astrona to be a full, true and correct copy of the astrona taken by said Board of Supervisors, by vote of the members present, as the series appears in the Official Minutes of said Board at its meeting of 12/9/91 1w \$56 cc: Planning, Surveyor,

Bv

Planning, Surveyor, Transportation, Co. Counsel-Mordy, Applicant, Owner, File.

CONTAKDIN -

14-0373-903 Roy, 8480

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

GENERAL ON-GOING CONDITIONS

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PLANNING DEPARTMENT (714) 387-4155

1. This conditional approval is for a Planned Development consisting of an eight (8) lot Subdivision, including 133 condominium units, 2-man-made ponds, and boat marina with other open space/recreational amenities on 28.2 acres generally located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be a six (6) phase development, with each of the six (6) phases being constructed in sequence and coinciding with the six (6) numbered lots of subdivision Tract 12217.

*2. Time limitations for Planned Developments: A conditionally Revised by Staff 4-28-92 Subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

- 2a. Time limitations for Tentative Tracts: This approval shall become null and void if all conditions have not been complied with and the occupancy or use of the land or recordation of a final map has not taken place within 36 months of the effective date. One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration. PLEASE NOTE: This will be the only notice given of the above specified expiration date. The applicant is responsible for initiating extension requests.
- 3. The applicant shall ascertain and comply with requirements of all State, County and local agencies as are applicable to the project area. They include, but are not limited to the Transportation/Flood Control, Fire Warden, Building and Safety, and the State Fire Marshall.
- 4. In compliance with San Bernardino County Development Code Section 81.0150 the applicant shall agree to defend at his sole expense any action brought against the County, its agents, officers, or employees, because of the issuance of such approval, or in the alternative, to relinquish such approval. The applicant shall reimburse the County, its

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* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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25. The Planned Development report text shall be revised by addendum to incorporate any additional corrections and omissions required by Planning staff or the Planning Commission.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 856-8050

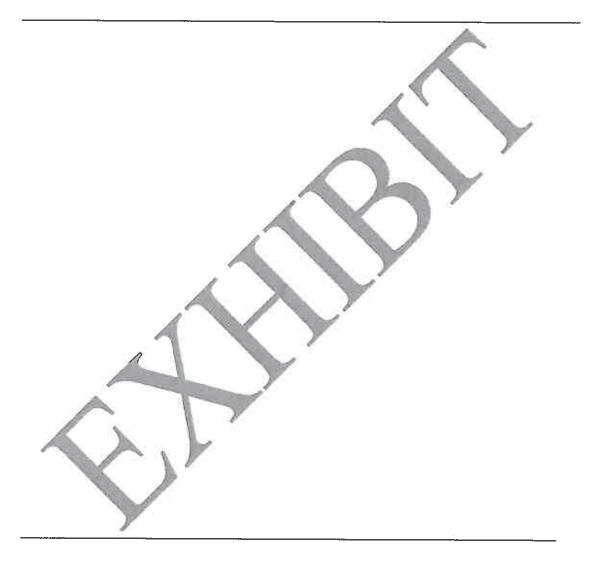
**26. Revised by PC 11-21-91 The developer must comply with the requirements of County's Assured Water Program by participating in the DWP's approved program. The current cost for the additional 50% Assured Water is \$284.00 per unit. For this project, the ratio of program components shall be 1/2 retrofit and 1/2 wastewater recharge.

- **27. The developer must provide (at his cost and at DWP specifications) for 100% of the project's estimated water demand at maximum day demand usage by providing a new operational well to the DWP (or a portion of a new well's capacity) and the necessary piping to connect to the DWP system.
- **28. The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

- 29. Two points of ingress and egress will be required to each phase.
- **30. The developer shall participate with their fair share in mitigating the regional traffic problems in the Big Bear area, including a contribution to signals at the Stanfield Cutoff/State Highway 18 intersection. In the event that the proposed "Transportation Fee Program for Big Bear" is adopted prior to the issuance of building permits, the developer shall participate in this program in lieu of the above.
 - 31. Trees, irrigation systems and landscaping shall not be installed on public right-of-way and shall be as specified in County Transportation/Flood Control Department standards for tree planting.
 - 32. Construction of private roads and private road related drainage improvements shall be inspected and certified by the engineer.

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)



This form and the descriptive information in the application package constitute the contents of an Initial Study pursuant to County Guidelines under Ordinance 3040 and CEQA Guidelines §15063.

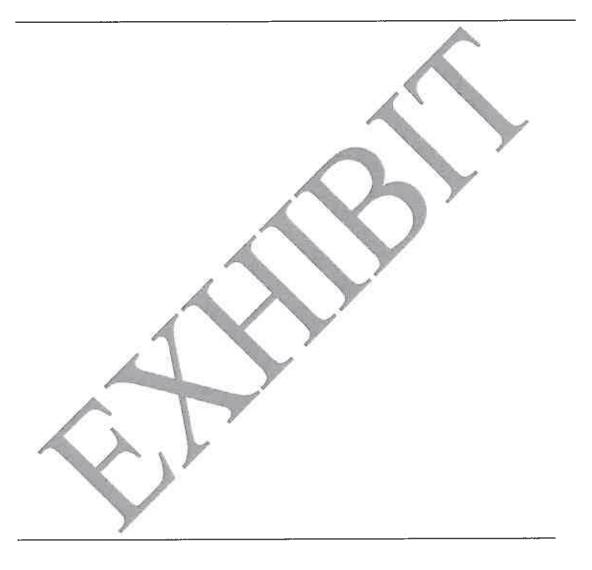
I.		USGS Quad: Fawnskin 7 1/2 min.
COMMUNITY: APPLICANT: FILE/INDEX:	BIG BEAR VALLEY Site Design Assoc., Inc. Ken Discenza A)PD/89-0053/M331-9/PUDP B)PD/89-0054/M331-9/PUDF	T,R,Section: <u>T2N, RIW, SEC 13</u>
	C) PD/89-0055/M331-9/TR12217	Thomas Bros: <u>97, F-2</u>
CATS #: PROPOSAL:	05175CF2 A) Preliminary Development Plan with 133 Condominium Units, Man-made Ponds, Marina and Open	Planning Area: Big Bear Valley
	Space/Recreational Amenities on 28.2 acres	OLUD:
	B) Final Development Plan with 133 Condominium Units, Man-made Ponds, Marina and Open Space/Recreational	Improvement Level: <u>IL-1</u>
	Amenities on 28.2 acres C) 8-Lot Subdivision with 6 lots (phases) for Condominium purposes on 28.2 acres	REVISED
	D) Environmental Impact Report on 28.2	Nov. 26,1991
LOCATION:	acres North Shore Drive, southwest side; approximately 315 feet south of Red Robin Drive	

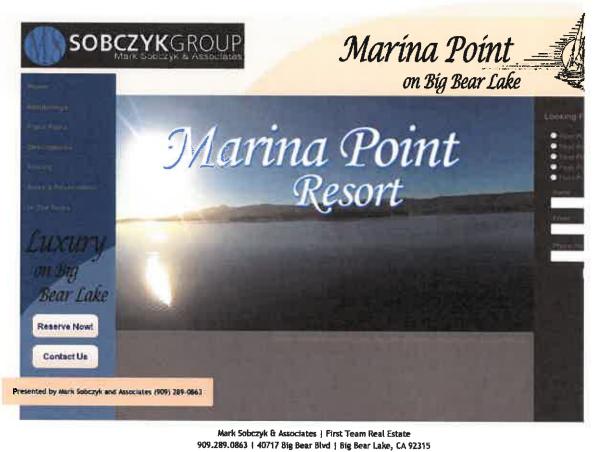
PROJECT CHARACTERISTICS: The proposed condominium project has been reviewed by the Planning Department before as Marina Cove. The first submittal, was originally approved on March 17, 1983 along with a project EIR (no SCH#). This first edition project approval expired on March 17, 1990 without Tract 12217 recording or the project commencing. The applicants later refiled the project, with modifications to their corporate structure and to the project, in April 1990. This particular project proposal included a fish lagoon and spawning streams which complicated reviews through the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and California Department of Fish and Game. This project proposal ran out of time on May 4, 1991 due to project streamlining limitations and was administratively withdrawn and refiled. The applicants have refiled a revised project that consists of 132 condominium units/Tentative Tract 12217 on 12.5 acres in the Fawnskin area. The proposed project density of 10.5 units/acre is less than the General Plan Land Use District of 12 units/acre would allow under optimum circumstances.

The current project being considered is very similar to the design of the original project approved in 1983. The current project employs the use of the 1983 Project EIR with the overriding considerations on cumulative significant traffic and water consumption issues pursuant to CEQA Guidelines, Section 15131. The Project EIR is being utilized because the present design issues, circumstances and impacts are similar to the 1983 project. The site is a previously disturbed lakeside property with an existing deteriorated recreational vehicle park located on it. The current project has been reviewed with an Initial Study using incorporation by reference of the relevant sections of both the 1983 Project EIR and relevant information from the Bear Valley Community Plan EIR (SCH #88032108) cited to characterize the anticipated environmental effects.

1.

FORM REVISED 9/89



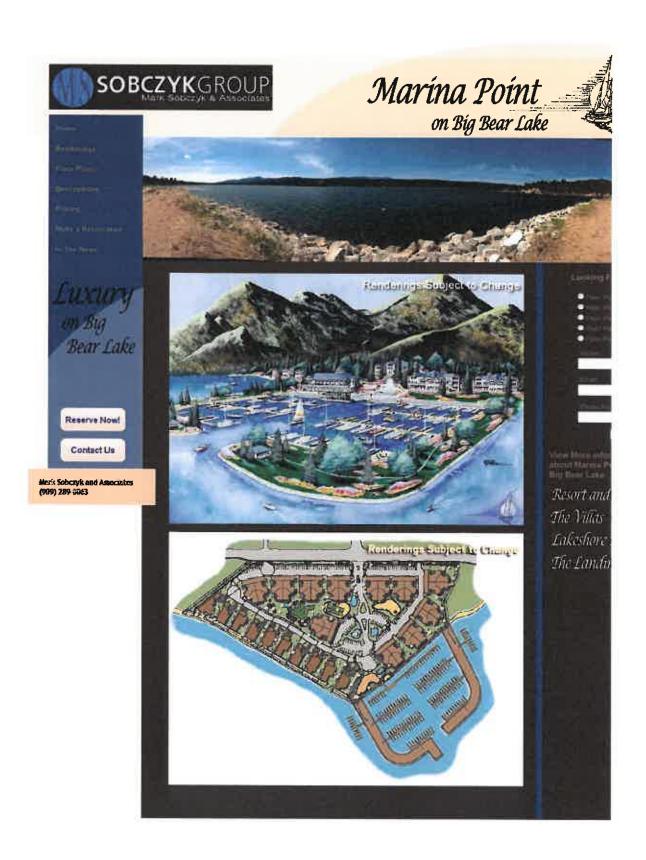


The Sobczyk Team | #1 in Customer Satisfection in Big Bear Leke All information deemed reliable but not guaranteed. 42013 The Sobczyk Group, All rights reserved. Department of Real Estate.



http://www.luxuryatmarinapointresort.com/index.html

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http://www.luxuryatmarinapointresort.com/Renderings.html

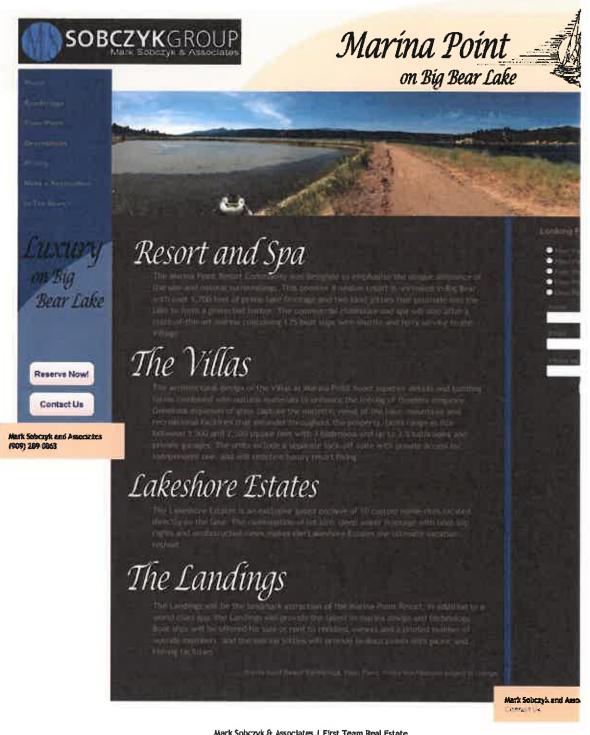
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http://www.luxuryatmarinapointresort.com/Renderings.html

4/4/2014



Mark Sobczyk & Associates | First Team Real Estate 909.289.0863 | 40717 Big Bear Blvd | Big Bear Lake, CA 92315 The Sobczyk Team ! #1 in Customer Satisfaction in Big Bear Lake

http://www.luxuryatmarinapointresort.com/Descriptions.html

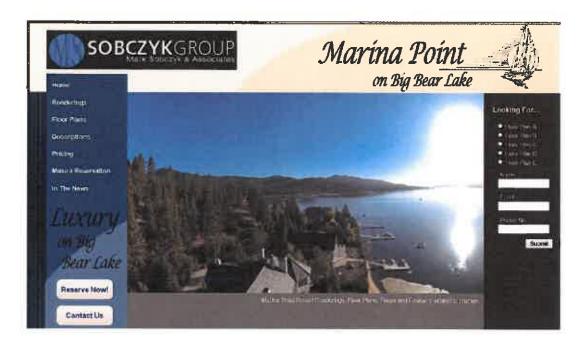
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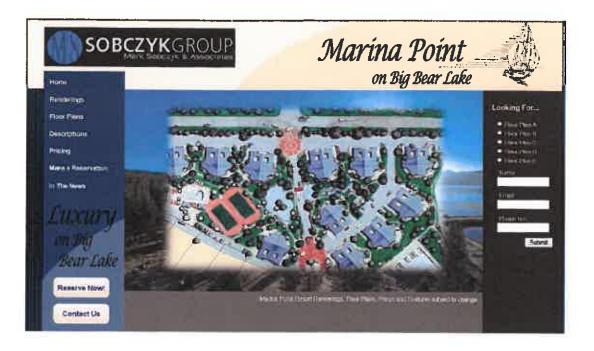
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April 7, 2014



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April 7, 2014

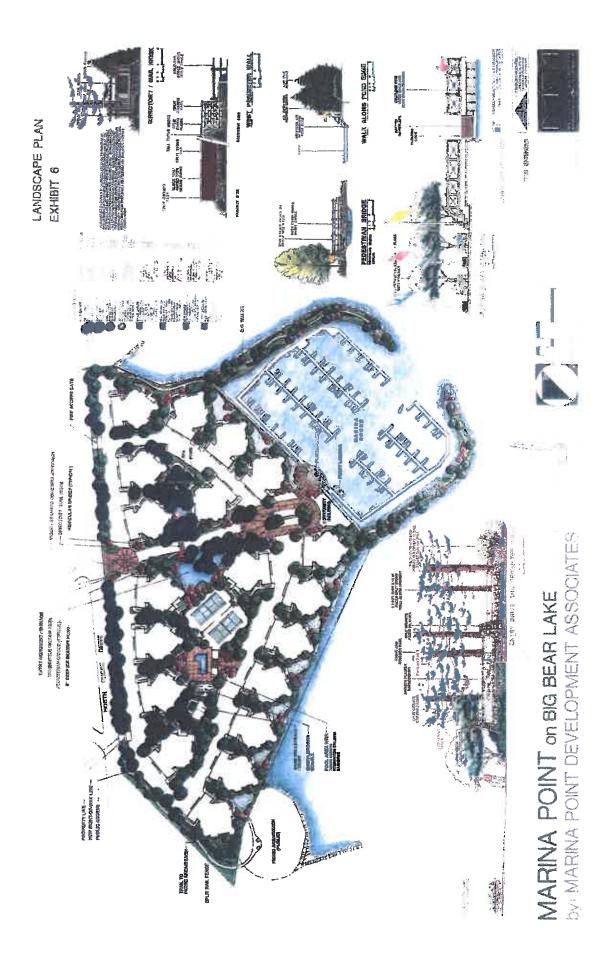


MARINA POINT on BIG BEAR LAKE

A DESTINATION RESORT COMMUNITY by MARINA POINT DEVELOPMENT ASSOCIATES

PRELIMINARY / FINAL DEVELOPMENT PLAN June 1991 County of San Bernardino

257 of 947



3.7.1.3 Schools

The project site is within the Bear Valley Unified School District

3.7.1.4 Fire Protection

The project area is served by the California Department of Forestry. The existing site, with little groundcover, scattered pines, and few permanent structures, poses a small fire hazard.

3.7.2 Impacts

3.7.2.1 Water Service

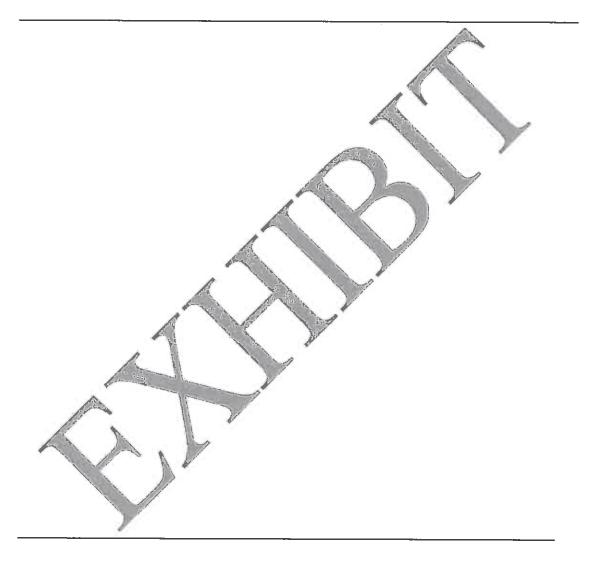
The project will require additional water from the Department of Water and Power for increased domestic uses and for irrigation of landscaping. The water required for domestic and landscaping uses will be supplied by the construction of an additional water storage tank and transmission line, as described in the Department of Water and Power's feasibility study. The actual location of the tank has not yet been determined.

The water for the on-site water features (pond and stream) will be taken from a well near the northwest property boundary No significant impacts are anticipated as a result of project implementation.

3.7.2.2 Sewer Service

The project will generate daily sewage, as does the existing development. CSA 53B has agreed to serve the project.

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LOS ANGELES DISTRICT U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY PERMIT

Permittee:	Marina Point Development Associates; Irv Okovita
Permit Number:	SPL-2010-00838-GS
Issuing Office:	Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To permanently discharge fill onto 0.09 acre(s) of non-wetland waters of the U.S. (montane riparian scrub), and to temporarily discharge fill onto 11.63 acre(s) of waters of the U.S., in association with the rehabilitation of the existing marina and adjacent boating channel, as shown on the attached drawings.

Specifically, you are authorized to:

1. Complete the shoreline protection along the east side of the Marina Point Property by undertaking the following actions:

(a) Install a temporary 190-foot long and 15-foot wide haul road (0.065 acre temporary impact) along the top of the proposed slopes on the east side of the drainage. The road is to be removed upon completion of the work;

(b) Replace and extend the existing 24" Caltrans pipe with an additional 35 LF of 48" pipe (0.009 acre impact) and replace the temporary quarry waste placed in February 2005 with a rip rap energy dissipater at the pipe outlet;

(c) Temporarily impact 1.05 acres of waters of the United States by grading the west bank and the east bank of the drainage leading to the Big Bear Lake to create a variable 2:1 to 5:1 slope, dredging 670 cubic yards of silt material and discharging 1,670 cubic yards of fill.

2. Dredge silt material from the inside of the existing marina to a depth of 6725 ft MSL with bottom dimensions of 260-feet by 400-feet; the removal of 41,655 cubic yards of

material; and discharge 3,270 cubic yards of fill material in order to reopen the marina to Big Bear Lake. Impacts include the permanent loss of function of 0.09 acres of montane riparian scrub. This work would temporarily impact 4.80 acres waters of the United States and includes:

(a) The removal of the rip rap and quarry waste placed on the outside of the jetties for temporary protection at the marina opening;

(b) Temporarily discharging 2,700 cubic yards of fill material onto the four sides of the slopes inside the marina, and discharging 2,630 cubic yards of quarry waste (8-inch-minus) rock on all slopes and 910 cubic yards of rip rap at the south entrance.

3. Temporarily discharge 830 cubic yards of fill material onto 0.26 acres of waters of the United States to complete the exterior sides of the marina jetties.

4. Dredge approximately 3,420 cubic yards of material to construct a 50-foot bottom width channel adjacent to the west shoreline of the Marina Point Property.

5. Discharge approximately 5,420 cubic yards of fill material to construct shoreline protection along the western side of the property, including the discharge of 211 cubic yards of quarry waste and 423 cubic yards of rip rap along 400 linear feet. This work includes the temporary discharge of fill material onto 0.065 acres of waters of the United States for the stabilization of the existing 15-foot wide by haul road, including installation of a temporary 24" drain pipe. The road and pipe will be removed upon completion of the work.

In addition, this permit provides after-the-fact authorization for the following actions:

6. Work undertaken by MPDA between September 10, 2002, and July 23, 2003 that involved the temporary discharge of fill material into 0.46 acres of waters of the United States for the removal of rock from the shoreline and the dredging of 7,925 cubic yards of silt from the lake bottom in the northwest corner of the project site that was excavated to a depth of 6725 ft MSL.

7. Work completed by MPDA under the ICMO dated October 16, 2003, which involved the temporary discharge of fill material into 2.90 acres of waters of the United States below the OHWM that consisted of: the dredging of 14,115 cubic yards of silt from the lake bottom around the marina jetties (the dredge was excavated to a depth of 6725ft MSL); creating a temporary desiltation basin by closing the marina; placing 4,225 cubic yards of fill to complete the slopes on the marina jetties and west shoreline; and placing 4980 cubic yards of quarry waste and rip rap on the outside of the marina jetties.

8. Work completed by MPDA under the ICMOs dated September 28, 2005 and November 18, 2005 that involved the temporary discharge of fill material into 1.30 acres of waters of the United States for stabilizing and installing erosion protection below the OHWM by: installing a temporary bench along the west shoreline by removing 3,000 cubic yards of previous fill; installing 280 cubic yards of crushed stone in a geo-cellular confinement.

Project Location: North shore of Big Bear Lake in the eastern portion of Grout Bay in the Community of Fawnskin, San Bernardino County, California.

Permit Conditions:

General Conditions:

1. The time limit for completing the authorized activity ends on March 16, 2017. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. Prior to initiating construction in waters of the U.S., and to mitigate for impacts to 0.09 acre montane riparian scrub non-wetland waters of the U.S., the Permittee shall provide documentation verifying purchase of 0.18 credits for the enhancement of wetlands, specifically "Invasive Removal and Ongoing Restoration," from the Sana Ana River Watershed Trust Fund for Arundo Eradication (SAWA) Corps-approved mitigation in-lieu fee program (ILFP). The

Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-mail) from the Corps Regulatory Division as to compliance with this special condition. The permittee retains responsibility for providing the compensatory mitigation until the number and resource type of credits described above have been secured from a sponsor and the district engineer has received documentation that confirms that the sponsor has accepted the responsibility for providing the required compensatory mitigation. This documentation may consist of a letter or form signed by the sponsor, with the permit number and a statement indicating the number and resource type of credits that have been secured from the sponsor.

2. Within 45 calendar days of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memo indicating the date authorized impacts to waters of the U.S. ceased. The memo shall include:

A) Summary of compliance status with each special condition of this permit;

B) One copy of "as built" drawings for the entire project (all sheets must be signed, dated, to-scale, and no larger than 11 x 17 inches).

3. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a complete set of final detailed grading/construction plans showing all work and structures in waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 21, 2009 (http://www.spl.usace.army.mil/regulatory/pn/SPL-RG map-drawing-standard final w-fig.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

PERMITTEE PRESIDENT, GENERAL PRATUES.

3/26/12 DATE

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

ñne -

21/2012

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

TRANSFEREE

DATE

LOS ANGELES DISTRICT U.S. ARMY CORPS OF ENGINEERS

NOTIFICATION OF COMMENCEMENT OF WORK FOR DEPARTMENT OF THE ARMY PERMIT

Permit Number:	SPL-2010-00838-GS
Name of Permittee: Date of Issuance:	Marina Point Development Associates; Iro Okovita
Date of Isoualice;	March 16, 2012

Date work in waters of the U.S. will comme	ence:
Estimated construction period (in weeks):	
Name & phone of contractor (if any):	
The second	

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that I, and the contractor (if applicable), have read and agree to comply with the terms and conditions of the above referenced permit.

Signature of Permittee

Date

At least ten (10) days prior to the commencement of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to: Gerardo.Salas@usace.army.mil OR

(2) FAX this certification, after signing, to: (213) 452-4196

OR

(3) MAIL to the following address:

U.S. Army Corps of Engineers Regulatory Division ATTN: CESPL-RG-SPL-2010-00838-GS LOS ANGELES DISTRICT CORPS OF ENGINEERS P.O. BOX 532711 LOS ANGELES, CALIFORNIA 90053-2325

LOS ANGELES DISTRICT U.S. ARMY CORPS OF ENGINEERS

NOTIFICATION OF COMPLETION OF WORK AND CERTIFICATION OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT

Name of Permittee:	SPL-2010-00838-GS Marina Point Development Associates; Irv Okovita March 16, 2012
--------------------	---

Date work in waters of the U.S. completed:	
Construction period (in weeks):	
Name & phone of contractor (if any):	
Firefield of contenector (it ally),	

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit.

Signature of Permittee

Date

Upon completion of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to: Gerardo.Salas@usace.army.mil OR

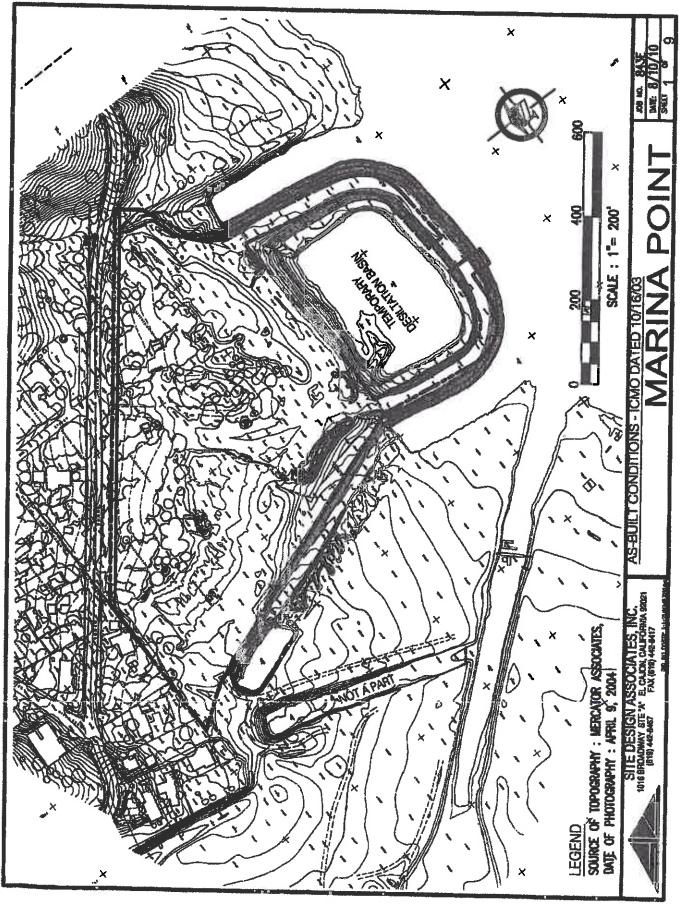
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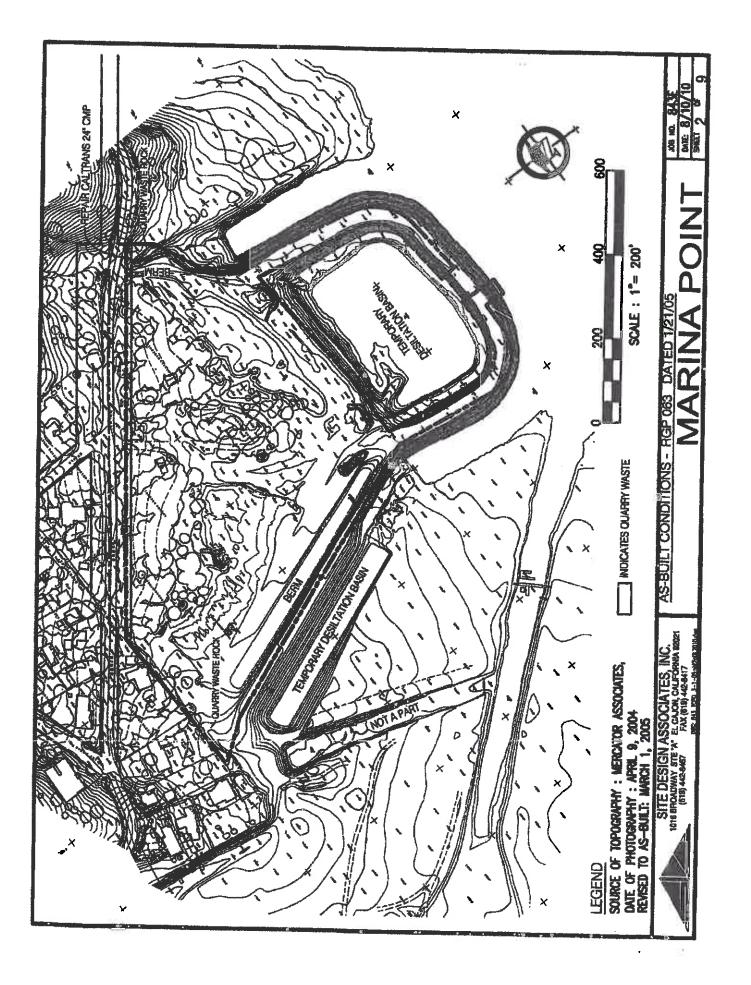
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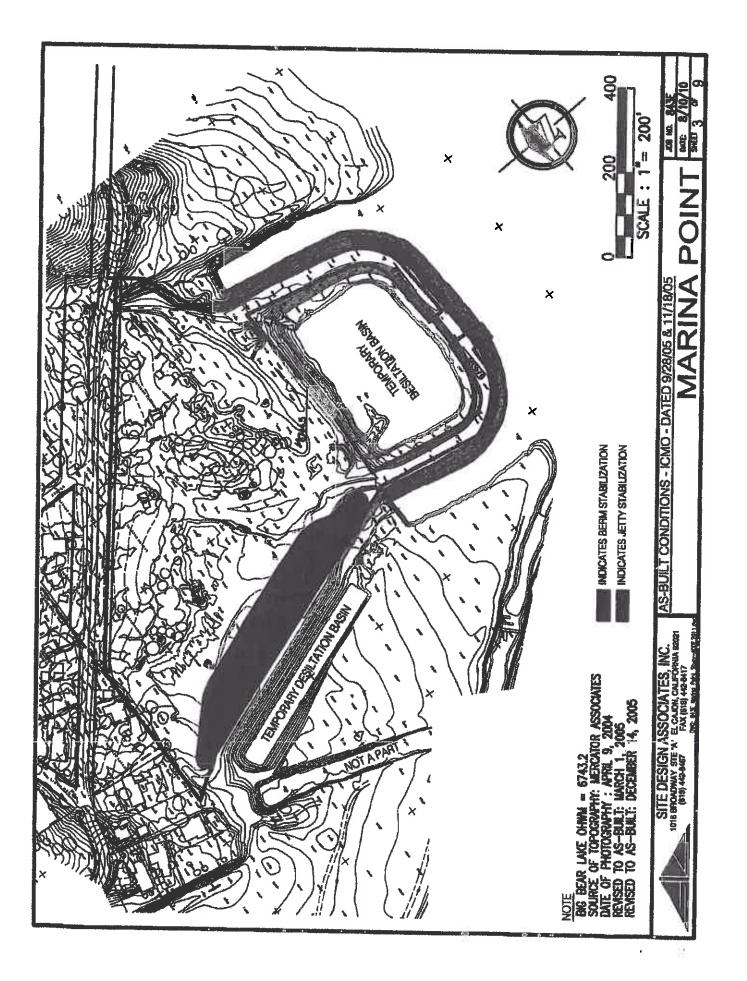
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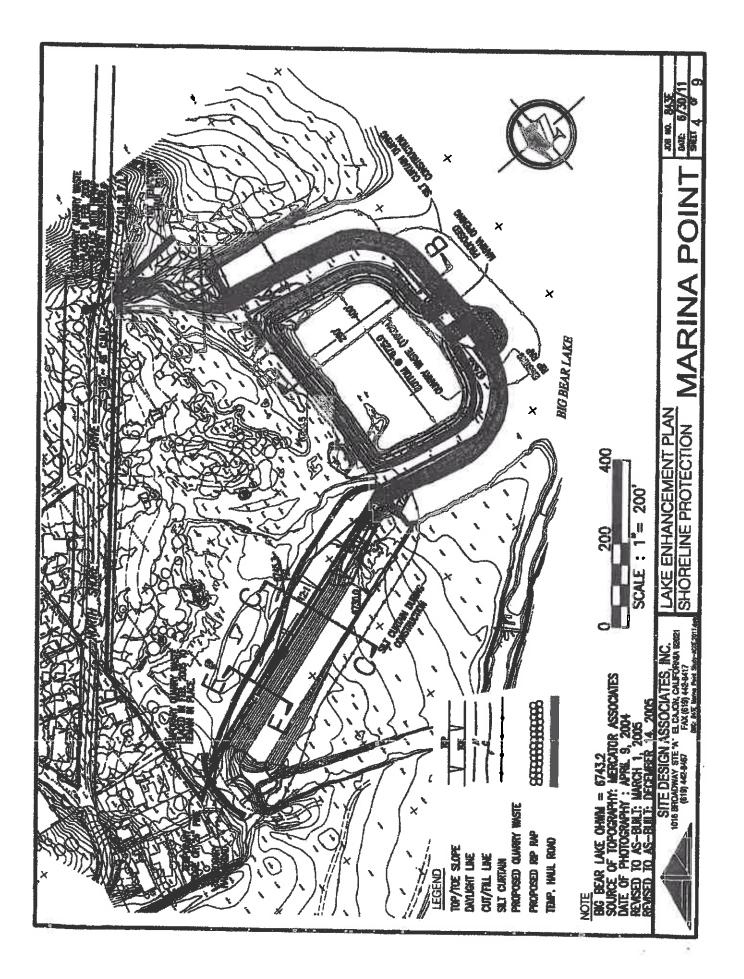
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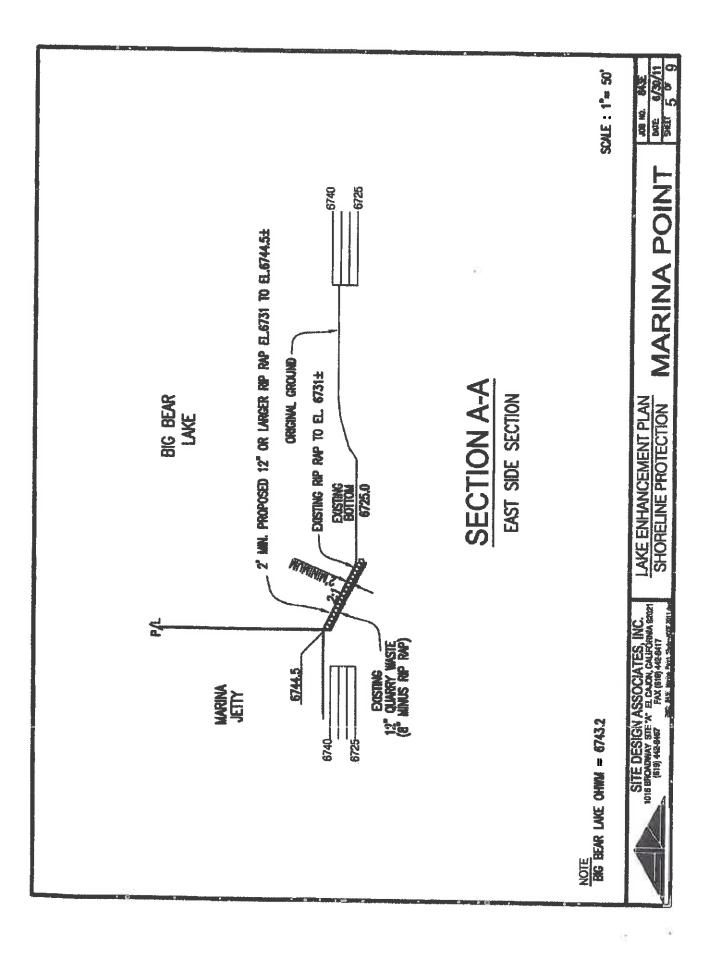
U.S. Army Corps of Engineers Regulatory Division ATTN: CESPL-RG-SPL-2010-00838-GS LOS ANGELES DISTRICT CORPS OF ENGINEERS P.O. BOX 532711 LOS ANGELES, CALIFORNIA 90053-2325

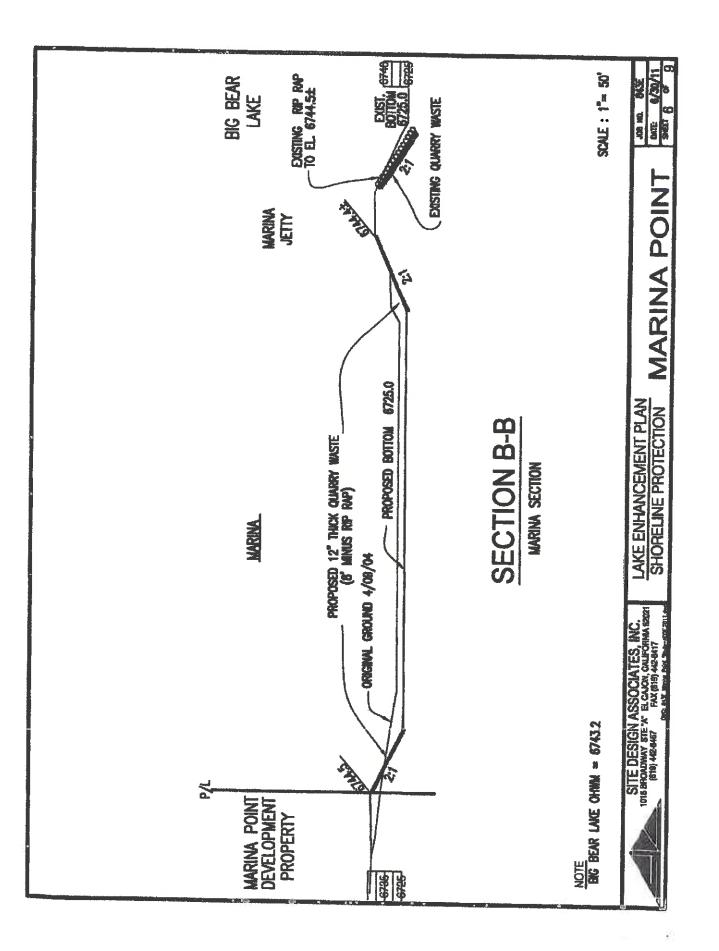


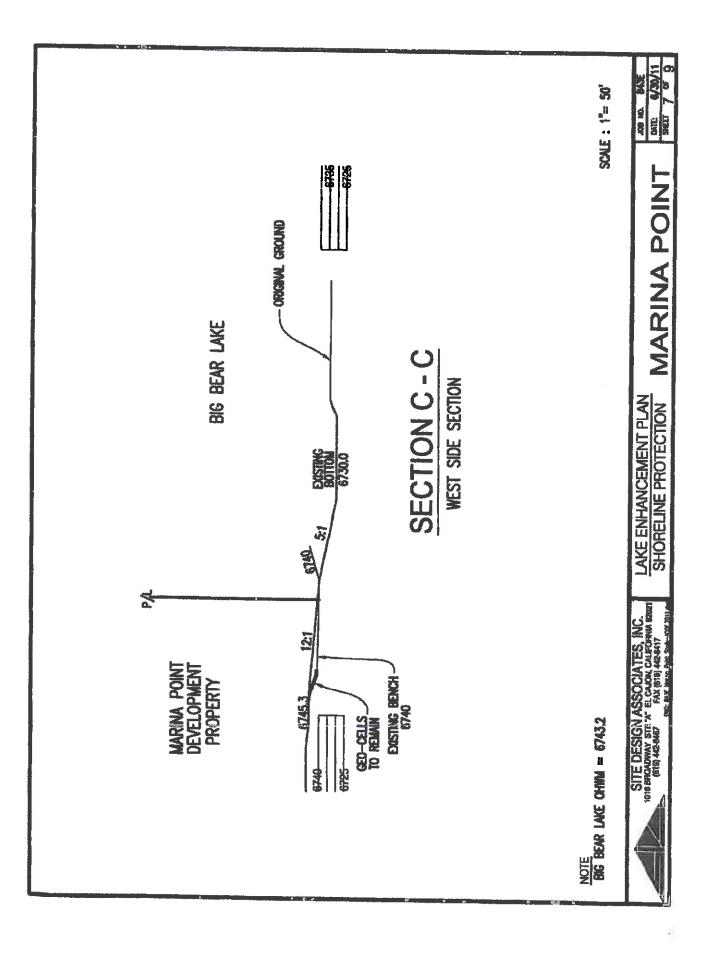




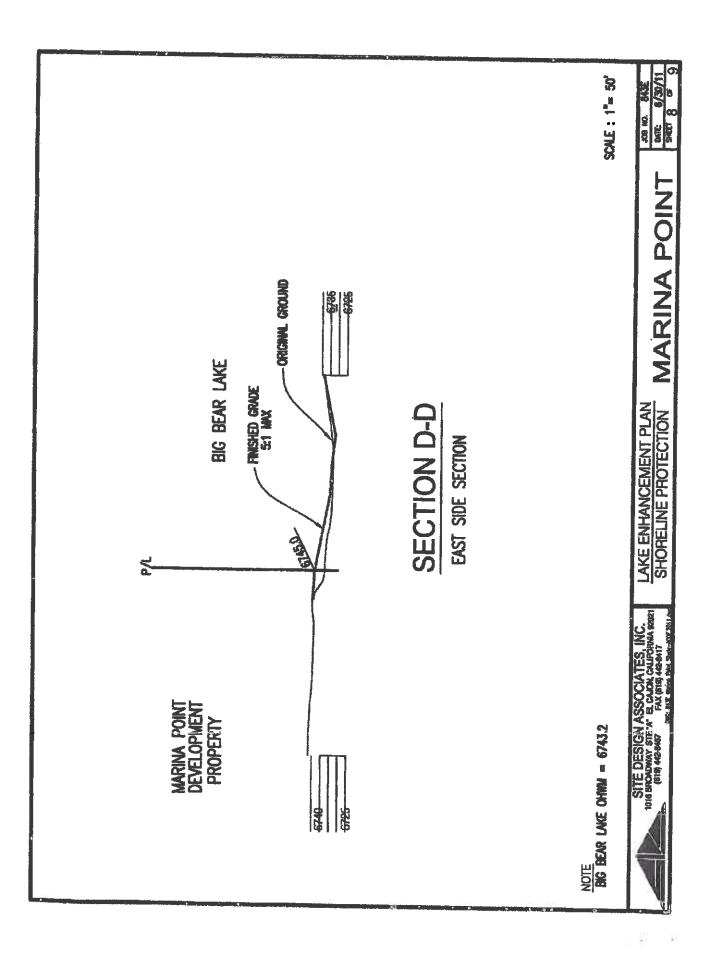








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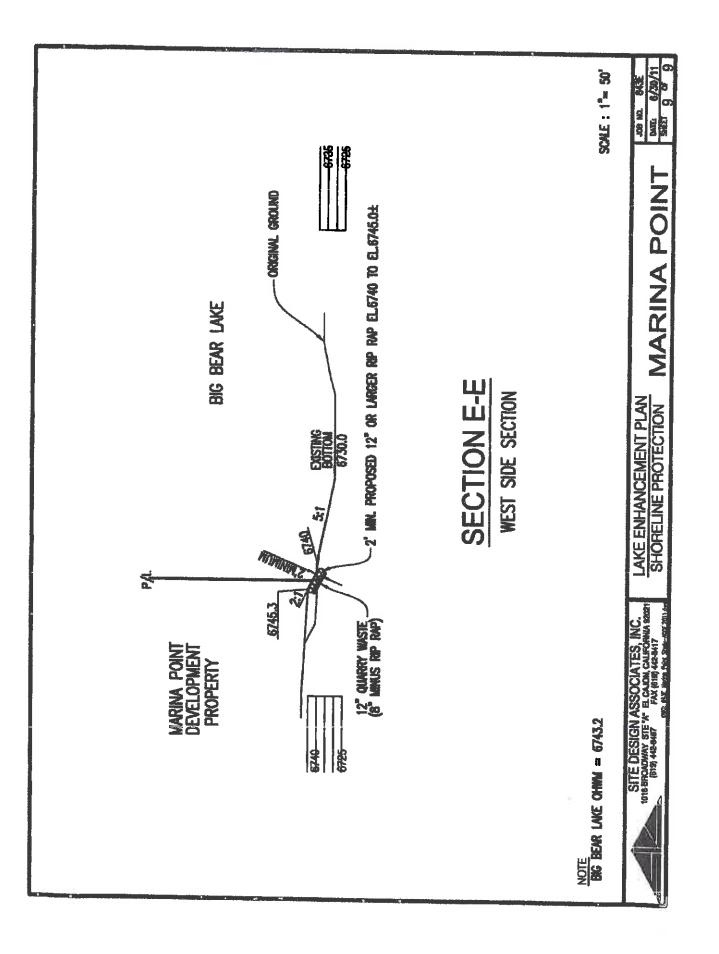


Exhibit 7



Exhibit 7

USDA



NEWS RELEASE

U.S. Forest Service, San Bernardino National Forest For Immediate Release Contact: John Miller at (909) 382-2788 Twitter: @sanbernardinonf

Great Day of Eagle Counting

San Bernardino, Calif., March 8, 2014 – On Saturday March 8th, the final bald eagle count of the winter was conducted by volunteer eagle observers and local Federal and State biologists around several lakes in the southern California.

A grand total of nine eagles (7 adults and 2 juveniles) were observed at the lake areas during the 1- hour count. Five bald eagles (4 adults and 1 juvenile) were observed at Big Bear Lake; 1 juvenile eagle at Lake Arrowhead; 2 adult eagles at Silverwood Lake; 1 adult eagle at Lake Hemet; 0 eagles at Lake Gregory and 0 at Lake Perris. Juvenile eagles are distinguished by a brown head and tail; adults are recognized by the famous white head and tail - it takes 4-5 years to acquire full adult coloration. Juvenile eagles are the same size as the adults.

Approximately 191 observers participated in the 1-hour eagle census (57 at Big Bear area, 20 at Lake Arrowhead/Lake Gregory, 68 at Silverwood Lake, 19 at Lake Hemet, and 37 at Lake Perris. The count coordinators from the Forest Service and State Recreation Areas would like to thank those volunteers for their dedication in getting up early and participating in the eagle census. The success of the eagle counts is entirely dependent on the volunteers! We've had a great season with fantastic turnouts of volunteers (and bald eagles)!

Bald eagle counts have been conducted at some of sites since 1978 and all of the sites have been participating since around 2000. Four monthly counts are conducted between December and March to estimate the number of bald eagles that are wintering in the area. The highest numbers are typically in February and March.

It was a beautiful day for spotting eagles and was a great way to end our winter eagle censuses. Many of the bald eagles have started migrating out of southern California, heading north to their breeding grounds. A few breeding pairs have set up nesting territories and are year-round residents. A pair of bald eagles is tending their nest at Lake Hemet. Big Bear Lake's nesting pair hatched two chicks in early February but, unfortunately, they did not survive last week's severe storm.

See websites for additional information about the San Bernardino National Forest (<u>http://www.fs.fed.us/r5/sanbernardino/) and the California State Recreation Areas</u>

(www.parks.ca.gov).

About the U.S. Forest Service:

The mission of the Forest Service is to sustain the health, diversity and productivity of the nation's forests and grasslands to meet the needs of present and future generations. The agency manages 193 million acres of public land, provides assistance to state and private landowners, and maintains the largest forestry research organization in the world. Public lands the Forest Service manages contribute more than \$13 billion to the economy each year through visitor spending alone. Those same lands provide 20 percent of the nation's clean water supply, a value estimated at \$7.2 billion per year. The agency has either a direct or indirect role in stewardship of about 80 percent of the 850 million forested acres within the U.S., of which 100 million acres are urban forests where most Americans live. Learn more at http://www.fs.usda.gov/sbnf

#

USDA is an equal opportunity provider and employer.

Background

The best time of year to see bald eagles in Southern California is during winter months when there is an influx of eagles. Migrating eagles typically begin arriving in the area in late November and leave in late March or early April.

Bald eagles are usually found close to water because their diet is primarily made up of fish and ducks. As winter approaches in those northern regions, lakes freeze over and waterfowl fly south. For bald eagles, that means that the food they eat has become scarce. So, they head south looking for areas with abundant food supplies and end up wintering in sunny southern California!

During the winter, southern California bald eagles are typically found at many of the lakes, including Big Bear Lake, Baldwin Lake, Silverwood Lake, Lake Arrowhead, Green Valley Lake, Grass Valley Lake in the San Bernardino Mountains and Prado Dam, Lake Perris, Lake Hemet, Lake Skinner, Diamond Valley Lake, Lake Matthews, and the Salton Sea to the south.

Through radio-tracking bald eagles, biologists learned that some of the same individual eagles return to the San Bernardino Mountains year after year. We also determined that there is a lot of movement of eagles between the different mountain lakes and that the lakes do not have distinctive separate populations—the eagles regularly move between the mountain lakes.

Radio-tracking and/or banding also revealed that the eagles that winter in the San Bernardino Mountains migrate to Southern California from Montana, Wyoming, Idaho, and Canada. Those regions are likely where most of our migratory bald eagles nest in spring and summer. Some of the San Bernardino Mountains' eagles were tracked all the way to Alberta and the Northwest Territories in Canada - that is about 2,000 miles one-way! For more information regarding bald eagle migratory routes for these and other California eagles go to the University of Santa Cruz Predatory Bird Research Group's web site at (<u>http://www2.ucsc.edu/scpbrg/baeamigration.htm</u>). While the evidence suggests a northem interior migration for most of the bald eagles, some of our southern California eagles have traveled fewer miles, moving over from the Channel Islands.

Breeding populations of bald eagles in Southern California were extirpated by the late 1950s. Until reintroduction efforts began in the 1980s on Catalina Island, the southernmost nest site known in California was in Lake County. Since 2003, several pairs of bald eagles have decided that our southern California neighborhoods were too nice to leave – they built nests and have successfully raised families. Nesting bald eagles can now be found at Lake Hemet, Lake Skinner, Lake Matthews, and Big Bear Lake. As the populations continue to grow, more bald eagles are in our future.

This is exactly what happened at Lake Hemet in Riverside County. The female eagle with orange wing tags "02" hatched at San Francisco Zoo in 2000 and was released on Catalina Island as part of the reintroduction efforts. In 2004, she arrived at Lake Hemet and decided to take up year-round residence with the male bald eagle that was already there. Together, the pair has raised successful nests over since then. In 2012, the first successful bald eagle nesting ever recorded in the San Bernardino Mountains happened in Big Bear Lake!

As bald eagles raise families in southern California, it is now possible to see bald eagles year-round (not just during winter migrations). Because of the influx of migrating bald eagles during the winter, the easiest time to see eagles is still between December and March.

The bald eagle is a success story of the federal Endangered Species Act – through protection under that law; its populations have recovered from the brink of extinction. Captive breeding programs, reintroduction efforts, the banning of DDT, and public education have all helped in the recovery of this species. There are over 10,000 breeding pairs in the United States and they now breed again in all 49 of the continental United States (they have never bred in Hawaii).

Because of the population rebound, bald eagles are no longer in jeopardy of going extinct. While bald eagles are no longer protected under federal Endangered Species Act, they still have full protection under the Bald Eagle Protection Act and under the State of California's Endangered Species Act. These laws make it illegal to harm or harass bald eagles. It is also illegal to possess bald eagle parts, even a feather.

Catching a glimpse of our breath-taking national symbol is relatively easy during winter months. There are some fantastic opportunities for excellent close-up photographs too. Just look in the tallest trees around the lake near open water for perching eagles. Or, if the lake is partly frozen, look for eagles perched on the ice near small groups of ducks using the open water.

If you want to look for eagles in the Big Bear area, stop by the Forest Service's Big Bear Discovery Center (on North Shore Drive, 1-1/2 miles west of Stanfield Cutoff) and pick up a handout on eagles. Also, join us for one of our free public talks – call the Big Bear Discovery Center (909-382-2790) for dates and times.

If you are in Garner Valley and want to see the resident pair, stop by the Forest Service's Lake Hemet Day Use Area and just look across the lake. The birds are often flying overhead fishermen and or sitting in trees above the picnic area.

Remember that human presence may distract or disturb the eagles - so, try to limit your movements and do not make loud noises when they're nearby. If possible, remain in your car while looking at eagles - the car acts as a blind. Stay a respectful distance of at least 200-300' away from perched bald eagles. Do not get closer than ¼ mile away nesting bald eagles – trying to get a closer look may result in eagles becoming agitated and knocking eggs or chicks out to the nest. It is illegal to harm or harass bald eagles. Please do your part to help protect our national bird!

Big Bear Lake & Bal Month Year	December	January	February	March	April	Average	High Count
1978 - 79	7	27	27	18	9	17.60	27
1979 - 80	20	22	13	11	3	13.80	22
1980 - 81	11	19	25	No Count	No Count	18.33	25
1981 - 82	15	27	22	6	3	14.60	27
1982 - 83	7	27	18	11	No Count	15.75	27
1983 - 84	14	28	18	10	No Count	17.50	.28
1984 - 85	27	8	3	3	No Count	10.25	27
1985 - 86	20	24	No Count	9	No Count	17.67	24
1986 - 87	20	24	No Count	9	No Count	17.67	24
1987 - 88	9	17	21	16	No Count	15.75	21
1988 - 89	12	6	4	12	No Count	8.50	12
1989 - 90	15	11	19	17	No Count	15.50	19
1990 - 91	6	16	22	17	No Count	15.25	22
1991 - 92	19	19	13	9	No Count	15.00	19
1992 - 93	6	15	3	3	No Count	6.75	15
1993 - 94	9	17	15	8	No Count	12.25	17
1994 - 95	10	10	20	No Count	No Count	13.33	20
1995 - 96	6	14	15	10	No Count	11.25	15
1996 - 97	10	15	5	9	No Count	9.75	15
1997 - 98	8	14 - 15	15	12	No Count	11.67	15
1998 - 99	8	17	15 - 17	9	No Count	11.33	17
1999 - 00	8	13	3	13	No Count	9.25	13
2000 - 01	13	13	14	12	No Count	13.00	14
2001 - 02	7	9	11	9	No Count	9.00	11
2002 - 03	6	13	15	9	No Count	10.75	15
2003 - 04	4	14	11	7	No Count	9.00	14
2004 - 05	6	1	4	5	No Count	4.00	6
2005 - 06	7	4	6	No Count	No Count	5.67	7
2006 - 07	4	8	5	5	No Count	5.50	8
2007 - 08	4	3	6	3	No Count	4.00	6
2008 - 09	No Count	6	No Count	5	No Count	5.50	6
2009 - 10	4	6	9	5	No Count	6.00	9
2010 - 2011	2	5	5	3	No Count	3.75	5
2011-2012	4	6-8	6	6	No Count	5.5-6	8
2012-2013	No Count	5	No Count	No Count	No Count	5*	5*
2013-2014	6	5	10	5	No Count	6.5	10
Monthly Average	9.9	13.4	11.9	8.6	5.00	11.1	16.3
Maximum						18.33	20
Minimum							

Exhibit 8



Exhibit 8



VU Study » Survival 🐘 Threats to Survival

Eagle Survival - Threats to Survival

DDT

DDT is an insecticide that has been widely used for pest control. The three letters come from the chemical name, *dichloro-diphenyl-trichloroethane*. This grayish-white powder kills insects by affecting the nervous system. DDT decays slowly and appears in the birds, fish, and animals that eat plants.

Some DDT never reaches the pest or insect that it is supposed to control. Small particles of DDT travel through the air and water. It is then absorbed in the organs and tissues of birds and animals. DDT is also taken indirectly when birds and fish eat organisms that contain the pesticide. DDT then passes from one organism to another through the food chain. A large fish can take in heavy amounts of DDT by eating smaller fish that have the material in their body. If a bird then eats the fish, the concentrated DDT is passed into the bird's body. This is an illustration of a food chain.

DDT has been used on a large scale. DDT has killed useful insects, as well as harmful ones. It may have also endangered other animal life, including birds and fish. Ingestion of pesticides such as DDT has disrupted the reproductive systems of female eagles, often causing their eggs to be infertile. The amount of calcium in the eggshells also becomes reduced, causing them to become thin and brittle and , consequently, to break during incubation.

DDT was banned in the United States in 1973. However, since it is used in Mexico, the effects of DDT are still being felt in the United States. Wind carries DDT across the man-made borders.

To learn more about DDT and other chemical pesticides, read the landmark book by Rachel Carson (1962) entitled *Silent Spring*.

Poisoning

Leadshot Poisoning - Throughout history baid eagles have been shot and killed by farmers, hunters, and profit-seekers. Though shooting continues to be a major problem for the baid eagle, recently a more subtle threat has surfaced. Lead poisoning has become one of the primary causes of death for baid eagles. This poisoning occurs when the baid eagle feeds off carrion (dead animals) that have been shot with lead bullets.

Through the process known as biomagnification or amplification the lead ingested by the bald eagle from feeding on carrion remains in the eagle's body and eventually accumulates to highly toxic levels. This process of accumulating large quantities of poison in the body is the same process that occurs with the chemical pesticide DDT which nearly caused the extinction of the bald eagle in the early 1960s. As with DDT, the bald eagle may not die immediately, but eventually suffers from the lethal effects of the lead poisoning.

The problem became so serious that legislation has been passed to prevent the use of lead shot. Particularly at risk are areas where the bald eagle winters. These areas tend to be popular duck and waterfowl hunting grounds.

For further information about the effects of lead poisoning on bald eagles and other raptors, visit the Raptor Center at the University of Minnesota.

Secondary Polsoning - In addition to leadshot poisoning, baid eagles often die from eating carrion that have been deliberately poisoned to attract undesirable predators. In a Spring, 1992 article from the Region 6: Fish & Wildlife News entitled, "Death in the Rockies," an account of the poisoning of wildlife such as baid eagles, birds, foxes, skunks, and even domesticated dogs and cats was reported.

Sheep farmers have traditionally put out polson to kill predators such as coyotes which are known to prey on sheep and lamb. However, many predators, including the coyote and the bald eagle, prefer to scavenge already dead prey and to save their energy when possible. As a result, farmers who resort to illegally poisoning dead animal carcasses have inadvertently killed other wildlife.

The poisons that are used are so strong that even a tiny bit can continue to kill third, fourth, and even fifth generations of non-targeted wildlife. In fact, reports of the death of children who have handled dead birds, killed by ingesting wildlife that had died from these deliberate poisonings, continue. This horrifying tradition of poisoning kills not only bald eagles, but humans as well.

Electrocution

Electrocution is among the top five causes of baid eagle deaths. A baid eagle perched upon a high-voltage power pole may inadvertantly touch the power source and the ground at the same time. When this happens, the bird is killed instantly. Baid eagles may also fly directly into power lines that are not visible in poor weather conditions.

Naturalists propose three suggestions for improving the safety of current power lines for bald eagles: removing the top crossbar to make them less attractive perch sites, installing a barrier to prevent the eagle from touching the ground and power source at the same time, and building artificial perches above the crossbar where electrocutions usually occur.

Poaching

As shocking as it may seem, poaching may still pose a danger for the baid eagle. Although federal law prohibits the shooting of eagles, as recently as 1989 between 20-60% of all eagles found dead had been shot. Since that time, educational programs seem to have created a greater awareness and support of our National Symbol."

Throughout its history the bald eagle has suffered persecution by farmers and landowners who suspect the bald eagle of preying on their livestock. At one time, people were rewarded with bounties for killing eagles and turning in their talons or body parts. This fear on the part of ranchers and livestock owners lives on and many eagle deaths still result from the actions of such irresponsible, uneducated people.

Some baid eagles are deliberately killed for their distinctive feathers. People pay large sums of money to

purchase authenic Indian crafts and artifacts which require eagle feathers. These crafts are sold in the Americas and Europe for high prices. For example, an Indian war bonnet may fetch over \$5,000 on the black market.

Often the juvenile bald eagle with its brown head is mistaken for a hawk and killed. Much more often, eagle shootings are deliberate.

In addition to shootings, bald eagles are often found caught in leg traps meant to capture other predators such as coyotes. Bald eagles will opportunistically feed off the trap bait or even off an animal already caught in the trap. The eagle becomes ensnared in a trap when seizing bait or approaching a nearby trap. Some eagles lose a leg or are otherwise crippled so that they become unable to fend for themselves in the wild.

Habitat Destruction

Today, even as the bald eagle population slowly recovers as people work together to restore the country's national symbol to its former status, new man-made threats continue to arise. The factor which most significantly affects the future of the bald eagle population is the destruction of its natural habitat. As the human population grows, the bald eagle population declines.

The most destructive human activity is the development of waterfront property. Because eagles depend on shoreline habitats and aquatic food sources, human development in these coveted areas poses the greatest threat to the bald eagle's survival. In addition, the cutting of "old growth forests" where bald eagles prefer to nest and perch has conflicted with the interests of people seeking lumber for housing and commercial products.

The sensitive issue of accomodating human needs and desires while at the same time preserving our wildlife resources can destroy communities. However, working together to come to reasonable agreements regarding the protection of wildlife can also have the opposite effect. At one time, only the bald eagle itself was protected by law. Today, the eagle's "critical habitat" is also protected, but only on public lands. Habitat management plans today call for groups of concerned citizens, agencies, and organizations to work together to reach common agreements regarding changes in the environment. Most habitat management plans concerning the bald eagle involve protecting nesting trees. Agreements which allow buffer zones around these sites have permitted human activity while preserving bald eagle nests. The most important weapon in the fight to save the bald eagle will be the education of and communication with people.

Predators

At the top of its food chain, the adult baid eagle has no natural predators. Unfortunately this does not mean that the bald eagle as a species faces no dangers. In fact, the mortality rate of eagle eggs, hatchlings, and first year juveniles is extremely high.

A wide variety of factors can contribute to the infertility of an eagle egg. A crow or raccoon may peck at the shell and crack it, leaving it open to bacteria or dried membranes. The parent eagles may be distracted and leave the egg unprotected from cold or heat. Since the egg needs a steady temperature of 99.5 degrees Fahrenheit to survive, an absence of less than a minute may cause death. Ingested poisons from leadshot or other contaminants may render the egg infertile.

The juvenile eagle faces as many threats. In fact, the first year of life of the bald eagle is its most dangerous.

The young eagle must learn to fly, hunt, and fend for itself in the wild. Without parental assistance, young eagles often fall prey to the same fate as older eagles: poisoning, shooting, electrocution, and even starvation.

In addition, man, knowingly or not, has become the bald eagle's greatest threat. Through the destruction of the bald eagle's natural habitat and the introduction of new chemicals into the environment, man unwittingly has severely harmed the bald eagle's chances of survival. Other irresponsible people deliberately kill or maim bald eagles.

By learning about what the bald eagle needs to survive and working together to prevent unnatural deaths, man can become the bald eagle's greatest support rather than its most threatening enemy.

Mortality Rate

For a large bird with no natural predators, the mortality or death rate of the bald eagle is quite high. The chances of a juvenile bald eagle surviving its first year of life today are less than 50%.

After that first year, the bald eagle stands a much better chance of living to its full lifespan, which is anywhere from 30-40 years in the wild. The mortality rate of the bald eagle fails to about 25% after the first year of life. The hazards of the wild are clear when one considers that a bald eagle raised in captivity may add an additional ten years to its lifetime.

As strange as it may seem, the bald eagle's long lifespan actually means that the greatest danger to the bald eagle is direct mortality rather than reproductive failure. The near extinction of the bald eagle due to the reproductive failure effects of the pesticide DDT has been widely documented. But many do not realize that long-lived bird populations suffer more from direct causes of death than from depressed reproduction.

Brought to you by the second and a second and a second and a second seco

Exhibit 9



Exhibit 9

By Tia Ghose, Staff Writer December 11, 2013 12:00pm ET 11 15 179 70 Submit Reddit	
SAN FRANCISCO — Wildfires may be the main culprit in the ho	SAN FRANCISCO — Wildfires in the western United States are getting worse, and human-caused climate change may be the main culprit in the hotter, more dangerous infernos, new research suggests.
"We're sceing an increase in fire activity," study co-author facets of fire activity," study co-author 10) here at the annual meeting of the <i>k</i> of the largest fires are all increasing."	"We're seeing an increase in fire activity across the western United States, and we're seeing it in many different facets of fire activity," study co-author Philip Dennison, a geographer at the University of Utah, said Tuesday (Dec. 10) here at the annual meeting of the American Geophysical Union. "Total area burned, number of fires and the size of the largest fires are all increasing."
Though Deranisori's study isn't th studies often looked at limited di country.	Though Deranison's study isn't the first to suggest that climate change may be fueling more <u>Western wildfires</u> , past studies often looked at limited data sets, ruled out private or public lands, or were limited to smaller regions of the country.
This photograph shows the Rim Fire burning in California at night on August 21, 2013 Credit: InciWeb <u>View full size image</u>	e.
Using data available from the Earth-observing <u>Landset</u> satellite, the team looked at all the Western fires that burned m That amounted to more than 6,000 fires.	team looked at all the Western fires that burned more than 1,000 acres (400 hectares) of both public and private land starting in 1984.
Across the West, in both grasslands and high mountain forests, wildfires seem to be getting worse, although there wer	lfires scem to be getting worse, although there were regional variations in how that increased fire activity appeared.
In Southern California, for instance, where nearly all wildfires are started by people (whether by arson or accident), the total number of ignitions didn't increase. But those must lended to become bleast, and the largest conflagrations are getting bigger, Dennison said. [Yesemite Aflants, Rtm Fire in Photos]	total number of ignitions didn't increase. But those this tended to become bleast.
In higher-elevation forests, infernos come earlier in the summer fire season, he said.	
Complex reasons	
In any given region, there may be complex reasons for exactly why fire behavior has changed. For instance, in Southe winds — may have fanned the flames, when as the <u>invasive species</u> cheatgrass may fuel forest fires in Colorado. In of fuels" that allow fire to ramp up easily, Deunison said.	fire behavior has changed. For instance, in Southern California, hotter, drier weather — combined with changes in the Santa Ana cheatgrass may fuel forest fires in Colorado. In other areas, closely packed trees overgrown with younger saplings may provide "ladde
The amount of data the researchers looked at is "too short to say for certain whether climate change is behind the trends we're seeing." Dennison told LiveScience.	s we're seeing," Dennison told LiveStrience.
But the trend seems to transcend regional conditions, ecosystem variations and fure-management practices, suggesting that larger climatic factors are at play.	that larger climatic factors are at play.
To tease that out, Dennison and his colleagues looked at drought severity and temperature. In general, the Western region of the United States was getting hotter and drier during the same period, suggesting that the climatic changes associated with greenhouse-gas emissions are likely one of the culprits in worsening wildfires.	ion of the United States was getting hotter and drier during the same period, ng wildfires.
Despite the broad, regional trend, the strategies for fighting wildfires will likely be different in each ecosystem. Fighting the worsening infernos will likely involve combating invasive species like cheatgrass, thinning forests in some areas and only suppressing fires that threaten valuable life or property, Denuison said.	ig the worsening infernos will likely involve combating invasive species like aid.

Climate Change May Be Worsening Western Wildfires

Follow Tia Ghose on <u>Twitter</u> and <u>Google+</u>. Follow us <u>altrescience</u>, Facebook & Google+. Original article on Line Science.

"There's no one strategy that will work for all fire regimes," Dennison said.

Exhibit 10



Exhibit 10

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Big Bear Lake TMDL Task Force

The Big Bear Lake nutrient TMDL Task Force addresses water quality in Big Bear Lake and its surrounding watershed. This Task Force effort was initiated by SAWPA in September 2007 in response to the Santa Ana Regional Water Quality Control Board formally adopting nutrient TMDLs for Big Bear Lake through Resolution No.R8-2006-0023. The TMDL task force works together with stakeholders and the Regional Board to implement a number of actions required in the Basin Plan Amendment

Geographic Setting Background Stakeholder Effort Resources Monitoring Program

Big Bear Lake



Big Bear Lake, located in the San Bernardino Mountains, was created by the construction of the Bear Valley Dam in 1884. The lake supports many different beneficial uses. Among the most important are irrigated agriculture, water contact recreation and freshwater

habitat for both cold and warm-water species.

The Lake has a surface area of approximately 3,000 acres, a storage capacity of 73,320 acre-ft and an average depth of 24 feet. The lake reaches its deepest point of 72 feet at the dam. The Big Bear Lake drainage basin encompasses 37 square miles and includes more than 10 streams.

Local stream runoff and precipitation on the Lake are the sole source of water supple to the Lake. The major inflows to the lake are creeks, including Rathbone Creek, Summit Creek and Grout Creek. Outflow from the Lake is the Bear Creek, which is a tributary to the Santa Ana River at about the 4,000-foot elevation level. Water from Big Bear Lake flows thru the dam, down Bear Creek and into the Santa Ana River above Seven Oaks Dam. Along the way, it is used to generate hydroelectric power, recharge groundwater basins and, ultimately, to supplement municipal drinking water supplies in the Inland Empire.

For further information about this project, please contact

Rick Whetsel

Upcoming Events

April 15: 2014 9:30 am Commission Mtg Riverside, CA United States

April 15, 2014 1.30 pm JOINT MSAR THIDL/Stormwater Quality Task Force Meeting Riverside, CA United States

April 16, 2014 9:30 am Basin Monitoring Program Task Force Riverside, CA United State:

April 18, 2014 1:30 pm LE/CL TMDL Task Force Meeting Riverside, CA United States

May 8, 2014 9:00 am Southern California Salinity Cosition Meeting Riverside, CA United States

View All Events

the dam. The Big Bear Lake drainage basin e 37 square miles and includes more than 10 st Local stream runoff and precipitation on the L sole source of water supple to the Lake. The i to the lake are creeks, including Rathbone Cr Creek and Grout Creek. Outflow from the Lak Creek, which is a tributary to the Santa App P

Exhibit 11



Exhibit 11

2 3 4 5 6	LAW OFFICE OF ANTHONY KORNAREN Anthony Kornarens, Esq. (SBN 119940) 2907 Stanford Avenue Marina del Rey, CA 90292 Telephone: 310-458-6580 Facsimile: 310-230-5104 Attorney for Plaintiff Gary J. Polizzi							
7 8	SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT							
9								
10	Gary J. Polizzi,	Case No.:						
11	Plaintiff,							
12		COMPLAINT FOR:						
13	VS.) (1) DECLARATORY RELIEF;) (2) VIOLATIONS OF UNFAIR COMPETITION ACT:						
14	Marina Point Development Associates, a	COMPETITION ACT; (3) DECLARATORY RELIEF;						
15	California General Partnership; Irving Okovita and Olivia Okovita, Co-Trustees of	(4) TRESPASS; (5) NUISANCE;						
17	the Okovita Irrevocable Family Trust; Oko Investments, Inc.; a California corporation; Bana Management Corporation, Northshore Development Associates, L.P., Irving Okovita and Does 1 through 20, inclusive,	 (6) NEGLIGENCE; (7) VIOLATION OF RECIPROCAL COVENANTS; AND (8) LACK OF LATERAL AND ADJACENT SUPPORT 						
19	Defendants.							
20	Borondullas.	}						
21	Gary J. Polizzi ("Polizzi") on beha	lf of himself as to all causes of action and on						
22	also behalf of the general public with resp	ect to the first and second causes of action						
23	alleges in this Complaint as follows:							
24								
25								
26								
27								
28	2. Defendant Marina Point Developmen	nt Associates, at all times relevant was and is a						
	California General Partnership. Said Defendant is a partial owner and developer of the project							
	COMPLAINT							
	294 of 947							

in Fawnskin, known as Marina Point, a portion of which is directly adjacent to the real 1 property commonly known as 39495 North Shore Drive, Fawnskin, Big Bear, California. The 2 property includes Lots 1 through 6, and B of Tract No. 122171 in the County of San 3 Bernardino, State of California, as per map recorded in book 280, pages 42 through 47, 4 5 inclusive of maps, in the office of the county recorder of said county, but subject to the various 6 encumbrances of record and further subject to the fact that Defendants' predecessors in interest 7 quitclaimed all areas below the level known as the seventy-two and four-tenths (72.4) contour 8 line. 9

3. Defendants Irving Okovita and Olivia Okovita, at all times relevant were and are Co Trustees of the Okovita Irrevocable Family Trust. Said Defendant is a partial owner and/or
 developer and/or manager of the project in Fawnskin, known as Marina Point, a portion of
 which is directly adjacent to the real property commonly known as 39495 North Shore Drive,
 Fawnskin, Big Bear, California.

4. Defendant Oko Investments, Inc. at all times relevant was and is a California
 Corporation. As indicated in public records, the principal of defendant Oko Investments, Inc. is
 defendant Irving Okovita. Said Defendant is a partial owner and/or developer and/or manager
 of the project in Fawnskin, known as Marina Point, a portion of which is directly adjacent to
 the real property commonly known as 39495 North Shore Drive, Fawnskin, Big Bear,
 California.

5. Defendant Northshore Development Associates, L.P., at all times relevant was and is
a California General Partnership. Said Defendant is a partial owner and/or developer and/or
manager of the project in Fawnskin, known as Marina Point, a portion of which is directly
adjacent to the real property commonly known as 39495 North Shore Drive, Fawnskin, Big
Bear, California.

Defendant Bana Management Corporation, at all times relevant was and is a
 corporation doing business in California. Said Defendant is a partial owner and/or developer

1

and/or manager of the project in Fawnskin, known as Marina Point, a portion of which is
 directly adjacent to the real property commonly known as 39495 North Shore Drive,
 Fawnskin, Big Bear, California.

7. Defendant Irving Okovita ("Okovita"), at all times relevant was and is an individual.
Polizzi alleges on information and belief that during part or all of the time of the unlawful
events that Plaintiff Polizzi identifies in this Complaint, defendant Okovita was either a
partner, or agent or associate of the other defendant landowners and developers and, as such,
participated and actively assisted in the unlawful acts alleged in this Complaint.

10 Polizzi does not know the true names of defendants identified and sued in this 8. 11 Complaint as Does 1 through 20. Polizzi alleges that Does 1 through 20 are responsible in part 12 or were the agents, employers, partners or participants in the wrongful acts alleged in this 13 Complaint, and were therefore responsible for the harm as alleged in this Complaint. Polizzi 14 will seek leave of the Court to amend this Complaint to identify the true names and capacities 15 16 of Defendant Does 1 through 20, when Polizzi identifies their true identities. Polizzi sues Doe 17 defendants 1 through 20 pursuant to C.C.P. §474. Each of the Defendants identified above are 18 sometimes collectively referred to hereinafter as "Defendants" or "the Developer." 19

9. In 2004, Polizzi acquired the property located at 39495 North Shore Drive, Fawnskin, 20Big Bear, California. The property consists of two adjoining lots which have since been 21 combined into a single parcel. The structure on the property was built in 1966. At or about the 22 23 time the structure was built, a chain link fence was built along the rear lot line of the lot closest 24 to Big Bear Lake, directly adjacent to the property now owned by the Developer. On the west 25 side of the rear fence there was built double swinging gates that are approximately 12 feet 26 wide. The function of the gates was to give Polizzi and his predecessors in interest full access 27 to Big Bear Lake and non-exclusive use of the adjoining property. That access was achieved by 28

¹ openly and notoriously using those portions of the adjoining two lots which are now owned by
 ² the Developer for the purposes next described.

3

Polizzi as the owner of the 39495 North Shore Drive property has a non-exclusive 10. 4 prescriptive easement to use the Developer's property over which an easement is claimed. 5 Without limitation, Mr. Polizzi holds a non-exclusive prescriptive easement in those portions 6 of the Developer's property contained in the areas identified as Lot One and Lot Two and 7 8 portions of the area that is the subject of what appears to be a 20 foot wide easement for lake 9 access, open space, drainage, utilities and private loads and to access the portion of the 10 property that the Developer intends to cut-off from the land by dredging a portion of Big Bear 11 Lake. 12

11. Polizzi's frequent and regular uses of the adjoining lots for more than the past nine
years have included: walks, hiking, birdwatching, enjoying the wildlife at the water's edge,
launching canoes, swimming, engaging in all lawful water activities (including boat launching
in accordance with the laws at the time).

17 12. The elements of a prescriptive easement are present here. The 39495 North Shore
 18 Drive property openly, notoriously and continuously used a portion of the Developer's
 19 property for which Polizzi claims an easement for well over the minimum five years required
 20 to establish the easement.

13. Specifically, based on long standing use, the non-exclusive easement by prescription
gave the owner of the 39495 North Shore Drive property the right to use the Developer's
portion of an approximate twenty-five foot wide area starting from the corner of the back lot of
39495 North Shore Drive (where the double gates are) and for over the past five years (due to
the dry hydrological conditions) extending all the way to what has now been made into an
island in Big Bear Lake by the Developer's recent dredging. Even when the lake was higher,
Polizzi's non-exclusive prescriptive easement allowed him direct access to what is identified

on the map attached as part of Exhibit A as Lots One though Three and to the area that the
 Developer's dredging will soon make into a permanent island.

3

14. Polizzi regularly and continuously used that non-exclusive prescriptive easement for
recreational purposes and to access Big Bear Lake and the surrounding lakebottom land (some
of which have already been destroyed by the Developer's recent actions).

7 15. Polizzi's use of all of the Developer's property over which he claims an easement
8 was open and notorious, continuous, and adverse for well in excess of the required five years.

9 16. Given the double rear gate at that back of the Property, Polizzi is informed and
10 believes and thereon alleges that his predecessors also had a non-exclusive prescriptive
11 easement. However, Polizzi personally has met the elements of a prescriptive easement for
12 more than nine years, which is well in excess of the five years use needed to establish a
14 prescriptive easement.

15 17. Beginning in November 2013, events have occurred that irreparably threaten
 16 Polizzi's ability to use his non-exclusive easement and which otherwise will cause imminent
 17 and long-term harm to Polizzi and to others as herein alleged.

18 18. Specifically, as alleged in greater detail hereinafter, extensive grading and filling
 directly behind Polizzi's property occurred beginning in November 2013 and a massive trench
 directly adjacent to Polizzi's property was excavated without any prior notice to Polizzi, in
 violation of *Civil Code* section 832.

19. Defendants have engaged in these actions with full knowledge of Polizzi's easement
non-exclusive prescriptive easement. Without limitation, Defendants have at all times been
aware of the 12 foot gate that has been on the rear of Polizzi's property for decades that opens
directly onto the Developer's property. Moreover, as alleged in greater detail, without
providing any specifics, Defendants have dismissed Polizzi's detailed stated written concerns

and assertions of his rights as "baseless" and characterized them as threats of "frivolous"
 litigation.

3 20. These events have taken place in a broader context; specifically, the approval and 4 intended construction of a major new – and controversial – lakefront marina and residential 5 development in Fawnskin that involves a major reconfiguration of the land adjoining the lake. 6 This is the subject of a number of reported opinions, including Center for Biological Div. v. 7 8 Marina Point, et al. (9th Cir. 2009) 566 F.3d 794, which reversed on grounds of inadequate 9 notice and mootness the lower court's determination that certain defendants herein violated the 10 Federal Clean Water Act (inadequate notice) and the Endangered Species Act (mootness), but 11 which did not disturb the District Court's findings of fact. 12

21. The project also involves the raising of the elevations of properties over which
 Polizzi claims easement rights (including by transferring fill to lakebottom land adjoining
 Polizzi's property, some of which lakebottom land is not even owned by the Developer) and
 the construction of a six foot high wall that will prevent Polizzi from accessing the Developer's
 properties over which Polizzi holds a non-exclusive prescriptive easement, as alleged in greater
 detail hereinafter.

22. The issues raised in this state law complaint implicate California's strong public
 21 policy encouraging preservation of open spaces in their natural condition and the design and
 22 implementation of appropriate pollution control measures for Big Bear Lake.

23 23. Big Bear Lake has been identified as impaired by the EPA and is subject to
24 numerous plans and requirements. The Regional Board has listed Big Bear Lake as water
25 quality limited in accordance with the Clean Water Act. Section 303(d) of the Clean Water Act
26 requires the establishment of a Total Maximum Daily Load (TMDL) for the pollutants causing
27 the impairment. State law requires an implementation plan and schedule to ensure that the
28 TMDL is met and that compliance with water quality standards is achieved. Given the complex

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nature of Big Bear Lake and its impaired condition, the implementation plan for Big Bear Lake
 specifies the development of a Lake Management Plan to address competing uses, nutrient
 reduction strategies and other plans to control nutrient discharges and aquatic plants as
 appropriate. Construction and land development have been identified as a probable source
 contributing to the impairment of Big Bear Lake.

7 24. As well, a complicating factor is that the Santa Ana River Basin (of which Big Bear
 8 Lake forms a significant component) has been suffering from dry hydrological conditions (that
 9 is, a prolonged drought) for many years. This has been so significant as to resulted in a
 10 federally approved amendment to the Nutrient TMDL Daily Load (TMDL) to take into account
 11 the Dry Hydrological Conditions for Big Bear Lake.

25. The effects of these dry hydrological conditions on the property at issue in this
 dispute may have contributed to the Developer's wrongful acts against Polizzi and the general
 public. Specifically, as to Polizzi, the Developer's threatened actions, unless mitigated or
 modified, will convert what has effectively been a lake front property owned and enjoyed by
 Polizzi for the past ten years into a far less valuable land-locked property.

18 26. Moreover, as Defendants know, a portion of the Property that the Developer is 19 modifying under an incorrect claim of ownership or improper exercise of dominion and control 20 lies below the mean high water mark of Big Bear Lake and thus is subject to flooding and 21 inundation of waters of Big Bear Lake, which are subject to change periodically through the 22 23 year due to weather conditions and run off of storm waters and snow fall from adjoining 24 property. Plaintiff is informed and believes and thereon alleges that this is why the Developer 25 is attempting to raise a portion of the Property in violation the rights of Polizzi, the rights of the 26 general public and the rights of the Big Bear Municipal Water District, during a time when Big 27 Bear Lake is at a low point, almost eight feet below its normal level. 28

1 27. Defendants' actions and their desire to maximize the value of the project conflict with 2 the personal rights of Polizzi, both as the owner of adjoining parcels and as the holder of a non-3 exclusive prescriptive easement to portions of the property identified as Lots One and Two and 4 portions of the area that is the subject of what appears to be a 20 foot wide public access 6 easement.

7 28. Defendants' actions also conflict with the rights of the general public and of the Big 8 Bear Municipal Water District (which is responsible for the overall management of Big Bear 9 Lake on behalf of the public and which purchased the lake bottom in 1977) as alleged herein. 10 29. Defendants' current development plans involve constructing a six foot high retainer 11 wall along the length of the lake access and open space easement that is closest to Big Bear 12 Lake where the lake is closet to Polizzi's property. According to the Developer, this was 13 required as a precondition to raising the height of the Developer's property (including Lots 14 One through Three). Plaintiff is informed and believes and thereon alleges that this is due to 15 16 the fact that the Developer could not obtain permission to utilize the entirety of the lots because 17 they are frequently flooded with lake water and run-off from the mountains at their pre-18 development level. At minimum, having lots that are in flood area would increase the costs to 19 insure the structures that will be built on them and impair their marketability and value. Also, 20as alleged hereinafter, Polizzi is informed and thereon alleges that Defendants are also 21 engaging in these activities on property that is, in fact, lakebottom land and property that is not 22 23 owned by Defendants.

30. In other words, both a portion of the Defendants' Property in its current state and a
 portion of the lakebottom acres that Defendants are exploiting are not buildable or reasonably
 insurable or even colorably marketable unless significantly elevated.

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31. Defendants' desire to maximize profits by raising the height of the Lots One through
 Three will violate Polizzi's personal rights in at least four respects, which are briefly
 summarized below.

32. Defendants' elevation of Lots One and Three and the infill of lakebottom acres as
alleged herein will also probably result in future serious personal injury claims for which the
Developer and the Developer's successors will be liable.

33. *First*, since the planned wall and the elevation of Lots One and Two stretches all the
way to the portion of the lake shore located to the south, Mr. Polizzi will no longer be able to
use most of the area that is subject to non-exclusive prescriptive easement, if only for the
simple reason that his access to much of the easement area will be blocked by the wall.

34. Second, no matter what the height of Big Bear Lake is, the prescriptive easement 13 ensured that Polizzi always would have direct access to Big Bear Lake, no matter what the 14 hydrological conditions were. This effectively gave Polizzi's home the amenities of a lake front 15 16 property, even though his legal lot line does not extend to the lake. Under the current 17 development plan, water will be channeled into the area of the easement which will often 18 prevent Polizzi from accessing Big Bear Lake and the properties adjoining the Lake over which 19 Polizzi and his predecessors held non-exclusive prescriptive rights. Although Big Bear Lake is 20low now due to the prolonged dry hydrological conditions, the lake at its normal levels extends 21 22 much further back than it is presently. This is confirmed by the photographs attached as a part 23 of Exhibit A. These photographs show not only the gates described above, but also demonstrate 24 that traversable water which is a part of or which directly flows into the Lake at certain times 25 of the year extends directly to the edge of Polizzi's property. The Developer's actions will 26 eliminate this. Instead, flowing run-off water will be directed onto Mr. Polizzi's property by 27 he Developer's actions. This will be further exacerbated when lake levels return more to 28 normal. However, no matter what the water level is, Polizzi's lake access will be impaired.

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35. Since the development plan entails raising the level of Lots One through Three and
 building a wall so that it no longer floods, these actions will certainly cause far greater amounts
 of water to be diverted into the easement area (both portions of the prescriptive easement area
 and the lake access/open space easement area); thereby impacting Polizzi's use of both the
 prescriptive easement and the lake access/open space casement and the public's use [including
 Polizzi] of the lake access/open space easement.

8 36. As the later point, a flooded or even a muddy channel will not provide the public with 9 proper or safe access to the "public beach" that the Developer has promised to be involved in 10 creating. Even if the dry hydrological conditions persist for a few more years, the Developer's 11 elevation of Lots One through Three and construction of the wall will make it inevitable that 12 the lake access/open space easement leading to the public beach will become impassable or, at 13 minimum, impaired or injured well beyond its current points. After all, the water will need 14 15 somewhere to go. As a practical matter, the water will head to the lowest point. In other words, 16 the very concern that is causing the Developer to raise Lots One through Three and to construct 17 the wall threatens to impair the easements. Defendants' action are creating these unsafe 18 conditions. 19

37. Without limitation, the run-off water no longer will be able to course across Lot One 20 and into the lake. This is shown by the watercourse in the photograph that is depicted on the 21 22 what is planned to be the elevated Lot One, as well as by the rocks that have been deposited in 23 that area. If the project is built as currently planned, the water will be diverted into a narrow 24 channel that does not exceed twenty feet, which is well below the grade of the developed 25 project and discharged through a much smaller opening. The increased water in the area will 26 inevitably result in both flooding and diminish (and, at times, eliminate) Mr. Polizzi's ability to 27 use any of the easement area. This is in addition to the fact that the wall will prevent Mr. 28

Polizzi from accessing the non-exclusive prescriptive easement area no matter what the
 hydrological conditions in the area are.

38. *Third*, the diversion of water will into the easement area will also result in significant
amounts of water being diverted onto Mr. Polizzi's property, whether that be run-off water or
lake water. The elevation of the Developer's land and the construction of the retaining wall to
direct water away from the Developer's land will certainly cause far greater flooding of
portions of Mr. Polizzi's property, thereby giving rise to a right of action by Mr. Polizzi against
the Developer and any subsequent owner of, at minimum, Lot One and perhaps Lots Two and
Three.

11 39. Fourth, to the extent that Polizzi takes action to mitigate the risks created by the 12 Developer (such as by building a wall along the back boundary of his property to keep the 13 increased flow of water from flooding his lot), he, too, could potentially be accused along with 14 the Developer and the Developer's successors in interest (the ultimate purchasers of Lots One 15 16 through Three) of impairing the lake access/open space easement and contributing to a 17 hazardous condition in the lake access easement that will almost certainly result in a member of 18 the public suffering a serious personal injury in the future. Put simply, the Developer's actions 19 will cause far more water to be directed into and remain in this easement area (and Mr. 20 Polizzi's property) than if the lots were not raised and the wall not built. 21

40. Through counsel, Polizzi sent a letter to Defendants dated November 29, 2013 which
constituted formal written notice to the Developer of Polizzi's non-prescriptive easement and a
formal demand that the Developer immediately cease and desist any actions that would
threaten to impair the easement, including, without limitation, constructing the wall. The
November 29, 2013 letter also discussed some of Polizzi's concerns regarding the project and
how it could impact the adjoining lands and Big Bear Lake. A true and correct copy of this
letter is attached hereto as Exhibit A.

41. Defendants did not substantively respond to this letter. As result, Plaintiff through counsel sent a follow up letter dated December 10, 2013. A true and correct copy of this letter is attached hereto as Exhibit B.

4 42. Defendants' elevation of Lots One and Three and the infill of lakebottom acres as
5 alleged herein will also violate the rights of the general public and the rights of the Big Bear
6 Municipal Water District.

7 43. Without limitation, Polizzi is informed and believes and thereon alleges that raising 8 the elevations of the Property will also result in encroachments in areas below the level known 9 as the seventy-two and four-tenths (72.4) contour line that is not owned by the Developer. 10Polizzi is further informed and believes and thereon alleges that the Developer's threatened 11 12 and/or intended actions will impair the separate "easement along the high water line of Big 13 Bear Lake, twenty feet in width, measured from the said high water line inland, solely for such 14 purposes, reasonably related to the ownership and management of said lake..." that is held by 15 the Bear Valley Mutual Water Company, the successor to whom is the Big Bear Mutual Water 16 District. 17

44. Per the 1938 CC & R's and deed, the 72.4 contour line is meant to describe when Big 18 Bear Lake is "full" within the meaning of the grant deed by which Defendants claim title. Per 19 20 the 1938 CC&R's, "the said contour line is located at the same elevation and in the same 21 horizontal plane as the top of the coping of the arches commonly known as Nos. 6, 7, 8, 9 and 22 10 of the second or new Bear Valley Dam and is also located at an elevation of seventy-two 23 and four-tenths feet above the datum plane by which the contours of said Reservoir have been 24 customarily measured and computed; said datum plane being located at a point fifty-six feet 25 26 lower in elevation than the top of the coping of the old or first Bear Valley Dam.

45. Prior to the filing of this action, Mr. Polizzi raised some of his additional
concerns in this regard to Defendants in a letter dated and sent February 17, 2014. A true and

¹ correct copy of this letter and an overlay demonstrating that Defendants' development and
 ² filling activities extend well beyond the 72.4 contour line is attached as Exhibit C.

3 46. In an email sent February 19, 2014 (a true and correct copy which is attached 4 hereto as Exhibit D), Defendants contended that "Big Bear Properties acquired approximately 5 2,500 acres of upland property contiguous to Big Bear Lake in January 1969 from Big Bear 6 Development Company" and that "as a part of this sale Bear Valley Mutual Water Company 7 also entered into a binding contract with Big Bear Properties for 200 acres of lakebottom land 8 9 that could be filled above the 72.4 contour (identical to the spillway elevation of 6,742.6)." 10 Defendants further contend that "(i)n 1976, Big Bear Properties sold approx. 4 of the 11 akebottom acres to the Whighams who filled and incorporated the property into the RV-park, 12 campground and marina operations." As a result, Defendants have contended they are lawfully 13 entitled to improve, raise the elevation of and to sell the "lakebottom acres" to the members of 14 the general public, irrespective that: (a) these properties are below the high water mark of Big 15 ¹⁶ Bear Lake; (b) there is 20 foot wide lake access easement running down the middle of the 17 development; and (c) the matters stated in the next paragraph.

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47. Based on the information currently available to him. Plaintiff disputes 19 Defendants' contentions and asserts that (a) a record survey ("Record Survey") was conducted 20a few months after the June 6, 1938 quitclaim deed which conclusively established the 21 boundaries of the seventy-two and four-tenths (72.4) contour line as it pertains to the property 22 23 at issue in this dispute; (b) the Record Survey was recorded in the Official Records of the 24 County of San Bernardino County as RS 3/103-110 in 1938 and defines the boundaries of the 25 Developer's property, including the lot that directly adjoins Mr. Polizzi's property; (c) the 26 Developer's current plans for development and Defendants' activities extend well beyond the 27 property actually owned by the Developer as shown in the Record Survey; (d) as alleged 28 above, and as admitted by Defendants, the Developer is filling in and/or otherwise modifying

property well below the level known as the seventy-two and four-tenths (72.4) contour line as 1 shown by the Record Survey; (e) this infill of property that is not owned by the Developer 2 includes a large portion of the so-called "Lot One" that is directly contiguous to Mr. Polizzi's 3 4 property, including most of the area that being filled in near Mr. Polizzi's rear gate; (f) 5 Defendants may not properly rely on a so-called "binding contract" from 1969 to convey 6 lakebottom property to the predecessor of Defendants' alleged predecessor in interest in that, 7 among other things, this alleged contract was never performed by any deed recorded in the 8 public record and is otherwise not adequate to convey to Defendants an actual ownership 9 interest in some or all of the "lakebottom land" that Defendants are presently modifying. 10 including the portion that directly abuts Mr. Polizzi's property; (g) in fact, an easement 11 12 recorded in April 1969 after the alleged date of the purported "binding contract" reaffirms that 13 the edge of Big Bear Lake (and the 20 foot wide lake access easement) is determined with 14 respect to the 1938 record survey: (i) the Developer's actions are inconsistent with the separate 15 easement along the high water line of Big Bear Lake, twenty feet in width, measured from the 16 said high water line inland, solely for such purposes, reasonably related to the ownership and 17 management of said lake ... " that is held by the Bear Valley Mutual Water Company and/or its 18 19 successor; (j) even if the Developer somehow can justify filling in and selling property that the 20 Developer does not own, the still extant easement that is measured from the high water line of 21 Big Bear Lake (that is the 72.4 foot contour line) means that there will remain a twenty foot 22 strip on the land side of the 72.4 foot high water line as shown by the Record Survey that will 23 be permanently unbuildable; (k) therefore, many (if not most) of the new lots being created by 24 the Developer's infill will not be buildable since there is an easement running down the middle 25 of these lots and, for that matter, down the middle of the project; (1) Defendants cannot 26 27 properly market and sell as buildable lots property burdened by the 20 foot wide lake access 28 easement running down the middle of the development; (m) these points are demonstrated by

the document attached as part of Exhibit C which contains an overlay of the boundaries as 1 established by the Record Survey and compares them to the tract maps recorded by the 2 Developer; (n) the tract maps that Defendants rely on are based on so-called "estimated" 3 4 boundary lines, whereas the Record Survey is based on the actual 72.4 foot high water line that 5 defines the Developer's property; (0) the tract maps that Defendants rely on exceed even 6 Defendants' own"estimated" boundary lines; (p) the Exhibit C overlay confirms that 7 significant portions of the project are below the 72.4 foot high water line (a point which 8 Defendants admit in Exhibit D); (q) Defendants have wrongly attempted to justify the 9 Developer's activities which extend well beyond the boundaries established by the Record 10 Survey by relying on so-called "estimated" boundary lines that are completely contradicted by 11 12 the Record Survey by which the actual boundary lines of the Developer's property were 13 conclusively established; (r) Defendants' assertion that their predecessor in interest filled in 14 areas below the 72.4 contour line does not justify Defendants conduct in that Defendants' 15 predecessors in interest could sell only that which he/she in fact owned and, further, on 16 information and belief, any infill that was done by Defendants' predecessor was done illegally 17 and cannot properly serve as a basis for Defendants' current modifications to the infilled 18 19 "lakebottom land"; (s) in any event, Defendants' activities in raising the fill in the "lakebottom 20 land" as alleged hereinabove goes well beyond anything their predecessor ever did; (t) on 21 information and belief, Defendants are filling in further portions of Big Bear Lake well beyond 22 even the plat map that they rely on in Exhibit D; and (u) the actual water levels of Big Bear 23 Lake after the mid-1970's (but before the current dry hydrological conditions) prove that the 24 'lakebottom land" that Defendants refer to in Exhibit "D" remained "lakebottom land" even 25 after Defendants' predecessor allegedly "filled" the lake in the 1970's. 26 27 ///

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FIRST CAUSE OF ACTION

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(For Declaratory Relief Against All Defendants – Public Rights Claims)

48. Polizzi realleges numbers 1 through 47 in this paragraph as though they were fully set
 forth in full.

49. Polizzi asserts that there is a controversy as between the parties, Polizzi on the one hand and defendants on the other as to the following:

a. Polizzi alleges that Defendants' development activities as alleged herein are
g illegal, unlawful, and improper because they violate the rights of Polizzi as a neighbor and as a
member of the general public who regularly uses Big Bear Lake,

11 b. Specifically, Polizzi alleges that (i) a record survey ("Record Survey") was 12 conducted a few months after the June 6, 1938 quitclaim deed which conclusively established 13 the boundaries of the seventy-two and four-tenths (72.4) contour line as it pertains to the 14 property at issue in this dispute; (ii) the Record Survey was recorded in the Official Records of 15 the County of San Bernardino County as RS 3/103-110 in 1938 and defines the boundaries of 16 the Developer's property, including the lot that directly adjoins Mr. Polizzi's property; (iii) the 17 Developer's current plans for development and Defendants' activities extend well beyond the 18 property actually owned by the Developer as shown in the Record Survey; (iv) as alleged 19 above, and as admitted by Defendants, the Developer is filling in and/or otherwise modifying 20 property well below the level known as the seventy-two and four-tenths (72.4) contour line as 21 shown by the Record Survey; (v) this infill of property that is not owned by the Developer 22 includes a large portion of the so-called "Lot One" that is directly contiguous to Mr. Polizzi's 23 property, including most of the area that being filled in near Mr. Polizzi's rear gate; (vi) 24 25 Defendants may not properly rely on a so-called "binding contract" from 1969 to convey 26 lakebottom property to the predecessor of Defendants' alleged predecessor in interest in that, 27 among other things, this alleged contract was never performed by any deed recorded in the 28 public record and is otherwise not adequate to convey to Defendants an actual ownership

interest in some or all of the "lakebottom land" that Defendants are presently modifying. 1 including the portion that directly abuts Mr. Polizzi's property; (vii) in fact, an easement 2 recorded in April 1969 after the alleged date of the purported "binding contract" reaffirms that 3 the edge of Big Bear Lake (and the 20 foot wide lake access easement) is determined with 4 respect to the 1938 record survey: (viii) the Developer's actions are inconsistent with the 5 separate "easement along the high water line of Big Bear Lake, twenty feet in width, measured 6 from the said high water line inland, solely for such purposes, reasonably related to the 7 ownership and management of said lake ... " that is held by the Bear Valley Mutual Water 8 9 Company and/or its successor; (ix) even if the Developer somehow can justify filling in and 10 selling property that the Developer does not own, the still extant easement that is measured 11 from the high water line of Big Bear Lake (that is the 72.4 foot contour line) means that there 12 will remain a twenty foot strip on the land side of the 72.4 foot high water line as shown by the 13 Record Survey that will be permanently unbuildable; (x) therefore, many (if not most) of the 14 new lots being created by the Developer's infill will not be buildable since there is an easement 15 running down the middle of these lots and, for that matter, down the middle of the project; (xi) 16 Defendants cannot properly market and sell as buildable lots property burdened by the 20 foot 17 wide lake access easement running down the middle of the development; (xii) these points are 18 demonstrated by the document attached as part of Exhibit C which contains an overlay of the 19 boundaries as established by the Record Survey and compares them to the tract maps recorded 20 21 by the Developer; (xiii) the tract maps that Defendants rely on are based on so-called 22 'estimated" boundary lines, whereas the Record Survey is based on the actual 72.4 foot high 23 water line that defines the Developer's property; (xiv) the tract maps that Defendants rely on 24 exceed even Defendants' own"estimated" boundary lines; (xv) the Exhibit C overlay confirms 25 that significant portions of the project are below the 72.4 foot high water line (a point which 26 Defendants admit in Exhibit D); (xvi) Defendants have wrongly attempted to justify the 27 Developer's activities which extend well beyond the boundaries established by the Record 28 Survey by relying on so-called "estimated" boundary lines that are completely contradicted by

1	the Record Survey by which the actual boundary lines of the Developer's property were			
2	conclusively established: (xvii) Defendants' assertion that their predecessor in interest filled in			
3	areas below the 72.4 contour line does not justify Defendants conduct in that Defendants'			
4	nredecessors in interest could sell only that which has been in fact owned and further on			
5	information and belief, any infill that was done by Defendants' predecessor was done illegally			
6	and cannot properly serve as a basis for Defendants' current modifications to the infilled			
7	"akebottom land"; (xviii) in any event, Defendants' activities in raising the fill in the			
8	"lakebottom land" as alleged hereinabove goes well beyond anything their predecessor ever			
9	did; (xix) on information and belief, Defendants are filling in further portions of Big Bear Lake			
10	well beyond even the plat map that they rely on in Exhibit D; (xx) the actual water levels of			
11	Big Bear Lake after the mid-1970's (but before the current dry hydrological conditions) prove			
12	that the "lakebottom land" that Defendants refer to in Exhibit "D" remained "lakebottom land"			
13	even after Defendants' predecessor allegedly "filled" the lake in the 1970's; and (xxi) on			
14 15	information and belief, Defendants may not proceed with the project because one or more of			
15 16	their permits has expired.			
10	c. Polizzi alleges that Defendants contend to the contrary and that Defendants take			
18	the position that all of their actions are lawful and proper.			
19	d. Polizzi requests a determination of the rights and obligations of the parties as to			
20	this dispute.			
21	50. Such a determination is necessary and appropriate to resolve an unsettled state of			
22	affairs regarding the ongoing and intended actions of Defendants, as alleged above.			
23	SECOND CAUSE OF ACTION			
24	(For Injunctive Relief and Restitution For Violations Of Unfair Competition Law)			
25	Individually and On Behalf of the General Public Against All Defendants)			
26	51. Polizzi realleges paragraph numbers 1 through 47 in this paragraph as though they			
27 28	were fully set forth in full.			
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52. Polizzi brings this claim for injunctive relief and restitution based on violations of the
California Unfair Competition Law (Business & Professions Code §17200 et seq.), as both on
behalf of the Plaintiff Class as a private attorney general pursuant to the Unfair Competition
Law, Business & Professions Code §17200 et seq. and individually. This claim is appropriate
and necessary because Defendants has engaged in, and continues to engage in, the acts
described herein as a general business practice.

53. Polizzi was and is a resident of Fawnskin, California whose property located at
39495 North Shore Drive directly adjoins that Defendants' development project.

54. Plaintiff brings this cause of action on behalf of himself and all others similarly 10 situated as a class action pursuant to Code Of Civil Procedure §382, which is required for UCL 11 12 injunctive relief under Business & Professions Code §17203 where a plaintiff (such as Polizzi) 13 meets the claimant meets the standing requirements of Section 17204. The class which Plaintiff 14 seek to represent is composed of and defined as follows: All residents of Fawnskin California 15 and all other members of the general public who have used Big Bear Lake for recreational 16 purposes in the past five years. 17

55. The class is ascertainable and the members of the Plaintiff Class have a well defined
 community of interest. The members of the Plaintiff Class are so numerous that joinder of all
 of the class members in this action is impracticable. The disposition of their claims as a class
 under Code Of Civil Procedure §382 and Business & Professions Code §17203 rather than in
 an individual action will benefit the parties and the Court.

56. Plaintiff estimates that the approximate size of the proposed plaintiff class is at least
several thousand persons. The Plaintiff Class is so numerous that joinder of all members is
impossible and/or impracticable. Further, some class members are only entitled to modest sums
and/or injunctive relief, making individual claims impracticable.

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57. Given the vast number of ascertainable plaintiffs, the fact that Defendants have
 systematically and continuously engaged in and continue to engage in the same wrongful
 conduct with regard to the Development Project, and the possibility that in many instances, the
 amounts of money due to the class members based on individual harm are not individually
 significant, a class action is superior to any other available methods of adjudicating this
 matter, thereby allowing for greater judicial economy and for the fair and efficient adjudication
 of this controversy.

58. The claims of the class representative is typical of the Plaintiff Class and their 9 interests do not conflict in any way with the interests of the Plaintiff Class which he seeks to 10 11 represent. Absent intervention of this Court, Plaintiff has a reasonable expectation of being 12 subjected to these practices in the future. Plaintiff is committed to the vigorous prosecution of 13 this action. Notice may be given to the plaintiff class via mail and/or by the use of techniques 14 and a form of notice similar to those customarily used in class actions. Plaintiff will fairly and 15 adequately protect the interests of the Plaintiff Class. Plaintiff has retained counsel 16 experienced and competent in class actions, in real estate matters and in litigation concerning 17 Business & Professions Code §17200 et seq. Plaintiff knows of no difficulty which will be 18 19 encountered in the management of this litigation which would preclude its maintenance as a 20 class action.

59. Defendants have acted, and threaten to act, on grounds generally applicable to
 individual members of the class, thereby making appropriate preliminary and permanent
 injunctive relief enjoining Defendants and their agents from engaging in the unfair business
 practices as alleged herein.

60. Predominant questions of law and fact permeate the Plaintiff Class. These common
 issues predominate over questions that affect only the class members. The questions of law
 and fact common to the Plaintiff Class include, but are not limited to, the following: (a)

whether Defendants have violated the Unfair Competition Law, California Business and 1 Professions Code §17200 et seq. by their conduct as alleged above; (b) whether Defendants's 2 3 practices as alleged above in connection with the lands below the 72.4 contour line and the 4 easement along that contour line are reasonable; (c) whether Defendants's practices as alleged 5 above in connection with the lands below the 72.4 contour line and the easement along that 6 contour line are lawful; (d) the Developer's current plans for development and Defendants' 7 activities extend well beyond the property actually owned by the Developer as shown in the 8 9 Record Survey; (e) whether the Developer is lawfully and/or properly filling in and/or 10 otherwise modifying property below the level known as the seventy-two and four-tenths (72.4) 11 contour line as shown by the Record Survey; (f) whether Defendants may properly rely on a 12 so-called "binding contract" from 1969 to convey lakebottom property to the predecessor of 13 Defendants' alleged predecessor in interest where, among other things, this alleged contract 14 15 was not performed by deed recorded in the public record and is otherwise not adequate to 16 convey to Defendants an actual ownership interest in some or all of the "lakebottom land" that 17 Defendants are presently modifying, including the portion that directly abuts Polizzi's 18 property; (g) whether an easement recorded in April 1969 after the alleged date of the 19 20 purported "binding contract" reaffirms that the edge of Big Bear Lake (and the 20 foot wide 21 lake access easement) is determined with respect to the 1938 record survey: (h) whether the 22 Developer's actions are inconsistent with the separate "easement along the high water line of 23 Big Bear Lake, twenty feet in width, measured from the said high water line inland, solely for 24 25 such purposes, reasonably related to the ownership and management of said lake..." that is held 26 by the Bear Valley Mutual Water Company and/or its successor; (i) whether even if the 27 Developer somehow can justify filling in and selling property that the Developer does not own, 28 the still extant easement that is measured from the high water line of Big Bear Lake (that is the

COMPLAINT

72.4 foot contour line) means that there will remain a twenty foot strip on the land side of the 1 72.4 foot high water line as shown by the Record Survey that will be permanently unbuildable; 2 (i) whether many (if not most) of the new lots being created by the Developer's infill will not 3 4 be buildable since there is an easement running down the middle of these lots and, for that 5 matter, down the middle of the project; (k) whether Defendants can properly market and sell as 6 buildable lots property burdened by the 20 foot wide lake access easement running down the 7 middle of the development; (1) whether the tract maps that Defendants rely which are based on 8 9 so-called "estimated" boundary lines take precedence over the Record Survey, which is based 10 on the actual 72.4 foot high water line that defines the Developer's property; (m) whether the 11 tract maps that Defendants rely on exceed even Defendants' own "estimated" boundary lines: 12 (n) whether the "estimated" boundary lines that Defendants rely on to justify their actions are 13 14 contradicted by the Record Survey by which the actual boundary lines of the Developer's 15 property were conclusively established; (o) whether the "estimated" boundary lines that 16 Defendants rely on to justify their actions are contradicted by plot map provided by Defendants 17 as part of Exhibit D; (p) whether Defendants' assertion that their predecessor in interest filled 18 in areas below the 72.4 contour line justifies Defendants' conduct in that Defendants' 19 20 predecessors in interest could sell only that which he/she in fact owned; (q) whether 21 Defendants' assertion that their predecessor in interest filled in areas below the 72.4 contour 22 line justifies Defendants' conduct in that any infill that was done by Defendants' predecessor 23 was done illegally and cannot properly serve as a basis for Defendants' current modifications 24 25 to the infilled "lakebottom land"; (r) whether Defendants' activities in raising the fill in the 26 "lakebottom land" as alleged hereinabove goes well beyond anything their predecessor ever 27 did; (s) whether Defendants are filling in further portions of Big Bear Lake well beyond even 28 the plat map that they rely on in Exhibit D; (t) whether the actual water levels of Big Bear Lake

after the mid-1970's (but before the current dry hydrological conditions) prove that the
"lakebottom land" that Defendants refer to in Exhibit "D" remained "lakebottom land" even
after Defendants' predecessor allegedly "filled" the lake in the 1970's; (u) whether Defendants
may not proceed with the project because one or more of their permits has expired; and (v)
whether Defendants' conduct as complained above is lawful.

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7 61. There also exist common issues concerning an appropriate classwide remedy,
 8 including, without limitation:

9 (a) Whether an injunction should issue restraining Defendants from filling, modifying,
10 contouring or in any way altering any lands below the 72.4 contour line of Big Bear Lake;
11 (b) Whether an injunction should issue restraining Defendants from filling, modifying,
12 contouring or in any way altering any lands other than the property actually owned by the
13 Developer as shown in the Record Survey;

(c) Whether an injunction should issue restraining Defendants from filling, modifying,
contouring or in any way altering any "lakebottom land" that Defendants' predecessor in
interest filled in areas below the 72.4 contour line without obtaining the required
approvals to do so at the time;

(d) Whether an injunction should issue restraining Defendants from filling, modifying,
contouring or in any way altering any lands other than the property reflected on the plat
map attached as Exhibit D (assuming, arguendo, the said plat map accurately depicts
Defendants' property);

(e) Whether an injunction should issue restraining Defendants from filling, modifying,
contouring or in any way altering any lands contained in the "easement along the high
water line of Big Bear Lake [that is the 72.4 foot contour line], twenty feet in width,
measured from the said high water line inland, solely for such purposes, reasonably
related to the ownership and management of said lake...";

(f) Whether an injunction should issue restraining Defendants from selling, marketing or in any way attempting to transfer property that the Developer does not own;

(g) Whether an injunction should issue restraining Defendants from selling, marketing or in any way attempting to transfer as part of a buildable lot any portion of the still extant easement that is measured from the high water line of Big Bear Lake [that is the 72.4 foot contour line];

7 (h) Whether an injunction should issue restraining Defendants from taking any
 8 actions that would have the effect of diverting additional waters into the public beach access
 9 easement;

(i) Whether an injunction should issue restraining Defendants from filling, grading,
 constructing, and/or maintaining any land or otherwise encroaching on any areas that are below
 the level known as the seventy-two and four-tenths (72.4) contour line; and

(j) Whether an injunction should issue restraining Defendants from filling, modifying,
 contouring or in any way altering any lands that are the subject of the Development Project
 without having unexpired, current permits for all of the work.

62. The practices in connection with Defendants' development project alleged at
 paragraphs 11 through 47 hereof constitute statutory unfair competition. They are both
 unlawful and are unfair to Defendants's neighbors (including Polizzi), the other residents of
 Fawnskin, the users of this portion of Big Bear Lake, the Big Bear Municipal Water District
 and the Defendants' successors in interest who may eventually purchase lots and/or other
 property in Defendants' development.

63. As alleged in this Complaint above, Polizzi suffered economic injury as a result of
these practices and is subject to suffering further economic injury.

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64. Defendants continue the policies and practices alleged herein. Without limitation, ł Defendants continue to violate the Unfair Competition Law, California Business & Professions 2 Code §17200 et seq. by the systemic conduct alleged above. 3 4 65. Defendants's ongoing conduct as described above constitutes unlawful and/or unfair 5 business business practices, as defined by Business & Professions Code §17200 et seq. Polizzi 6 is informed and believe and thereon alleges that said acts have been committed and are 7 continuing to be committed in California pursuant to the practices and policies of Defendants 8 as alleged above. 9 66. Polizzi has been injured and damaged by Defendants's policies and practices, as 10 alleged herein, which policies and practices Defendants continue to engage in. 11 12 67. Polizzi requests that this Court determine whether the conduct alleged herein as a 13 business practice is unfair, unlawful or unfair competition, and, if so, to fix an appropriate 14 injunctive remedy enjoining Defendants from engaging in the unfair business practices as 15 alleged herein. 16 68. Polizzi on behalf of himself and in a representative capacity hereby requests a 17 permanent injunction enjoining Defendants from pursuing and/or continuing to pursue or to 18 19 engage in the policies, acts and practices complained of herein, including as described in 20 paragraph 61 above. 21 69. Additionally, Polizzi, on behalf of himself personally, requests that Defendants be 22 enjoined and restrained from: 23 a. . filling, grading, constructing, and/or maintaining any land or otherwise 24 encroaching on any areas that are subject to Polizzi's prescriptive easement; 25 b. engaging in any actions that block direct access from Polizzi's property at 39495 26 North Shore Drive to that portion of Defendants' property that is subject to Polizzi's 27 prescriptive easement, including constructing the six foot retaining wall that Defendants intend 28 **COMPLAINT**

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to build and continuing to maintain that wall in the event that it is built before the court intervenes; and

- c. taking any actions that would have the effect of diverting additional waters onto
 Polizzi's property at 39495 North Shore Drive.
- 5 70. Absent this Court's intervention, Defendants will continue to pursue or to engage 6 in the policies, acts and practices complained of herein. Polizzi has no adequate remedy at law 7 with which to prevent the continuing wrongful acts and unfair business practices of 8 Defendants.
- 9
 71. Polizzi further seeks an order requiring Defendants to restore all benefits they have
 10
 obtained and obtain in the future as a result of the unlawful practices alleged herein.
- 72. Polizzi may property maintain this claim for injunctive relief because he was injured
 by the unfair and/or unlawful business practices alleged herein, these unfair and/or unlawful
 business practices are ongoing and there is a probability of future violations occurring unless
 this Court grants injunctive relief. As a California state court plaintiff, Polizzi may seek an
 injunction and restitution since he satisfies the harm requirements of *Bus. & Prof. Code* §17204
 and meets the requirements of *Code Of Civil Procedure* §382.

THIRD CAUSE OF ACTION

(For Declaratory Relief Against All Defendants – Prescriptive Easement And Private
 Rights)

19

73. Polizzi realleges paragraph numbers 1 through 47 in this paragraph as though they
were fully set forth in full.

74. Polizzi asserts that there is a controversy as between the parties, Polizzi on the one
hand and defendants on the other as to the following:

a. Polizzi alleges that Defendants' development activities as alleged herein are
illegal, unlawful, and violate the non-exclusive prescriptive easement held by Polizzi as alleged

above. Specifically, Polizzi alleges that the following acts are improper because they will
 impair the non-exclusive prescriptive easement held by Polizzi as alleged above:

 filling, grading, constructing, and/or maintaining any land or otherwise
 encroaching on any areas that are subject to Polizzi's non-exclusive prescriptive easement;

⁴ cherotaching on any areas that are subject to Polizzi's non-exclusive prescriptive easement;
⁵ ii. engaging in any actions that block direct access from Polizzi's property at 39495
⁶ North Shore Drive to that portion of Defendants' property that is subject to Polizzi's non⁷ exclusive prescriptive easement, including constructing the six foot retaining wall that
⁸ Defendants intend to build and continuing to maintain that wall in the event that it is built

⁹ before the court intervenes;

- iii. taking actions that would have the effect of diverting additional waters onto
 Polizzi's property at 39495 North Shore Drive; and
- iv. the other actions and intended actions alleged herein that tend to minimize or
 impair Polizzi's ability to use and enjoy the non-exclusive prescriptive easement held by
 Polizzi as alleged above.
- b. Polizzi alleges that Defendants contend to the contrary and that Defendants take the position that all of their actions are lawful and proper.
- c. Polizzi requests a determination of the rights and obligations of the parties as to this
 dispute.

20

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FOURTH CAUSE OF ACTION

(For Trespass Against All Defendants)

22 75. Polizzi realleges paragraph numbers 1 through 47 of this Complaint as if fully
23 set forth in this paragraph.

76. Mr. Polizzi maintains this private right of action is for damages and injunctive
relief for trespass. Lucky Auto Supply v. Turner (1966) 244 Cal.App.2d 872, 881
(exclusion of licensee from use of an area subject to an easement "whether by the

28 licensor or by third parties" is a trespass).

77. During the period of time beginning November 2013, and ongoing and
continuing thereafter to the present date, defendants, and each them, and those acting on
their behalf, without the permission of Polizzi, willfully trespassed upon Plaintiff
Polizzi's property, consisting of that portion of the real property located directly adjacent
to 39495 North Shore Drive over which Polizzi has a non-exclusive prescriptive
easement as alleged hereinabove.

78. Without limitation, Defendants to date have excavated and filled on the area
included within the non-exclusive prescriptive easement and engaged in the other
conduct alleged herein. Defendants threaten to construct a retaining wall and divert water
which will effectively prevent Polizzi from future use of his non-exclusive prescriptive
easement.

13 79. During the period of time commencing November, 2013, and thereafter, 14 defendants, and each of them, and those acting on their behalf: (1) began to implement a 15 plan to runoff water onto Mr. Polizzi's property; (2) interfered with Polizzi's non-16 exclusive prescriptive easement and his access to Big Bear Lake; (3) damaged the fence 17 and the gate located on Polizzi's Property; (4) filled in portions of Big Bear Lake; (5) 18 19 raised and recontoured the land on that is subject to the non-exclusive prescriptive 20 easement; and (6) raised and recontoured land which had been lakebottom acreage before 21 it was illegally filled in by Defendants and/or their predecessors in interest.

80. Unless enjoined, Defendants, once construction resumes following the winter
hiatus, intend to: (1) continue engaging in the activities described in the immediately
preceding paragraph; (2) raise the elevation of the lots adjoining the 39495 North Shore
Drive property by six feet; (3) cause to be erected a wall that will divert water onto the
39495 North Shore Drive property, causing loss to the property value at 39495 North
Shore Drive; (4) cause to be erected a wall that will divert water into the public easement

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area directly adjoining the 39495 North Shore Drive property and/or cause greater 1 amounts of run-off water to remain in that area, causing loss to the property value at 2 39495 North Shore Drive and negatively impacting the public easement; (5) cause to be 3 4 erected a wall that will be highly unsightly when viewed from 39495 North Shore Drive, 5 causing loss to the property value at 39495 North Shore Drive; (6) continue to fill in 6 portions of Big Bear Lake; (7) continue to raise and recontour the land on that is subject 7 to the non-exclusive prescriptive easement; and (8) continue to raise and recontour land 8 which had been lakebottom acreage before it was illegally filled in by Defendants' 9 predecessors in interest. 10 81. The Defendants' trespass was continuous, notorious, willful, and undertaken by 11 12 defendants, and each of them. 13 82. Plaintiff Polizzi has been damaged in an amount to be proven at trial of no less 14 than \$250,000.00, including as measured by greater of the loss to Polizzi and the value to 15 Defendants for each element. 16 83. The acts of defendants and each of them were willful, and malicious and Polizzi 17 is entitled to punitive damages. 18 19 84. Without limitation, Polizzi requests that Defendants be enjoined and restrained 20 from: 21 filling, grading, constructing, and/or maintaining any land or otherwise a. 22 encroaching on any areas that are subject to Polizzi's prescriptive easement; 23 b. engaging in any actions that block direct access from Polizzi's property at 24 39495 North Shore Drive to that portion of Defendants' property that is subject to 25 Polizzi's prescriptive easement, including constructing the six foot retaining wall that 26 Defendants intend to build and continuing to maintain that wall in the event that it is built 27 before the court intervenes; 28

COMPLAINT

1	c. taking any actions that would have the effect of diverting additional waters		
2	onto Polizzi's property at 39495 North Shore Drive		
3	85. Unless enjoined by this Court, the acts of Defendants threaten to cause and will		
4	cause irreparable harm to Polizzi and to members of the general public.		
5	FIFTH CAUSE OF ACTION		
6	(For Nuisance against all Defendants)		
7	86. Polizzi realleges paragraph numbers 1 through 47 of this Complaint as if fully		
8	set forth in this paragraph.		
9	87. Defendants and each of them in their construction of the property located		
10 11	directly adjacent to 39495 North Shore Drive, have caused both a public and a private		
11	nuisance, which has existed and is presently ongoing and continuous.		
13	88. The public and private nuisance has been intentional, willful and malicious.		
14	89. Polizzi has been damaged in an amount to be proved.		
15	90. The actions of defendants and each of them have been willful, and malicious and		
16	Polizzi requests an award of punitive damages.		
17	91. Without limitation, Polizzi requests that Defendants be enjoined and restrained		
18	from:		
19	a. filling, grading, constructing, and/or maintaining any land or otherwise		
20 21	encroaching on any areas that are subject to Polizzi's prescriptive easement;		
21	b. engaging in any actions that block direct access from Polizzi's property at		
23	39495 North Shore Drive to that portion of Defendants' property that is subject to		
24	Polizzi's prescriptive easement, including constructing the six foot retaining wall that		
	Defendants intend to build and continuing to maintain that wall in the event that it is built		
	before the court intervenes;		
27	c. taking any actions that would have the effect of diverting additional waters		
28	onto Polizzi's property at 39495 North Shore Drive.		
	COMPLAINT 30		

92. Unless enjoined by this Court, the acts of Defendants threaten to cause a				
2	cause irreparable harm to Polizzi and to members of the general public.			
3	SIXTH CAUSE OF ACTION			
4	(For Negligence against all Defendants)			
5	93. Polizzi realleges paragraph numbers 1 through 47 of this Complaint as if fully			
6	set forth in this paragraph.			
7	94. Defendants, and each of them, had a duty to Polizzi to use reasonable care and to			
	 provide reasonable, acceptable and required maintenance, inspection, supervision and conduct so as to avoid exposing Polizzi and his property to an unreasonable risk of harm. 			
9 10				
11	95. Defendants violated this duty by virtue of the conduct alleged herein.			
12	96. Polizzi has been damaged in an amount to be proved, in excess of the			
13	jurisdictional limitations of this Court.			
14	SEVENTH CAUSE OF ACTION			
15	(For Violation of Reciprocal Mutual Covenants)			
16	(Against All Defendants)			
17 18	97. Polizzi realleges paragraph numbers 1 through 47 in this paragraph as though			
18 19	they were fully set forth in full.			
20	98. Polizzi's property and that of Defendants are part of a development which			
21	contains mutual reciprocal restrictive covenants, which imposes restrictions on the			
22	2 manner and method of construction, and which imposes height, set back and other			
23	specific building restrictions consistent with the Covenants and Conditions.			
24	99. Specifically, the Marina Point property is subject to covenants, conditions and			
25 26	restrictions recorded: April 26, 1917 in Book 614 page 13 of deeds, but omitting any			
26 27	covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation,			
28	familial status, marital status, disability, handicap, national origin, ancestry, or source of			
	income, as set forth in applicable state or federal laws, except to the extent that said			
	COMPLAINT 31			
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covenant or restriction is permitted by applicable law as set forth in the document.
 Among other things, said covenants, conditions and restrictions provide for various
 easements as set forth therein. The Marina Point property also is subject to
 modification(s) of said covenants, conditions and restrictions recorded: June 11, 1938 in
 book 1276, page 415 official records and August 10, 1965 in book 6449 page 610 official
 records.

100. The benefits of these Covenants and Conditions accrue to each owner in the 8 subdivision, Polizzi included. The Covenants, Conditions and Restrictions provide for a 9 right of entry, damage and for injunctive relief in connection with any breach of the 10 Covenants, Conditions and Restrictions. As a successor to the Bear Valley Mutual Water 11 12 Company, Polizzi has the right to enforce the Covenants, Conditions and Restrictions 13 against Defendants, at least insofar as any violation of the Covenants, Conditions and 14 Restrictions affects Polizzi's rights. 15

101. One of the rights reserved in the 1917 Covenants, Conditions and
 Restrictions is the right to enter upon occupy and use Big Bear Lake (referred to as "the
 Bear Valley Reservoir") for the purposes of boating, fishing, hunting, skating or other
 purpose of pleasure or recreation. In 1938, that right was specifically quitclaimed and
 relinquished to the Water Company by the Defendants' predecessor in interest, the
 Development Company.

102. Defendants and those under Defendants' direction and control have in their
 manner of construction, design and filling violated the Covenants, Conditions and
 Restrictions by which Defendants are bound.

26 103. As a result of Defendants' violations, Polizzi has been damaged in an
27 amount to be proven at trial.

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1 2 3	<u>EIGHTH CAUSE OF ACTION</u> (For Failure to Provide Lateral and Adjacent Support And Failure to Provide Notice Of Excavation) (Against All Defendants)			
4	104. Polizzi realleges paragraph numbers 1 through 47 in this paragraph as			
5	though they were fully set forth in full.			
6	105. Defendants as an adjacent landowner to Polizzi were and is required under			
7	the Civil Code and at common law to provide notice to Polizzi prior to excavation (Civil			
8	Code §832(1) through (4).)			
9	106. As required by the Civil Code and common law, Defendants were required			
10	to give reasonable notice to the owner or owners of adjoining land "stating the depth to			
11 12	which such excavation is intended to be when and when the excavation will begin" (Civil			
12	Code §832(2)).			
14	107. Defendants failed to provide any notices as required by <i>Civil Code</i> §832			
15	and the common law, undertook excavation in a negligent manner, which caused damage			
16	to Polizzi in an amount according to proof.			
17	108. Defendants' acts were willful and intentional, and Polizzi is entitled to			
18				
19	PRAYER			
20	WHEREFORE Polizzi respectfully requests:			
21 22	1. Damages according to proof of not less than \$250,000.00;			
23	2. Punitive damages;			
24	3. Mandatory and/or prohibitory injunctive relief as requested above;			
25	4. Declaratory relief as requested above;			
26	5. Abatement of a public and private nuisance;			
27	6. Costs of suit; and			
28				
	COMPLAINT 33			

7	7. Such other relief as the Court may find appropriate.				
1 2 3	Dated: March 25, 2014	Respectfully submitted, LAW OFFICE OF ANTHONY KORNARENS			
4		2011			
5					
6		By: Anthony Kornarens			
7		Attorneys for Plaintiff, Gary J. Polizzi			
8					
9	DEMAND FOR JURY TRIAL				
10	Plaintiff hereby demands a	trial by jury.			
11	, ,				
12	Dated: March 25, 2014	Respectfully submitted,			
13		LAW OFFICE OF ANTHONY KORNARENS			
14		gg/			
15		D			
16		By: Anthony Kornarens			
17		Attorneys for Plaintiff, Gary J. Polizzi			
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695 Deer Trail PO Box 293 Fawnskin California 92333

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April 9, 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

I have become aware of and would like to express comments and my concerns about the proposed revision to this project. The application on file with your department differs in significant ways from what has been advertised to the public and described to a colleague of mine who called the developer's sales agent. I thus think a more extensive review of the application, and an insistence that the application parallel what is being marketed, be required. It looks like the developer is trying to slide in a few changes now and then seek additional ones later, all in the pretense that each change is only incremental. In fact a significant increase in usage from what was originally proposed many years ago is in progress. The County should exercise its authority, and follow its duty under California law, to require a full review of what is, in effect, a new proposal.

First, as mentioned, the project notice apparently does not advise your office about all the changes that have actually been and are being advertised by this developer. There are docks planned to be added for the individual home lots on the west side of the project in an area that is often used for hunting by the bald eagles that nest in Fawnskin. The advertising also talks about each condominium having a separate unit that could be rented out. I had a friend call the developer's sales office and she was assured this was the plan. No mention was made of the County ordinance that requires a conditional use permit for short term rental use. My neighborhood and street have already experienced trouble with such short term rentals, including noise, traffic, trash left around and on street parking. Encouraging an expansion of such use threatens the livelihood of innkeepers who are regulated and pay transient occupancy tax and the developer should not be allowed to do this without a full study. The proposed inclusion of lock off units would greatly increase the number of units rather than lowering it. The advertising also suggests that the buildings will be larger, thereby interfering even more with the public's ability to see the lake from North Shore Drive, a state-designated scenic highway.

Making it be so easy for two families to use the same condo space would increase the number of people using the site, causing parking issues, and increase the impacts on our small town, especially noise and traffic. To say nothing of the increased burden on threatened water supply and sewage systems, and the increased trash from multiple units. Although owners in Fawnskin have permits to use the transfer station in the Big Bear Valley, we and our neighbors often have observed renters dumping trash in the boat launches, leaving it in the local park or sneaking it into the dumpsters of local businesses. The advertising includes a restaurant, which if built would add even more noise, traffic and potentially increase the need for law enforcement, as the ill-fated North Shore Tavern did with its loud bands and rowdy patrons.

Second, this project has been in process for decades. In that time, the situations in our area have changed in major ways. Climate change was almost an unknown factor years ago but our recent non-winter demonstrates that impacts on water and other resources need to be rethought. There is much more traffic, and the resulting noise and dust has increased. There are more homes and buildings in Fawnskin, decreasing areas that used to be available for wildlife habitat, reducing forest corridors for wildlife access to the lake and interfering with foraging activity, especially for bald eagles. We have experienced several major wildfires in recent years, which was less the case prior to the project being proposed, and the increased risk, in the case of a need for evacuation, needs to be considered. Will the County be required to increase expenditures for fire protection to accommodate this dense development? If the County does not, who will do so?

There is much more boat traffic and pollution in the lake and more air pollution. The property is subject to lake access easements and the drawings in what is being advertised appear to cut this off or severely limit it. The project also limits current efforts to develop and establish hiking and biking access to the lake and shore.

This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. At a minimum a public hearing is needed-actually a full new environmental analysis needs to be done.

Please include me on any further notices about this project. Thank you.

Sincerely.

Peter J. Ternvson

P.O. Box 409 Fawnskin, CA 92333 April 5, 2014

San Bernardino County Land Use Services **Planning Project Notice** 385 North Arrowhead Ave, First Floor San Bernardino, CA 92415-0182

Re: Project # P201400106/RMC Proposed Revision Assessor parcel number 0304-082-15 Applicant's Name: Irv Okovita

Dear Sir or Madam:

I am writing to object to the change in the development proposal by Irv Okovita for assessor parcel number 0304-082-15, project number P201400106/RMC. The proposed change from a multi-unit condominium to include "10 single-unit condominium structures" is a major change to the project. It is a not very well-disguised attempt to now have single family residences on the property rather than the condominiums which were originally approved. To quote from Wikipedia, a condominium is defined in part by:

Use of and access to common facilities in the piece such as hallways, heating system, elevators, and exterior areas are executed under legal rights associated with the individual ownership. These rights are controlled by the association of owners that jointly represent ownership of the whole piece.

The term " single-unit condominium structures" clearly means single family homes and as such does not meet the criterion for the condominium development that was approved previously. This description is an contradiction in terms at best, while in reality it is an attempt to change the proposed development substantially to include single family homes.

This major change should not be approved. If the developer wishes to make such a substantial change, a new application with associated environmental impact statement should be filed with the County.

This letter is being sent by FAX but a hard copy with a self-addressed, stamped envelope will be sent by mail so that I am notified of the project decision.

Thank you for your time and consideration.

Yours truly.

B. File Att

cc: Supervisor James C. Ramos

Chris Warrick, Planner, County of San Bernardino, CA,

FISCA: University

As a Fawnskin resident, I want to protest the Marina Point project. I respect the 25 right of a property owner to develop their property; however this developer has not been open and above-board in the past nor present about the plans for this property.

It has been brought to my attention that the developer has been discussing with the local MWD the possibility of more docks in the lake than are shown on the plans submitted to the County. Also more units are planned, under the guise of "locked off" apartment units connected to some of the condos units, so those areas can be rented out. Thus we now have the possibility of even more people.

The only way in or out of Fawnskin is a two lane road, and we need more people? We are always asked to "be prepared" for wild-fires, earthquakes, and water shortages have already arrived in the whole State. Why add to the current population under these conditions? Plus the County Fire Dept. has only two paramedic/firemen up here at any given time, plus some paid-call people, who may or may not be able to get here in an emergency. The firemen are usually rotated up here and probably don't even know the existing streets. This is a disaster waiting to happen, in my opinion. If people want to vacation here in Fawnskin, there are cabins, homes and a motel for rentals already here. And a very nice Bread and Breakfast. This "locked unit" deal is just a way to bring in more people in the same area.

Even after 10 years here, it's still a thrill for me to see an eagle, some of our wild animals, and all the beautiful birds. This area of development is a known eagle habitat. I moved up here from Los Angeles County to get away from the traffic, noise, smog, and general mess down there. This is a very peaceful and quiet area, and we don't want another L.A. here. There a lot of homes for sale here, esp. with the recent down turn in the economy, as people will sell their vacation homes first. If people want to rent or buy here in Fawnskin, there are lots of ways to do that, and we already have enough places here to launch a boat or rent one.

Please look very carefully at this developer's plans and ask a lot of questions, before putting your stamp of approval on it. Either this developer is lying to his potential customers on his web-site, or what? Look closely into past records, also. I'd be willing to bet most Fawnskin full-time residents would like to keep this development as small as possible. I also think we need a current environmental impact report.

Thanking you for your consideration, sincerely,

Auch L. Curtas Po Bax 345 Fawnskin, CA 92332

Warrick, Chris - LUS

From: Sent: To: Subject: sandy ellis <fseilis67@gmail.com> Wednesday, April 09, 2014 3:56 PM Warrick, Chris - LUS Marina Point

Dear Mr. Warrick,

We are writing you about the proposed Marina Point development in Fawnskin. We travel by this site every Thursday on our way to Apple Valley to volunteer in our grandchildren's classes. The destruction which has taken place there is heart breaking. It is a beautiful, serene site. The last environmental review was done in 1991. The proposed changes in the plan must be reviewed. This development could double the population of Fawnskin. This revised project needs to be analyzed with a full environmental impact report.

Thank you,

Most sincerely, Sandy and Frank Ellis



FRIENDS OF FAWNSKIN Big Bear Valley Environmental Education & Oversight P.O. Box 422, Fawnskin, California 92333 www.friendsoffawnskin.org friendsoffawnskin@gmail.com 909-878-3091

9 April 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

We have become aware of the proposed revisions to the Marina Point development project and would like to express our concerns.

Friends of Fawnskin (FOF) is a non-profit environmental education organization representing a membership of over 500 residents and homeowners of the Big Bear Valley. Residents and visitors come to Big Bear primarily to enjoy the current character of the area and FOF works to preserve and protect these unique environmental surroundings. Our goals are to keep the public informed on issues that may impact their surroundings; to assure proper opportunity for public participation in the decision-making process; to educate the governing agencies regarding concerns of local residents and visitors; and to make certain the environmental laws in place to protect all of us are followed.

The revisions application information submitted for this proposed revision does not match the broadly advertised (website—<u>www.luxuryatmarinapointresort.com</u>, newspaper articles, real estate guides) information. The advertised information includes individual docks outside the enclosed marina, as well as 'lock-off' units associated with each of the condominium and neither of these is mentioned in the application. Before any approval can be given on this proposed revision, all of the actual changes must be clarified, disclosed to the County and noticed to the public for additional comment.

The application document that Marina Point submitted also discusses "custom homes" under "Site Condominium Units" but calls this a minor change that decreases the number of condominium units. Creating "custom homes" instead of condominium units, not a minor change and though it may decrease the number of condominium units, could increase the actual impact of the project. For example, could the "custom homes" add out buildings or additions at any point in the future that would increase the footprint and associated impact? —Please note that having homeowners' association rules that prohibit these items is quite insufficient for limiting impact. The Eagle Point Estates in the City of Big Bear Lake used homeowners' association rules to mitigation significant impacts on bald eagles, then went back to the City Council a year after approval and had those rules changed, thus eliminating the mitigations.— These issues create much confusion and generate more questions than they answer. This proposal must be clearly defined, disclosed to the County and noticed to the public for additional comment.

Defining ten individual "custom homes" as "single-family condominiums" is, at best, inaccurate, and is, in any case, misleading to the public. The well-accepted definition of a 'condominium' is an individually owned unit within a 'multiple-unit complex' where there is at least one shared wall with another unit. Calling these 'custom homes,' more clearly defines these single family units as single family homes rather than as condominiums. If these homes are in fact 'custom' how can the square footage be defined to determine the actual footprint of the project? Would the exterior of these units belong to the condominium association? If not, then what makes these units condominiums rather than single family homes? Or is this terminology simply being used as pretense in order for major changes to slide through the system as 'minor' or 'incremental'? All of these issues must be clearly defined, disclosed to the County and noticed to the public for additional comment.

Additional docks to the west of this project site or anywhere in this area would have major increased impact on the bald eagles that nest less than one mile from the site and forage at and near the site on a regular basis throughout the year. The circumstances of the bald eagle population has changed in major ways since the previous environmental review on this project. Due to increased development in the past 20 years, the average number of bald eagles in the area during winter months has decreased from 28 to 6. Bald eagles are also now documented year-round residents, as opposed to only winter visitors, as they were at the time of the previous analysis. In addition, a nesting pair has successfully raised one chick and had failed attempts the past two years. This pair, as well as their offspring, regularly forages in and around the Marina Point project, especially including the bay to the west of the project site. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report.

The advertising for this development states the 'lock-off units' could also be 'rented out.' This would nearly double the number of families and vehicles that could be using the site at any one time. This would also nearly double the impacts of this project revision, with major increases in traffic, noise, water usage, fire hazard, air pollution, and water pollution. There have already been extensive water shortages with water restrictions throughout the valley and the current statewide drought confirms this to be an ongoing issue. This potential major increase in the number of occupants would also impact fire evacuation in the case of forest fires, now a very real threat to any forested community. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report.

In summary, this project revision has not been clearly defined sufficiently for the County to make accurate determinations of potential impacts is would create or even to determine how much the project is changing. It must be more clearly defined with all details disclosed to the County and notice to the public for additional comment. Based on what can be determined from the revision application and the information that Marina Point is making public through advertising and other outlets, the actual planned revision is much larger than what has been officially disclosed. That, along with major changes to the environmental circumstances since the previous environmental review, requires that a full environmental impact report be done to properly determine the significance of the potential impacts of this proposal.

Please include Friends of Fawnskin on any future notices about this project. Thank you for your consideration.

Sincerely,

Sarlyttees

Sandy Steers Executive Director

cc: James Ramos, Supervisor, Third District Chris Carrillo, Deputy Chief of Staff Elizabeth Harris, Field Representative Jeffrey Brandt, California Department of Fish and Wildlife Ed Wallace, Sierra Club, Big Bear Group Drew Feldmann, San Bernardino Valley Audubon Society Adam Keats, Center for Biological Diversity Hugh Bialecki, Save Our Forest Association

Warrick, Chris - LUS

From:	Mark Winters <markandsheri@cox.net></markandsheri@cox.net>
Sent:	Wednesday, April 09, 2014 4:54 PM
To:	Warrick, Chris - LUS
Subject:	Re: Marina Point revisions
Importance:	High

Dear Mr. Warrick,

My wife and I bought our house in Fawnskin in 1997. Fawnskin is a quiet community as you are aware. This project will destroy that atmosphere.

The developer of this project has been untruthful since the beginning. He has cut down trees that were declared bald eagle habitat without permission or permits. He has moved dirt and graded the property without proper permits. He has encroached and changed the shoreline without authorization from the Army Corp of Engineers. Big Bear is experiencing a water drought, inadequate sewer systems, etc. and yet this developer is being allowed to build 130 residential units. Fawnskin is approximately 850 total living units. This one project alone will increase the number of units in Fawnskin by approximately 15%.

When is the County going to fight for the unincorporated areas of the county instead of for the developers with the big money to finance the campaigns of the supervisors?

The latest revision to the project does not mention all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for hunting by the bald eagles that nest here. The advertising also talks about each condominium having a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. Making it be so easy for two families to use the same condo space would increase the number of people possible and increase the impacts on our small town, especially noise and traffic.

This project has been in process for decades. In that time, the situations in the area have changed in major ways. There is much more traffic, there are lots more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis should be required!

Please include me on any further notices about this project. Thank you.

Sincerely,

Mark & Sharon Winters

CENTER for BIOLOGICAL DIVERSITY

via electronic mail and USPS

April 9, 2014

Chris Warrick Planner for San Bernardino County Land Use Services Planning Division 385 North Arrowhead Ave, First Floor San Bernardino, CA 92415-0182 Chris.Warrick@lus.sbcounty.gov

Re: Planning Project Notice for Revision to Marina Point Development Plan (Project Number P201400106/RMC)

Dear Mr. Warrick:

These comments are submitted on behalf of the Center for Biological Diversity ("the Center") regarding the proposed revision to the Marina Point Development Plan. Specifically, the Center urges that the proposed revision to the development plan undergo thorough and comprehensive environmental review under the California Environmental Quality Act ("CEQA") prior to any County approval. Although labeled as a "minor" change by the Project applicant, the proposed revisions to the Project will potentially result in significant new environmental impacts. These significant environmental impacts, coupled with new information not available at the time of previous environmental review and substantial changes to surrounding environment, warrant a supplemental or subsequent Environmental Impact Report ("EIR") under CEQA. Therefore, the County must complete an updated environmental review of the Project that fully addresses and analyzes the Project's *current* impacts to sensitive species and habitat, air quality, water quality, water supply, traffic, greenhouse gas emissions, potential for growth-inducing impact, cumulative impacts and all reasonable alternatives and mitigation measures, prior to any approval for the Project.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 675,000 members and e-activists throughout the county and California, including San Bernardino County. The Center has worked for many years to protect imperiled wildlife and natural resources, open space, air and water quality, and overall quality of life for people living near Big Bear Lake.

Alaska . Arizona . California . Florida . Minnesola . Nevada . New Mexico . New York . Oregon . Vermont . Washington, DC

Aruna Prabhala - Staff Attorney, Urban Wildlands - 351 Celifornia St., Ste. 800 - San Francisco, CA 94104-2404 Phone: (415) 436.9682 x322 - Fax: (415) 436.9683 - aprabhala@biologicaldiversity.org

I. The Applicant has Failed to Provide an Accurate and Properly Defined Project Description

Under CEQA, environmental review of a project must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to the project. (Pub. Res. Code § 21061.) These requirements help ensure that the public and decision makers are reviewing and deciding on the project know the full scope of the project and its impacts. (See CEQA Guidelines, §§ 15126, 15358(a).) Environmental review that fails to provide these details undermines the fundamental requirement of public disclosure in CEQA. In particular, an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient environmental review. (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185 (an enigmatic or unstable project description impedes public input); See also San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 730.)

The proposed change to the Project includes plans to "replace 7 multi-unit condominium structures with 10 single-unit condominium structures along the Big Bear Lake shore, reducing the overall density from 133 units to 120 units on 12.5 acres." Although the applicant has presented this revision to the Project as "minor," the proposed changes raises fundamental issues with the Project and that must be resolved through a revised application and comprehensive environmental review. The application fails to include an accurate or reliable project description, making informed decision making by the County impossible.

For example, the application fails to include other changes to the Project that have been advertised elsewhere and have occurred since the last comprehensive environmental review of the Project. (See Marina Point on Big Bear Lake at <u>www.luxuryatmarinapointresort.com</u> (last visited April 9, 2014).) Changes include new docks that will extend into Big Bear Lake and could result in water quality impacts and interfere with foraging habitat of bald eagles, a state listed and fully protected species under California law. (See Fish & Game Code § 3511.) It is unclear if the proposed revision to the Project includes these new docks and what environmental impacts will result from their construction. Other changes to the Project include separate "lock-off suite" that could be rented for independent use, a larger clubhouse, a new "gate house for special events" and an altered layout of buildings. Each of these will likely alter the footprint of the Project and potentially result in new significant environmental impacts.

The Project description provided in the application is inconsistent with previous and current, separate plans for the Project. Nonetheless, the applicant has made no attempt to explain or resolve these inconsistencies. Instead, the public and decisionmakers are left will a vague, illdefined Project with no possible way to evaluate the revised Project's environmental effects. Until an accurate and complete Project description is made available, the true scope of the Project and its potential environmental impacts will remain uncertain. Therefore, before moving forward with the proposed revisions to the Project, the applicant must provide the public and the County with an accurate Project description. It is only with this information that the County can

complete the necessary environmental review and make an informed decision on whether to the Project or not.

II. CEQA Requires A Supplemental or Subsequent EIR Prior to County Approval

While an agency may rely on a previous EIR when approving a Project, a supplemental or subsequent EIR is required if (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require major EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. (Pub. Res. Code § 21166; CEQA Guidlelines § 15162, 15163.) Courts have found that when changes to the Project results in significant new impacts, "the failure to prepare a subsequent or supplemental EIR deprived the public, who relied on the EIR's representations, of meaningful participation." (*Mira Monte Homeowners Ass'n v. County of Ventura*, 165 Cal. App. 3d 357, 365 (Cal. App. 2d Dist. 1985).) Because each of these conditions has been met here, the County must complete an updated and thorough supplement or subsequent EIR before it considers approval of the revised Project.

A. Substantial Changes to the Proposed Project and Surrounding Environment Require Major Revisions to the EIR

This Project has undergone minimal environmental review, much of which occurred decades ago when the Project was originally approved and did not take account subsequent changes to the proposed Project. In the decades since the environmental impacts of the Project were last analyzed, new information about the surrounding environment has been disclosed and the environment has undergone substantial changes. Additionally, the proposed changes to the Project by the applicant will potentially result in significant new impacts, all of which make clear that an updated environmental review of the Project is warranted.

i. New Information and Changes to the Surrounding Environment Will Require Major Revisions to the EIR

One of the most important changes to the Project site and surrounding environment is the bald eagle population that nest, forage, rest, and perch around Big Bear Lake. Bald eagles now inhabit the area year-round rather than only in the winter. However, increased development in the area has increased pressure on the bald eagle population, resulting in a drop from 28 to 6. This population of birds relies on continued use of the Project site and the surrounding environment. Areas adjacent to the Project site are essential to the continued viability of the bald eagle population. Additional docks, construction and increased residential use at the Project site would represent a significant increased impact on bald eagles.

Other changes to the surrounding environment that warrant further analysis include traffic increases from nearby development. It is unclear when the County last completed traffic analysis for the Project and surrounding area, which has undoubtedly changed since the decades old environmental analysis for the Project. Similarly, water quality and air quality has also changed in and around Big Bear Lake since the last comprehensive environmental review of the

Project. New and proposed development projects near the Project site have altered the surrounding environment. Construction and operation of the Project will only further degrade the air and water quality of the nearby area. The new and more realistic environmental baseline on the Project site and surrounding areas should be used to analyze the Project's impacts rather than outdated, decades old information. Additionally, to analyze and determine the cumulative impacts of the Project, the County must update its environmental review to include the current conditions of the surrounding environment.

Our understanding of the climate change and the contribution greenhouse gas emissions to global warming has also dramatically changed since the previous environmental review of the Project. New statutes and regulations have been put in place to monitor and limit greenhouse gas emissions, including California's Global Warming Solutions Act or AB 32. CEQA also now requires analysis of a Project's individual and cumulative contributions to climate change. (CEQA Guidelines § 15126.2.) The County has an obligation to identify all of the potential sources of GHG emissions that would be generated by construction and operation of the Project and adopt measures to reduce or eliminate these emissions. For example, the Project's land use changes, construction, traffic impacts and water use should all be now analyzed for their contribution to greenhouse gas emissions and, if significant, those emissions should be mitigated.

ii. The Proposed Revisions to the Project Will Require Major Revisions to the EIR

As noted above, the Project has changed since its previous environmental review in ways not limited to those changes detailed in the application. These changes will result in significant new environmental impacts. For example, new proposed "lock-off suites" could potentially double the density of the Project by allowing two users to occupy each condo. This increase in residents at the Project site will have implications for the traffic, air quality, water quality, water supply and noise cause by the Project, all of which need further analysis through an environmental review process. Similarly, proposed new boat slips will require additional fill and increase construction related impacts to the project. Proposed new facilities as the Project site. including a restaurant and expanded gate house have the potential to increase traffic to the Project. Air quality and greenhouse gas emissions from increased vehicle travel to the Project all represent new impacts from the Project that require further analysis. These facilities also represent a change to the Project's footprint and impact on wildlife habitat on the Project site. This revision of the Project is not minor but instead substantial. When considered alongside changed circumstances and new information about the surrounding environment, it is clear an updated environmental review is required by CEOA. The County should complete a comprehensive environmental review of this Project in the form of a supplement or subsequent EIR, prior to any approval of the Project.

B. Supplemental and Subsequent Environmental Review of the Revised Project Must Include Comprehensive Analysis of the Project's Impacts

CEQA requires that an EIR analyze the whole of the Project including associated project components and impacts, and impacts that are further distant in the future. Therefore, in order to

meet the statutory requirement under CEQA, a supplemental or subsequent EIR should include thorough analysis of the following issues.

The proposed Project's footprint lies within an important wildlife habitat areas important to federal and state protected species, including the state-listed and fully protected bald eagles. Bald eagles are known to nest in the surrounding area year round and use the Project site for foraging. Therefore, any known impacts to bald eagles within the Project's footprint must be fully disclosed and analyzed. To that end, careful documentation of the current site resources is imperative in order to analyze how best to site the Project to avoid and minimize impacts and then to mitigate any unavoidable impacts. Updated environmental review of the Project must include thorough, seasonal surveys performed for bald eagles and other potential sensitive animal, plant species and vegetation communities under the direction and supervision of the land management and resource agencies such as the US Fish and Wildlife Service and the California Department of Fish and Wildlife with full disclosure of survey methods and results to the public and other agencies. Adequate surveys covering all likely seasons in likely conditions must be implemented to evaluate the existing on-site conditions.

Environmental review of the Project must also include concrete, enforceable mitigation measures to reduce direct and indirect impacts to bald eagles. The preservation of regional and local scales of genetic diversity is critical to maintaining species in perpetuity especially in light of global climate change and continued urban development in the region. Although the bald eagle is of particular concern, *all* species found at the edge of their ranges or that occur at distinct locations be evaluated for impacts by the proposed Project.

In addition to those issues raised above, environmental review of the proposed revision must also address thoroughly a variety of other related issues. For example, environmental review must fully disclose and analyze the growth-inducing impacts of this Project in light of current environmental conditions, and discuss alternatives and effective mitigation measures to avoid, reduce, and mitigate these impacts. The environmental review must also address the Project's impact on air quality, traffic, noise and aesthetics. Lastly, environmental review of the Project must include a detailed analysis of the cumulative impacts of this project together with other completed, current, and reasonably foreseeable development and transportation projects in the area.

Lastly, updated environmental review of the Project must include a robust analysis of all alternatives that would alleviate the Project's harms to the surrounding environment and wildlife. The Center urges adoption of an alternative that would minimize environmental impacts and maintain existing habitat values of conservation land. A supplemental or subsequent EIR should include careful and thoughtful evaluation of alternatives that limit the footprint of the Project and impacts to wildlife and habitat.

A. Conclusion

The environmental effects of the proposed revision of the Marina Point Development Plan may include, but not limited to, direct and indirect impacts to wildlife and habitat, particularly the bald eagle, impacts to air quality and regional growth, green house gases, traffic, water quality and noise. Evaluation of each of these impacts, as well as, analysis of reasonable and prudent alternatives must be included in any future environmental review done on the Project. A CEQA-mandated supplemental or subsequent EIR must occur prior to approval of the Project to ensure that decisionmakers and the public are fully informed and aware of all current environmental impacts of the Project. Thank you for the opportunity to submit comments on this proposed revision to the Marina Point Project and please include me on any future notices about the Project. If you have any questions, please do not hesitate to contact the Center at the number listed below. We look forward to reviewing any further environmental review and documentation on this Project.

Sincerely,

An Julha

Aruna Prabhala Staff Attorney Center for Biological Diversity 351 California St, Suite 600 San Francisco, CA 94104 Ph: (415) 436-9682 ext. 322 aprabhala@biologicaldiversity.org

Warrick, Chris - LUS

From:Steven Farrell <mr_sqf@yahoo.com>Sent:Thursday, April 10, 2014 12:01 AMTo:Warrick, Chris - LUSSubject:Re: Marina Point - Notice?

9 April 2014

Mt. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415 VIA EMAIL: <u>Chris.Warrick@lus.sbcounty.gov</u>

Re: Proposed Revision to Project P201400106/RMC (APN 0304-082-15) Marina Point development plan, applicant: Irv Okovita

Dear Mr. Warrick,

Thank you for emailing me today a copy of the March 26, 2014 Planning Project notice the County sent last month to property owners near the proposed Marina Point project.

As I explained to you on the phone this morning, I have been concerned about this project for many years, and have asked the County to include me on any public notice distributions sent regarding this project. I don't know why that didn't happen, but I'm glad a friend alerted me to both the revision notice itself and of today's public comment deadline to be included in the final project action (as explained in the notice).

Although this project was approved nearly 25 years ago (under a different General Plan and Developement Code), I am quite sure that under today's land use policies, it would not be. Certainly it would not be approved in its current configuration. Much has changed since 1991. What is especially disappointing to me however is that in spite of a history of permitting and procedural violations, missed deadlines, expirations and more by the applicant, San Bernardino County has repeatedly chosen to keep the project viable.

This notice appears to be another version of "enabling" the applicant over respecting the public's right to due process and proper environmental review and mitigation. This notice seems to be treating the project change as a modification to a single parcel, and not to the entirety of the Planned Development. The notice highlights only one element of change and does not even address the question if changes to the project should trigger renewed environmental review. Which they should.

More egregiously, this notice apparently only describes one of several changes being considered for the project (and only on the one parcel?). It seems there are also plans for other changes to the project (on other parcels? – it is not explained) such as new docks and new residency (or occupancy) capacities (beyond the bare number of building "units"). Noticing only a single change in the project at a time, instead of recognizing and reviewing all changes to the Development would seem to be a version of "piecemealing" the project modifications so as to avoid proper environmental review.

In any case, Marina Point is long overdue for an updated analysis of its impacts and adherence to current standards and context. At a minimum, Greenhouse Gas impacts of the project, traffic and similar impacts to the current

community characteristics (not the 1991 community) and an updated water supply analysis should all be triggered by changes to the project.

Thank you for this opportunity to comment. And please include me on any further notices about this project.

Respectfully,

Steven Farrell San Bernardino Mountains Group Sierra Club PO Box 2287 Crestline, CA 92325

From: "Warrick, Chris - LUS" <Chris.Warrick@lus.sbcounty.gov> To: 'Mr SQF' <mr_sqf@yahoo.com> Sent: Wednesday, April 9, 2014 11:10 AM Subject: RE: Marina Point - Notice?

Mr. Farrell,

As you requested, attached is the project notice for the Marina Point project. Please let me know if you have any questions.

Please take a moment to complete our 1 Minute Satisfaction Survey www.surveymonkey.com/s/3RK9JH7

Chris Warrick Senior Planner Land Use Services Department County of San Bernardino 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0187 T: (909) 387-4112 F: (909) 387-3223 E: <u>cwarrick@lusd.sbcounty.gov</u> W: www.sbcounty.gov

"Our Job is to create a county in which those who reside and invest can prosper and achieve well-being."

-----Original Message-----From: Mr SQF [mailto:mr_sqf@yahoo.com] Sent: Tuesday, April 08, 2014 1:57 PM To: Warrick, Chris - LUS Subject: Marina Point - Notice?

Hello Mr. Warrick,

I have also just left you a voicemail, hoping to reach someone who can explain to me what

might be happening with the proposed Marina Point project in Fawnskin. I understand you are the planner assigned. Marina Point has a long history

of problems and I remain very concerned about the social and environmental impacts it will have on the local area and community.

If there are proposed changes to the project, or updates to any of the procedural processes it must follow, as an engaged local citizen I am very interested in learning about any changes of status regarding Marina Point (MP).

As background, I live in the mtns, and received an email today from a friend about "something" (a public notice) that

has been issued about modifications to the MP project. I try to follow mountain based developments, and although I

have asked to be included in any public notice for projects in this region, I did not get any notice.

The unofficial email I received indicated a deadline for public comment may end today or tomorrow. Obviously I am

trying to clarify what's happening as quickly as I can.

Can you please call me at 661 449 2867 (much easier than email back and forth) to share what you know about the project. What this "notice" is about, what it's for, and where I can find a copy?

Thank you,

Steven Farrell

Warrick, Chris - LUS

From: Sent: To: Subject: Karin Powell <bbteacher@charter.net> Thursday, April 10, 2014 7:54 AM Warrick, Chris - LUS Revision to Mariana Point APN0304-082-15

April 9, 2014

Mr. Chris WarrickCounty of San BernardinoLand Use Services/Planning Department385 North Arrowhead Ave.; First floorSan Bernardino, CA 92415VIA EMAIL: <u>Chris.Warrick@lus.sbcounty.gov</u> Re: Revision to approved action to revise the Marina Point development plan; APN0304-082-15

Dear Mr. Warrick,

I would like to voice my concerns about the proposed revision to this project.

There are many discrepancies in the proposed changes and what the

down-the- mountain developer is advertising. This seems to me, to show that the developer is insincere and something is fishy with what he is planning to do to our peaceful paradise. Because of what this parcel has already undergone, (it is a mess), I really think that a thorough investigation into this proposal should be a top priority for your office. I'm not sure if you know that bald eagles nest in this area, and they fish right in the area where the development is planned! We've got the National Bird potentially being harassed!

This project has been in the works for a long, long time. A lot of things have changed in Fawnskin during this period. This project and the proposed revisions need to be reanalyzed regarding the impacts they really have on our small community. A new environmental analysis needs to be done.

Please include me on any further notices about this project. Thank you for your hard work and consideration of Fawnskin residents - wildlife included.

Sincerely, Karin Powell PO Box 356 Fawnskin, CA 92333 (909) 866-3463



Big Bear Group

San Gorgonio Chapter

PO Box 3048 Big Bear Lake CA. 92315

www.sierraclubbigbeargroup.org

April 10, 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415 VIA EMAIL: <u>Chris.Warrick@lus.sbcounty.gov</u>

Re: Revision to approved action to revise the Marina Point development plan; APN 030408215

Dear Mr. Warrick,

The Big Bear Group of the Sierra Club representing over 150 residents of the Big Bear Valley would like to express their concerns about the proposed revision to this project. The county in our view continues to let this developer slide over county regulations.

First, the project notice does not mention all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for hunting by the bald eagles that nest here. The advertising also talks about each condominium having a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. Making it be so easy for two families to use the same condo space would increase the number of people possible and increase the impacts on our small town, especially noise and traffic.

Second, this project has been in process for decades. In that time, the situations in the area have changed in major ways. There is much more traffic, there are lots more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis needs to be done. Please include me on any further notices about this project.

Sincerely,

Rush E Wallace – Executive Committee Chair Big Bear Group Sierra Club

From: Sent: To: Subject: Kay Anderson <kay@nobest.net> Friday, April 11, 2014 4:31 PM Warrick, Chris - LUS Marina Point

Dear Mr. Warrick,

We are home owners in Fawnskin and have always cherished, and appreciated this small quiet town. My family has been in this area for over 20 years now and we are quite concerned about the construction of Marina Point Development that is underway in our small community. We understand that there have been changes made to these plans which will bring even more people, noise, trash, and basic disturbance to our community than was originally approved by the county. Please keep in mind that this area is a two lane highway. The traffic issue alone seems to be inconvenient at best, not to mention dangerous if there were to be an emergency of any kind. It is also our understanding that the developers are not being forthcoming about their revised plans for this area, including additional docks, lock off units separate of the condominiums themselves, etc.

It has been brought to our attention that there has <u>not</u> been an environmental impact review of this area since the project was approved back in 1991. Obviously a lot has changed in 23 years. Since that time, there have been a lot of changes with regard to the protection of wildlife, water and air pollution, etc. To that end, I am requesting that the developers be required to provide complete construction plans, (old and new) along with all advertisements they have posted with regard to the proposed construction and sale of these condominiums be submitted to the County of San Bernardino, and to the residents of Fawnskin so that those documents can be reviewed before any approval be given.

Our small town is what we enjoy, and have quite frankly paid a lot of money to be a part of. We are fearful that these proposed changes, and (not so transparent) changes, will impact this area greatly in a negative way.

Thank you so much for your time in reading and addressing this letter. Please keep us informed of any communications or meetings to be held with regard to this project.

Sincerely,

Jeff and Kay Anderson 38570 North Shore Drive Fawnskin, Ca. 92333 Cell - (714) 469-3624

P.O. Box 28 Fawnskin, CA. 92333

Phyllis Wyatt

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POB 400524 Hesperia, Ca. 92340

Mr. Chris Warrick	
County of San Bernardino	
Land Use Services/Planning Dept.	
385 N. Arrowhead Ave. First floor	
San Bernardino, Ca. 92415	

RE: Revision to approved action to revise Marina Point development plan Fawnskin, Ca.

Dear Mr. Warrick,

I would like to voice my concerns about the proposed revision to this project.

First, said project notice does not mention the changes that have been proposed and are being **advertised** by the developer. There are docks that are planned to be added to individual home lots and would be on west side of the project in an area that is often used for hunting by the bald eagles that nest there. The advertising also talks about each condo having a separate unit that could be **rented out** and that would greatly increase the number of units rather than lowering it. Making it easy for two families to use same condo space would increase the number of people possible and increase the impact on our small town, especially noise and traffic.

Second, this project has been in process for decades. In that time, the situations in the area changed in major ways. There is much more traffic, there are lots more homes and buildings in the areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. This project and proposed revisions need to be carefully analyzed regarding the impacts they really have on these changed conditions. A new environmental analysis need to be done.

Please include me on further notices about this project. Thank you.

Gincerely, Phyllis Wyatt

Phyls58@aol.com

Warrick, Chris - LUS

From:	Stone, Louisa <lstone@crowncrafts.com></lstone@crowncrafts.com>
Sent:	Monday, April 14, 2014 7:46 AM
То:	Warrick, Chris - LUS
Cc:	stoneartlou@yahoo.com
Subject:	Revision to approved action to revise the marina Point development plan; APN 0304-082-15

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Dear Mr. Warrick,

I would like to voice my concerns about the proposed revision to this project.

First, the project notice does not mention all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for hunting by the bald eagles that nest here. The advertising also talks about each condominium having a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. Making it be so easy for two families to use the same condo space would increase the number of people possible and increase the impacts on our small town, especially noise and traffic.

Second, this project has been in process for decades. In that time, the situations in the area have changed in major ways. There is much more traffic, there are lots more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis needs to be done.

Please include me on any further notices about this project. Thank you.

Sincerely, Louisa and Art Stone 980 Canyon Road Fawnskin, CA 92333 Email: <u>StoneArtLou@yahoo.com</u>

ALMS UNDERGROUND CONSTRUCTION, INC.

38703 VISTA DRIVE CATHEDRAL CITY, CA. 92234 Ca. Lic. 482180 760-324-1911 - Office 760-324-9541 - Fax 760 578-1510 - Cell <u>AlmsUnderground@gmail.com</u>

April 14, 2014

Mr. Chris Warrick Country of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

Via Email: chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point developemtn plan; APN 0304-082-15

Dear Mr. Warrick,

I would like to voice my concerns about the proposed revision to this project.

First, the project notice does not mention all the changes that have actually been proposed and are being advertised by this developer. There are docks that are planned to be added to those individual home lots and they would be on the west side of the project in an area that is often used for hunting by the bald eagles that nest here. The advertising also talks about each condominium having a separate unit that could be rented out and that would greatly increase the number of units rather than lowering it. Making it be so easy for two families to use the same condo space would increase the number of people possible and increase the impacts on our small town, especially noise and traffic.

Second, this project has been in process for decades. In that time, the situations in the area have changed in major ways. There is much more traffic, there are lots more homes and buildings in areas that used to be available for wildlife habitat, especially the bald eagles, there is much more boat traffic and pollution in the lake and more air pollution. This project and the proposed revisions need to be analyzed properly regarding the impacts they really have on these changed conditions. A new environmental analysis needs to be done.

Furthermore, are provisions in place for us and our neighborhoods, to maintain ease of access to the lake, now and in the future?

Please include me on any further notices about this project. Thank you.

Sincerely,

Douglas R. Alms, Owner

Pamela L. Alms, Owner

We dig it for you!



Big Bear Group

San Gorgonio Chapter

PO Box 3048 Big Bear Lake CA. 92315

www.sierraclubbigbeargroup.org

May 14, 2014

Tom Hudson Director, Land Use Services Development County Government Center 385 N. Arrowhead Ave. San Bernardino, CA 92415

Re: Expiration of Marina Point Development Permits

Dear Mr. Hudson:

The Big Bear Group of the Sierra Club representing over 150 local members in the Big Bear Valley has serious concerns regarding the County's handling of the Planned Development Permit process for the Marina Point condominium project (the "Project") located on Big Bear Lake in Fawnskin. It has come to our attention that this permit expired as of June 21, 2011 or possible earlier, yet construction has been allowed to continue with what appears to be little oversight by the county agencies that should be involved.

Under the Conditions of Approval for the Project and Section 86.06.060 of the San Bernardino County Development Code (the "Code"), Marina Point Development Associates (the "Developer") was required to either (1) record a final map, or (2) obtain a building permit for each successive five year period for which the Planned Development Permit was in effect. The Developer recorded a final map for the Project on December 21, 2000, resetting the deadline to December 21, 2005. The Project was enjoined by the U.S. District Court for the Central District of California for 66 months in April, 2004. Even if the County were to credit the Developer for this 66 month period, it only extends the Developer's deadline until June 21, 2011. The Developer did not, and still has not, filed an additional final map or obtained a building permit.

Because the County's approval has expired, Code Section 86.06.060 is clear: "<u>no further work</u> shall be done on the site" until the developer obtains a new permit.

The Sierra Club formally requests and urges the County to enforce its Code provisions and Conditions of Approval regarding the expiration of the Marina Point Planned Development Permit. Considering the substantial impact this Project has already had on the local environment and the local community, and the risk that the development that does not fit with current conditions, enforcing the Code and requiring a new evaluation is highly appropriate as well as legally required. We and other members of the public deserve the benefit of the Code's requirements and ask you to give us the protection embedded in the Conditions of Approval and the Code.

The Sierra Club opposes any further development under the expired Planned Development Permit. Big Bear Lake is a unique and important natural resource that must be protected from irresponsible development such as that occurring at the Project site. Under the provisions of the Code, further development should be halted until the project can be fully reassessed and new permits issued, with appropriate conditions to safeguard this unique public resource. We have no idea why the County has not followed its own codes. However, it is our observation that citizens today are becoming more and more cynical toward government and its employees. This is not necessarily fair but failure to follow your own regulations does not help change this attitude. Please correct the mistakes of the pass and make this developer follow the same rules that would be required of the general public.

Sincerely

Ed Wallace Chair Big Bear Group - Sierra Club



via electronic mail only

Because life to an in

May 16, 2014

Tom Hudson Director, Land Use Services Development County Government Center 385 N. Arrowhead Ave. San Bernardino, CA 92415 Tom.Hudson@lus.sbcounty.gov

Re: Expiration of Marina Point Project Planned Development Permits

Dear Mr. Hudson:

I am writing to you on behalf of Center for Biological Diversity ("the Center"). The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 675,000 members and e-activists throughout the county and California, including San Bernardino County. The Center has worked for many years to protect imperiled wildlife and natural resources, open space, air and water quality, and overall quality of life for people living near Big Bear Lake. It has come to the Center's attention that the Planned Development Permit for the Marina Point condominium project (the "Project") located at Big Bear Lake has expired as of June 21, 2011 at the latest.

Under the Conditions of Approval for the Project and Section 86.06.060 of the San Bernardino County Development Code (the "Code"), Marina Point Development Associates (the "Developer") was required to either (1) record a final map, or (2) obtain a building permit for each successive five year period for which the Planned Development Permit was in effect. The Developer recorded a final map for the Project on December 21, 2000, resetting the deadline to December 21, 2005. The Project was enjoined by the U.S. District Court for the Central District of California for 66 months in April, 2004. Even if the County were to credit the Developer for this 66 month period, it only extends the Developer's deadline until June 21, 2011. The Developer did not, and still has not, filed an additional final map or obtained a building permit.

Because the County's approval has expired, Code Section 86.06.060 is clear: "no further work shall be done on the site" until the developer obtains a new permit.

The Center formally requests and urges the County to enforce its Code provisions and Conditions of Approval regarding the expiration of the Marina Point Planned Development Permit. Considering the substantial impact this Project has already had on the local environment

Alaska - Arizona - California - Flonda - Minnesola - Nevada - New Maxico - New York - Oregon - Vermont - Washington, DC

Aruna Pinohala - Staff Attorney, Urban Wildlands - 351 California St., Ste. 600 - San Francisco, CA 94104-2404 Pitone: (415) 435.9632 x322 - Fax: (415) 435.9683 - aprabhala@biologicaldiversity.org Director Tom Hudson May 16, 2014 Page 2

and the local community, and the risk that the development that does not fit with current conditions, enforcing the Code and requiring a new evaluation is highly appropriate as well as legally required. We and other members of the public deserve the benefit of the Code's requirements and ask you to give us the protection embedded in the Conditions of Approval and the Code.

The Center opposes any further development under the expired Planned Development Permit. Big Bear Lake is a unique and important natural resource that must be protected from irresponsible development such as that occurring at the Project site. Under the provisions of the Code, further development should be halted until the project can be fully reassessed and new permits issued, with appropriate conditions to safeguard this unique public resource. If you have questions about the concerns raised in this letter, please contact the Center at the number listed below. Please add the Center to any mailing lists or public notices addressing changes, revisions or updates to this project.

Sincerely,

An Julha

Aruna Prabhala Staff Attorney Center for Biological Diversity 351 California St, Suite 600 San Francisco, CA 94104 Ph: (415) 436-9682 ext. 322 aprabhala@biologicaldiversity.org

CC: Terri Rahall at <u>terri.rahhal@lus.sbcounty.gov</u> Chris Warrick at <u>cwarrick@lusd.sbcounty.gov</u> Liz Harris at <u>pokeyandliz@gmail.com</u> Chris Carrillo at <u>chris.carrillo@bos.sbcounty.gov</u> Jeff Brandt at jeff.brandt@wildlife.ca.gov

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396 HAYES STREET, SAN FRANCISCO, CA 94102 T: (415) 552-7272 F: (415) 552-5816 www.smwlaw.com EDWARD T. SCHEXNAYDER Attorney schexnayder@smwlaw.com

May 19, 2014

Via E-Mail and U.S. Mail

Tom Hudson Director, Land Use Services County of San Bernardino County Government Center 385 N. Arrowhead Avenue San Bernardino, CA 92415

Re: <u>Marina Point Development - Expired Approvals and History of</u> <u>Illegal Activities</u>

Dear Mr. Hudson:

On behalf of Friends of Fawnskin, we write with further information about the expired approvals for the Marina Point Development on Big Bear Lake. The Marina Point Development Associates ("Developer") has been performing grading, construction, and demolition activities at the project site without necessary approvals and permits from the County, in violation of local, state and federal law. Not only do these actions degrade the environment of Big Bear Lake, but they threaten the health and livelihood of Fawnskin's residents. We therefore urge the County to take these violations seriously and halt work at the Marina Point Development site.

I. The County Code Forbids Work at the Project Site Because the Project's Approvals Have Expired.

The San Bernardino County Code of Ordinances unequivocally forbids "further work" at a project site after expiration of planning permits and authorizations under County Code section 86.06.060. *See* County Code § 86.06.060(c). Here, the Planned Development and Tentative Map approvals for the project expired long ago. Consequently, the Developer lacks necessary entitlements to continue working at the project site, and must cease all activities until it receives new approvals.

A. The Planned Development Permit Has Expired.

For phased planned developments like the Marina Point project, an applicant "shall either record a tract map or obtain Building Permits for at least one phase of the project within five years of the Development Plan conditional approval and, as applicable, *within each succeeding five-year period*." County Code § 86.06.060(a)(5)(B) (emphasis added). Here, the "Development Plan conditional approval" for the original Project occurred on December 9, 1991. After a 23-year delay, this County approval has expired.

For example, the Developer had five years following the 1991 approval to either record a tract map for the project or obtain a building permit. The Developer did neither. It obtained no such approvals until December 21, 2000, when it recorded a final map for the project—nine years after the original approval. Thus, the County's planned development approval expired in 1996, five years after the Project approval.

Even if the December 2000 approval were somehow timely—and it was not—the Developer would have been required to begin obtaining building permits for the project by December 2005. See County Code § 86.06.060(a)(5)(B). This has not occurred either. To date, the Developer has not received a single building permit for the Project.¹

B. The Tract Map Approval Has Expired.

The County Code also states that conditionally-approved planned developments "shall be subject to a time limitation *not to exceed that specified by the condition of approval* for the Development Plan approval." *Id.* (emphasis added). The County revised the conditions of approval for the Marina Point Project on April 28, 1992.

Condition of Approval 2a imposes firm "[t]ime limitations for Tentative Tracts," under which the "approval *shall become null and void* if [1] all conditions have not been complied with and [2] the occupancy or use of the land or recordation of a final map has

¹ Between April 16, 2004 and September 9, 2009, federal court orders halted construction at the project site pending resolution of litigation over Clean Water Act and Endangered Species Act violations. The County Code does not suspend planned development or tract map time limits for litigation, but if it did, the time for seeking building permits would have expired on June 21, 2011.

not taken place within 36 months" of the approval date. (emphasis added).² This condition allows for one discretionary 36-month extension.

Under Condition 2a, the Developer had 36 months from the approval date—until December 9, 1994—to record a final map. This period was extended three years by state legislation to December 9, 1997. The County then granted the one discretionary 36-month extension so that the Developer had until December 9, 2000 to record a final map. Despite six years of extensions, the Developer failed to record a final map until December 21, 2000. As a result of the untimely final map recording, the County's tract map approval became "null and void" and the final map was invalid.

Moreover, even with the nine-year time period for complying with "all conditions" of project approval, some project conditions remain unmet today. For example, Condition of Approval 27 requires the developer to provide "100% of the project's estimated water demand . . . by providing a new operational well." The developer has provided no such well. The County's tentative tract approval for the Project has expired under Condition 2a for this reason as well.

Significantly, this is not the first time that approvals for Marina Point development have expired. The County first approved a development proposal for the site in 1983. But in 1991, the County recognized that "project approval had expired" because the Developer had not recorded a tract map or commenced that project.

This time, the Developer's delay is much more significant—the County's planned development approval is 23 years old. Because the Developer has far exceeded the mandatory time limits in the County Code and the Conditions of Approval for the original Project, the County's 1991 approval is "null and void." The County should therefore require the Developer to halt all work at the project site unless and until it receives new approvals from the County. County Code § 86.06.060(c).

II. The Developer Has Continued its Practice of Illegal Activities at the Project Site.

Marina Point's Developer has a consistently engaged in illegal and unpermitted activities on the project site, many of which have harmed the environment and threatened the health and safety of Fawnskin residents. Allowing this behavior to continue is both

² The separate deadline in Condition of Approval 2 echoes the County Code's five year planned development time limit.

detrimental to the community and unfair to other landowners who play by the rules. Given this history of egregious behavior, it is especially critical for the County to enforce the development time limits in its Code and hold the Developer accountable.

These violations include:

Demolishing Buildings Containing Asbestos Without Any Permits or Safety Precautions (April-May 2014)

Over the last month, workers at the project site demolished three old buildings onsite, some of which are known to contain asbestos. All these buildings might have also contained lead-based paint. In violation of both federal and state law, the Developer took no precautions before performing this work. Nor did it obtain any hazardous materials permits or post notices before the demolition occurred. This violation was reported to the South Coast Air Quality Management District, which has verified the presence of asbestos.

The Environmental Protection Agency has classified asbestos as a hazardous air pollutant because of the severe threat it poses to human health.³ Workers on the project site were likely directly exposed to asbestos during the demolition, and contamination could have spread to the residential community that surrounds the Project. In short, not only was this demolition illegal, it has created a significant health risk for Project workers and residents of Fawnskin.

• Failing to Halt Work During Wintering Bald Eagle Season (2003 and 2013)

Under the Project's conditions of approval, the Developer must halt all mechanized work during the annual wintering bald eagle season, from December 1 to April 1. The Developer has violated this moratorium at least twice, in 2003 and 2013.

• Illegal Tree Cutting and Misrepresentations to Obtain Timber Harvest Exemption (2010 and 2007)

In 2010, the Developer received a timber harvest exemption to cut trees on the project site, after misrepresenting to the Department of Forestry and Fire Protection that the cut area was under 3 acres. Rather than measuring the entire area of cutting, which was over 3 acres, the measurements were done around small sections of grouped trees

³ http://www2.epa.gov/asbestos/asbestos-laws-and-regulations#epalaws

without including the area between groupings. Additionally, the Developer cut down a bald eagle perch tree that was outside of the designated timber harvest area, waiting until after the timber harvest inspection was complete.

In 2007, the Developer began cutting trees on the project site without obtaining either a timber harvest exemption or a permit. Many trees were cut before the County halted this activity.

• Unpermitted Bulldozing and Grading (July 2003)

Lacking any permits, the Developer bulldozed the east side of the Project site, removing many willows and plants. This area included habitat for the endangered Southwest Willow Flycatcher. The bulldozing and grading activities also reshaped the site's shoreline in a way that thwarted the Army Corp of Engineers' jurisdictional water inspection.

The Developer also performed unpermitted dredge and fill work on the site, grading some of the dredged materials. The County withdrew the Project's grading permits because of this activity.

• Illegal Dredge and Fill Operations (June 2003)

The Developer conducted illegal dredge and fill operations in Big Bear Lake without obtaining a Clean Water Act section 404 permit from the Army Corps of Engineers. The Army Corps issued a Cease and Desist order to the Developer in July 2003 and subsequently ordered it to perform repairs on two separate occasions to remedy the unpermitted activity. Because the developer did not provide proper erosion control to protect lake quality, it was required to perform emergency repairs. Much of this repair work took place after December 1, well into the moratorium on construction activities to protect the wintering bald eagles.

• Illegal Water Hook-ups. (June 2003)

The Developer took water from the Fawnskin water supply to fill watering trucks for the Project. The Fawnskin area has scarce water resources and continues to face forced water restrictions. Contractors throughout the valley are required to bring in their own water for use in construction activities to conserve the drinking water supply. The Big Bear Lake Department of Water and Power ordered the Developer to remove its illegal connections.

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• Unpermitted Open-air Spray Painting of Construction Equipment (May 2003)

The contractors were openly spray painting construction equipment on the project site with no protection to prevent wind from carrying the paint into the surrounding neighborhoods or the lake. The South Coast Air Quality Management District forced the Developer to halt this activity.

• Unpermitted Lake Bottom Dredging (May 2003)

The Developer began dredging areas of Big Bear Lake surrounding the project site without obtaining a Shorezone Alteration permit from Big Bear Municipal Water District or a proper Army Corps of Engineers permits. This activity extensively damaged the shallow water lake bottom, which is critical for eagle foraging. The dredging further degraded the water quality in Big Bear Lake. The Water District, which manages the lake, ordered the Developer to stop the illegal dredging.

• Grading in Violation of Project's Conditions of Approval (May 2003)

The developer began grading activities without first doing vector control, as the Project conditions of approval require. As a result of this activity, the County suspended the Developer's grading permit.

• Work Performed Without a Grading Permit (2002)

In August 2002, the Developer bulldozed the entire project site without obtaining a grading permit. This activity extensively damaged the site's wetland habitat.

III. Conclusion

The residents of Fawnskin depend on the County to enforce the County Code to protect their health and safety, the general wellbeing of the community, and Big Bear Lake's precious environment. The County should not sit on the sidelines while the Developer performs work without valid approvals in violation of the County Code. Not only is stopping this illegal activity required by law, it is the right thing to do.

SHUTE, MIHALY

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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Style

Edward T. Schexnayder

cc: Terri Rahall <u>terri.rahhal@lus.sbcounty.gov</u> Chris Warrick <u>cwarrick@lus.sbcounty.gov</u> Liz Harris <u>pokeyandliz@gmail.com</u> Chris Carrillo <u>chris.carrillo@bos.sbcounty.gov</u> Jeff Brandt jeff.brandt@wildlife.ca.gov

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San Bernardino Valley Audubon Society

P. O. Box 10973, San Bernardino, California 92423-0973

May 21, 2014

Tom Hudson Director, Land Use Services Development County Government Center 385 N. Arrowhead Ave. San Bernardino, CA 92415

Via Email: tom.hudson@lus.sbcounty.gov

Re: Expiration of Marina Point Development Permits

Dear Mr. Hudson:

The **San Bernardino Valley Audubon Society** ("Audubon") is submitting this letter as a local concerned citizen organization that has watched with alarm and dismay for about two decades as the Marina Point condominium project in the Fawnskin community of Big Bear Lake has continued to neglect its Conditions of Approval, mislead the public and take advantage of the County's lax enforcement practices. We know of no other project in the mountain area that has a worse record of procedural and environmental abuse. We now understand that the Planned Development Permit for the Marina Point project has expired as of June 21, 2011 at the latest.

Under the Conditions of Approval for the Project and Section 86.06.060 of the San Bernardino County Development Code, the developer (Marina Point Development Associates) was required to either record a final map, or obtain a building permit for each successive five year period for which the Planned Development Permit was in effect. The Developer recorded a final map for the Project on December 21, 2000, resetting the deadline to December 21, 2005. The Project was enjoined by the U.S. District Court for the Central District of California for 66 months in April, 2004. Even if the County were to credit Marina Point for this 66 month period, it only extends their deadline until June 21, 2011. The Developer did not, and still has not, filed an additional final map or obtained a building permit.

Because the County's approval has expired, Code Section 86.06.060 is clear that "no further work shall be done on the site" until the developer obtains a new permit.

Audubon would like to formally request and encourage the County to fully enforce its Code provisions and Conditions of Approval regarding the expiration of the Marina Point Planned Development Permit. The extreme negative impact this Project has already had on the lake and local forest environment of the small rural community of Fawnskin is terribly disturbing. The fact that the development has not had any responsible environmental review for over 20 years, has had multiple infractions and no longer fits in with current standards is a major red flag for us, indicating serious problems in the overall planning process. Enforcing the Code and requiring a new evaluation is long overdue as well as legally mandated. We and other concerned members of the public appeal to the County to take all appropriate action and exercise the legitimate enforcement of the Conditions of Approval and the Development Code.

Audubon strongly opposes any further development under the expired Planned Development Permit. Big Bear Lake is a highly unique and significant natural resource for all of Southern California that needs to be protected from misguided, detrimental and rogue development projects such as Marina Point has so far proved to be. Under the provisions of the Code, further development should be halted until the project can be properly reassessed and new permits issued, with appropriate conditions to safeguard the precious natural resources of Big Bear Lake and the surrounding national forest.

Sincerely,

Drew Heldmann

Drew Feldmann, Conservation Chair

cc. Terri Rahall, Director of Planning, via email: terri.rahhal@ius.sbcounty.gov Chris Warrick, Project Planner, via email: cwarrick@lusd.sbcounty.gov Chris Carrillo, Deputy Chief of Staff for Supervisor Ramos, chris.carrillo@bos.sbcounty.gov Liz Harris, Field Representative for Supervisor Ramos, liz.harris@bos.sbcounty.gov Jeff Brandt, Department of Fish & Wildlife, Ontario Office, jeff.brandt@wildlife.ca.gov Ed Wallace, Conservation Chair, Big Bear Sierra Club, ednjeanne@charter.net Dr. Hugh Bialecki, President, Save Our Forest Association, habialeckidmd@gmail.com

Warrick, Chris - LUS

From: Sent: To: Subject: hope trompeter-guzman <hyhopes@hotmail.com> Monday, August 18, 2014 1:40 PM Warrick, Chris - LUS Marina Point, Fawnskin, CA

August 18, 2014

Attention: Mr. Chris Warrick

Dear Sir,

I am a homeowner in Fawnskin, California and would like to give some input in regards to the Marina Point development in the area.

On Big Bear Lake there are thirty three public lake access sites on the South Shore of the lake. There are absolutely none on the North Shore side other than the East and West public ramps respectively 2-4 miles away.

Our public lake access is increasingly compromised as Fawnskin is inevitably developed. Thusly, it becomes imperative that any and all lake shore development include no cost public lake access to it's local residents.

In conclusion, please make sure that the Marina Point development has free public lake access for community tax payers.

Sincerely,

Hope Trompeter-Guzman 760-638-0614

EXHIBIT F

Letters of Support

Warrick, Chris - LUS

From:	David Bruner <jdbruner@cox.net></jdbruner@cox.net>
Sent:	Monday, April 21, 2014 9:28 AM
То:	Warrick, Chris - LUS
Subject:	Marina Point Plan Revision; APN 0304-082-15

Good Morning Mr. Warrick,

It has come to my attention that a plan revision is under consideration for the Marina Point development and once again the 'Friends of Fawnskin' has launched a letter writing campaign to defeat the change and hopefully derail the entire project. I have been a Fawnskin resident for almost 20 years and I want it made clear that the 'Friends of Fawnskin' most certainly does NOT represent the population of Fawnskin at large. Personally, I believe the organization has been largely orchestrated to preserve the view from homes on Flicker and to block any development that might bring additional residents regardless of the rights of others to responsibly utilize their private property. The view from my home will be altered for better or worse as well but we were aware that potential from the time we built. We love our home and would consider it unthinkable if others in the community would have fought our construction of it.

We are extremely interested in the wildlife habitat but do not see how the proposed plan revision actually impacts it. The current state of construction has altered it now and to what degree there is a demonstrable effect to completing the project is suspect.

Marina Point represents the first significant, well planned and designed development I've seen for Fawnskin in my time here, replacing what for years was an eye sore of dilapidated buildings. Delays in work on this project has only made that worse. It is clearly time to move on and allow this project to be finished. Once completed it will enhance the quality of Fawnskin's appeal and help revitalize the community.

Thank you for your consideration of my views.

Regards,

John David Bruner 39409 Lodge, Fawnskin 909/866-1484 2

Warrick, Chris - LUS

From:	James Dooley <twodooleys@mac.com></twodooleys@mac.com>
Sent:	Saturday, April 12, 2014 10:22 AM
То:	Warrick, Chris - LUS
Subject:	Marina Project, Fawnskin

We are full time residents in Fawnskin and are really in favor of the Marina Project.

We think it will be a great improvement, visually and economically. The site has looked a mess for 20 years, dilapidated buildings and trash. Anything will look better.

And Fawnskin could use the boost to the downtown that this new project will bring. We look forward to a clubhouse with recreational facilities and the dock for boats. And responsible management will diminish any impact on the lake.

Some people will say that it is an endangerment to the bald eagles that sometimes nest across the bay from the development, but our own house and others are only 1/3-1/2 mile from the eagles and we don't seem to keep them from nesting.

Historically, the traffic flow is way lower than it was in the 40s-60s, maybe as much as 50% lower. Fawnskin flourished then with more restaurants, fish camps and gas stations. We would like to see this again. There are never any traffic jams in Fawnskin and this won't create any.

The population density now is only about 25% full time occupancy rate. This new project will not add that many more residents. Most will probably be part time visitors, as the rest of the town is now.

Please let's get this project off the ground now.

Jim and Janet Dooley

Petition in Support of County Approval of the Revision to Marina Point's Planned Development

Supervisor John Ramos Planning Director Terri Rahhal County of San Bernardino 385 N. Arrowhead Ave. San Bernardino, CA 92415

We the undersigned hereby express our support of the revision to Planned Development Plan of the Marina Point project on Big Bear Lake, and petition the County of San Bernardino to approve the revision for the following reasons:

- 1. The density is being reduced by 10% from 133 to 120 units.
- 2. The proposed on the 10 custom homes site condos will create a more open view shed from the lake, and have a further positive influence on property values in the area.
- 3. There would be an increase in open space and the number of parking spaces.
- 4. The project will generate over \$950,000 in annual real estate taxes to the County of San Bernardino as well as substantial sales taxes from the commercial facilities and marina.
- 5. The job creation would be of benefit to residents and businesses in the Valley.
- 6. The project will boost the local Fawnskin commercial economy and a stimulus for restoration.
- 7. The project provides public access to the lake's enhanced aquatic habitats.
- 8. Marina Point will be Big Bear's finest upscale lakefront community, which will enhance Big Bear Valley's overall real estate market and reputation as the best four season resort in Southern California and beyond.

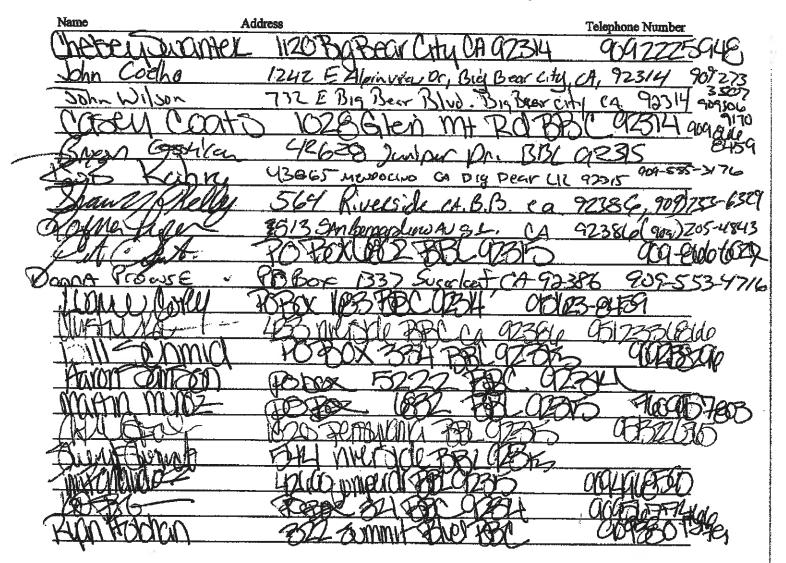
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Petition in Support of County Approval of the Revision to Marina Point's Planned Development

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Address **Telephone** Number



SAN BERNARDINO COUNTY LAND USE SERVICES PLANNING PROJECT NOTICE 385 North Arrowhead Avenue, Fitst Floor, San Bernardino, CA 92415-0182

Referral Date: March 26, 2014

ATTENTION PROPERTY OWNERS

Page 1 of 2

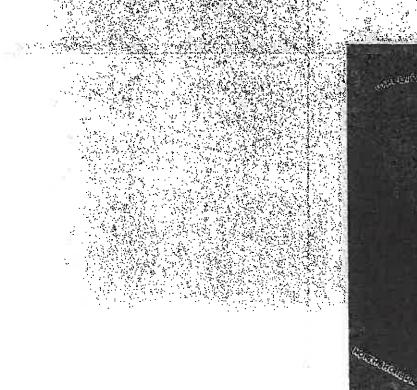
The development proposal listed below has been filed with County Planning. Please comment in the space below. You may attach additional pages as necessary.

Your comments must be received by Planning no later than April 09, 2014 to be sure that they are included in the final project action. However, comments will be taken up to the time of the project decision. Please refer to this project by the Applicant's name and the Assessor Parcel Number indicated below. If you have no comment, a reply is not necessary. If you have any questions regarding this proposal, please contact Planner, CHRIS WARRICK at (909) 387-4112, by email at Chris. Warrick@hashcounty.gov, or mail your comments to the address above. If you wish, you may also FAX your comments to (909) 387-3223.

ASSESSOR PARCEL NUMBER: 0304-082-15
PROJECT NUMBER: #Multiple Parcel Associations
APPLICANT
LAND USE DISTRICT (ZONING):
IN THE COMMUNITY OF: FAWNSKINGRO/SUPERVISORIAL DISTRICT
LOCATED AT: MARINA RD. BOTH SIDES, NORTHSORE RD, SOUTH SIDE
PROPOSAL: REVISION TO APPROVED ACTION TO REVISE THE MARINA BOINT DEVELOPMENT PLAN TO
REPLACE 7 MULTFUNIT CONDOMINIUM STRUCTURES WITH 10 SPICELE UNIT CONDOMINIUM STRUCTURES ALONG THE BIG BEAR LAKE SHORE, REDUCING THE OVERALL DENSITY FROM
133 UNITS TO 120 UNITS ON 12.5 ACRES

If you want to be notified of the project decision, please print your name clearly and legibly on his form and mail it to the address above along with a self-addressed, stamped envelope. All decisions are subject to an appeal period of ten (10) calendar days after an action is taken.

Comments (If you need additional space, please attach additional pages):





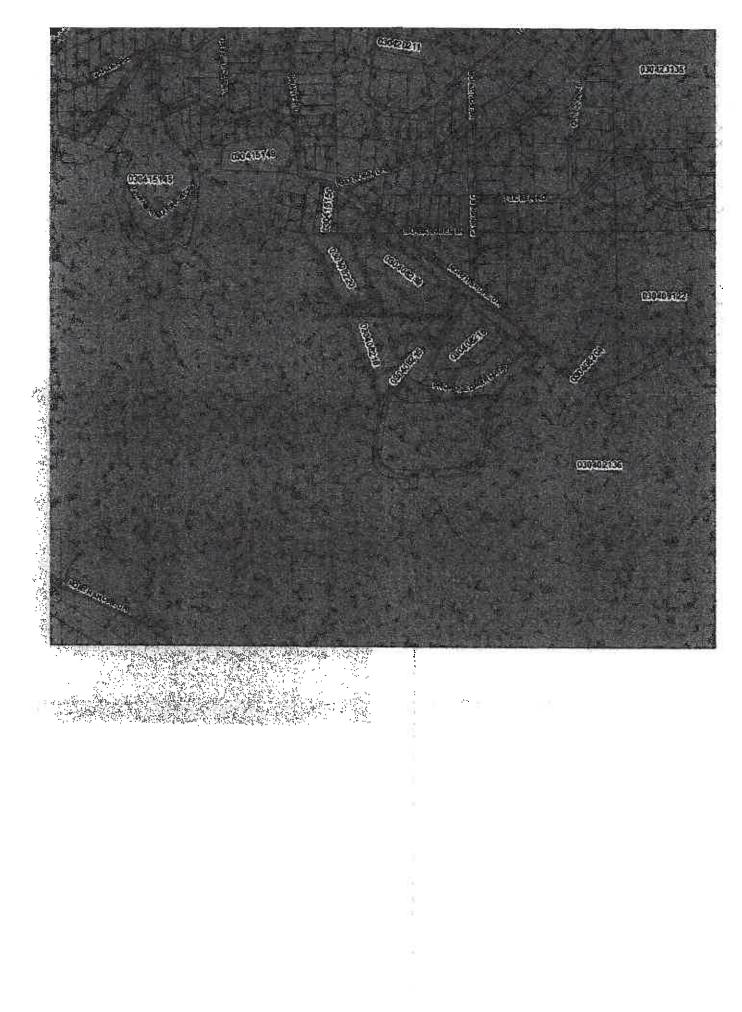


EXHIBIT G

Letter from Appellant, dated March 20, 2015





March 20, 2015

Via E-Mail and FedEx

Chris Warrick, Planner County of San Bernardino Land Use Services - Planning Division 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0182 E-Mail: <u>chris.warrick@lus.sbcounty.gov</u>

RECEIVED

MAR 2 4 2015

San Bernardino County Planning Division AUTHRISTRATION 2015 HAR 23 AM 8: 5

Re: Appeal of Revision to Approved Action (P201400106)

Dear Mr. Warrick:

Friends of Big Bear Valley and the Center for Biological Diversity submit this letter in support of their appeal of staff's decision on December 30, 2014 to approve a "Minor Site Plan Revision" application for the Marina Point planned development ("Project"). This approval violates both the County's Development Code and the California Environmental Quality Act and should accordingly be set aside.

I. The "Revision" Approval Is Inappropriate Because the Project's Development Permit Expired Long Ago.

As Friends and the Center have detailed in prior letters regarding the revision application (which are attached as Exhibit A and fully incorporated herein), the County's 1991 approval of the Marina Point development has long expired. In the nearly 25 years since the County's original approval, the applicant has never completed the Project.

The County's Development Code and the Project's conditions of approval both require expeditious completion of the Project: an applicant "shall either record a tract map or obtain Building Permits for at least one phase of the project within five years of the Development Plan conditional approval and, as applicable, *within each succeeding five-year period.*" See Exhibit A; County Code § 86.06.060(a)(5)(B) (emphasis added).

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The applicant recorded an (untimely) tract map for the Project in December 2000, but has never obtained building permits since. Thus, even under the most favorable view of the facts surrounding this incomplete Project, the County's approvals expired nearly a decade ago.

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Because the Project's underlying development permit has expired, the County cannot approve the revision application. The revision procedures that staff relied on for this action require the existence of an "approved development project." *See* County Code § 85.12.010. In the absence of a valid, unexpired development permit for the Project, approval of the revision application is an illegal and "null and void" action under the County's development code. County Code § 81.01.050(i). For this reason alone, the Planning Commission should overturn approval of the revision application.

II. The County's Approval Requires Environmental Review under CEQA.

As Friends of Big Bear Valley has previously shown, the application presents a "new project" under CEQA, requiring a new EIR. Especially considering that the Project's development permit expired 10 years ago, it would be improper for the County to rely on decades-old environmental analysis of the Project's impacts when deciding whether to issue a new approval. The County must prepare a new EIR that evaluates the environmental impacts of the entire Project. (*See* Exhibit A.)

But even if the Project's development permits had not expired, the County would still need to undertake CEQA review before approving the revision application. Public agencies must comply with CEQA before issuing a discretionary approval for any "project." Pub. Res. Code § 21080(a). CEQA defines a "project" as any activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." *Id.* § 21065.

It is indisputable that approval of the revision application meets this definition and requires CEQA review. Increasing the number of buildings on the Project's western shore and expanding the planned recreation center by nearly 50% clearly constitute physical changes to the environment. Additionally, the applicant's plan to build "lock-off" units and new docks extending into Big Bear Lake are further physical changes that will foreseeably follow approval of the revised Project. (*See* Exhibit A.) All of these changed uses will likely alter the Project's environmental impacts, including impacts to noise, traffic, air quality, and sensitive wetlands and habitat. But staff's December 30, 2014 approval letter does not even mention CEQA, much less identify an adequate CEQA document that is needed to disclose the Project's impacts before the revision approval may proceed. Given CEQA's clear applicability, it is surprising that the County has entirely failed to consider CEQA compliance for this approval.

Moreover, the revised Project could create further environmental impacts, but the County's description of the revised Project is so vague that it is impossible to know the

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true scope of the applicant's plans. Staff's approval letter merely states the size of a new recreational clubhouse building and lists the number of condo buildings that have been approved for the site. It contains no information about the design or layout of these buildings, their intended uses, the number of people they will bring to the site, or information about steps necessary to construct the revised Project. The approval letter also states the revisions entail "other open space/recreation amenities" but offers no description of these amenities, how they differ from the previous Project plans, or potential impacts that might result from the new uses.

CEQA's fundamental purpose is to disclose potential environmental impacts to the public and decisionmakers before an agency approves or commits to a project. CEQA Guidelines § 15002(a).¹ But staff's ill-defined approval undermines this statutory goal—the public and decisionmakers cannot assess the potential impacts of the revised Project without a full description of that action.

In sum, the County must fully disclose *what* it is approving and comply with CEQA before issuing the permit that the applicant seeks.

III. At a Minimum, CEQA Requires the County to Prepare an SEIR for the Project.

Even if entirely new environmental analysis were not required, the County could not approve the Project revisions based on the previous analysis alone. Instead, CEQA requires preparation of a supplemental or subsequent EIR ("SEIR") when (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. Pub. Res. Code § 21166; *see also* CEQA Guidelines § 15162. As previously discussed (*see* Exhibit A) and detailed further below, at a minimum, CEQA would require preparation of an SEIR for the Project.

A. Substantial Changed Circumstances and New Information Since the Original Approval Require Further Environmental Review.

1. Climate Change and Greenhouse Gas Regulations

Action to address climate change becomes ever more urgent with each passing day. The National Oceanic and Atmospheric Administration (NOAA) and National Aeronautics and Space Administration (NASA) confirmed that 2014 was the hottest year ever recorded. (NASA 2015.) In the National Climate Assessment released by the U.S. Global Change Research Program, experts make clear that "reduc[ing] the risks of some

¹ The CEQA Guidelines are available at Cal. Code Regs., tit. 14, § 15000 et seq.

of the worst impacts of climate change" will require "aggressive and sustained greenhouse gas emission reductions" over the course of this century. (Melillo 2014.) Indeed, humanity is rapidly consuming the remaining "carbon budget" necessary to preserve a likely chance of holding the average global temperature increase to only $2^{\circ}C$ above pre-industrial levels. According to the IPCC, when non-CO₂ forcings are taken into account, total cumulative future anthropogenic emissions of CO₂ must remain below about 1,000 gigatonnes (Gt) to achieve this goal.² Some leading scientists—characterizing the effects of even a $2^{\circ}C$ increase in average global temperature as "disastrous"—have prescribed a far more stringent carbon budget for coming decades. (Hansen 2013; Steinacher 2013; UNEP 2013.)

Climate change will affect California's climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability. California has a mandate under AB 32 to reach 1990 levels of greenhouse gas emissions ("GHG") by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. Health & Saf. Code § 38550. The state must also reduce emission levels to 80 percent below 1990 levels by 2050. (Executive Order S-3-05 (2005).) In enacting SB 375, the state has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.³

The state Legislature has found that failure to achieve greenhouse gas reduction would be "detrimental" to the state's economy. Health & Saf. Code § 38501(b). In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- Increase electricity derived from renewable sources to 50 percent;
- Reduce today's petroleum use in cars and trucks by 50 percent;
- Double the efficiency of existing buildings and make heating fuels cleaner. (Brown 2015 Address.)

² See IPCC 2013 ("Limiting the warming caused by anthropogenic CO₂ emissions alone with a probability of >33%, >50%, and >66% to less than 2°C since the period 1861–1880, will require cumulative CO₂ emissions from all anthropogenic sources to stay between 0 and about 1570 GtC (5760 GtCO₂), 0 and about 1210 GtC (4440 GtCO₂), and 0 and about 1000 GtC (3670 GtCO₂) since that period, respectively. These upper amounts are reduced to about 900 GtC (3300 GtCO₂), 820 GtC (3010 GtCO₂), and 790 GtC (2900 GtCO₂), respectively, when accounting for non-CO₂ forcings as in RCP2.6. An amount of 515 [445 to 585] GtC (1890 [1630 to 2150] GtCO₂), was already emitted by 2011."). See also UNEP 2013 (describing emissions "pathways" consistent with meeting 2°C and 1.5°C targets).

³ See <u>http://www.arb.ca.gov/cc/sb375/sb375.htm.</u>

Although some sources of GHG emissions may seem insignificant, climate change is a problem with cumulative impacts and effects. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172, 1217 ("the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis" that agencies must conduct). One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California's climate as a whole. Similarly, CEQA requires that an EIR consider both direct and indirect impacts of a project. CEQA Guidelines, § 15064.

The County, however, has done no environmental review on the Project's GHG emissions or potential impact on climate change. The previously adopted EIR for the Project is over 30 years old and thus did not address climate change at all, much less the most recent climate science. The County has failed to take advantage of the numerous recent resources available to analyze and evaluate a project's GHG emissions. (*See* Scoping Plan 2008; CAPCOA 2008; Resources Agency 2009.) The Project's outdated environmental review and analysis lack any mitigation measures to improve energy efficiency or reduce GHG emissions, in violation of CEQA. CEQA Guidelines § 15064.4(b)(1) (a lead agency must consider the "extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting"); *see also* Moon Camp 2010 RDEIR at section 4.2 (considering neighboring project proposal's climate impacts).

The County must analyze the cumulative significance of the Project's emissions in light of GHG reductions needed to avoid contributing to the environmental impacts of climate change. If the Project's GHG emissions are found to be significant, the County must also require mitigation measures to address them. To comply with CEQA, mitigation measures must be "fully enforceable through permit conditions, agreements, or other legally-binding instruments." CEQA Guidelines § 15126.4(a)(2). The measures must be "incorporated into the project or required as a condition of project approval in such a way that [would] ensure their implementation." *Fed'n of Hillside and Canyon Assoc. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1262. CEQA also requires the adoption of all feasible mitigation measures that would reduce the environmental impacts of a project. Pub. Res. Code § 21002; CEQA Guidelines § 15126.4(c); *City of Marina v. Bd. of Trs. of the Cal. State University* (2006) 39 Cal.4th 341, 369-70.

Mitigation measures during construction and operation of the Project would lower the Project's overall GHG emissions and contribution to climate change. California Air Pollution Control Officers Association has identified existing and potential mitigation measures that could be applied to projects during the CEQA process to reduce a project's GHG emissions. (CAPCOA 2010.) The California Office of the Attorney General also has developed a list of reduction mechanisms to be incorporated through the CEQA process. (California Attorney General 2010.) These resources provide a rich and varied array of mitigation measures that should be incorporated into the revised Project. Potential mitigation measures during operation of the Project include, but are not limited to:

- Analyzing and incorporating the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) or comparable standards for energy and resource-efficient building during pre-design, design, construction, operations and management;
- Designing buildings for passive heating and cooling, and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.;
- Designing buildings for maximum energy efficiency including the maximum possible insulation, use of compact florescent or other low-energy lighting, use of energy efficient appliances, etc.;
- Reducing the use of pavement and impermeable surfaces;
- Requiring water reuse systems;
- Installing light emitting diodes (LEDs) for traffic, street and other outdoor lighting
- Limiting the hours of operation of outdoor lighting;
- Maximizing water conservation measures in buildings and landscaping, using drought-tolerant plants in lieu of turf, planting shade trees;
- Ensure that the Project is fully served by full recycling and composting services;
- Ensure that the Project's wastewater and solid waste will be treated in facilities where greenhouse gas emissions are minimized and captured;
- Installing the maximum possible photovoltaic array on the building roofs and/or on the project site to generate all of the electricity required by the Project, and utilizing wind energy to the extent necessary and feasible;
- Installing solar water heating systems to generate all of the Project's hot water requirements;
- Installing solar or wind powered electric vehicle and plug-in hybrid vehicle charging stations to reduce emissions from vehicle trips.

Mitigation measures related to Project construction could include:

- Utilize recycled, low-carbon, and otherwise climate-friendly building materials such as salvaged and recycled-content materials for building, hard surfaces, and non-plant landscaping materials;
- Minimize, reuse, and recycle construction-related waste;
- Minimize grading, earth-moving, and other energy-intensive construction practices;
- Landscape to preserve natural vegetation and maintain watershed integrity;
- Utilize alternative fuels in construction equipment and require construction equipment to utilize the best available technology to reduce emissions.

Rather than evaluate these and the other available mitigation measures for development projects, the County has chosen to conduct no analysis on the Project's GHG emissions or adopt any mitigation measures.

Outdated private development projects like Marina Point will increase the volume of GHG emitted into the atmosphere while jeopardizing the sustainability of the environment. By failing to identify, quantify, and mitigate the Project's GHG emissions, the County has ignored the need to address climate change at a local level. Before allowing the revised Project to proceed, the County must require environmental analysis of the Project's GHG emissions and impact on climate change.

2. Water Supply Impacts and California's Worsening Drought

The County last considered the water supply impacts of the Project in the EIR prepared in the early 1980s. Thirty years later, a substantial change in California's climate and available water resources, as well as an abundance of new scientific studies and information on this water crisis, requires the County to conduct additional environmental review under CEQA. Pub. Res. Code § 21166(b). Ongoing drought since 2012 rendered 2014 one of the driest water years in California history. (ACWA 2014a.) Studies have shown that Southwestern United States, which includes California, is either in or will very likely soon enter a megadrought over the length of 10 years due to climate change. (Ault et al. 2014; see also Rice 2014.) Additionally, there is an 80% chance that the Southwest will experience an unprecedented megadrought that would last more than three decades, between 2050 and 2099. (Cook 2015.) In the meantime, this region will experience additional droughts leading up to that looming megadrought. (Cook 2015.) A recent study of droughts in California concluded that anthropogenic climate change has and will continue to cause the co-occurrence of warm and dry periods in California, which in turn will exacerbate water shortages, groundwater overdraft, and species extinction. (Diffenbaugh 2015.) Recognizing the current and projected impacts of climate change on reducing California's snowpack, Governor Brown declared a drought state of emergency in California in January 2014, which called for a 20% reduction in statewide water use. (State of Emergency Proclamation 2014.)

A recent USGS study indicates that Bear Valley only recharges its groundwater through rain and snow melt (Flint 2012), which decrease in drought years. Indeed, the study recognizes that population growth and climate change are stressing the groundwater supply, requiring a new, long-term approach to managing water resources in the valley. (*Id.*) Thus, the Bear Valley Community Services District adopted mandatory outdoor water use restrictions in August 2014. (ACWA 2014b.) And the Big Bear Area Regional Wastewater Agency previously investigated a wastewater recharge program because water demand in Big Bear Valley can exceed existing supply in dry years and during prolonged droughts. (*See* BBARWA DEIR 2005 at 3-1.)

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Despite overwhelming scientific evidence of the recent drought crisis, as well as action at both the state and county levels to address water shortages and reevaluate water use planning in the face of a new reduced-water reality, the revision approval never mentions the water supply impacts of the Project in light of this new information and changed environmental circumstances. The environmental analysis and a hydrology and water feasibility study that accompanied the original Project as approved in 1991 are wholly inadequate given the recent drought and new information about long-term drought problems.

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The previous environmental issues analysis acknowledged that the Project will require additional water service from the Department of Water and Power (now "DWP"), which depends exclusively on groundwater supply from the Bear Valley Groundwater Basin ("Basin"). (Development Plan 1991.) The Development Plan proposed to take additional groundwater for on-site water features from a nearby well. (Development Plan 1991). The Development Plan states that no significant impacts regarding water supply are anticipated to arise from project implementation, even though the 1983 EIR concluded that the Project would increase overdraft of the Basin by 3%, to approximately 770 acre-feet per year. (Development Plan 1991; FEIR 1983.) In 1990, the DWP wrote that it believed that newly identified wells, along with improvements in the DWP Master Plan to incorporate wastewater recharge, toilet retrofitting, among others, will allow the Project to comply with the County's General Plan water supply requirements. (Development Plan 1991.) It is not clear, however, which of these improvements have been made. For instance, in the 25 years since the 1991 approval, groundwater recharge has never been implemented-the Big Bear Area Regional Wastewater Agency shelved this program in 2006. (BBARWA Special Meeting 2006 at 8-9.) And whatever conservation measures have been adopted have been inadequate to alleviate the water supply crisis in Big Bear Valley.

Additionally, the Project's original EIR projected Marina Point's water demand at 150 gallons per day, per connection, based on average water use figures from 1981. (FEIR 1983 Appendix 4.) But more recent studies of water usage in the Fawnskin area show that average water demand has nearly doubled to 250 gallons per day for every water connection. (Moon Camp 2011 RDEIR, Appendix B.) These documents also show that existing water infrastructure is inadequate to meet current fire flow requirements. (*Id.*) And water demand can spike dramatically during Big Bear Valley's peak recreational seasons. (DWP Website.) The County must reevaluate the Project's impact on the local water supply using updated information regarding anticipated water use for the Project and the capacity of Fawnskin's water supply infrastructure to meet that demand.

Notably, in addition to its planned residential uses, the revised Project lists a number of amenities that will increase water use at the Project site. For instance, according to the revision application and Marina Point's website, the new clubhouse will

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include a spa, a new indoor-outdoor pool, a restaurant, banquet facilities, and a gourmet food shop. (*See* Revision Application; Exhibit C.) The applicant also plans to build "reflecting ponds that convert to an ice skating ring [sic]," a "Gazebo with water feature," and "whirlpool spas throughout the site," all of which will require additional water to operate. Other agencies have recognized that recreational features like these are very water intensive and have placed restrictions on such uses in response to the growing drought. (ACWA 2014b.)

Without conducting the additional analysis that CEQA requires, it is impossible to fully understand the potential water supply impacts of the Project. The County must analyze whether existing water supplies can serve the Project in light of the state and local drought emergency. The County must also identify the cumulative water demand from the Marina Point Project, together with the other development projects contemplated around Big Bear Lake, and evaluate whether sufficient supplies exist to serve these developments. The revised Project must therefore be accompanied by an EIR that accurately takes into account the current extreme drought conditions and future climate change impacts on water supply.

3. Increased Threat of Wildfires

Since the County's 1991 Project approval, the risk of wildfire has dramatically increased in the Fawnskin area. Fire activity is increasing across the western U.S. According to one source, total area burned, number of fires and the size of the largest fires are all increasing. (*See* Exhibit A.) With climate change, threats from wildfires are only expected to increase. (CAPCOA 2010.)

The fire danger surrounding the Project site reflects this general trend. A 2007 CalFire map of Fire Hazard Severity Zones for San Bernardino County places the project site and the surrounding area in the "Very High" fire hazard zone, the most dangerous designation.⁴ Indeed, in recent years, fires have burned in the immediate vicinity of Fawnskin and caused evacuations.⁵

While analysis in the 1991 Development Plan (prepared by the Project applicant) asserted that the existing site poses a "small fire hazard" (Development Plan 1991 at EA 26), according to recent EIRs prepared in the Project vicinity, wildland fire hazards are particularly acute in San Bernardino County. (*See* Church of the Woods DEIR at 3.E-1 and 2; *see also* Forest Service – Wildfire 2001.) That EIR further discloses that "the San Bernardino Mountain's fire risk in forested areas has been further exacerbated by drought

⁴ See <u>http://frap.fire.ca.gov/webdata/maps/san_bernardino_sw/fhszs_map.62.pdf;</u> <u>http://www.fire.ca.gov/fire_prevention/fhsz_maps_sanbernardinosw.php</u>

⁵ <u>http://www.nbclosangeles.com/news/local/Wildfire-Burning-Near-Big-Bear-Lake-203945401.html; http://articles.latimes.com/2007/sep/16/local/me-bearfire16</u>

conditions which were followed by a bark beetle infestation." (*Id.*) The EIR for the adjacent Moon Camp project also describes fire conditions in the neighboring San Bernardino National Forest as "more dangerous than ever." (Moon Camp 2010 RDEIR at 4.5-11.) And that EIR further reveals that Fawnskin's existing water supply and infrastructure cannot provide sufficient fire flows that new development will require. (Moon Camp 2011 RDEIR, Appendix B.)

Given the extreme fire danger in the area, impacts relating to wildland fire safety deserve extraordinarily close scrutiny. The County must study both how the Project will exacerbate the growing fire hazard in Fawnskin area and the risks that fire poses to the Project and its future inhabitants. A new EIR must also consider how new residents of the Project site will impact evacuation routes and CalFire response times, and identify new mitigation measures to reduce the risk of wildfire.

4. Significant Changes to the Southern Bald Eagle Population and New Information About Eagle Habitat Near the Project Site

The state of California has listed the southern bald eagle as an endangered species. As has been previously detailed, two significant changes have occurred in the bald eagle population in Big Bear Valley since the Project's original approval. First, the long-term wintering eagle population has declined significantly since 1991. (*See* Exhibit A.) The Project sits in prime eagle foraging habitat and shoreline construction like that required for the Project can significantly impact the eagle population. (*Id.*; 2015 Appeal Application, Attachment B.) The County must therefore assess the impacts of the revised Project in light of the declining seasonal eagle population in Big Bear Valley.

Second, a small number of new, year-round eagle residents now live roughly half a mile from the Project site and forage in Grout Bay, which borders the Project site. (*See* Exhibit A; Forest Service Bald Eagle 2014.) Mitigation measures, including a winter construction moratorium, were adopted as part of the original Project approval to minimize impacts to the *seasonal* eagle residents. But the County has never analyzed or considered non-seasonal measures to mitigate impacts to the new year-round bald eagle residents near Fawnskin. The County must conduct that analysis in a new EIR.

Additionally, the Project's impacts to Big Bear Valley's bald eagle population must be reevaluated to account for recent degradation of and new threats to eagle foraging habitat surrounding the Project site. For example, a U.S. District Court has already found that the applicant's work on the Project site has caused environmental "damage [which] has affected the bald eagle population" by "modifying and disturbing its habitat." *Center for Biological Diversity v. Marina Point Development Associates* (C.D. Cal. 2006) 434 F.Supp.2d 789, 795-96. The Court further found that construction of the Project will "cause significant additional disturbance to the eagle population," so that "[u]ltimately, it will render their habitat inhospitable." For example, extensive tree cutting has occurred at the Project site, far in excess of the tree removal that was anticipated in the previous Project plan, which stated that 160 trees would be retained on the site. (Appeal Application, Attachment B.) Some of the large (now cut) trees were crucial perch trees that bald eagles utilize to forage in grout bay. Before allowing the Project to move forward, the County must assess the impact that this tree removal (and other environmental degradation at the Project site) will have on the eagle population.

Importantly, surveying has shown that the neighboring Moon Camp site "is used extensively by bald eagles" and other perch trees have been identified directly adjacent to the Project site. (Moon Camp 2010 RDEIR at 4.3-23; Moon Camp 2011 RDEIR at Exhibit 2-3.) Recent environmental analysis for the Moon Camp project also determined that construction and residential uses in proximity to roosting and perch trees could create "a loss of perching or roosting habitat value for wintering bald eagles [and] would be considered a significant impact." (Moon Camp 2010 RDEIR at 4.3-42.) Noise, lighting, and human activity associated with project construction and ultimate use can also impact the eagle population in Big Bear Valley. (*Id.* at 4.3-46.)

Because of this significant potential for negative impacts from human activity, the U.S. Fish and Wildlife Service has developed guidelines for managing construction and other activities in bald eagle habitat. (*See* Bald Eagle Management Guidelines 2007.) These federal guidelines contain many recommendations applicable to projects like Marina Point, including that projects "[1]ocate long-term and permanent water-dependent facilities, such as boat ramps and marinas, away from important eagle foraging areas" and also avoid "recreational and commercial boating and fishing near critical eagle foraging areas during peak feeding times." (*Id.* at 14.) The County should therefore prepare an EIR to consider the cumulative impacts of the marinas and other facilities at Marina Point, Moon Camp, and nearby Fawn Harbor, which surround Grout Bay's prime eagle foraging habitat. This environmental analysis should also consider new mitigation measures (like those contained in the U.S. Fish and Wildlife Service guidelines) to lessen the significant impacts that these facilities will have on the bald eagles.

5. Physical and Modeling Changes for Traffic Surrounding the Project Site

Since the Project's original environmental review and approval, traffic conditions in Big Bear Valley have changed dramatically. In 1981, traffic on North Shore Drive (SR-38) near the Project site averaged 1,500 daily trips annually, with peak month traffic climbing to 1,750 average daily trips. (FEIR 1983 at 18.) By 2003, average daily traffic on this segment had roughly tripled to almost 5,000 trips. (*See* Moon Camp 2010 RDEIR at 4.6-20.) In 2010, average Friday traffic on North Shore Drive was estimated at 12,000 trips west of the Project site, and 5,200 trips east of the site. (*Id.* at Exhibit 4.8-8A.) Average Sunday traffic in 2010 on the same road segment was estimated at 23,700 trips west of the Project site, and 7,400 trips east of the site. (*Id.* at Exhibit 4.8-8B.) These averages do not disclose the full magnitude of population and traffic growth during peak season, when tens of thousands of new visitors arrive in Big Bear Valley. (SANBAG Mountain Area Transportation Study – Draft Scope of Work 2015.) And traffic on North Shore Drive is projected to continue its dramatic growth through 2030. (Moon Camp 2010 RDEIR Appendix E.2 at 4-12, 4-13.)

Moreover, the County has developed new information to evaluate traffic impacts in the San Bernardino mountains since the Project's 1991 approval. Most notably, in 2010 the County employed the San Bernardino Mountain [traffic] Model to evaluate traffic impacts from the proposed Moon Camp development that is proposed to abut the Project site. (*See* Moon Camp 2010 RDEIR at 4.8-2, 4.8-7.) That methodology evaluates traffic trip distribution and future traffic impacts from proposed projects (*id.*), but was not developed until the mid-1990s after the Project was approved in 1991 (the model was subsequently updated in the 2000s). (SANBAG Mountain Area Transportation Study – Draft Scope of Work 2015.)

The new information and changed circumstances regarding traffic in Big Bear Valley require reconsideration of the Project's traffic impacts. *See Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1380-82 (it is improper to rely on deficient methodologies to determine the potential impacts of a project). Thus, the County must conduct new environmental review, using current traffic models, to determine the Project's impacts to twenty-first century traffic conditions rather than relying on impact calculations that are over three decades old.

6. Cumulative Impacts from New and Proposed Development

As noted in prior letters, the Project combined with new proposed development in the area will cause cumulative traffic, water, and other environmental impacts, none of which have been analyzed by the County. (*See* Exhibit A.) Fawnskin and the entire Big Bear area have experienced significant population growth since the County's 1991 Project approval. The 1983 EIR states that Fawnskin's population was only 323 full time residents (FEIR 1983 at 16), but by the year 2000, the community's year-round population had increased to over 409 people, with the peak weekend/holiday population reaching nearly 1,500. (Moon Camp 2010 RDEIR at 6-2.) The rest of Big Bear Valley has also seen population growth and new development has been built since 1991. Most notable, a 245-parcel development, Caste Glen Estates, has been constructed across the lake from Fawnskin and post-dated the Project approval.⁶ When considered in conjunction with the Project, new development like this can increase cumulative impacts to water supply, traffic, emergency resources, and Big Bear Lake's water quality.

⁶ See <u>http://www.bigbearlakefrontrealestate.com/luxury-homes/castle-glen-estates/;</u> <u>http://www.thetimwoodgroup.com/big-bear-neighborhood-overview-castle-glen-estates/</u>.

Additionally, when the County approved the Project in 1991, the neighboring Fawn Harbor marina on the north shore of Big Bear Lake had not been expanded to its current size. The Fawn Harbor marina did not receive approval until 1995 (*see* Concession Agreement and Lease 1995), so the County has never considered the cumulative noise, water quality, and bald eagle impacts of operating these marinas together or in conjunction with the proposed marina for the Moon Camp development. Notably, increased boating activity can further impair lake water quality and habitat. (*See* Buetow 2000; Asplund 2000.) Before it can approve the revision application, the County must analyze the cumulative impacts resulting from the Project and the significant development that has occurred in the last 25 years.

B. The Revised Project Contains Substantial Changes that Require Major Revisions to the EIR.

Although there is insufficient detail about the specific components of the revised Project, the information that has been provided indicates that the revised Project would result in significant environmental impacts that have not been analyzed.

1. Deletion of Mitigation Measures and Conditions of Approval

In addition to the impacts from the revised Project discussed in previous letters (*see* Exhibit A), it appears that the revision approval has not incorporated or required conformance with the numerous mitigation measures and conditions of approval that the County adopted in 1991 to lessen the environmental impacts of the Project. This 1991 approval adopted mitigation measures for the Project's potentially significant impacts to air quality, water quality, water supply, traffic, aesthetic, fire safety, and the bald eagle population, and impacts from noise, mudslides, seismic hazards, erosion runoff into Big Bear Lake, and incorporated these measures as conditions of approval for the Project. (*See* Findings and Overriding Considerations; Appeal Application, Attachment E.) The revision approval does not adopt the same mitigation measures that the County imposed in 1991, effectively deleting these measures from the Project approval.

CEQA prohibits the disregard or cancellation of mitigation measures without substantial evidence that the mitigation is no longer needed and an evaluation of environmental impacts that will result from the cancelled mitigation. *Katzeff v. Cal. Dept.* of Forestry & Fire Protection (2010) 181 Cal.App.4th 601, 614 (agency could not authorize destruction of mitigation by ministerial act). Approving the revised Project without requiring implementation of previously-adopted mitigation measures therefore violates CEQA.

2. Increases in the Size and Uses of Project Buildings

The size of the total building footprint on the Project site has increased since the 1991 Project approval. For example, the previously approved Project included a .14 acre

(or roughly 6,100 square foot) "Community Building" in addition to the proposed condominium buildings. But this building has been replaced by a 9,000 square foot "clubhouse" according to the County's approval letter. An increased development footprint alone can result in increased environmental impacts, including loss of sensitive habitat, increased stormwater runoff, and new construction related impacts. And here, the applicant is planning expanded hospitality uses for the site that have never been analyzed in an EIR. The applicant apparently intends to add a "Lakefront Restaurant Offering Indoor & Outdoor Dining," a "Gourmet Food Store," and "Meeting Rooms & Banquet Facilities," none of which were previously approved by the County. The County must identify in an EIR the uses proposed for this new, larger clubhouse, and determine whether they will result in previously unanalyzed impacts, including new traffic, bald eagle, greenhouse-gas emission, water supply, light and noise impacts from the expanded clubhouse facilities.

Additionally, the ten new single-resident units, ranging from 12,000-14,000 square feet each, will increase the total number of residential buildings on the Project site. The applicant has advertised these units to the public as having "Dock Rights," and has depicted new docks extending from the Project sites western shore into the lake. (Exhibits A, B, and C.) The applicant has continued to advertise these new docks since submitting its revision application, but they are noticeably absent from the application materials and were not part of the 1991 Project approval. A new environmental analysis must be prepared that fully describes the proposal for these new residential buildings and associated docks, and assesses new impacts relating to this Project change, including impacts to (1) wetlands from the lakeshore construction and (2) the public beach access that was previously planned for the western shore of the site.

Finally, the new single-family buildings and onsite hospitality facilities may also increase traffic generated by the Project. For instance, the County's 1983 EIR recognized that condominiums and single-family residences generate different levels of traffic. Using the trip generation numbers from the 1983 EIR, adding the new single family units will *increase* the Project's traffic generation to 1,253 ADT under the maximum trips scenario. (FEIR 1983 at 19.) And this increased volume does not account for traffic generated by adding new clubhouse amenities to the site, which have never been analyzed in an EIR. (*See* Exhibit A.) Again, the County cannot merely assume that the revised Project will have the same impacts as the previously approved Project. Instead, the County must conduct new traffic and other impact analyses to understand the true impacts of the revision approval as CEQA requires.

IV. Conclusion

In sum, the County was required to undertake new environmental review and fully comply with CEQA before approving the project. Moreover, the applicant must seek a new planned development approval, not "revisions" to expired approvals, before it can continue with this Project. For all of the reasons discussed above and contained in the

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previous letters submitted to the County regarding this application, the County should grant the appeal and rescind the revision approval.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

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Edward T. Schexnayder

cc: Sandy Steers, Friends of Big Bear Valley
 Aruna Prabhala, Center for Biological Diversity
 Drew Feldmann, San Bernardino Valley Audubon Society
 Ed Wallace, Sierra Club, Big Bear Group

Exhibits:

- A. Letter from Edward T. Schexnayder to Chris Warrick, 4/9/14 (exhibits were provided with original letter)
 Letter from Aruna Prabhala to Chris Warrick, 4/9/14
 - Letter from Sandy Steers to Chris Warrick, 4/9/14
- B. Online listings from www.MLXchange.com, 8/25/14
- C. Marina Point Big Bear Lake homepage, 3/12/15

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EXHIBIT A

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April 9, 2014

Via E-Mail and U.S. Mail

Chris Warrick, Planner County of San Bernardino Land Use Services - Planning Division 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0182 E-Mail: chris.warrick@lus.sbcounty.gov

Re: Proposed Revision to Approved Action (P201400106)

Dear Mr. Warrick:

On behalf of Friends of Fawnskin, we submit the following comments on the application for a "Minor Site Plan Revision" to the Marina Point planned development ("Project"). Although the Applicant, Irv Okovita, has presented the Project changes as small alterations to a previously-approved project, the County cannot approve the Project without resolving fundamental issues with the revised application and its environmental review.

First, decades have passed since the original Project approval. As a result, the previous approvals for the Project have expired and the Applicant must submit a new application before the County can act on the Project.

Second, the California Environmental Quality Act ("CEQA") requires additional information about the proposed Project. Of critical concern, the Project description in the application is inconsistent with separate plans for the Project. The application makes no attempt to resolve these inconsistencies. Until the Project is accurately defined, it is not possible to evaluate the revised Project's true scope and environmental effects. Additionally, changes to the Project, along with changed circumstances and new information about environmental impacts, require further environmental review. The County should evaluate these issues and impacts in an Environmental Impact Report ("EIR").

Third, the County should provide further notice and hold public hearings for the Project, consistent with the County Code. Finally, we urge the County to carefully consider the issues raised in a new lawsuit filed against the developer, which contends that the developer is building on property that it does not actually own.

I. The County's Original Project Approvals Have Expired.

The San Bernardino County Code of Ordinances requires developers to expeditiously complete planned developments like the Project. An applicant "shall either record a tract map or obtain Building Permits for at least one phase of the project within five years of the Development Plan conditional approval and, as applicable, *within each succeeding five-year period*." County Code § 86.06.060(a)(5)(B) (emphasis added).

The "Development Plan conditional approval" for the original Project occurred on December 9, 1991. See Minutes of the Board of Supervisors, December 9, 1991, attached as Exhibit 1. But due to a nearly 23-year delay, that County approval expired long ago. For example, the Applicant had five years following the 1991 approval to either record a tract map for the project or obtain a building permit. But the Applicant obtained no such approvals until December 21, 2000, when it recorded a final map for the project—nine years after the original approval. Thus, the County's planned development approval expired well over a decade ago. Even if the December 2000 approval were somehow timely, the Applicant would have been required to begin obtaining building permits for the project by December 2005. See County Code § 86.06.060(a)(5)(B). This did not occur either. To date, the Applicant has not received a single building permit for the Project.¹

The County Code also states that conditionally-approved planned developments "shall be subject to a time limitation *not to exceed that specified by the condition of approval* for the Development Plan approval." *Id.* (emphasis added). The County adopted revised conditions of approval for the original Project on April 28, 1992. Conditions 2 and 2a contain firm deadlines for the original Project's completion. Condition 2's deadline echoes the five year time limit in the County Code. *See* Revised Conditions of Approval, April 28, 1992, attached as Exhibit 2 at 1. Condition 2a imposes separate

¹ Between April 16, 2004 and September 9, 2009, federal court orders halted construction at the project site pending resolution of litigation over Clean Water Act and Endangered Species Act violations. The County Code does not suspend planned development time limits for litigation, but if it did, the time for seeking building permits would have expired March 21, 2011.

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"[t]ime limitations for Tentative Tracts," under which the "approval *shall become null* and void if [1] all conditions have not been complied with and [2] the occupancy or use of the land or recordation of a final map has not taken place within 36 months" of the approval date. *Id.* (emphasis added). This condition allows for one discretionary 36month extension. *Id.*

Despite the 72 month time period for complying with "all conditions" of project approval, some project conditions remain unmet 23 years later. For example, Conditions 27 requires the developer to provide "100% of the project's estimated water demand . . . by providing a new operational well." *Id.* The developer has provided no such wells. As a result, the County's tentative tract approval for the Project expired under Condition 2a.

In fact, this is not the first time that approvals for Marina Point development have expired. The County first approved a development proposal for the Project site in 1983. But in 1991, the County recognized that "project approval had expired" because the Applicant had not recorded a tract map or commenced the project. *See* Initial Study Environmental Checklist, revised November 26, 1991, attached as Exhibit 3.

This time, the Applicant's delay is much more significant—the County's planned development approval is nearly 23 years old. Because the Applicant has far exceeded the mandatory time limits in the County Code and the Conditions of Approval for the original Project, the County's 1991 approval is "null and void" and there is nothing that can be revised. The County should therefore require the Applicant to submit a new planned development application for the proposed Project.

II. The County Cannot Approve the Proposed Revisions Without a Complete Project Description.

CEQA requires an applicant to provide a complete and accurate description of the Project. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient" environmental review. San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 727. Here, because the application omits key information about the proposed Project changes, the Project description is far from complete and accurate.

A. The Application Omits Plans for New Docks on Big Bear Lake.

The Project developers are currently advertising units at Marina Point to the general public. These advertisements contain many project features that substantially

differ from the changes described in the application. Key among these are plans showing new docks that extend into Big Bear Lake. One set of plans shows two docks extending from the exterior of the harbor, while other plans shows docks along the western shore of the Project site. *See* Marina Point on Big Bear Lake Advertisement, Sobczyk Group ("Marina Point Advertisement"), attached as Exhibit 4 at 3, 6. Contrary to these publicly advertised plans, the current application never mentions the planned new docks extending into the lake. The County must determine whether the revised Project includes new docks. If so, the County must evaluate the environmental impacts resulting from the construction and use of those docks. The Applicant cannot segment consideration of the dock plans from the County's review by omitting them from this application in the hope that they can be approved later.

B. The Application Omits Substantial Changes to Buildings on the Project Site.

The application notes that the revised Project will contain 23 fewer condominium units and will add 10 new lakefront "condominium site units" which will be 12,000 to 14,000 square feet each. But here again, the application neglects to mention other significant changes to design of the buildings on the Project site. For instance, according to the Marina Point Advertisement, the 110 remaining condo units ("the Villas") will each include a separate "lock-off suite," which will have "private access" and which could be rented for "independent use." Exhibit 4 at 4. The new Project application never mentions these lock-off units, even though they would allow two independent users to occupy each condo, effectively doubling the density for these units. The impact of this density, including impacts on parking requirements and traffic, should be fully considered.

Other aspects of the application's building layout are also inconsistent with previous designs and plans in the Marina Point Advertisement. For instance, the layout of condominium buildings in the Applicant's proposed phasing plan is inconsistent with the building layout that is currently advertised for the Project. Exhibit 4 at 7. Additionally, the clubhouse proposed for the new project will be 9,000 square feet and appears substantially larger than the clubhouse that was approved for the original planned development. *See* Marina Point on Big Bear Lake, Preliminary/Final Development Plan, Landscape Plan, June 1991, attached as Exhibit 5. The application states that the clubhouse has been "reconfigured," but never addresses whether it will have a larger footprint. And the application includes a new "gate house for special events" that does not appear in the original planned development. The County must require the Applicant

to clarify the inconsistencies between the recent application and other plans for the Project.

C. Other Aspects of the Original Planned Development Are Now Uncertain.

The Project changes could include other undisclosed differences from the original approval. For instance, the original Project design contained a public beach at the western corner of the Project site and a lake access easement running along the western shore of the site. These facilities would have allowed public use and enjoyment of the lake. It is unclear, however, whether these important public amenities remain in the new Project plans. *See* Exhibit 4 at 6 (showing that the lakefront docks obstruct shore access). The County must determine if a redesigned Project will alter additional aspects of the previously-approved Project, including plans for public recreational facilities and shore access.

III. The Proposed Project is a New Project Under CEQA, Requiring New Environmental Review.

A project is a "new project" that requires new environmental review under CEQA if it requires substantially new drawings of planning documents, or otherwise requires substantial changes from the originally approve project. *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1056 fn. 7; *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1300-01. For instance in *Lishman*, a project applicant proposed changing a project seven years after its original approval. 140 Cal.App.4th at 1291-93. Although the revised project had almost identical uses as the originally-approved project and actually *reduced* the number of proposed hotel rooms, the court found that the project revision was a new project that required new CEQA review. *Id.* at 1291-93, 1300-01.

While the proposed Project changes will have some similar uses to the originallyapproved Project, like in *Lishman*, the Applicant must obtain new planning documents before the Project may be approved. *See supra* Section I. Additionally, the proposed revisions involve substantial changes from the original project, including new docks extending into Big Bear Lake, new "lock-off" units, a potentially increased development footprint, and potential elimination of public recreation facilities and shore access. As a result, the proposed "revised" Project is actually a new project that requires a new EIR.

IV. Even if the Project Were Not a New Project, CEQA Requires Supplemental or Subsequent Environmental Review.

In cases where a project revision is not a "new project," CEQA still mandates that agencies consider a Project's environmental impacts before granting new discretionary approvals. The County may be considering approval of the revised Project based on prior environmental review, but CEQA requires preparation of a supplemental or subsequent EIR ("SEIR") if (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require major EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. Pub. Res. Code § 21166; *see also* Cal. Code Regs., tit. 14, § 15162.

Contrary to the Applicant's claims, the proposed Project revisions are not "minor," but are substantial revisions that require additional environmental review. Our review of the County's files also indicates a 1983 Focused DEIR and a 1991 revised Initial Study, but neither of these documents are sufficient to support the revised Project. Because the Project's environmental review is over 30 years old, new information and substantial changed circumstances require preparation of an SEIR for the Project.

A. Substantial Changes Are Proposed to the Project Which Require Major Revisions to the EIR.

Although there is insufficient detail about the specific components of the revised Project, the information that has been provided indicates that the revised Project would result in significant environmental impacts that have not been analyzed.

1. The Project Would Result in Additional Wetlands Impacts that Have Not Been Analyzed in Prior Environmental Documentation.

While the environmental documentation for the prior Project analyzed, albeit inadequately, impacts resulting from the development of the marina, it did not analyze the impacts resulting from the development of additional slips located on the western side of the property. *See* Exhibit 4 at 6.

The Army Corps of Engineers ("ACOE") Permit Number SPL-2010-00838-GS authorized the discharge of fill material in and around the marina for the construction of shoreline protections along the western side of the property and for the stabilization of the

existing haul road. See ACOE Permit Number SPL-2010-00838-GS, attached as Exhibit 6 at 2. It did not, however, permit the fill that would be required for construction of additional boat slips.

The County must evaluate the environmental effects of this additional fill in an EIR. This analysis must account for the cumulative effects of fill resulting from the construction of the proposed docks, together with the fill permitted by Permit Number SPL-2010-00838-GS.

2. The Project Would Result in Traffic Impacts that Have Not Been Analyzed in Prior Environmental Documentation.

The revised Project has additional components that have the potential to increase traffic. First, it is our understanding that the revised Project now includes the development of a restaurant. Restaurants have the potential to generate significant volumes of vehicular trips. Trip generation rates vary by the type of restaurant. High quality restaurants generate 56.3 trips per 1,000 gross square feet; high turnover restaurants generate 164.4 trips per 1,000 gross square feet; and a drive-in restaurant generates 553 trips per 1000 gross square feet.² If the revised Project includes a restaurant, the County must determine the restaurant's size and type, identify its trip generation and analyze the traffic from the entire Project, i.e., residential, retail, and recreational uses.

The revised Project also includes 11 buildings of 10 units each plus 10 single family units and now may include lock-off units, which can be "rented out." Properties with lock-off units can be divided into two complete sections, and have separate entrances, so that two different parties may occupy either half at the same time. Residential properties that have lock-off units have the potential to therefore double the trip generation compared to conventional units.

The County must analyze the revised Project's traffic impacts. It is entirely unclear whether the County has conducted any traffic analysis for this Project since 1983. Background traffic conditions have undoubtedly changed over the last 30 years. It is appropriate that the County conduct a comprehensive traffic impact study. The appropriate forum for such a study is an EIR.

² See Trip Generation Manual, Institute of Transportation Engineers.

3. Increases in the Size of the Building Footprint Would Result in Environmental Impacts that Have Not Been Analyzed in Prior Environmental Review.

The size of the building footprint appears to have increased since completion of the prior Project application. An increased development footprint can result in increased environmental impacts, including loss of sensitive habitat and increased stormwater runoff. The County must identify the Project's actual development footprint and analyze the associated environmental impacts. This analysis should occur in an EIR.

B. Substantial Changed Circumstances and New Information Since the Original Approval Require Further Environmental Review.

1. Climate Change Crisis and Greenhouse Gas Regulations

Although global warming is considered one of the most alarming environmental issues today, the County has yet to study the climate change consequences of building and operating the Project. Such analysis is required in light of AB 32. As stated in AB 32, the California Global Warming Solutions Act:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

Because global warming significantly impacts the environment, lead agencies must consider their projects' individual and cumulative contributions to this impact in their CEQA analyses.

There is a strong link between land cover and climate, so that changes in land use are important contributors to climate change and variability. In addition, there is a direct correlation between automobile usage and carbon dioxide and other greenhouse gas ("GHGs") emissions. Simply put: more automobiles equals more GHG emissions.

The proposed Project will contribute to global warming both because it will

convert forestland to developed uses and because it will increase automobile travel. The County has an obligation to identify all of the potential sources of GHG emissions that would be generated by construction and operation of the Project and adopt measures to reduce or eliminate these emissions. As the County's Greenhouse Gas Reduction Plan clearly states:

The County can provide local leadership in reducing GHG emissions, for example, through the promotion of policies that reduce vehicle use and by working collaboratively with developers, building owners and residents to achieve energy efficiency and energy savings. In addition, the County, as CEQA lead agency *must ensure* that impacts of GHG emissions are mitigated when discretionary projects go through CEQA review. Through these mechanisms, the County can reduce emissions that occur within its land use jurisdiction. *See* Greenhouse Gas Reduction Plan at 1-12 (emphasis added).

Other environmental documents prepared by San Bernardino County evaluate a Project's impact on climate change by its incremental contribution combined with the cumulative increase of all other sources of GHGs. *See* e.g., Moon Camp RRDEIR at 4.2-17. The County must conduct such an analysis for the Marina Point Project. The appropriate forum for this analysis is an EIR.

2. Southern Bald Eagle

The Project site is within key perching and foraging habitat for the Southern bald eagle, a State-listed endangered and fully protected species. Construction and operation of the proposed Project have the potential to result in significant impacts to the eagle. Two conditions have changed since the prior environmental review. First, new studies indicate that bald eagles are year-round visitors to Big Bear Lake. Second, the number of eagles in Big Bear Lake has declined significantly since the early 1980s.

a. Bald Eagles Are Year-round Residents at Big Bear Lake.

In 1983, the bald eagle was a seasonal visitor to the area. They had been known to "winter" at Big Bear Lake. See 1983 DEIR at 14. Studies now show that bald eagles are year-round residents. See U.S. Forest Service News Release, March 8, 2014, attached as Exhibit 7. Previously, the County proposed to mitigate construction-related impacts by restricting construction activities during the eagle's residency periods, i.e., December 1 through April 1. See 1983 DEIR at 14 and Letter from the Forest Service to San

Bernardino County, April 22, 1982. Yet, as the News Release makes clear, five bald eagles, including breeding pairs, were observed at Big Bear Lake in the middle of this period, on March 8th. See Exhibit 7. In fact, the highest number of eagles are typically in February and March. Id. Given the eagles' year-round residency, this limitation on construction activities would not effectively mitigate the Project's impact on bald eagles.

Moreover, although the prior environmental review never analyzed the effect that the marina would have on the eagles, the County proposed to mitigate such impacts by closing the marina from December 1 to April 1. Again, because eagles inhabit the area on a year-round basis, simply closing the marina during this four month period would not mitigate the Project's significant impacts on the eagles. Further, the Marina Point Advertisement shows that numerous docks will be outside the marina and the County must consider whether these docks will interfere with eagle activities.

b. The Number of Bald Eagles at Big Bear Lake Has Declined Significantly Since the Early 1980s.

Another significant factor warranting further environmental review is the precipitous decline in the Southern bald eagle since the late 1970s and early 1980s. Bald eagle counts have been conducted at Big Bear Lake since 1978. *See* Exhibit 7. Four monthly counts are conducted between December and March to estimate the number of bald eagles that are wintering in the area. As the Bald Eagle Count Summary shows, the highest number of eagles occurred from 1978 through 1985, with a high of 28 eagles identified in 1983-1984. Since then, he number of eagles has dropped substantially, and now hovers between 5 and 10. *Id*.

This substantial reduction in numbers is alarming. While many factors have played a role in this decline, the most destructive human activity is the development of waterfront property:

Because eagles depend on shoreline habitats and aquatic food sources, human development in these coveted areas poses the greatest threat to the bald eagle's survival. In addition, the cutting of "old growth forests" where bald eagles prefer to nest and perch has conflicted with the interests of people seeking lumber for housing and commercial products. *See* Eagle Survival – Threats to Survival, "The American Bald Eagle: Recovery From Near Extinction," Vanderbilt University, attached as Exhibit 8.

The year-round presence and decline in the number of bald eagles since the prior environmental review warrant analysis of the Project's impacts on this State-listed endangered and fully protected species.

3. The Project is Likely to Result in a Significant Increase in Particulate Matter_{2.5}.

Although the Project would result in an increase in $PM_{2.5}$ emissions, the County has never studied the Project's contribution to this potentially significant environmental effect. Sources of fine particles include all types of combustion activities (motor vehicles, fugitive dust from roads, fugitive dust from construction, wood burning, etc.).³ Particles less than 10 micrometers in diameter (PM_{10}) pose a health concern because they can be inhaled into and accumulate in the respiratory system. Particles less than 2.5 micrometers in diameter ($PM_{2.5}$) are referred to as "fine" particles and are believed to pose the greatest health risks. Because of their small size (approximately 1/30th the average width of a human hair), fine particles can lodge deeply into the lungs.⁴ According to the U.S. Environmental Protection Agency ("USEPA"), $PM_{2.5}$ at the ambient concentrations that presently exist in some areas of the country, including those in compliance with the PM_{10} National Ambient Air Quality Standards, can cause serious health consequences, including premature mortality, exacerbation of respiratory and cardiovascular disease, decreased lung function, increased respiratory symptoms from pre-existing pulmonary disease, and aggravation of symptoms associated with asthma.⁵

The understanding of the health risks associated with $PM_{2.5}$ has grown since the Project's approval. In 1997, the USEPA promulgated a $PM_{2.5}$ standard and, in 2003, the State established an annual standard for $PM_{2.5}$. The South Coast Air basin is in state non-attainment for $PM_{2.5}$. It is vitally important that the County analyze the potential for the Project to significant increase $PM_{2.5}$ emissions. Indeed, the County required such an analysis in the context of the Moon Camp Project. See Moon Camp RRDEIR Air Quality Chapter. That EIR's analysis determined that Moon Camp's increase in $PM_{2.5}$ emissions would result in a significant environmental impact. See Moon Camp RRDEIR at 4.2-30.

⁵ See http://www.bryancave.com/files/Publication/7e0edf14-dd55-4ac5-8975-452a79ffe3e0/Presentation/PublicationAttachment/185ff3d4-77c8-4f6b-91c2-47bb435fd129/Env%20Article-KarmelEnvLawinCA8-02.pdf, accessed April 7, 2014

³ See <u>http://www.epa.gov/pmdesignations/faq.htm</u>, accessed April 7, 2014.

⁴ See <u>http://www.epa.gov/pmdesignations/faq.htm</u>, accessed April 7, 2014.

4. Increased Risk of Wildfire

The risk of wildfires has increased considerably since the Project's prior environmental documentation was prepared. As is now commonly acknowledged, fire activity is increasing across the western U.S. According to one source, total area burned, number of fires and the size of the largest fires are all increasing. *See* LiveScience, "Climate Change May be Worsening Western Wildfires," December 11, 2013, attached as Exhibit 9.

While the 1991 Environmental Analysis (prepared by the Project Applicant) asserted that the existing site poses a "small fire hazard" (Exhibit 5 at EA 26), according to other EIRs prepared in the Project vicinity, wildland fire hazards are particularly acute in San Bernardino County. *See* Church of the Woods DEIR, San Bernardino County, April 2010, at 3.E-1 and 2. That EIR further discloses that "the San Bernardino Mountain's fire risk in forested areas has been further exacerbated by drought conditions which were followed by a bark beetle infestation." *Id.* Given the extreme fire danger in the area, impacts relating to wildland fire safety deserve extraordinary close scrutiny. The appropriate forum for such an analysis is an EIR.

5. The Project is Likely to Result in a Significant Impact to Water Quality.

Water quality in Big Bear Lake has deteriorated significantly since the 1983 EIR was prepared. In 1990, the Santa Ana Regional Water Quality Control Board ("Regional Board") added Big Bear Lake to California's list of impaired water bodies due to elevated nitrogen and phosphorus concentrations. *See* Big Bear Lake TMDL Task Force, attached as Exhibit 10. These pollutants act as fertilizers and encourage growth of noxious aquatic plants such as Coontail and Eurasion Milfoil that interfere with human recreation and despoil the native freshwater habitat. *Id.* In addition, high nutrient loads cause excess algae growth which, in turn, reduces dissolved oxygen levels in the water and leads to fish kills. *Id.*

Construction and operation of the Project has the potential to further degrade the lake's water quality. The Project includes several land uses (construction/ land development, recreational and tourism activities (boating)) that are some of the worst offenders in causing water quality impairment in local water bodies, particularly for increased sedimentation and nutrients. Importantly, *any* reduction of water quality is a significant impact according to the State's (RWQCB) anti-degradation policy.

The County must analyze the Project's potential to further impair water quality. The appropriate forum for such an analysis is an EIR.

6. The Project Is Likely to Cause Significant Water Supply Impacts.

Water is an extremely scarce resource in southern California. Previous environmental documentation for the proposed Project recognized that the Big Bear region is in groundwater overdraft. See July 20, 1982 Initial Study, Appendix 2 at 8; 1983 DEIR at 11; and Letter from Big Bear Municipal Water District, September 2, 1982.

Yet, the water supply situation has changed substantially over the last 30 years. California is now facing severe water shortfalls in what is being called the driest year in recorded state history.⁶ In fact, this January, Governor Brown proclaimed a State of Emergency, directing state officials to take all necessary actions to prepare for drought conditions. *Id.* Extremely dry conditions have persisted since 2012 and are expected to continue beyond this year and more regularly into the future, based on scientific projections regarding the impact of climate change on California's snowpack. *Id.* Consistent with the state's drought emergency status, in February 2014, the Big Bear City Community Services District approved Stage 1 water restrictions.⁷

The County must analyze the ability to serve the revised Project in light of the state and local drought emergency. Moreover, as discussed below, several other development projects are contemplated around Big Bear Lake. The County must identify the cumulative water demand from the Marina Point Project, together with the other proposed development projects, and evaluate whether sufficient supplies exist to serve these developments.

7. The Project Will Likely Cause Significant Cumulative Environmental Impacts.

The County is currently processing several other development applications that have the potential to cause cumulatively significant environmental impacts. These projects include:

⁶ See <u>http://gov.ca.gov/news.php?id=18368</u>, accessed April 8, 2014

⁷ See http://www.bigbeargrizzly.net/news/article_a4bb1198-8dfb-11e3-801e-001a4bcf887a.html, accessed April 8, 2014

- Moon Camp, a proposal to subdivide a 62-acre parcel into 92 residential lots, is located directly east of the Marina Point Project. Development of the Moon Camp Project would result in many of the same impacts as the Marina Point Project, including impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, increased traffic and impacts to local water supply.
- A 30-home project is proposed for 30 acres of undeveloped land directly behind the Moon Camp Project (APN #0304-231-35). Development of that project would result in many of the same impacts as the Marina Point project, including impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, increased traffic and impacts to local water supply.
- A project, including approximately 67 homes on 37 acres, is proposed on the opposite shore of Big Bear Lake (APN #2328-571-01). Development of this project would result in many of the same impacts as the Marina Point project. These include impacts to loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, and impacts to local water supply.
- A project, including eight homes on three acres, known as Shadow Mountain (Tentative tract #16611) is proposed for the city of Big Bear Lake directly across the lake. Development of this project would result in many of the same impacts as the Marina Point project. These include impacts to the bald eagle, loss of habitat, degradation of Big Bear Lake's water quality, increased air pollutants, including PM_{2.5}, and impacts to local water supply.

None of these projects were proposed when the prior environmental review for the Marina Point Project was undertaken. The County must evaluate the cumulative environmental impacts that would result from these projects, together with the effects from the Marina Point Project.

V. The Board of Supervisors Should Consider this Application Following the Same Procedures Used for the Original Application.

Because the Applicant must seek new approvals and undergo new environmental review, the County should review the Project using its procedures for considering new planned development permits. Even if this were not the case, the County Code section 85.10.090 dictates the County's procedure for considering amendments to planned developments like the Applicant has proposed. The Director of Planning may only approve *minor* changes to a planned development. County Code § 85.10.090(c). Otherwise, changes to a project must "be submitted to the review authority that originally approved the permit" and follow "the same review notice and hearing procedures as required for the original approval." County Code § 85.10.090(a).

Minor changes "do not involve an increase in structure area, an increase in the number of dwelling units, or a change of use." County Code § 85.10.090(c). Despite the Applicant's characterization, the proposed Project changes are not "minor" under the code. For instance, including lock-off units for the proposed condominiums doubles the number of units from 110 to 220. Adding the 10 new "site condominium units," shows that the number of dwelling units has actually increased from the 133 units in the original Project to 230 units.

Similarly, it appears that the condominium buildings and the clubhouse have increased in size in the new application. The Applicant is also proposing a new gate house facility that has not been approved. The application attempts to cast the Project changes as a reduction in size by claiming that the "lot coverage" is slightly smaller. But the Applicant is proposing to significantly reconfigure the Project site's lots, rendering this "lot coverage" claim meaningless. Instead, the County should look closely at the buildings proposed in the application and compare their size to the buildings in the original approval.

Because the Project changes are not "minor," the County should review the application under the procedures for new planned development permits, including a public hearing and consideration by the Board of Supervisors.

VI. The County Should Delay Consideration of the Project Until the Courts Determine the Applicant's Right to Develop the Property.

On March 26, 2014, a neighbor of proposed Project site filed a complaint against the Applicant in San Bernardino Superior Court. See Complaint, Gary J. Polizzi v.

Marina Point Development Associates, et al (Case No. CIV-DS-1403497), attached as Exhibit 11. According to the complaint, the historic 72.4 foot high water line defines the boundary between the Applicant's property and Big Bear Lake, but the Applicant's Project will place fill and improvements on the lake side of this boundary. That is, the Applicant is planning to build on land that he does not own.

The complaint further contends that two easements burden the project site, including a 20-foot publicly-held easement that provides lake access. According to the complaint, this public easement runs through the middle of the proposed development site. If this is correct, the length of the public easement would be unbuildable.

It is therefore uncertain that the Applicant even possesses sufficient property rights to build the Project as proposed. At the very least, the County should refrain from issuing any further approvals for the Project until the courts have resolved these outstanding property issues.

VII. Conclusion

In sum, not only does ongoing litigation cast doubt on the Project's viability, but the current application is inadequate in many respects. The Applicant must seek new planned development and tentative tract approvals, not "revisions" to expired approvals. The County must undertake new environmental review and hold public hearings on the Project. For all of these reasons, the County should not approve the current application.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

What Solar

Edward T. Schexnayder

cc: Adam Keats, Center for Biological Diversity, <u>akeats@biologicaldiversity.org</u> Drew Feldmann, San Bernardino Valley Audubon Society, <u>drewf3@verizon.net</u> Ed Wallace, Sierra Club, Big Bear Group, <u>ednjeanne@charter.net</u> Hugh Bialecki, Save Our Forest Association, <u>habialeckidmd@gmail.com</u> James Ramos, Supervisor 3rd District <u>supervisorramos@sbcounty.gov</u>

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Exhibits:

- 1. Minutes of the Board of Supervisors, December 9, 1991
- 2. Revised Conditions of Approval, April 28,1992, excerpted
- 3. Initial Study Environmental Checklist, revised November 26, 1991, excerpted
- 4. Marina Point on Big Bear Lake Advertisement, Sobczyk Group
- 5. Marina Point on Big Bear Lake, Preliminary/Final Development Plan, Landscape Plan, June 1991
- 6. ACOE Permit Number SPL-2010-00838-GS
- 7. U.S. Forest Service News Release, March 8, 2014
- 8. Eagle Survival Threats to Survival, "The American Bald Eagle: Recovery From Near Extinction," Vanderbilt University
- 9. LiveScience, "Climate Change May be Worsening Western Wildfires," December 11, 2013
- 10. Big Bear Lake TMDL Task Force
- 11. Complaint (excluding exhibits), Gary J. Polizzi v. Marina Point Development Associates, et al (Case No. CIV-DS-1403497)

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Because life is good.



via electronic mail and USPS

April 9, 2014

Chris Warrick Planner for San Bernardino County Land Use Services Planning Division 385 North Arrowhead Ave, First Floor San Bernardino, CA 92415-0182 <u>Chris.Warrick@lus.sbcounty.gov</u>

Re: Planning Project Notice for Revision to Marina Point Development Plan (Project Number P201400106/RMC)

Dear Mr. Warrick:

These comments are submitted on behalf of the Center for Biological Diversity ("the Center") regarding the proposed revision to the Marina Point Development Plan. Specifically, the Center urges that the proposed revision to the development plan undergo thorough and comprehensive environmental review under the California Environmental Quality Act ("CEQA") prior to any County approval. Although labeled as a "minor" change by the Project applicant, the proposed revisions to the Project will potentially result in significant new environmental impacts. These significant environmental impacts, coupled with new information not available at the time of previous environmental review and substantial changes to surrounding environment, warrant a supplemental or subsequent Environmental Impact Report ("EIR") under CEQA. Therefore, the County must complete an updated environmental review of the Project that fully addresses and analyzes the Project's *current* impacts to sensitive species and habitat, air quality, water quality, water supply, traffic, greenhouse gas emissions, potential for growth-inducing impact, cumulative impacts and all reasonable alternatives and mitigation measures, prior to any approval for the Project.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 675,000 members and e-activists throughout the county and California, including San Bernardino County. The Center has worked for many years to protect imperiled wildlife and natural resources, open space, air and water quality, and overall quality of life for people living near Big Bear Lake.

Alaska - Arizona - California - Florida - Minnesota - Nevada - New Mexico - New York - Oregon - Vermont - Washington, DC

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I. The Applicant has Failed to Provide an Accurate and Properly Defined Project Description

Under CEQA, environmental review of a project must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to the project. (Pub. Res. Code § 21061.) These requirements help ensure that the public and decision makers are reviewing and deciding on the project know the full scope of the project and its impacts. (*See* CEQA Guidelines, §§ 15126, 15358(a).) Environmental review that fails to provide these details undermines the fundamental requirement of public disclosure in CEQA. In particular, an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient environmental review. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 (an enigmatic or unstable project description impedes public input); *See also San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.)

The proposed change to the Project includes plans to "replace 7 multi-unit condominium structures with 10 single-unit condominium structures along the Big Bear Lake shore, reducing the overall density from 133 units to 120 units on 12.5 acres." Although the applicant has presented this revision to the Project as "minor," the proposed changes raises fundamental issues with the Project and that must be resolved through a revised application and comprehensive environmental review. The application fails to include an accurate or reliable project description, making informed decision making by the County impossible.

For example, the application fails to include other changes to the Project that have been advertised elsewhere and have occurred since the last comprehensive environmental review of the Project. (See Marina Point on Big Bear Lake at <u>www.luxuryatmarinapointresort.com</u> (last visited April 9, 2014).) Changes include new docks that will extend into Big Bear Lake and could result in water quality impacts and interfere with foraging habitat of bald eagles, a state listed and fully protected species under California law. (See Fish & Game Code § 3511.) It is unclear if the proposed revision to the Project includes these new docks and what environmental impacts will result from their construction. Other changes to the Project include separate "lock-off suite" that could be rented for independent use, a larger clubhouse, a new "gate house for special events" and an altered layout of buildings. Each of these will likely alter the footprint of the Project and potentially result in new significant environmental impacts.

The Project description provided in the application is inconsistent with previous and current, separate plans for the Project. Nonetheless, the applicant has made no attempt to explain or resolve these inconsistencies. Instead, the public and decisionmakers are left will a vague, illdefined Project with no possible way to evaluate the revised Project's environmental effects. Until an accurate and complete Project description is made available, the true scope of the Project and its potential environmental impacts will remain uncertain. Therefore, before moving forward with the proposed revisions to the Project, the applicant must provide the public and the County with an accurate Project description. It is only with this information that the County can

complete the necessary environmental review and make an informed decision on whether to the Project or not.

II. CEQA Requires A Supplemental or Subsequent EIR Prior to County Approval

While an agency may rely on a previous EIR when approving a Project, a supplemental or subsequent EIR is required if (1) substantial project changes are proposed which require major revisions to the EIR, (2) substantial changed circumstances require major EIR revisions, or (3) new information becomes available that could not be have been known when the original EIR was certified. (Pub. Res. Code § 21166; CEQA Guidlelines § 15162, 15163.) Courts have found that when changes to the Project results in significant new impacts, "the failure to prepare a subsequent or supplemental EIR deprived the public, who relied on the EIR's representations, of meaningful participation." (*Mira Monte Homeowners Ass'n v. County of Ventura*, 165 Cal. App. 3d 357, 365 (Cal. App. 2d Dist. 1985).) Because each of these conditions has been met here, the County must complete an updated and thorough supplement or subsequent EIR before it considers approval of the revised Project.

A. Substantial Changes to the Proposed Project and Surrounding Environment Require Major Revisions to the EIR

This Project has undergone minimal environmental review, much of which occurred decades ago when the Project was originally approved and did not take account subsequent changes to the proposed Project. In the decades since the environmental impacts of the Project were last analyzed, new information about the surrounding environment has been disclosed and the environment has undergone substantial changes. Additionally, the proposed changes to the Project by the applicant will potentially result in significant new impacts, all of which make clear that an updated environmental review of the Project is warranted.

i. New Information and Changes to the Surrounding Environment Will Require Major Revisions to the EIR

One of the most important changes to the Project site and surrounding environment is the bald eagle population that nest, forage, rest, and perch around Big Bear Lake. Bald eagles now inhabit the area year-round rather than only in the winter. However, increased development in the area has increased pressure on the bald eagle population, resulting in a drop from 28 to 6. This population of birds relies on continued use of the Project site and the surrounding environment. Areas adjacent to the Project site are essential to the continued viability of the bald eagle population. Additional docks, construction and increased residential use at the Project site would represent a significant increased impact on bald eagles.

Other changes to the surrounding environment that warrant further analysis include traffic increases from nearby development. It is unclear when the County last completed traffic analysis for the Project and surrounding area, which has undoubtedly changed since the decades old environmental analysis for the Project. Similarly, water quality and air quality has also changed in and around Big Bear Lake since the last comprehensive environmental review of the

Project. New and proposed development projects near the Project site have altered the surrounding environment. Construction and operation of the Project will only further degrade the air and water quality of the nearby area. The new and more realistic environmental baseline on the Project site and surrounding areas should be used to analyze the Project's impacts rather than outdated, decades old information. Additionally, to analyze and determine the cumulative impacts of the Project, the County must update its environmental review to include the current conditions of the surrounding environment.

Our understanding of the climate change and the contribution greenhouse gas emissions to global warming has also dramatically changed since the previous environmental review of the Project. New statutes and regulations have been put in place to monitor and limit greenhouse gas emissions, including California's Global Warming Solutions Act or AB 32. CEQA also now requires analysis of a Project's individual and cumulative contributions to climate change. (CEQA Guidelines § 15126.2.) The County has an obligation to identify all of the potential sources of GHG emissions that would be generated by construction and operation of the Project and adopt measures to reduce or eliminate these emissions. For example, the Project's land use changes, construction, traffic impacts and water use should all be now analyzed for their contribution to greenhouse gas emissions and, if significant, those emissions should be mitigated.

ii. The Proposed Revisions to the Project Will Require Major Revisions to the EIR

As noted above, the Project has changed since its previous environmental review in ways not limited to those changes detailed in the application. These changes will result in significant new environmental impacts. For example, new proposed "lock-off suites" could potentially double the density of the Project by allowing two users to occupy each condo. This increase in residents at the Project site will have implications for the traffic, air quality, water quality, water supply and noise cause by the Project, all of which need further analysis through an environmental review process. Similarly, proposed new boat slips will require additional fill and increase construction related impacts to the project. Proposed new facilities as the Project site, including a restaurant and expanded gate house have the potential to increase traffic to the Project. Air quality and greenhouse gas emissions from increased vehicle travel to the Project all represent new impacts from the Project that require further analysis. These facilities also represent a change to the Project's footprint and impact on wildlife habitat on the Project site. This revision of the Project is not minor but instead substantial. When considered alongside changed circumstances and new information about the surrounding environment, it is clear an updated environmental review is required by CEQA. The County should complete a comprehensive environmental review of this Project in the form of a supplement or subsequent EIR, prior to any approval of the Project.

B. Supplemental and Subsequent Environmental Review of the Revised Project Must Include Comprehensive Analysis of the Project's Impacts

CEQA requires that an EIR analyze the whole of the Project including associated project components and impacts, and impacts that are further distant in the future. Therefore, in order to

meet the statutory requirement under CEQA, a supplemental or subsequent EIR should include thorough analysis of the following issues.

The proposed Project's footprint lies within an important wildlife habitat areas important to federal and state protected species, including the state-listed and fully protected bald eagles. Bald eagles are known to nest in the surrounding area year round and use the Project site for foraging. Therefore, any known impacts to bald eagles within the Project's footprint must be fully disclosed and analyzed. To that end, careful documentation of the current site resources is imperative in order to analyze how best to site the Project to avoid and minimize impacts and then to mitigate any unavoidable impacts. Updated environmental review of the Project must include thorough, seasonal surveys performed for bald eagles and other potential sensitive animal, plant species and vegetation communities under the direction and supervision of the land management and resource agencies such as the US Fish and Wildlife Service and the California Department of Fish and Wildlife with full disclosure of survey methods and results to the public and other agencies. Adequate surveys covering all likely seasons in likely conditions must be implemented to evaluate the existing on-site conditions.

Environmental review of the Project must also include concrete, enforceable mitigation measures to reduce direct and indirect impacts to bald eagles. The preservation of regional and local scales of genetic diversity is critical to maintaining species in perpetuity especially in light of global climate change and continued urban development in the region. Although the bald eagle is of particular concern, *all* species found at the edge of their ranges or that occur at distinct locations be evaluated for impacts by the proposed Project.

In addition to those issues raised above, environmental review of the proposed revision must also address thoroughly a variety of other related issues. For example, environmental review must fully disclose and analyze the growth-inducing impacts of this Project in light of current environmental conditions, and discuss alternatives and effective mitigation measures to avoid, reduce, and mitigate these impacts. The environmental review must also address the Project's impact on air quality, traffic, noise and aesthetics. Lastly, environmental review of the Project must include a detailed analysis of the cumulative impacts of this project together with other completed, current, and reasonably foreseeable development and transportation projects in the area.

Lastly, updated environmental review of the Project must include a robust analysis of all alternatives that would alleviate the Project's harms to the surrounding environment and wildlife. The Center urges adoption of an alternative that would minimize environmental impacts and maintain existing habitat values of conservation land. A supplemental or subsequent EIR should include careful and thoughtful evaluation of alternatives that limit the footprint of the Project and impacts to wildlife and habitat.

A. Conclusion

The environmental effects of the proposed revision of the Marina Point Development Plan may include, but not limited to, direct and indirect impacts to wildlife and habitat, particularly the bald eagle, impacts to air quality and regional growth, green house gases, traffic, water quality and noise. Evaluation of each of these impacts, as well as, analysis of reasonable and prudent alternatives must be included in any future environmental review done on the Project. A CEQA-mandated supplemental or subsequent EIR must occur prior to approval of the Project to ensure that decisionmakers and the public are fully informed and aware of all current environmental impacts of the Project. Thank you for the opportunity to submit comments on this proposed revision to the Marina Point Project and please include me on any future notices about the Project. If you have any questions, please do not hesitate to contact the Center at the number listed below. We look forward to reviewing any further environmental review and documentation on this Project.

Sincerely,

An Julha

Aruna Prabhala Staff Attorney Center for Biological Diversity 351 California St, Suite 600 San Francisco, CA 94104 Ph: (415) 436-9682 ext. 322 aprabhala@biologicaldiversity.org



FRIENDS OF FAWNSKIN Big Bear Valley Environmental Education & Oversight P.O. Box 422, Fawnskin, California 92333 www.friendsoffawnskin.org friendsoffawnskin@gmail.com 909-878-3091

9 April 2014

Mr. Chris Warrick County of San Bernardino Land Use Services/Planning Department 385 North Arrowhead Ave.; First floor San Bernardino, CA 92415

VIA EMAIL: Chris.Warrick@lus.sbcounty.gov

Re: Revision to approved action to revise the Marina Point development plan; APN 0304-082-15

Dear Mr. Warrick,

We have become aware of the proposed revisions to the Marina Point development project and would like to express our concerns.

Friends of Fawnskin (FOF) is a non-profit environmental education organization representing a membership of over 500 residents and homeowners of the Big Bear Valley. Residents and visitors come to Big Bear primarily to enjoy the current character of the area and FOF works to preserve and protect these unique environmental surroundings. Our goals are to keep the public informed on issues that may impact their surroundings; to assure proper opportunity for public participation in the decision-making process; to educate the governing agencies regarding concerns of local residents and visitors; and to make certain the environmental laws in place to protect all of us are followed.

The revisions application information submitted for this proposed revision does not match the broadly advertised (website—<u>www.luxuryatmarinapointresort.com</u>, newspaper articles, real estate guides) information. The advertised information includes individual docks outside the enclosed marina, as well as 'lock-off' units associated with each of the condominium and neither of these is mentioned in the application. Before any approval can be given on this proposed revision, all of the actual changes must be clarified, disclosed to the County and noticed to the public for additional comment.

The application document that Marina Point submitted also discusses "custom homes" under "Site Condominium Units" but calls this a minor change that decreases the number of condominium units. Creating "custom homes" instead of condominiums is not a minor change and though it may decrease the number of condominium units, could increase the actual impact of the project. For example, could the "custom homes" add out buildings or additions at any point in the future that would increase the footprint and associated impact? --Please note that having homeowners' association rules that prohibit these items is quite insufficient for limiting impact. The Eagle Point Estates in the City of Big Bear Lake used homeowners' association rules to mitigation significant impacts on bald eagles, then went back to the City Council a year after approval and had those rules changed, thus eliminating the mitigations.--- These issues create much confusion and generate more questions than they answer. This proposal must be clearly defined, disclosed to the County and noticed to the public for additional comment.

Defining ten individual "custom homes" as "single-family condominiums" is, at best, inaccurate, and is, in any case, misleading to the public. The well-accepted definition of a 'condominium' is an individually owned unit within a 'multiple-unit complex' where there is at least one shared wall with another unit. Calling these 'custom homes,' more clearly defines these single family units as single family homes rather than as condominiums. If these homes are in fact 'custom' how can the square footage be defined to determine the actual footprint of the project? Would the exterior of these units belong to the condominium association? If not, then what makes these units condominiums rather than single family homes? Or is this terminology simply being used as pretense in order for major changes to slide through the system as 'minor' or 'incremental'? All of these issues must be clearly defined, disclosed to the County and noticed to the public for additional comment.

Additional docks to the west of this project site or anywhere in this area would have major increased impact on the bald eagles that nest less than one mile from the site and forage at and near the site on a regular basis throughout the year. The circumstances of the bald eagle population has changed in major ways since the previous environmental review on this project. Due to increased development in the past 20 years, the average number of bald eagles in the area during winter months has decreased from 28 to 6. Bald eagles are also now documented year-round residents, as opposed to only winter visitors, as they were at the time of the previous analysis. In addition, a nesting pair has successfully raised one chick and had failed attempts the past two years. This pair, as well as their offspring, regularly forages in and around the Marina Point project, especially including the bay to the west of the project site. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report.

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The advertising for this development states the 'lock-off units' could also be 'rented out.' This would nearly double the number of families and vehicles that could be using the site at any one time. This would also nearly double the impacts of this project revision, with major increases in traffic, noise, water usage, fire hazard, air pollution, and water pollution. There have already been extensive water shortages with water restrictions throughout the valley and the current statewide drought confirms this to be an ongoing issue. This potential major increase in the number of occupants would also impact fire evacuation in the case of forest fires, now a very real threat to any forested community. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report.

In summary, this project revision has not been clearly defined sufficiently for the County to make accurate determinations of potential impacts is would create or even to determine how much the project is changing. It must be more clearly defined with all details disclosed to the County and notice to the public for additional comment. Based on what can be determined from the revision application and the information that Marina Point is making public through advertising and other outlets, the actual planned revision is much larger than what has been officially disclosed. That, along with major changes to the environmental circumstances since the previous environmental review, requires that a full environmental impact report be done to properly determine the significance of the potential impacts of this proposal.

Please include Friends of Fawnskin on any future notices about this project. Thank you for your consideration.

Sincerely,

mlighter,

Sandy Steers Executive Director

cc: James Ramos, Supervisor, Third District Chris Carrillo, Deputy Chief of Staff Elizabeth Harris, Field Representative Jeffrey Brandt, California Department of Fish and Wildlife Ed Wallace, Sierra Club, Big Bear Group Drew Feldmann, San Bernardino Valley Audubon Society Adam Keats, Center for Biological Diversity Hugh Bialecki, Save Our Forest Association

EXHIBIT B

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	Fawnskin 0 LAKE SHOI	RE DRIVE			\$ 1,149,000 Ref#: 2141759
	Status: City:	Active FAWNSKIN	XStreet: Zoning: Lot SqFt:	north shore 12,779	
ATT	Zip Code: Acres: St Front Dim:	92333	Lot Dims:	124175	

Virtual Tour Link:

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS, COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

	*** All Information i	Herein Is Deemed Réliable, But Is Not Guarantéed ***	08/25/14	10:26 AM
NANCY WAL	ER	HAZEWINKEL & CO.		909-866-3300
CALBRE#:	01253681			

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Prop Type: Lot & Land	Prop Style:	Lakefront
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Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Skl Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

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Prop Type: Lot & Land	Prop Style:	Lakefront
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Prop Type: Lot & Land	Prop Style:	Lakefront
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Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

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Association Fee: \$330

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Prop Type: Lot & Land	Prop Style:	Lakefront
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Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakevlew, Ski Siope View, View National Forest

Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

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Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest
Utilities: Electric Available, Natural Gas Available	Water/Sewer	Water Supplied By Dwp, Sewer Available

Finance Terms:

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Association Fee: \$330

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Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

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Association Fee: \$330

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CALBRE#:	01253881			

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EXHIBIT C

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THE LANDINGS AT MARINA POINT



CLUBHOUSE & MARINA

The commercial clubhsuse, and marina facility and the landmark attractions of the Marine Point resort community. The Marine Chip will provide superior design and technology and boat slips will be offered for-sale or cent to owners of condominium units and single family homes all well as a line et number of outside members. The marine provides for a variety of water vehicle rentalit and cervine, and the landstaped jointer surmainelling the marine ofter looks ut points with pictule and a shing facilities.



MARINA CLUB AMENITIES

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- Clubhouse, with Loony for Givent Providention
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The Sobczyk Team | #1 in Customer Satisfaction in Big Bear Lake All information deemed reliable but not guaranteed.
 Q2013 The Sobczyk Group. All rights reserved. Department of Real Estate.
 MARINA POINT DEVELOPMENT PLANS, RENDERINGS, FLOOR PLANS,
 PRICES, AND PROJECT FEATURES SUBJECT TO CHANGE



SOUTHERN CALIFORNIA'S PREMIER 4 SEASON RESORT COMMUNITY

Marina Point on Big Bear lake is an exclusive destination resort community that will offer the finest in resort living. The project encompasses 28 acres comprised of 12.5 land acres, a 3.4 acre marina, and an 11.7 acre sphere of influence that extends 600 feet into Big Bear lake. The Property has over 1,700 feet of prime lake frontage and its two jetties that protrude into the lake form a protected harbor.

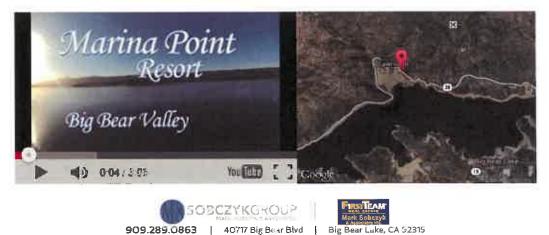
Marina Point is ideally located on the North Shore of Big Bear Lake, only minutes away from Southern California's two premier ski resorts and the Village of Big Bear Lake. The property's southern exposure provides spectacular views of the lake and surrounding mountains.



COMMUNITY ELEMENTS

This master planned resort community was designed into two distinguished lakefront residential communities surrounding 🝙 landmark clubhouse and marina. Lakeshore Estates is a gated enclave of 10 lakufront custom homesites, and the 'Villas at Marina Point" offers 110 luxury condominiums ranging in size between 1,500 to 2,250 equare feet.

The "Landings at Marina Point" consists of a 9,000 square foot clubhouse and spa with extensive recreational and resort amentice including a state-of-the-art 175 boat slip marina.



The Sobczyk Team | #1 in Customer Satisfaction In Big Bear Lake All information deemed reliable but not guaranteed. ©2013 The Sobczyk Group. All rights reserved. Department of Real Estate. MARINA POINT DEVELOPMENT PLANS, RENDERINGS, FLOOR PLANS, PRICES, AND PROJECT FEATURES SUBJECT TO CHANGE

EXHIBIT H

Letter from Marina Point to County CEO, Greg Devereaux, dated March 25, 2015 MARINA POINT DEVELOPMENT ASSOCIAT

PO BOX 577 • DEL MAR • CALIFORNIA 92014 • TELEPHONE (619) 417 4416

SENT BY E-MAIL

March 25, 2015

Mr. Gregory C. Devereaux, Chief Executive Officer County of San Bernardino 385 N. Arrowhead Avenue San Bernardino, CA 92415-0120

Re: Marina Point Tract 12217

Dear Mr. Devereaux:

This letter is to notify you of Marina Point Development Associates et al. ("Marina Point") objections to San Bernardino County's ("County") failure to observe the requirements of the California Permit Streamlining Act, and its intentional delay in approving a minor revision to Marina Point's Final Development Plan and conditioning the approval with unfeasible conditions.

We are writing this letter to you as result of our prior meeting and because, emails, messages, letters and requests for meetings and information, including the February 6, 2015 FOIA request from Marina Point and its consultants, have been disregarded by the County. This matter is being sent to your attention in order to apprise you of the situation and serious consequences that may result if resolution is not reached.

A. Background

By the end of 2009, the County and Marina Point had prevailed in litigation by Friends of Fawnskin and Center of Biological Diversity. The State Court rejected all CEQA claims and confirmed Marina Point's development entitlements.

Marina Point prevailed as well in Federal Court over baseless claims by FOF & CBD on the project and false allegations of Marina Point wrong doings. The Federal Ninth District Court found the Marina Point project posed no adverse impact to bald eagles and dissolved the development injunction that allowed Marina Point to proceed once again with site work that it began in 2002.

In 2005, the County agreed to toll the 2004 grading permit due to the litigation and court approved site work performed in later years. While the County confirmed the tolling, Marina Point was informed at the counter when attempting to pick up the permit that the file had been inadvertently deleted from the computer system and could not be retrieved.

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The County gave Marina Point no alternative but to resubmit the approved plans and pay additional review fees. As we related in our September 12, 2012 meeting with you, County assurances to re-issuance the grading permit within a couple of weeks turned into over two years of duplicate reviews, added fees, and new conditions of approval that resulted in substantial delays and cost.

In our meeting that included various department heads, Planning was directed to have the permit re-issued that same day. It was not issued that day, and when it was issued on October 2, 2012, it left insufficient time for Marina Point to start work prior to the December 1 - April 1 construction prohibition period. The delay caused Marina Point to lose another year and resulted in a January 2013 claim filed against the County over the unwarranted delays.

B. Minor Changes to the Approved Final Development Plan

In early 2013, Marina Point and its engineer met with the County over a potential change to MPDA's final development plan that would reduce the overall scope of the project by reducing the number of condominium units and replacing condo buildings with single unit sitecondominiums on essentially the same site plan. The County agreed that the changes were "minor" that could be approved administratively and in substantial conformance with the original development plan. This determination was paramount to Marina Point to avoid any discretionary action or public notice since FOF and CBD continued to oppose the project and every reissuance of permits by other agencies.

On June 6, 2013, Marina Point presented a more refined site plan and the County set out a framework for accomplishing the reduced project. The County knew from that meeting the overall goal of Marina Point and dictated the path for Marina Point to take, a bit of a circuitous, but one that all parties understood the desired outcome. Marina Point agreed to not pursue its January 2013 claim.

The County's directives to Marina Point were as follows:

- (a) Prepare a Substantial Conformance Plan based upon the original 133-unit site development plan that made minor changes to roads, parking, amenities, and delineated the lot line adjustments to later accommodate the site-condominiums in the reduced project. This Substantial Conformance Plan was submitted on January 10, 2014 and approved by the County on January 26, 2014.
- (b) Prepare and submit the lot line adjustments to the Tract Map for County approval and recordation once the Substantial Conformance Plan was approved. The lot line adjustments were approved by the County in July 2013, and held it until recordation on April 9, 2014.
- (c) Submit the reduced project as a minor change to the Planned Development Permit in accordance with CDC §85.10.090(c). The reduced project was applied for as a minor site plan revision on March 11, 2014 utilizing the "Revision Minor Modifications" form provided by the County. It was Marina Point's understanding that the County would be approving the reduced project as a "Change to an Approved Project" in accordance with CDC §86.06.070, which did not require a "Surrounding Property Owners Certification" and/or a public notice.

On March 26, 2014, the County issued an application completeness letter on the reduced project that was referenced as "Revision to an Approved Action". The County included a public notice that it had distributed to surrounding property owners that Marina Point neither expected nor wanted as it was in the process of obtaining a construction loan. The County stated that the public notice would not affect its intended approval of the reduced project and would state so to the lender.

In a conference call between the County, Marina Point and representatives of its construction lender, the County confirmed the approval of the Substantial Conformance Plan and that it was prepared to record the lot line adjustments for the reduced project. The County also confirmed that the minor revision application was complete with no additional CEQA required, and assured the lender that staff supported the reduced project and intended to issue approval of the project once the public notice comment period ended on April 10, 2014.

The County also stated that an appeal was possible but overturning the approval was unlikely given staff's support and the nature of the minor revision and reduced project, and that any appeal would be scheduled quickly in light of the impending construction. In reliance on the County's representations, the lender funded the construction loan based upon obtaining County approval in April and possible appeal completed by July 2014 without penalty. The County recorded the lot line adjustments for the reduced project on April 9, 2014.

The following day, the County notified Marina Point that it was retracting its application completeness letter and seemingly declared it incomplete citing a third party conceptual website that was unrelated to the application. Marina Point objected to the County retraction in an April 16, 2014 letter that you were copied on, and submitted preliminary floor plans and elevations that were not previously required.

On April 29, 2014, the County finally forwarded the public notice comments after numerous requests. The comments sent did not include a petition in favor of the approval. The comments were from the usual parties in opposition to the entire project that reiterated the same false allegations of Marina Point's past wrong doings. One comment from a FOF board member referenced a prior meeting in their home with Supervisor Ramos who reportedly stated that Marina Point would be made to start from scratch if any changes were proposed to the project.

This was disconcerting given the December 17, 2013 hearing on extending the time to complete the project's bonded public improvements. Supervisor Ramos was opposed to an extension and raised having the Marina Point property reverted to raw acreage as an option to a time extension which FOF members requested, or calling the bonds. Supervisor Ramos agreed to the extension after Marina Point informed the Board of the litigation and subsequent delay in obtaining the grading permit. Marina Point later met Supervisor Ramos's staff and provided a history of the opposition and false claims that Marina Point prevailed upon. Staff later set up a meeting with FOF's director which was cancelled after FOF filed its petition against the County and Marina Point as real parties in interest.

C. Continued Delay in the Minor Revision Process

From assuring Marina Point and its construction lender that approval of the reduced project was forthcoming in April 2014, until a rather fervent demand was made by Marina Point's counsel in late December 2014, there were continued unjustified delays in every

-3-

direction. At no time did the County indicate it would disregard the Development Code limitations or timing parameters. Nor do we believe County staff has that authority. We also surprised to hear of the FOF power point presentation to the County in May 2014 on Marina Point's development entitlements especially that the County has charged Marina Point on prior communication with FOF despite objection.

Agreements as to timing of review throughout the minor revision process were never adhered to by the County, who was the one setting the time deadlines. Internal reviews that were to take place regarding the requested revisions to the new conditions were not undertaken. Requests for comments by other departments were never provided. Yet, as pointed out in Marina Point's December 24, 2014 letter, charges have been made to the Marina Point account for such reviews, and even the latest non-detailed invoice seemingly once again setting this out.

When the Approval was finally issued on December 30, 2014, it contained substantial unworkable and adverse conditions that were previously discussed and supposedly revised. It was apparent from Planning and its prior repeated statements that the County was attempting to force Marina Point to drop the reduced project application by delay and placing unwarranted conditions of approval. The attempts by Marina Point's counsel to resolve these issues were rebuked by the County with nothing further than what amounts to a "take it or leave it" ultimatum without justification. A number of the more incongruous conditions, and our requested revisions and reasons are attached hereto as "Exhibit A".

The "minor revision" has been in the process for almost two years and it took nine months from formal application to approve the reduced project with a shocking set of new conditions. During that time, the County sent out a letter deeming the application complete, a letter withdrawing this for reasons outside the application, made requests for items that are wholly unnecessary to a approve a reduction in density (e.g. Water Quality Management Plan), requested the additional information to then be placed on a single Minor Site Plan Revision, and staff provided time frames for completing the review and issuing approval that were never met. At the same time, Marina Point has been required to continually add funds to the developer account for further reviews that were to be made for Approval without detailed accounting as repeatedly requested.

Even after making the requested deposits, intentional delays ensued. Staff would not (and continues to not) respond to inquiries by Marina Point and its design consultants (both its engineer and architect). Marina Point made it clear to staff about the timing issues associated with the project. These included not only the limited construction period required by the County, but also the issues associated with Marina Point's financing, the Bureau of Real Estate's white report for closing sale escrows, and that construction was taking place. Even the lender for Marina Point has made this known to the County.

Then to complete the picture, the County, rather than providing supplemental changes to the original Conditions of Approval associated with the minor revision, and necessary to carry out the purpose of the original Planned Development Permit, the County blatantly presents a new set of conditions that are contrary to the County Development Code, Marina Point's Planned Development Permit, original Conditions of Approval, Final Subdivision Map, and site improvements that have been constructed. The conditions are also contrary to actual Minor Revision Site Plan being approved.

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On top of that, Planning has stated in a conference call with County Counsel, Marina Point and its counsel and consultant that the submission of the Conditions was advertent and Marina Point's only recourse is to appeal the issue to the Planning Commission, and possibly the Board of Supervisors, or to submit a new application that essentially commences the process all over again. It is clear from the record that there are other than simple scheduling and work load related reasons that affected the timing of this project.

D. <u>Appeal of the Minor Revision</u>

The County treated the minor revision as an entirely new project that it intentionally delayed, and then saddled the approval with incongruous conditions of approval. The County then continued the charade by scheduling the Planning Commission hearing 90 days from the date of the appeal, and is likely to schedule a further appeal to the Board of Supervisors for at least another 90 days despite prior representations to Marina Point and its lender.

We are now informed by the County that appellants may request the Planning Commission hearing on April 9, 2015 be rescheduled. Marina Point strongly opposes the County granting any such request given that the County has already delayed scheduling the appeal for three months, which provided all parties with more than ample time to prepare.

E. <u>Bonded Public Improvements</u>

County counsel recently informed Marina Point that Supervisor Ramos wants the remaining bonded public improvements installed in 2015 despite the still undetermined project, and FOF/CBD's petition.

The County's position on the improvements bond is another example of a long standing attempt to sideline the project, which has evidently permeated into other departments, as certain employees openly admit. There are issues with the Sewer District over the sewer system that was constructed on the Marina Point site, and reimbursement of costs Marina Point incurred in relocating the District's main trunk line back into the County easement as per the approved November 2013 engineer's relocation plan.

The issues with the Sewer District also extends to its directing Marina Point's contractor to conduct additional work to District's sewer main in 2014 without Marina Point's knowledge or approval. These costs remain outstanding and the matter must be addressed to avoid liens and legal action among the parties.

The City of Big Bear Lake Department of Water and Power informed the County Public Works for the past 2 years that the original off-site public water improvements originally contemplated to be installed by the Developer and reimbursed by the DWP are no longer applicable. Letters from DWP, approved plans, and engineer's estimates have been disregarded resulting in Marina Point incurring substantially higher premiums. The County has had no issue increasing the bond in the past based upon DWP notices, but then refuses to decrease the bond for reduced improvement requirements and costs.

The County also submitted no response to the Court on the Preliminary Injunction Motion on either the alleged Planned Development Permit expiration claim or the validity of the County's 2014 demolition permits. The County was silent as to its inspector directing Marina Point's

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contractor to demolish the two small dilapidated structures based upon the 2003 hazardous waste survey and demolition permit, and vector survey the County previously conducted. The County did not mention the asbestos report that Marina Point conducted once 6 square feet of asbestos material was identified in a partially demolish structure that was given to the County before issuance of the 2014 demo permits. And while all demolition is complete, the County's inaction resulted in the Court ruling against the County and Marina Point on this issue. Marina Point counsel is working on setting the record straight to dissolve the preliminary injunction and requires the County's cooperation in informing the Court that preconditions were met prior to its issuing the 2014 demo permit.

F. <u>Possible Resolution</u>

The County's ongoing actions over the past several years have been geared towards impeding Marina Point's project. The record is clear and unambiguous with undeniable correspondence and witnesses, including County employees past and present, as well as supervisory personnel that can attest to Marina Point's assertions.

The County was keenly made aware last March, that the construction lender has rights under the terms of the loan to accelerate repayment in the event the County did not approve the minor revision by July 2014. The Lender was informed of the June 2014 meeting wherein the County agreed to approve the project once Marina Point submitted an EIR addendum that was questionable for a minor revision but submitted. The County reneged on that representation as well, and placed Marina Point in a position wherein it faces severe damages.

Should the County wish to address the issues and a possible resolution, we recommend a meeting be scheduled with you, Planning and, if need be, County counsel as they have been actively involved with this project. In light of the time restrictions, and upcoming appeal the requested meeting needs to be convened prior to the currently scheduled Planning Commission hearing on April 9, 2015.

Irv Okovita

Encls.

Cc: Tom Hudson, Director of Land Use Services Terri Rahhal, Planning Director Bart Brizzee, County Counsel Dennis Stryker, Stryker Slev Kenneth Polin, Jones Day Rob Meserve, Esq. Bridge Loan Financial

EXHIBIT "A"

CONTESTED CONDITIONS OF APPROVAL TO MINOR REVISION

A. <u>Conditions of Approval to the Approved Minor Revision</u>

The County's Development Code provides, under *CDC § 85.10.090 (b)*, addressing amendments to Planned Development Permits, that "Added Conditions. The review authority may, as a condition of approval, impose added changes or conditions to the Planned Development Permit amendment as it deems reasonable and necessary to carry out <u>the purpose and intent of the original Planned</u> <u>Development Permit</u> and this Chapter." This limiting authority as to conditions resulting from an amendment to the Planned Development Permit was not respected in the Conditions provided with the approval.

When the draft of the proposed conditions were provided by the Planning Department in October it appeared that the draft conditions were based upon a formulaic template and a different land use then already approved. The draft conditions were not consistent with the Marina Point Planned Development Permit, original Conditions of Approval, Final Subdivision Tract Map, County Development Code and the approved minor revision site plan itself. If fact, there are a series of conditions that have nothing to do with the already existing Planned Development Permit. Because of these inconsistencies, Marina Point submitted comments and proposed revisions. After emails and telephone conversations with you and County Staff, it was our understanding these changes were being reviewed and processed. In fact, fees were submitted for that very purpose. When the final approved Minor Revision was provided, the new set of Conditions did not take into account the requested changes, did not address the issue of inconsistency among already approved requirements, create ambiguities for Marina Point and the County, did not comply with the Development Code limitation under *§85.10.090(b)*, and will be problematic to various County departments if not corrected.

Since the Planning Director Approved the minor revision administratively, we saw no reason that the Director could not modify the conditions to conform to the original Planned Development Permit, Final Map, Development Code and its limitations, as well as the overall project approvals. As such, the revisions to the new set of Conditions of Approval could have been adjusted without further procedural delay, without lengthy review, without having to meet notice requirements (especially since Chapter 85.12 of the Development Code sets out the limits of notice), and with the simple act of review, discussion with the applicant, and then finalization in accordance with the limitations within the Development Code. All of this was ministerial in nature as it was all based upon the previously granted approval of the project overall that requires no further review under CEQA as changes contemplated by these Development Code provisions do not have an impact environmentally, and because of the limitations within the Development Code on what qualifies and what new conditions may be placed on the revision(s).

The changes proposed by Marina Point were not an expansion of use (in fact it is a reduction in overall use), the changes requested by Marina Point fall within *§85.10.090(c)*, which provides for minor changes to a Planned Development Permit that do not involve an increase in structure, an increase in the number of dwelling units or a change in use to be approved by the Director as a "Change to an Approved Project." *§86.06.070*, "Changes to an Approved Project," provides the authority to the Director to

accept the requested changes without the use of the Minor Revision application and without the need to go through the process outlined in Chapter 85.12.

Essentially, the changes proposed by Marina Point that have been submitted through the "Revisions to an Approved Action" process as required by the County after the initial discussions and staff prepared outline of events from 2013 should have been reviewed and handled in the same manner as the substantial conformance was done in January of 2014. The changes were not significant as it reduced the overall number of units, reduced the overall footprint of the physical construction of the dwellings, and did not amount to a change in use. This was the plan outlined to staff in 2013 that prompted the staff to set out the three stage process for the approval of the changes, which should have been fully approved last April.

B. <u>Contested County Conditions</u>

CONDITION #1

<u>Project Description.</u> This Minor Revision to Approved Action for the Marina Point Planned Residential Development is approved to be constructed and operated in compliance with the San Bernardino County Code (SBCC), the Marina Point Final Development Plan, the following conditions of approval, the approved site plan and any other required and approved reports and/or displays (e.g. elevations, floor plans). This project includes ten (10) single unit condominium sites and eleven (11) condominium buildings, each containing ten (10) condominium units for a total of 120 condominium units for the project. The project also includes a 9,000 square foot clubhouse, a boat marina and other open space/recreational amenities on 28.5 acres generally located on the southwest side of North Shore Drive approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be developed in (6) phases as shown on the approved site plan. Project APN: 0304-082-16, 17, 21, 22, 24, 25, 26 and 27. Project Number P201400106.

MPDA REQUESTED CHANGE

Displays, elevations, floor plans etc. are schematics and not part of a project description. Incorporating this language at this stage serves no purpose other than adding to confusion. The final architectural plans have not been submitted to the County for approval and there may be changes required from that review process that may require the approved plans to differ from the existing schematics. Additionally, Condition #62 covers the submission of building elevations to the County prior to building permits, so any concerns by the County will be addressed per that condition.

CONDITON #3

<u>Revisions.</u> Any proposed change to the approved use/activity on the site; or any increase in the developed area of the site or any expansion or modification to the approved facilities, including changes to structures building locations, elevations, signs, parking allocation, landscaping, lighting, allowable number of occupants (clients and/or employees); or a proposed change in the conditions of approval, including operational restrictions from those shown either on the approved site plan and/or in the conditions of approval shall require that an additional land use application (e.g. Revision to an Approved Action) be submitted to County Planning for review and approval obtained.

REQUESTED CHANGE

Revise the condition to refer to the SBCC § 85.10.090 that govern Planned Development Permit Amendments.

"Any proposed change to the approved Planned Development Permit shall comply with and follow SBCC § 85.10.090 on Planned Development Permit Amendments.

REASON

This proposed County condition appears to cover commercial projects rather than residential Planned Developments. The Project's approved site plan already contains requirements for landscape, signs, parking allocation, lighting, allowable number of occupants (clients and/or employees), as well as operational restrictions shown on the approved site plan and/or in the conditions to the existing conditions already provide for County review and approval. Recall that *§85.10.090* governs, which is why we inserted this in our requested revision to this condition initially. And as drafted, this condition is misleading as to what is allowed under the approved Planned Development Permit, and, as previously outlined above, the new conditions are to be limited to implementing the existing requirements of that permit.

CONDITON #4

<u>Continuous Effect/Revocation.</u> All of the Conditions of this project are continuously in effect throughout the operative life of the project for the use approved. Failure of the property owner, tenant, applicant, developer or any operator (herein "developer") to comply with any or all of the conditions at any time may result in a public hearing and revocation of the approved land use, provided adequate notice, time and opportunity is provided to the property owner or other party to correct the non-complying situation.

MPDA REQUESTED CHANGE

Delete Condition

REASON

This proposed County condition again appears to be applicable to commercial projects and geared toward conditional use permits and the like. It seems to indicate that certain actions and property rights of owners, and/or the homeowners association can be addressed via a public hearing by the County that can revoke the entire land use. This is not enforceable since many property rights are part of the State's Constitution as well as state statutes. On a conference call in November 2014, staff agreed to review this provision based upon the issues outlined in our previous submittal as well as the discussion on that call. Additionally, the Planned Development Permit runs with the land per the Development Code. Presumably the County is not trying to impede rights, etc. but is simply looking for a mechanism to ensure compliance of the conditions of approval. This has been accomplished by the insertion of Condition 19, which provides the County with the ability to enforce these conditions as well as the Planned Developments against the developer and the property owner. Deletion doesn't affect the County's ability to enforce the various requirement imposed on the project, and eliminates confusion as to what standards the developer must meet and what the County's expectations are.

CONDITION #5

Expiration. This project permit approval shall expire and become void if it is not "exercised" within three (3) years of the effective date of this approval, unless an extension of time is approved. The permit is deemed "exercised" when either:

- A. The permittee has commenced actual construction or alteration under a validly issued building permit, or
- B. The permittee has substantially commenced the approved land use or activity on the project site, for those portions of the project not requiring a building permit. (SBCC §86.06.060)

Occupancy of completed structures and operation of the approved and exercised land use remains valid continuously for the life of the project and the approval runs with the land, unless one of the following occurs:

- A. Construction permits for all or part of the project are not issued or the construction permits expire before the structure is completed and the final inspection is approved.
- B. The land use is determined by the County to be abandoned or non-conforming.
- C. The land use is determined by the County to be not operating in compliance with these conditions of approval, the County Code, or other applicable laws, ordinances or regulations. In these cases, the land use may be subject to a revocation hearing and possible termination.

PLEASE NOTE: This will be the ONLY notice given of the approval expiration date. The "developer" is responsible to initiate any Extension of Time application.

REQUESTED CHANGE

Notwithstanding the above, pursuant to SBCC §86.06.060(a)(5)(B) and the original conditions of approval for the project, the time limitations for Planned Developments shall apply, as follows: A conditionally approved Planned Development for a phased project shall be subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

<u>REASON</u>

This proposed County condition is based upon $\underline{\$86.06.060}$ (a) (1), (2), (3), (4) that covers time limits on a number of land use approvals. However, since Development Code \$86.06.060(a)(5)(B) governs time limits associated with phased Planned Development Permits and supersedes other portions of \$86.06.060, the appropriate time limits need to be added to avoid confusion. Though this condition merely stets out the time frame to utilize the determination and approval of this minor revision, as set out in the new conditions it has the ability to confuse the timing issue.

Additionally, as has been mentioned above, the new conditions are to complement existing conditions and implement the Development Code as well as well as the Planned Development Permit.

CONDITION #7

Indemnification.

(a) Applicant's Agreement to Indemnify and Hold Harmless. As a condition of approval of a land use application, the applicant shall agree to defend, indemnify, and hold harmless the County or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void, or annul an approval of the County, an advisory agency, appeal board or legislative body concerning the map or permit or any other action relating to or arising out of County approval.

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(b) *County's Duty to Notify Applicant and Cooperate in Defense.* Any condition of approval imposed in compliance with this Development Code shall include a requirement that the County act reasonably to promptly notify the applicant of any claim, action, or proceeding and that the County cooperate fully in the defense.

MPDA REQUESTED CHANGE

The following is the indemnification language as set forth in SBCC §81.01.070,

<u>Indemnification</u>. In compliance with SBCC §81.01.070, and as a condition of approval of a land use application, the applicant shall agree to defend, indemnify, and hold harmless the County or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void, or annul an approval of the County, an advisory agency, appeal board or legislative body concerning the map or permit or any other action relating to or arising out of County approval.

(b) *County's Duty to Notify Applicant and Cooperate in Defense.* Any condition of approval imposed in compliance with this Development Code shall include a requirement that the County acts reasonably to promptly notify the applicant of any claim, action, or proceeding and that the County cooperates fully in the defense.

<u>REASON</u>

Requested change is to actual language from §81.01.070. County's proposed condition is too broad in that it takes away all legal rights by applicant including intentional passive negligence.

CONDITION #13

<u>Clear Sight Triangle</u>. Adequate visibility for vehicular and pedestrian traffic shall be provided at clear sight triangles at all 90 degree angle intersections of public rights-of-way and private driveways. All signs, structures and landscaping located within any clear sight triangle shall comply with the height and location requirements specified by County Development Code (SBCC§ 83.02.030) or as otherwise required by County Traffic.

REQUESTED CHANGE

Adequate visibility for vehicular and pedestrian traffic shall be provided at public right-of-way and private driveways in accordance with the recorded Final Tract Map and original conditions of approval for the Planned Development Permit

<u>REASON</u>

Roads have been built per the conditions of the recorded Final tract map and approved plans. The County's proposed condition conflicts with the recorded Final Tract Map and approved plans associated with this application.

CONDITION #55.

<u>Water System Commercial</u>. A water system approved and inspected by the Fire Department is required. The system shall be operational, prior to any combustibles being stored on the site. All fire hydrants shall be spaced no more than three hundred (300) feet apart (as measured along vehicular travel-ways) and no more than three hundred [300) *{sic}* feet from any portion of a structure. [F54]

REQUESTED CHANGE

This condition should be adjusted to reflect the actual built conditions as well as the approval granted by the County Fire Department to the constructed facilities. As such, this condition should say:

<u>Water System Commercial</u>. A water system approved and inspected by the Fire Department is required. The system shall be operational, prior to any combustibles being stored on the site. All fire hydrants shall be spaced as required and approved by the San Bernardino County Fire Department.

REASON

The fire department has approved the water system and approved the spacing of fire hydrants, some of which has been installed.

CONDITION #67

<u>HOA required</u>. The Developer shall establish a Homeowners' Association (HOA) for the purpose of monitoring and maintaining common area amenities and where applicable, private lot areas with HOA maintenance easements. The HOA shall include all lots in Tentative Tract 12217 and shall be formed to the satisfaction of County Planning.

REQUESTED CHANGE

This condition should be revised as follows:

<u>HOA required</u>. The Developer shall establish a Homeowners' Association (HOA) for the purpose of monitoring and maintaining common area amenities on Lot B and where applicable, private lot areas with HOA maintenance easements. The HOA shall include all residential lots in Tentative Tract 12217 and Lot B and shall be formed to the satisfaction of County Planning.

<u>REASON</u>

The HOA will not be operating the marina operations and clubhouse. These operations are typically beyond the scope of HOA capabilities. A separate arrangement will be provided for operation and use of those facilities.

The original conditions of approval provided for the marina complex to be maintained by the owner developer in accordance with Big Bear Municipal Water District Permits. The County approved Final Development Plan provided for the following:

"The facilities associated with the Community building will include a health club, food and beverage facility, meeting rooms a marina with boat slips and rentals and an on-site management and rental office. The community building will also incorporate a private club with facilities available to members of the club, the Marina Point residents and their guests. The club will be owned and managed by the project proponent and will be built in phases." It is the intention of the developer to abide by this condition. And since the revisions submitted to the county have no impact on this portion of the project, any adjustments would be outside the limitations established under the Development Code.

CONDITION #83

<u>Road Improvements</u>. The developer shall submit for review and obtain approval from the Land Use Services Department the following plans and permits for the listed required improvements, designed by a Registered Civil Engineer (RCE), licensed in the State of California. These shall be submitted to the Land

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Use Services Department, located at 385 N. Arrowhead Ave, San Bernardino CA 92415-0187. Phone: (909) 387-8311.

Private Street (Private 40')

- Road Dedication. A 40 foot grant of easement is required to provide a full-width right-of-way of 40.
- Curb Return Dedication. A 20 foot radius return grant of easement is required at the intersections of all interior streets.
- Street Improvements. Design a minimum 26' paved road section for all interior roads.
- Driveway Approach. Design driveway approach per San Bernardino County Standard 128A, and located per Standard 130.
- Curb Returns. Curb Returns shall be designed per County Standard 110.
- Cul-de-sac Design. The proposed cul-de-sac shall be designed and constructed full width to County Standards and the map revised as necessary to accomplish this.

REQUESTED CHANGE

This condition needs to be revised as follows:

<u>Road Improvements</u>. The developer shall submit for review and obtain approval from the Land Use Services/Land Development Division the project's road improvements that are to be consistent with the Final Tract Map and Planned Development Permit. The plans are to be designed by a Registered Civil Engineer (RCE), licensed in the State of California. These shall be submitted to the Land Use Services Department, located at 385 N. Arrowhead Ave, San Bernardino CA 92415-0187. Phone: (909) 387-8311.

<u>REASON</u>

County's proposed conditions conflict with the Final Tract Map, Planned Development and its previously approved improvement plans. Some Roads have been installed in accordance with the approved plans. Condition No. 121 correctly requires access drives to be 24 feet wide as shown on the Final Tract Map. This is one of the areas where the County has already approved improvement plans that were prepared and approved in accordance with the existing Planned Development Permit and existing conditions. This is, in part, why the Development Code establishes the limitations on new conditions. Conflicts occur otherwise that result in delay and confusion that is avoided by compliance with the limitations on new conditions.

CONDITION 84

<u>Private Roads</u>. Private roads to be constructed within this development shall be in accordance with the Private Road Standards in the San Bernardino County Transportation Road Planning and Design Standards Manual and they shall not be entered into the County Maintained Road System.

REQUESTED CHANGE

<u>Private Roads</u>. Private roads to be constructed within this development shall be in accordance with the Private Road Standards in the San Bernardino County Transportation Road Planning and Design Standards Manual, or in conformance with the Final Tract Map, approved Development Plan, or as otherwise approved and they shall not be entered into the County Maintained Road System.

<u>REASON</u>

The approved Development Plan governs where there are approved deviations. Construction activity approved by the County has already taken place. This activity conforms to the approved Tract Map,

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Development Plan, original conditions of approval and approved improvement plans. Again, the Development Code limitations serve a purpose, as here, where the County has provided approval of the improvements that have been constructed. As such, this condition needs to take into account not only the original conditions and Development Permit, but the approved improvement plans as well.

CONDITON #116

<u>Amenities</u>. The amenities shown as part of Lots A and B shall be installed with the first phase of construction or bonding guaranteeing completion of the subject amenities shall be provided prior to occupancy of Phase III.

REQUESTED CHANGE

<u>Amenities.</u> The amenities shown as part of Lots B shall be installed with the first phase of construction of the multi-family condominium buildings, which is phase III of the project, or bonding guaranteeing completion of the subject amenities shall be provided prior to occupancy of the second phase of the multi-family condominium buildings, which is phase IV of the project.

<u>REASON</u>

The change is required for the condition to be consistent with the approved Development Plan as to Lot B, and to prevent overburdening owners of units purchased in the initial phases.

As to Lot A, the original County approved Final Development Plan the included the following provisions for Lot A that was separate and distinct from the rest of the project:

"The facilities associated with the Community building will include a health club, food and beverage facility, meeting rooms a marina with boat slips and rentals and an on-site management and rental office. The community building will also incorporate a private club with facilities available to members of the club, the marina Point residents and their guests. The club will be owned and managed by the project proponent and will be built in phases."

Accordingly, the facilities on Lot A were always intended to be separate and distinct from the rest of the project and constructed in phases based upon economic viability. It is not a time-frame set by a condition of approval.

EXHIBIT I

Letter from Appellant, dated March 31, 2015

Sandy Steers P.O. Box 423 Fawnskin, CA 92333

31 March 2015

Chris Warrick, Planner County of San Bernardino Land Use Services - Planning Division 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0182 E-Mail: <u>chris.warrick@lus.sbcounty.gov</u>

Re: Appeal of Revision to Approved Action (P201400106)

Dear Mr. Warrick:

I am writing this letter in support of the Friends of Big Bear Valley/Center for Biological Diversity appeal of staff's decision on December 30, 2014 to approve a "Minor Site Plan Revision" application for the Marina Point planned development.

A. Major Changes since the Findings and Statement of Overriding Considerations in 1991

Since the "Findings and Overriding Considerations (1991 version1)" (Attachment A) was approved in 1991, several environmental circumstances have changed significantly and need to be reevaluated to determine whether the revised project would have significant impacts. These include:

1-Item (8) on page 3 states: "Land Use: The EIR finds that the project represents a substantial alteration to existing land use...(based on the disturbance from the R.V. Park)...The EIR concludes that the perception of many of the surrounding property owners is that the project will organize the site and improve its appearance from lake and highway even though the density is associated with more urban type development."

Circumstances have changed significantly regarding Land Use. The R.V. Park has not been on the site for over 15 years, and the site had returned in large part to a natural state during that period. The land use of the project revision must be reevaluated with the changed circumstances.

2-Item 3 (a) on page 7 states:

"Significant potential exists that the project may contribute incrementally to the impacts on the region's remaining perching and foraging habitat for wintering bald eagle. "Mitigation measures contained within the EIR and Condition of Approval 9, 27-A, 27-B, 54 and 43 (of revised planning conditions) would lessen this environmental effect to a level of nonsignificance.

"The site is located within key foraging habitat for the wintering bald eagle. However, the EIR concluded that no perch trees exist on the site and the foraging habitat is not of a good quality due to the lack of shallow lake bottom and shoreline vegetation which attract waterfowl, a good food source for eagles.

"These potential significant impacts can be mitigated to insignificant levels through: -compliance with prohibition of construction from December 1 through April 1.

-closing the marina from December 1 to April 1

-adherence to the Big Bear Municipal Water District's shoreline alteration permit. -retention of a significant number of trees to provide habitat for future foraging habitat -planting of fast-growing conifers which may become perch trees."

Circumstances with bald eagles have changed significantly since this 1991 evaluation: 1) the available foraging habitat around the lake has decreased with the additional developments in bald eagle habitat, including: Castle Glen Estates on the south shore and the proposed Moon Camp development adjacent to this site; 2) contrary to the statement in the findings, bald eagles do use this site for foraging as shown in the attached photographs (Attachment B) of bald eagles on the site taken on multiple dates from 2004 through 2010.

3-Item 3 (c) on page 10 states: "Significant potential exists that this Project will contribute to an increase in traffic hazards to motor vehicles and bicyclists....increased traffic accidents can be mitigated by installing road improvements per CalTrans..."

New information discovered in 2014 shows that CalTrans does not have a rightof-way on the highway adjacent to this project. Therefore, anything that has been approved through CalTrans is now irrelevant and must be reevaluated.

4-The "Developments Benefits" listed on page 11 are no longer true with both the changed circumstances of the area and environment and the changes created by the revision, as follows:

a-The Land Use section comparison of an improvement over the R.V.Park is no longer valid since there has been no R.V. Park for over 15 years.

b-The Land Use section statement that 78% of the property will remain as open space is no longer true with the changes in footprint of the project revision and the required increases in parking required.

c-The Land Use section statement that the project provides land use more compatible with adjacent land uses is no longer true since the R.V. Park is long gone.

B. New Information of Edge Effects on Nearby Endangered Habitat/Plants

The following information from the 2010 Draft Environmental Impact Report for the proposed Moon Camp project, immediately adjacent to the Marina Point site discusses

the potential impacts from Edge Effects to the endangered pebble plain habitat and plant species located on the western side of the Moon Camp project, within 100 feet from the Marina Point site. From this discussion, it is clear that the Marina Point project would impact this habitat and the associated endangered plants. This new information must be evaluated in conjunction with the Marina Point project revision, including the increased population and number of visitors (that could trample the habitat), the increased bicycle and vehicle traffic and the associated impacts, the increased potential for sprayed pollutants, the increased potential for pets and other introduced non-native animals, and the potential introduction of non-native plants to the area.

From: Moon Camp 2010 DEIR

http://www.sbcounty.gov/Uploads/lus/Mountain/MoonCamp50/00520089 %20DEIR Co mplete.pdf

Page: 4.3-45

"Indirect Impacts

Indirect impacts are those related to disturbance by construction (such as noise, dust, and urban pollutants) and long-term use of the project site and its effect on the adjacent habitat areas. The indirect impact discussion below includes a general assessment of the potential indirect affects (noise, dust and urban pollutants, lighting, human activity, and non-native species introduction), of the construction and operation of the Proposed Alternative Project. Particular focus is placed on the indirect effects on the natural open space area from the Proposed Alternative Project, collectively referred to as edge effects.

"Edge effects occur where development, including roads, takes place adjacent to natural open space areas. Edge effects threaten the ecological integrity, recreational experience, aesthetic quality, public investment, and safety operations of preserved or undeveloped natural areas located adjacent to developed areas. When development is configured in a manner that creates a high ratio of development edge to natural open space, there is an increase in the potential impacts caused by human use (indirect impacts). These indirect effects that address both the short-term construction and longterm use of the project site are outlined below."

From: Moon Camp 2010 DEIR appendices

http://www.sbcounty.gov/Uploads/lus/Mountain/MoonCamp50/00520089-CompleteAppendices.pdf

Appendix B.7 - Draft Vegetation and Special Status Plants Survey (Scott White **Biological Consulting, August 2007)**

"4. Onsite Management

"The following discussion of edge effects on rare plants is based on an analysis by the Conservation Biology Institute (2000) addressing San Fernando Valley spineflower, an endemic southern California species threatened by development and surrounding land uses in the Santa Clarita Valley. Sensitive plants found near developed lands tend to die out due to a variety of edge effects, including:

• Exclusion by invasive weedy plants introduced deliberately or accidentally into developed landscapes;

• Trampling or soil damage caused by foot traffic, vehicles, bicycles, or other recreation.

• Altered hydrology caused by irrigation overspray, road runoff, or water diversions installed for erosion control;

Direct damage by pets and feral animals (e.g., digging by dogs and cats);

• Indirect effects of non-native animals, such as elimination of native pollinators by invasive Argentine ants;

• Vegetation clearing, especially for fuel modification to reduce fire hazards to adjacent homes; and

• Pollution from over-sprayed or runoff landscaping chemicals (insecticides, herbicides, fertilizers).

"Conservation planners can design "buffer areas" to separate managed sensitive species or habitat areas from the indirect effects from adjacent land uses. Roads, trails, or fuel modification land uses were not considered consistent with buffer function. The Conservation Biology Institute analysis (2000) estimated that buffer widths of 200 feet would be "highly likely to be effective" in buffering sensitive plant occurrences from a series of adverse edge effects from adjacent land uses.

"Most land surrounding the proposed Moon Camp site is in private ownership, except in the northeastern corner where National Forest land is adjacent to the north and east. None of the surrounding private land is managed as either a buffer area or for conservation. Most of the adjacent land has been developed and would not be available for conservation or a buffer area. The proposed project will be subject to substantial edge effects from adjacent residential development and roads, especially Highway 38 (see Exhibit 4)."

C. Mitigations and Conditions of Approval Not Being Followed

Several of the mitigations and conditions of approval required by the 1991 approval have not been followed and have created changed circumstances and changed conditions on the site, especially in the areas of erosion control and runoff into the lake, retention of trees on the site, noise, and bald eagle habitat, as discussed in Attachments C, Declaration of Sandy Steers, and D, Supplemental Declaration of Sandy Steers.

The noise from the construction activities at the project site echoes up through the residential area canyons of Fawnskin and is disruptive in several portions of the town. My home is over three blocks from the Marina Point site and I can hear all the activities quite clearly throughout the day and often into the night. In addition, having individual homes with yard areas on part of the site as proposed in the revision would invite more outdoor activities than the original enclosed condominium buildings and therefore would create greater noise, a changed circumstance from the previous approval. Also, the County's standards for noise level in rural/mountain areas have changed since the original project was approved. Since the noise circumstances have changed significantly, new evaluation is required for this proposed revision.

Summary

Based on the changes in circumstances, changes in the project and new information since the previous environmental review, the County must require new environmental review under the California Environmental Quality Act before the revision can be approved. Therefore, the County should grant the appeal and rescind the revision approval.

Sincerely,

Sandy Steers

Sandy Steers

Attachment B



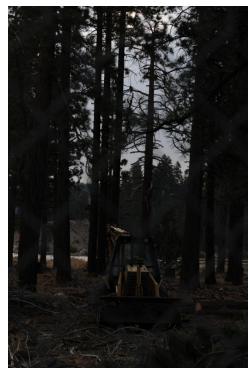
Taken: 7-9-2010 perch tree with bald eagle on Marina Point site - close view



Taken: 7-9-2010 perch tree with bald eagle on Marina Point site – distant view for location



Taken 10-15-2010 adult eagle perching on Marina Point site – close view



Taken 10-15-2010 adult eagle perching on Marina Point site – distant view for location



Taken 7-22-2009 – adult bald eagle perching – close view



Taken 7-22-2009 adult bald eagle perching – distant view for location



Taken 4-26-2010 adult bald eagle foraging/feeding on Marina Point jetties - close view



Taken 4-26-2010 adult bald eagle foraging/feeding on Marina Point jetties – distant view for location



Taken 1-10-2004 Sub-adult bald eagle flying on Marina Point site



Taken 1-10-2004 Sub-adult with coot feeding on Marina Point site

FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING THE ENVIRONMENTAL EFFECTS OF THE MARINA POINT PLANNED DEVELOPMENT

The San Bernardino County Board of Supervisors, in approving the Marina Point Planned Development Environmental Impact Report relating to the development of a proposed destination resort located in the Fawnskin area of San Bernardino County, makes findings and adopts the Statement of Overriding Considerations hereinafter set forth.

I. <u>PROJECT_SUMMARY</u>

The proposed project is a planned development, hereinafter referred to as the "Project," located in the Community of Fawnskin along the east shore of Grout Bay, Big Bear Lake. Specifically, the project site is located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robbin Road. The site is a previously disturbed lakeside property with an existing deteriorated recreational vehicle park and commercial marina located on it. The total Project will consist of 28.2 acres of which 3.42 acres will compromise a commercial marina, 12.28 acres include lake enhancements and the remaining 12.50 acres is for land use.

The proposed Project was previously reviewed by the Planning Department, and was known as Marina Cove. The original submittal was approved on March 17, 1983, with the San Bernardino County Board of Supervisors adopting of a statement of overriding considerations and certifying a project EIR (no SCH#).

In January 1989, while the project was in the latter stages of processing a final subdivision map, Southern California Water Company, the local water purveyor who were being taken over by the City of Big Bear Lake, withdrew their letter of availability for the project. As a result of the revocation, the project was unable to satisfy the conditions of approval relating to water services and thus unable to record the final map prior to the Project approval expiration date of March 17, 1989.

The Project was later refiled in April of 1990 with modifications to the ownership structure and to the Project. The revised project proposed a fish lagoon and spawning streams which complicated reviews through the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and California Department of Fish and Game. As a result of the complexities of the environmental issues, the County's environmental review period ran out of time on May '4, 1991 due to project streamlining limitations and the Project was administratively withdrawn and refiled.

Subsequently, a project very similar to the design of the 1983 project was resubmitted. The Project consists of a 132 unit destination resort development, Tentative Tract 12217, on 28.2 acres in the Fawnskin area. The proposed Project density on the 12.5 acre land use portion is 10.6 units/acre, which is less the General Plan Land Use District's allowable 12 units/acre.

This current Project employs the use of the 1983 Project EIR along with overriding considerations on cumulative significant traffic and water consumption issues pursuant to CEQA Guidelines, Section 15131. The Project 1983 EIR is utilized because the present design issues, circumstances and impacts are similar to the 1983 Project.

The current Project is reviewed with an Initial Study incorporating by reference the relevant sections of both the 1983 Project EIR and relevant information from the Bear Valley. Community Plan (BVCP) EIR (Certified 12-5-88, SCH#88032108) cited to characterize the anticipated environmental effects.

In accordance with Sections 15063 and 15082 of the CEQA Guidelines the County of San Bernardino, as the lead agency, prepared an Initial Study, a Notice of Preparation and an availability of an Environmental Impact Report (SCH#91082092) herein after referred to as the EIR." These were circulated to the State Clearing House, various public agencies and interested parties.

The Board of Supervisors of the County of San Bernardino having studied the development plans and environmental documents, as required by the CEQA process, approves the proposed development and finds that the EIR adequately addresses the environmental effects of the Project as adopted.

Impacts identified in the EIR have been assessed for significance, avoidability and the extent to which the significant impacts can be mitigated to levels of non-significance. Mitigation measures are proposed to mitigate certain impacts to non-significant levels and to lessen the degree of some unavoidable impacts.

Each of the non-significant impacts of the Project are listed below. In addition, each to the significant mitigatable impacts of the Project are described in association with a finding and substantiation of the finding. An analysis of the Project's benefits and alternatives follow. Finally, unavoidable adverse impacts of the Project, as well as beneficial impacts and overriding considerations, are addressed below.

II. FINDINGS

A. NON-SIGNIFICANT IMPACTS

The impacts which the EIR found to be non-significant, thus not requiring any mitigation measures, are as follows:

(1) <u>Aviation Safety:</u> The EIR concludes that the Project's potential impacts upon Aviation Safety will be insignificant since the airport is located further to the east in the valley.

(2) <u>Hazardous Water/Radioactive Materials</u>: The EIR concludes that although there is a potential for incidental oil/gas spills relating to the Marina, the Project's impact on Hazardous Waste/Radioactive Materials are insignificant.

(3) <u>Cultural/Paleontological Resources:</u> The EIR concludes that the Project's impact on Cultural/Paleontologic Resources will not be adversely affected. Conversion from the current R.V. park to an attractive development with replacement landscaping will probably enhance the appearance of the site.

(4) <u>Solls/Agriculture:</u> The EIR concludes that the Project's impact upon soils for agriculture will be insignificant since the site does not contain suitable soil for agriculture. The EIR also concludes the impact from the dredge and fill operation will modify soil types and that with proper soil management should improve overall fertility and stability. (5) <u>Mineral Resources:</u> The EIR concludes the Project's potential impact upon mineral resources will be insignificant since the Project is not located within the identified mineral resource area.

(6) <u>Energy:</u> The EIR concludes the Project's potential impact upon natural resource consumption is insignificant since the replacement of the existing R.V. Park by the Project should be more energy efficient.

(7) <u>Housing/Demographics/Socioeconomics</u>: The EIR concludes the Project's potential impact upon housing will be insignificant since the R.V. park was never a primary full time residence for tenants and not subject to mobile home conversion regulations.

(8) Land Use: The EIR finds that the Project represents a substantial alteration to the existing land-use, although the use and density are consistent with the County General Plan. The site having been extensively disturbed by the R.V. Park and commercial marina has degraded the more naturally appearing condition along the lakeside. The EIR concludes that the perception of many of the surrounding property owners is that the Project will organize the site and improve its appearance from the lake and highway even though the density is associated with more urban type developments.

B. MITIGABLE IMPACTS AND MITIGATION MEASURES

Mitigable impacts and measures imposed to mitigate them to a non-significant level are discussed below.

1. NATURAL HAZARDS:

(a) Potential Significant Impact:

Significant potential exists that existing fill soils near the marina and shoreline will result in subsidence thereby creating possible structural defects.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 64 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potentially significant impacts can be mitigated to insignificant levels through soil engineering solutions such as removal and compaction, use of reinforced foundations or pile footings.

(b) Potential Significant Impact:

Potential exists that there may be adverse impacts to people or property as a result of geologic hazards such as earthquakes, mudslide or ground failure.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 64 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potentially significant impacts can be mitigated to insignificant levels through soil engineering solutions identified in the required soils report and geologic hazard investigation

(c) Potential Significant Impact:

Potential exists that there may be adverse impacts to people or property as a result of water related seismic hazards.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 64, would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potentially significant impacts can be mitigated to insignificant levels through soil engineering solutions identified in the required soils report and geologic hazard investigation.

(d) Potential Significant Impact:

Potential exists that the dredge and fill operation will result in deposition, erosion, or siltation into Big Bear Lake.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 13, 19, 20, 21, 53, 54, 56, 64, 74, and 76 would reduce the environmental effects to levels of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through:

- Compliance with Big Bear Municipal Water District's Shorezone Alteration Permit's Conditions of Approval of the which requires a double silt curtain be installed during the dredging operation and the protection of all fill slopes with rip rap.

- Implementation of the Regional Water Quality Control Board's permit and Conditions of Approval which requires engineered erosion protection measures and desiltation basins.

- Organization of off and onsite drainage flows per County Drainage Section requirements.

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- Compliance with an erosion and sedimentation control plan and permit, which is to be approved by the County Office of Building and Safety prior to any land disturbance.

(e) Potential Significant Impact:

Potential exists that the dredge and fill operation will result in a decrease in the amount of surface water of Big Bear Lake.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 13 and 54 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through implementation of the Conditions of Approval of: Big Bear Municipal Water District Shorezone Alteration Permit, U.S. Corps of Army Engineers Section 404 Permit, and Department of Fish and Game Section 1601-1603 Permit.

(f) Potential Significant Impact:

Potential exists that there may be significant adverse impacts due to exposure

to floods.

Finding:

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The mitigation measures contained within the EIR and Condition of Approval 49, 50, 51, 52, 53, 101, 102, and 103 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated through elevating building areas and increasing the depth of shallow water levels during the dredge and fill operation. On and off site drainage flows will be per County Land Development/Drainage Section requirements. The design features required by the County Building Department will minimize the potential of innundation to Insignificant levels.

(g) Potential Significant Impact:

Potential exists that there may be significant adverse impacts due to exposure

to fires.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 67, 68, 85, 86, 87, 88, 89, 91, 132, 133, 134 135, 136, 141, and 142 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The Project site lies within the county fire safety overlay districts, Review Area 2. The Fawnskin area is recognized as generally having inadequate fire flow and the project site is located in this category. The Project will provide extensive improvements to the water distribution infrastructure system serving the project as mitigation for inadequate fire measures currently in place. The Project will comply with Uniform Fire Code requirements (300,000 gallons water storage @ 2,500 G.P.M.) plus full fire sprinkling of buildings. These measures have been determined by the fire authority to be appropriate mitigation which would reduce the potential impacts to levels of nonsignificance.

(h) Potential Significant Impact:

Potential exists that the Project may result in significant adverse erosion impacts.

Finding:

The mitigation measures contained within the EIR and Condition of Approval . 13, 21, 51, 52, 53, 56, 64, 65, 74, 76, and 77 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

A detailed erosion and sedimentation plan and permit will be required by the Office of Building and Safety prior to any land disturbance. Similar permits will be required by the Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the Big Bear Municipal Water District. In addition all slopes will be limited to a maximum ratio of 2 to 1 and be contour-graded to blend with existing natural contours. The implementation of the measures contained in these permits will reduce potential significant impacts to levels of insignificance.

2. MANMADE HAZARDS:

(a) Potential Significant Impact:

Potential exists that the Project may result in significant adverse noise ts.

impacts.

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Finding:

The mitigation measures contained within the EIR and Condition of Approval 6, 9, and 63 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The Project will comply with County Development Code Section 87.0905(b) and will maintain noise levels below those standards. There will also be a prohibition of construction during the December 1 to April period and compliance with the Department of Environmental Health Services noise attenuation requirements. The implementation of these mitigations measures will reduce potential significant impacts to levels of insignificance.

3. NATURAL RESOURCES:

(a) Potential Significant Impacts:

Significant potential exists that the Project may contribute incrementally to the the impacts on the region's remaining perching and foraging habitat for wintering bald eagle.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 9, 27-A, 27-B, 54, and 43 (of revised planning conditions) would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The site is located within the Key Habitat for the wintering bald eagles. However, the EIR concluded that no perch trees exist on the site and the foraging habitat is not of a good quality due to the lack of ideal shallow lake bottom and shoreline vegetation which attract waterfowl, a good food source for eagles.

These potential adverse significant impacts can be mitigated to insignificant levels through:

- compliance with a prohibition of construction from December 1 to April 1,

.- the closing of the marina form December 1 to April 1,

- adherence to the Big Bear Municipal Water District's shoreline alteration permit,

- retention of a significant number of trees to provide habitat for future perching habitat

- planting of fast growing conifers, which may become perch trees

(b) Potential Significant Impact:

Potential exists that the Project will result in the deterioration air quality.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 122, and 130 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

Installation of catalytic reduction equipment in all wood burning fireplaces and the requirement that the Project obtain a permit or clearance form the local Air Pollution Control District will reduce potential impact to insignificant levels.

(c) Potential Significant Impact:

Significant potential exists that the Project may result in adverse impacts to the lake's water quality during the dredge and fill operation.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 13, 19, 20, 21, 53, 54, 56, 64, 74, and 76 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through:

- Compliance with Big Bear Municipal Water District's Shorezone Alteration Permit's Conditions of Approval of the which requires a double silt curtain be installed during the dredging operation and the protection of all fill slopes with rip rap.

- Implementation of the Regional Water Quality Control Board's permit and Conditions of Approval which requires engineered erosion protection measures and desiltation basins.

- Organization of off and onsite drainage flows per County Drainage Section requirements.

- Compliance with an erosion and sedimentation control plan and permit, which is to be approved by the County Office of Building and Safety prior to any land disturbance.

(d) Potential Significant Impact:

Potential exists that the Project will contribute to obstruction of views along State Highway 38!

Finding:

The mitigation measures contained within the EIR and Condition of Approval 78 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing open space and views to the lake is largely public ownership as National Forest and thereby reduces the potential significance of the project in the context of the entire expanse of shoreline on the North shore of Big Bear Lake. Project design standards included in the project further mitigates the the intrusion of structures into the existing scenery/viewscape.

(e) Potential Significant Impact:

Potential exists that the Project may result in significant impacts to the aesthetics of the area and the view from the lake.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 78 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing site currently contributes to a detractive cluttered appearance. The Project's landscape plan would incorporate a landscape buffer on Highway 38 and a revegetation plan utilizing fast growing conifers which will eventually screen units from the southern viewshed.

3. MANMADE RESOURCES:

(a) Potential Significant Impact:

Potential exists that the Project will result in significant impacts related to a need for new or substantial alteration to the area's water system.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 58, 61 and Department of Power' conditions of approval would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing RV Park currently obtains water service from the Big Bear Department of Water and Power. The Project will providing a new onsite system with the cost borne by the developer. The system will be designed to such standards that they may be turned over to the respective district for maintenance and operation.

(b) Potential Significant Impact:

Potential exists that the Project will result in significant impacts related to a need for new or substantial alteration to the sewer systems.

Finding:

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The mitigation measures contained within the EIR and Condition of Approval 57 and 61 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing RV Park is currently serviced by the County Area 53B for sewage disposal. Because major site grading and filling will be taking place, a new on-site system will be constructed by the developer. The cost of the systems will be borne by the developer and the system will be designed to such standards that it may be turned over to the respective district for maintenance and operation.

(c) Potential Significant Impact:

Significant potential exists that the Project will contribute to an increase in traffic hazards to motor vehicles and bicyclists.

Finding:

The mitigation measures contained the EIR and Condition of Approval 93, 95, 96, and 100 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

The potential significant impacts of increased traffic hazards can be mitigated by installing road improvements per Cal Trans and the County Office of the Surveyor (Land Development Roads Section). These improvements include a left hand turn lane that will be installed per the traffic engineer's report.

(d) Potential Significant Impact:

Significant Potential Impacts exists that the development of the Project would require new or altered fire protection services.

Finding:

The mitigation measures contained the EIR and Condition of Approval 5, 88, 91, 135, 141, and DWP's conditions of approval would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

The Project will be required to provide new water storage and distribution facilities which will comply with the necessary fire flow requirements. Another mitigating measure reducing the potential impact to levels of nonsignificance will be the Project participation in a Mello-Roos or special improvement zone funding for expansion of local fire protection services.

(e) Potential Significant Impact:

Significant Potential Impacts exists that the development of the Project would require new or altered school services.

Finding:

The mitigation measures contained the EIR and Condition of Approval 83 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through the payment of the Project's share of school improvement fees as part of the building permit process.

III. <u>DEVELOPMENTS BENEFITS</u>

The San Bernardino County Board Of Supervisors finds that the Project will generate the following benefits in both the planning area and in the surrounding communities:

A. LAND USE:

- The Project will provide numerous benefits to the area including conversion of the existing detractive recreational vehicle park into a high quality destination resort community which benefits include extensive recreational facilities, creation and extension of infrastructure, provision for public access to the lake and picnic area.

- High quality development will positively impact property values adjacent to the Project and in both the Fawnskin and Big Bear Valley area, thus increasing the area's tax base.

- The Project's land use plan maintains aproximately 78% of the Project (22 acres) for open space and recreational facilities. Project design maximizes retention of existing trees and proposes extensive tree planting and revegetation in a five acre area currently devoid of végetation. Natural wildlife habitat improved as a result of lake enhancements and revegetation.

- Project provides land uses which are more compatible with adjacent land uses or existing uses.

B. HOUSING

- The Project will provide additional recreational housing to a more diverse population than is currently provided for in the area.

- The development of quality Project, that is compatible with the character of the land and is efficiently situated, comprises an additional significant beneficial impact.

- The Project is expected to attracted new residents to the area thereby stimulating the Fawnskin's local economy and the construction job market throughout Big Bear Valley.

- The Project will help to satisfy the continued high demand for recreational facilities in Big Bear Valley.

C. <u>PUBLIC SERVICE</u>

- The Project will provide a variety of leisure time activities, including active and passive recreation.

- The Project would provide a significant upgrade to the area's domestic water infrastructure and aleviate current defficient fire flow to the benefit of existing and future residents. Development of the Project will provide the financial means for the developer to participate in providing these public benefits.

- The Project would be a participant in contributing development impact fees for various infrastructures and Capital Facilities including roads, libraries, museums,

parks, open space, flood control, drainage, water, sewer, courts, jails, other law enforcements facilities, fire fighting facilities and equipments, geographic mapping, and data base development.

D. FISCAL

The high quality nature of the Project will have an overall positive effect on the community of Fawnskin's tax base and will tend to increase property values elsewhere in the area, which in turn will generate increased tax revenues. The Project, itself will provide additional tax revenues to the County which could exceed \$400,000 per vear.

IV. PROJECT ALTERNATIVES

The California Environmental Quality Act requires discussion of reasonable alternatives that could feasibly obtain the Project's basic objectives. In the 1983 EIR, five alternatives were considered and evaluated, No Project, Reduced Density, Single Family Residential, Mobilehome Park, Public Park/Marina/Campground and Restaurant/Lodge. As part of the EIR, the Initial Study developed and evaluated three alternatives, No Project, Reduced Density, and Different Location. For purposes of this document each different alernative is described.

1. <u>No Project:</u>

The No Project alternative assumes that no development would occur and that the site would be retained in its present developed state as an aesthetically detractive R.V. park and commercial marina. This alternative would essentially maintain the exiting environmental conditions of the subject property as discussed in various sections of the EIR.

The No Project Alternative would eliminate the net increase in vehicles trips of 244 ADT and could be considered environmentally superior to the Project since it eliminates certain unavoidable cumulative effects of the Project.

However, the No Project Alternative would eliminate the desirable improvements to the infrastructure of the area's water system and fire protection that would accrue through project implementation of new storage and distribution facilities. This alternative would also eliminate the general community benefits associated with modern, well-designed residential development. Important Project benefits would not be provided. For example no infrastructure fees would be raised, lake enhancements, lake access, tree preservation, could also not be provided.

2. Reduced Density:

This alterative would result in the same types of impacts as the Project but of lesser magnitude. It would reduce the level of additional traffic contributing to existing transportation network within the valley. However, the BVCP EIR determined that any incremental addition to current traffic volumes will contribute to a cumulative significant effect on transportation/circulation. Consequently, this alternative would not be a viable alternative in the terms of reducing the cumulative impacts to transportation/circulation.

The Reduced Density alternative would also not be economically feasible due to the substantial cost of providing utility infrastructure, on and offsite improvements and extensive recreational facilities.

3. Single Family Residential:

Same impacts as Project but to even a lesser degree. Possibly more consistent with surrounding land uses. However, not economically feasible due to the cost of providing infrastructure, services, recreational facilities. Important Project benefits would not be provided.

4. Mobile Home Park/Subdivision:

This alternative would be more organized and more year round than the existing R.V. park but would produce the same level of impacts as the proposed Project. Design options would be fewer and there would be more intense conflict with the adjacent residential uses.

5. <u>Public Park/Marina/Campground:</u>

This alternative would result in less intense effects due to a predominantly summertime use. However, summer impacts would be similar to proposed Project. The alternate would present more conflict with adjacent residential uses and would provide only seasonal cash flow to the developer. Thus important improvements to the area's utility infrastructure could not be provided.

6. <u>Restaurant/Lodae:</u>

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This alterative would result in similar environmental effects as proposed project. There would possibly be greater opportunities for open space retention but would result in intense conflicts with adjacent residential uses. This alternative could be viable if the facilities would be large enough to justify cost of infrastructure.

7. Different Location:

This alterative considers qualitatively the use of a different project site for the construction of the Project. A major premise of this alternative is that there is a site available elsewhere within the Big Bear Valley area which could accommodate a development of this scope and which would result in less overall environmental impacts.

However, a Different Location alternative would not produce a reduction in cumulative impacts to transportation/circulation since the Big Bear Community Plan EIR, identified the entire Big Bear Valley as the area subject to the cumulative impacts from additional vehicle trips. Since the Proposed Project is on the North Shore, with its lighter traffic, the Project site would possibly generate less traffic impacts onto congested areas of Big Bear Valley than would a Different Location.

Similarly, the Project site is in the North Shore ground water sub-basin, an area of the Big Bear Valley where a groundwater supply is currently underdrafted. If the Different Location alternative were in an overdrafted area in Big Bear Valley the impacts on water supply would be greater than the proposed Project site.

Consequently, locating the Project in a different location within the Big Bear Valley would not reduce cumulative impacts. The EIR concludes that this alternative would result in similar impacts as the Project and would require similar levels of mitigation, and is thus not considered environmentally superior to the Project.

V. <u>SIGNIFICANT UNAVOIDABLE ADVERSE</u> EFFECTS OF THE PROJECT

The California Environmental Quality Act (CEQA) requires a public agency to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve a project. The San Bernardino County Board of Supervisors proposes to approve the Project despite certain unavoidable adverse cumulative effects identified in the EIR. Therefore, the San Bernardino County Board of Supervisors, having reviewed and considered the information contained in the EIR and the record, makes the following statement of overriding considerations which have been balanced against the unavoidable adverse impacts of the Project.

(a) Significant Unavoidable Impact:

Construction of the project will contribute to cumulative traffic impacts in the Big Bear Valley region.

Finding:

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Mitigation measures found in the EIR and Conditions of Approval 32, 93, 96 and 104 would lower the impacts associated with the Project's

contribution to cumulative traffic impacts in Big Bear Valley. However, due to the EIR's findings that any incremental increase in vehicular trips from the Project results in regional cumulative traffic impacts, these mitigation measures can not reduce the impacts below a level of significance.

Facts in Support of Finding:

The mitigation measures contained in the EIR include; the installation of left hand turn lanes at the intersection of Highway 38 and the Project's main entrance to reduce any potential for rear end accidents, and a monetary contribution towards a traffic signal at highway 18 and Stanfield Cut-Off.

The mitigation measures contained in the Conditions of Approval include:

- Project participation in the Transportation Facilities Fee Program if adopted or a fair share contribution toward the mitigation of the regional traffic impacts.

- Project contribution of its share of development impact fees, if adopted, for various infrastructures and capital facilities, including roads.

- Road sections bordering the Project would be designed per State Department of Transportation's standards and to the County Transportation / Flood Control Department in accordance with the Master Plan of Highways.

- Dédication will be granted on Highway 38 to concur with the Master Plan of Highways.

<u>Alternatives:</u>

1. <u>No Project Alternative:</u>

The EIR finds that this alternative would eliminate the net increase in vehicles of 244 ADT and thus the undesireable cumulative traffic impacts. However, the No Project alternative would result in the continued use of the site as an existing rundown recreational vehicle park with current traffic impacts. The EIR concludes that while this alternative is the most environmentally superior, this option would also eliminate the desirable infrastructure improvements in the Fawnskin water system and the general community benefits associated with a well designed modern development.

2. <u>Reduced Density:</u>

The EIR finds that this alternative would result in similar impacts to that of the Project but of lesser magnitude. However, given that any incremental addition to current traffic volumes will contribute to a significant effect on transportation/circulation, the EIR concludes that this alternative is not viable in terms of reducing the cumulative traffic impacts. Furthermore, given the sustantial cost of providing infrastructure, services, improvements, recreational facilities, this alternative is economically infeasible. As a result, important Project benfits could not be financed.

3. Single Family Residential:

While the EIR does not specifically address traffic impacts within the Single Family Residential Alternative, it is assumed, however, that this option would reduce the level of additional vehicular trips from the Project site and thus, the significant cumulative effect on regional traffic. The EIR concludes that this option would provide marginal economic returns to the developer due to the cost of providing services. Without the means to finance infrastructure costs, this alternative would be infeasible and important Project benefits would not be provided.

4. <u>Mobile Home Park/Subdivision:</u>

The EIR concludes that the Mobile Home Park alternative would result in similar levels of impacts as the Project including unavoidable cumulative impacts on transportation/circulation. Design options would be fewer with this alternative and there would be more intense conflict with the adjacent residential uses.

5. Public Park/Marina/Camporound:

The EIR concludes that this alternative could probably provide a reduction in traffic impacts during the winter, spring, and fall, but not during the summer. Therefore, this alternative would continue to contribute to the cumulative significant effects on traffic transportation /circulation. Since cash flow would seasonal, with possible marginal economic returns, important Project benefits would not be provided.

6. <u>Restaurant/Lodge:</u>

While the EIR does not address whether this option would result in greater or lesser cumulative traffic impacts than the proposed Project, it is assumed that the impacts would be directly proportional to the magnitude of the Restaurant/Lodge. In order for this option to be economically feasible, given the cost of the utility infrastructure, site improvements, and amenities, the Restaurant/Lodge would have to be of a substantial size. This would probably result in this alternative producing environmental effects similar to that of the proposed Project, including the unavoidable cumulative impact on regional transportation/circulation.

7. <u>Different Location:</u>

The EIR concludes that a different location is not a viable option as it would not result in reducing traffic effects. The BVCP EIR identifies the entire Big Bear Valley as being the area subject to cumulative impacts and any additional vehicle trips anywhere in the valley would contribute to regional traffic effects.

(b) Significant Unavoidable Impact:

While the ground water sub-basin underlying the Project is determined to be in an underutilized condition, construction of the project would contribute incrementally to the overall groundwater water supply overdraft in the Big Bear Valley region.

Finding:

Mitigation measures found in the EIR and Conditions of Approval 5, 22, 59, 60, 61, 62 and (42). would lower the impacts associated with the Project's contribution to cumulative water supply overdraft in Big Bear Valley. However, due to the EIR's findings that any incremental increase in water use over the existing water use results in regional cumulative impacts, these mitigation measures can not reduce the impacts below a level of significance.

Facts in Support of Finding:

The mitigation measure contained in the EIR would require the project to meet the 'assured water supply" provisions of the Bear Valley Plan Area General Plan Standards.

The mitigation measures contained in the Conditions of Approval include:

- Project providing a reliable and assured water supply adequate in quantity and quality to meet health and safety code requirements; in compliance with Section (s) BV2.0801(d) (2) (A) (i).

- Provide a letter from the Sanitary Engineering Section, State Health Department that they have reviewed the water system and concur with Big Bear Water and Power findings that additional supplies of adequate quality and quantity of are available to meet health and safety Code requirements.

- Install indigenous landscaping and an automatically controlled irrigation system to minimize water consumption.

revegetate he site with native drought resistant plants.

<u>Alternatives:</u>

1. <u>No Project Alternative:</u>

The EIR finds that the No Project Alternative would result in possibe elimination of a net increase of water use and thus the undesireable cumulative regional impacts. However, this option would result in the continued use of the site as an recreational vehicle park with its current use of water. The EIR concludes that while this alternative is the most environmentally superior, this option would also eliminate the desirable infrastructure improvements in the Fawnskin water system along with general community benefits associated with a well designed modern development.

2. <u>Reduced Density:</u>

The EIR finds that this alternative would result in similar impacts to that of the Project but of lesser magnitude. However, given that any incremental water use will contribute to a significant cumulative effect on regional water supplies, this alternative is not viable in terms of reducing the overall cumulative impacts. The EIR also concludes that this alternative would provide less economic return. With the cost of utility infrastructure, site improvements and extensive amenities, a Reduced Density alternative would be economically infeasible and would result in important Project benefits not being provided.

3. <u>Single Family Residential</u>:

The EIR finds that this Alternative would result in similar impacts to that of the Project but to even a lesser magnitude. While not addressed specifically, cumulative water supply impacts are assumed to be included. The EIR concludes that this option would provide marginal economic returns to the developer due to the cost of providing services. Without the means to finance infreastructure costs, this alternative would be infeasible and important Project benefits would not be provided.

4. <u>Mobile Home Park/Subdivision:</u>

The EIR concludes that this Alternative would result in similar levels of impacts as the Project. While not addressed specifically, cumulative water supply impacts are assumed to be included along with the unavoidable cumulative impacts on regional water supplies. Design options would be fewer with this alternative and there would be more intense conflict with the adjacent residential uses.

5. Public Park/Marina/Campground:

While the EIR does not address whether this option would result in greater or lesser cumulative water supply impacts, it is assumed that the impacts would potentially be less during the winter, spring, and fall, but similar to the Project during the summer. The EIR concludes that this alternative would only provide seasonal cash flow which could make this alternative infeasible thus eliminating the desirable infrastructure improvements in the Fawnskin water system and increased fire protection services and other desireable Project benefits.

6. <u>Restaurant/Lodge:</u>

While the EIR does not address whether this option would result in greater or lesser cumulative water supply impacts than the proposed Project, it is assumed that the

impacts would be directly proportional to the magnitude of the Restaurant/Lodge. In order for this option to be economically feasible, given the cost of the utility infrastructure, site improvements, and amenities, the Restaurant/Lodge would have to be of a substantial size. This would probably result in this alternative producing environmental effects similar to that of the proposed Project, including the unavoidable cumulative impact on regional water supplies.

7. Different Location:

The EIR concludes that a different location is not a viable option as it would not result in reducing water consumption effects. The BVCP EIR identifies the most of Big Bear Valley as being subject to water supply overdraft. Since the Northshore ground water basin underlying the Project site is determined to be underutilized, the Different Location Alternative would be probably be inferior to that of the Project.

VI. STATEMENT OF OVERRIDING CONSIDERATIONS

The Board of Supervisors of San Bernardino County adopts this Statement of Overriding Considerations with respect to the nonmitigable impacts identified in the EIR, specifically those, impacts associated with cumulative traffic and water supply impacts within Big Bear Valley.

The Board hereby finds that the Project will provide numerous benefits to the area as described in Section III of this document. The Board further finds that all mitigation measures identified in the EIR, except for those found to be infeasible, have been imposed to lessen the impacts to the greatest extent possible, and furthermore finds that the No Project Alternative, Reduced Density Alternative, Single Family Residential Alternative, Mobilehome Park Alternative, Public Park/Marina/Campground Alternative, Restaurant/Lodge Alternative, and Different Location Alternative are infeasible because, as discussed above, they have similar environmental impacts, do not provide the benefits described herein, or are socially or economically infeasible.

Cal. PUD res §21002 provides that "In the event specific economic, social, and other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof." Section 21002.1(c) states that "In The event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, the project may nonetheless be approved or carried out at the discretion of a public agency." Administrative Code Title 14, §15093(a) states: "If the benefits of a proposed project outweigh the unavoidable adverse environmental adverse effects, the adverse environmental effects may be considered "acceptable".

Based on the above discussion and on the evidence presented, the Board of Supervisors finds that the benefits of the Project outweigh the potential cumulative adverse environmental impacts associated therewith.

1 2 3 4 5 6	RACHEL B. HOOPER (State Bar No. 98569 AMY J. BRICKER (State Bar No. 227073) EDWARD T. SCHEXNAYDER (State Bar I SHUTE, MIHALY & WEINBERGER LLP 396 Hayes Street San Francisco, CA 94102 Telephone: (415) 552-7272 Facsimile: (415) 552-5816 Hooper@smwlaw.com Bricker@smwlaw.com Schexnayder@smwlaw.com	FILED SUPERIOR COUNTY OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO CIVIL DIVISION AUG 22 2014 BY AUG 22 2014 BY AUG 22 2014 Maitha Paulot DEPUTY				
7	Attorneys for Friends of Fawnskin					
8 9 10 11 12	ADAM KEATS (State Bar No. 191157) ARUNA PRABHALA (State Bar No. 27886 CENTER FOR BIOLOGICAL DIVERSITY 351 California Street, Suite 600 San Francisco, CA 94104 Telephone: (415) 436-9682 Facsimile: (415) 436-9683 AKeats@biologicaldiversity.org APrabhala@biologicaldiversity.org	5)				
13	Attorneys for Center for Biological Diversity	,				
14	SUPERIOR COURT OF	THE STATE OF CALIFORNIA				
15	COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT					
16						
17	FRIENDS OF FAWNSKIN and CENTER FOR BIOLOGICAL DIVERSITY,	Case No. CIVDS14090159				
18	Petitioners,	[California Environmental Quality Act ("CEOA") Case]				
19						
20	V.	DECLARATION OF SANDY STEERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION				
21	COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS FOR THE COUNTY OF SAN BERNARDINO, and					
22	COUNTY OF SAN BERNARDINO, and DOES 1-20,	Time: 8:30 am				
23	Respondents.	Dept.: S23 7/6 Judge: Hon. Judge Alvarez				
24						
25 26 27	MARINA POINT DEVELOPMENT ASSOCIATES, IRVING OKOVITA, BEAR VALLEY PAVING, SITE DESIGN ASSOCIATES, KENNETH DISCENZA, and DOES 21-50,	By Fax				
28	Real Parties in Interest.					
20						
	DECLARATION OF SANDY STEERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION CASE NO. CIVDS14090159					
	475 of 047					

DECLARATION OF SANDY STEERS

I, Sandy Steers, declare as follows:

I have personal knowledge of the facts set forth herein, except as to those stated on 1. information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. 6 I am the executive director of Friends of Fawnskin, a group of individuals and 7 organizations throughout Big Bear Valley, the San Bernardino Mountains, and Southern 8 California who work to protect and preserve the natural habitat of Big Bear Valley. I have also lived and worked in the unincorporated community of Fawnskin, California for over 13 years. 9 10 My home is three blocks from the Marina Point Project ("Project") site, which sits at the southeastern edge of Fawnskin. I can hear Project construction activities from my home. I can 12 also observe activity on the Project site from multiple locations around Fawnskin, including 13 from North Shore Drive, which runs along the northern boundary of the site.

14 3. On behalf of Friends of Fawnskin, I have gathered information and monitored the 15 Project site for well over a decade. In addition to collecting and reviewing the documents from 16 the County's 1991 conditional project approval and subsequent permits for the Project, I have 17 actively engaged numerous permitting agencies regarding unpermitted activities taking place at the Project Site. 18

19 4. Exhibit A, attached hereto, is a true and correct copy of the 1983 Draft 20 Environmental Report submitted by Irv Okovita. Exhibit B, attached hereto, is a true and correct 21 copy of excerpts from the June 1991 Preliminary Final/Development Plan submitted by Marina 22 Point Development Associates. Exhibit C, attached hereto, is a true and correct copy of the 23 Initial Study prepared for the Project, dated November 26, 1991. Exhibit D, attached hereto, is a 24 true and correct copy of the Minutes of the Board of Supervisors of San Bernardino County, 25 dated December 9, 1991. Exhibit E, attached hereto, is a true and correct copy of the Conditions 26 of Approval for the Marina Point Planned Development. Exhibit F, filed herewith, is a true and 27 correct copy of a County of San Bernardino Memo regarding the recording of the final map for 28 the Project. Friends of Fawnskin obtained all of these documents from the County of San

Bernardino. I have never seen a building permit or new planned development permit for the
 Project, and am informed and believe that none exist.

5. The developer of the Marina Point Project recently submitted an application to San
Bernardino County for "revisions" to the Project. I obtained copies of the revision application
materials from a planner for the County, Chris Warrick. Exhibit G, attached hereto, is a true and
correct copy of the revision application materials that I received from Mr. Warrick.

7 6. The Project site sits on the location of the old Cluster Pines campsite. Residential
8 housing borders the Project site to the north and west. The Inn at Fawnskin, a local bed and
9 breakfast, is located to the north, directly across North Shore Drive from the Project site.

10 7. In the late 1990s and early 2000s, the Project site was vacant and open to the 11 public. Many Fawnskin residents, members of the surrounding community, and I frequently 12 used the public lake access on the property for fishing, eagle watching, dog walking, and other 13 recreation. In 2001 or early 2002, while the site was still open to the public, I inspected three 14 restroom and shower facility buildings that remained from the old camp. I was accompanied by 15 an asbestos remediation expert during my inspection. We entered two of the buildings and 16 observed pipes insulated with asbestos. These buildings were close to North Shore Drive, 17 directly across the street from residential homes and the Inn at Fawnskin.

8. On April 15, 2014, I observed a pile of building debris and a facility building
missing from the Project site. I did not see any public notices or visible protections to contain
asbestos from the buildings. I also observed that some of the building debris had been bulldozed
into the earth.

9. Shortly after the demolition began, I contacted the County to (1) determine
whether it had issued any demolition permits for the buildings being demolished on the Project
site, and (2) ask why the developer was allowed to demolish asbestos-laden buildings without
precautions to protect workers and the surrounding community from harmful asbestos exposure
from the demolition activities. At that time, I was informed by County staff that no building
permits were necessary for the demolition.

28

1 10. On April 16, 2014, I contacted the South Coast Air Quality Management District
 2 ("Air District") to inform them of the building demolition and lack of asbestos control measures
 3 at the Project site. I am informed and believe that the next day, an Air District inspector visited
 4 the site and took samples from the demolition debris and the one building that remained partially
 5 standing. The Air District inspector has since confirmed over the phone that these samples
 6 contained asbestos. Weeks later, I observed that the additional building had been removed, again
 7 without any visible asbestos control measures.

8 In early April, 2014, I observed workers at the Project site bulldozing a natural 11. 9 streambed on the eastern edge of the site that flows directly into Big Bear Lake. I saw the 10 workers bulldozing the riparian vegetation all along this streambed. This activity destroyed 11 almost all of the riparian vegetation along the creek, including numerous willow trees. I observed the streambed again on June 25, 2014 and currently it is almost entirely devoid of 12 13 vegetation. All that remains are mounds of earth and numerous dead willow branches that 14 workers have gathered into a large pile. On July 1, 2014, I observed on the west side of the 15 Project site recent grading marks in the soil all the way to the water's edge, with no erosion protection along much of the shore to keep soil from running into the shallow water habitat. 16 17 There were three areas over a foot wide where a large chunk of soil had fallen off the graded 18 edge into the water. In another section, where some protection bags have been placed along the 19 shoreline, some bags were broken or missing, also leaving no protection from erosion in recently 20graded areas. On the east side of the project in a small inlet that adjoins the streambed, there was 21 also erosion visible and small areas where chunks of soil had fallen into the shallow water 22 habitat.

12. In the first week of May, 2014, I heard and observed workers at the Project site
cutting large native pine trees. I had previously observed workers cut many pine trees in 2010.
At that time, workers designated trees for cutting with spray-painted Xs.

26 13. Before May 6, 2014, I contacted the County of San Bernardino planner who works
27 on the Project. I asked him whether the County had recently issued permits for the tree cutting.

28

He responded that the County had issued a grading permit for the Project site, but he did not
 provide me a copy of that permit.

May 29, 2014, I visited County offices and personally requested County-issued
permits related to the Project, including any demolition or grading permits that had been issued.
At that time, I obtained copies of a September 28, 2011 grading permit, an October 2, 2012
revised grading permit, an October 2, 2012 boundary wall permit, and two demolition permits
dated April 22, 2014. Exhibit H, attached hereto, contains true and correct copies of the permits
that I obtained from the County. Despite its ongoing interest in the Project, Friends of Fawnskin
never received notice before the County issued these permits.

10 15. On June 13, 2014, I stood across North Shore Drive from the Project site and
11 methodically counted all of the trees that remained on the site after the most recent cutting. I
12 counted significantly fewer than 150 trees.

13 16. Days later, I again walked along North Shore Drive next to the Project site and
14 observed many freshly dug holes in the ground and exposed roots where workers had pulled
15 recently-cut stumps from the earth. In total, I counted at least 14 locations where there were
16 stumps, exposed roots, or holes in the ground, which further confirmed recent tree cutting. I
17 observed other areas where dirt had been bulldozed and moved, which has been a frequent
18 occurrence on the Project site over the last few weeks. These activities may have covered over
19 other areas where trees were recently cut.

20 17. On June 19, I observed a birds' nest on the ground within 10 feet of a hole where
21 one of the pine trees had been recently cut.

18. On June 25, 2014, I observed seven still-standing pine trees on the Project site that
had been spray-painted with white Xs. These trees are within 35 feet of North Shore Drive and
are in a larger stand of trees. An eighth tree is marked for cutting immediately across North
Shore Drive from the site. This is the first time I observed trees marked for cutting with Xs since
workers started cutting trees in May 2014.

27 19. Also on June 25, I measured two stumps from recently-cut trees on the Project
28 site, adjacent to North Shore Drive. One stump was 35 inches in diameter, the other was 43

⁴

inches in diameter. Based on these measurements, and on my observations of still standing trees
 that have been spray painted with Xs, at least three of the spray-painted trees appear to be over
 30 inches in diameter.

20. Big Bear Valley, and in particular, Big Bear Lake's Grout Bay, which borders
Fawnskin on the south, is well known as a wintering bald eagle habitat. The United States Forest
Service has actively counted the winter bald eagle population in Big Bear Valley since at least
1978. Exhibit I, attached herewith, is a true and correct copy of Forest Service bald eagle count
data that I obtained from Forest Service Field Biologist, Robin Eliason, in April 2014.

9 21. For the past 10 years, I have served as a volunteer eagle monitor for the Forest 10 Service. I regularly watch for eagles in Fawnskin and the surrounding area, and I report my 11 observations to the Forest Service. During the last 6 years, a pair of eagles have become year-12 round residents in Big Bear Valley and have built the only Bald Eagle nest in the valley. I have 13 frequently observed that nest, which is within a mile of the Project site. The eagles nest on Forest Service property on the edge of Grout Bay. Exhibit J, attached hereto, is a true and 14 15 correct picture of the bald eagle nest and one of the nesting bald eagles. Exhibit K, attached hereto, is a true and correct copy of a Forest Service News Release dated March 2014 that 16 mentions "Big Bear Lake's nesting pair" of bald eagles, which live on the edge of Grout Bay. 17

18 22. The year-round nesting pair of eagles began hatching chicks in early 2012. To
19 date, only one chick has survived. Since that chick fledged, I have observed a juvenile eagle that
20 is also a year-round resident in the Big Bear Valley flying near the Project site.

21 23. Before the nesting bald eagle pair took up residence in Big Bear Valley in 2008,
22 all of the regions' eagles were migratory and would only appear in the winter months. Migratory
23 winter bald eagles still visit Big Bear Valley, but this winter population has declined sharply
24 over the past 35 years.

25 24. I frequently observe bald eagles perching on the properties neighboring directly to
26 the east and west of the Project site. As recently as 2012, I saw bald eagles perching in trees on
27 the Project site. I also have observed bald eagles foraging in the shallows of Grout Bay,

28

immediately adjacent to the site. On June 16, 2014, I observed a bald eagle roughly 50 yards
 east of the Project site, heading towards the Project site.

3 25. As a resident and business owner in the immediate vicinity of the Marina Point Project, I am very concerned that the continued construction and ultimate operation of the 4 5 Project may cause serious, long-term harm to not only the environment but also my and my surrounding neighbors' property and wellbeing. The north shore of Big Bear Lake, including the 6 7 community of Fawnskin, is a peaceful, rural community in the San Bernardino mountains, 8 which is surrounded by the San Bernardino National Forest. The full-time population of 9 Fawnskin is less than 400 people. Currently, the northern shore of the lake lacks any large-scale 10 condominium developments like the lake's northern shore.

11 26. I moved to Fawnskin from Los Angeles County for the quiet and to be surrounded
12 by the area's natural beauty. When there is no noise at the Project site, Fawnskin is so quiet, that
13 I can hear any car that passes on North Shore Drive, which is three blocks from my house.

14 27. Now, construction noise from the Project site echoes through Fawnskin's hills
15 every weekday and often on Saturday. From my home, I can hear virtually every machine and
16 most construction activity on the site.

17 28. Once built, the Project's residents alone could roughly equal the current full-time
18 population of Fawnskin. Noise from increased traffic, jet skis and boats using the Project's
19 marina, and from activities at the site itself could permanently remove the quiet from our
20 community.

21 29. On June 18, 2014, the local newspaper, the Big Bear Grizzly, ran an article
22 entitled "Marina Point Is Moving Forward." The article contains statements from Marina Point's
23 developer Irv Okovita describing the ongoing work at the Project site and the developer's
24 intentions to continue that work, including work on the Marina that will continue through
25 August. Exhibit L, attached hereto, is a true and correct copy of that newspaper article.

30. The Friends of Fawnskin is a non-profit, community group. Its budget is sharply
limited. The current litigation is a serious strain on that budget and promises to become more so
as the case proceeds. Accordingly, the Friends of Fawnskin likely will be unable to afford to

⁶

1	post a substantial bond to obtain a preliminary injunction. In that event, it will be unable to			
2	prevent the damage to the property currently being caused by defendants.			
3	I declare under penalty of perjury under the laws of the State of California that the			
4	foregoing is true and correct.			
5	Executed July 2, 2014, at Fawnskin, California.			
6	A. H.			
7	Sandy Meer			
8	Sandy Steers			
9	601436.4			
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	7 DECLARATION OF SANDY STEERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION			
	CASE NO. CIVDS14090159			

EXHIBIT A

FOCUSED

RECEIVED Site Design Associates Inc. řa -2

by Check #

ENVIRONMENTAL IMPACT REPORT

DRAFT

PROJECT: 132 Unit Condominium on 12 Acres

LOCATION: North Shore of Big Bear Lake

-3

San Bernardino County

APPLICANT: Marina Cove Associates/Shardel Development

PREPARED BY: San Bernardino County Planning Department Environmental Analysis Section

DRAFT DATE: January 12, 1983

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APPENDICES 29

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I. INTRODUCTION

At the Subdivision Review Committee meeting of June 29, 1982, after taking the application "under advisement" from the June 22, 1982 Environmental Hearing, the Environmental Hearing Officer informed the applicant of his intent to require a Focused Environmental Impact Report, primarily on the project's contribution to the regional groundwater overdraft. The Environmental Hearing Officer referred the project to the Environmental Review Board (ERB) in order to utilize the expertise of the ERB members in making an environmental determination on the complex issues associated with this project.

On July 20, 1982, the Environmental Review Board, after determining that there might be sufficient information upon which to formulate mitigation measures without requiring an Environmental Impact Report, referred the project back to the Hearing Officer to determine if a Mitigative Negative Declaration could feasibly be issued. If not, the Hearing Officer would again refer the project back to ERB.

Ensuing public concern and the difficulty in mitigating impacts to levels less than "significant" resulted in resubmittal of the project to the ERB. On September 7, 1982, after reviewing letters from public agencies and hearing testimony from local residents and the North Shore Improvement Association, the ERB required a focused Environmental Impact Report on water supply and traffic.

This focused EIR assesses the water and traffic implications and lists the Conditions of Approval (mitigation measures) previously agreed upon that resulted in Non-Significant Effect findings for other impact categories.

The project will require the following:

County:

Zone Change Tract Approval 8-Lot Subdivision Approval Health Related Permits Building Permits

CalTrans: Encroachment Permit and Highway Improvements Big Bear Mutual Water District: Shore Zone Alteration Permit

(1)

II. PROJECT DESCRIPTION

A. Location

The site is in the San Bernardino Mountains on the north shore of Big Bear Lake, east of Fawnskin and on the eastern extent of Grout Bay. (See Figures 1 & 2).

B. Project Characteristics

The project subject to County action consists of:

- Zone Change from "Flood Plain 1 Flood Hazard" to "Multiple Family Residential" on 5.22 acres (to allow construction on previous fill);
- 132-condominium units on 12.5 acres (Tract 12217) includes interior ponds, tennis courts and parking;
- 3. 8-lot subdivision on 12.5 acres.

Overall density approximates 10.5 units/acre. Two Hundred Ninety Three (293) parking spaces are included, averaging 2.2 spaces/unit. The plot plan indicates approximately one-half acre of ponds to be incorporated into project design to enhance the site's "lakefront" character. An existing marina with a rock jetty will probably remain as a major feature associated with the proposed use. Public use of the marina may continue even after project build-out. The project will displace an active trailer/recreational vehicle park (Cluster Pines) which has existed on the site for many years.

III. REGIONAL SETTING

The existing trailer park and associated marina uses have substantially

(2)

altered the site's natural characteristics; however, fairly healthy stands of young and mature yellow pines remain throughout the site away from the lakefront. The shoreline is devoid of vegetation. The rock jetty/marina is one of the most heavily used on the north shore. The surrounding land uses consist of the town of Fawnskin and single family residential units to the northwest and sparse development/open space along the shore to the west. Residential, tourism and water sports provide most of the human activity in the Grout Bay region, mostly during summer months.

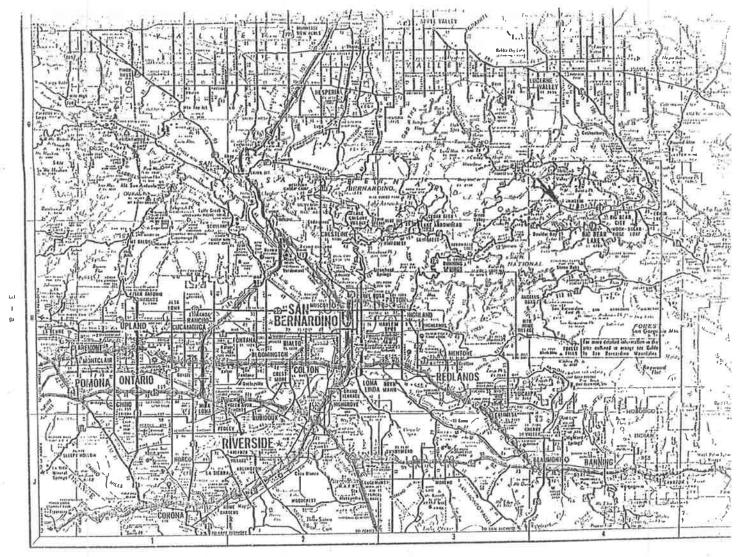
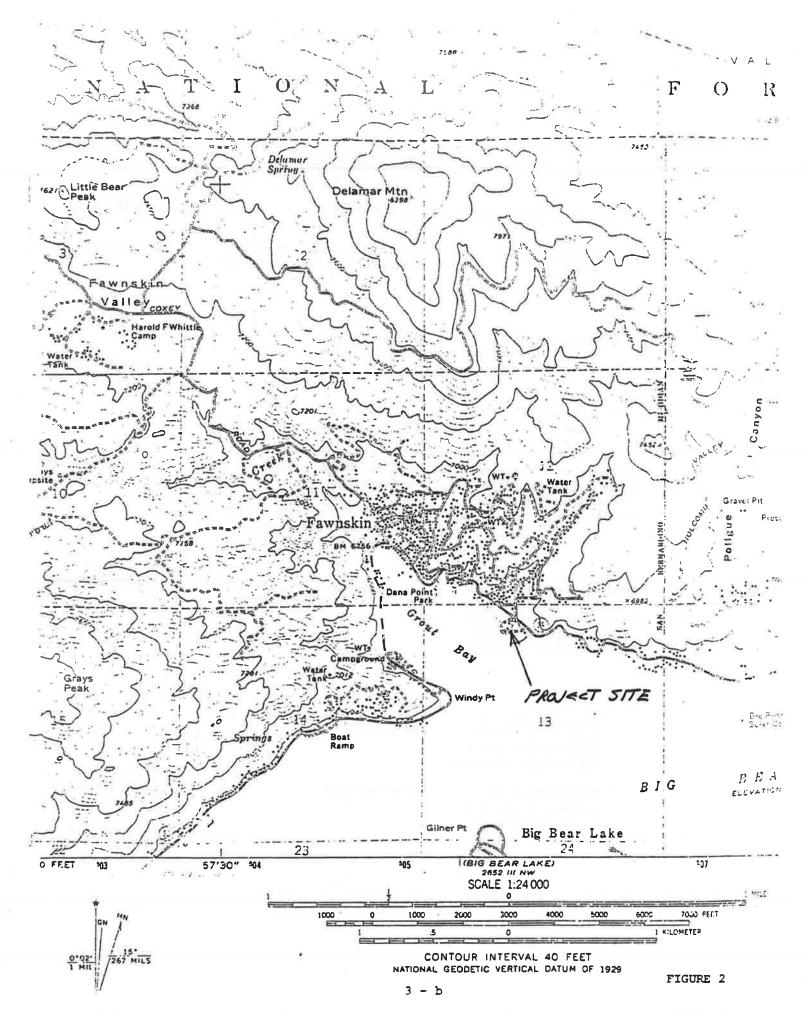


FIGURE 1



IV. SUMMARY OF ENVIRONMENTAL EFFECTS (Refer to the Environmental Impact Report for listing of all Impacts and Mitigation Measures)

GENERAL ASSESSMENT

Impact	Mitigation	Significance
Construction on old fill	Adequate new fill material, compaction, "pile" footings, etc.	Non-Significant
Water:		
a) Contribution to valley-wide ground water overdraft	Only available on a regional scale	Project: NSE Cumulative:
		Significant
b) The Fawnskin ground water overdraft	Only available on a regional scale	
Incremental effect upon eagle habitat in winter around Grout Bay; lake sedimentation; aesthetics	Tree planting; revegetation of shoreline; non-construction and no marina use during winter months; offsite mitigation per the Big Bear Mutual Water Dis-	Non-Significan
	trict's conditions, etc.	
Land Use Alteration and effect on adjacent resi- dents (view obstruction), Existing use currently contributes to conflicts.	Landscaping, tree planting will be partially effective	Non-Significan
contributes to contributes.		
Traffic:		
a) Increased use of Highway 38 (North	Left Turn Lanes and Cal Trans encroachment permit	Non-Significan
Shore Drive) still well within capacity		
 b) Intersection of Highway 38 and Stan- 	None required	Non-Significant

(4)

SUMMARY OF ENVIRONMENTAL EFFECTS - Page 2

Impact			Mitigation	Significance
5.	Trafi	ic: ×	· · · · · · · · · · · · · · · · · · ·	
	C)	Intersection of Highway 18 (Big Bear Boulevard) and Stan- field Cut-Off	Signal will eventually be required due to current stressed conditions	Project: NSE Cumulative: Significant
	545			

6. Services, Schools, etc.

Available on project and regional scale Non-Significant

V. IRREVERSIBLE RESOURCE COMMITMENT

The replacement of trailer and recreational vehicles with multi-story condominiums would likely remain a long term change. Increased water consumption and groundwater overdraft within the basin would probably be irreversible, and only partially compensated for by import of State aqueduct water, if available. The loss of open space on the site would become more permanent than that resulting from the present, more temporary use. Valley-wide traffic volumes would increase on a year-around basis, exasperating already stressed conditions.

If the project is approved, a large amount of finite resources and service capacities could be consumed by 250-300 residents living on this relatively small 12-acre site. In contrast, a few Big Bear area developers have recently been attempting to provide tracts with fairly large lots with the intent of: a) spreading residential uses out to a degree that impacts will not be quite so concentrated in specific locations; and, b) that the residential use of the mountain land will not rise to a level greater than that sustainable by available or potentially available resources. This "equity" issue may not be "environmental" in nature, but it should nevertheless be considered by the Planning Commission and Board of Supervisors.

VI. GROWTH INDUCEMENT

The project would allow a concentration of higher, year-around population density within the Fawnskin area and could set a trend, services and resources permitting, for other condominium-type residential units on the north shore where few, if any, currently exist. Use of local ski slopes and the lake for boating and fishing will likely increase, possibly displacing some non-resident tourists/recreationists.

(6)

VII. CUMULATIVE IMPACTS

Combined with a recently approved mobilehome subdivision on the north shore, the project will result in higher <u>year-around</u> traffic loads on Highway 38 (North Shore Drive), Stanfield Cut-Off and on Highway 18 (Big Bear Boulevard). This and other recently approved projects within the basin will accentuate what may already be an over-commitment of local water supplies. Multi-story buildings will contribute to the disruptions of natural vistas from viewsheds on the lake and on the south shore. Population increases and service needs for this and other projects will contribute to north shore urbanization.

VIII. PROJECT ALTERNATIVES

Retention of current, seasonal use No Project: 1: trailer park. 2. Lower Density Condominiums: Resulting in same types of impacts, but of lesser magnitude. Less return to developers, but still possibly an economic alternative. Better opportunity for tree retention. 3: Single Family Residential: More consistent with surrounding land uses, less intense impacts, but possibly only marginal return to developers due rto cost of services, etc. Better options for tree retention, eagles, etc. 4. Mobilehome Park/Subdivision: Similar, but "more organized" more yearround than current trailer/vehicle park. Probably same level of impacts as proposed project. Fewer design options.

5. Public Park/Marina/Campground, etc: Less intense effect on wintering eagle

Less intense effect on wintering eagle populations due to predominately summertime usage. Provide better service to existing, local populations. Public use of marina would be more consistent with use of remainder of site, less conflicts, etc. Allows retention of integrity

Similar or more intense conflict with

adjacent residential.

(7)

of tree stands and reduces intensity of site development. Would probably only mitigate winter/spring/fall traffic increases, not summer loads. Possible more intense conflicts with adjacent residential uses. Would allow only seasonal cash flow.

Better opportunity for open space retention. Probable economic return. Maybe less conflict with adjacent residential and with public use of marina. Allows year-round use and cash flows. Similar but possibly less intense effects on eagle use of Grout Bay via design and clustering options.

6. Restaurant/Lodge:

(8)

ENVIRONMENTAL IMPACT EVALUATION

IX. NATURAL RESOURCES

Note: Although not considered "environmentally significant" by the Environmental Review Board, the following sections on Soils, Biota, Land Use, Aesthetics and Services are included as a means of identifying the mitigation measures that will have to be adopted as conditions of project approval in order to confine impacts to less than "significant" levels.

A. Soils

Current Status

A portion of the site contains "fill" soils, mostly near the marina and shoreline.

Impact

Weight of the buildings could result in subsidence of "fill" soils, especially if water saturated, thereby creating potential structural defects, (i.e.: similar to the conditions affecting recently constructed condominiums on the south shore).

Mitigation

Subsidence and soil "breakdown" can be effectively reduced or eliminated by import of adequate fill material, compaction, "pile" footings or other standards applied via building permits.

B. Hydrology

Impact

Flood Control

The portions of the site within and abutting natural drainage courses are subject to infrequent flood hazards from overflow, erosion and debris deposition. The site, in general, is subject to infrequent sheet overflow from thunderstorms. Portions of the site below 6745' (above sea level) are subject to inundation from the lake in the event of a major storm.

Mitigation

On-site inundation from lake water and overflow from runoff can be mitigated by elevating dwelling unit pads to 6747' (4' above the dam spillway elevation of 6743') and by elevating garage floors to a minimum elevation of 6745' (See Appendices <u>8</u> \in <u>12</u>).

Water Quality

Impact/Mitigation

The dwelling units will be sewered (Appendix 12).

Erosion and sedimentation to the lake from grading and soil disturbance can be mitigated by conditions of County and Big Bear Municipal Water District approval (See Appendices 9 ε 12).

(10)

Water Supply

Note: The following information was provided by the applicant from comments, calculations and data derived from the Big Bear Water Resources Report and Management Plan (prepared by CM Engineering for the Big Bear City Community Services District and Southern California Water Company); and from conversations with representatives of CM Engineering, Southern California Water Company and the Community Services District. Refer to Appendix <u>4</u> for the complete report which contains analyses of the water problem from the various perspectives of the involved service entities.

Current Status

Water use for 1981 by the existing recreational vehicle park (proposed project site) was 4.98 ac.ft. This data is from meter readings by the Southern California Water Company. Water use for 1981 for the Fawnskin area was 158.80 ac.ft. This figure was derived from a water production amount of 198 ac.ft. and a 19.8% system loss. The entire Big Bear Valley area had a 1981 water use of 2,713.2 ac.ft. based upon a water production value of 3,800 ac.ft. and a 28.6% system loss.

The safe sustained annual yield for all hydrogeologic subareas in the Big Bear area is approximately 3,050 ac.ft. The safe sustained yield for the Grout Creek Hydrogeologic subarea is 150 ac.ft. The safe sustained yield for the entire Big Bear area could be increased to 3,330 ac.ft. The Grout Creek subarea has potential for an increase in safe sustained yield. It should also be noted that the adjacent hydrogeologic subarea "North Shore" is presently under producing its safe sustained yield by 150 ac.ft. per year.

The (Big Bear) valley-wide overdraft is approximately 750 ac.ft. per year. The Fawnskin area (Grout Bay Hydrogeologic Subarea) is in current overdraft of 48 ac.ft. per year.

(11)

Water use in Big Bear Valley varies from 55 gal/day per connection in the Sugarloaf-Erwin Lake area to 150 gal/day per connection in Big Bear City. The Fawnskin area has an average use per connection of 131.5 gal/day. For the purpose of this report, water use for the proposed condominium project will be placed at 150 gal/day per connection. The justification for this increase is the probability of a use pattern of the units similar to units in Big Bear City (i.e. more permanent residences than is normal compared to the Fawnskin area). It should be pointed out that all units in the project will be metered and a reduction in useage as compared to the Big Bear City consumers could be expected. At full capacity, the 132 units will "consume" (for simplification) approximately 22 ac.ft. per year.

Assuming an evaporation rate of 4 ft. per year in this mountain environment, the 1/2 acre of ponds will result in 2 ac.ft. of evaporation per year, not necessarily requiring 2 ac.ft. of groundwater per year (See Appendix 3....).

The total project will consume a maximum of 24 ac.ft. per year (Since sewered wastewater is eventually discharged to a Lucerne Valley alfalfa field, the term "consumption", not "use", is appropriate, at least with respect to valley-wide implications).

The project would increase the valley-wide overdraft to approximately 770 ac.ft. per year (3% increase) and the Fawnskin area overdraft to approximately 65 ac.ft. per year (37% increase), taking into account the current consumption on the site.

Mitigation

Southern California Water Company has indicated that an adequate water supply is available to meet project demand.

(12)

Impact

The County Department of Environmental Health Services will require the following condition to assure an adequate water supply to the project:

Provide a letter from the Sanitary Engineering Section of the State Health Department stating they have reviewed the water system and concur with Southern California Water Company's findings that additional supplies of adequate quality and quantity of water are available to meet Health and Safety Code requirements.

Mitigation to increase supplies to compensate for the project's contribution to the valley-wide and Fawnskin overdrafts is not feasibly available to the applicant. See Appendix 4 for potential mitigations that could be applied on a regional (not project) basis.

Current Status

The site is within "key" perching and foraging habitat for wintering bald eagles in Big Bear Valley (USFS letter - Appendix 7). The current, predominately summertime use of the project site does not substantially affect this habitat integrity. However, because of the existing relatively dense development (without significant tree canopy) along Grout Bay west of the site, this eagle habitat is already stressed. No trees of existing "perch" caliber exist on the site. Waterfowl habitat along the site's shoreline is marginal due to lack of vegetation and inadequate water depth.

Impact

Project build-out will incrementally stress the region's remaining habitat due to some loss of "potential" perch trees and due to population-related pressures during winter periods.

Mitigation

The applicant has agreed to the following conditions:

- No construction from December 1 to April 1 (to avoid disturbance to wintering eagle populations).
- 2. Marina to be closed from December 1 to April 1.
- 3. Adherence to conditions of Big Bear Municipal Water District's shore zone alteration permit (i.e.: planting of willows along shoreline, erosion control, off-site waterfowl enhancement near Stanfield Cut-Off, etc.). Such mitigation will constitute an improvement over existing conditions. (Note: Big Bear Municipal Water District owns Big Bear Lake and has jurisdiction over shoreline use).

(14)

4. Retention of some of the existing conifers and planting of fast growing pines which may become future eagle perch trees.

Note: Implementation of the above conditions will reduce project impact to a level less than "significant".

A. Population - Land Use - Planning

Current Status

The current population of the immediate Fawnskin area (E.D.46V) is 323 (1980 Census). E.D.46V boundaries are at Del Mar on the west, to Polique Canyon Road on the east, the lake on the south and the USFS on the north. The current population of the Big Bear Valley region (Census Tract 102.01) approximates 8,500. Summertime populations at the trailer park might reach 200. Some of the trailers/recreational vehicles periodically utilizing "Cluster Pines" seem to be dispersed at random, especially during summer months when the "park" probably operates close to capacity, providing the basis for the term "Clutter Pines", sometimes attributed to the site. The marina is a major boat launch on the north shore. Single family residential units exist west of the site. Fawnskin is comprised primarily of residential and commercial uses. Most of the shoreline east of Grout Bay is publicly - owned open space managed by the United States Forest Service.

Impact

Build-out of the 132 units could allow approximately 250-300 part-orfull time residents, a (worst case) 30-40% increase over Fawnskin's current population (which now includes residents of the trailer park to be replaced) and approximately a 1-3% increase in Big Bear Valley's part/full time population. Implications of this population increase and/or change are difficult to determine since the site currently houses at least 100-200 people during summer months. The most likely effect will be the extension of traffic and service demands throughout a greater portion

(16)

of the year. A condominium in Big Bear Valley could be used for snow and lake-oriented recreation on a part time or time share basis; or on a full time basis by permanent residents, but most likely a mix of the above.

The existing "residents" using Cluster Pines as a permanent or part time home will be displaced to other such parks on or off the mountain, or will be forced to alter their lifestyles. Similar facilities in Big Bear Valley are transitioning to more permanent residential uses; therefore it can be assumed "displacement" to areas in the valley near the lake may not be an option for all of the park users or residents. Conversion of the site will reduce the current "affordable" housing in the mountains by about 100-200 trailer spaces.

The site will be converted to a more stable and conventional residential facility, possibly constituting a net-benefit to some residents, particularly those in the immediate vicinity of Grout Bay.

Continued use of the marina by Bear Valley residents and the general public may create traffic, noise and other conflicts with the condominium owners/users.

The project will probably result in a greater use of skiing facilities by Bear Valley residents; however, it is difficult to determine if such use will constitute a net increase since the project's future residents may presently be commuting to the valley's ski facilities.

Mitigation

None required.

The Environmental Review Board did not consider such impacts to be "environmentally significant". Population and land use related impacts are assessed in other sections of this Environmental Impact Report.

(17)

B. Traffic/Transportation

Note: The information for this traffic section was supplied by the applicant. Report prepared by: Lawrence S. Eisenhart, Consulting Engineer, November 1982 (on file with Planning Department).

Current Status

The local roadways serving and most affected by the site are State Route 38 (North Shore Drive), providing direct access on the north; Stanfield Cut-Off (County Road) providing the closest line between the north shore and the south shore commercial area, and Highway 18 (main north and south access to the mountains and also "Big Bear Boulevard").

Capacity is greatly exceeded on Stanfield Cut-Off and Big Bear Boulevard on a regular basis during peak periods (weekends of good skiing, summer weekends, holidays, etc.). Travel on Big Bear Boulevard even on weekdays during non-peak hours can still be a challenge.

Current site usage of the "park" generates an ADT of 319 during the summer months. Very little traffic is generated during the winter months, due to declining use levels. Winter ADT for the existing use is approximately 32.

Impact

Route 38 (North Shore Drive) will be the most affected road.

History of Existing Roadway Volumes

ROUTE 38 (NORTH SHORE) Between Big Bear Dam and Holcomb Valley Road

YEAR	PEAK HOUR	PEAK MONTH ADT	ANNUAL ADT
1977	240	1350	1100
1978	260	1600	1200
1979	240	1350	1100
1980	240	1250	1100
1981	330	1750	1500

(18)

Trip Generation

Trip generation factors for various land uses have been established from studies made by governmental agencies, research institutes and consulting traffic engineers nationwide. Generation factors for residential dwellings are listed below:

TYPE OF DWELLING UNIT	AVERAGE WEEK	DAY VEHICLE TRIPE	NDS PER UNIT
a:	Average	Maximum	Minimum
Single Family	10.0	21.9	4.3
Planned Unit Development	7.9	10.0	6.2
Apartment	6.1	12.3	0.5
Mobilehome	5.4	6.8	2.8
Condominium	5.1	9.4	0.6

Note: For the most part the generation factors were established in and around urbanized areas.

Project Generation:

The project as proposed contains 132 units. Traffic generation may be calculated as follows: 132 x 7.9 (PUD) = 1042.8 generated trips (ADT) 132 x 5.1 (Condominiums) = 673.2 generated trips (ADT) 132 x 6.5 (PUD + Cond. \div 2) = <u>858 generated trips (ADT)</u>

Maximum trips 132 x 9.4 (Condominium) = 1240.8 generated trips (ADT)

Site Traffic Distribution

Access routes to the commercial area of Fawnskin, other mountain communities outside the Big Bear area, and the valley areas of San Bernardino/Riverside lie to the west of the site. Access to the major shopping areas of Big Bear and the desert areas at Victorville/Apple Valley lie to the east of the site. For this

(19)

analysis, it is assumed that site generated traffic will distribute equally east and west from the site.

Route 38

The difference of the projected (worst case) year-round 858 ADT and the existing 319 summertime ADT results in a 539 ADT increase during the summer months. The difference between the projected 858 ADT and the existing 32 wintertime ADT results in an 826 ADT increase during winter months.

ROUTE 38 (AVERAGE GENERATION)

YEAR	PEAK HOUR	ANNUAL ADT	PERCENT INCREASE
1981	330	1500	
Plus project	416	2358	57%

Studies indicate that peak hour factor is approximately 10% of daily ADT. Therefore, the condominium development will produce an increase of 26% (86 trips) in the peak hour traffic.

Assuming equal distribution of traffic, Route 38 impacts are illustrated on Map 1.

Capacity

Capacity of roadways is determined by consideration of several factors. The capacity for Route 38 has been calculated at 1395 VPH (vehicles per hour).

GIVEN:

Existing peak hour	traffic	=	330
Additional traffic	generated from site	=	86
Capacity		3	1395 VPH
SOLUTION:			

Existing peak (330) + additional peak (86) ÷ capacity (1395) = .30 A capacity change from the existing .23 to .30 will occur if project is approved.

(20)

Certain assumptions have been made to calculate capacities - one of these is roadway velocities. Route 38 to the east of the site will allow greater speeds than to the west where 15 mph curves are encountered. This restricted velocity will reduce ultimate capacities, hence vehicle trips to the west are more likely to affect total capacity than eastward trips. Assuming a reduction in westward capacity of 30%, the project will use .42 of Route 38's capacity.

 $1395 \times .3 = 418.5$

1395 - 418.5 = 976.5

416/976.5 = .42

A westward bound capacity change from .23 to .42 will occur if the project is approved, reducing the level of service for Route 38 through Fawnskin.

Westbound vehicles on Route 38 that desire to turn left into the site are required to yield to eastbound vehicles on Route 38. This requires left turning vehicles to stop in the westbound lane on Route 38 until a sufficient gap in eastbound traffic is available to safely make the maneuver. This places the left turning motorist in jeopardy of being rear-ended by a through westbound motorist. The project would exasperate this hazard.

Highway 18 and Stanfield Cut-Off

The intersection of Stanfield Cutoff and Route 18 was studied by the County Traffic Division in 1980 and it was found that the intersection is experiencing sufficient traffic to meet minimum warrants to justify the installation of a traffic signal. The increase in site generated traffic of 86 vehicles in the peak hour will cause a significant incremental impact at this intersection. Highway 38 and Stanfield Cut-Off

The intersection of Stanfield Cut-Off and Route 38 was not studied by the County for the need for traffic signals. However, 24-hour traffic counts were

(21)

taken. These are shown below. Also, the table includes in the totals the anticipated increase due to site generated traffic.

STREET	LOCATION	ADT	APPROACH	SITE TRAFFIC	TOTAL
Route 38	West Leg	2561		86	2647
Route 38	East Leg	2559			2559
Stanfield Cut-Off	South Leg	3235	NB-1457	86	3321

A warrant sheet utilizing approach ADT's indicates that traffic signals will not be justified at this intersection.

Cumulative Impacts

Several other projects have been approved in Bear Valley which will all ultimately impact all local roadways. Along Route 38, between the Marina Cove project and Stanfield Cut-Off, a mobilehome subdivision with 108 spaces has been approved. The cumulative impacts are calculated below (worst case analysis, since some traffic is presently being generated at the site of the proposed mobilehome subdivision):

MHS project generation: $108 \times 6.1 = 658.5$

ROUTE 38

YEAR	PEAK HOUR	ANNUAL ADT
1981	. 330	1500.
Marina Cove	416	2358
Mobilehome Subdivision	482	3017

Capacity change:

 $416 + 66 = 482 \div 1395 = .34$

The cumulative capacity change from .30 to .34 will occur east of Marina Cove.

(22)

West of the Marina Cove project (cumulatively with approved projects), the change equals:

1395 x .3 = 418.5 1395 - 418.5 = 976.5 V/C = 482/976.5 = .49

Reduction in service levels can be expected.

Impact Summary

The additional traffic generated from the development of 132 condominium units over that being generated from the existing trailer park will not cause a severe impact on Route 38 traffic circulation with mitigation listed below. There is sufficient excess capacity on Route 38 in the vicinity of the site to provide an acceptable level of service. Sight distance on Route 38 at the main entrance to the project site is adequate for prevailing speeds.

Project-related traffic will incrementally add to the already stressed condition at the intersection of Highway 18 and Stanfield Cut-Off.

The Highway 38/Stanfield Cut-Off intersection will not be significantly affected.

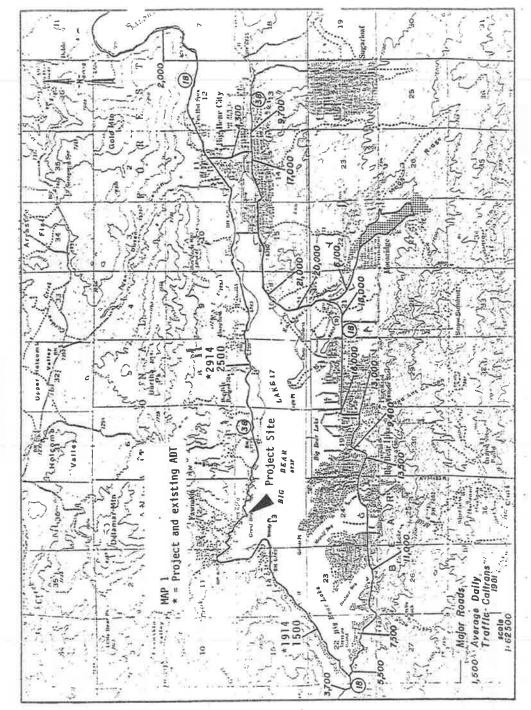
Mitigation

Left turn lanes should be provided for east and west traffic at the intersection of Highway 38 and the project's main entrance and Canyon Road to reduce the potential for rear end accidents.

The eventual installation of a signal at Highway 18 and Stanfield Cut-Off will somewhat alleviate the project's incremental impact. A monetary contribution by the applicant towards the cost of the signal would be the most effective mitigation.

The project will not stress the Highway 38/Stanfield Cut-Off intersection to a level warranting signalization.

(23)



MAP 1

(24)

512 of 947

C. Aesthetics.

Current Status

The site's trailers and recreational vehicles currently contribute to a somewhat "cluttered" appearance.

Impact

The plot plan indicates a fairly neat clustering of condominiums, constituting to some viewers a net improvement; however, the multi-story units (up to 3 stories) will be more visible over a greater distance, mostly from the lake and south shore. The project design, especially with a half-acre of ponds, does not allow retention of many of the site's trees which would help to balance the scenic alterations. The permanent residential atmosphere will create a more urban appearance, especially over the short term due to a substantial loss of the existing pine stands.

Mitigation"

In order to confine the substantial aesthetic alterations to a relative short term, the applicants have agreed to revegetate the site with fast growing pines or other conifers in order that the units will eventually be screened or partially masked, particularly from the southern viewshed.

D. Sewers

No significant impact with mitigations adopted as conditions of approval (See Appendix 12).

E. Schools

Current Status

Schools within the Bear Valley Unified School District are generally operating above capacity (Appendix 10).

(25)

The project could generate 16 (plus) school age children, incrementally adding to the stressed condition (Appendix 10).

Mitigation

The applicant has indicated a willingness to pay per unit fees to the District in amounts specified by the District and/or Board of Supervisors if and when the District files for relief pursuant to the current County school fee ordinance (Appendix 11). Such agreement will need to be incorporated into conditions of approval.

F. Law Enforcement/Fire/Emergency

Current Status

All such service entities are operating under stressed conditions.

Impact

It is difficult to determine if the project will generate sufficient revenue to cover its service needs, but any subsidy would likely be slight due to the temporary occupancy of part of the site. Fire protection requirements will require upgrading of water service to ensure adequate flows.

Mitigation

See "Water Section" and related appendicies for description of fire flow needs and related mitigation.

XI. BIBLIOGRAPHY

- 1. Information received from applicant and others (See Appendices).
- "Traffic Report for Marina Cove Associates Large Scale Housing....."
 Eisenhart November, 1982.
- 3. Big Bear Mutual Water District Shorezone Ordinance
- "Big Bear Valley Water Resources Report and Management Plan" by
 C. M. Engineering

XII. CONSULTATION/CONTACTS

Environmental Review Board Jere Mitchell/Steve LOE/Genine Derby - United States Forest Service Mrs. Edward Hothan - Resident Irv Okovita - Applicant Jim Hicks - Engineer Doreen Liberto - Planning Department Paul Draga - North Shore Improvement Association Steve Foulkes/Frank Gehrke - Big Bear Mutual Water District Gary Wentz - Big Bear City Community Services District Mike Perry - Special Districts Department Joe Rowe - C. M. Engineering Ross Burke - Southern California Water Company George Boon - Cal Trans Anwar Wagdy - County Transportation Department Pat Murphy - City of Big Bear Lake

(27)

San Bernardino County Planning Department

Charles H. Bell - Senior Environmental Specialist Fred Hinshaw - Environmental Specialist Helen Smith - Secretary

XIV. COST OF THE ENVIRONMENTAL IMPACT REPORT Report writing 32 hours x \$25.00/hr. Fee* = \$ 750.00 Typing/Clerical 8 hours x \$25.00/hr. 250.00 TOTAL \$1000.00

* per County Fee Schedule

XV. RESPONSE TO COMMENTS

(To be completed as part of the Final Environmental Impact Report).

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EXHIBIT B

MARINA POINT on BIG BEAR LAKE

A DESTINATION RESORT COMMUNITY by MARINA POINT DEVELOPMENT ASSOCIATES

PRELIMINARY / FINAL DEVELOPMENT PLAN June 1991 County of San Bernardino

MARINA POINT

PRELIMINARY/FINAL DEVELOPMENT PLAN

June 1991

Prepared for:

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Consultants:

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B. Project Setting

1. Location and Physical Setting

The Marina Point project site is located in the Community of Fawnskin along the east shore of Grout Bay, Big Bear Lake. Specifically, the project site is located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Road. The total project will consist of 28.2 acres of which 3.42 acres will comprise a commercial marina, 12.28 acres include lake enhancements and the remaining 12.50 acres is for land use area.

Exhibit 1 depicts the Regional Location of the project site, while Exhibit 2 depicts the precise Project Boundaries.

The project site is presently occupied by Cluster Pines, a recreational vehicle park/campground and commercial marina, one of seventeen properties on Big Bear Lake with a commercial marina permit. All existing structures will be removed from the property.

Surrounding land uses consist of scattered residential to the north and sparse development and open space along the shore to the east. Residential living, tourism and water sports provide most of the human activity in the Grout Bay region. The Dana Point public park is located to the west and the Grout Bay Picnic Area, at the head of Grout Bay, is located approximately a mile from the site.

2. Legal Description

All that portion of the Northwest 1/4 of Section 13, Township 2 North, Range 1 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government Survey, described as follows:

D. Project Description

The development delineated by this Plan involves a masterplanned, destination resort community consisting of 132 condominiums situated on-site for a density of 10.6 dwelling units per acre.

On-site recreational amenities include facilities for a 175 boat slip marina, community swimming pools and spas, two tennis courts, shuffleboard courts, a volleyball court, an ice skating pond along with walking trails and picnic areas that are scattered throughout the community. The Community Building incorporates management offices, health and spa facilities, meeting rooms and a small restaurant.

In addition, the project includes public access through the project to an off-site beach and picnic area that would be created for public use.

Table 1 (page I-8) shows a statistical land use summary of the Marina Point Development Plan. Assuming a median family size of 2.8 persons per dwelling unit (San Bernardino County General Plan, 1989), the estimated population for the project is 370 persons. Because of the resort nature of the project, this population is not expected to be full-time residents, but rather coincident with mountain resort utilization typical of the Big Bear region.

B. Land Use

The 28.20 acre Marina Point Final Development Plan consists of approximately 12.5 acres of land use, 3.42 acres of protected marina and 12.28 acres of lake enhancement accommodating the development of a high-quality lakefront destination resort community. The Land Use Plan, <u>Exhibit 4</u>, has been developed following extensive research and analysis of the site's opportunities and constraints.

Residential land use consists of approximately 3.30 acres (11.7%). This land use is planned for attached townhomes/ condominiums. The units are generally located to take full advantage of scenic lake and mountain views or central recreational amenities incorporated into the project. All units will have attached garages with additional parking in close proximity.

As <u>Exhibit 4</u> depicts, the units have been clustered to provide more open space consistent with the Community Plan guidelines. <u>Exhibit 5</u>, Site Section and Elevation, gives another perspective of the site.

The circulation system, including street rights-of-way and parking, encompasses approximately 2.50 acres (8.9%). The streets are private and will be maintained by the homeowners association.

The balance of the site, encompassing approximately 22.40 acres (79.4%), will be utilized for various forms of recreation and open space, including a marina, pool, spas, tennis courts, volleyball courts, shuffleboard courts, ice skating pond, picnic area, sand beach and lake enhancement.

1. Relationship to Community Plan

Development of the Marina Point FDP is consistent with the goals and objectives of the land use section of the Bear Valley Communities Plan. Of the 28.20 acres comprising the project site, the project utilizes a total of 3.30 acres for residential development through sensitive land planning and clustering techniques, both of which are encouraged by the Bear Valley Communities Plan.

III-4

2. Phasing

Marina Point has been planned to be developed in six phases as identified in <u>Exhibit 9</u>, the Grading Plan. Offsite dredging is scheduled to commence in the Fall of 1991 and continue to December 1, with the remainder of the project grading to be completed beginning again in April, 1992 along with construction of improvements. Construction of Phase 1 units will begin in the Summer of 1992 along with some common facilities. Complete buildout is estimated within three to four years.

The phasing has been based upon the provision for adequate services including sewer, water and circulation. Changes in the phasing will be permitted provided that provisions for adequate services and utilities are met.

III-5



1.3 PROJECT OBJECTIVE

The objective of the project is to develop a lakefront destination resort that will incorporate recreational amenities in an enhanced wildlife environment. Attaining the objective will provide for recreation and conservation while maintaining harmony between the human and natural elements.

1.4 BACKGROUND

In 1983, the County approved a Large Scale Housing permit, a Tentative Map, and a rezone from FP-1-H1 to R3 to reflect the onsite fill. The previous project proposed the development of 132 condominiums, the same as the currently proposed project, and it included generally the same recreational amenities. A Focused Environmental Impact Report (EIR) prepared by County staff was certified for the project. The County Board of Supervisors approved the project with overriding considerations relating to cumulative regional impacts on water and traffic.

The project previously received a service availability letter from the Southern California Water Company, which was the water purveyor for the area at the time. However, in January of 1989, the Company withdrew their statement of availability and put the project, along with others, in limbo. In 1989, the California Regional Water Quality Control Board placed a moratorium on building permits in Big Bear City, although it did not include County land in the Fawnskin area. However, the project could not be built without water service and the availability of an adequate water supply had to be resolved.

Since that time, the City of Big Bear Department of Water and Power has taken over the provision of water and maintenance of the water system. The developer initiated, and the Department prepared, a feasibility study and determined that, with the conditions imposed on the project, there will be an adequate water supply.

Subsequent to discussions between the developer and representatives of the County of San Bernardino regarding both the water availability issue and the expiration of the prior Tentative Map, the developer decided to resubmit the project for reapproval. As part of the current resubmittal, the project has been revised to meet the various agencies' current requirements.

In July 1989, the County General Plan was revised and designated the site for Planned Development. This designation requires the approval of a Final Development Plan when the Tentative Map is approved. The current proposal includes this Plan.

PROJECT SPECIFICS

The project proposes to redevelop the site with a lakefront destination resort that would include the following: (1) the construction of 132 condominiums on the land portion of the site; (2) the redevelopment of the marina to provide approximately 175 slips; (3) the provision of recreational amenities on-site for club members including two tennis courts, a swimming pool, spas, a marina office, a health club, a volleyball court, shuffleboard courts, an ice skating pond, a pro shop, hiking/jogging and nature trails, a fishing area that will be open from April through November, and a small food and beverage facility; (4) the provision of a management/rental office; and (5) the construction of a public beach/picnic area in the area that is now part of Big Bear Lake/Grout Bay (see the Land Use Plan in the Final Development Plan).

The proposed gross density is 10.6 units per acre, well below the allowed maximum. The marina and recreational facilities would be restricted to homeowners, club members, and their guests. A homeowners' association will be responsible for the maintenance of the exterior of the buildings, roads, irrigation system, landscaping, and all other on-site open space. Public access to the beach and picnic area will be provided by a pedestrian trail along the northwesternmost part of the land portion of the site.

The project includes the construction of 19 residential buildings, a community building and a storage building. The residential buildings will be three stories, and are designed for use as second homes or as rental units. Each residential building will include seven units. The ground floor will include three units as well as garage space for seven cars. The second floor of each building will include four units. The remainder of the 264 parking spaces will be allocated in outdoor parking areas interspersed throughout the project. A total of two parking spaces per unit is proposed.

The project has been designed to provide the maximum in recreational amenities. In addition to the marina, pedestrian trails, picnic area, swimming pool, tennis courts, volleyball court, pro shop, small food and beverage facility, ice skating pond and fishing facilities will be available. The proposed land and water uses for the project site are included in Table 2. A comparison of the currently proposed project and the 1983 project is included in Table 3.

The project will receive sewer service from County Service Area (CSA) 53B and water service from the Big Bear Department of Water and Power. Both agencies have indicated that service will be available for the currently proposed project. The on-site sewer line and easement will be relocated. Utility lines will be undergrounded.

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TABLE 2.

PROJECT SITE USES

Use	No. of Acres	% of Project within Property Lines	% Total* Proj Area
Within Property Lines:			
Residential Buildings (132 Dwelling Units)	3.30	26.4%	11.7%
Community Building	0.14	1.1%	0.5%
Recreation Facilities	0.53	4.2%	1.9%
Parking and Streets	2.50	20.0%	8.9%
North Shore Drive Deduction	0.26	2.1%	0.9%
Open Space (Landscaped and Native)	_5.77	46.2%	<u>20.4</u> %
Total within Property Lines	12.50	100.0%	44.3%
Off-site to Property Lines:			
Marina	3.42		12.1%
Public Beach/Picnic Area	0.56		2.0%
Lake	11.72		41.6%

Grand Totals: 28.20 100.0%

* Includes total on-site and off-site (current lake) improvements.

** The total open space is 22.0 acres comprising 78% of the total project site.

TABLE 3

COMPARISON OF 1983 PROJECT AND CURRENT PROJECT

Factor	<u>1983</u>	<u>1991</u>
Acres of land Acres of water No. of condos No. of parking spaces Gross Density Recreation	12.5 15.7 132 293 10.6 2 tennis courts Food & beverage	12.5 15.7 132 264 10.6 2 tennis courts Food & beverage
	facility Pool Boat launch Small Clubhouse/ Recreation Center	facility Pool and spas Picnic area Clubhouse/Community Center
	Commercial marina	Commercial marina Volleyball court Shuffleboard courts Ice skating pond Fishing at marina
		Nature/jogging trails
Wildlife habitat	Revegetation & land- scaping of denuded areas	Revegetation & land- scaping of denuded areas, including berm around marina
».	Tree habitat for birds, squirrels	Tree habitat for birds, squirrels Fish habitat in Big Bear Lake
Trees preserved Water for recreation Linear feet of shoreline No. of buildings Cu. Yds. of cut Cu. Yds. of fill Acres graded (land on-site)	131 0.4 acre + marina 3,750 (approximate) 38 50,000 50,000 11.7	160 0.16 ac. + marina 3,840 (approximate) 20 45,000 45,000 11.7
Acres dredged % of land graded	15.7 94%	15.7 94%

The project will entail approximately 45,000 cubic yards of cut and 45,000 cubic yards of fill. Approximately 11.7 acres of land will be graded and 15.7 acres of water area in Grout Bay will be dredged. All fill will be placed above the high water level and will be used to raise the area proposed for development. The existing marina will be deepened about 4 feet, with the dredged material used as fill to raise up the building pads.

Prior to dredging the marina, the entrance will be dammed and the water pumped out. This will keep the possible sedimentation impacts confined within the marina area and minimize potential impacts to water quality in Big Bear Lake. A peripheral berm will also be used to minimize water quality impacts during the dredging operation. The project will use standard sedimentation control measures such as sediment fences, sand bags, and other sediment traps. Rip rap will be installed on the slopes along the marina and on the shoreline to prevent erosion and water quality degradation.

In order to enhance the potential for wildlife habitat, the portion of Big Bear Lake to be dredged would be left with irregular undulations in the lake bottom and the shoreline will be constructed at a slope gradient varying from 2:1 to 5:1 (horizontal to vertical) and rip rap will be applied.

The project will improve the segment of North Shore Drive (Highway 38) that borders the site. The road will be widened 25 feet along the south side of the road and left-turn lanes will be provided for both east- and west-bound traffic at the main entrance to the development, at Canyon Road. The road will be restriped upon completion of these improvements. Utilities will be undergrounded. The on-site roads will be 24-feet wide private streets. In addition, the applicant, as in 1983, will contribute funding towards the installation of a traffic signal at the Stanfield Cutoff/Route 18 intersection.

The project includes improvement of the drainages along the southeasternmost and northwesternmost portion of the property. The area along the southern boundary will be deepened and a pipe will carry the drainage to the lake. The project will construct an on-grade channel along the existing drainage near the northern boundary.

The landscaping plan for the site is included in the Final Development Plan. It proposes extensive landscaping, including the planting of approximately 500 trees, which will include Austrian pines, incense cedar, western yellow pine, and giant Sequoia. Fast-growing pines will be planted along all the shoreline, garages and on the berms forming the marina. A permanent irrigation system will be designed that will use automatic irrigation devices with soil moisture overrides. The project will require a reapproval of the Tentative Map and approval of a Final Development Plan by the County of San Bernardino. The Big Bear Municipal Water District owns Big Bear Lake and will require approval of a Shoreline Alteration Permit. The Army Corps of Engineers is responsible for navigable waterways and will require approval of a 404 Permit prior to The California Department of Fish and Game will construction. require a Section 1603 Agreement. The California Regional Water Quality Control Board will have to approve a Discharge Permit. The project applicant, as in 1983, will pay the appropriate school fees to mitigate potential impacts on schools. The applicant will also participate in the upgrading of the water system for fire protection. The project will conform to all of the requirements for the Fire Safety Overlay District.

The project will be accomplished in six phases, with no construction occurring between December and April. If the project is approved in time, it is expected that the dredging in the lake and the marina would be done in two months during the fall of 1991, prior to the bald eagle season. The berm would remain unlandscaped until the following spring. Approximately 20 residential units would be constructed in the first phase. The second phase would include 21 units; the third phase, 21 units; the fourth phase, 21 units; the fifth phase, 28 units, and the sixth phase, 21 units. The community building and recreation facilities will also be constructed in phases. addition, the current high amount of human disturbance and activity might discourage eagle use of the site even if appropriate perch trees were available. The U.S. Fish & Wildlife Service has concluded that the project site does not contain suitable eagle habitat.

3.1.2 Potential Project Impacts

The proposed project will create an undulating shoreline and lake bottom to enhance the potential for habitat, which will have beneficial impacts on aquatic fauna. Potential adverse impacts associated with the necessary removal of many of the pine trees can be mitigated to a level of insignificance by the proposed landscaping plan. These issues are discussed in the following sections.

3.1.2.1 Flora

project will result in the removal of approximately 233 The Jeffrey pine trees. This species is on the County's list of native trees in "Native Trees of the Mountain and Valley Zones of San Bernardino County" (County Code Section 811.0305) and is subject to the tree removal policy (San Bernardino County Development Code, Division 9). The Planning Department has indicated that this is not necessarily considered a significant impact warranting replacement because the Jeffrey pine is not a sensitive species. The project proposes to plant approximately 500 trees of various species, as indicated on the landscape plan. These include Austrian pines and western yellow pines, which are fast-growing species. Although the new trees will be smaller than the pines to be removed, they will be 15-gallon and 24-inch box trees and the number of trees to be planted far outnumbers amount being removed. The increase in diversity of tree the types may have a beneficial impact on the forest and is expected to have an indirect beneficial impact on wildlife. The project proposes a permanent irrigation system with a soil moisture override so that the future trees may be healthier than the existing trees in time of drought. No significant impacts are anticipated.

3.1.2.2 Fauna

Bald eagles may use the west side of Grout Bay for perching. The U.S. Fish & Wildlife Service has determined that the project site is not used by bald eagles due to the angle of the sun on the lake, which prohibits eagles from seeing down into the lake from the project area, and also because the area lacks suitable perch trees (see letter of March 6, 1991). The marina will be closed between the months of December and April so that boating activity during the bald eagle season is minimized.

The proposed shoreline, which will undulate both vertically and horizontally, may offer habitat opportunities for aquatic species. The proposed landscape plan will replace pine trees impacted by the development and, in addition, will substantially

3.4 Land Use Compatibility

3.4.1 Existing Conditions

The project site lies along the northern shore of Big Bear Lake, which is far less developed than the southern shore. It is approximately 1 mile southeast of the town of Fawnskin, the only population center along the north shore. The site is currently partially developed with the Cluster Pines RV Park/Campground and marina, which includes several permanent buildings and numerous semi-permanent trailers and trailer storage. At peak times during the summer, there have been more than 300 vehicles on the site. The marina currently has 60 boat slips instead of the 74 slips it had during previous years due to the low water level. It is heavily used in summer.

The project site lies within a band of privately-owned land along the north shore of Big Bear Lake (see Figure 3 in Section 1). The remainder of the land is within San Bernardino National Forest. The project site is bounded on the northwest by singlefamily detached residences. The eastern boundary is North Shore Drive (State Route 38), east of which are a few additional scattered single-family detached residences. The southeastern corner is bounded by a drainage and vacant land. The remainder of the site to the south, west and northwest is bounded by Grout Bay, which is an inlet of Big Bear Lake.

The Community Plan and General Plan indicate different land use designations for the project site, with the General Plan designation taking precedence. The General Plan, which was revised in July 1989, designates the site for Planned Development (PD). The zoning is PD-12/1-FW on 11.5 acres of the site. The spits surrounding the existing marina comprise 1 acre of land and are zoned FW (see Land Use Exhibit in the Final Development Plan).

3.4.2 Impacts

The proposed project is compatible with the General Plan designation and the zoning. The density is below the maximum allowed and the project is being planned and will be implemented via the Final Development Plan. That Plan includes a Landscaping Plan, a Site Plan, a Tentative Tract Map/Grading Plan, Circulation Plan, an Infrastructure Plan, a Conservation/Public Safety Plan, and elevations illustrating how the site will appear at different areas.

The proposed project will be of a higher intensity, more dense nature than the surrounding land areas. However, the project provides landscaped buffer areas between the proposed buildings and adjacent land uses, thereby minimizing potential land use impacts. significant improvement over the existing largely barren slopes, which provide little in the way of protection or foraging potential for animals and allow sheetflow erosion.

The project proposes to create a horizontally and vertically undulating shoreline to simulate natural conditions and maximize the habitat potential for both vegetation and aquatic faunal species.

11. In order to determine that development is consistent with the FWQ District, the development must not alter the natural stream course alignment or alter natural flows.

The proposed project will slightly alter the drainage coming out of the pipe beneath North Shore Drive just south of the site. However, since this drainage already contains manmade facilities, the proposed alteration of the drainage could be considered compatible with this policy. The project will channelize the drainage along the northwest property boundary, which might not be considered consistent with this policy. However, the channelization and the adjacent wall will provide protection to the site from the 100-year flood.

12. Limit the number of fireplaces allowed in large developments.

Each unit will have fireplaces. In light of the estimated 300 vehicles that often occupy the site on peak summer weekends, and the campfires they create, it is likely that the 132 condominiums could have a lesser impact than the existing development during the summer.

13. Adopt and enforce tree protection and forest conservation provisions and standards as listed in the Development Code.

The project will require the removal of an estimated 233 of the 393 Jeffrey pines on-site. These will be removed in order to construct the buildings, recreational amenities, streets and parking. Jeffrey pines are considered a native tree and are covered by the Tree Removal Policy. This is discussed in more detail in the Biological Resources section of this report.

14. Parking credit reductions from the required parking may be allowed for proposed parking spaces containing healthy and vigorous native specimen trees, when consistent with the standards specified in the County Development Code.

The project proposes to provide two parking spaces per residential unit, one within a garage and the other outside. The project could, but has not asked for, a reduction from the required parking due to the location of trees in some of the parking areas.

3.7.1.3 Schools

The project site is within the Bear Valley Unified School District.

3.7.1.4 Fire Protection

The project area is served by the California Department of Forestry. The existing site, with little groundcover, scattered pines, and few permanent structures, poses a small fire hazard.

3.7.2 Impacts

3.7.2.1 Water Service

The project will require additional water from the Department of Water and Power for increased domestic uses and for irrigation of landscaping. The water required for domestic and landscaping uses will be supplied by the construction of an additional water storage tank and transmission line, as described in the Department of Water and Power's feasibility study. The actual location of the tank has not yet been determined.

The water for the on-site water features (pond and stream) will be taken from a well near the northwest property boundary No significant impacts are anticipated as a result of project implementation.

3.7.2.2 Sewer Service

The project will generate daily sewage, as does the existing development. CSA 53B has agreed to serve the project.

EXHIBIT C

SAN BERNARDINO COUNTY INITIAL STUDY ENVIRONMENTAL CHECKLIST FORM

This form and the descriptive information in the application package constitute the contents of an Initial Study pursuant to County Guidelines under Ordinance 3040 and CEQA Guidelines §15063.

Ι.		USGS Quad: Fawnskin 7 1/2 min.
COMMUNITY:	BIG BEAR VALLEY	general and a state of a state of the
APPLICANT: FILE/INDEX:	Site Design Assoc., Inc. Ken Discenza A)PD/89-0053/M331-9/PUDP	T,R,Section: T2N, RIW, SEC 13
	B) PD/89-0054/M331-9/PUDF	
	C) PD/89-0055/M331-9/TR12217	Thomas Bros: 97, F-2
CATS #:	05175CF2	
PROPOSAL:	 A) Preliminary Development Plan with 133 Condominium Units, Man-made 	Planning Area: Big Bear Valley
	Ponds, Marina and Open Space/Recreational Amenities on 28.2 acres	OLUD:
	B) Final Development Plan with 133 Condominium Units, Man-made Ponds, Marina and Open Space/Recreational Amenities on 28.2 acres	Improvement Level:
	 C) 8-Lot Subdivision with 6 lots (phases) for Condominium purposes on 28.2 acres 	REVISED
	D) Environmental Impact Report on 28.2 acres	Nov. 26,1991
LOCATION:	North Shore Drive, southwest side; approximately 315 feet south of Red Robin	

PROJECT CHARACTERISTICS: The proposed condominium project has been reviewed by the Planning Department before as Marina Cove. The first submittal, was originally approved on March 17, 1983 along with a project EIR (no SCH#). This first edition project approval expired on March 17, 1990 without Tract 12217 recording or the project commencing. The applicants later refiled the project, with modifications to their corporate structure and to the project. in April 1990. This particular project proposal included a fish lacoon and spawning streams which complicated reviews through the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and California Department of Fish This project proposal ran out of time on May 4, 1991 due to and Game. project streamlining limitations and was administratively withdrawn and refiled. The applicants have refiled a revised project that consists of 132 condominium units/Tentative Tract 12217 on 12.5 acres in the Fawnskin area. The proposed project density of 10.5 units/acre is less than the General Plan Land Use District of 12 units/acre would allow under optimum circumstances.

The current project being considered is very similar to the design of the original project approved in 1983. The current project employs the use of the 1983 Project EIR with the overriding considerations on cumulative significant traffic and water consumption issues pursuant to CEQA Guidelines, Section 15131. The Project EIR is being utilized because the present design issues, circumstances and impacts are similar to the 1983 project. The site is a previously disturbed lakeside property with an existing deteriorated recreational vehicle park located on it. The current project has been reviewed with an Initial Study using incorporation by reference of the relevant sections of both the 1983 Project EIR and relevant information from the Bear Valley Community Plan EIR (SCH #88032108) cited to characterize the anticipated environmental effects.

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Drive

1...

ENVIRONMENTAL/EXISTING SITE CONDITIONS: The site has been used as a recreational vehicle park (RVP) and is known locally as "Cluster Pines". The proposed project could replace the RVP area. The site also includes a small existing marina; which will continue to be an integral part of the new project proposed at the site. The current site includes a combination of graded lake fill that is devoid of vegetation and a moderately dense stand of younger second growth Jefferey pines containing about 340 trees. The site is within potentially "Key Habitat" for wintering bald eagles. The habitat provides for foraging and perching activities for bald eagles.

EXISTING LAND USE		OFFICIAL LAND USE DISTRICT	IL
North	Single Residential	BV/RS	1
South	Big Bear Lake, Grout Bay	BV/FW	NA
East	Residential and National Forest Land	RI-40	1
West	Big Bear Lake, Grout Bay	BV/FW	NA

II. Identification of maximum potential environmental effects of the proposed project. The purpose is to identify any <u>potentially significant impacts</u> and discuss mitigation measures for identified impacts. Please substantiate your responses by summarizing your assessment of <u>significant</u> impacts and referencing documents used as research (e.g., Norton Air Force Base AICUZ study re: Noise). Include quantification of changes caused by the <u>project's</u> development at maximum potential buildout from existing status.

Circle or underline specific item of concern for "yes" or "maybe" answers if one item applies and others do not. If an impact that would be significant can be mitigated below a level of significance, indicate by checking "yes" or "maybe" with an " \rightarrow " to "no" and discuss mitigative measure(s) under substantiation. Substantiation is also necessary for "no" answers.

	TWALL.		·	Yes	Maybe No	2
1.		ogic Hazards. Will the proposed project result ignificant impacts related to:		-		
		a.	Unstable earth conditions or changes in geologic substructures?	_	<u>x</u> -> <u>x</u>	
		b.	Change in topography or ground surface relief features?	_	<u> </u>	
		c.	The destruction, covering or modification of any unique geologic or physical features?		<u>x</u>	
		d.	Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?		<u>X</u> -> X	
		e.	Exposure of people or property to water-related seismic hazards such as seiche?	_	<u>x -> x</u>	

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NATURAL HAZARDS

SUBSTANTIATION (check ______ if project is located in the Geologic Hazards-Overlay District): The project involves considerable modifications and reshaping of a relatively flat site which slopes gently toward the lake. The site grading will involve minimal dredging of off-shore areas for filling of on-site building pads and activity areas to reduce potential of inundation from the lake when it is up to its normal level. Existing site disturbance includes existing sandy fill areas which according to the BVCP are subject to potential settling, compaction, subsidence and liquefaction. The standard requirement for a soils report and geologic hazard investigation will address detailed aspects of site fill from dredged lake material and site stability.

			Ves	Maybe	No
2.		d Hazards. Will the proposed project result significant impacts related to:	100	in the second second	no
	a.	Changes in currents, or the course of direction of water movements?			<u> X </u>
	b.	Changes in deposition, erosion, or siltation that may modify the channel of a river, stream,			
		bay, inlet, or lake?		<u>X</u> ->	<u>X</u>
	c.	Alterations to the course or flow of flood waters?			<u>_X</u>
	d.	Change in the amount of surface water in any water body?		<u> </u>	<u> </u>
	e.	Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?	_	<u> </u>	<u>X</u>
	f.	Exposure of people or property to water-related hazards such as flooding or dam inundation?		<u> </u>	<u>x</u>

SUBSTANTIATION (check if project is located in the Flood Plain Safety Overlay District X or Dam Inundation Overlay ____): FP-1 The project involves a dredge and fill operation. When this operation is completed, the building areas will be elevated and the depth of shallow water levels increased. The development of the site will require the organization of off and on-site drainage flows per county drainage section conditions of approval. Building Department requirements will specify design features to minimize the potential for inundation where structures will be constructed near to the high water level of Big Bear Lake. Only non-habitable parking structures are proposed as subterrain features.

Yes Maybe No

- 3. Fire Hazards. Will the proposed project result in significant impacts related to:
 - a. Exposure of people or property to wildland fires?

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SUBSTANTIATION (check X if project is located in the Fire Safety Overlay District): FR-2 This project site lies within the county fire safety overlay districts, Review Area 2. This site is immediately adjacent to the highway on the north and Big Bear Lake on the south. The Fawnskin area is recognized as generally having inadequate fire flow and the project site is known to be in this category. The 1983 approval of a similar project required extensive improvements to the water distribution system serving the project as mitigation for inadequate fire protection measures currently in The improvements required for the 1983 approval plus full fire place. sprinkling of buildings have been determined by the fire authority to still be appropriate for incorporation as mitigation measures for this project. The required measures will reduce the impacts to a level of non-significance.

Yes Maybe No

<u>X -> X</u>

<u>X</u>

<u>X</u>

- Wind/Erosion. Will the proposed project result 4. in significant impacts related to:
 - Any increase in wind or water erosion of soils, a. either on or off the site?

SUBSTANTIATION: A detailed erosion and sedimentation plan will be required to protect the lake from development impacts. Any proposed dredging below the high water level of the lake will be subject to Big Bear Lake Municipal Water District approvals and the U.S. Army Corps of Engineers 404 Permitting These review and permitting procedures should allow for requirements. adequate mitigation of water quality impacts from site development.

MANMADE HAZARDS

5.		se. Will the proposed project result significant impacts related to:	Yes	Maybe	No	
	a.	Increases in existing noise levels?		<u> </u>	X	

Increases in existing noise levels? a.

Exposure of people to severe noise levels? b.

SUBSTANTIATION (check if the project is located in the Noise Hazard Overlay District ____ or is subject to severe noise levels according to the General Plan Noise Element ____): An older recreational vehicle park (now being dismantled) currently exists on this site, complete with a boat marina. The type of sounds associated with the present development will also be present in the new one. Noise attenuation will be required by DEHS for noise sources. The possibility for noise reception by residences along Highway 38 exists.

Yes Maybe No

- Aviation Safety. Will the proposed project result 6. in significant impacts related to:
 - Exposure of people to risk from aircraft a. operations?

SUBSTANTIATION (check _____ if project is located in the Airport Safety Overlay District): Airport is located further to the East. Aircraft will be heard, but at a distance and at lower noise levels.

7.	Haza	rdous/Radioactive Materials. Will the proposed	Yes	Maybe	No
	proj	ect result in significant impacts related to:			
	a.	A risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals, or radiation) in the event of an accident or upset conditions?			_X_
	b.	Possible interference with an emergency response plan or an emergency evacuation plan?		_	
	c.	Creation of any health hazard or potential health hazard?	_		<u>_x</u>
	d.	Exposure of people to potential health hazards?			<u> </u>

SUBSTANTIATION: No hazardous or radioactive materials are anticipated to be a part of this project. The existing/proposed marina does have the potential for incidental oil/gas spills, related to power boat service, fueling and usage.

NATURAL RESOURCES

8.	Biol resu	ogical Resources. Will the proposed project lt in significant impacts related to:	Yes	Maybe No
	a.	Loss, reduction, or deterioration of habitat and/or change in diversity of species of plants or animals?		<u>X</u>
	b.	Reduction of the numbers of any unique, rare, threatened, or endangered species of plants or animals?		<u> </u>
	c.	Introduction of exotic species of plants or animals into an area, or in a barrier to the normal replenishment or migration of existing species?		<u> </u>

SUBSTANTIATION (check if project is located in the Biological Resources Overlay \underline{X} or contains habitat for any species listed in the California Natural Diversity Database \underline{X}): The site is located within Key Habitat for wintering bald eagles. An EIR was prepared for the original project approved 1983. Information contained in 1983 EIR indicated that no mature trees suitable for perching existed on site at that time and that foraging habitat was not of prime quality. The low quality was attributed to lack of the ideal shallow lake bottom, which provides better fish foraging, and due to the lack of mature shoreline vegetation which attracts waterfowl as an eagle food source. However, the current proposal, similar to the 1983 project, poses potential cumulative impacts that will contribute to an overall degradation of bald eagle habitat in and around Big Bear Lake and loss of potential on-site habitat.

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The applicant has been involved in informal consultation with the U.S. Fish & Wildlife Service and the Army Corps of Engineers which has resulted in proposed mitigation measures that will reduce the impacts. Those measures include, but are not limited to, the following: 1) construction activities limited to April 1 to November 30; 2) marina closure from December 1 to March 31; 3) adherence to Big Bear Municipal Water District requirements associated with a shore zone alteration permit; 4) retention of a significant number of trees to provide habitat and for future perching habitat and 5) potential enclosing of parking to minimize impacts associated with noise caused by vehicle uses.

9.	Cultural/Paleontologic Resources. Will the proposed	
	project result in significant impacts related to:	

a	. The alteration or destruction of a prehistoric or historic archaeological site?	 _	<u>_X</u>
b	. Physical or aesthetic effects to a prehistoric or historic building, structure, or object?	 	<u>_X</u>
С	A physical change that would affect unique ethnic cultural values?	 	<u>_X</u>
đ	. Restricting existing religious or sacred uses within the potential impact area?	 	<u>_X</u>
е	. Any alteration or destruction of fossil remains?		х

Yes Maybe No

Yes Maybe No

X

SUBSTANTIATION (check if the project is located in the Cultural _____ or Paleontologic _____ Resources overlays or cite results of cultural resource review): Replacement landscaping and attractive theme buildings will probably improve appearance of the site. The site will be more intensively utilized and organized. The current R.V.Park provides a certain degree of visual blight and deterioration.

10.	Air Quality.	Will the proposed project result	
	in significant	impacts related to:	

a.	Substantial	air emissions	or	deterioration of		
	ambient air	quality?			 <u>X -></u>	<u>X</u>

b. The creation of objectionable odors?

c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?

SUBSTANTIATION (discuss conformity with the South Coast Air Quality Management Plan, if applicable): Site is currently developed with a older recreational vehicle park. The new development will have to comply with newer emissions requirements. The BVCP included the requirement for catalytic-type wood stoves for use to reduce emissions. That requirement and others will be used for this project to reduce the impacts to air quality.

			Yes	Maybe	No	
11.		er Supply/Water Quality. Will the proposed ect result in significant impacts related to:				
	a.	Changes in the quantity of groundwaters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations (onsite)?	<u>_x</u>			
ĸ	b.	Substantial reduction in the amount of water otherwise available for public water supplies?	<u>_X</u>			
	c.	Alteration of the direction or rate of flow of groundwaters?			<u> x</u>	
	d.	Pollution, contamination, or any change in the quality of groundwater (toxics, nitrates, fluorides, salts, etc.)?			<u>X</u>	
	e.	Discharge into surface waters, or any alteration of surface water quality, including, but not limited to, temperature,		<u>2</u>		

dissolved oxygen, or turbidity?

<u>x -> x</u>

SUBSTANTIATION: The Northshore groundwater sub-basin underlies the project. This particular sub-basin was determined to be in an under-utilized site. condition in the 1983 Project EIR and the BVCP EIR, even though Bear Valley groundwater supplies as a whole were identified as being in a serious state of overdraft. This new water efficient project is expected to result in the consumption of approximately 46.2 acre feet of water per year based on a consumption rate of .35 acre feet for single family residential use. The net water consumption of the existing R.V. Park land-use on the site has been determined to be approximately 5 acre feet per year. This project is consistent with the PD 12/1 Land Use District and Bear Valley Planning Area and as such, may be recognized as having the similar impacts as the project previously considered, within the scope of the Community Plan EIR. This project will not result in any additional impacts to water supply beyond those identified in the BVCP EIR. The current project will also incorporate the mitigation measures adopted for the BVCP, which were intended to mitigate the impacts to the maximum extent practical. This project will contribute to an overall cumulative depletion of groundwater supplies, which was recognized as an unavoidable significant impact during the adoption of both the 1983 Project EIR and the BVCP thereby requiring adoption of statements of overriding considerations for the vegetation. This project will include the mitigation measure that it meet the "assured water supply" provisions of the Bear Valley Planning Area General Plan standards. The assured water provision generally required that a new, supplemental water source be used to supply the project or be brought "on-line" to offset overdraft in other basins by supplying 150% of the project's demand, and minimize, the water system leaks. It is not anticipated that the lake waters will be degraded during the construction process, because of a "siltcurtain" for dredging operations and "zero discharge" from stockpiled soils on-site.

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12.	Open proj	Space/Recreation/Scenic. Will the proposed ect result in significant impacts related to:	Yes	Maybe	No
	a.	The quality or quantity of existing recreational opportunities?			<u>X</u>
	b.	The obstruction of any scenic vista or view open to the public?	_	<u>x</u> ->	× <u>×</u>
	c.	The creation of an aesthetically offensive site open to public view?	_		<u>_x</u>
	d.	New light or glare?			<u>_X</u>

SUBSTANTIATION (check ______ if project is located within the viewshed of any Scenic Route listed in the General Plan): The project will result in a noticeable change from the relatively unobstructed views of the lake from State Highway 38, a County-designed scenic highway. The proposed two story attached dwelling units will obstruct the current view from the highway. The position of the new structures in the viewshed of the highway will be an impact, albeit at a non-significant level. The existing open space providing views of the lake from the highway is largely in public ownership as National Forest and thereby reduces the potential significance of this project in the context of the entire expense of shoreline on the north shore of Big Bear Lake. Project design standards included in the planned development for the site further mitigate the intrusion of the structures into the existing scenery/viewscape.

Yes Maybe No

13.	Soils/Agriculture.	Will the proposed	project
	result in signification	nt impacts related	to:

a.	Disruptions, displacements, compaction, or overcovering of the soil?	 	<u>_X</u>
b.	Loss of agricultural soils?	 	<u>X</u>

c. Reduction in acreage of any agricultural crop? _____X

SUBSTANTIATION (check ______ if project is located in the Important Farmlands Overlay): No agricultural grade soils involved. The Dredge and fill operation will modify soil types, and with proper soil management improve overall fertility and stability.

Yes Maybe No

X

- 14. Mineral Resources. Will the proposed project result in significant impacts related to:
 - a. The prohibition or restriction of development of any mineral resource rated as Classified or Designated by the State Mining and Geology Board?

SUBSTANTIATION (check _____ if project is located within the Mineral Resource Zone Overlay): Not in the identified mineral resource area.

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MANMADE RESOURCES

			Ves	Maybe	No	
1	resul for r	tilities/Infrastructure. Will the proposal It in significant impacts related to a need new systems, or substantial alterations to following utilities:		<i>inju</i> c	NO	
i i i	a.	Power or natural gas?			<u> </u>	
1	ь.	Communications systems?			<u>_x</u>	
0	с.	Water?		<u> </u>	<u>_X</u>	
0	d.	Sewer?		<u> </u>	<u>_X</u>	
•	e.	Storm water drainage?		<u> </u>	<u>_X</u>	
:	f.	Solid waste and disposal?			<u>X</u>	

SUBSTANTIATION: The existing R.V. Park is currently serviced by the Big Bear Department of Water and Power for water service and County Service Area 53B for sewage disposal. Because major site grading and filling will be taking place, a new on-site system will be constructed by the developer. The cost of the systems will be borne by the developer and the systems will be designed to such standards that they may be turned over to the respective district for maintenance and operation, eventually.

Yes Maybe No

1

17. Transportation/Circulation. Will the proposed project result in significant impacts related to:

Generation of substantial additional vehicular а. movement? X b. Effects on existing parking facilities, or demand for new parking? Substantial effect upon existing transportation c. systems? X d. Alterations to present patterns of circulation or movement of people and/or goods? X Alterations to waterborne, rail, or air traffic? e. X f. Increase in traffic hazards to motor vehicles, bicyclists, equestrians, or pedestrians? <u>X -> X</u>

SUBSTANTIATION: Cumulative traffic impacts resulting from this project were identified as being at a significant level in both the original 1983 project EIR and in the BVCP EIR. A statement of overriding considerations was adopted for the original project approval and for the adoption of the BVCP. An updated traffic study prepared by Lawrence S. Elsenhart for the current proposal is included as an attachment to this review. The report indicates that the total trip generation for the condominium project will be 563 ADT (p. 9). The trip generation of the existing land use is indicated to be 319 ADT, resulting in a net additional trip generation of 244 ADT (p. 10). The

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engineer who prepared the traffic study indicated that the project would <u>not</u> impact the existing Level of Service "C" (LOS) of North Shore Drive (State Highway 38) and that the project would only create minimum impacts to Big Bear Boulevard (State Highway 18) in the south shore area of Big Bear Lake. The County Traffic Engineer, however, has determined that the impact is understated and that cumulative traffic impacts will occur in the area of Stanfield Cutoff, which crosses Big Bear Lake at the east end, as well as, in the commercial area of the City of Big Bear Lake.

This project will make a significant contribution to a transportation network that was identified in the BVCP as being substantially impacted during peak periods. The BVCP was adopted with the provision that a transportation facilities plan be developed to collect impact fees for use in solving the traffic problems within all of Big Bear Valley. The facilities plan was a major component of the traffic mitigation measures for the community and for this project. This plan, however, has not yet been finalized and therefore does not provide a viable method for reducing the impacts associated with this project. This project will therefore contribute to a significant cumulative effect on traffic and circulation.

Yes Maybe No

Х

X

18.	Energy.	Will	the p	roposed	project	result	in
	significa	ant ir	pacts	related	l to:		

a.	An increase in the rate of consumption of any natural resources?		 <u>_x</u>
b.	Use of substantial amounts of fuel or energy?	—	 <u>_X</u>

c. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?

SUBSTANTIATION: As a "replacement" project, the new Planned Development project should be more energy efficient than the existing RVP Major increases in natural resources consumption are not anticipated.

19.	Housing/Demographics/Socioeconomics. Will the proposed project result in significant impacts related to:		Yes	Maybe	No	
	a.	An effect on existing housing, or creation of a demand for additional housing?	-		<u>_X</u>	
	b.	Alteration of the location, distribution,				

density, or growth rate of the human population of the area?

SUBSTANTIATION: The R.V.P. (M.H.P.) provides rental spaces/utility hook-ups for recreational vehicles, travel trailers and a few smaller mobile homes. This existing facility was never intended to provide a primary full time residence for tenants. Some of the trailers have been expanded by space additions, such as cabanas, without proper authorization. This project is not subject to the special provisions of the State Subdivision Map Act with regards to mobile home park conversions and therefore does not require a "relocation plan" to address dislocation of permanent residents.

20.	in s	ic Services. Will the proposed project result ignificant impacts related to a need for new or red governmental services in:	Yes	Maybe	No
	a.	Fire protection?	_	<u> </u>	<u>x</u>
	b.	Police protection?	_		<u>_X</u>
	c.	Schools?		<u> </u>	<u> </u>
	d,	Parks or other recreational facilities?			<u>X</u>
	е.	Maintenance of public facilities, including roads?			<u>x</u>
	f.	Other governmental services?			х

SUBSTANTIATION: The facility proposed provides condominiums for permanent residency and unique on-site recreational opportunities. School impact fees will have to be paid as part of the permitting process. The potential significant effect of this project on fire protection services is related to the water supply issue as it pertains to providing adequate flows. The 1983 project proposed was required to construct new storage and distribution facilities as mitigation for resulting impacts. These same measures will be included as mitigation for the current project. In addition, the fire authority has proposed a measure to mitigate the impact on equipment and fire service staffing by requiring participation in a mello-roos or special improvement zone funding for expansion of local fire protection services.

LAND USE

Yes Maybe No

X

- 21. Will the proposed project result in significant impacts related to:
 - a. A substantial alteration of the present or planned land use of an area? (Consider the Official Land Use Designation of the project site and surrounding property, as well as their Improvement Level designations on the General Plan Infrastructure Overlay and any relevant Resource Overlays.)

SUBSTANTIATION: The new project represents a substantial alteration to the existing land-use, although the use and density are consistent with the County General Plan. The site is an extensively used and disturbed one on which the RVP has degraded from the more naturally appearing condition along leucocyte. The perception of many of the surrounding property owners is that this proposed project will organize the site and improve its appearance from the lake and highway. The proposed condominium density is less than the G.P. allows (G.P. = 12/1) and is the type of permanent residence normally associated with higher multiple residences densities. The current

improvement level designation is level one (1) which reflects more urbantype of developments such as this.

Yes Maybe No

X -> X

<u>X</u>

X

<u>X</u>

22. MANDATORY FINDINGS OF SIGNIFICANCE

- a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below selfsustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
- b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)
- c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)
- d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

SUBSTANTIATION: This project will have significant cumulative adverse impacts on traffic/circulation and water supply/water quality within Big Bear Valley. The project will contribute to an existing transportation system that is severely impacted at various locations during peak use periods, yearlong and to with supply and quality overall. The contribution of the project to congested traffic conditions in the area of Stanfield Cutoff and Big Bear Boulevard will lead to cumulative adverse effects on residents and seasonal visitors to Big Bear Valley.

Potential adverse impacts to the wintering bald eagle and wetlands can be partially mitigated by incorporation of prescribed measures as conditions of approval. A variety of measures have already been included in the design of the project, which where developed as a result of extensive consultation with the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers and the Big Bear Municipal Water District.

III. Discussion of Environmental Evaluation: The major concern with the proposed project is its contribution to cumulative traffic impacts and water supplies in Big Bear Valley. The earlier Marina Point Project EIR acknowledged that the project would stimulate further growth and cause significant traffic impacts. The BVCP EIR also recognized that further growth in Bear Valley would cause significant effects on transportation/circulation and overriding considerations were adopted as part of the approval of the Community Plan

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due to the social, economic and other benefits that would be derived from plan implementation. One of the implementation measures was to prepare a transportation facilities plan to reduce the traffic congestion problems within the valley. That plan has not yet been adopted and thereby diminishes the ability of this project to be totally consistent with the current General Plan. Traffic mitigation measures are proposed for this project however, those measures do not reduce the overall impact to below a level of significance.

The current project will incorporate the mitigation measures adopted for the BVCP, which were not available in 1983, which were intended to mitigate the impacts to the maximum extent practical. This project will contribute to an overall cumulative depletion of groundwater supplies. This project will include the mitigation measure that it meet the "assured water supply" provisions of the Bear Valley Planning Area General Plan standards. The assured water provisions requires that a new, supplemental water source be used to supply the project or be brought "on-line" to offset overdraft in other basins by supplying 150% of the project's demand.

- A. Project Alternatives:
- 1. <u>No Project</u>: This alternative could result in the continued use of the site as the existing rundown recreational vehicle park. Based on the traffic study prepared for the proposal, no project would eliminate the net increase in vehicles trips of 244 ADT. This alternative would also eliminate the desirable improvements to the Fawnskin water system that will accrue through project implementation of new storage and distribution facilities. This alternative would also eliminate the general community benefits associated with modern, well-designed residential developments.
- 2. <u>Reduced Density</u>: This alternative would reduce the level of additional traffic contributing to the existing congested transportation network within the valley. However, the BVCP EIR determined that <u>any incremental</u> <u>addition</u> to current traffic volumes will contribute to a cumulative significant effect on transportation/circulation. Consequently, this alternative is not a viable alternative in terms of reducing the cumulative impacts to transportation/circulation.
- 3. <u>Different Location</u>: This alternative is similar to alternative 2 in terms of potential reduced cumulative impacts to transportation/circulation. The BVCP EIR identified the entire Big Bear Valley as the area subject to the addition of vehicle trips resulting in cumulative impacts. Thus, another location within Big Bear Valley will not result in reduced effects, overall.

Based on the analysis of potential alternatives to the proposed project, alternative 1, the no project alternative, is the most environmentally superior project. Alternative 2 would reduce the absolute number of additional vehicle trips on the existing transportation system, but it would still result in cumulative significant impacts as is the effect of the proposed action. Alternative 3 would not alter the cumulative impacts due to the valley-wide transportation/circulation problem.

IV. Mitigation Measures to be included in project Conditions of Approval/ Mitigation Monitoring Program:

Attached are the preliminary conditions of approval for the project relating to the major project impacts of water and traffic. The mitigative conditions are identified in the document.

PROPOSED MITIGATION MEASURES:

Transportation/Circulation:

- *61. Vehicular access rights shall be dedicated on State Highway 38, North Shore Drive.
- *63. An encroachment permit shall be required from the State Division of Highways prior to any construction within the right-of-way.
- *65. Dedication shall be granted on State Highway 138 (half-width R/W 52 feet half width curb separation, 40 feet). as necessary to concur with the Master Plan of Highways. This dedication is to be coordinated with the State Division of Highways.
- *68. Any change(s) to this project as currently proposed, which may be necessitated by Caltrans requirements, must be incorporated prior to recordation.
- **1. The developer to participate with their fair share in mitigating the regional traffic problems in the Big Bear area, including contributions to traffic signals at Stanfield Cutoff & State Highway #18 intersection. In the event the proposed "Transportation Fee Program for Big Bear" is adopted prior to the issuance of building permits, the developer will participate in this program in lieu of the above.
- **2. On SH 138 (North Shore Drive) at the project entrance, a left turn land shall be required for both eastbound and westbound traffic (opposite Canyon Road).
- **3. This project and subsequent phases shall participate with a regional transportation facilities fee program if adopted prior to the issuance of occupancy permits, or contribute their fair share towards mitigating the regional traffic problems of Big Bear Lake based on the trip generations of the project.
- **4. The County is in the process of developing and implementing development impact fees for various infrastructure and capital facilities needs generated by new development. These fees will provide for various capital facilities, including, but not limited to, roads, libraries, museums, parks (local and regional), open space, flood control, drainage, water, sewer, courts, jails, other law enforcement facilities, fire fighting facilities and equipment and geographic mapping database

*From the prior 1983 Marina Cove Project/EIR conditions of approval **From the BVCP EIR / Current Project Review, conditions of approval

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development. This project shall be subject to all such development impact fees which are in effect prior to the issuance of final development permits. The exact timing and applicability of the fees will be determined by the ordinance or other action which establishes the fee.

**5. Prior to Planning Commission approval, the applicant shall submit a traffic impact analysis (TIA) that is found to be consistent with accepted methodologies and provisions of the Congestion Management Plan (CMP). The TIA shall be consistent with CMP-approved methodologies and shall include a mitigation plan for any deficiencies identified. Any improvements or fees required to mitigate TIA-identified deficiencies shall be constructed, paid or bonded for prior to recordation. (The analysis was provided and appropriate changes made to Conditions of Approval)

Water Supply/Water Quality:

- **6. The owner shall provide a reliable and Assured Water Supply adequate in quantity and quality to meet Health and Safety Code requirements; in compliance with General Plan Section(s) BV2.0801(d) (2) (A) (i), as follows: an "assured" water supply shall mean (either) an adopted plan containing an implementation program and schedule including a time table for the availability and quantity of service, a financing mechanism and technical means of delivering adequate quality of domestic water to a water purveyor, or, a (independent) substantial new, assured water supply benefit, providing 1 1/2 the project's forecasted net water consumption of supplemental water to a water purveyor; a letter from the Public Water Supply Branch, State Health Department, stating they have reviewed said plan or supplemental water sources and concur that additional supplies of adequate quantity and quality are available to meet Health and Safety Code requirements.
- **7. The water purveyor shall be City of Big Bear Lake Department of Water & Power. Submit evidence of installation and/or service to DEHS for approval. Submit evidence of service to Building & Safety at time of construction plan submittal.
- **8. The Source of water shall meet quality and quantity standards. Test results which show source meets water quality and quantity standards shall be submitted to DEHS.
- **9. The following are steps that must be completed to meet the requirements for installation and/or finance of the on-site/off-site water system and/or sewer system:

*From the prior 1983 Marina Cove Project/EIR conditions of approval **From the BVCP EIR / Current Project Review, conditions of approval

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A.Where the system is to be installed prior to recordation:

- I. The water system, fire hydrants, and/or sewer system shall be installed in accordance with requirements of the State Health and Safety Code, and in accordance with plans approved by the water and/or sewering utility and the governing fire protection authority. The plans shall be reviewed by a Civil Engineer, registered in the State of California, and contain required certificates and approval to the Surveyor Department, a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.
- B. Where a bond is to be posted in lieu of installation of the improvements:
 - II. The domestic water plan and/or sewer plan which meets the requirements of the State Health and Safety Code shall be reviewed by a Civil Engineer, registered in the State of California, and approved by the water or sewering utility and the governing fire protection authority. The plans shall contain the required certificates and approval signatures. A copy of the approved plan shall be submitted to the Surveyor Department.
 - III. Said engineer shall determine the amount of bond necessary to install the improvements. This amount plus 10% shall be posted with the County of San Bernardino. A statement signed by the engineer stating that the amount of bond recommended is adequate to cover the cost of installation of the improvement shall be included with the estimate and submitted to the Surveyor Department.
 - IV. Prior to release of the bond for the improvement, the utility of jurisdiction shall submit a signed statement confirming that the improvement has been installed and meets the requirements of all appropriate State and County laws pertaining to such improvement. It is the developer's responsibility that such signed statement is filed with the Surveyor Department.
- **10. The applicant shall provide a letter from the Sanitary Engineering Section, State Health Department, stating they have reviewed the water system and concur with City of Big Bear Lake Department of Water & Power findings that additional supplies of adequate quality and quantity of water are available to meet Health and Safety Code requirements.

Natural Resources/Biological Resources

*38. All existing [Bald Eagle] perch trees should be retained unless removal is required for reasons of public safety. (Consult with USFS to determine importance of site for perching. NOTE: The La Haye report indicates no perch trees were located on-site).

*From the prior 1983 Marina Cove Project/EIR conditions of approval **From the BVCP EIR / Current Project Review, conditions of approval

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- *39. Construction/site grading shall not be allowed from December 1 to April 1.
- *40. Marina shall not be used from December 1 to April 1.
- *41. Compliance with conditions of the Big Bear Municipal Water District Shorezone Plan.
- *42. Install state-of-the-art water conservation devices in all units. Revegetate with native plants.
- *43. Revegetate with fast-growing pines or some other conifers in order that the units will eventually be screened or partially masked from viewshed on the lake and from the south shore.

Initial Environmental Evaluation Prepared By:

11-1-91 Date

Buni R. Barn, Rlam Signature

On the basis of this initial evaluation:

The proposed project WOULD NOT have a significant effect on the environment (Mitigation Measures are included within the project's Conditions of Approval/Mitigation Monitoring Program), and a NEGATIVE DECLARATION should be prepared.

The proposed project MAY have a significant adverse effect on the | X | environment, and an ENVIRONMENTAL IMPACT REPORT should be required. (It is proposed to use the prior 1983 Project EIR for this project also)..

<u>11-26-91</u> Date

michael Welliam ley BKB. Signature

For The Planning Agency

*From the prior 1983 Marina Cove Project/EIR conditions of approval **From the BVCP EIR / Current Project Review, conditions of approval

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"NOTE This project (TR 12217 and associated preliminary and final development plan) employs the use of a single EIR from a previous project pursuant to CEQA Section 15153. The EIR employed is that document prepared for the prior Marina Cove Planned Development and substantiating information from the Marina Cove EIR because the issues, circumstances and impacts of the respective projects are comparable.

> The project has been reviewed with an Initial Environmental Study using incorporation by reference of the relevant sections of the prior project EIR cited to describe the significant environmental impacts of the project and alternatives and mitigations related to each significant effect, so identified.

> The key issues involving the single use of the prior project EIR are whether or not this EIR should be used for this project and whether or not there are any additional, reasonable alternatives or mitigations that should be considered as ways of avoiding or reducing the significant effects of the project.

ATTACHMENTS:

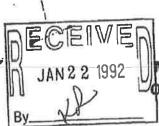
- 1. Vicinity Map.
- 2. Project Design Plan Map.
- 3. Lawrence S. Elsenhart, July 1990, Traffic Study for Residential Development on the North Shore of Big Bear Lake.
- County of San Bernardino, July 1990, Preliminary Conditions of Approval for Marina Point Planned Development & Tentative Tract 12217, Application File/Index: A) PD/89-0053/M331-9/PUDP; B) PD/89-0054/M331-9/PUDF; C) PD/89-0055/M331-9/TR 12217.

REFERENCES (List author or agency, date, title)

- 1. <u>County of San Bernardino</u>, Jan. 12, 1983, EIR for the Marina Cove Planned Development.
- 2. County of San Bernardino, Nov. 1988, EIR for the Bear Valley Communities Plan (SCH #88032108).

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EXHIBIT D



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Corrected

MINUTES OF THE BOARD OF SUPERVISORS

RECEIVED

JAH 13 1922

DECEMBER 9, 1991

SITE DESIGN ASSOCIATES, INC.

PLANNING: HEARINGS: PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR JOBS 133-CONDOMINIUM UNITS, MAN-MADE PONDS, MARINA AND OPEN SPACE/REC. J-9430 FACILITIES AND 8-LOT SUBDIVISION WITH 6 LOTS ON 28.2 ACRES: BIG BEAR AREA: APPLICANT-SITE DESIGN ASSOCIATES/KEN DISCENZA: APPROVED:

The Board conducts a hearing to consider a Preliminary Development Plan and Final Development Plan with 133 Condominium Units, manmade ponds, marina and open space/recreational amenities and an 8-lot subdivision with 6 lots (phases) and EIR on 28.2 acres located southwest side North Shore Drive, approximately 315 feet south of Red Robin Drive, Big Bear Valley area. (M331-9/TR12217). (Applicant: Site Design Associates, Inc.-Ken Discenze).

Notification as required has been made by publication in the Big Bear Life and Grizzly and by mailing to list on file in the office of the Clerk.

Ina Petokas, Deputy Planning Director, presents the staff report, a copy which is on file in the office of the Clerk. She states that the Planning Commission had recommended that the eagle mitigation condition be modified as Condition 6 and 6a (copy of memo on file in the office of the Clerk) regarding wintering Bald Eagle Habitat Mitigation Measures. She indicates that staff recommends that the Planning Commission revised conditions be replaced with one Condition 6 (a copy of the memo is on file in the office of the Clerk). She says that there is also a revised Condition 11 and the Board should consider adding Condition 18D to the Composite Development Plan, also in the memo. She states for the record also that this project had to comply with the Assured Water Policy that the Board has adopted and they have done so with Condition 26 which specifies that they provide 100% of the water to service the site plus they have to provide 50% in addition to that, half of which would be for retrofit and the other half for waste water reuse. She says that the mitigations that are attached to the project include other water mitigation measures and the Planning Commission recommended that this project go forward with these revisions. She says they would be operating the marina in conformance with regulations for the lake.

Peter Medellin has concerns that he never received notice of this particular project. He says he is opposed to the condo development and feels there is not enough water in the area and that the development is too big. He feels the development will also block off the view of the lake to the existing residents.

12/9/91 1w #56

MINUTES OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA

DECEMBER 9, 1991

PLANNING: HEARINGS: PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR 133-CONDOMINIUM UNITS, MAN MADE PONDS, MARINA AND OPEN SPACE/REC. FACILITIES AND 8-LOT SUBDIVISION WITH 6 LOTS ON 28.2 ACRES: BIG BEAR AREA: APPLICANT-SITE DESIGN ASSOCIATES/KEN DISCENZA: APPROVED:

Philip Kohn, representative for the applicant, addresses Condition 6 and feels that activities like painting and wallpapering should not be prohibited and he asks to modify this condition to limit activities only that disturb the bald eagle habitat. In regard to Condition 18D, he says this is the first time he has known about this issue but states that the applicant is not willing to accept this condition at this time. He says that while it is the intention of the property proponent to market and operate the project as condominiums and not as a time share, the final marketing decision has not been made and it would be dictated more by what the marketing conditions are at the time.

Irv Okovita reiterates statements made by Mr. Kohn and concurs with all items except Conditions 6 and 18D.

Ken Discenza, engineer with Site Design Associates, Inc., states that he is there if there are any questions.

G. B. Sneed of North Shore Improvement Association, states that his property is right across the street from the project and indicates that he is in favor of the project.

Sandy Acosta speaks in favor of the project.

Supervisor Riordan states that the project has been reviewed very carefully by staff and it appears to be a development that could enhance and not detract from the area. She feels they can accommodate the inside activities such as painting and carpet laying and just prohibit outside types of construction from December 1 to April 1.

Ina Petokas suggests then that Conditions 6 and 6a be adopted which would require the services of biologists to be engaged to determine that there will be no adverse affect on the bald eagle if activities take place inside.

-2-

Mr. Kohn says that this would be acceptable.

12/9/91 1w #56

MINUTES OF THE BOARD OF SUPERVISORS **OF SAN BERNARDINO COUNTY, CALIFORNIA**

DECEMBER 9, 1991

PLANNING: HEARINGS: PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR 133-CONDOMINIUM UNITS, MAN MADE PONDS, MARINA AND OPEN SPACE/REC. FACILITIES AND 8-LOT SUBDIVISION WITH 6 LOTS ON 28.2 ACRES: BIG BEAR AREA: APPLICANT-SITE DESIGN ASSOCIATES/KEN DISCENZA: APPROVED:

On motion by Supervisor Riordan, seconded by Supervisor Mikels, and carried, the Board:

- 1) Approves the Preliminary Development Plan and Final Development Plan M331-9 for 133 condominium units, 2 man-made ponds, marina and open-space/recreational amenities, subject to the revised Conditions of Approval 6 and 6a, addition of Condition 18D and revised Condition 11 (copy of December 9, 1991 memo on file on the office of the Clerk);
- 2) Approves Tract 12217 for 8 lots with 6 lots for condominium purposes;
- .3) Adopts the findings as contained in the staff report;
- 4) Adopts the Statement of Overriding Considerations, certifies the use of a Single Environmental Impact Report and directs the Clerk to file a Notice of Determination.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Bernardino, State of California, by the following vote:

AYES: Turoci, Mikels, Riordan, Walker

NOES: None

........

Hammock ABSENT :

STATE OF CALIFORNIA COUNTY OF SAN BERNARDINO

I, EARLENE SPROAT, Clerk of the Board of Supervisors of the Control of Supervisors, State of California, hereby certify the foregoing to be a full, true and correct copy of the second of the section taken by said Board of Supervisors, by vote of the members present, so the seme appears in the Official Minutes of said Board at its meeting of 12/9/91 1w #56 cc: Planning, Surveyor,

Transportation, Co. Counsel-Mordy, Applicant, Owner, File.

EAR Clé 14-835-183 Rev. 9/85

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EXHIBIT E

SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

GENERAL ON-GOING CONDITIONS

PLANNING DEPARTMENT (714) 387-4155

1. This conditional approval is for a Planned Development consisting of an eight (8) lot Subdivision, including 133 condominium units, 2-man-made ponds, and boat marina with other open space/recreational amenities on 28.2 acres generally located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be a six (6) phase development, with each of the six (6) phases being constructed in sequence and coinciding with the six (6) numbered lots of subdivision Tract 12217.

*2. Time limitations for Planned Developments: A conditionally approved Planned Development for a phased project shall be subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

- 2a. Time limitations for Tentative Tracts: This approval shall become null and void if all conditions have not been complied with and the occupancy or use of the land or recordation of a final map has not taken place within 36 months of the effective date. One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration. PLEASE NOTE: This will be the only notice given of the above specified expiration date. The applicant is responsible for initiating extension requests.
- 3. The applicant shall ascertain and comply with requirements of all State, County and local agencies as are applicable to the project area. They include, but are not limited to the Transportation/Flood Control, Fire Warden, Building and Safety, and the State Fire Marshall.
- 4. In compliance with San Bernardino County Development Code Section 81.0150 the applicant shall agree to defend at his sole expense any action brought against the County, its agents, officers, or employees, because of the issuance of such approval, or in the alternative, to relinquish such approval. The applicant shall reimburse the County, its

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

Revised by Staff 4-28-92

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

> agents, officers, or employees, for any Court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition.

**5. The County is in the process of developing and implementing development impact fees for various infrastructure and capital facilities needs generated by new development. These fees will provide for various capital facilities including, but not limited to, roads, libraries, museums, parks (local and regional), open space, flood control, drainage, water sewer, courts, jails, other law enforcement facilities, fire fighting facilities and equipment and geographic mapping database development. This project shall be subject to all such development impact fees which are in effect prior to the issuance of final development permits (i.e., occupancy permit).

**6. Revised by)S 12-09-91 Exterior Construction activity shall be prohibited from December 1 to April 1, to minimize disturbance to Bald Eagle habitat.

**6a. If the Revised by constr BOS 12-09-91 employ distur

If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall employ a wildlife biologist to evaluate the level of disturbance and the effect on the wintering Bald Eagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to the Environmental Team of the County Planning Department in advance of the anticipated construction.

**7. The marina shall not be used from December 1 to April 1, to protect wintering Bald Eagles.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 8. Noise levels shall be maintained below County Standards, Development Code Section 87.0905(b).
- 9. Refuse disposal service shall be provided by a DEHS approved and permitted waste hauler.
- 10. A Special Use Permit may be required to monitor the operation

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S) SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

to insure the protection of the public's health, safety and welfare.

CONCURRENTLY WITH THE BOARD OF SUPERVISORS ACTION ON THE PROPOSAL, THE FOLLOWING CONDITIONS SHALL BE MET:

11. Pursuant to California State Assembly Bill 3158, the applicant Revised by BOS 12-09-91 Game. The fee shall be submitted to the Clerk of the Board of Supervisors upon filing of the Notice of Determination along with any filing fee required by the Clerk. The applicant should be aware that Section 21089(b) of the Public Resources Code provides that any project approved under CEQA is not operative, vested or final until the required fee is paid. Proof of fee payment may be required prior to issuance of building permits or final recordation of a map.

PRIOR TO ANY LAND DISTURBANCE, THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

- **12. Prior to any tree removal, the applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit(s) from the California Department of Forestry and a 1601-1603 permit from the California Department of Fish and Game. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.
- **13. Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Game, in accordance with Sections 1601-1603 of the State Fish and Game Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. Copies of these permits shall be filed with the Planning Department or submit evidence from the Trustee Agency that a permit is not required.

BUILDING & SAFETY DEPARTMENT (714) 387-4246

**14. A tree removal plan, permit and preconstruction inspection, in compliance with the county's plant protection and management ordinance, shall be approved prior to any disturbance and/or removal of any protected tree or plant.

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 15. A Hazardous Materials Handler Permit and/or Hazardous Waste generator Permit shall be required. For information, call Hazardous Materials Field Services at (714) 387-3080.
- Prior to issuance of a Demolition Permit, a vector control 16. survey must be conducted to identify any vector problems and implement mitigation measures.

PRIOR TO RECORDATION THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

- The owner shall provide a reliable and assured water supply **17. adequate in quantity and quality to meet health and safety code requirements and in compliance with the County's recently approved Assured Water Implementation Plan. Big Bear Department of Water and Power requirements are shown as Conditions of Approval (No.'s 26-28 & 82). The
- A Composite Development Plan shall be required to show the *18. following items:
 - Building setback lines shall be as shown on the Final A. Development Plan and on the Composite Development Plan.
 - в. Setbacks from drainage areas.
 - Structures shall not extend into Lake Management easement, unless otherwise guitclaimed, or a valid C. encroachment permit shall be obtained.
- A statement shall be added to the Composite Development D. Plan that in the event the applicant (or its successor) staff 4-28-92 determines to operate the project for timeshare use, then the following requirements apply:
 - The applicant (or its successor) shall be required 1. to provide documentation satisfactory to the County that proper arrangements have been made to insure all buildings and common area landscaping and improvements will be maintained in a manner acceptable to the County and consistent with other conditions of project approval.
 - The project shall be subject to any regulations 2. governing timeshare uses which may be enacted on a countywide or areawide basis, and the applicant (or its successor) shall comply with all such regulation.

* NON-STANDARD CONDITION(S) ****ENVIRONMENTAL MITIGATIVE MEASURE(S)**

Revised by

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- Easements of record not shown on the tentative map shall be relinquished or relocated. Lots affected by proposed *19. easements or easements of record, which cannot be relinquished or relocated, shall be redesigned or a valid encroachment permit shall be obtained.
- The applicants shall abate the existing structural encroachment from the parcel to the west or obtain a Lot *20. Line Adjustment prior to Final Map recordation.
 - All access drives shall be a minimum of twenty-four (24) 21. feet wide to facilitate two-way traffic, except as shown on the approved Development Plan Map.

**22. Revised by PC 11-21-91

- The following changes and corrections shall be incorporated into the final CC&R's which are part of the subdivision tract:
 - The boat marina shall not be used from December 1 to λ. April 1 to protect wintering bald eagles.
 - No individual owners or lessees of individual condominiums shall have the authority to initiate any в. changes to any structure on the property or to make any changes involving the landscape that will adversely affect the bald eagle, either directly or indirectly. Any minor modifications proposed that are determined not to affect the bald eagle must still have the prior express written approval from the Board of Directors, and such changes shall conform to the architectural provisions of this Declaration.
 - A Homeowners Association shall assume responsibility C. for maintaining the on-site water features.
 - The boating marina shall be maintained by the D. owner/developer in accordance with the Big Bear Municipal Water District permits.
 - The shoreline access/pedestrian easement shall be E. referenced and retained as accessible to accomplish its intended purpose.
- A copy of the CC&R's shall be submitted for Planning 23. Director final review and approval. The CC&R's shall also include other applicable items specified in these conditions of approval.
- 24. A Homeowners Association shall be established for the purpose of carrying out the intent of the Planned Development Application.

25. The Planned Development report text shall be revised by addendum to incorporate any additional corrections and omissions required by Planning staff or the Planning Commission.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 866-5050

**26. Revised by PC 11-21-91

- 6. The developer must comply with the requirements of County's by Assured Water Program by participating in the DWP's approved -91 program. The current cost for the additional 50% Assured Water is \$284.00 per unit. For this project, the ratio of program components shall be 1/2 retrofit and 1/2 wastewater recharge.
- **27. The developer must provide (at his cost and at DWP specifications) for 100% of the project's estimated water demand at maximum day demand usage by providing a new operational well to the DWP (or a portion of a new well's capacity) and the necessary piping to connect to the DWP system.
- **28. The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

- 29. Two points of ingress and egress will be required to each phase.
- **30. The developer shall participate with their fair share in mitigating the regional traffic problems in the Big Bear area, including a contribution to signals at the Stanfield Cutoff/State Highway 18 intersection. In the event that the proposed "Transportation Fee Program for Big Bear" is adopted prior to the issuance of building permits, the developer shall participate in this program in lieu of the above.
 - 31. Trees, irrigation systems and landscaping shall not be installed on public right-of-way and shall be as specified in County Transportation/Flood Control Department standards for tree planting.
 - 32. Construction of private roads and private road related drainage improvements shall be inspected and certified by the engineer.

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 33. Existing utility poles shall be shown on the improvement plans and relocated as necessary without cost to the County.
- 34. Slope rights shall be dedicated on the final tract map where necessary.
- **35. Vehicular access rights shall be dedicated on State Highway 38.
 - *36. An approved type wall/barrier shall be required along the rear of any double frontage lots and shall be constructed outside of the public road right-of-way.
- **37. Dedication shall be granted on North Shore Drive, S.H. #38 as necessary to concur with the Master Plan of Highways. This dedication is to be coordinated with the State Department of Transportation (Cal Trans, District 08).
- **38. Any change to this project (as currently proposed) which may be necessitated by the State Department of Transportation recommendations, must be incorporated prior to recordation to the Final Map.
 - 39. The applicant shall present evidence to the Land Development Engineering Division that he has tried to obtain a letter of non-interference from any utility company that may have rights of easement within the property boundaries.
 - *40. Private roads to be constructed within this development shall be to Planned Development (PD) road standards per County Transportation/Flood Control Department policies and requirements or as approved, and shall not be entered into the County Maintained Road System.
 - 41. All required road and drainage improvements shall be bonded in accordance with the County Development Code unless constructed and approved prior to recordation of Final Map.
 - 42. Turnarounds at dead end streets shall be in accordance with the requirements of the County Transportation/Flood Control Department and the Forestry and Fire Warden Department.
- **43. On State Highway #38 (North Shore Drive) at the project entrance, a left turn lane shall be required for both east bound and west bound traffic (opposite Canyon Road).
 - 44. Street type entrance(s) shall be provided to the entrance(s) of this development at North Shore Drive.

- 45. Emergency access roads shall be designed to provide legal vehicular access to the County Maintained Road System to standards acceptable to the County Transportation/Flood Control Department and Forestry and Fire Warden Department. This will entail design (and construction) of channel crossings for 100-year Q with bulking. These shall be shown on the Final Map and confirmation of maintenance arrangements satisfactory to the County shall be provided before approval of the Final Map.
- 46. Trees, irrigation systems, landscaping required to be installed on public right-of-way within this tract area shall be maintained by other than the County Transportation/Flood Control Department, and shall be as specified in County Transportation/Flood Control standards for tree planting. Maintenance procedures acceptable to Transportation/Flood Control Department shall be instituted prior to recordation.

LAND DEVELOPMENT ENGINEERING/DRAINAGE SECTION (714) 387-4040

- 47. Adequate San Bernardino County Drainage Easements (minimum 15 feet wide) shall be provided over the natural drainage courses and/or drainage facilities. The easements shall be designed to contain the 100-year frequency storm flow plus bulking and freeboard per County Standard Criteria.
- 48. Minimum finish floor elevations shall be 6747 feet.
- **49. Grading plans shall be submitted to Land Development Engineering/Drainage Section, for review.
 - 50. Adequate rolls shall be provided on the entrance roads to the site at North Shore Drive to minimize the possibility of street flow entering the site.
 - 51. In addition to the Drainage Requirements stated herein, other on-site or off-site improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this department.
- **52. All necessary permits for taking material from the lake shall be obtained prior to recordation. This shall include a shore line alteration permit from Big Bear Municipal Water District.
- **53. Proof that the lake owners have approved the proposed filling shall be supplied to this department.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4246

Written clearance shall be obtained from the designated California Regional Water Quality Control Board (listed 54. below) and a copy forwarded to DEHS for storm water drainage/runoff from landscaping.

Santa Ana Region, 6809 Indiana Avenue, Riverside, CA 92506, 714/782-4130.

- The location of trash enclosures shall be indicated on the 55. Development Plan for proper handling and collection of solid wastes generated by the development.
- Sewage disposal shall be by connection to County Service 56. Area 53-B. The applicant shall submit evidence of installation and/or service to DEHS for approval and submit evidence of service to Building and Safety at the time of construction plan submittal.
- The water purveyor shall be City of Big Bear Department of **57. Water and Power. Submit evidence of installation and/or service to DEHS for approval.
- Source of water shall meet water quality and quantity **58. standards. Test results which shown source meets water quality and quantity standards shall be submitted to DEHS.
- The operation of a public water supply system shall be subject to the condition that entity or association acceptable **59. to DEHS assume responsibility for maintenance and operation.
- The following are the steps that must be completed to meet the **60. requirements for installation and/or finance of the on-site/off-site water system and/or sewer system:
 - Where the system is to be installed prior to recordation: **A**.
 - The water system, fire hydrants, and/or sewer system shall be installed in accordance with requirements of the State Health and Safety Code, and in accordance with plans approved by the water and/or sewering utility and the governing fire protection authority. The plans shall be reviewed by a Civil Engineer, registered in the State of California, and contain required certificates and approval signatures. It is the developer's responsibility to submit to the LAND DEVELOPMENT ENGINEERING DIVISION a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.

* NON-STANDARD CONDITION(S)

**ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- B. Where a bond is to be posted in lieu of installation of the improvement:
 - 1. The domestic water plan and/or sewer plan which meets the requirements of the State Health and Safety Code shall be reviewed by a Civil Engineer, registered in the State of California, and approved by the water or sewering utility and the governing fire protection authority. The plans shall contain the required certificates and approval signatures. A copy of the approved plan shall be submitted to the <u>LAND DEVELOPMENT ENGINEERING</u> DIVISION.
 - 2. Said engineer shall determine the amount of bond necessary to install the improvements.
 - a. This amount plus ten percent shall be posted with the County of San Bernardino. A statement signed by the engineer stating that the amount of bond recommended is adequate to cover the cost of installation of the improvement shall be included with the estimate and submitted to the <u>LAND DEVELOPMENT</u> ENGINEERING DIVISION.
 - b. Or, in cases where the water agency or sewering agency is a governmental subdivision, the bond in the amount of 110 percent of the cost of installation of the improvement may be placed with the agency. A signed statement from that agency stating that financial arrangements have been completed shall be submitted to the <u>LAND DEVELOPMENT ENGINEERING</u> DIVISION.
 - 3. Prior to release of the bond for the improvement, the utility of jurisdiction shall submit a signed statement confirming that the improvement has been installed and meets the requirements of all appropriate State and County laws pertaining to such improvement. It is the developer's responsibility that such signed statement is filed with the LAND DEVELOPMENT ENGINEERING DIVISION.
- **61. Provide a letter from the Sanitary Engineering Section, State Health Department, stating they have reviewed the water system and concur with Big Bear Water and Power findings that additional supplies of adequate quality and

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

quantity of water are available to meet Health and Safety Code requirements.

An acoustical study shall be performed to assess noise **62. levels at the development and shall be reviewed and approved by the Department of Environmental Health Services. Detailed noise analysis and precise mitigation measures shall be submitted to the Department of Environmental Health Services for review and approval prior to recordation. Specifically addressing, 1) North Shore Drive, 2) marina, 3) tennis courts, 4) pool/health club, 5) tram/bus loading area, 6) pond pumps/motors, an 7) any other noise generating sources. Prior to the issuance of building permits, a report stating that the recommended mitigation measures have been implemented shall be submitted to the Department of Environmental Health Services and the building plans shall be so certified by the A fee will be charged for review of acoustical engineer. the acoustical study and payment will be required prior to issuance of approval/denial letter.

BUILDING & SAFETY DEPARTMENT (714) 387-4246

- A preliminary soils report shall be filed with and approved **63. by the Building Official prior to recordation of the final map.
 - For projects where grading is to be done, grading plans are 64. to be submitted to and approved by the Building and Safety Department prior to recordation.
 - 65. Submit plans and obtain building permits for required walls.

FORESTRY AND FIRE WARDEN (714) 387-4213

- Construction plans shall comply with FIRE REVIEW AREA 2 66. requirements.
- Private road maintenance, including but not limited to grading and snow removal, shall be provided for prior to recordation or approval. Written documentation shall be 67. submitted to the fire agency having jurisdiction. Private fire access roads shall provide an all weather surface with minimum paving width of twenty (20) feet.

PRIOR TO GRADING PERMITS THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

Prior to any tree removal, applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit(s) **68.

* NON-STANDARD CONDITION(S)

**ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

> from the California Department of Forestry and a 1601/1603 permit from the California Department' of Fish and Game. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

69. An encroachment permit, or authorized clearance, shall be obtained from the County Transportation/Flood Control Department prior to issuance of a grading permit by the Building and Safety Department.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 70. Plague has been shown to be endemic to the San Bernardino Mountain area. The disease is carried by fleas on wild rodents, including ground squirrels. It is known that ground squirrels are currently in the San Bernardino mountain area; therefore, for land development, the following control measures shall be completed prior to grading:
 - A. A survey of the subject area by a qualified vector biologist or biologist for the presence of actoparasites and ground squirrel numbers.
 - B. If it is determined by the survey that the number of ground squirrels is high, then prior to grading, a control program to include ectoparasite suppression immediately followed by a rodent suppression program would be performed.
- 71. Any abandoned wells on the property or similar structures that might result in contamination of underground waters shall be destroyed in a manner approved by DEHS prior to grading.

BUILDING AND SAFETY DEPARTMENT (714) 387-4246

72. An erosion and sediment control plan and permit, shall be submitted to and approved by the Building Official prior to any land disturbance.

PRIOR TO BUILDING PERMITS THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 73. Easements of record not shown on the tentative map shall be relinquished or relocated. Lots affected by proposed easements or easements of record, which cannot be relinquished or relocated, shall be redesigned or an encroachment permit shall be acquired.
- 74. A final grading plan shall be required. Said grading plan shall be submitted to the Building and Safety Department for review and approval. All on-site cut and fill slopes shall:
 - A. Be limited to a maximum slope ratio of 2 to 1 and a maximum vertical height of thirty (30) feet. Setbacks from top and bottom of slopes shall be a minimum of one-half the slope height from top and bottom of slopes shall be a minimum of one-half the slope height.
 - B. Be contour-graded to blend with existing natural contours.
 - C. Be a part of the downhill lot when within or between individual lots.
- 75. A copy of the final grading plan, approved by Building and Safety, shall be submitted to the Planning Department when graded cut slopes exceed five (5) feet in height and fill slopes exceed three (3) feet in height.
- 76. Four (4) copies of a landscape and irrigation plan for the planting (indigenous landscaping shall be utilized to minimize water consumption) and permanent irrigation system for the development, including setback areas and parkways, shall be submitted to the Planning Office prior to issuance of building permits for review and approval, to include the following:
 - A. Voltage boxes, mailboxes, trash enclosures, maintenance structures, backflow devices, automatic controls, air conditioning/heating units, etc., to e shown on the plan and screened with landscaping and/or decorative fencing/trim.
 - B. A permanent automatically-controlled irrigation system.
 - C. Landscaping shall consist of drought tolerant, fireresistant vegetation capable of surviving the soil and climatic conditions natives of the mountain environment.
 - **D. As part of the required Landscape Plan, the applicant/owner shall retain a qualified Registered Professional Forester (RPF), acceptable to the County,

* NON-STANDARD CONDITION(S)

**ENVIRONMENTAL MITIGATIVE MEASURE(S)

> to prepare a forest conservation plan and insect infestation prevention program to include guidelines for tree preservation both during and after construction.

- E. Trees, shrubs and ground covers in the following quantities shall be required as follows:
 - **1. All tree removal and site revegetation shall be in accordance with the Forester's report as submitted with the development plan. The removal and replanting shall be supervised by an individual to be approved by the San Bernardino County Planning staff.
 - 2. Shrubs (50% 1 gallon/50% 5 gallon), minimum average of one (1) per each one hundred (100) square foot of total landscaped area.
 - 3. Ground cover from flats at a minimum spacing of eight (8) inches on center.
 - **4. Consult the Mountain Planning Team (714/387-4155) for recommended species suitable for planting in the mountain area.
- F. Parking areas screened with landscaping where practical.
- G. The units shall be screened or partially masked from the viewshed on the lake and from the south shore, by fastgrowing pines or other conifers that accomplish the intended purpose.
- H. Landscape detail of trash enclosures on landscape plan.
- I. The sign lettering copy, location and elevations for any on-site identification sign shall be shown on the plan.
- J. The method of screening of outdoor storage shall be specified.
- 77. Four (4) copies of an irrigation plan shall be submitted for Planning Department review and approval when slope planting is required. Slopes required to be planted shall be provided with an approved system of irrigation, designed to cover all portions of the slope. A functional test of the system may be required. The maintenance of graded slopes and landscaped areas shall be the responsibility of the developer/property owner until the transfer to individual ownership or until the

> maintenance is officially assumed by a County Service Area. All irrigation systems, where required, shall be designed on an individual lot basis unless commonly maintained in an approved manner.

- *78. A maintenance plan for the required landscaping and the complex water features proposed by the developer shall be approved by the Planning Department. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period. The maintenance of graded slopes, landscaped areas and water features shall be the responsibility of the developer until the transfer to the Homeowners Association.
 - 79. Commitment shall be obtained in writing from the sewering agency indicating that the agency has the capacity to furnish said service to the subject property. A copy of the commitment shall be provided to the Planning Department.
 - 80. Applicant shall submit the approved site plan (brownline or original) with an application for a Land Use Compliance Review, prior to the issuance of building permits.
- **81. Prior to issuance of building permits, the developer shall provide certification from the appropriate school district as required by California Government Code Section 53080(b) that any fee charge, dedication or other form of requirement levied by the governing board of the district pursuant to Government Code Section 53080(a) has been satisfied.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 833-5050

**82. The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project. The DWP will attempt to assist the developer in investigating financing alternatives for capital improvements such as Mello-Roos reimbursement agreements, etc.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

83. Roads within this development shall not be entered into the County Maintained Road System.

- *84. Road sections bordering the tract shall be designed and constructed to Road Standards of the State Department of Transportation, and to the policies and requirements of the County Transportation/Flood Control Department and in accordance with the Master Plan of Highways.
- 85. An encroachment permit, or authorized clearance, shall be obtained from the State Department of Transportation prior to issuance of a grading permit by the Building and Safety Department.
- **86. An encroachment permit shall be required from the State Department of Transportation prior to any construction within their right-of-way.
 - 87. Road improvement plans for State Highway 38 shall be submitted to the State Department of Transportation by a register civil engineer. Left turn lane to be installed per traffic report and Caltrans requirements.
 - 88. Any grading within the road right-of-way prior to the signing of the improvement plans shall be accomplished under the direction of a Soil Testing Engineer. Compaction tests of embankment construction, trench backfill and all subgrades shall be performed at no cost to San Bernardino County and a written report shall be submitted to the Contracts Division of the Transportation/Flood Control Department, prior to any placement of base materials and/or paving.
 - 89. Final Plans and profiles shall indicate the location of any existing utility facility which would affect construction.
 - 90. A thorough evaluation of the structural road section, to include parkway improvements, from a qualified materials engineer, shall be submitted to the Transportation/Flood Control Department.
 - 91. Right-of-way and improvements (including offsite) to transition traffic and drainage flows from proposed to existing, shall be required as necessary.

LAND DEVELOPMENT ENGINEERING/DRAINAGE SECTION (714) 387-4040

92. Adequate provisions shall be made to intercept and conduct the offsite tributary drainage flow around or through the site in a manner which will not adversely affect adjacent or downstream properties.

- 93. Permanent channel improvements shall be required for the natural drainage course traversing the southwest portion of the site. The channel shall be designed to contain 100year storm flow plus bulking and freeboard, per County standard criteria.
- 94. Adequate provisions shall be made to intercept and conduct upstream overflow from the natural drainage course around the site into Big Bear Lake in a manner which will not adversely affect adjacent properties.

FORESTRY AND FIRE WARDEN DEPARTMENT (714) 387-4213

- 95. All new construction shall comply with the existing Uniform Fire Code Requirements and all applicable statutes, codes, ordinances, or standards of the Fire Department.
- 96. Prior to any construction occurring, all flammable vegetation shall be removed from each building site a minimum distance of thirty (30) feet from any flammable building material, including a finished structure.
- 97. Prior to Building permits being issued approved fire hydrants and fire hydrant pavement markers shall be installed. Fire hydrants shall be 6" diameter with a minimum one 4" and one 2 1/2" connection. The hydrant and fire hydrant markers shall be approved by Fire Department. All fire hydrant spacing shall be 300 feet with the exception of single family residential which may be increased to 600 feet maximum.
- 98. Prior to issuance of building permit a fuel modification zone in compliance with county standards is required.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES

- 99. Plans for swimming pool(s) and restreem facilities shall be approved by DEHS prior to construction.
- 100. Plans for refuse storage areas and collection which meet guidelines of DEHS shall be submitted prior to construction.
- 101. Verification of application for sign registration and plot plan approval by DEHS must be submitted prior to the issuance of a building permit for the installation, wiring, remodeling or reconstruction of any freestanding sign or portion thereof which has an area of eighteen (18) square feet or greater and/or which has a height of six (6) feet or greater.

PRIOR TO OCCUPANCY THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

102. No sign shall interfere with a driver's or pedestrian's view of public rights-of-way or in any other manner impair public safety, or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.

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- *102a. The amenities shown as part of Lots A and B shall be installed with the first phase of construction or bonding guaranteeing completion of subject amenities provided prior to occupancy of Phase II.
- 103. Off-street parking, loading and access drives shall be surfaced with a minimum of two (2) inches of road-mixed surfacing, County Department of Transportation and Flood Control Specification No. 38. Landscaping shall be provided for the parking area(s).
- 104. One (1) permanently maintained loading space, measuring not less than ten (10) feet in width and twenty (20) feet in length, shall be provided.
- *105. A minimum of 264 parking spaces shall be provided. One hundred thirty-three (133) of these required spaces shall be in enclosed garages. The space sizes shall be a combination of full size spaces (9' X 19') and compact spaces (7 1/2' X 15') per the Final Development Plan. A minimum of two (2) handicapped spaces to be fourteen (14) by nineteen (19) in size, and outlined to show a nine (9) foot parking area, and a five (5) foot loading/unloading area. The arrangement and design of this space shall be subject to Chapter 2-71 of Title 24 of the California and shall be identified as required in Section 22511.8 of the California Vehicle Code.
- *106. Handicapped parking spaces shall be located as near as practical to the primary entrance of the clubhouse or shall be located to provide for safety and optimum proximity to the entrance(s) of the building.
 - 107. If wheel stops are installed in parking space, the distance from the end of the space to the rear of the wheel stop shall not exceed two (2) feet.
- 108. Individual parking stalls shall be clearly striped and permanently maintained with double or hairpin lines on the surface of the parking facility, with the two (2) lines being located an equal nine (9) inches on either side of the

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stall sidelines. Arrows shall be painted on paving to indicate direction of traffic flows.

- 109. "NO PARKING" shall be clearly designated in areas of bus parking and turnaround and shall be posted at fire lane turnarounds. Fire turnaround areas shall be striped for "FIRE LANE".
- 110. Minimum parking lot aisle width shall be twenty-four (24) feet.
- *111. All access drives shall be a minimum of twenty-four (24) feet wide to facilitate two-way traffic except as shown on the approved Development Plan Map.
- *112. All lights used to illuminate the site shall be hooded and designed so as to reflect away from adjoining properties, public thoroughfares and Big Bear Lake.
 - 113. All outdoor storage and refuse shall be screened from public view.
 - 114. All roof top mechanical equipment is to be screened from ground vistas.
- **115. All woodburning fireplaces in new construction shall be equipped with catalytic reduction equipment.
 - 116. Utility lines shall be placed underground in accordance with the requirements of County Ordinance.
 - 117. All landscaping and irrigation shown on the approved landscape and irrigation plans and all required walls shall be completed.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 866-5050

##118. The developer must pay the appropriate connection fee pursuant to the DWP regulations at the time water service is provided. The connection fees will be calculated providing a credit for the costs the developer has spent constructing the other water facilities to serve the tract. The connection fee is intended to be related to the impact the tract has on the existing Fawnskin Water System.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 119. Plans for food establishments shall be reviewed and approved by DEHS. For information , call DEHS/Plan Check at (714) . 387-4608.
- * NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

- 120. Plans for swimming pool(s) and restroom facilities shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at (619) 243-8141.
- 121. Plans for underground tanks shall be reviewed and approved by DEHS. For information, call DEHS/Hazardous Materials Field Services at (714) 387-3080.
- **122. The applicant shall install a standard grease trap to intercept surface runoff carrying petroleum products. It shall be connected to a clarifier/interceptor as part of a separate subsurface disposal system built to U.P.C. standards. Separate plans shall be submitted to the Building and Safety Department for approval.
 - 123. Prior to occupancy, a "Business Plan" as defined in Chapter 6.95 of the Health and Safety Code, detailing the plan for emergency release or threatened release of hazardous materials and wastes, may/shall be required. Obtain clearance from DEHS/Hazardous Materials Section. For information, call Emergency Response/Enforcement at (714) 387-3044.
 - 124. If necessary, the applicant shall obtain a "Permit to Construct" and/or any appropriate permits from the local Air Pollution Control District (listed below). A copy of any written clearance shall be provided to DEHS.

Air Pollution Control District (Desert Basin), 15428 Civic Drive, Victorville, CA 92392, (619) 243-8200.

125. Prior to any occupancy of the resort, a Certificate of Final Completion shall be issued by the Building & Safety Department, after which an application shall be submitted to DEHS for a Certificate of Occupancy.

FORESTRY AND FIRE WARDEN (714) 387-4213

126. The street address shall be posted with a minimum of four (4) inch numbers, visible from the street and during the hours of darkness the numbers shall be low voltage internally electrically illuminated. Posted numbers shall contrast with their background and be legible from the street in accordance with the Uniform Fire Code. Where building setbacks exceed 100 feet from the roadway, additional contrasting four (4) inch numbers shall be displayed at the property access entrance.

Page 21 of 21

SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

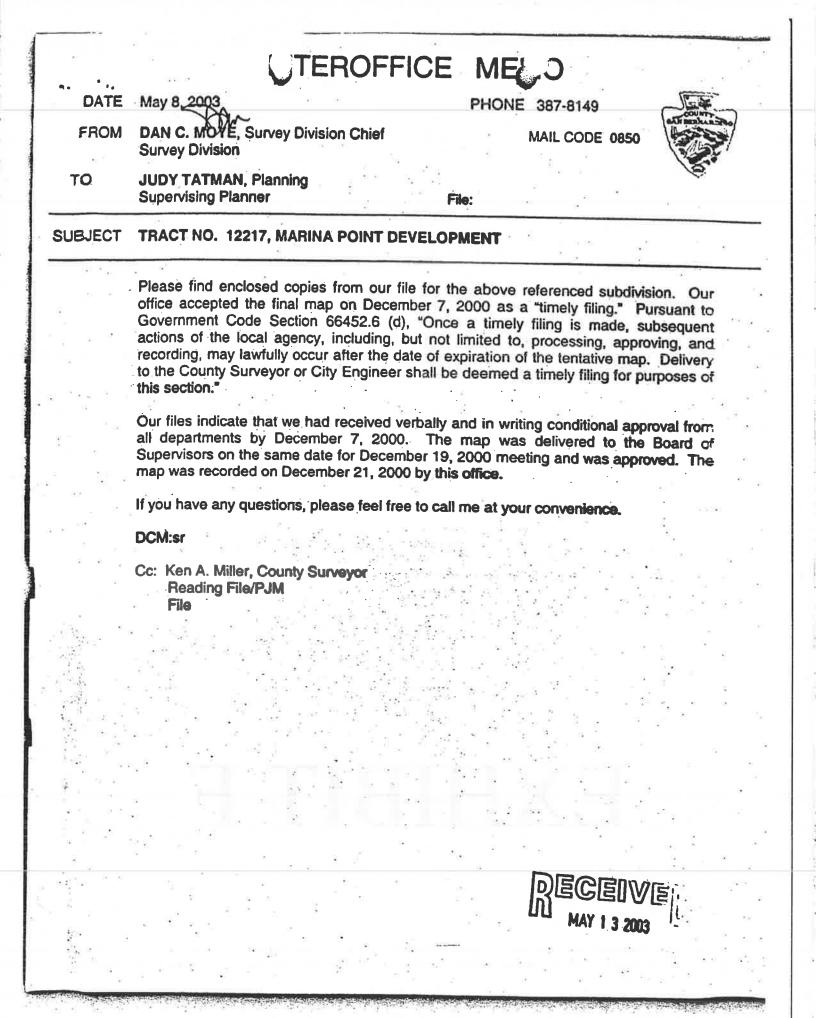
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- 127. Prior to final inspection or occupancy the development and each phase thereof shall have two (2) points of vehicular access for fire and other emergency equipment, and for routes of escape which will safely handle evacuations as required in the development code.
- 128. Prior to final inspection or occupancy, private roadways which exceed 150 feet in length shall be approved by the Fire Department having jurisdiction, and shall be extended to within 150 feet of, and shall give reasonable access to all portions of the exterior walls of the first story of any building. An access road shall be provided within 50 feet of all buildings if the natural grade between the access road and the building is in excess of 30 percent. Where the access roadway cannot be provided, an approved fire protection system or systems shall be provided, as required and approved by the Fire Department.
- 129. Prior to final inspection or occupancy, this development shall comply with Fire Safety Overlay conditions as adopted in County Ordinance Number 3341. The development is located in Fire Review Area 2 (FR-2).

BUILDING AND SAFETY DEPARTMENT (387-4246

- **130. The applicant shall remove any paving, asphalt and construction debris from the lakefront area in front of the site.
- **131. The applicant shall install state-of-the-art water conservation devices/fixtures in all units.
 - *132. A grading quality control engineer is required for this project.

EXHIBIT F



582 of 947

EXHIBIT G

P201400106 REVISIONS **APPLICATION** Complete all sections of this form. If you believe that an item does not apply to your project, mark it "N/A." Do not leave any blank spaces. Section 1 - APPLICATION INFORMATION: Applicant's Name: 12V OFOUTTS Address: PO POX 677 DEL MAR, LA Zip 92014 City 4112 FAX NO. E-Mail E-Mail EVE OFONTEDEUFTYE 619 41 Phone AS AFFLICANT Owner's Name: SAME Address: City _____ Zip _____ FAX No. E-Mail Phone DE HOLKER (10 NOXA GROUP Representative's Name: 220 POSECICADS OF # 329 2410 DIEGO, CB. Zip 92106 Address: City 619.507.100 619.297-BOLLE-Mail JOHCINOALING. GOY Phone FAX No. Section 2 - REQUEST:

 This request is for a revision to:
 INIAP

 APN:
 0304 - 082-15, 18, 19, 9, 20

 File/Index #:
 PD 99-0054/M331-9N KN28 SUB. CONFORMANCE

 EVIEW EATED
 -22.14

 This request is for a revision to: 🔲 Map Description of Proposed Revisions: MINOS STOE PLAN REVISION This change is initiated by: Applicant, Engineer or Representative County The applicant agrees to defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding attacking or seeking to set aside, void or annul the approval of all or part of the matters applied for, or any other claim, action or proceeding relating to or arising out of such approval. This obligation includes the obligation to reimburse the County, its agents, officers and employees for any court costs or attorney fees which the County, its agents, officers or employees are required by a court to pay as a result of such a claim, action or proceeding. The County agrees to notify the applicant of any such claim, action or proceeding promptly after the County becomes aware of it. The County agrees to cooperate in the defense provided by the applicant. The County may, at its own expense, participate in the defense of the claim, action or proceeding, but such participation will not relieve the applicant of the applicant's defense and indemnification obligations. To be completed by County Staff: Filing Date: _____ Project No.: _____ JCS Project No.: _____ San Bernardino County 1 **Revision Minor Modifications**

Sectio	on 3 – SIGNATURE:							
I certify	y under penalty of perjury that I am the (check o	ne)						
Ø	Legal Owner (all individuals must sign as their names appear on the deed to the land), OR							
	Owner's legal Agent, and that the foregoing is true and correct. (Please submit an authorization letter from legal owners).							
to collect	oplicant/owner/developer agrees to pay all a ation. Your project will not be approved, fir lect any outstanding funds are unsuccess tions. County will make every effort to so g a project into deficit.	aled, or vested until all charges iful, your project will be close	s are paid in full. If attempts					
(Print)	APPLICANT OR LEGAL AGENT)	Signature	7 <u>3.</u> [1,] 4 Date					
	TRATION NO. D.E., OR LICENSED LAND SURVEYOR)	A						
(Print)	OWNER(S) OF RECORD)*	Signature	5 <u>3. 11. 14</u> Date					
(Print)	(OWNER(S) OF RECORD)*	Signature	Date					

*If property is owned by corporation, partnership or other group, signee shall indicate corporate position or title and submit substantiating documentation (e.g. incorporation certificate).

N A 9 r o v p 4990 N Harbur Dave San Diego. CA 99106 Tet: 619-297-8066 fax 619-297-8066

March 18, 2014

Mr. Chris Warrick Senior Planner County of San Bernardino 385 N. Arrowhead Avenue, First Floor San Bernardino, CA 92415

Re: Marina Point Minor Site Plan Revision Application Narrative Previous Actions: Substantial Conformance Review (1-22-14) PD 89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 Revised Conditions of Approval (4-28-92)

Mr. Warrick

Per our recent meeting and subsequent conversations, the following is a narrative of the proposed "Minor Site Plan Revision" that has been incorporated to improve the functionality and desirability of the development of the subject property into a high-quality destination resort community.

Also attached are 15 copies of the following plans and documents. The Revised Site Development Plan contains a detailed comparison of the revisions to the approved plan.

- 1. Revised Site Development Plan
- 2. Grading Plan
- 3. Phasing Plan
- 4. Lot Line Exhibit
- 5. Grant Deed

Density

The current Site Development Plan ('SDP") is comprised of 133 condominium units in 19 buildings along with a commercial clubhouse and marina facility. Approval of the "Minor Site Plan Revision" would reduce the number of condominiums to 110 units in 11 buildings, and integrates 10 site condominium units. The total of 120 units represents a 10% reduction of density.

Roadways

The roadway and parking spaces are the same configuration as the current site plan other than some minor adjustments to preserve and enhance the existing pine trees. The main entry road as an example is re-designed to split into single lane roads in places to create tree islands. Controlled access gates are incorporated for the privacy and protection of residents. Landscape fingers and exterior walkways and stairs to the condominium units are also configured to preserve trees.

Parking

Each Condominium Unit has one enclosed parking space per Unit and one full size open Guest Space (2 spaces per unit total). This represents an increase from the 1.85 spaces per unit originally approved and is the same as the January 2014 "Substantial Conformance Site Plan".

Condominium Buildings

The shape of the condominium buildings is essentially unchanged. Each building has 10 single-car garages instead of 7 garages, and has a slightly larger footprint. The lot coverage over the entire development is actually reduced to from 3.30 acres to 3.26 acres to provide for a more spacious site.

Site Condominium Units

The 10 site condominium units range in size from approximately 12,000 to 14,000 square feet with buildable footprints of approximately 4,500 square feet. Mandatory setbacks include 30 feet between units to preserve view of the lakes and fire protection. Landscape guidelines are designed to further protect lake views.

Custom homes that are built on these sites that are more than single story will be designed wherein the additional story and roof will be limited in size and shall not exceed 75% of the ground floor to achieve appropriate bulk and scale. Each building will provide a minimum of 2 enclosed parking spaces and one guest parking space on the road.

Club House and Marina

The club house and marina are reconfigured to provide better functionality and aesthetic appeal. The revision improves views to the lake and a large open plaza will contain a lookout, pool and spa, fire pit(s) and seating areas. The pool, as proposed, will extend partially indoors and be heated to allow comfortable all year use. The requisite parking is unchanged, but is in closer proximity to the facilities.

Recreational Amenities

The community's recreational amenities have been slightly revised and expanded to include:

- Children play areas
- Gazebo with water feature and picnic areas
- Pitch and putting greens
- Bocce ball courts
- Horseshoe areas
- Reflecting ponds that convert to an ice skating ring.
- Whirlpool spas throughout the site
- A gate house for special events.

Environmental Impacts

The reduced nature of the revised project effectively reduces all environmental impacts identified by the adopted and certified EIR.

We would appreciate review of this Minor Site Plan Revision Application at your earliest convenience. As discussed, our timeline for the project is such that we need to proceed as quickly as possible.

Please do not hesitate to e-mail me a <u>jch@noaainc.com</u>, or call me at 619-507-1001, if you have any questions or need any additional information.

Thank you, NOAA Group

Joe Holasek Principal



SAN BERNARDINO COUNTY LAND USE SERVICES PLANNING PROJECT NOTICE 385 North Arrowhead Avenue, First Floor, San Bernardino, CA 92415-0182

Referral Date: March 26, 2014

ATTENTION PROPERTY OWNERS

Page 1 of 2

The development proposal listed below has been filed with County Planning. Please comment in the space below. You may attach additional pages as necessary.

Your comments must be received by Planning no later than April 09, 2014 to be sure that they are included in the final project action. However, comments will be taken up to the time of the project decision. Please refer to this project by the Applicant's name and the Assessor Parcel Number indicated below. If you have no comment, a reply is not necessary. If you have any questions regarding this proposal, please contact Planner, CHRIS WARRICK at (909) 387-4112, by email at Chris.Warrick@lus.sbcounty.gov, or mail your comments to the address above. If you wish, you may also FAX your comments to (909) 387-3223.

0304-082-15	(See map below for more information)
P201400106/RMC	* Multiple Parcel Associations *
IRV OKOVITA	
BV/SD-Res	
FAWNSKIN/3RD/ SUPERVISORIAL DIST	RICT
MARINA RD, BOTH SIDES; NORTHSOR	E RD, SOUTH SIDE
STRUCTURES ALONG THE BIG BEAR L	REVISE THE MARINA POINT DEVELOPMENT PLAN TO M STRUCTURES WITH 10 SINGLE-UNIT CONDOMINIUM AKE SHORE, REDUCING THE OVERALL DENSITY FROM
	P201400106/RMC IRV OKOVITA BV/SD-Res FAWNSKIN/3RD/ SUPERVISORIAL DIST MARINA RD, BOTH SIDES; NORTHSORI REVISION TO APPROVED ACTION TO F REPLACE 7 MULTI-UNIT CONDOMINIU

If you want to be notified of the project decision, please print your name clearly and legibly on this form and mail it to the address above along with a self-addressed, stamped envelope. All decisions are subject to an appeal period of ten (10) calendar days after an action is taken.

Comments (If you need additional space, please attach additional pages):



SIGNATURE

DATE

AGENCY

IF THIS DECISION IS CHALLENGED IN COURT, SUCH CHALLENGE MAY BE LIMITED TO ONLY THOSE ISSUES RAISED IN WRITING AND DELIVERED TO LAND USE SERVICES REFORE THE PROJECT DECISION IS MADE 589 of 947

EXHIBIT H

Permit Number: B201004992 **GRADING /TRACT 12217 PERMIT COPY** Date Issued: 09/28/2011 **User Id: S2678** Region: 305 Index: 331-9N Status: ISSUED Use Code: 235 A Sub-Type: GRADING Job Site Address: 49103 NORTH SHORE DR FAW **Cross Street:** CANYON Parcel Number: 0304-082-12-0000 Parcel Map: **Parcel:** Tract: 12271 Blk: Lot: Sec: NW13 Twn: 2N Rng: 1W Applicant: SITE DESIGN ASSOCIATES/ KENNETH Phone: 619 442-8467 Address: 1016 BROADWAY, SUITE A EL CAJON CA 92021 **Owner: MARINA POINT DEVELOPMENT ASSOC Phone:** Address: 6007 E GRANT RD TUSCON AZ 85712 **Contractor:** License: Address: **Phone:** *****Minimum Setback Requirements **** C/L of Street **Distance in Feet** R/W Direction From P/L **From Easement** PER APPROVED PLOT Front: 0 Ν N 0 Rear: N Ν Side: 0 N Ν Side: 0 Ν N Side: 0 N N ****** ******** Lot Dimension: 3 ACRES + Land Use District: PD1.25; Geo Overlays: ; ; Planning Area: BV Hazard Overlays: ; ; ; Existing Use:VACANT Latitude: 34.233976 Longitude: -116.93895 ********** **Construction Information** **** Water Public: N Private: N Sewer Public: N Sewer Private: N Tank: 0 Depth: 0 SqFt: 0 Existing Occ: VACANT **Proposed Occ: Existing Bldgs:** 0 New Bldgs: 0 Sign SqFt: 0 **Construct Type:** Proposed SqFt: 0 Valuation: \$0.00 Sign Val: \$0.00

Permit Number: B201201902 REVISION TO GRADING PERMIT COPY

			-		
Cross Street:	CANYON	FAW			
		-	NW13 Twn:		
				Phone: 6 19-44	2-8467
				Phone:	
Contractor: Address:				License: Phone:	
*****	Cross Street: CANYON Parcel Number: 0304-082-15-0000 Parcel Map: Parcel Map: Tract: 12217 Blk: Lot: SITE DESIGN ASSOC - KENNETH DISCENZA Address: SITE DESIGN ASSOC - KENNETH DISCENZA 1016 BROADWAY SUTIE A EL CAJON, CA 9021 Owner: MARINA POINT DEVELOPMENT ASSOC 6007 E GRANT RD TUSCON AZ 85712 Contractor: License:				
Dista	nce in Feet C/L of Street	R/W	Direction	From P/L F	From Easement
Front: 0				N N	L
Rear: 0				N N	2
Side: 0	34			N N	4
Side: 0				N N	1
Side: 0				N N	1
******	******	* Land Use*****	*****	*************	* * * * * * * * * * * *
Lot Dimension:	3 ACRES Land Us	e District:	SD-RES;		
Planning Area:	BV Geo Over	lays: ; ;			
Hazard Overlays:	; FP1 ; FS1 ;				Existing
Use:MARINA POIN	ſ				
Latitude:					
******				******	* * * * * * * *
			Depth: 0		
0			-		
			0		
			valuation:	30.00	

Permit Number: B201207254

BOUNDRY WALL PERMIT COPY

Date Issued: Status:	10/02/2012 ISSUED	User Id: W0877 Use (Region Code: 2 30 H	: 305	Index: 331-9N Sub-Type: MISC
Job Site Address:		SHORE DR	FAW		
Cross Street:		AA			Dural International Internationa
	0304-082-12-00		Map: Sec: NW13	Twn: 2N	Parcel:
Tract:	12217 Bik:	Lot:	Sec: NW13	1 wn: 21	Rng: 1W
Applicant: Address:		DEVELOPMENT AS D TUSCON AZ 857		Pho	ne:
		DEVELOPMENT AS D TUSCON AZ 857		Pho	ne:
Contractor:				Licen	se:
Address:				Phor	le:
*********	********	•••••Ninimum Seti	ack Requirement	S	******
Dista	nce in Feet C/L o	f Street R/V	V Dire	ction From	P/L From Easement
Front: 0				N	N
Rear: 0				N	N
Side: 0				N	N
Side: 0				N	N
Side: 0				N	N
******	******	****************** Lan	d Use**********	*******	*****
Lot Dimension:	3 ACRES	Land Use Dist	rict: S	SD-RES;	
Planning Area:	BV	Geo Overlays:	;;		
Hazard Overlays:	FP1;FS1; ;			`	Existing
Use:MARINA POINT	Γ				
Latitude:			Longi	tude:	
********					****
Water Public:		Private: N		Public: N	
	N	Tank: 0		Depth: 0	
SqFt:	0		Propose	d Ocer	
•	MARINA POINT	New Bldgs: 0		n SqFt: 0	
Existing Bldgs: Construct Type: Sign Val:		oosed SqFt: 0	-	luation: \$0.00	

PERMIT NUMBER: B201402907 **DEMO UTILITY BLDG. PERMIT** Date Issued: 04/22/2014 User Id: H1749 Region: 305 Index No: 331-9N Status: ISSUED Use Code: 245 R Sub-Type: DEMO Job Site Address: 49103 **NORTH SHORE DR** FAW Cross Street: CANYON Unit: Parcel Number: 0304-082-16-0000 Parcel Map: Parcel: Tract: 12217 Blk: Lot: 2 Sec: 13 Twn: 2N Rng: 1W Applicant: BEAR VALLEY PAVING Phone: (909) 866-4746 Address: PO BOX1588 BIG BEAR LAKE, CA 92315 **Owner: MARINA POINT DEVELOPMENT ASSOCIATES Phone:** Address: PO BOX 577 DEL MAR CA 92038 Contractor: BEAR VALLEY PAVING License: 269261 Phone:(909) 866-4746 Address: PO BOX1588 BIG BEAR LAKE, CA 92315 Distance in Feet C/L of Street R/W Direction From P/L From Easement Front: 0 N N Rear: n N N Side: 0 N Ν Side: Ν Λ Ν Side: Δ N N *** Lot Dimension: . Land Use District:SD-RES ; Planning Area: BV Geo Overlays: ; ; Hazard Overlays: FS1; ; FP1; Existing Use:MARINA POINT Latitude:34.264152752 Longitude: -116.938070876 Number of Stories: 0 Number Units: 0 Number of Bedrooms: 0 Floor: **Exterior Walls: Ceiling: Interior Walls:** Fireplace Metal: 0 F/P Masonry: 0 Heating: Roof: Water Public: N Private: N Sewer Public: N No. of Tanks: 0 Tank: Depth: 0 SqFt: 0 0 Group: R-3 **Construction Type: No. Existing Bldgs:** 0 No. New Bldgs: 0 **Retain Wall:** 0 **Block Wall:** 0 TYPE SQFT FACTOR/PSF ADJ AREA TYPE SQFT FACTOR/PSF ADJ AREA 0

5.		DEMC	UTILITY F	PERMI BLDG. PERMI		B201402908
Date Issued: Status:	04/22/2014 ISSUED	User Id:	H1749 Use Code:	Region: 305 2 45 R		Index No: 331-9N Sub-Type: DEMO
Job Site Address: Cross Street:		ORTH SHORE	DR FA	AW		
Parcel Number:		9-0000	Parcel Map:			Parcel:
Tract:		Blk:	Lot: 5	Sec: 13 Ty	wn: 2N	Rng: 1W
		LEY PAVING 88 BIG BEAR L	AKE, CA 92315		Phon	e: (909) 866-4746
		OINT DEVELO 77 DEL MAR, (PMENT ASSOC CA 92038		Phon	e:
		LEY PAVING 88 big bear l	AKE, CA 92315	License: 269261 P	hone:(909) 860	6-4746
****	******	***************************************	Minimum Setback F	Requirements *******	*****	*****
Disto	nce in Feet	C/L of Street	R/W	Direction	From P/L	From Easement
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Lot Dimension:			Use District:SD-	RES;		
Planning Area:		Geo	Overlays: ; ;			
Hazard Overlays: Latitude:34.264938251	FS1;;;		Longitude:	Existing Use:MARIN -116.939028605	NA POINT	
*****	******	******	*** Construction In	formation **********	*****	****
Number of Stories:	0	Number Units:	0 Num	ber of Bedrooms: 0	Flo	o r:
Exterior Walls:		Ceilin	g:	Interior Walls:		
Fireplace Metal:	0	F/P Masonr		Heating:		Roof:
Water Public:	N	Privat		Sewer Public:	N	
No. of Tanks:	0	Tan	k: 0	Depth: 0	SqF	řt: 0
Construction Type:		Grou	p: R-3	No. Existing Bldgs:	0 No	. New Bldgs: 0
Retain Wall:	0		-	Block Wall:		
ТҮРЕ	SQFT		F ADJ AREA	TYPE SO	-	ACTOR/PSF ADJ AREA
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EXHIBIT I

Big Bear Lake & Bal Month Year	December	January	February	March	April	Average	High Count
1978 - 79	7	27	27	18	9	17.60	27
1979 - 80	20	22	13	11	3	13.80	22
1980 - 81	11	19	25	No Count	No Count	18.33	25
1981 - 82	15	27	22	6	3	14.60	27
1982 - 83	7	27	18	11	No Count	15.75	27
1983 - 84	14	28	18	10	No Count	17.50	28
1984 - 85	27	8	3	3	No Count	10.25	27
1985 - 86	20	24	No Count	9	No Count	17.67	24
1986 - 87	20	24	No Count	9	No Count	17.67	24
1987 - 88	9	17	21	16	No Count	15.75	21
1988 - 89	12	6	4	12	No Count	8.50	12
1989 - 90	15	11	19	17	No Count	15.50	19
1990 - 91	6	16	22	17	No Count	15.25	22
1991 - 92	19	19	13	9	No Count	15.00	19
1992 - 93	6	15	3	3	No Count	6.75	15
1993 - 94	9	17	15	8	No Count	12.25	17
1994 - 95	10	10	20	No Count	No Count	13.33	20
1995 - 96	6	14	15	10	No Count	11.25	15
1996 - 97	10	15	5	9	No Count	9.75	15
1997 - 98	8	14 - 15	15	12	No Count	11.67	15
1998 - 99	8	17	15 - 17	9	No Count	11.33	17
1999 - 00	8	13	3	13	No Count	9.25	13
2000 - 01	13	13	14	12	No Count	13.00	-14
2001 - 02	7	9	11	9	No Count	9.00	11
2002 - 03	6	13	15	9	No Count	10.75	15
2003 - 04	4	14	11	7	No Count	9.00	14
2004 - 05	6	1	4	5	No Count	4.00	6
2005 - 06	7	4	6	No Count	No Count	5.67	7
2006 - 07	4	8	5	5	No Count	5.50	8
2007 - 08	4	3	6	3	No Count	4.00	6
2008 - 09	No Count	6	No Count	5	No Count	5.50	6
2009 - 10	4	6	9	5	No Count	6.00	9
2010 - 2011	2	5	5	3	No Count	3.75	5
2011-2012	4	6-8	6	6	No Count	5.5-6	8
2012-2013	No Count	5	No Count	No Count	No Count	5*	5*
2013-2014	6	5	10	5	No Count	6.5	10
Monthly Average	9.9	13.4	11.9	8.6	5.00	11.1	16.3
Maximum						18.33	2
Minimum						3.75	

576403.1

EXHIBIT J



EXHIBIT K





NEWS RELEASE

U.S. Forest Service, San Bernardino National Forest For Immediate Release Contact: John Miller at (909) 382-2788 Twitter: <u>@sanbernardinonf</u>

Great Day of Eagle Counting

San Bernardino, Calif., March 8, 2014 – On Saturday March 8th, the final bald eagle count of the winter was conducted by volunteer eagle observers and local Federal and State biologists around several lakes in the southern California.

A grand total of nine eagles (7 adults and 2 juveniles) were observed at the lake areas during the 1- hour count. Five bald eagles (4 adults and 1 juvenile) were observed at Big Bear Lake; 1 juvenile eagle at Lake Arrowhead; 2 adult eagles at Silverwood Lake; 1 adult eagle at Lake Hemet; 0 eagles at Lake Gregory and 0 at Lake Perris. Juvenile eagles are distinguished by a brown head and tail; adults are recognized by the famous white head and tail - it takes 4-5 years to acquire full adult coloration. Juvenile eagles are the same size as the adults.

Approximately 191 observers participated in the 1-hour eagle census (57 at Big Bear area, 20 at Lake Arrowhead/Lake Gregory, 68 at Silverwood Lake, 19 at Lake Hemet, and 37 at Lake Perris. The count coordinators from the Forest Service and State Recreation Areas would like to thank those volunteers for their dedication in getting up early and participating in the eagle census. The success of the eagle counts is entirely dependent on the volunteers! We've had a great season with fantastic turnouts of volunteers (and bald eagles)!

Bald eagle counts have been conducted at some of sites since 1978 and all of the sites have been participating since around 2000. Four monthly counts are conducted between December and March to estimate the number of bald eagles that are wintering in the area. The highest numbers are typically in February and March.

It was a beautiful day for spotting eagles and was a great way to end our winter eagle censuses. Many of the bald eagles have started migrating out of southern California, heading north to their breeding grounds. A few breeding pairs have set up nesting territories and are year-round residents. A pair of bald eagles is tending their nest at Lake Hemet. Big Bear Lake's nesting pair hatched two chicks in early February but, unfortunately, they did not survive last week's severe storm.

See websites for additional information about the San Bernardino National Forest (http://www.fs.fed.us/r5/sanbernardino/) and the California State Recreation Areas

(www.parks.ca.gov).

About the U.S. Forest Service:

The mission of the Forest Service is to sustain the health, diversity and productivity of the nation's forests and grasslands to meet the needs of present and future generations. The agency manages 193 million acres of public land, provides assistance to state and private landowners, and maintains the largest forestry research organization in the world. Public lands the Forest Service manages contribute more than \$13 billion to the economy each year through visitor spending alone. Those same lands provide 20 percent of the nation's clean water supply, a value estimated at \$7.2 billion per year. The agency has either a direct or indirect role in stewardship of about 80 percent of the 850 million forested acres within the U.S., of which 100 million acres are urban forests where most Americans live. Learn more at http://www.fs.usda.gov/sbnf

#

USDA is an equal opportunity provider and employer.

Background

The best time of year to see bald eagles in Southern California is during winter months when there is an influx of eagles. Migrating eagles typically begin arriving in the area in late November and leave in late March or early April.

Bald eagles are usually found close to water because their diet is primarily made up of fish and ducks. As winter approaches in those northern regions, lakes freeze over and waterfowl fly south. For bald eagles, that means that the food they eat has become scarce. So, they head south looking for areas with abundant food supplies and end up wintering in sunny southern California!

During the winter, southern California bald eagles are typically found at many of the lakes, including Big Bear Lake, Baldwin Lake, Silverwood Lake, Lake Arrowhead, Green Valley Lake, Grass Valley Lake in the San Bernardino Mountains and Prado Dam, Lake Perris, Lake Hemet, Lake Skinner, Diamond Valley Lake, Lake Matthews, and the Salton Sea to the south.

Through radio-tracking bald eagles, biologists learned that some of the same individual eagles return to the San Bernardino Mountains year after year. We also determined that there is a lot of movement of eagles between the different mountain lakes and that the lakes do not have distinctive separate populations—the eagles regularly move between the mountain lakes.

Radio-tracking and/or banding also revealed that the eagles that winter in the San Bernardino Mountains migrate to Southern California from Montana, Wyoming, Idaho, and Canada. Those regions are likely where most of our migratory bald eagles nest in spring and summer. Some of the San Bernardino Mountains' eagles were tracked all the way to Alberta and the Northwest Territories in Canada - that is about 2,000 miles one-way! For more information regarding bald eagle migratory routes for these and other California eagles go to the University of Santa Cruz Predatory Bird Research Group's web site at (<u>http://www2.ucsc.edu/scpbrg/baeamigration.htm</u>). While the evidence suggests a northern interior migration for most of the bald eagles, some of our southern California eagles have traveled fewer miles, moving over from the Channel Islands.

Breeding populations of bald eagles in Southern California were extirpated by the late 1950s. Until reintroduction efforts began in the 1980s on Catalina Island, the southernmost nest site known in California was in Lake County. Since 2003, several pairs of bald eagles have decided that our southern California neighborhoods were too nice to leave – they built nests and have successfully raised families. Nesting bald eagles can now be found at Lake Hemet, Lake Skinner, Lake Matthews, and Big Bear Lake. As the populations continue to grow, more bald eagles are in our future.

This is exactly what happened at Lake Hemet in Riverside County. The female eagle with orange wing tags "02" hatched at San Francisco Zoo in 2000 and was released on Catalina Island as part of the reintroduction efforts. In 2004, she arrived at Lake Hemet and decided to take up year-round residence with the male bald eagle that was already there. Together, the pair has raised successful nests over since then. In 2012, the first successful bald eagle nesting ever recorded in the San Bernardino Mountains happened in Big Bear Lake!

As bald eagles raise families in southern California, it is now possible to see bald eagles year-round (not just during winter migrations). Because of the influx of migrating bald eagles during the winter, the easiest time to see eagles is still between December and March.

The bald eagle is a success story of the federal Endangered Species Act – through protection under that law; its populations have recovered from the brink of extinction. Captive breeding programs, reintroduction efforts, the banning of DDT, and public education have all helped in the recovery of this species. There are over 10,000 breeding pairs in the United States and they now breed again in all 49 of the continental United States (they have never bred in Hawaii).

Because of the population rebound, bald eagles are no longer in jeopardy of going extinct. While bald eagles are no longer protected under federal Endangered Species Act, they still have full protection under the Bald Eagle Protection Act and under the State of California's Endangered Species Act. These laws make it illegal to harm or harass bald eagles. It is also illegal to possess bald eagle parts, even a feather.

Catching a glimpse of our breath-taking national symbol is relatively easy during winter months. There are some fantastic opportunities for excellent close-up photographs too. Just look in the tallest trees around the lake near open water for perching eagles. Or, if the lake is partly frozen, look for eagles perched on the ice near small groups of ducks using the open water.

If you want to look for eagles in the Big Bear area, stop by the Forest Service's Big Bear Discovery Center (on North Shore Drive, 1-1/2 miles west of Stanfield Cutoff) and pick up a handout on eagles. Also, join us for one of our free public talks – call the Big Bear Discovery Center (909-382-2790) for dates and times.

If you are in Garner Valley and want to see the resident pair, stop by the Forest Service's Lake Hemet Day Use Area and just look across the lake. The birds are often flying overhead fishermen and or sitting in trees above the picnic area.

Remember that human presence may distract or disturb the eagles - so, try to limit your movements and do not make loud noises when they're nearby. If possible, remain in your car while looking at eagles - the car acts as a blind. Stay a respectful distance of at least 200-300' away from perched bald eagles. Do not get closer than ¼ mile away nesting bald eagles – trying to get a closer look may result in eagles becoming agitated and knocking eggs or chicks out to the nest. It is illegal to harm or harass bald eagles. Please do your part to help protect our national bird!

EXHIBIT L

Wednesday, June 18, 2014 | bigbeargrizzly.net | 5

Marina Point is moving forward

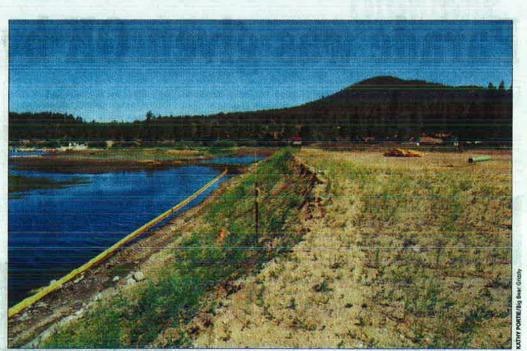
There's a green fence lining the Marina Point property in Fawnskin. Work is moving forward on the condominium project as developer Irv Okovita awaits word from San Bernardino County on approval on a minor site plan revision. He wants to change the western side of the project from seven condo buildings housing a total of 49 units to 10 home sites.

Okovita submitted the revision to the county March 18.

According to Okovita, the original project is approved, and all the permits are in order to move forward. If this last amendment isn't approved, he will move forward with the original plan.

Marina Point is a condo development for permanent homes and units. It is not a timeshare, Okovita said.

"We've just completed relocation of the 12-inch sewer main," Okovita said. "We've installed all of the project mains and laterals to the buildings. We're almost completely



Dredging is nearly complete and rip rap will soon be installed along the western shore of the Marina Point site in Fawnskin.

done with dredging."

During the next couple of weeks the rip rap will be finished along the outer edges of the project, said Realtor Mark Sobczyk of First Team, the agent for the project. Rock obtained when the dam bridge was constructed was stored on site to be used for the rip rap project, Sobczyk said.

Work will also begin soon on North Shore Drive to add a right-turn lane. A few trees were cut down per a Caltrans requirement for that project to proceed, Sobczyk said.

"We are also going to improve the drainage on the east side where the road floods all the time," Sobczyk said.

Water and electricity will be installed during the next few weeks. All of the utilities will be underground, Okovita said.

Work on the marina is slated to begin sometime in July with the plan to reopen that section to the lake in August. Bioretention basins will be constructed as required by the Water Quality Board. A wall along North Shore Drive is also planned.

Grading will begin during the next few weeks once the dirt is dry enough for use, Sobczyk said. A soils engineer conducts tests throughout construction to make sure everything is done correctly, he said.

-Kathy Portie

1	RACHEL B. HOOPER (State Bar No. 98569)	
2	AMY J. BRICKER (State Bar No. 227073) EDWARD T. SCHEXNAYDER (State Bar No.	284494)
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4	San Francisco, CA 94102 Telephone: (415) 552-7272	
5	Facsimile: (415) 552-5816 Hooper@smwlaw.com	
6	Bricker@smwlaw.com Schexnayder@smwlaw.com	
7	Attorneys for Friends of Fawnskin	
8	ADAM KEATS (State Bar No. 191157)	
9	ARUNA PRABHALA (State Bar No. 278865) CENTER FOR BIOLOGICAL DIVERSITY	
10	351 California Street, Suite 600 San Francisco, CA 94104	
11	Telephone: (415) 436-9682 Facsimile: (415) 436-9683	
12	AKeats@biologicaldiversity.org APrabhala@biologicaldiversity.org	
13	Attorneys for Center for Biological Diversity	
14	SUPERIOR COURT OF	THE STATE OF CALIFORNIA
15	COUNTY OF SAN BERNARD	INO, SAN BERNARDINO DISTRICT
16		
17	FRIENDS OF FAWNSKIN and CENTER FOR BIOLOGICAL DIVERSITY,	Case No. CIVDS1409159
18	Petitioners,	[California Environmental Quality Act ("CEQA") Case]
19		
20		SUPPLEMENTAL DECLARATION OF SANDY STEERS IN SUPPORT OF
21	COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS FOR THE COUNTY OF	MOTION FOR PRELIMINARY INJUNCTION
22	SAN BERNARDINO, and DOES 1-20,	Date: September 23, 2014 Time: 8:30 a.m.
23	Respondents.	Dept.: S36 Judge: Hon. Gilbert Ochoa
24	MARINA POINT DEVELOPMENT ASSOCIATES, IRVING OKOVITA,	Judge. Hon. Onbert Ochoa
25	BEAR VALLEY PAVING, SITE DESIGN ASSOCIATES, KENNETH DISCENZA, and	
26	DOES 21-50,	
27	Real Parties in Interest.	
28		Action Filed: June 24, 2014
	Supplemental Declaration of Sandy Steers In Support of M CASE NO. CIVDS1409159 607 6	Aotion for Preliminary Injunction

DECLARATION OF SANDY STEERS

I, Sandy Steers, declare as follows:

1

2

I have personal knowledge of the facts set forth herein, except as to those stated on
information and belief and, as to those, I am informed and believe them to be true. If called as a
witness, I could and would competently testify to the matters stated herein.

A natural, ephemeral creek surrounded by willow trees used to flow into Big Bear
Lake along the eastern edge of the Marina Point property boundary. This is the same creek
described in paragraph 11 of my Declaration in Support of this Motion, dated July 2, 2014
("Steers Dec.").

On August 28, 2014, I observed the eastern portion of the Marina Point project site
 from the public road outside of the property boundary and from public property below the mean
 high-water mark. At that time, I saw that the creek has been completely bulldozed over with
 mounds of loose earth. In its place, workers had dug a steep trench through the loose earth.
 Exhibit A, attached herewith, contains true and correct photos depicting the raw earthwork in the
 location where the creek once ran.

4. There are no visible sandbags, riprap, or other erosion controls along the new
steep trench. There is also no visible erosion control near the steeply graded shoreline that is
nearest the trench. *See* Exhibit A. The 1991 final development plan requires erosion control
measures for activities on the project site. *See* Steers Dec. Ex. B at 10.

5. On August 25, 2014 I read online listings from the MLXchange.com real estate
website, advertising the sale of "10 LAKE FRONT CUSTOM HOME-SITES" on the
"MARINA POINT" property in Fawnskin. Exhibit B, attached herewith, contains true and
correct screenshots depicting the online advertisement for these lots.

6. These 10 lake front homes were not part of the original Marina Point project that
the County of San Bernardino approved in 1991. That project contained only condominium
buildings and no custom homes. Steers Dec., Ex. B, at I-7. Instead, the 10 lake-front homes that
are being advertised for sale are part of the revised project that Marina Point Development
Associates presented to the County this year. Steers Dec., Ex. G.

1

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. DATED: September 15, 2014 Andy Steers 624778.1 Supplemental Declaration of Sandy Steers In Support of Preliminary Injunction CASE NO. CIVDS1409159

EXHIBIT A















EXHIBIT B

	Fawnskin 0 LAKE SHO	RE DRIVE			\$ 1,149,000 Ref #: 2141759
	Status: City: Zip Code: Acres:	Active FAWNSKIN 92333	XStreet: Zoning: Lot SqFt: Lot Dims:	north shore 12,779	
A A	Zip Code:	92333	Lot SqFt:	12,779	

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS, COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type:	Lot & Land	Prop Style:	Lakefront
Frontage:		Boat Fac:	Has Dock Rights
Disclosure:		Roads:	Paved & Maintained
Topography:	Level	View:	Lakeview, Ski Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

 *** All Information Herein Is Deemed Reliable, But Is Not Guaranteed ***
 08/25/14
 10:26 AM

 NANCY WALKER
 HAZEWINKEL & CO.
 909-866-3300

 CALBRE#:
 01253881

http://bbv.mlxchange.com/5.12.05.35765/Search/PrintPreviewDlg.asp

8/25/2014

Fawnskin 0 LAKE SHO	RE DRIVE			\$ 1,149,000 Ref#: 2141760
Status: City:	Active FAWNSKIN	XStreet: Zoning:	north shore	
Zip Code: Acres: St Front Dim:	92333	Lot SqFt: Lot Dims:	12,018	

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS , COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

*** All Information Herein Is Deemed Reliable, But Is Not Guaranteed *** 08/25/14

10:30 AM 909-866-3300

NANCY WALKER CALBRE#:

HAZEWINKEL & CO.

http://bbv.mlxchange.com/5.12.05.35765/Search/PrintPreviewDlg.asp

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8/25/2014

	Fawnskin 0 LAKE SHO	RE DRIVE			\$ 1,149,000 Ref #: 2141763
	Status: City:	Active FAWNSKIN	XStreet: Zoning:	north shore	
The second	Zip Code: Acres: St Front Dim:	92333	Lot SqFt: Lot Dims:	12,010	

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS , COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

*** All Information Herein Is Deemed Reliable, But Is Not Guaranteed *** 08/25/14 10:30 AM

NANCY WALKER CALBRE#: 01253881 HAZEWINKEL & CO.

909-866-3300

http://bbv.mlxchange.com/5.12.05.35765/Search/PrintPreviewDlg.asp

8/25/2014

	Fawnskin 0 LAKE SHO	RE DRIVE			\$ 1,249,000 Ref#: 2141767
Page 1	Status: City:	Active FAWNSKIN	XStreet: Zoning:	north shore	•
	Zip Code: Acres: St Front Dim:	92333	Lot SqFt: Lot Dims:	12,651	

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS , COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available

WAR All Tedemonitory Linux - -----

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

	*** All Information Herein Is Deemed Reliable, But Is Not Guaranteed ***	08/25/14	10:30 AM
NANCY WALKER	HAZEWINKEL & CO.		909-866-3300

CALBRE#: 01253881

http://bbv.mlxchange.com/5.12.05.35765/Search/PrintPreviewDlg.asp

8/25/2014

Fawnskin 0 LAKE SHO	RE DRIVE			\$ 1,249,000 Ref#: 2141769
Status: City:	Active FAWNSKIN	XStreet: Zoning:	north shore	
Zip Code: Acres: St Front Dim:	92333	Lot SqFt: Lot Dims:	12,998	

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS, COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakevlew, Ski Slope View, View National Forest
Utilities: Electric Available, Natural Gas Available	Water/Sewer:	Water Supplied By Dwp, Sewer Available
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Finance Terms: Association Fee: \$330

*** All Information Herein Is Deemed Reliable, But Is Not Guaranteed *** 08/25/14

 NANCY WALKER
 HAZEWINKEL & CÓ.
 909-866-3300

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8/25/2014

10:30 AM

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10:30 AM

909-866-3300

	Fawnskin 0 LAKE SHO	RE DRIVE				\$ 1,249,000 Ref#: 2141770
	Status: City:	Active FAWNSKIN		XStreet: Zoning:	north shore	
- 2.5. ····	Zip Code: Acres: St Front Dim:	92333	8	Lot SqFt: Lot Dims:	13,441	

Virtual Tour Link:

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS , COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest

Utilities: Electric Available, Natural Gas Available

Water/Sewer: Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

*** All Information Herein Is Deemed Reliable, But Is Not Guaranteed *** 08/25/14

NANCY WALKER CALBRE#: 01253881 HAZEWINKEL & CO.

624 of 947

HAZEWINKEL

http://bbv.mlxchange.com/5.12.05.35765/Search/PrintPreviewDlg.asp

8/25/2014

Fawnskin 0 LAKE SHC	DRE DRIVE		\$ 1,399,000 Ref #: 2141771	
Status: City:	Active FAWNSKIN	XStreet: Zoning:	north shore	٠
Zip Code: Acres: St Front Dim	92333	Lot SqFt: Lot Dims:	12,842	

LAKE SHORE ESTATES IS AN EXCLUSIVE GATED ENCLAVE OF 10 LAKE FRONT CUSTOM HOME-SITES DESIGNED TO EMPHASIZE THE UNIQUE AMBIANCE OF THE SITE & NATURAL SURROUNDINGS. THIS PREMIER 4 SEASON RESOR T IS UNRIVALED IN BIG BEAR. THE COMBINATION OF LOT SIZE W/ BOAT SLIP RIGHTS, UNOBSTRUCTED VIEWS, COMMERCIAL CLUB HOUSE & STATE OF THE ART MARINA MAKES MARINA POINT THE ULTIMATE RETREAT.

Prop Type: Lot & Land	Prop Style:	Lakefront
Frontage:	Boat Fac:	Has Dock Rights
Disclosure:	Roads:	Paved & Maintained
Topography: Level	View:	Lakeview, Ski Slope View, View National Forest
Utilities: Electric Available, Natural Gas Avallable	Water/Sewer:	Water Supplied By Dwp, Sewer Available

Finance Terms:

Association Fee: \$330

*** All Information Herein Is Deemed Reliable, But Is Not Guaranteed *** 08/25/14

 NANCY WALKER
 HAZEWINKEL & CO.
 909-866-3300

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http://bbv.mlxchange.com/5.12.05.35765/Search/PrintPreviewDlg.asp

8/25/2014

10:30 AM

EXHIBIT J

Letter from Anthony Kornaren and Lisa Saperstein, dated April 1, 2015

Anthony Kornarens

LAWYER

2907 STANFORD AVENUE MARINA DEL REY, CALIFORNIA 90292
 TELEPHONE
 (310)
 458-6580

 FACSIMILE
 (310)
 230-5104

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL (chris.warrick@lus.sbcounty.gov)

Mr. Chris Warrick Land Use Services Department, San Bernardino County 385 Arrowhead Avenue San Bernardino, CA 92415-0187

Re: Marina Point Development Minor Site Plan Revision Application P 201400106

Dear Mr. Warrick:

1.

INTRODUCTION AND OVERVIEW

We write on behalf of Gary J. Polizzi, a landowner whose property adjoins the westernmost portion of the property that is the subject of the proposed "Minor Site Revision Application" submitted by the project developers in March 2014. By this reference, Mr. Polizzi incorporates by reference each of the points made in the submission by Friends Of Big Bear Valley.

When you spoke this afternoon with my associate, you stated that you intend to submit your recommendations tomorrow morning. Accordingly, we are rushing this submission to you this afternoon. As well, we will be sending the letter to you in electronic form. The exhibits will be included in the overnight mail version of this letter and also will be emailed to you under separate cover once they are condensed.

As this submission will demonstrate, that so-called "Minor Site Revision Application" in actuality seeks permission from the County to bypass the strict requirements of the California Environmental Quality Act ("CEQA"). Approval of these proposed revisions without further study would be a clear abuse of discretion by the County.

Mr. Polizzi was not given notice of the "Minor Site Revision Application" and only of this appeal by chance less than two weeks ago. This is odd since Mr. Polizzi has had a pending lawsuit on file against the Developer and others regarding the Project since before the March, 2014 "Minor Site Revision Application." Apparently, the Developer did not want the Planning Commission to have the benefit of the information that Mr. Polizzi can provide. At Part Two, Mr. Polizzi will show that this lack of notice violated the San Bernardino Development Code. Accordingly, the scope of this

submission is limited by time constraints and Mr. Polizzi must qualify this letter by stating that it is not intended as a full and complete recitation of all of the facts and circumstances surrounding this matter or the legal authorities available to Mr. Polizzi. Nothing herein is intended to constitute a waiver of any of remedy available either to Mr. Polizzi or to any person similarly situated, and all such rights and remedies are hereby expressly reserved.

Mr. Polizzi will provide further information on any of these points as requested by the Land Use Services Department of San Bernardino County.

The Project suffers from a myriad of problems, which singularly and collectively require that the so-called "Minor Site Revision Application" be denied at this time, pending further environmental studies.

Indeed, any one of these points requires the application be denied at this time, pending further study of the Project.

First, this letter will show that he project has expanded and changed so greatly such that it has never been the subject of any EIR. At best, it substantially differs from what has been reviewed. Subsequent studies are required. These issues are discussed in greater detail later in this letter at Part 3 under the following headings:

3A. The Revised Conditions Of Approval Have Long Since Expired

3B. The So-Called Minor Site Plan Alteration Seeks After The Fact Permission To Build On Or Sell Newly Filled Lakebottom Land That Has Never Been The Subject of Any EIR

Second, this letter will show that there have been numerous changes in both general conditions and conditions at the site in the decades since the last environmental studies were conducted. Indeed, the Developers' pervasive infill of Big Bear Lake without any environmental studies itself requires denial of the Application. Each of these changes is itemized below and will be discussed in greater detail later in this letter at Part 4.

4A. Changed Climate Conditions, Including Prolonged Drought And Accompanying Water Shortages

- 4B. Changing Climate Conditions, Including Prolonged Drought And Accompanying Water Shortages
- 4C. Inability To Properly Revegetate
- 4D. Increased Hazards Of Fire

- 4E. Change from Campground to Vacant Land
- 4F. Substantial Loss In Lake Volume
- 4G. Elimination Of Portions Of Big Bear Lake by Diversion of Large Volumes of Water, Combined With Prolonged Drought Conditions
- 4H. Water Will Be Diverted Onto Mr. Polizzi's Adjacent Property Because The Developer Has Altered Adjacent Properties
- 4I. The Developer Has Substantially Changed The Project By Including Ten Single Family Residence Homesites On Two Of the Eight Approved Lots, Resulting In An Additional 10,000 Square Feet And Adding a 9,000 Square Foot Clubhouse/ Commercial Facility And Private Boat Docks On The Lake. The Developer Has Also Substantially Reconfigured The Lots.
- 4J. There Are Now Less Trees On The Property Than Contemplated And Required By The EIR
- 4K. Changes In Bald Eagle Population
- 4L. Serious Issues Involving Failure Of Recently Installed Fill and Settling And Ponding In Constructed Roadways
- 4M. Substantial Changes To Buildings

4N. The Impact On Adjoining Properties Has Greatly Changed

Third, this letter will show that the Developers' current plan contains pervasive violations of the terms and conditions previously imposed on this Project, including mitigation measures resulting from the now decades old environmental studies. Each of these points is itemized below and will be discussed in greater detail later in this letter at Part 5.

- 5A. The Developer Has Violated Numerous Specific Conditions In The EIR
- 5B. The On-Site Water Supply Required By The 1992 EIR Conditions of Approval Is No Longer Being Included
- 5C. There Are Now Less Trees On The Property Than Contemplated And Required By The EIR
- 5D. Easements Of Record Not Extinguished Or Relocated
- 5E. The Developer Has Circumvented The Approval Of An Eight Lot Subdivision By

> Including Ten Single Family Resident Homesites On Two Lots, Thus Creating A Total Of Seventeen Lots. As Well, The Developer Has Added Clubhouse And Private Boat Docks In The Lake

- 5F. Violation Of Large Scale Housing Project Conditions Of Approval 2, 4, and 5 Requiring Prevention of Off-Site Sedimentation And Erosion At All Times
- 5G. Inability To Properly Revegetate
- 5H. Developer's Failure Meet Conditions That Defects In Landfill Be Corrected.
- 51. The Requirement That The Project Be Constructed In Six Phases No Longer Can Be Met Because The Developers Are Now Selling Phase One As Vacant Lots, Rather Than Constructing Condominiums.
- 5J. The Perch Trees Required By The EIR Have Been Removed
- 5K. Adequate Measures Have Not Been Taken To Prevent Run-Off
- 5L. Trees and Irrigation Systems Are Now Proposed To Be Installed On Public Rights Of Way, In Violation of the Conditional Approval
- 5M. The 1983 EIR Required Buffer For Bald Eagles By Stanfield Pass Is No Longer In The Plan.
- 5N. Omission Of The Required 10 foot Planter Strip Screen Along The Northern Boundary Of The Project
- 5P. The So-Called "Public Beach Is Now 20 Feet Above Big Bear Lake And The Lake Is Thus Not Safely Accessible For Public Use
- 5Q. Omission Of The Required Fire Department Approvals For The New Structures

2.

RULES GOVERNING THE "MINOR SITE REVISIONS APPLICATION" PROCESS

The Developers have chosen to proceed under the "Minor Site Revision Application" process.

The *San Bernardino Development Code*, Chapter 85.12, clearly states this process can be used only where the review authority finds that "findings for the original application type can still be made."

Section 85.12.020.¹

Per section 81.01.050(d), "all development projects subject to discretionary review shall also be subject to environmental review in compliance with the California Environmental Quality Act (CEQA)." Per section 81.02.020(e)(4), "in the event of any conflict between the requirements of [the] Development Code and mitigation measures adopted as part of a certified environmental impact report ["EIR"] or approved negative declaration, the most restrictive shall control."

Accordingly, as a matter of law, this "Minor Site Application" process cannot be used to approve significant changes to an existing project or to relieve the Developers of any mitigation measures previously imposed on this project under CEQA, nor can the Application otherwise limit the protections of CEQA.

The County recognizes the distinction between no impact, on the one hand, and additional impact, on the other, the latter which *does* trigger further CEQA review. Page ten of the checklist on the "Minor Site Revision Application" (Ex. A hereto) references the "No Effect Determination (NED) Process." It also directs the Applicant as follows: "For additional explanation to the regulations and procedures regarding NED please see the No Effect Determinations detailed instructions at the following link. https://www.wildlife.ca.gov/Conservation/CEQA/NEDhtml"

The website to which the County's form directs the "Minor Site Revision" Applicant (Ex. B hereto) states:

NED Eligibility

For the assessment of CEQA filing fees, a project that causes **any** effect on the habitat on which fish and wildlife may depend, or causes direct harm to fish and wildlife, is considered to have an effect on fish and wildlife. A filing fee is required regardless of project size, magnitude of the effect, or whether the effect on the environment is considered positive or negative (Cal. Code Regs., tit. 14, § 753.5, subd. (d)).

CDFW may determine that a project would have no effect on fish and wildlife if all of the following conditions apply:

¹ San Bernardino Development Code 810.01.070(o) defining "EIR" as the public document used by a governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid possible environmental damage and (p), defining "Environmental Review Guidelines" as "written procedures adopted by the Board of Supervisors for the purpose of implementing the requirements of the California Environmental Quality Act (CEQA)."

• The project would **not** result in or have the potential to result in harm, harassment, or take of any fish and/or wildlife species.

• The project would **not** result in or have the potential to result in direct or indirect destruction, ground disturbance, or other modification of any habitat that may support fish and/or wildlife species.

• The project would **not** result in or have the potential to result in the removal of vegetation with potential to support wildlife.

• The project would **not** result in or have the potential to result in noise, vibration, dust, light, pollution, or an alteration in water quality that may affect fish and/or wildlife directly or from a distance.

• The project would **not** result in or have the potential to result in any interference with the movement of any fish and/or wildlife species.

If CDFW determines that a project meets all of the above conditions, the project may qualify for an NED (Cal. Code Regs., tit. 14, § 753.5, subd.(d)).

The revised project here clearly does not meet any of these criteria, much less all of them. It clearly will cause (and has caused) effect on the habitat on which fish and wildlife may depend, or cause direct harm to fish and wildlife due to the infill that was never studied as part of the EIR and the more than 20 conditions of approval that have been violated or are proposed to be violated.

The website continues:

Examples of Qualifying Projects

Only a small fraction of projects with a Negative Declaration (ND), Mitigated Negative Declaration (MND), or Environmental Impact Report (EIR) have qualified for an NED. CDFW makes each NED on a case-by-case basis. CDFW has previously found the following types of projects to have no effect on fish and wildlife:

• Development and redevelopment in highly urbanized or industrialized settings, typically within existing footprints, and demolition and rebuilding at sites where the project did not affect nearby animals, bat roosts, nesting birds, and other resources.

• Minor zoning changes that did not lead to or allow new construction, grading, or other physical alterations to the environment.

• Minor modifications to existing structures including addition of a second story to single or multi-family residences.

• Approval of administrative regulations, school, or special district redistricting, and air quality improvement plans subject to CEQA that did not authorize activities that could cause effects on fish and wildlife or physical alterations to the environment.

A proposed project's similarity with the example projects listed above should not be used as justification for an NED.

The "Minor Site Revision Application" does not meet these limited exceptions. The scope of the Project that is that subject of the "Minor Site Revision Application" goes well beyond the current EIR, for many reasons, including:

• The "Minor Site Revision Application" seeks permission for new construction, grading, and other physical alterations to the environment. It also seeks permission to build 50,000 square feet of new luxury structures, high occupancy structures² that were not part of any prior environmental study, in large part on infill of Big Bear Lake that likewise was not part of any environmental study; and

• The so called "Minor Site Revision Application" seeks approval of a modified project that has simply eliminated many of the mitigating conditions of approval that were imposed by the EIR.

For all each of the reasons stated below, it would be an obvious abuse of discretion and blatant violation of CEQA for the County to allow the project as modified to proceed at this date, without requiring further environmental studies.

San Bernardino Development Code 85.03.040(a) states that "[a]ll land use applications that are subject to the California Environmental Quality Act (CEQA) shall be reviewed by the Department in compliance with County Review Guidelines." (boldface added)

Although labeled as a so-called "Minor Revision," the 10-10-14 submission (Ex. C hereto)

²It is naïve, at best, to accept the Developers' representation that these newly added luxury homes will reduce the Project's impact. As this Department knows, the most common use of luxury ski and lake resort housing is for short-term vacation rentals. It can reasonably be expected that the owner investors of these 5,000 square foot lake front villas will use them only on occasion, and when not using them, will attempt to recoup their substantial monetary investments in the resort property by renting them out to large groups of people intent on a mountain frolic. The rental rate for a 5,000 square foot luxury home in an amenity filled resort will be quite high. Therefore, it can reasonably be anticipated that large groups of vacationers (perhaps 8 to 10 at a time) will pool their monies and collectively rent the 5,000 square foot spaces for a few days or a weekly get away. The Developer is plainly attempting to appeal to this luxury demographic by including high end, expensive amenities intended to attract a high impact vacationing crowd to the Project, intent on getting their money's worth for a mountain resort vacation. In relation, the Developer's proposed CC&R's (submitted 20 years after EIR approval) permit the rental on a daily basis of each of the units in the project. (see section 4(iv)(12)). This raises a host of issues regarding adequacy of parking and the overall strain on the North Shore that these crowds of vacationers will inevitably cause. At minimum, the impact of adding ten luxury vacation rental lodges to the Project must be the subject of further environmental review.

(which postdates the "Minor Revision" Application by over six months)³ effectively seeks approval of a modified tract map for at least two reasons: (1) due to infill of Big Bear Lake, the outer perimeters of the tract have changed; and (2) there are now ten new or reconfigured parcels (denominated as "site[s]) on the map. Under *San Bernardino Development Code* 87.02.030; see 87.02.050(b)(1)(a) **all** proposed Tentative Maps shall be reviewed to determine whether they comply with the applicable EIR and the Development Code] and appropriate findings are required. 87.02.050(b)(2). Environmental findings also are required. *San Bernardino Development Code* 85.03.040(b).

San Bernardino Development Code 87.02.060(a)(1) sets forth the mandatory findings that are required for tentative map approval. They include findings that:

(A) The proposed map, subdivision design, and improvements are consistent with the General Plan, any applicable community plan, and any applicable specific plan;

(B) The site is physically suitable for the type and proposed density of development;

(C) The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat...;

(E) The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of, property within the proposed subdivision. This finding may also be made if the review authority finds that alternate easements for access or use will be provided, and that they will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record, or to easements established by judgment of a court of competent jurisdiction, and no authority is hereby granted to the review authority to determine that the public at large has acquired easements of access through or use of property within the proposed subdivision..."

Mandatory Supplemental findings are stated in *San Bernardino Development Code* 87.02.060(b) as follows:

(b) Supplemental findings. In addition to the findings identified in Subsection A. above, the review authority shall not approve a Tentative Map unless it can also make the following findings, when they are applicable to the specific subdivision proposal.

³ There have been significant changes to the plan even after the March 204 submission. For example, whereas the next luxury homes in March 2014 were supposedly going to average 4,500 square feet each (Developer's March 2014 letter, Exhibit D) they are now 5,000 square feet and, in the instance of the three story home 35 foot tall home closest to Mr. Polizzi, 5,500 square feet. This can be seen by reading the very small print of the County's version of Developer's 10-10-14 submission (Exhibit C hereto).

(1) Construction of improvements. In the case of a Tentative Map for a subdivision that will require a subsequent Parcel Map, the construction of improvements for the subdivision within a specified time after the recordation of the Parcel Map is in the interest of the public health and safety, and it is necessary as a prerequisite to the orderly development of the surrounding area.

None of these findings can properly be made regarding the 10-10-14 map. (see Parts 4-6 infra.)

Whether or not approval of any application will have a significant effect on the environment is addressed by CEQA. As used in connection with a project, the term "significant effect" on the environment is defined in the CEQA Guidelines as "a substantial, or potentially substantial, *adverse change* in *any* of the physical conditions within the area affected by the project" Cal. Code Regs., tit. 14, §15382, (italics added.) The term "project" is broadly defined and, consistent with the broad concept of "additional impact," includes *any* activities that have a potential for resulting in a physical change in the environment, directly or ultimately. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307; Cal. Code Regs., tit. 14, §21065.

The definition encompasses a wide spectrum, ranging from the adoption of a general plan, which is by its nature tentative and subject to change, to activities with a more immediate impact, such as the issuance of a conditional use permit for a site-specific development proposal. *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062 (holding that City violated CEQA by unreasonably minimizing a size increase in a project and by failing to consider the extraterritorial effects of a project expansion and by approving the project without approving a major modification application).⁴

By analogy, a supplemental EIR must be prepared where a program or a project EIR provides insufficient details regarding discretionary choices. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173. Here, because the Developers' Application goes well beyond

⁴ see *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445, see also Id. at 448-449 ("CEQA analysis [must] employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts."); cf. 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2013) Significant Environmental Effects, §13.21, p. 635 (rev. 3/13) [EIR must analyze significant effects of entire project, including phases to be implemented later].); Id at 456 (criticizing as inconsistent with the CEQA disclosure requirements "the unwarranted omission of information on years or decades of a project's environmental impacts" which could "open the door to gamesmanship in the choice of baselines."); Id at 462 ("Nothing prevents an agency preparing an EIR from analyzing the impacts of a project's long-term operation. Moreover, the use of multiple baselines for direct impacts analysis does not violate CEQA.")

seeking approval of minor changes, further environmental studies are required due to the significant changes and deviations in the current project, as compared to what was approved in 1983 and further assessed in 1992.

The Director of Land Use Services may approve minor modifications/revisions of the conditions of approval or project design for a conditionally approved development project. However, should the Director determine that the modifications may be controversial, the requested modification shall be referred back to the reviewing authority who required the conditions. In this case, the review procedures that were originally used to review and approve the project, shall also be used to consider the proposed modifications.⁵

The legal duties imposed by CEQA are to be strictly enforced. (*Mira Monte Homeowners Assn.* v. *County of Ventura* (1985)165 Cal.App.3d 357, 366) "Only by requiring the County to fully comply with the letter of the law can a subversion of the important public purposes of CEQA be avoided. . . ." (*People* v. *County of Kern* (1974) 39 Cal.App.3d 830, 842) The requirements of CEQA also must be "interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth* v. *Board of Supervisors* (1972) 8 Cal.3d 247, 259.

As this letter next will show, it is an abuse of discretion for the County to proceed without requiring the refiling of the original application and a subsequent hearing by the appropriate review authority in this matter.

Mr. Polizzi As An Adjoining Neighbor Had A Right To Notice Of The Application And To Be Heard

Before turning to the merits, Mr. Polizzi will explain why he is first appearing at this time, as a party whose interests are impacted by the proposed action. *San Bernardino Development Code* §86.08 (Appeals).

Mr. Polizzi lives on a combined lot directly adjoining the westernmost portion of the project (the proposed "Phase 1"). (see Title documents and Grant Deed attached as Exhibit E). As an adjoining neighbor, Mr. Polizzi had the right to receive notice of the Application and a right to be heard. *San Bernardino Development Code* §85.03.080(a)(3). However, Mr. Polizzi was given no notice of the Application and has only recently learned about this appeal. *San Bernardino Development Code* §86.07.020. In *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 614, the California Supreme Court held that land use planning decisions less extensive than general rezoning could not be insulated from

⁵ See Revision to Approved Action Information Sheet and Application, p.1 (Exhibit A hereto).

notice and hearing requirements by application of the "legislative act" doctrine.⁶

Furthermore, Mr. Polizzi was never formally notified of the plan, nor was he formally notified of the infill of the lake on the western portion of the project that occurred in 2013-2014, nor of the Developer's other activities, including submitting wildly varying and ever changing proposed plot maps, as recently as October 2014.

According to the California Supreme Court, approval by a county of a tentative subdivision map is an adjudicatory function and subdivision approvals are not purely ministerial acts requiring no precedent notice or opportunity for hearing. Rather, these approvals constitute land use decisions which substantially affect the property rights of owners of adjacent parcels and may constitute deprivations of property within the context of procedural due process. Under principles of due process, adjudicatory functions require that both appropriate notice and an opportunity to be heard be given to persons whose property interests may be significantly affected.

The "Minor Site Revision" Application that is the subject of this appeal presupposes approval under CEQA of the myriad changes to the Project and their cumulative impact (discussed below), which were approved without proper disclosure to the public or adjacent landowners, including Mr. Polizzi.

Moreover, even if the so-called "minor modifications" had been properly recognized as the significant changes that they are and were therefore the subject of public disclosure and comment, EIR proceedings do not satisfy the notice requirement for land use planning decisions, and the County's environmental evaluation process itself does not fairly constitute an adequate "hearing" justifying cessation of public and private property rights. *Horn*, 24 Cal.3d 617-620. The procedure

⁶Subdivision approvals, like variances and conditional use permits, involve the application of general standards to specific parcels of real property. Such governmental conduct, affecting the relatively few, is "determined by facts peculiar to the individual case" and is "adjudicatory" in nature. Following our analysis of the constitutional implications of the variance procedure in *Topanga Assn. for a Scenic Community* v. *County of Los Angeles, supra*, 11 Cal. 3d 506, 513-514, several recent appellate decisions have assumed that subdivision approvals are "adjudicatory" or "quasi-judicial" local agency decisions which require adequate findings at the administrative level for purposes of judicial review under the "substantial evidence" standard. (*McMillan* v. *American Gen. Fin. Corp.* (1976) 60 Cal. App. 3d 175, 182; *Carmel Valley View, Ltd.* v. *Board of Supervisors* (1976) 58 Cal. App. 3d 817, 823) In *Youngblood* v. *Board of Supervisors* (1978) 22 Cal. 3d 644, we ourselves have very recently affirmed these principles, expressly holding that "*Approval of a tentative subdivision map is a quasi-judicial act subject* to judicial review for abuse of discretion under Code of Civil Procedure section 1094.5."

was constitutionally inadequate and therefore violates public and private due process rights.⁷

Under CEQA, while the environmental impact report (EIR) is to include a general assessment of effects of the proposal on private property and the quality of life in the vicinity of the project, it does not necessarily focus on the individual concerns of particular landowners who may be directly affected. (Appen. 1, §2.) There is provision for an ultimate administrative appeal to the board from environmental decisions, but the scope of the appeal is limited to the adequacy of the EIR or negative declaration. The general feasibility and desirability of the project are expressly excluded from consideration. (Art. 5, G, 3.)

For the past ten years that Mr. Polizzi has owned the Property (Exhibit E), he has never received any notice of the Developer's proposals, including the March 2014 submission that is the subject of the pending appeal. This violates *San Bernardino Planning Code*, Chapter 86.07.020, see also 86.07.030. Accordingly, Mr. Polizzi's due process rights have been violated.

3.

THIS IS A NEW PROJECT; AT BEST, IT SUBSTANTIALLY DIFFERS FROM WHAT HAS BEEN REVIEWED

OVERVIEW OF THE APPLICABLE LAW

The Minor Site Revision Application seeks approval of a new or substantially different project and thus requires a new or supplemental EIR.

"The EIR is the heart of CEQA' and the integrity of the process is dependent on the adequacy of the EIR. [Citations.]" (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117-118.) "The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (CEQA Guidelines, §21061.)

⁷ In *Horn*, 24 Cal.3d 605, the California Supreme Court held that approval by the defendant county of a tentative subdivision map is an adjudicatory function and rejected the concept that subdivision approvals are purely ministerial acts requiring no precedent notice or opportunity for hearing. The Court recognized that adjudicatory matters are those in which "the government's action affecting an individual is determined by facts peculiar to the individual case", whereas "legislative" decisions involve the adoption of a broad, generally applicable rule of conduct on the basis of general public policy. The defendant argued that plaintiff must reasonably have anticipated when he bought his land that the adjacent property would be subject to residential subdivision, and he thereby suffered no "deprivation." The Court disagreed and pointed out that Plaintiff's complaint was not directed to the fact of the subdivision itself, but rather averred that the particular details of the current plan caused him injury.

Subdivision (c) of CEQA Guidelines §15125 states that "[k]nowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR` must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." *Cadiz Land Company, Inc. v. Rail Cycle L.P.* (2000) 83 Cal.App.4th 74, 92 (4th DCA, Div Two concludes that "the failure to discuss in [an] EIR the volume of groundwater subject to contamination renders the EIR inadequate under CEQA.")

A curtailed, enigmatic or unstable project description draws a red herring across the path of public input. *County of Inyo v. City Of Los Angeles* (1977) 71 Cal.App.3d 185. CEQA Guidelines §15144 states that, "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." "Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the FEIR adequately investigated and discussed the environmental impacts of the development project." *Cadiz Land Company, Inc.*, 83 Cal.App.4th at 87.

County of Inyo v. City Of Los Angeles (1977) 71 Cal.App.3d 185, 192-193 involved a proposed project for a small-scale groundwater project commencing with a modest proposal to pump an additional 51 cubic feet per second (cfs) for "unanticipated uses". However, in a later EIR, the project description was referred to as part of a larger operation of the Los Angeles Aqueduct System. The incidental effect of this characterization would necessarily require long-term subsurface extraction at a vastly increased rate of 130 cfs, an amount that would have lowered the water table of the subsurface basin by 10 to 15 feet and caused irreversible changes in the pattern of natural vegetation. The city argued that the "project" only encompassed increased groundwater extraction (that is, a net increase of 51 cfs in the long-term rate and of 65 cfs in the high-year rate) destined solely for use on city-owned lands in Inyo and Mono Counties.

There, the Court found that the demands of CEQA could only be met by considering expanded groundwater extraction as a 'project' separate and divisible from the initially proposed project, and stated:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, [citation omitted] assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (3) An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

In language that described what the Developer is trying to accomplish here, the Court added,

"The final EIR represents an ex parte attempt to narrow the city's CEQA obligation -- and the scope of this lawsuit -- down to the relatively small flow of underground water destined for in-valley use."

"The task of selecting the geographic boundaries of an EIS [Environmental Impact Study under NEPA] requires a complicated analysis of several factors, such as the scope of the project considered, the features of the land, and the types of species in the area." [citation omitted]. *Northern Plains Resource Council, Inc. v. Surface Transp. Bd.*, (2011) 668 F.3d 1067, 1087.

Here, the project that is the subject of the "Minor Site Revision Application" bears little resemblance to what the 1983 EIR addressed. It could be called an entirely new project. At best, it substantially differs from what was previously reviewed and a supplemental EIR under Cal. Pub. Res. Code § 21166 is therefore required in order to explore the environmental ramifications of a substantial change not considered in the original EIR.

Indeed, a substantial portion of the project has never been the subject of any EIR.

3A. The Revised Conditions Of Approval Have Long Since Expired

As to the first point, the Revised Conditions of Approval issued on April 28, 1992 expressly state "this approval shall become null and void if all conditions have not complied with and the occupancy or use of the land or recordation of a final tract map have not taken place within 36 months of the effective date (Exhibit F hereto). The May 1, 1992 transmittal letter identifies an "expiration date" of December 9, 1994, which is three years after the Board of Supervisors approved this project on December 9, 1991.

The Developers no doubt will claim that they have obtained an extension of this deadline.

However, an extension for the Tentative Tract was contemplated by the 1992 approval and, consistent with the law, was expressly limited by Condition 2(a) to a single three year extension: "One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration." (see Condition 2a of 1992 Conditional Approval).

Therefore, any extension is improper in that it violates Condition 2a of the Conditional Approval.

There is also an extension provision that applies only where a developer has recorded a tract map within five years of the conditionally approved development plan. Therefore, any extension is improper in that it violates Condition 2 of the Conditional Approval.

However, there could not have been any valid extension since, Phase One of the Project is on land the Developer *still* does not own (and therefore cannot record a tract map on) and there is no

indication that the Developer otherwise met this requirement in a timely manner. Moreover, the 1983 Agreement (next discussed) whereby the Developer claims the right to acquire so-called "lakebottom land" from the Big Bear Mutual Water District at a cost of \$1,000 per acre *requires* "the proposed excavation and filling described" in the plans to be approved by the Water District to be "completed within three years after the date of said deed." (Exhibit G hereto). One of the properties identified in that 1983 agreement as being subject to the acquisition option is up to "8.5 acres" of "Lake Bottom land abutting" "Cluster Pines" (shown as Parcel B-1 of the Agreement, see paragraph 7 of Agreement).

We believe there has been no "deed" to a portion of these 8.5 acres. If we are correct, the requirements to extend the deadline for completion of the project have not been met for that reason alone. Either way, however, the EIR does not even encompass the lakebottom land on the western portion of the plat map since the (i) property is not owned by the Developer and (ii) the project EIR is limited only to the Cluster Pines campground, which did not include this extension.

The 1983 Agreement also confirms that the most recent application constitutes a substantial change to the scope of the project. The agreement (recorded in the public records) states at paragraph 7(f) that the Lake Bottom Land "shall be developed only with single family (detached) residential homesites...". Notwithstanding its knowledge of this term, the Developer only first sought approval to add so-called single family "condominiums" to the project in March 2014, after the Developer learned that Mr. Polizzi had raised this issue in a pending lawsuit.

Due in part to the 1983 option to acquire "lakebottom land" in the future to add to the Cluster Pines land, the geographic boundaries and scope of the "project" has now been transformed from moderately priced condominiums to luxury vacation home site lots priced as high as \$1.4 million dollars. It bears no resemblance whatsoever to what was approved in the 1983 EIR, the Conditions of Approval of which are attached as Exhibit H hereto.

This itself is a significant revision to the Project, requiring further review.

Indeed, any extension – even if valid – has resulted in a substantially changed project. *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 857, citing *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 806-808 ("Whether an activity requires environmental review depends upon whether it expands or enlarges project facilities or whether it merely monitors and adjusts the operation of existing facilities to meet fluctuating conditions.")

Moreover, as next discussed, the EIR was expressly predicated on the assumption that the only work that would be done on the western end of the property was to correct prior fill that had been placed on the property before the EIR issued.

3B. The So-Called Minor Site Plan Alteration Seeks After The Fact Permission To Build On Or Sell Newly Filled Lakebottom Land That Has Never Been The Subject of Any EIR

The EIR never considered the effect of filling in portions of Big Bear Lake, as the Developer indisputably has done.⁸ The EIR is therefore inadequate for current project since as no environmental studies have been conducted since 1991 and no further review is scheduled.

The law is clear: to be effective, the EIR must consider all environmental aspects of the project. Whether the EIR was effective for the project as the project was described in 1983 is not relevant now. Since 1983, the project has changed so pervasively that critical aspects of it have never been subject to any EIR. Most notable is the EIR's failure to address the infill at Big Bear Lake that has since become part of this project. Other changes include substantially different buildings, new structures, changed uses, including commercial, different amenities and other change discussed infra. As such, the "Minor Site Revision Application" seeks after-the-fact approval of a substantially different, if not entirely new, project.

Courts have looked for adequacy, completeness, and a good faith effort at full disclosure in an EIR.⁹ In *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, the Court held that because the EIR failed to disclose the volume of groundwater subject to contamination, it should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information. "The EIR's failure to address the volume of groundwater in the aquifer constitutes prejudicial error." *Id.* at 95.

An EIR must contain information that "is both required by CEQA and necessary to informed discussion." *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986);" see also *Citizens for a Sustainable Treasure Island*, 227 Cal.App.4th at 1046 -1048 ("As Division Three of this court reiterated, in language particularly pertinent to the issue before us, the 'fact that this EIR is labeled a 'project' rather than a 'program' EIR matters little …' for purposes of its sufficiency as an informative document," quoting *California Oak Foundation v. Regents of University of* California (2010) 188 Cal.App.4th 227, 271, fn. 25) "'The level of specificity of an EIR is determined by the nature of the project and the "rule of reason" [citation], rather than any semantic label accorded to the EIR.' [Citations.]" (*Ibid.*). As a general statement of CEQA practice, " [t]he degree of specificity which is described in the EIR. [¶] … An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan … "¹⁰

The question is not whether a program EIR should have been prepared for this Project, but

¹⁰ Citizens for a Sustainable Treasure Island, 227 Cal.App.4th at 1051 citing Guidelines §15146.

⁸ The 1983 EIR without exhibits is attached as Exhibit I hereto.

⁹ CEQA Guidelines, §15151; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco*, 227 Cal.App.4th 1036, 1046

instead, whether the EIR addresses the environmental impacts of this Project to a "degree of specificity" consistent with the underlying activity being approved through the Minor Site Revision Application that is tethered to the EIR.¹¹ Only through an accurate view of the project that fully reflects all changes since 1983 may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal i.e., the 'no project' alternative), and weigh other alternatives in the balance. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193.

Additionally, it is unconstructive to ask whether the EIR provided "project-level" as opposed to "program-level" detail and analysis. Instead, the focus of the Board should be whether the EIR provided decision makers with sufficient analysis to intelligently consider the environmental consequences of [the] project as it is presently constituted. *Citizens for a Sustainable Treasure Island*, 227 Cal.App.4th at 1052.

For the purposes of requiring a new EIR, it does not matter that the original EIR was not labeled a program EIR. As the Court observed in *County of Inyo*, 71 Cal.App.3d at 199:

We reiterate -- an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. The defined project and not some different project must be the EIR's bona fide subject. The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.

The Court explained CEQA's public information aims were frustrated since the interrelated character of the proposals at issue there was known in advance and the selection of a narrow project was used as the launching pad for a vastly wider proposal. "The department's calculated selection of its truncated project concept was not an abstract violation of CEQA. In formulating the EIR, the department of water and power did not proceed "in a manner required by law." §21168.5; *County of Inyo*, 71 Cal.App.3d at 199-200.

In another case, Sonoma County certified and adopted a program EIR and a specific plan for regulating mining. Appellant applied to amend the plan, sought a use permit to mine 50 acres, and allow reclamation. The County approved the revised plan. The Sierra Club petitioned for writ of mandate, contending the County had violated CEQA by certifying a negative declaration and not requiring a new EIR. The court held that the trial court correctly ordered the county to set aside its approval of the project pending preparation of an EIR. Because the new project had never previously been assessed and was entirely different from the project that had been considered in the EIR, the court that, in effect, no

¹¹ Guidelines, §15146; see §15168(c)(5).

prior environmental review had taken place. Id. at 199.

Center for Sierra Nevada Conservation v. County of El Dorado (2012) 202 Cal.App.4th 1156, 1181 held: "As the California Supreme Court has emphasized, the EIR requirement's "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government." (Id. at 1177-1178).

Thus, it is settled that "compliance with the CEQA requirement of an EIR must precede project approval. On this point our high court has explained, "A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If postapproval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken. We have expressly condemned this use of EIR's." (Id)

A project is considered new where proposed changes are not within the scope of any prior EIR. *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-1321.

As shown below, this project is "new," given its expansion into Big Bear Lake, the substantial changes that have occurred and the decades that have passed since environmental studies were conducted. At minimum, there have been substantial changes necessitating further environmental review before the Developer's pending application can be approved.

The Developer here has admitted to greatly expanding the project beyond its original scope. Indeed. Mr. Okovita admitted in an email to this law firm dated February 19, 2104 (less than one month before submitting the March 2014 so-called "Minor Site Revision Application") that he was developing 4 "lakebottom acres" (that is "land below the 72.4 contour [identical to the spillway elevation of 6,742.6])." (Ex. J hereto).

Mr. Okovita claimed that this land had been sold to the Whighams in 1976, and that it had been "incorporated" into the campground previously. (Ibid). This was incorrect. There was no grant deed whereby the owner of the lake transferred the land to the Whighams, and the deed transferring the campground to Marina Point does not include these four acres.¹²

Moreover, the attached photos taken over the past twenty years (Exhibit M to this letter)

¹² These four acres first appear in the chain of title on a legal description contained on a Corporation Grant Deed recorded in 1980 that was signed after the Bear Valley Mutual Water District no longer owned Big Bear Lake and was in liquidation. (Exhibit L hereto). The alleged "grant" was made to Big Bear Properties, although the Whighams owned Cluster Pines at that time.

conclusively prove that at least portions of the Lake on the westernmost portion of the site had not been filled in as of that time. These photos show that Big Bear Lake extended almost all the way to the rear gates of Mr. Polizzi's rear parcel, even after Mr. Polizzi acquired his two parcels in the past ten years. These photographs conclusively disprove any claim that the Developer might make that the westernmost portion of the property had already been filled in at the time of the 1983 EIR or the 1991/1992 conditional approvals. In fact, the filling in of this portion of Big Bear Lake commenced in 2013 (see photos from November 2013 attached as Exhibit N, and see discussion supra).

Mr. Okovita's email states that "Big Bear Properties acquired approximately 2,500 acres of upland property contiguous to Big Bear Lake in January 1969 from Big Bear Development Company" and that "as a part of this sale Bear Valley Mutual Water Company also entered into a binding contract with Big Bear Properties for 200 acres of lakebottom land that could be filled above the 72.4 contour (identical to the spillway elevation of 6,742.6)."

The area was subject to a record survey in 1938 that established the 72.4 contour line. Everything below the line comprised Big Bear Lake and was owned by the Bear Valley Mutual Water Company, the predecessor to the Big Bear Mutual Water District.

According to the 1983 agreement (and as confirmed by Mr. Okovita's email) Big Bear Properties acquired an *option* in 1969 to purchase lake bottom land from the Bear Valley Mutual Water Company to purchase portions of Big Bear Lake.

This contract was made approximately four years after the Big Bear Mutual Water District was formed and began condemnation procedures to acquire Big Bear Lake.¹³ These condemnation procedures were successful only as of 1977, when a judgment was entered resulting in the purchase of Big Bear Lake (that is, all lands below the 72.4 contour line) by the District, and putting the Bear Valley Mutual Water Company into a liquidation trust. This was years *before* the Bear Valley Mutual Water Company signed the deed purporting to convey the lakebottom land that the Developer references in his Exhibit J email. (see 1980 Deed, Exhibit K hereto).

In that period, there was extensive litigation over whether the 1969 option was enforceable. That litigation was resolved only in February, 1983, *after* the EIR was applied for (in the year 1982), and one month before the 1983 EIR issued. It was only then for the first time that the so-call lakebottom land could be transferred to the Developer's predecessor, Big Bear Properties. Therefore, this land could not have been owned by the Developer at time the EIR was applied for and there is no record of it having been transferred before then.

This is why the Developer is trying to obtain approval of a new tract map that simply assumes a

¹³See Big Bear Municipal Water District v. Bear Valley Mutual Water Company [1989] 207 Cal.App.3d 363, 368-369.

transfer of this land has occurred, when, in fact, the transfer never has occurred.

As the enclosed Exhibits show, this is highly significant to the current appeal. Literally none of the western portion of the current development site is on the Cluster Pines campground. And the Developer has admitted that some of the western portion of the site is on lakebottom land. Yet, the EIR did not encompass this lakebottom land – nor could it, since the Developer's predecessor at that time was still litigating its right to acquire that land when the EIR was applied for and only first obtained that right in February, 1983.

This is also shown by the documents transferring title to the Developer's predecessor. They do *not* identify the four acres on the west. These four acres were, however, mentioned in a deed that was recorded in favor of Big Bear Properties *after* it sold its interest in Cluster Pines (see Ex. K hereto). This deed ostensibly replaced a deed that had been "lost" in 1976 and never recorded during the time frame that the Big Bear Mutual Water Company was arguing that it had no obligation to convey lakebottom land. The so-called "replacement deed" was signed by Big Bear Mutual Water Company after it was in liquidation and after Big Bear Lake had already been purchased in 1977 by the Big Bear Municipal Water District. However, that questionable issue need not be resolved at this time, since the 1983 EIR on its face was limited only to the land that the *applicant* owned and never contemplated, studied or addressed the additional infill of the lake that has occurred since the 1983 EIR. 1983 EIR, p. 4 (project based on "construction on **old** fill") (boldface added); 1983 EIR, p. 9 ("A portion of the site contains 'fill' soils, mostly near the marina and shoreline); 1983 EIR, p. 2 ("The project subject to County action consists of 1. Zone Change from 'Flood Plain - 1 - Flood Hazard" to "Multiple Family Residential on 5.22 acres (to allow construction on **previous** fill) (boldface added);

All of this is directly relevant to the pending application that is the subject of this appeal because the Developers seek approval of their Phase One A to building five 5,000 square foot vacation homes/rentals in a part of the lake that was never the subject of the 1983 EIR and which could not have been part of the EIR since BBP's right to acquire that property *in the future* was being litigated when the EIR was applied for and the matter was only settled in early 1983. (see Ex. G, 10-10-14)

Were it otherwise, the EIR would have been applied for by the owner of that property (the Water District), the EIR would have stated that the project in question involved filling in portions of the lake (rather than being limited to correcting old fill) and that critical issue of the environmental impact of filling in portions of BBL would have been addressed. Instead, the Developer's March 2014 "Minor Site Plan Revision" application (and the 10-10-14 "Minor Revision To An Approved Application" submitted over six months later) seeks to avoid all of those issues by seeking retroactive approval of highly invasive activities that never have been the subject of any EIR.

This is confirmed by the photographs attached as a part of Exhibit L (lake before Developer's unpermitted infill in the early 2000's); Exhibit M (curving western shore of lake after Developer's

unpermitted infill in the early 2000's); N (lake returning to normal levels after Developer's unpermitted infill in the early 2000's) and O (lake returns so that it directly abuts the rear portion of Mr. Polizzi's yard after Developer's unpermitted infill in the early 2000's and before the Developer's recent infill in 2013); the overlays attached as Exhibit P (showing Developer's infill of lake to create straight shore line and extra space on which to build five luxury homes on lakebottom land); and photographs attached as Exhibit Q that show the Developers' infill of the lake in late 2013.

These photographs demonstrate that portions of the western side of the property were submerged within Big Bear Lake for many decades after the EIR was approved and that the "fill" that the EIR stated must be corrected was located on a different part of the property. The portions were submerged in Big Bear Lake even in the current prolonged drought conditions, resulting in the the water levels of Big Bear Lake being eight feet lower than normal, even before the Developer's recent infill of the lake.

When you (Mr. Warrick) recently spoke to my associate Lisa Saperstein, he appeared not to appreciate the significance of these facts to the current application. He appeared to suggest that it did no matter who owned the land below the 72.4 contour line (the "lakebottom land") because the Army Corps of Engineers had issued a permit authorizing that portions of the Lake be filled in and the Water District did not appear to be objecting.

Respectfully, this misses the point:

• Big Bear Lake is a protected part of the public trust. *Big Bear Municipal Water District v. Bear Valley Mutual Water Company* [1989] 207 Cal. App.3d 363, 379; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434, 446 ("The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. . .")

• The Ninth Circuit has already held that the 12.51 acres comprising the project extended "to the lake." [emphasis added] and does not include any wetlands. *Center for Biological Diversity v. Marina Point Development Co.* (9th Cir. 2008), 535 F.3d 1026, 1029 ("Marina Point's 12.51 acre development project site is located on the north shore of Big Bear Lake and the east shore of Grout Bay in the San Bernardino Mountains. The property extends from the edge of the trees to the lake.")

• Discussing scope of the project, the Ninth Circuit also confirmed that "(t)he permit authorized Marina Point to dredge the adjacent shoreline and the interior of the existing marina, and to use the dredged material as fill for building pads on the land. Marina Point was forbidden, however, from placing rip-rap at elevations below lake bottom contours, from depositing sand below the ordinary high water mark, and from transferring fill or structures to neighboring wetlands.") (Id. at 1030) (boldface added); see *Conway v. State Water Resources Control Board*, 2d Civil No. B252688 (March 30, 2015) _____ Cal.App.4th _____, Slip Op. at 4 ("the sediment . . . is intermixed with the lake waters and it is part of the lake. The Regional Board could reasonably determine that the lake bed sediment is not, as

Conway argues, a distinct physical environment. Instead, the lake waters and the lake bed sediment form a single physical environment.")

• As such, before *any* portion of Big Bear Lake can be filled in, whether 4 acres or less, an EIR assessing the impact of that infill must be prepared .

• The 1983 EIR and the 1991/1992 conditional approvals addressed only the property that was above the 72.4 contour line prior to 1981/1982, when the EIR was applied for. While this included preexisting fill below the 72.4 contour line that had been installed prior to 1981, it did not address or analyze filling in additional portions of Big Bear Lake. 1983 EIR, p. 2 ("The project subject to County action consists of 1. Zone Change from 'Flood Plain - 1 - Flood Hazard" to "Multiple Family Residential on 5.22 acres (to allow construction on **previous** fill) (boldface added); 1983 EIR, p. 4 (project based on "construction on **old** fill") (boldface added); 1983 EIR, p. 9 ("A portion of the site contains 'fill' soils, mostly near the marina and shoreline). Nothing is said about filling in additional portions of Big Bear Lake, as the Developer indisputably has done, without conducting any studies since the 1983 EIR issued.

• These approvals did not address any lakebottom land, nor did they consider the significant environmental effects of further infill of an already impaired lake.

By definition, these approvals did not and could not have addressed the infill of the westernmost portion of Big Bear Lake by the Developer after the 1983 EIR and the 1991/1992 conditional approvals since (1) the EIR never mentions any infill of Big Bear Lake; (2) the EIR dealt only with fixing problems with prior fill on the 12.5 acres that are the subject of that EIR (1983 EIR, p. 2 ("The project subject to County action consists of 1. Zone Change from 'Flood Plain - 1 - Flood Hazard" to "Multiple Family Residential on 5.22 acres (to allow construction on previous fill) (boldface added); (3) Marina Point's 12.51 acre development project site extended only "from the edge of the trees to the lake" Center for Biological Diversity v. Marina Point Development Co. (9th Cir. 2008), 535 F.3d 1026, 1029; (4) the Developer was in 1991 permitted only "to strengthen the existing shoreline" and "[t]he permit authorized Marina Point to dredge the adjacent shoreline and the interior of the existing marina, and to use the dredged material as fill for building pads on the land" that was the subject of the EIR's (Center for Biological Div. v. Marina Point, 566 F.3d at 790); (5) the Developer was expressly "forbidden, however...from depositing sand below the ordinary high water mark, and from transferring fill or structures to neighboring wetlands." (Id. at 1030); (6) the attached photographs and the diagram attached to the Army Corps of Engineers report (Exhibit R hereto)¹⁴ plainly show that Developer expanded the scope of the Project by infilling Big Bear Lake in that the previously curved, undulating shoreline along the western portion of the property has been modified into a straight line by adding fill to what was until 2013 portions of Big Bear Lake -- the shoreline has been reconfigured into a new

¹⁴ A color version of the Site Design Associates diagram of 3/11/11 showing proposed lake infill on the western shore of the project (called "slope stabilization measures," "emergent wetland" and "disturbed land") is attached as Exhibit S.

share and significantly exposed so the Developer can squeeze in ten expensive luxury homesites on land that either did not exist before or land that had always been vacant [see Ex T "Existing General Plan", showing that the western portion of the property had no structures even when used as a campground]; (7) the Developer admitted to illegally infilling the lake in the early 2000's (Exhibit R); and (8) the Army Corps of Engineers 2011 Report specifically addresses filling in portions of the Lake in order to correct issues caused by the Developer's illegal infill of portions of Big Bear Lake in 2002, resulting in a 2003 cease and desist order. *Center for Biological Div. v. Marina Point*, 566 F.3d at 803; see Ex. R.

The United States Army Corps Of Engineers (USACE) Public Notice and Report (Ex. R) from 2011 proves this point.

The Report expressly pertains to "after-the-fact-authorization" for work done by **the Developer** *in Big Bear Lake* **without a permit** in the years 2002 and 2003. This work was done 20 years after the 1983 EIR and ten years after the 1992 Revised Conditional approval, which expressly required as an environmental mitigation measure that the Developer obtain a permit from the USACE before doing any work. (Ex. F, Condition 13). The Developer simply flaunted this requirement and then sought a permit to correct the damage he caused, and then further infilled the lake, all without **any** environmental study.

According to the USACE Report, some of the unauthorized work by the Developer (for which it was cited) was adding "fill material into 0.46 acres of water of the United States." (Ex. R, page 5) and placing additional fill in 2.90 acres of the lake in 2003 and, in 2005, the "**permanent** discharge of fill material" into Big Bear Lake on the **western** shore. (Ex. R, page 6) (boldface added). All of this was done without any EIR or studies. As confirmed by the Ninth Circuit opinion involving the parties to this appeal, all of this work exceeded the scope of the project. *Center for Biological Diversity v. Marina Point Development Co.* (9th Cir. 2008), 535 F.3d 1026. 1030.¹⁵

This is also evident from Court's discussion at 535 F.3d at 1034, stating the plaintiff's notices to Mr. Okovita were inadequate because he had already been ordered to cease and desist filling in the lake.

¹⁵ Work began in May 2002, but Marina Point's permit from the Corps expired on September 10, 2002, after several extensions. Marina Point graded the land area before the permit expired. On October 7, 2002, Marina Point's contractor also used a grader to remove trees on the land. Moreover, the Corps allowed Marina Point to proceed with dredging without a permit as long as that did not result in more than "incidental fallback" of soil within the Corps' jurisdiction, **but the Corps disallowed any pushing or pulling of materials along the lake bed**. Work resumed at the site in June of 2003 and went on until about July 23, 2003, when the Corps issued a Cease and Desist Order to Marina Point. The Corps' stated reasons for the order were that Marina Point's use of a dragline bucket, rather than a clamshell dredge, caused more than incidental fallback of soil, and that the contractor had been temporarily stockpiling material **below** the ordinary high water mark. (Ibid). (Boldface added)

("The first of the notices on June 30, 2003, declared that "Section 404 of the CWA" was being violated by activities that began June 17, 2003, which activities were placing "enormous amounts of fill" into the lake and were accompanied by grading below the ordinary high water mark. The notice did not mention any claims under §402 of the CWA, nor did it give any detail whatsoever regarding just what "wetlands" were allegedly being affected or how. It also gave no other specific dates. The second of the notices, dated July 17, 2003, is of the same ilk. It gives little more detail about the activities regarding the lake itself and no more detail regarding wetlands or §402. Those notices are questionable regarding §404 violations and insufficient regarding wetlands and any claimed §402 violations. What is of even more significance, however, is that long before any action was filed and, in fact, before 60 days had gone by, the Corps issued its cease and desist order on July 23, 2003, and all activity by Marina Point *regarding the lake* stopped as it had to. That, in fact, is reflected in the Center's third notice, on August 8, 2003, wherein it stated that the activities it complained of occurred each day' from June 17, 2003, through July 25, 2003.") (Boldface and italics added).¹⁶

The USACE gave the Developer "after-the-fact-authorization" to resume filling in Big Bear Lake in 2011. However, there has never been any EIR (supplemental or otherwise) for this activity, although that is what the County as the lead agency is required to conduct. *Conway v. State Water Resources Control Board*, 2d Civil No. B252688 (March 30, 2015) ____ Cal.App.4th ____, Slip Op. at 8 (dredging of a polluted lake is the appropriate topic of a second tier analysis).¹⁷

The 2011 USACE report further confirms that "the MPDA site is located on decades old landfill" (page 3). It then goes on to reference further "shoreline" protection "to create [the] slopes" that on the east side would "impact 1.05 acres of waters of the United States below the ordinary high water mark (OHWM) of Big Bear Lake, which the Corps has determined to be 6,743.2 MSL." (Ex. R hereto, page 4). It also references further work that would be done on the western portion of the lake that "would impact a total of 2.07 acres of waters of the United States below the OHWM of Big Bear Lake."

¹⁶ The Court continues: "Just slightly over 60 days later and before commencement of this action, the Corps issued its October 16, 2003, ICMO authorizing and directing Marina Point to perform and complete a number of corrective measures by December 1, 2003, for the purpose of protecting the lake from the kinds of problems alluded to by the August 8, 2003, notice. It is also notable that although the Corps' ICMO was issued nine days after the 60 days had expired, Marina Point had applied for permission to undertake that work on September 25, 2003, which was before the 60 days had run. Of course, Marina Point could not have been expected to actually begin correcting perceived § 404 problems regarding the lake without obtaining permission from the Corps. In short, as weak as it was, the notice had done its job, if, indeed, the job was not being done without the notice." (Boldface added)

¹⁷"Until such a plan is formulated, a full environmental analysis of any particular method of remediation is premature. If dredging is indeed chosen as the method, a full analysis can be made on a second tier."

(Ex. R hereto, page 5).

One of the exhibits to the Report (prepared by the Developer's agent Site Design Engineers and dated 3/11/11) confirms that the work on the western portion of the property since the 2011 report has included filling in portions of Big Bear Lake to create a straight shoreline, as so-called "slope stabilization measures." This is confirmed by the enclosed photograph of the lake taken after the Developer's illegal infill from 2001-2002, but *before* the work reflected in the USACE Report." (Ex. R hereto).

The photograph of Big Bear Lake (taken after the Developer had already installed extensive permanent fill in the Lake without any EIR) shows the shoreline curving, which also is reflected in the Site Design Engineers 3/11/11 diagram. (color version attached as Exhibit S).

Since then, that portion of the Lake has been filled by the Developer in 2013-2014, even though this infill of Big Bear Lake was never within the scope of or assessed by any EIR. Again, the 1983 EIR discusses only the stabilization of fill improperly placed in Big Bear Lake in the 1970's. It never analyzed the environmental impact of placing further extensive fill in Big Bear Lake.

We are enclosing the first page of Exhibit P an overlay of the proposed tract map superimposed over an aerial photograph of the western portion of Big Bear Lake, taken *after* the Developer first placed illegal fill the lake in the early 2000's and before the Developer's infill of the lake in late 2013 and 2014. This overlay conclusively shows that most of the Developer's Parcel 1 (where five luxury homes averaging 5,000 square feet each are proposed to be built) was a part of Big Bear Lake, up to than twenty years **after** the 1983 EIR.

The photographs do not lie. The Developer has gone far beyond simply correcting old fill from the 1970's. He has installed new fill in the lake in order to create a luxury home subdivision on "lakebottom" land that he does not even own – and has gone well beyond the scope of the 1983 EIR and the 1992 Revised Conditions.

The 1983 EIR was for a project that did not include all of the 4 lake-bottom acres – even if some of this land may already have been filled at the time. 1983 EIR, p. 2 ("The project subject to County action consists of 1. Zone Change from 'Flood Plain - I - Flood Hazard" to "Multiple Family Residential on 5.22 acres (to allow construction on **previous** fill) (boldface added); 1983 EIR, p. 4 (project based on "construction on **old** fill") (boldface added); 1983 EIR, p. 9 ("A portion of the site contains 'fill' soils, mostly near the marina and shoreline). (Exhibit I hereto).

An EIR that is limited on its face to property owned by a Developer/Applicant cannot confer authorization to modify property that is not owned by the Developer/Applicant. Plainly, the 1983 EIR did not encompass those portions of Big Bear Lake that the Developer did not own or which otherwise was not within the project's scope at that time.

In other words, this entire portion of the project is based on pervasive environmental violations starting with illegal fill in the 1970's which the 1983 EIR contemplated correcting, and further illegal fill in the early 2000's which the Developer has misused as an opening to further fill the lake in 2013 – 2014, based on an environmental study that was over 30 years old and which never contemplated further filling in of Big Bear Lake. Whether or not permitted by the USACE, this is a clear CEQA violation.

Put simply, under the guise of minor, discretionary revisions, the project as currently described has snowballed far beyond the scope of the original project. The cumulative effect of thirty years of revisions represents a new project entirely, especially given the Lake infill that was approved by the ACOE, *but was never publicly approved as part of the EIR process*. The Revision Application seeks to retroactively legitimize "massive fruits" that have "blossomed from the tiny seed of the initial project description." *County of Inyo v. City Of Los Angeles* (1977) 71 Cal.App.3d 185, 199. Therefore, the project should be treated as a "new project." At the very least, a supplemental EIR should be required.

The March 2014 so-called "Minor Site Plan Revision" seeks approval for construction on newly created land which has never been the subject of any EIR. As such, it completely violates California law, including case law under CEQA, the CEQA Guidelines, the San Bernardino County Planning Code and the County General Plan.

There is no doubt that this Western phase one area was part of Big Bear Lake (that is, part of the "lake bottom" *adjacent to* Cluster Pines identified in the 1983 agreement) before the Developer first began to fill it in 2013 (more than 30 years after the EIR issued), and completed filling after April 1, 2014 – after applying for the "Minor Site Plan" revisions. These actions – which were not the subject of the 1983 EIR on which this project is based, clearly violate CEQA.¹⁸ At minimum, further investigation before these actions are approved, since there has been no comprehensive environmental study ever performed.

If these studies are not required by the County and performed as required by CEQA, Mr. Polizzi will become involved in CEQA proceedings against the County. The County will not be entitled to be indemnified by the Developer since the Planning Code does not permit indemnity under circumstances where – as here – there has been no CEQA approval process at all.

¹⁸ The project also runs counter to the San Bernardino County General Plan, where the County vows to support watershed protection principles and policies and considerations with measures aimed to limit disturbance of natural water bodies and drainage systems; conserve natural areas; protect slopes and channels; and minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies. Policy CI 13.2, p. III-41.

4.

CHANGED CONDITIONS

The County's application of the baseline from the 1983 EIR is contrary to law. At least three decades¹⁹ have passed since the studies for the 1983 EIR were conducted and the environmental conditions in and around the Okovita site have changed significantly, due to Okovita's actions as well as climate change. Notwithstanding the public outrage over significant changes to the project plans, it continues to be bootstrapped by stale data. This violates the letter and intent of CEQA and mandates the preparation of a new EIR.

Before discussing the significant environmental changes, it is appropriate to provide an overview of some of the relevant legal principles.

OVERVIEW OF THE LAW

The CEQA Guidelines require that the EIR describe the physical environmental conditions in the vicinity of the project, "as they exist at the time the notice of preparation [of an EIR] is published" and specify "[t]his environmental setting will normally constitute the baseline" (CEQA Guidelines, §15125[a] italics added.)

To afford meaningful environmental review of a proposed project's impact, a CEQA baseline must reflect the existing physical conditions in the affected area, that is, the real conditions on the ground, rather than the level of development or activity that could or should have been present according to a plan or regulation. *Citizens for East Shore Parks v. State Lands Com.*, (2011) 202 Cal. App. 4th 549, 557. Administrative agencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds. *Id.* at 563. An inappropriate baseline may skew the environmental analysis flowing from it, resulting in an EIR that fails to comply with CEQA. *Id.* at 558. The cases further make clear the baseline must include existing conditions and that use of stale baseline data violates CEQA.

For example, the California Supreme Court thoroughly addressed the selection of CEQA baselines in *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310. In that case, ConocoPhillips sought permits to modify or replace existing refinery equipment in order to produce a new low-sulfur diesel fuel. (*Id.* at p. 317.) Although the modified or new equipment would release more NOx (nitrogen oxide) gas than was currently being released at the site, the heightened emission level would still be within that allowed by existing permits. (*Id.* at 318.) The air quality district therefore treated the permitted emission level as part of the baseline, even though the actual emissions at the site had not reached that level. (*Ibid.*) Measured against this baseline, the district concluded the low-sulfur fuel project would not have significant environmental impacts and did not prepare an EIR. (*Ibid.*) The Court of Appeal reversed. The Supreme Court affirmed the appellate court, holding the baseline did not reflect "a realistic

¹⁹32 years, to be exact, the original EIR having been completed in 1983.

description of the existing conditions without the Diesel Project." (Id. at p. 322.)

In *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, the appellate court upheld the county's choice of a baseline reflecting present-day conditions to evaluate the impact of a proposed airport expansion that developed over a period of nearly 30 years without County authorization. There was evidence of environmental damage during that period, and the Airport had been the subject of at least two zoning enforcement actions. The appellate court held that the county acted within its discretion using current airport operations as the baseline for CEQA review. Id. at 1280–1281.

In the unpublished decision of *Creed-21 v. City of San Diego*, D064186 (Cal.App. 1-29-2015), a City storm drain was failing, causing a risk to public safety. The project description to replace the drain was submitted to the development department in 2007. A preliminary biological report, submitted in 2008, recommended revegetation to mitigate the impacts to sensitive vegetation. However, in 2009, before the City had formally applied for the requisite development permit to replace the drain, it unexpectedly failed and the City engineer requested that an emergency exemption from CEQA be issued claiming that failure represented an imminent threat to public safety. On January 15, 2010 the planning department issued the emergency CEQA exemption and a permit to repair the drain, expressly conditioning its approval on the application for a development permit within 60 days. Simulataneously, the City engineer updated the biological report to describe the affected lands as "Tier IV lands".²⁰

The City completed the pipe replacement minus the revegetation in May 2010, and applied for the development permit in October 2010, long past the deadline. In evaluating the effect of the remaining portion of the "project", the revegetation, the planning department used the postemergency conditions as its baseline instead of the initial conditions, resulting in a finding of no significant impact and a notice of exemption (NOE) from CEQA, issued on November 29, 2011. The plaintiff challenged the finding, alleging that the City used erroneous baseline data in making its finding of no significant impact and that a proper analysis would have used the conditions as they existed prior to the pipe replacement.

The Court found that under CEQA, "the baseline for a revegetation project must be set *after* the 2010 emergency work was completed and that any qualification for CEQA exemption and/or significant environmental effect of that project must be considered based on the postemergency work physical environment of the site." "[T]he comparison must be between existing physical conditions without the [project] and the conditions expected to be produced by the project."

The Court explained that the physical environment existing at the site in 2010 changed for purposes of CEQA review, due to the pipe replacement, and that any future work proposed to be completed at the site, including the revegetation, was required to be considered based "solely" on the physical environment that existed *after* completion in 2010 of the drain "without any consideration" of the conditions that existed prior to repairs in 2007.

²⁰ "Tier IV" or "disturbed" habitat is generally cleared of vegetation such that little or no natural habitat remains.

As a general rule then, for an accurate determination of impacts, "the public agency must make a "fair assessment of existing physical conditions" and compare them to the anticipated or expected physical conditions were the project completed, "thereby allowing the agency to focus on the nature and degree of changes expected in those physical conditions after the project and whether those changes result in any significant impact on the environment." A fair assessment requires examining the "existing physical conditions, or *real conditions on the ground*, in 2011". *Creed*.

If, under *Creed*, the changes that occur in a three-year time period require baseline time-shifting, certainly the County must examine whether those in a roughly thirty-year time period would as well in light of the many changes in conditions herein discussed. These include the Developer's illegal infill Big Bear Lake in the early 2000's and its activities more than ten years after to mitigate the substantial impact of those acts, done without any environmental studies.

Furthermore, under *Creed*, the mere replacement of pipe was sufficient to mark the turning point between the change in conditions. In the present case, we have decades of construction-related activities including infill, tree removal, retaining wall erection and rip-rap placement to name a few, that have dramatically changed the landscape and habitat. (See discussion infra).

The Ninth Circuit recently addressed stale baselines in *Northern Plains Resource Council, Inc. v. Surface Transp. Board* (2011) 668 F.3d 1067, where construction and build-out of the Project would be phased and was anticipated to be completed over an approximately 15- to 20-year period, but actually took about 30 years. The lead agency conducted the environmental review using a five-year time frame. The Board reasoned that five years was appropriate because it would allow for approximately three years of construction time, followed by two years of operation time. The Board also used stale data for its environmental review, including bald-eagle studies that were 10 years old.

The court held that the Board arbitrarily and capriciously relied on the five-year time frame, which resulted in a faulty analysis of the possible cumulative impacts. The court stated:

The Board's assumption that the railroad would be constructed and operational within five years of approval in 2007 is clearly flawed in light of the history of this railroad project, which has been under way for almost three decades, starting with TRRC I's approval in 1986. To date, construction has not begun on any section of the railroad. Accordingly, there is little reason to presume that the railroad would be constructed in five years, which—importantly for the Board's analysis—means that we can place little confidence in the Board's assumption [that there were no significant impacts].

[Emphasis added.]

The Board contended that it was entitled to rely on outdated data because "the physical environment of the area at issue here is substantially the same." In response, the court said, "we fail to understand how this necessarily and logically leads to the conclusion that the information regarding habitat and

populations of numerous species remains the same as well," $(id. at 1086)^{21}$ and held at the Board violated NEPA by not taking a sufficiently "hard look" when it deferred gathering baseline data.

Similarly, here the project construction has not begun on any section of the property. Yet, the application of the 1983 baseline in the present case is even more arbitrary and capricious that it was in *Northern Plains* in that a baseline twice as old is being used to make decisions on a construction project that, at the latest, was expected to be completed in less than half the time as the one in that case.

Applying the principles of *Northern Plains* to the present case, "[CEQA]²² requires that an [EIR] engage in reasonable forecasting. Because speculation is . . . implicit in [CEQA], [] [courts] must reject any attempt by agencies to shirk their responsibilities under [CEQA] by labeling any and all discussion of future environmental effects as crystal ball inquiry."²³

To reiterate, the environmental review must proceed based on the current conditions existing at the property. *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246-247 (effects of rezoning must be compared to the existing physical environment, rather than to development allowed under a prior land use plan); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955 (baseline for water diversion project was actually existing stream flows, not minimum stream flows set by federal license); *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121 (water use baseline for analysis of proposed land development was actual use without the project, not what the applicant was entitled to use for irrigation); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 658 (baseline for proposed to merely hypothetical conditions allowable under existing plans"); *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 693, 706-710 (effects of a large office and shopping center development must be compared to the current undeveloped condition of the property, rather than to an office park that could be developed under existing zoning).

²¹ Mitigation measures in the original EIR documents are not sufficient where, as here, the EIR presupposed that the project would be constructed within a three to six-year period, but where the project in dispute dragged on for decades: "We recognize the Board's extensive mitigation efforts. However, such mitigation measures, while necessary, are not alone sufficient to meet the Board's NEPA obligations to determine the projected extent of the environmental harm to enumerated resources before a project is approved. Mitigation measures may help alleviate impact after construction, but do not help to evaluate and understand the impact before construction. In a way, reliance on mitigation measures presupposes approval. It assumes that—regardless of what effects construction may have on resources—there are mitigation measures that might counteract the effect without first understanding the extent of the problem." (Id. at 1084-1085).

²² NEPA, which stands for the National Environmental Policy Act, is the less restrictive federal analogue of CEQA.

²³ *Id.* at 2 at 1068 citing *Selkirk*, 336 F.3d at 962.

Although the Board approving the Okovita project may not have anticipated the roughly 30delay, it has been approving changes apparently based on studies and conditions that were relevant in 1983 and 1991/1992.

There is nothing in the record to support a contention that the climate conditions of the lake, the infill, the water supply or quality, or the eagle population and habitat were the same in 2014 when the Revision Application was approved, as they were back in 1983. In fact, the conditions have changed dramatically over the past 20-30 years as explained now, below, while the data has not been updated with additional studies and surveys.

CHANGES IN GENERAL ENVIRONMENTAL CONDITIONS

1983 Environmental Conditions

In 1983, the Okavita site was home to Cluster Pines campground. The projected daily water use at the site was 150 gallons, based on water use figures from two years prior. Pines and other native conifer trees inhabited the site and bald eagles were frequently seen there. As of 1991, the site posed only a "small fire hazard." Big Bear Lake had not yet been designated an impaired water body.

The 1983 EIR concluded that the Project would increase overdraft of the Basin by 3%²⁴ and expressed concern about a lack of adequate water to supply the Project. Since then, the Project has grown in scope, while available water supplies have sharply decreased and fire hazards in Big Bear Valley pose a greater threat to human structures than every before. Additionally, many of the mitigating conditions that were included in the 1983 EIR have not been enforced or complied with. Since the project has proceeded at a much slower pace than anticipated, the landscape is very different from what it was expected to look like at this point when analyzed in in 1983.

Changed Climate Conditions, Including Prolonged Drought And Accompanying Water Shortages And Fire Hazards, 1983 - 2014

Drought, increase in wildfires, and reduction in snowpack and precipitation are all hallmarks of climate change and part of the daily reality at Big Bear Lake. California has done much to address changing climate conditions, including amending CEQA in 2010 to require potentially significant impacts of locating development in ... areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.²⁵

²⁴ Development Plan 1991; EIR 1983.

²⁵ CEQA 2010 Amendment § 15126.2, subdivision (a).

Dry conditions and lack of precipitation due to anthropogenic climate change have been posing urgent problems in California for several years – drinking water supplies were, and still are, at risk in many California communities and the risk of wildfires across the state has greatly increased. Although Big Bear Lake residents get most of their water from precipitation and melted snow, as of January 2014, snowpack in California's mountains was approximately 20 percent of the normal average.²⁶

In January 2014, Governor Jerry Brown declared a drought emergency, noting that "[e]xtremely dry conditions have persisted since 2012 and may continue beyond [2014] and more regularly into the future, based on scientific projections regarding the impact of climate change on California's snowpack". Referring to the situation as one of "extreme peril" to the safety of persons and property in California due to water shortage and drought conditions, Governor Brown called for a 20% cut back in water use by all citizens. He also placed a moratorium on non-essential landscaping projects at state facilities and on state highways and roads. Governor Brown's Proclamation also called on local water agencies to update their legally required urban and agricultural water management plans in order to plan for extended drought conditions.²⁷ "We ought to be ready for a long, continued, persistent effort to restrain our water use," he said.²⁸

This year, 2015, marks the second straight year that the state Legislature has acted on emergency drought relief. The Legislature also crafted a \$7.5 billion water bond that was approved by voters last November, with most of those funds earmarked for longer-term projects to bolster the state's water infrastructure.²⁹ Governor Brown also signed a \$687.4 million drought package in 2014.³⁰

Reduction in Water Availability

Population growth and climate change are already stressing the groundwater supply in Bear Valley. Recently, average water use in the Fawnskin area has grown to 250 gallons per day for every water connection.³¹ Existing water infrastructure is already insufficient to meet current fire flow³²

²⁶ Governor Brown's proclamation is discussed, among many other places, at http://blogs.ocweekly.com/navelgazing/2014/11/california_drought_water_jay_famigliett

²⁷ Governor Brown's proclamation.

²⁸ LATimes www.articles.latimes.com.

²⁹Moon Camp 2011 RDEIR; <u>http://blogs.ocweekly.com/navelgazing/2015/03/</u> jerry brown california_drought_legislation.php

³⁰ (<u>http://blogs.ocweekly.com/navelgazing/2014/11/california_drought_water_jay_famigliett</u>)

³¹ Moon Camp 2011 RDEIR, Appendix B.

requirements. Indeed, Big Bear Valley Community Services District adopted mandatory outdoor water use restrictions in August 2014. Big Bear Area Regional Water Agency has considered implementing a wastewater recharge program since the demand in Big Bear Valley can exceed the water supply in dry years and during prolonged droughts.

Many of these environmental changes are reflected in the San Bernardino County General Plan. Adopted in 2007, the General Plan reflects the County's current development concerns and standards. Although projects under CEQA need not adopt every single recommendation therein, they must be "consistent with" the General Plan.³³

Specific to the Mountain Region, which includes Fawnskin, the General Plan requires that developers, when feasible, substantially maintain existing percolation, establish controls for soil erosion and sedimentation, use reclaimed wastewater from Mountain sewage systems, maintain existing percolation and the surface water runoff rate by discouraging the paving of large surface areas, and create recharge areas for overdrafted basins offsetting increased consumption attributable to new development.³⁴

In 1990, the DWP wrote that it believed that newly identified wells and improvements in the DWP Master Plan to include wastewater recharge and toilet retrofitting would allow the Project to comply with the County's General Plan requirements. However, these changes have not been implemented. In fact, mysteriously absent from the 1991 Conditions is1983's Condition 42 requiring installation of state-of-the-are water conservation devices in all units.

Given the sensitivity of the water issue, the evident elimination of the environmental mitigating conditions requiring water at the source is another key change in the project. That condition is found in the 1992 Revised Conditions Of Approval as condition numbers 27, 28, 82.

The 1983 EIR concluded that the Project would increase overdraft of the Basin by 3%.³⁵ Although there are fewer units contemplated by the revised plan, the project now includes many waterdependent amenities that were not part of the 1983 EIR, including numerous spas, an indoor-outdoor pool, a pond that converts to an ice skating rink, a "Gazebo with a water feature", a restaurant, banquet

³² Moon Camp 2010 RDEIR at 4.5-11.

³³ San Ber. County General Plan, Policies M/CO 2.8 and M/CO 2.9, p. V-42, Policy M/CO 3.6 p. V-43

³⁴ Id., Policy CI 11.11 (2)(d). p. III-35

³⁵ Development Plan 1991; EIR 1983

facilities, or gourmet food shop.

The impact of these changes on the water supply was apparently not part of any later analysis. These revisions cannot reasonably be considered "minor revisions" under CEQA given the ongoing water crisis.

The purpose of CEQA is to disclose potential environmental impacts to the public and decision makers *before* an agency approves or commits to a project. CEQA Guidelines §15002(a).

CEQA requires that the County conduct an additional analysis to clearly determine whether the existing water supply is adequate to serve the Project *as currently proposed* given the state and local drought emergency and its effects on the water supply.

The failure to conduct more studies of the conditions as they exist on the gournd and acknowledge the changing landscape of Big Bear and the project site is to analyze the Project in a vacuum and ignores the realities of a living in a changing environment.

Increased Hazards Of Fire

Since the United States Forest Service has kept records for over 107 years, the Big Bear Valley has not been affected by a large fire. Consequently, there is 107 years of forest fuels accumulation in the San Bernardino National Forest immediately adjoining the City of Big Bear Lake. Over 60% of that forest is a Condition Class 3 and is significantly overstocked with trees and filled with an estimated 14 million dead trees due to the recent bark beetle infestation and cyclical drought conditions. In 2001, the City of Big Bear Lake was listed in the Federal Register as a Community at Risk of a wildfire. In 2003, the entire community was evacuated as a result of the uncontrollable "Old Fire." Based upon a computer model, the Old Fire would have taken less than 24 hours to reach Big Bear Valley absent suppression efforts.³⁶

The Okovita site had been designated as a "Very High" rise area by CalFire and the Fire Warden as of 2007. In 2006, the Big Bear Lake Safe Council and Mayor formally acknowledged the increased fire hazard in the Big Bear Valley Community Wildfire Protection Plan. It was a collaborative effort of multiple agencies including San Bernardino National Forest representatives (Id.).³⁷ The General Plan indeed vows to "provide a fire-safe environment throughout the Mountain Region"³⁸ and in 2014, a new provision was added that calls for a Hazard Mitigation Plan, which, together with the County Fire

³⁶ http://firewise.org/wildfire-preparedness/be-firewise/success-stories/california/big-bear-lake.aspx?sso=0

³⁷ The entire plan can be viewed at: <u>www.thinisin.org</u>.

³⁸ San Bernardino County General Plan, Goal M/S 2, Page VIII-34

Department and Fire Districts, aims to reduce and/or eliminate risk that may result in loss of life and property due to fire and other hazards.³⁹

The ongoing drought since 2012 further exacerbates the fire risk in the region. These changes at the very least necessitate new requirements in fire safety, which new structures, including the ones Okovita intends to build, must reflect.

Moreover, the substantial change in the fire risk over the last couple decades is a substantial change in the environmental setting of the project that must be analyzed in conjunction with the project itself in a more current EIR.

The significantly reduction in water availability, and the increased risk of wildfires constitute a substantial change in the setting of the Okovita project that must be subjected to a new environmental review under CEQA.⁴⁰ In the context of the environmental conditions *as they presently exist* and as they are projected to deteriorate into the future, a project of this scale and grandeur on this site is outrageous. The 2014 revised approval never considered these environmental changes. Many of the conditions imposed in 1983 would be impractical or impossible given the stark change in environmental conditions.

The following is an itemization of some of the Conditions of Approval rendered impractical or impossible by the drought, which must be reconsidered in light of the changed conditions:

- **1983 Condition 17:** Provide a letter from the Sanitary Engineering Section, State Health Department stating they have reviewed the water system and concur with Southern California Water Company's findings that additional supplies of adequate quality and quantity of water are available to meet Health and Safety Code requirements.
- **1983 Condition 21:** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings of portions of buildings are hereafter constructed when any portion of the building protected is in excess of 150 fee from a water supply on a public street, there shall be provided on site fire hydrants and mains capable of supplying the required fire flow. The required fire flow for your project is 2,500 GPM[...] This fire flow is in addition to the average daily consumption.
- **1983 EIR Condition 24:** Fire Department requirement of construction of new reservoir with a minimum storage capacity of 300,000 gallons.
- **1983 EIR Condition 42:** Revegetate with native plants. (inadequate water for required landscaping)

³⁹ Policy S 10.1 Page VIII-31

⁴⁰ CEQA Pub. Res. Code 21166(b).

- 1983 EIR Condition 43: Revegetate with fast-growing pines or some other conifers....
- **1983 EIR Condition 52:** A maintenance plan for the required landscaping shall be approved by the Planning Director. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period.
- **1992 EIR Condition 17:** The owner shall provide a reliable and assured water supply adequate in quantity and quality to meet health and safety code requirements and in compliance with the County's recently approved Assured Water Implementation Plan.
- **1992 EIR Condition 26:** The developer must comply with the requirements of County's Assured Water Program by participating in the DWP's approved program. The current cost for the additional 50% Assured Water is \$284.00 per unit. For this project, the ratio of program components shall be ½ retrofit and ½ wastewater recharge.
- **1992 Condition 27:** The developer must provide (at his cost and at DWP specification) for 100% of the project's estimated water demand at maximum day demand usage by providing a new operational well to the DWP (or a portion of a new well's capacity) and the necessary piping to connect to the DWP system.
- **1992 Condition 28:** The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990.
- **1992 Condition 82:** The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project.

2014 Environmental Conditions

Since 1983, the project has staggered along over the last few decades, and there have been a number of significant changes to the site, resulting in:

- Vacant land since the campground was replaced shortly after 1983;
- Inadequate water supply for housing, landscaping and revegetation;
- Decrease in Lake Volume
- Dredging, resulting in extremely dry patches of land
- Increased flood risk on adjacent properties due to the trenches dug by the Developers

- A 25,000 square foot increase in proposed structural development, unpermitted fill and numerous modifications to site and building specifications
- Conifers have been leveled:
- Destruction of bald eagle habitat on the site and a reduction in the bald eagle population;
- Fill settling and potholes due to •
- Sharp increase in the fire hazard;⁴¹
- Designation of the Lake as an impaired water body;⁴²

the so-called "public beach" is now 20 feet above Big Bear Lake and the lake thus entirely inaccessible for the public use;

is

the required public lake access easements have been eliminated by the Developer.

SITE SPECIFIC CHANGES

Although some of the site changes were approved individually as minor changes, cumulatively, they have cumulatively resulted in an entirely new environment at the site, especially in light of some of the macrocosmic changes just described. At minimum, "as a matter of necessity at this stage in the planning process, there are many Project features that are subject to future revision" and which must "be the subjects of supplemental review before the final Project design is implemented." Citizens for a Sustainable Treasure Island, 227 Cal.App.4th at 1054

While CEQA does not require an EIR to be prepared for every step taken in the course of a project CEQA Guidelines, §21166 provides that subsequent or supplemental environmental impact report shall be required by the lead agency if one or more of the following events occurs:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report,

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report, or

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.43

⁴³ (§21166; see also Guidelines, §15162; [citation]; see Committee for Green Foothills v. Santa Clara County Bd. Of Supervisors (2010) 48 Cal.4th 32, 54-55 ('[S]ection 21166 comes into play precisely

⁴¹ http://www.frap.fire.ca.gov

⁴²http://www.waterboards.ca.gov/rwqcb8/water issues/programs/tmdl/index.shtml#projects

"[S]ection 21166 comes into play precisely because in depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired (§21167, subd. (c)), and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process.' [Citation.]" *Committee for Green Foothills v. Santa Clara County Bd. Of Supervisors* (2010) 48 Cal.4th 32, 54-55.

Furthermore, the label placed on an EIR is not particularly relevant for purposes of ordering a supplemental study.⁴⁴

4A. Change from Camp to Vacant Land

The 1983 EIR correctly considered the existing use of the eastern portion of the property as the proper baseline comparison. (1983 EIR, p. 2 ("The project will displace an **active** recreational vehicle park (Cluster Pines) **which has existed on the site for many years**) (boldface added); At that time, the eastern portion of the property was being used as a campground. However, since the 1983 EIR, the campground has been replaced with vacant land. The land was last used as a campground vacant in the 1980's and has been vacant since then. The uses on which the outdated environmental analysis was based ended decades ago.

As mentioned at the start of Section 4, "[i]n assessing the impacts of a project proposed for an undeveloped piece of property, agencies should compare project impacts against the existing environment. . .". *Center for Sierra Nevada Conservation v.County of El Dorado* (2012) 202

because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired (§21167(c)), and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process.' [Citation.]" (see also discussion under changed conditions).

⁴⁴ As stated in *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1047-1048: "There are many different names that have been applied to EIRs.... For this reason, courts strive to avoid attaching too much significance to titles in ascertaining whether a legally adequate EIR has been prepared for a particular project. As explained in *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511: "Designating an EIR as a program EIR . . . does not by itself decrease the level of analysis otherwise required in the EIR. 'All EIR's must cover the same general content. (Guidelines, §§15120-15132.) The level of specificity of an EIR is determined by the nature of the project and the "rule of reason" [citation], rather than any semantic label accorded to the EIR'.... As Division Three of this court reiterated, in language particularly pertinent to the issue before us, the "fact that this EIR is labeled a 'project' rather than a 'program' EIR matters little . . ." for purposes of its sufficiency as an informative document. (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 271, fn. 25 "The level of specificity of an EIR is determined by the nature of the project and the "rule of the project and the "rule of reason" [citation], rather than a

Cal.App.4th 1156, 1184. This concept should apply to assessing the 2014 application, given the fact the 1983 EIR was conducted over 30 years ago. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246-247 (effects of rezoning must be compared to the existing physical environment, rather than to development allowed under a prior land use plan)

It would naïve not to recognize that much can happen in three decades including changes to flora and fauna, soil composition, and to water quantity and quality.

The current application must be assessed in relation to the current, vacant state of the property and a new EIR must be conducted to determine the extent to which the baseline has changed in the period since the property has been vacant. The proper baseline has changed and the current application must be assessed with reference to the current vacant state of the property. Although the baseline "normally" consists of "the physical environmental conditions in the vicinity of the project, as they exist at the time . . . environmental analysis is commenced. . . ." (Cal. Code Regs., tit. 14, §15125[a]), this can change where, as here, existing physical conditions have varied over time (see *Com. For a Better Env. v. S.C. Air Qua. Mng.* (2010) 48 Cal.4th 310, 316, see also Id at 328;⁴⁵ Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors (2001) 87 Cal.App.4th 99, 121 (the "`real conditions on the ground"' are the proper baseline). The current application must be assessed in relation to the current, vacant state of the property and a new EIR must be conducted to determine the extent to which the baseline has changed in the period since the property has been vacant.

The 1983 EIR baseline was also predicated on the existence of a marina. *All* of the environmental impacts of the proposed project were assessed based on the premise that the proposed project would be replacing one of the busiest marinas on the North Shore, which had an average occupancy of between 200 to 300 people. Great emphasis was placed on the fact that a dilapidated and poorly run marina would be replaced by an environmentally sensitive condominium project that would not greatly add to the density of the use or its impact on the environment. This premise permeates every aspect of the 1983 EIR and has never been reassessed based on changing conditions.

For example, the 1991 Findings state at page 11 "The No Project alternative assumes that no development would occur and that the site would be retained In Its present developed state as an aesthetically detractive R.V; park and commercial marina. This alternative would essentially maintain

⁴⁵ "Whatever method the District uses, however, the comparison must be between existing physical conditions without the Diesel Project and the conditions expected to be produced by the project. Without such a comparison, the EIR will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates. (§21100.)"

the existing environmental conditions of the subject property as discussed in various sections of the EIR." These findings confirm the 1983 baselines was used in connection with the 1991 EIR.⁴⁶

These findings are completely outdated and irrelevant due to changed circumstances. The use of the land as a campground was voluntarily discontinued years ago, shortly after the 1983 EIR issued. Further studies and a new EIR are required because the present use of the property is vacant land and has been for nearly a quarter century.

In other words, we are no longer substituting a condominium project for a campground. We are now substituting a condominium project for raw land, which has had decades to return to its natural state before the Developers' actions that resulted in a court injunction issuing last year.

4A. Inability To Properly Revegetate

Per the 1983 EIR's Conditions Of Approval Numbers 38 and 43, all existing Perch trees were to be retained unless removal was required for issues of public safety and the entire site was to have been re-vegetated "with fast-growing pines or some other conifers in order that the units will eventually be screened and or partially masked from the viewshed on the lake and from the south shore." Both of these are mitigating factors, according to the EIR. The 1991 Condition of Approval Number 46 likewise references "trees, irrigation systems, landscaping installed on public right of way within this tract area."

There are at least six changed conditions that call into question the Developer's ability to meet these conditions, especially when considered in combination with each other:

- (1) Due to the water shortages and drought, this required revegation cannot occur;
- (2) This is exacerbated by the Developer's removal of more than the minimum 160 trees that were to have been left on the property;
- (3) According to the Developers' plans, the developer has moved the lakefront access easement to the shore of the lake. However, the public access easement is the only place that the revegetation required by the 1983 EIR's Condition of Approval Number 38 can occur, especially since the massive buildings are designed right to the edge of (and in some instances) over the 20 foot

⁴⁶ "In the 1983 EIR, five alternatives were considered and evaluated, No Project, Reduced Density, Single Family Residential, Mobilehome Park, Public Park/Marina/Campground and Restaurant/lodge. As part of the EIR, the Initial Study developed and evaluated three alternatives, No Project, Reduced Density, and Different Location. For purposes of this document each different alterative is described;" see also, Id. at 14 ("the No Project alternative would result in the continued use of the site as an existing rundown recreational vehicle park with current traffic impacts."); Id. at 16 ("The EIR finds that the No Project Alternative would result In possible elimination of a net increase of water use and thus the undesirable cumulative regional impacts. However, this option would result in the continued use of the site as an recreational vehicle park with its current use of water.")

easement.

- (4) The Developer has placed massive boulders on many portions of the site where the re-vegetation has occurred. This change in condition makes it impossible to revegate in these areas, thereby making it impossible to comply with the 1983 EIR's Conditions Of Approval Nos. 38 and 43.
- (5) Much more of the so-called "open space" has been covered by the later addition of "amenities" such as tennis courts and bocce ball court and a 9,000 square foot retail building; and
- (6) As stated in the submission by Friends of Bear Valley, some of the large trees improperly removed by the Developer were perch trees that bald eagles used to forage in Grout Bay. This has affected nesting birds.

4F. Substantial Loss In Lake Volume

The 1983 EIR states that that no lake volume would be lost because all that would occur would be putting what was dredged from the lake onto fill existing from the 1970's. We now know that is incorrect and that substantial portions of the lake have been filled in by the Developer in the past 13 years, without any environmental study. There has been a substantial loss in lake volume. This action requires a new environmental study.

The recent Lake infill has changed not only the contour of the Lake, but has reduced its capacity. Flooding was a problem prior to the infill. As the 1983 EIR recognizes, "Portions of the site below the 6745' (above sea level) are subject to inundation from the lake in the event of a major storm."⁴⁷

Although Big Bear Lake is relatively small, unauthorized infill is becoming more common. Infill of lakes plays a crucial, if not the main, role in disappearance of lakes understood as a decrease in their volume. ⁴⁸ Lake disappearance is a result of two parallel processes: changes in the water level and the infill of the lake basins.⁴⁹

The cumulative impact of each incremental infill on the environment increases with subsequent infill projects. It must be fully analyzed in relation to other infill that has occurred in the lake as well as all of the other changes to the Okovita project, especially since the infill was never analyzed in the first EIR.

⁴⁹ Id.

⁴⁷ 1983 EIR p.10

⁴⁸ A. Choiński1, M. Ptak, Lake Infill as the Main Factor Leading to Lake's Disappearance, Polish J. of Environ. Stud. Vol. 18, No. 3 (2009), 347-352.

4G. Elimination Of Portions Of Big Bear Lake by Diversion of Large Volumes of Water, Combined With Prolonged Drought Conditions

The Developers have dredged deep channels, which, in combination with prolonged drought conditions, has turned a vast portion of Big Bear Lake into a moated desert island. This was done with no environmental study whatsoever because the study was limited to the Cluster Pines area.

What was once lake bottom is now euphemistically referred to as "emerging wetlands." In fact, it is nothing other than a desert island surrounded on three sides by a man-made moat.

CEQA requires a comprehensive analysis of the impact of the activities on the surrounding areas. Although this result might not have been reasonably foreseeable in 1983, it now must be analyzed thoroughly because there is uncontroverted evidence that the Developer's activities combined with the drought conditions have caused it to occur.

4H. Water Will Be Diverted Onto Mr. Polizzi's Adjacent Property Because The Developer Has Altered Adjacent Properties

The 1992 Revised Conditions of Approval caution the Developers to "abate the existing structural encroachment from the parcel to the west or obtain a Lot Line Adjustment prior to Final Map recordation. (1992 Revised Conditions, Condition Number 20.) Per 1992 Condition Number 74(A), all on-site fill slopes shall be limited to a maximum vertical height of thirty (30) feet. A copy of the final grading plan must be submitted when graded slopes exceed five (5) feet in height and fill slopes exceeds three (3) feet. (1992 Revised Conditions, Condition Number 76.) Condition 22(E) requires pedestrian easements to be retained as accessible to accomplish their intended purposes. These Conditions, in effect, protect surrounding properties, easements and water bodies from erosion and increased runoff. See also, 1992 Condition Number 72, which requires an erosion and sediment control plan and permit "prior to any land disturbance."

The 1983 EIR found that the project's effect on adjacent properties (including "view obstruction") would be "non-significant."

That has all changed. There are now changed circumstances such that the project is having an extremely adverse effect on properties that border the western portion. This is especially true with respect to Mr. Polizzi, who previously had an unobstructed view of the lake and direct lake access from his rear parcel. Now, his home and three adjacent structures to the east stare into a block wall, holding back lots that are six feet higher than the neighboring lots, and will someday contain thirty-five feet tall houses built to the edge of the wall. These are significant changes in conditions that mandate a supplemental EIR.

Further, Condition 11 of the 1983 EIR required that "Adequate provisions shall be made to intercept and conduct upstream overflow from the natural drainage course around the site into Big Bear

Lake in a manner which will not adversely affect adjacent properties." (see also Condition No. 5,⁵⁰ and Large Scale Housing Project Condition No. 5).⁵¹ Those conditions have been violated. The Developer's modifications to the natural drainage course will divert water onto Mr. Polizzi's property.

Historically, the lake has come up to Polizzi's rear gate, which has been there since the early '60s. ((Photo, Ex. L, Ex. O) Yet the Developers have encroached upon Polizzi's private easement by building up the height of their "lakebottom" lot by six feet in a way that will divert water onto his property and by illegally raising the height of the property to the west of Mr. Polizzi . While the construction has reduced the volume of the lake, as discussed above, it has also effectively created a culvert in front of Polizzi's property. That culvert is in a natural drainage course to the lake (which is also supposed to be a public access easement), and is protected on the Developer's side by a six foot high retaining wall, but that has no wall or barrier on the other side where the channel is directly adjacent to Mr. Polizzi's property. These changes will necessarily divert onto Mr. Polizzi's lower land the water that previously flowed into Big Bear Lake before the Developer infilled it, raised the level six feet and installed a large retaining wall along the newly created southern portion of the drainage channel to protect his new land from the lake overflow.

The diverted flowing water will also erode Mr. Polizzi's property because there is no reinforcement on his side of the drainage channels to where the Developer's actions have redirected the flowing water. This, too, is a changed condition that mandates a supplemental EIR. Given the impaired designation of Big Bear Lake, it is all the more important to avoid sedimentation run-off and erosion.

Case law holds that "an owner of property may not construct or maintain structures which are detrimental to his neighbor's property, merely for the purpose of improving his own property." *Katenkamp v. Union Realty Co.* (1935) 11 Cal.App.2d 63, 68.

The Developer's actions also violate the *San Bernardino Development Code*, Chapter 85.11, especially §85.11.030(a), which says that "No person [...] shall commence with a disturbance of land (e.g. grading or land clearing) or construction activity that has that potential to cause erosion without first obtaining approval of erosion control measures to ensure that erosion would not reasonably be expected to occur."

Once again, all of this was done without any environmental studies in violation of the conditions of approval.

⁵⁰ Adequate provisions shall be made to intercept and conduct the offsite tributary drainage flow around or through the site in a manner which will not adversely affect adjacent or downstream properties."

⁵¹." All disturbed areas shall be protected to control erosion and to prevent sedimentation of adjacent properties, storm sewers and/or streams."

4I. The Developer Has Substantially Changed The Project By Including Ten Single Family Residence Homesites On Two Of the Eight Approved Lots, Resulting In An Additional 10,000 Square Feet And Adding a 9,000 Square Foot Clubhouse/ Commercial Facility And Private Boat Docks On The Lake. The Developer Has Also Substantially Reconfigured The Lots.

The 1992 Approval was for an eight lot subdivision. See GENERAL ON-GOING CONDITIONS, Condition Number One. ("This conditional approval is for a Planned Development consisting of an eight (8) lot Subdivision). Through its so-called "Minor Revision Application," the Developer has sought to circumvent this limited approval, by including **ten** single family residence homesites on two of the eight lots. These lots are being marketed as luxury homesites for \$1.4 million each with anticipated single family homes averaging 5,000 square feet each, for a total of 50,000 square feet. (see 10-10-14 Plan, Ex C hereto) The prior condominium buildings were approximately 20,000 square feet for a total of 40,000 square feet. (Id)

The Developer is advertising and selling these as sites for "custom homes' and according to the signs posted on the property, has at least two of the lots in escrow already. (see Exhibit X hereto).

Defining ten individual "custom homes" as "single-family condominiums" is, at best, inaccurate. Calling these "custom homes" more clearly defines units as single family homes rather than as condominiums.

As discussed supra, it is naïve, at best, to accept the Developers' representation that these newly added luxury homes will reduce the Project's impact. The most common use of luxury ski and lake resort housing is for short-term vacation rentals. It can reasonably be expected that the owner investors of these 5,000 square foot lake front villas will use them only on occasion, and when not using them. will attempt to recoup their substantial monetary investments in the resort property by renting them out to large groups of people intent on a mountain frolic. The rental rate for a 5,000 square foot luxury home in an amenity filled resort will be quite high. Therefore, it can reasonably be anticipated that large groups of vacationers (perhaps 8 to 10 at a time) will pool their monies and collectively rent the 5,000 square foot spaces for a few days or a weekly get away. The Developer is plainly attempting to appeal to this luxury demographic by including high end, expensive amenities intended to attract a high impact vacationing crowd to the Project, intent on getting their money's worth for a mountain resort vacation. In relation, the Developer's proposed CC&R's (submitted 20 years after EIR approval) permit the rental on a daily basis of each of the units in the project. (see section 4(iv)(12)). This raises a host of issues regarding adequacy of parking and the overall strain on the North Shore that these crowds of vacationers will inevitably cause. At minimum, the impact of adding ten luxury vacation rental lodges to the Project must be the subject of further environmental review.

Accordingly, the condominium terminology is simply being used as pretense in order for major changes to slide through the system as "minor."

When combined with the new "clubhouse"/ commercial facility, the Developer thus proposes to add 19,000 more square feet of buildings *to a portion of* the project, (and ten private boat docks on Big

Bear Lake),⁵² and completely change the nature of what is being constructed and sold on the western portion of the project, all in the guise of a so-called "minor site revision" application. These proposed actions would result in a substantial change to the project.

As well, the Developer is proposing to substitute 10 luxury homes of 5,000 feet each for 20 condominiums of approximately 1,000 feet each. This is an additional 30,000 square feet in residential space alone. When added to the 9,000 square foot clubhouse/ commercial complex, this additional 39,000 square feet increases by over 25% the total square feet of the buildings in the project. And this does not even count the vast increase in constructed "amenities." Clearly, this is not a minor site revision, by any stretch of the imagination.

The Developer has also substantially reconfigured the shape of the Lots that were approved, such that many of them now resemble a gerrymandered voting district from the last century. (see revised Lot Line Exhibit, Exhibit Y). This, too, is a substantial change.

4J. There Are Now Less Trees On The Property Than Contemplated And Required By The EIR

Until the Developer's failure to comply with Conditions, the 1983 EIR contemplated a site with 160 coniferous trees, however, there are now only 150 because the Developer removed trees in violation of the mitigation requirements.

The EIR requires native revegetation. Missing trees were to be replaced with quick-growing conifers, in order to meet this requirement. However, we are now suffering from a drought. Although they are native, quick-growing conifers will require more water and are more flammable than other kinds of trees. The General Plan also encourages the use of non-flammable vegetation. Therefore, the conifers cannot be replaced at this time.

Nor is there enough space at the project because of all the extra square footage of structures and outbuildings the Developer has added in its site plan dated 10-10-14. This is evident simply by comparing the site plan to the landscape plan. (Exhibits C and W, and see Exhibit Z, showing

⁵² Additional docks to the west of this project site or anywhere in this area would have major increased impact on the bald eagles that nest less than one mile from the site and forage at and near the site on a regular basis throughout the year. The circumstances of the bald eagle population has changed in major ways since the previous environmental review on this project. Due to increased development in the past 20 years, the average number of bald eagles in the area during winter months has decreased from 28 to 6. Bald eagles are also now documented year-round residents, as opposed to only winter visitors, as they were at the time of the previous analysis. In addition, a nesting pair has successfully raised one chick and had failed attempts the past two years. This pair, as well as their offspring, regularly forages in and around the Marina Point project, especially including the bay to the west of the project site. These changes and the actual impacts of the project revisions and the cumulative impacts of this with other nearby projects must be analyzed thoroughly through a full environmental impact report.

Developer's misleading depiction of the site). The former shows structures and parking lots where the latter shows trees. Moreover, the landscape plan shows trees in areas where the EIR forbids them being planted (such as the public access easement and the lakefront easement) or where they are physically impossible to be planted (such as the areas on the lake where the Developer has installed extensive riprap (to wit, massive boulders).

It takes only a few minutes of attention to see that the Developers are playing a shell game by submitting conflicting plans and never will be able to meet the landscape requirements of the EIR based on the way the project is currently configured.

4K. Changes In Bald Eagle Population

The Bald eagle habitat on the site has been virtually destroyed and the bald eagle population has dwindled severely. As the County has recognized, bald eagles remain protected under the Bald Eagle and Golden Eagle Protection Act and The Migratory Bird Treaty Act. Both laws prohibit "killing, selling or otherwise harming eagles." (Warrick letter to Okovita, dated September 14, 2011, page 6) (Ex. AA hereto); see *San Bernardino Development Code* §81.01.00(c), "Rare or Endangered Species" "shall be as defined in Section 15380 of the California Environmental Quality Act (CEQA)."

The cumulative effect of having even one fewer perch tree on the site is significant since they are an integral part of the habitat of this endangered animal. Condition 38 of the 1983 Conditions of Approval states "All existing perch trees should be retained." However, the Developer has impermissibly removed perch trees that bald eagles used to forage in Grout Bay.

Federal guidelines promulgated by the U.S. Fish and Wildlife Service contain many recommendations relevant to the Okovita Project. For instance, USFWS urges local authorities to "[1]ocate long-term and permanent water-dependent facilities, such as boat ramps and marinas, away from important eagle foraging areas" and also to avoid "recreational and commercial boating and fishing near critical eagle foraging areas during peak feeding times." United States Fish and Wildlife Sercie, Bald Eagle Management Guidelines, 2007, 14.

The Developer's placement of new homes along the western shore and extensive private docks in Big Bear Lake in this area (see Developer's advertising materials submitted by Friends of Bear Valley) are substantially changed conditions that violate these guidelines.

4L. Serious Issues Involving Failure Of Recently Installed Fill and Settling And Ponding In Constructed Roadways

The EIR was predicated on the substandard fill issues on the ground being corrected.

At page 9, the 1983 EIR reports that "a portion of the site contains 'fill' soils, mostly near the marina and the shoreline." It then expresses concern that "[w]eight of the buildings could result in subsidence of 'fill soils, especially if water saturated, thereby creating potential structural defects." See

1983 EIR, p. 2 ("The project subject to County action consists of 1. Zone Change from 'Flood Plain - 1 - Flood Hazard" to "Multiple Family Residential on 5.22 acres (to allow construction on **previous** fill) (boldface added).

The required steps to minimize erosion are not succeeding.

We know from the photographs taken in March 2015 (some of which are attached as Exhibit CC) that significant new fill issues have manifested in the roadways already constructed by the Developer. These include three sinkholes in the road running down the center of the project, a collapse of the land leading to the road and extensive ponding in the newly installed roadway. The approved EIR talked about ponds on the property – not ponds in the middle of the roads.

The failure of the fill that has already been installed is a changed condition that warrants further investigation. This is a significant impact on environment.

4M. Substantial Changes To Buildings

Per the 1983 EIR's Condition Of Approval Number 26, "[c]alculations were based upon four (4) unit buildings, two stories in height."

The Developer then proposed a plan with 19 residential buildings on 12.5 acres, with seven units per building (13 units plus on managers unit). This, too, was a substantial change.

The buildings have further changed dramatically in the year 2014. There now are 10 SFR's (single family residences averaging 5,000 square feet each), and ten buildings of 11 units each, plus, among other significant changes, an added 9,000 square foot "community building" with a restaurant (with no dedicated parking), retail space, a health club (with only 20 parking spaces for 9,000 square feet), tennis courts, and indoor/outdoor pool, a so-called "ice skating pond," a viewing deck cantilevered over the lake where there was supposed be an easement, and other extensive amenities befitting what the Developers now refer to as a "destination resort community."

Contrary what the Developer's March 2014 Submission suggests, the 2014 Project has vastly increased density. Given the commercial uses now proposed, the zoning has now changed from what the 1983 EIR contemplated, which was, simply put, the replacement of campground residences with a low-density residential condominium complex.

It is no longer a series of two-story fourplex units. It now consists of ten three story large multifamily dwellings of eleven units each, plus ten single family homes (averaging 5,000 square feet each) (built in large part on lakebottom land filled without any EIR) totaling an additional 50,000 square feet, plus a 9,000 square foot "clubhouse" and commercial facility.

Based on the rendition submitted by the Developer (Ex. C hereto) the multifamily buildings will

now be three stories, parking is now in the buildings, with guest parking outside. Because the buildings are now three stories, the foundations will need to be much bigger and caissons will need to be sunk into the compacted fill (assuming it is ever fixed) to be able to support the greater mass of what is being built. Due to increased size of the multi-family units, there are fire sprinkler issues, and new issues and concerns as to appropriate firewall separations. Corridors, stairwells, handicapped access issues have all changed substantially, and handicap accessibility requirements have changed dramatically since 1983.

As well, the danger of damage due to liquefaction has now increased; the buildings will now need to be steel reinforced, and require far more seismic support.

All of this is being built on compacted fill that the 1983 EIR identified as being inadequate and which remains inadequate, based on the notable settling in the new roadways that already occurred in the mild rains we have had this past winter.

The nature of the buildings has completely changed since the 1983 EIR. The construction time will greatly increase, thereby causing far greater disruption to the environment than was ever considered in the 1983 EIR.

Further, as elaborated upon earlier in this letter, the entire west side of project is now being developed, whereas it was empty before. This is in the area of the infill of lakebottom land.

If these drastic changes are approved without any further environmental review, perhaps the Developer should consider next adding adding a Wal-Mart or a multi-plex cinema to the compliment the Frisbee golf-course that has recently been installed in the western portion where Big Bear Lake used to be before the Developer's dredging contributed to diverting the water from that portion of the lake.

4N. The Impact On Adjoining Properties Has Greatly Changed

As discussed in greater detail in the next section, the changes to the project that have been made have had a substantial impact on adjoining properties, including Mr. Polizzi's directly adjoining property.-

The cumulative impact of these changes is overwhelming. The project has completely changed. A low density condominium project has been replaced by a high density concrete jungle. There is nothing in the record to support a contention that the climate conditions of the lake, the infill, the water supply or quality, or the eagle population and habitat were the same in 2014 when the Revision Application was approved, as they were back in 1983. In fact, the conditions have changed dramatically over the past 20-30 years as explained now, below, while the baseline data has not been updated with additional studies and surveys. Further environmental review is required.

THE DEVELOPER'S PROPOSED "MINOR SITE ALTERATION" VIOLATES OR PROPOSES TO VIOLATE MANY OF THE 1983 AND 1992 EIR CONDITIONS OF APPROVAL

OVERVIEW OF THE LAW, INCLUDING THE COUNTY'S LIABILITY UNDER CEQA FOR ALLOWING THE PROJECT TO PROCEED IN VIOLATION OF THE CONDITONS OF THE EIR

As the lead agency, the County under CEQA has the legal responsibility to enforce the conditions of approval in an EIR. *San Bernardino Development Code* §86.09.010.

This is relevant to the current appeal because the so-called "Minor Site Revision Application" indirectly requests the County to turn a blind eye to numerous pervasive violations of the current EIR. The County may not do so without being subject to legal action for which it is not entitled to indemnity from the Developer. (see *San Bernardino Development Code* §81.01.070, limiting indemnity to "approval of a land use application," but not addressing County's knowing failure to enforce the conditions of a previously approved plan or otherwise to meet its duties under *San Bernardino Development Code*, §86.09.010; see §86.09.040 [it is unlawful "for any person to violate the Development Code or to cause or allow any violation of the Development Code are a public nuisance]; §86.09.090 [unlawful to comply with any condition of land use approval].)

Specifically, a number of the mitigation measures that were imposed after the public comment process in 1983 mysteriously disappeared from the 1991/1992 revised Conditions and even more of them have since been disregarded.

In Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152, 1165-1167, Division One of the Fourth DCA confirmed that the lead agency under CEQA has the legal responsibility to enforce the mitigating conditions of approval in an EIR. The Court also held that since all of the adopted mitigating conditions are part of the EIR, a suit under CEQA seeking to enforce those conditions is not barred by the statute of limitations because it does not challenge the EIR. (Id at 1166-1167, citing *Lincoln Place Tenants Assn. v. City of Los* Angeles (2007) 155 Cal.App.4th 425, 453). Such a suit "is in support of the County's past findings and promises to achieve" identified goals through the earlier adopted mitigating measures.

Sierra Club also holds at 231 Cal.App.4th at 1165-1166 that "if the agency finds that mitigation measures have been incorporated into the project to mitigate or avoid a project's significant effects, a 'public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the

environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. (Pub. Resources Code, §21081.6, subd. (a)(1).)'. Thus, "'[m]itigating conditions are not mere expressions of hope." *Lincoln Place I*, supra, 130 Cal.App.4th at p. 1508.

Once incorporated, mitigation measures cannot be defeated by ignoring them or by "attempting to render them meaningless by moving ahead with the project in spite of them." Lincoln Place II, supra, 155 Cal.App.4th at p. 450. This is true even where subsequent approvals are ministerial. *Katzeff v*. Department of Forestry & Fire Protection (2010) 181 Cal.App.4th 601, 614 (public agency "may not authorize destruction or cancellation of the mitigation — whether or not the approval is ministerial -without reviewing the continuing need for the mitigation, stating a reason for its actions, and supporting it with substantial evidence"). If a mitigation measure later becomes "impractical or unworkable," the "governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence." Lincoln Place I, supra, 130 Cal.App.4th at 1509) (Id at 1167-1168); see California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 189, (holding "[w]hen a project will result in an adverse change to the physical environment, CEQA instructs that "the agency 'shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures' (§21081.6(b)) and must adopt a monitoring program to ensure that the mitigation measures are implemented (§21081.6(a)). The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (See §21002.1(b).)" (Federation of Hillside & Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1260-1261, fn. omitted.).

Nor can the County be deemed to have made implied findings that the Project as presently constituted complies with the EIR mitigation measures adopted in the 1983 EIR and the 1992 Revised Conditions. *Sierra Club*, 231 Cal.App.4th at 1172 ("The County contends that the board of supervisors made an "implied finding" that the CAP complied with Mitigation Measure CC-1.2 and that finding is "entitled to great deference." However, "such an 'implicit finding' does not satisfy CEQA's requirement of express findings." (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1037, fn. 17.) "[T]he board of supervisors must make findings . . . to permit a reviewing court to bridge the analytic gap between the evidence and the ultimate decision." (*People v. County of Kern* (1976) 62 Cal.App.3d 761, 777; see *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 442 ["passing references to the mitigation measures are insufficient to constitute a finding, as nothing in City's resolutions binds it to follow these measures"].)

Moreover, "even if 'implied findings' were permissible, there can be no 'interpretation' of [a] [m]itigation [m]easure [that is] contrary to its express terms." *Sierra Club*, 231 Cal.App.4th at 1172, citing *Southern Cal. Edison Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 1086, 1105 ("an agency's interpretation of a regulation or statute does not control if an alternative reading is compelled by the plain language of the provision"); *Santa Clarita Organization for Planning the Environment v.*

City of Santa Clarita (2011) 197 Cal.App.4th 1042, 1062 (agency's "view of the meaning and scope of its own ordinance" does not enjoy deference when it is "clearly erroneous or unauthorized' ".)

Here, the County has failed to meet these most basic requirements. Some of the earlier adopted mitigation measures have simply dropped out of the most recent version of the Project. Others are not being enforced by the County in violation of its duties under CEQA. No findings have been made. Most of the earlier adopted mitigation measures have not been expressly deleted. Rather, they have simply been ignored. No legitimate reasons exist for doing so.

Were the County not to uphold the instant appeal, the record would amply demonstrate "that the County is not making meaningful implementation efforts, and in some instances that the County is acting contrary to mitigation measures incorporated into the" EIR. *Sierra Club*, 231 Cal.App.4th at 1169.

The San Bernardino County Development Code likewise provides at §86.09.060:

Unlawful to Refuse or Fail to Comply With a Condition of Land Use Approval

(a) It is unlawful for the owner, the owner's agent or representative, or other person in whose favor or for whose benefit, a land use approval of any kind has been granted for the parcel of real property at issue, to refuse or to fail to comply with the condition of approval or the conditions of approval, either individually or collectively in any number.

(b) Each and every day, and during any portion of which, any failure or refusal to comply with the condition or conditions of approval imposed on any land use approval, authorization, permit, or variance, is committed, continued, or allowed, is a new and separate offense.

Also, §86.09.070 states: "[a]ny property not in compliance with an applicable condition of approval imposed upon any land use approval, authorization, permit, or variance is hereby declared to be unlawful and a public nuisance."

In summary, mitigation measures in an EIR that are not enforced are CEQA violations addressable via a writ of mandamus and the County's failure to enforce these measures render its in violation of its own Development Code.

Under the *San Bernardino County Development Code*, the County is not entitled to be indemnified its legal fees for its failure to enforce the earlier adopted mitigation measures. §81.01.070 "Legal Defense Fee Responsibility" limited to actions "relating to or arising out of County *approval*." (emphasis added)

5A. The Developer Has Violated Numerous Specific Conditions In The EIR

The Developer's failure to propose a project that can be built consistent with prior approvals

mandates further environmental review. Indeed, the State Supreme Court has just confirmed that "if a proposed project cannot be built as approved, then the project's proponents will have to seek approval of any additional activities and, at that time, will have to address the potential environmental effects of those additional activities." *Berkeley Hillside Preservation v. City of Berkeley*, S201116 (Cal. 3-2-2015) Slip Op. at 43.

The following list includes some of the specific conditions that the Developer is violating, including mitigation measures contained the 1983 EIR and the 1992 Revised Conditions.

Some of these are elaborated on in greater detail in this letter.

5B. The On-Site Water Supply Required By The 1992 EIR Conditions of Approval Is No Longer Being Included

The on-site water supply required by the Conditions of Approval is longer being included. The proposed elimination of the mitigating conditions requiring water at source mandate that a new EIR be conducted.

The 1992 document contains the following revised conditions of approval:

- **1992 Condition 27:** The developer must provide (at his cost and at DWP specification) for 100% of the project's estimated water demand at maximum day demand usage by providing a new operational well to the DWP (or a portion of a new well's capacity) and the necessary piping to connect to the DWP system.
- **1992 Condition 28:** The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990.
- **1992 Condition 82:** The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project.

These conditions were imposed in order to mitigate serious water shortage concerns identified in studies leading to the 1983 EIR. The Developer was ordered to post a bond to ensure these required improvements were constructed in accordance with these critical mitigating conditions.

The Developer has never constructed these improvements.

Instead, the record reflects that the Developer submitted a letter from the Big Bear Department of Water dated January 25, 2013, recommending a reduction in the bond for these improvements and stating "constructing a new groundwater production well and being responsible for 90,000 gallons of

water system storage are no longer necessary." (see Ex. EE hereto).⁵³

In 1990, the DWP wrote that it believed that newly identified wells and improvements in the DWP Master Plan to include wastewater recharge and toilet retrofitting would allow the Project to comply with the County's General Plan requirements. However, these changes have not been implemented.

This is a critical deviation from what the 1992 Conditions of Approval described as "environmental mitigative measures."

One of the County's stated goals is to "protect and preserve water resources for the maintenance, enhancement, and restoration of environmental resources." In that vein, the County will promote conservation of water and maximize the use of existing water resources by promoting activities/ measures that facilitate the reclamation and reuse of water and wastewater. San Bernardino County General Plan, V-27

The County has adopted several programs to further that goal including authorizing local water authorities to mandate feasible water conservation measures in all new development recommended by the water agency or purveyor that supplies the development with water, to require the implementation of water reclamation systems and other non-potable water to the maximum extent feasible for landscape irrigation. Id. at V-28.

The County also authorizes the regulation of "non-essential water use" and seeks to establish water conservation measures in areas experiencing groundwater supply problems or overdraft as defined by state and local agencies. Id. This authorization obviously reflects the paramount importance of water conservation measures in the twenty-first century.

As a matter of law the environmental mitigative measures in the EIR may not be omitted from a plan without a new study being conducted. (see discussion under County's mandatory duty to enforce Conditions of Mitigation, infra.)

Furthermore, the approval never mentions the environmental impacts that the so-called "minor" revisions will have. The 1983 EIR concluded that the Project would increase overdraft of the Basin by 3%.⁵⁴ Although there are fewer units contemplated by the revised plan, the project now includes many water-dependent amenities that were not part of the 1983 EIR, including a spa, an indoor-outdoor pool, a pond that converts to an ice skating rink, a "Gazebo with a water feature", a restaurant, banquet

⁵³ This letter does not satisfy CEQA, which requires a supplemental EIR to remove a mitigating condition. Moreover, to our knowledge, the mitigating condition has not been removed. Instead, it appears to have been ignored, with no environmental study having been conducted.

⁵⁴ Development Plan 1991; EIR 1983.

facilities, or gourmet food shop. The impact on the water supply was apparently not part of any analysis. These revisions cannot reasonably be considered "minor revisions" under CEQA given the ongoing water crisis.

5C. There Are Now Less Trees On The Property Than Contemplated And Required By The EIR

The 1983 EIR contemplated a site with 160 coniferous trees, however, there are now only 150 remaining because the Developer removed trees beyond the minimum in violation of the mitigation requirements, and without obtaining the proper permits from California Department of Forestry prior to removal. He has failed to replant them. The absence of these trees, which has persisted since their disappearance as a result of the Developer's tree removal activities, has changed the immediate environment.

As anticipated by the Planning Department itself, the unauthorized removal of trees in conjunction with the permitted elimination of others, has diminished the biological diversity on site. Members of the community who used to enjoy watching the creatures perch on the conifers at the Okovita site, have noticed a sharp decline in the eagle population within the past year, no doubt due to other site-specific modifications as well.⁵⁵ This is one of the Developer's many violations of the Revised Mitigating Conditions of Approval; specifically Condition Number 12 of the 1992 Revised Conditions.⁵⁶

The EIR requires native revegetation. (1983 EIR, Condition of Approval Number 42). The trees that were permitted to be leveled were to be replaced with quick-growing conifers. However, we are now suffering from a drought. Although they are native, quick-growing conifers will require more water and are more flammable than other kinds of trees. The amount of "seasonal rainfall" relied upon in the 1983 EIR cannot credibly be claimed analogous to the precipitation expected during a severe drought.

Before development can continue, the County needs to prepare an EIR that analyzes the effects of having fewer trees on the property than anticipated in 1983 as well as how the change in climate has affected its recommendation for fast-growing conifers. Specifically, the EIR must address how the tree loss affects the eagle population.

5D. Easements Of Record Not Extinguished Or Relocated

Per the 1983 EIR's Condition Of Approval Number 47, "easements of record not shown on the

⁵⁵ Recent environmental analysis also determined that construction and residential uses in proximity to roosting and perch trees could create "a loss of perching or roosting habitat value for wintering bald eagles [and] would be considered a significant impact." Friends of Bear Valley Appeal Application, Attachment B

⁵⁶ This was one of the reasons why the San Bernardino County Superior Court issued a preliminary injunction against the Developer in 2014.

tentative map shall be relinquished or relocated."

According to public record documents, there is an access easement running down the center of the Project. (see *San Bernardino Development Code* §810.01.070(b) defining "easement" as '[a] grant of one or more property rights by the property owner to and/or for the use by the public, a corporation...".)

Based on the current configuration of the project – as redesigned after the EIR issued, the public lake access easement that ran down the center of the property has now been eradicated.

Specifically, according to some of the plans submitted by the Developer, that easement has now been located along the reconfigured shoreline. However, as discussed above, the "easement" the extent it truly exists is utterly meaningless in that it is now blocked by a combination of trees, rock and structures.

Critically, the Developers' March 2014 letter submission at page two (Exhibit D) now states that the public will be completely excluded from the property because the entire project now will have "controlled access gates" "for the privacy and protection of residents."

In the other words, the public easement required by the 1983 EIR's Condition Of Approval Number 47 has been completely eliminated.

In addition to the private prescriptive easement he is attempting to enforce through a pending lawsuit against the Developer, Mr. Polizzi and the public have rights to the following interests based on certain recorded deeds, which the project as presently constituted would eliminate:

a. A 20-foot wide lake-access easement traversing the southern edge of the Project site from approximately the northeast edge of Lot 3, adjacent to North Shore Drive, to Big Bear Lake's High Water Line (which is the level known as the seventy-two and four-tenths (72.4) foot contour line), adjacent to the western edge of Lot A.

b. A 20-foot wide lake-access easement traversing the western edge of the Project site from approximately the northwest corner of Lot 6, adjacent to Big Bear Lake's High Water Line, to the southwest corner of Lot A, adjacent to Big Bear Lake's High Water Line.

c. A 40-foot wide public lake-access easement on land composing the perimeter of the existing marina.

d. An easement along the High Water Line of Big Bear Lake 20 feet in width, as measured from the High Water Line inland.

e. A 20-foot wide public access easement extending from North Shore Drive, adjacent to the northwestern side Lot 2 on the Project site, and traversing portions of Lot 1 and Lot 2 to the High Water Line, for vehicle and pedestrian access to the easement along the High Water Line.

Each of these easements is a protected conservation easement under *Civil Code* §815.1, which states: "conservation easement' means any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition." Under *Civil Code* §815.2, "(a) A conservation easement is an interest in real property voluntarily created and freely transferable in whole or in part for the purposes stated in Section 815.1 by any lawful method for the transfer of interests in real property in this state; (b) A conservation easement shall be perpetual in duration; and (c) A conservation easement shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding the fact that it may be negative in character."

As stated in *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1353, fn. 1 "`[a]n open-space easement is an instrument whereby the owner relinquishes to the public the right to construct improvements upon the land, effectively preserving for public use or enjoyment the natural or scenic character of the open-space land." Such easements are binding on successive owners of the land. *Wooster v. Dept. of Fish & Game* (2012) 211 Cal.App.4th 1020, 1026.⁵⁷

The Project as presently constituted will eradicate these easements, in violation of the conditions of the 1983 EIR. It will also subject the County to years of litigation, not only from the present opponents of the Project as presently constituted, but also from buyers who are ordered to remove the illegally built structures, built over the lots for which they will be paying millions of dollars.

5E. The Developer Has Circumvented The Approval Of An Eight Lot Subdivision By Including Ten Single Family Resident Homesites On Two Lots, Thus Creating A Total Of Seventeen Lots. As Well, The Developer Has Added Clubhouse And Private Boat Docks On The Lake.

The 1992 Approval was for an eight lot subdivision. See GENERAL ON-GOING CONDITIONS, Condition Number One. ("This conditional approval is for a Planned Development consisting of an eight (8) lot Subdivision).

⁵⁷ *Feduniak* provides a roadmap for what will occur if the Developers are permitted to proceed and eradicate the conservation easements. In *Feduniak*, an unethical seller failed to disclose that it had built a three hole golf course over a conservation easement. The seller's successor in interest who took without notice of the conservation easement was ordered to remove the improvements and to restore the land to its natural condition. The Fourth District Court of Appeal affirmed the Order, holding that the Coastal Commission's order that the property be restored to its natural state was valid and not barred by estoppel. Here, were the County to knowingly approve the construction of the Project over the various easements, it will be virtually guaranteeing being embroiled as a co-defendant with the Developers in years of litigation by subsequent purchasers of portions of the Project, once these purchasers are ordered to remove the improvements constructed in violation of the easements. As such, this appeal presents one of the final opportunities for the County to avert a protracted legal, as well as an environmental disaster.

Through its so-called "Minor Revision Application," the Developer has sought to circumvent this limited approval, by including **ten** single family residence homesites on two of the eight lots. These lots are being marketed as luxury homesites for \$1.4 million each with anticipated single family homes averaging 5,000 square feet each, for a total of 50,000 square feet. (see 10-10-14 Plan, Ex. C hereto) The prior condominium buildings were approximately 20,000 square feet for a total of 40,000 square feet. (Id) When combined with the new "clubhouse," the Developer thus proposes to add 19,000 more square feet of buildings to the project, (and private boat docks on the lake), and completely change the nature of what is being constructed and sold on the western portion of the project, all in the guise of a minor site revision application. These actions violate a condition of approval and resulted in a substantial change to the project.

5F. Violation Of Large Scale Housing Project Conditions Of Approval 2, 4, and 5 Requiring Prevention of Off-Site Sedimentation And Erosion At All Times

The 1983 EIR includes Large Scale Housing Project Conditions Of Approval 2, 4, and 5 which requiring prevention of off-site sedimentation and erosion at all times, including preventing sedimentation of adjacent properties such as Big Bear Lake and Mr. Polizzi's home. See also 1992 Conditions of Approval Nos. 92 and 94.

This is consistent with *San Bernardino Development Code* 84.18.040 (c)(2) and (d)(5) which respectively require suitable stabilization of new earthwork and the forbid "the placement of structures for human habitation in an environmentally hazardous, fragile or unique area."

These conditions have been pervasively violated.

As result of the Developer's activities, there already has been extensive off-site sedimentation and erosion, including into Big Bear Lake. This is conclusively shown by the Exhibit CC photographs.

5G. Inability To Properly Revegetate

Per the 1983 EIR's Conditions Of Approval Numbers 38 and 43, all existing Perch trees were to be retained unless removal was required for issues of public safety and the entire site was to have been re-vegetated "with fast-growing pines or some other conifers in order that the units will eventually be screened and or partially masked from the viewshed on the lake and from the south shore." Both of these are mitigating factors, according to the EIR. The 1992 Condition Of Approval Number 46 likewise references "trees, irrigation systems, landscaping installed on public right of way within this tract area."

As discussed above, there are at least six changed conditions that call into question the Developer's ability to meet these conditions, especially when considered in combination with each other. However, whether or not the Developer can ultimately correct these issues, the fact remains that the Project is currently not in compliance.

5H. Developer's Failure Meet Conditions That Defects In Landfill Be Corrected

As discussed above, the EIR was predicated on the substandard fill issues on the ground being corrected. There remain serious issues in this regard involving the failure of the recently installed fill and the settling and the ponding in the constructed roadways resulting from this year's light rains.

51. The Requirement That The Project Be Constructed In Six Phases No Longer Can Be Met Because The Developers Are Now Selling Phase One As Vacant Lots, Rather Than Constructing Condominiums.

The EIR requires that the Project be constructed in six phases and the construction on each phase proceed sequentially.

Phase One is supposed to be constructed before anything else. Conditions require construction "in sequence and coinciding with the six (6) numbered lots of subdivision Tract 12217." That is now not occurring.

The Project can no longer being constructed in six phases because the Developers are now attempting to sell Phase One, as buildable lots, rather than constructing condominiums.

Once again, the Developers are failing to comply with the terms and conditions of the approval they received in 1983 and 1992.

5J. The Perch Trees Required By The EIR Have Been Removed

Condition 38 of the 1983 Conditions of Approval states "All existing perch trees should be retained." Perch trees are an integral part of the habitat of the bald eagle and the purpose of this condition was to mitigate the negative impacts the project has on the bald eagle population Perch trees are an integral part of the habitat of the bald eagle. As stated by Friends of Bear Valley, some of the large trees improperly removed by the Developer were perch trees that bald eagles used to forage in Grout Bay.

5K. Adequate Measures Have Not Been Taken To Prevent Run-Off

As the attached photographs (Exhibit CC) show, adequate measures have not been taken to prevent run-off.

The Conditions of Approval from 1983 and 1991/1992 require prevention of runoff. However, recent visits to the site reveal that there is pervasive run-off of mud and debris into the lake. (Ex. CC).

The County has articulated a commitment to minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies in its General Plan.⁵⁸

⁵⁸ Policy CI 13.2, p. III-41.

5L. Trees and Irrigation Systems Are Now Proposed To Be Installed On Public Rights Of Way, In Violation of the Conditional Approval

Per 1992 condition of Approval 62, trees and irrigation systems cannot be installed on public rights of way. Yet, that is exactly what the Developer's landscape plan proposes to do, in order to satisfy the revegetation condition. (See Ex. W and Ex. Z hereto)

The Developer cannot both move the landscaping and satisfy the revegetation condition. There is simply too many structures in the project as proposed to do both. This is why some of the Developer's submissions include the landscaping (in an area where it cannot be placed), whereas the 10-10-14 site development plan omits the landscaping. (compare Exhibits C to Ex. W and Z hereto).

5M. The 1983 EIR Required Buffer For Bald Eagles By Stanfield Pass Is No Longer In The Plan.

Big Bear Lake has provided wintering habitat for the bald eagle. Lake Big Bear is therefore recognized by the California Department of Fish and Game as an Area of Special Biological Importance

By law, the County must coordinate with state and federal agencies and departments to ensure that their programs to preserve rare and endangered species and protect areas of special habitat value, as well as conserve populations and habitats of commonly occurring species, are reflected in reviews and approvals of development programs. This coordination can only be accomplished by notification of development applications and through distributed CEQA documents.⁵⁹

5N. Omission Of The Required 10 foot Planter Strip Screen Along The Northern Boundary Of The Project

Condition Number 51(b) of the 1983 EIR (identified as a mitigating factor) states "the 10 foot Planter Strip Screen **shall** be provided along the northern boundary of the project with trees and shrubs." (emphasis added).

The so-called "Minor Site Alteration" proposes a massive angular structure on the northernmost portion of Lot 6A (identified as "Site 1') that is *directly adjacent* to the new six foot high wall on the northern boundary of the project. (see Developer's "Minor Revision To An Approved Action, dated 10-10-14, which was first sent to us by Mr. Warrick on March 30, 2015). There is no room for the required 10 foot Planter Strip. That strip has simply been eliminated. (see Ex. C and Exs. V and Y, showing proposed structure built along lot line).

⁵⁹ County Of San Bernardino Section V – Conservation Element, April 12, 2007 Page V-5

Nor can the Developers place the Planter Strip into the public right-of-way beach access easement, that is below the raised portion of the property as they may be intending to do. Condition Number 62 of the 1983 EIR could not be clearer: "Trees, irrigation and landscaping shall not be installed on public right-of-way."

The proposed structure on the northern boundary of the project therefore must be moved ten feet away from the Northern Boundary Since there must be thirty feet between each of structures and the proposed "Minor Site plan Revision" allows only thirty feet, *each* of the ten proposed single family structure must be moved ten feet further away from the Northern Boundary. However, because the Developers have placed the last structure (identified as "Site 10") almost in Big Bear Lake, there is not enough room to move all the of the structures to accommodate the"10 foot Planter Strip Screen...along the northern boundary of the project" required as in mitigation by Condition Number 51(b) of the 1983 EIR. Accordingly, the so-called "Minor Site Alteration" **cannot** be approved without directly violating the 1983 EIR. In its continuing effort to maximize by profits by creating a alienable luxury homesite for a 5,500 square foot home, the Developer has completely ignored this mitigating condition,

We believe that other setback requirements are no longer being met. However, this is difficult to fully assess due to the Developers' failure to provide the "Minor Site Revision" package to Mr. Polizzi.

50. The So-Called "Public Beach Is Now 20 Feet Above Big Bear Lake And The Lake Is Thus Not Safely Accessible For Public Use

As the attached photographs (Ex. DD) show, the so-called "public beach" is now 20 feet above Big Bear Lake and the lake thus is entirely inaccessible for the public use from the so-called "public" beach. This is because the Developer has raised the land in the area and the lake is eight feet below normal level. This created a highly hazardous condition for any member of the attempting to use the lake from the public beach. The County, of course, will be liable for the inevitable personal injuries that will result, including claims for paralysis of which the County is on actual and constructive notice. This problem will remain even after the lake returns to normal level in that there will still be a twelve foot drop from the beach to the water. Alternatively, in order to protect the County from liability, the public beach will have to be eliminated, thereby violating other conditions of approval and public easement rights. Conversely, if the required beach remains, someone will suffer catastrophic personal injuries in the future because the land was raised far too high in relation to the lake.

5P. Omission Of The Required Fire Department Approvals For The New Structures

Condition Number 26 of the 1983 EIR states that "Fire flow requirements were predicated on the Plot Plan dated March 29, 1982. Calculations were based upon four (4) unit buildings, two stories in height. Any revisions or substantial changes in design or location of the clustered units will be subject to review by the Fire Chief."

There is no indication that the Fire Chief has approved the changes identified in the 10-10-14 Site Plan (which, itself, postdates the March, 2014 application by more than six months.)

SPECIFIC REQUESTS

Based on the foregoing, Mr. Polizzi requests:

- 1. That the purported "Minor Site Revision Application" be denied;
- 2. That additional environmental studies be ordered to address each of the issues raised in this letter and by the submission of Friends of Bear Valley, including the changed circumstances of this Project;
- 3. That a new EIR or, in the alternative, a Supplemental EIR be ordered prepared;
- 4. That a new public hearing be ordered and the Developer ordered to give proper notice, including to Mr. Polizzi and to all adjoining neighbors;
- 5. That the San Bernardino Land Use Services Department promptly and fully enforce each of the mitigating conditions contained in the 1983 EIR and the 1992 Revised Conditions of Approval;
- 6. That the Developer be ordered to cease and desist all activities on the Project until these issues are resolved.
- 7. That Findings of Fact be issued on each of the issues raised above to justify any decision made on the Application.

6.

CONCLUSION

"The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283. The cumulative changes to this project since the 1983 EIR have been pervasive and significant. For the reasons stated above, and given the plain record, "a supplemental EIR must be prepared . . ." *Sierra Club*, 231 Cal.App.4th at 1173, citing *Lincoln Place I*, supra, 130 Cal.App.4th at 1508-1509.) As well, e San Bernardino Land Use Services Department promptly and fully enforce each of the mitigating conditions contained in the 1983 EIR and the 1992 Revised Conditions of Approval.

"The County's failure[s] to comply with" CEQA (including the extant Mitigation Measures, supports the conclusion that the "project will have significant, adverse environmental impacts that have not been previously considered, mitigated, or avoided. (Id at 1173). Simply put, "[i]t cannot be said

that" the Developer's "failing to comply with" the scope of the project and the terms of the Mitigation Measures "does not change the environmental conclusions in the" EIR. *Sierra Club*, 231 Cal.App.4th at 1174-1175.

This appeal must be granted.

The required further environmental studies must "focus on impacts to the existing environment, not hypothetical situations." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955) and assess "the impacts of" the proposed project based on "the actual environmental conditions" currently existing at the site. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321. Further a biotic resources report must be prepared under San Bernardino Development Code section 82.19.030.

Verv tra ANTHONY KORNARENS LAW(O) Kornarens thom Lisa Saperstein

cc: James Ramos, Supervisor, Third District
Chris Carrillo, Deputy Chief of Staff
Elizabeth Harris, Field Representative
Jeffrey Brandt, California Department of Fish and Wildlife
Mr. Tom Hudson, Director, Land Use Services Department, San Bernardino County
Mr. Gary Polizzi
Ms. Sandy Steers, Friends of Bear Valley
Ed Wallace, Sierra Club, Big Bear Group
Adam Keats, Center for Biological Diversity
Hugh Bialecki, Save Our Forest Association

Exhibit A



San Bernardino County

Land Use Services Department, Planning Division San Bernardino County Government Center 385 N. Arrowhead Ave., San Bernardino, CA 92415-0187 15900 Smoke Tree Street; Hesperia, CA 92345 San Bernardino Office – (909) 387-8311 Fax (909) 387-3223 High Desert Office – (760) 995-8167

REVISION TO AN APPROVED ACTION INFORMATION SHEET AND APPLICATION

The Director of Land Use Services may approve minor modifications/revisions of the conditions of approval or project design for a conditionally approved development project. However, should the Director determine that the modifications may be controversial, the requested modification shall be referred back to the reviewing authority who required the conditions. In this case, the review procedures that were originally used to review and approve the project, shall also be used to consider the proposed modifications.

CHECKLIST OF SUBMITTAL MATERIALS

Please use this checklist as you assemble the materials for the submittal of your application. County staff will use the checklist to determine whether your application is acceptable for submission. If your submittal package does not contain all of the information listed below, your application will not be taken in and receipted for processing. If you have any questions about the items requested or if you wish to obtain information on processing schedules, please call the Application Intake Center at (909) 387-8311 or 760-995-8140.

<u>Section A</u> – Fees/Deposit

1. _____ Check or money order made payable to San Bernardino County in the amount of **\$2,980.00** for the "initial deposit." (J649)

"Actual Cost Initial Deposit" – The basic review fees for this application are charged on an "actual cost" basis. Your application money is deposited into an account and the reviewing staff records the time spent processing your proposed project. Your account is then charged for the staff time at established hourly rates (\$63 to \$226/hr). You are responsible for all charges made to the project account. If account funds are depleted an additional deposit will be required. If an additional deposit is required it must be paid to allow staff to continue processing. Any failure to pay the required deposit will result in suspension and possible termination of the project review process. After the review is completed, a minimum deposit balance will be required for condition compliance processing. For more information on fees, please contact County Planning.

- 2. _____ <u>Receipt</u> from the Environmental Health Services Division (DEHS) of payment of required review fees. Contact DEHS at (909) 387-4666 for fee amount, applicability and payment prior to application submittal if original approval was more than one year ago.
- 3. _____ Receipt from the appropriate fire jurisdiction of payment of required review fees if original approval was more than one year ago.

Map Portion

2.

- 1. _____ Map should be drawn so that "north" is to the top of the Property Plot Map Form. Write the scale of the plot map under the north arrow provided.
 - Delineate the location and dimension the lengths and widths of the following:
 - (a) Existing property lines for each lot or parcel.
 - (b) Proposed property lines for each lot or parcel.
 - (c) Existing right-of-ways for all abutting streets. ALSO indicate names.
 - (d) Proposed new right-of-way dedication including expansion and additions.
 - (e) Existing street and drainage improvements including curbs, gutters, sidewalks and paving widths.
 - (f) All existing and proposed easements for drainage, public utilities, access or encroachments.
 - (g) All underground structures including septic tanks, leach lines, seepage pits, storm drains and wells.
 - (h) All existing structures. In addition to dimension of structures, indicate the distances between structures and between each structure and the nearest existing or proposed property line. Also indicate the use of each structure and any that are to be removed.
 - (i) Indicate location and dimensions of any important topographic conditions (hills, canyons, water courses, known seismic fault areas, etc.)
- 3. _____ Number each proposed lot and compute the net and gross lot area in square feet or acres.
- 4. _____ If commercial and/or industrial structures are existing and to be retained and utilized, show all parking facilities and driveways.
- 5. _____ Indicate native trees six inches or greater in diameter, and protected desert native plants with stems two inches or greater in diameter or six feet or greater in height, or state in a note that no such trees exist on site. Indicate whether any trees or protected plants are to be removed.
- 6. _____ Show any existing grading and provide copy of approved grading plan.

Information Portion

- 7. _____ Applicant's name and phone number.
- 8. ____ The number of lots to be created.
- 9. _____ The Assessor's book, page and parcel number(s) of the existing parcel(s).
- 10. _____ The township, range and quarter section of the parcel.

Note: State Fish and Wildlife fees may be required before your project can be approved.

If your project is subject to these fees, you will have to submit your payment (<u>https://www.wildlife.ca.gov/Conservation/CEQA/Fees</u> depending on project specifics) to the Clerk of the Board of Supervisors within five (5) days after the date of conditional approval. The project planner will then be able to complete the final paperwork at the appropriate time.

If you have any questions concerning the Environmental Filing Fee due to the State, please visit the California Department of Fish and Wildlife Web-Site. https://www.wildlife.ca.gov/Conservation/CEQA

No Effect Determination (NED) Process. For additional explanation to the regulations and procedures regarding NEDS please see the No Effect Determinations Detailed instructions at the following link.

https://www.wildlife.ca.gov/Conservation/CEQA/NEDhtml

Exhibit B



<u>Home (/)</u> <u>Conservation (https://www.wildlife.ca.gov/Conservation)</u> <u>CEQA</u> (https://www.wildlife.ca.gov/Conservation/CEQA)</u> **NED (#)**

<u>Loqin</u>

No Effect Determination (NED)

Pursuant to Fish and Game Code section 711.4, subdivision (c)(1), all project proponents including public agencies subject to the California Environmental Quality Act (CEQA) shall pay a filing fee for each project. The filing fee will be waived however, if the project will have no effect on fish and wildlife. Projects that are statutorily or categorically exempt from CEQA are not subject to the filing fee and do not require an NED (Cal. Code Regs., tit. 14, §§ 15260 – 15333; Fish & G. Code, § 711.4, subd. (d)(1)).

Determining whether a project subject to CEQA will affect fish and wildlife is the responsibility of CDFW. An NED is made solely for the purpose of determining filing fees and is not part of the assessment a lead agency makes under CEQA (Cal. Code Regs., tit. 14, § 753.5, subd. (c)(1)(A)). Lead agencies continue to be responsible for determining whether projects will have potentially significant environmental effects on the environment, including biological resources.

NED Eligibility

For the assessment of CEQA filing fees, a project that causes **any** effect on the habitat on which fish and wildlife may depend, or causes direct harm to fish and wildlife, is considered to have an effect on fish and wildlife. A filing fee is required regardless of project size, magnitude of the effect, or whether the effect on the environment is considered positive or negative (Cal. Code Regs., tit. 14, § 753.5, subd. (d)).

CDFW may determine that a project would have no effect on fish and wildlife if all of the following conditions apply:

- The project would not result in or have the potential to result in harm, harassment, or take of any fish and/or wildlife species.
- The project would not result in or have the potential to result in direct or indirect destruction, ground disturbance, or other modification of any habitat that may support fish and/or wildlife species.
- The project would **not** result in or have the potential to result in the removal of vegetation with potential to support wildlife.
- The project would **not** result in or have the potential to result in noise, vibration, dust, light, pollution, or an alteration in water quality that may affect fish and/or wildlife directly or from a distance.
- The project would **not** result in or have the potential to result in any interference with the movement of any fish and/or wildlife species.

If CDFW determines that a project meets all of the above conditions, the project may qualify for an NED (Cal. Code Regs., tit. 14, § 753.5, subd.(d)).

Examples of Qualifying Projects

Only a small fraction of projects with a Negative Declaration (ND), Mitigated Negative Declaration (MND), or

Environmental Impact Report (EIR) have qualified for an NED. CDFW makes each NED on a case-by-case basis. CDFW has previously found the following types of projects to have no effect on fish and wildlife:

- Development and redevelopment in highly urbanized or industrialized settings, typically within existing footprints, and demolition and rebuilding at sites where the project did not affect nearby animals, bat roosts, nesting birds, and other resources.
- Minor zoning changes that did not lead to or allow new construction, grading, or other physical alterations to the environment.
- Minor modifications to existing structures including addition of a second story to single or multi-family residences.
- Approval of administrative regulations, school, or special district redistricting, and air quality improvement plans subject to CEQA that did not authorize activities that could cause effects on fish and wildlife or physical alterations to the environment.

A proposed project's similarity with the example projects listed above should not be used as justification for an NED.

NED Process

Submitting a Request

The lead agency or project applicant should pre-screen their project for the above considerations prior to submitting an <u>NED Request Form (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=4003&inline=1)</u> (Cal. Code Regs., tit. 14, §753.5, subd.(c)(1)(A)). If you anticipate that your project will have no effect on fish and wildlife, please follow the below instructions:

- Complete an <u>NED Request Form (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=4003&</u> inline=1) and send it to the appropriate <u>Regional Office (https://www.wildlife.ca.gov/Regions)</u> with the environmental document. (Projects with a statewide scope send the NED Request Form to the Habitat Conservation Planning Branch, CEQA Program, 1416 9th Street, Sacramento, CA 95814, or email to <u>CEQA@wildlife.ca.gov (mailto:CEQA@wildlife.ca.gov)</u>).
- Documents submitted in digital format are preferred (e.g., email, compact or digital videodisk). Contact the appropriate <u>Regional Office (https://www.wildlife.ca.gov/Regions)</u> to obtain the correct email address. Digital files for supporting documents larger than 20 MB cannot be accepted through CDFW's email system. Please send a web link if documents are available online or mail a compact disk of documents to CDFW's regional or branch representative you have been working on the project.
- The request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period.

Finding Effect

If CDFW determines that a project has the potential to affect fish, wildlife, or habitat, the lead agency and/or project applicant will be notified that an NED will not be issued. CEQA filing fees will be due at the time the project's Notice of Determination (NOD) is filed. Fees for Certified Regulatory Program documents are due to CDFW prior to filing of the Notice of Decision.

Finding No Effect

If CDFW determines that a project will not have the potential to effect fish, wildlife, or habitat, then CDFW will provide the lead agency and/or project applicant with a written NED. The lead agency and/or project applicant should retain the original NED for their records and submit two copies to the county clerk (for local agencies) or Office of Planning and Research-State Clearinghouse (for state agencies) along with the NOD (Cal. Code Regs., tit. 14, §753.5, subd. (c)(2)). If the project is subject to a Certified Regulatory Program, the lead agency and/or project applicant should keep the original NED for their records and submit a copy to the Natural Resources Agency along with the Notice of Decision. Only a CDFW-issued NED form will be accepted in lieu of the CEQA filing fee. For local lead agencies, although the NED may be used in lieu of a CEQA filing fee when the NOD is filed with the county clerk, the county's filing fee may still apply.

Contact CDFW's CEQA Program: <u>CEQA@wildlife.ca.gov</u> (mailto:CEQA@wildlife.ca.gov)

NOTE: CDFW staff cannot make decisions or intercede on CEQA projects under the jurisdiction of another lead agency. Please address project-specific comments to the project's lead agency.

Habitat Conservation Planning Branch (https://www.wildlife.ca.gov/Explore/Organization/HCPB) 1416 Ninth Street, 12th Floor, Sacramento, CA 95814 (916) 653-4875



CEQA Review

The California Environmental Quality Act (https://www.wildlife.ca.gov/Conservation/CEQA/Purpose)

External CEQA Project Review Procedures (https://www.wildlife.ca.gov/Conservation/CEQA/External-Review)

CEQA Filing Fees (https://www.wildlife.ca.gov/Conservation/CEQA/Fees)

Process for No Effect Determinations (https://www.wildlife.ca.gov/Conservation/CEQA/NED)

Federal Project Review (https://www.wildlife.ca.gov/Conservation/CEQA/Federal-Review)

CDFW's Internal CEQA Procedures (https://www.wildlife.ca.gov/Conservation/CEQA/Procedures)

Other Types of CEQA Project Reviews (https://www.wildlife.ca.gov/Conservation/CEQA/Other)

Related Links

- <u>2014 CEQA Statutes and Guidelines (PDF) (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=77795& inline)</u>
- <u>CEQA FAQ (PDF) (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=4009&inline=1)</u>
- <u>CEQA Public Notices (https://www.wildlife.ca.gov/Notices)</u>
- <u>SB 1535 (PDF) (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=76455&inline=1)</u> Changes in filing fees
- Fish and Game Code Section 711.4 and Section 713 (https://nrm.dfg.ca.gov /FileHandler.ashx?DocumentID=71768&inline=1) Legal information on filing fees

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	Select Lang	uage V		
<u>Conditions of Use</u>	<u>Privacy Policy</u>	Accessibility	<u>Contact Us</u>	
Co	pyright © 2015 Stat	te of California		

Exhibit C

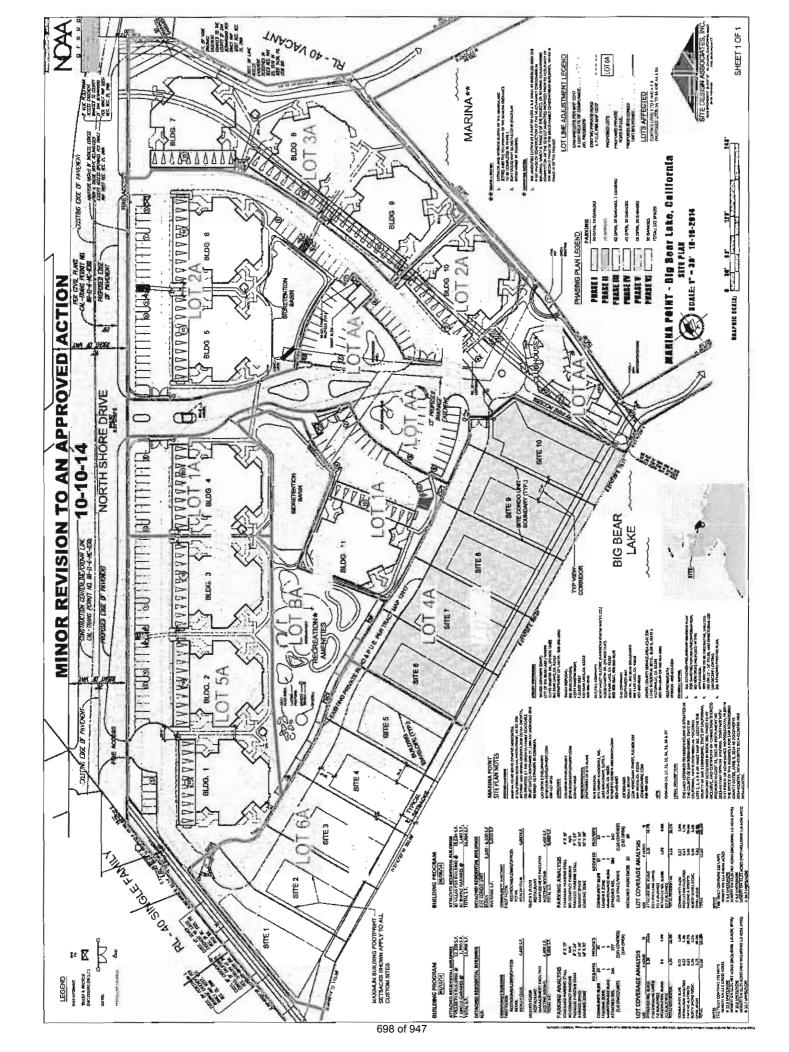


Exhibit D

9 f O U P 4990 N Horbor Onve Son Diago CA 92106 fet: 419 297-4066 fot: 619-291-8066

March 18, 2014

Mr. Chris Warrick Senior Planner County of San Bernardino 385 N. Arrowhead Avenue, First Floor San Bernardino, CA 92415

Re: Marina Point Minor Site Plan Revision Application Narrative Previous Actions: Substantial Conformance Review (1-22-14) PD 89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 Revised Conditions of Approval (4-28-92)

Mr. Warrick

Per our recent meeting and subsequent conversations, the following is a narrative of the proposed "Minor Site Plan Revision" that has been incorporated to improve the functionality and desirability of the development of the subject property into a high-quality destination resort community.

Also attached are 15 copies of the following plans and documents. The Revised Site Development Plan contains a detailed comparison of the revisions to the approved plan.

- 1. Revised Site Development Plan
- 2. Grading Plan
- 3. Phasing Plan
- 4. Lot Line Exhibit
- 5. Grant Deed

Density

The current Site Development Plan ('SDP") is comprised of 133 condominium units in 19 buildings along with a commercial clubhouse and marina facility. Approval of the "Minor Site Plan Revision" would reduce the number of condominiums to 110 units in 11 buildings, and integrates 10 site condominium units. The total of 120 units represents a 10% reduction of density.

Roadways

The roadway and parking spaces are the same configuration as the current site plan other than some minor adjustments to preserve and enhance the existing pine trees. The main entry road as an example is re-designed to split into single lane roads in places to create tree islands. Controlled access gates are incorporated for the privacy and protection of residents. Landscape fingers and exterior walkways and stairs to the condominium units are also configured to preserve trees.

Parking

Each Condominium Unit has one enclosed parking space per Unit and one full size open Guest Space (2 spaces per unit total). This represents an increase from the 1.85 spaces per unit originally approved and is the same as the January 2014 "Substantial Conformance Site Plan".

Condominium Buildings

The shape of the condominium buildings is essentially unchanged. Each building has 10 single-car garages instead of 7 garages, and has a slightly larger footprint. The lot coverage over the entire development is actually reduced to from 3.30 acres to 3.26 acres to provide for a more spacious site.

Site Condominium Units

The 10 site condominium units range in size from approximately 12,000 to 14,000 square feet with buildable footprints of approximately 4,500 square feet. Mandatory setbacks include 30 feet between units to preserve view of the lakes and fire protection. Landscape guidelines are designed to further protect lake views.

Custom homes that are built on these sites that are more than single story will be designed wherein the additional story and roof will be limited in size and shall not exceed 75% of the ground floor to achieve appropriate bulk and scale. Each building will provide a minimum of 2 enclosed parking spaces and one guest parking space on the road.

Club House and Marina

The club house and marina are reconfigured to provide better functionality and aesthetic appeal. The revision improves views to the lake and a large open plaza will contain a lookout, pool and spa, fire pit(s) and seating areas. The pool, as proposed, will extend partially indoors and be heated to allow comfortable all year use. The requisite parking is unchanged, but is in closer proximity to the facilities.

Recreational Amenities

The community's recreational amenities have been slightly revised and expanded to include:

- Children play areas
- Gazebo with water feature and picnic areas
- Pitch and putting greens
- Bocce ball courts
- Horseshoe areas
- Reflecting ponds that convert to an ice skating ring.
- Whirlpool spas throughout the site
- A gate house for special events.

Environmental Impacts

The reduced nature of the revised project effectively reduces all environmental impacts identified by the adopted and certified EIR.

We would appreciate review of this Minor Site Plan Revision Application at your earliest convenience. As discussed, our timeline for the project is such that we need to proceed as quickly as possible.

Please do not hesitate to e-mail me a jch@noaainc.com, or call me at 619-507-1001, if you have any questions or need any additional information.

Thank you, NOAA Group

Joe Holasek Principal

Exhibit E



Property Information

Primary Owner : Secondary Owner : Site Address : Mailing Address :	POLIZZI GARY J N/A 39495 N SHORE DR FAWNSKIN, CA 92333- 13527 RYE ST SHERMAN OAKS, CA 91423
Assessor Parcel Number :	0304-151-50
CountyName :	San Bernardino
Tax Account ID :	
Phone :	N/A
Census Tract :	0113.00
Housing Tract Number :	N/A
Lot Number :	N/A
Page Grid :	-
Legal Description :	Abbreviated Description: DIST:15 CITY:BIG BEAR LAKE CLINEMILLER SUB PTN LOT 314 DESC AS FOL COM AT NE COR SD LOT TH WLY 70 FT ALG N LI SD LOT TH SLY TO A PT ON S LI SD LOT WHICH ; City/Muni/Twp: BIG BEAR LAKE

Property Characteristics

Bedrooms :	3	Year Built :	1966	Square Feet :	2414
Bathrooms :	2.0	Garage :	А	Lot size :	23861 SF
Partial Bath :	0	Fireplace :	1	Number of Units :	0
Total Rooms :	5	Pool/Spa :	N	Use Code :	Single Family Residential
Zoning :	N/A				

- Sale/Loan Information

Transfer Date : N/A Transfer Value : N/A First Loan Amt : N/A Document # : N/A Cost/Sq Feet : N/A Lender : N/A

Assessment/Tax Information

Assessed Value :	\$630,278	Tax Amount :	\$6,836.40
Land Value :	\$278,586	Tax Status :	Current
Improvement Value :	\$351,692	Tax Rate Area :	57-018
Percent Improvement :	55 %	Homeowner Exemption :	Y

Data Deemed Reliable, But Not Guaranteed.



Order. Non-Order Search Co: Lawyers Title Insurance Company Dept: 6316-RIVERSIDE OPS CRN: 0006300016 TO[.] 01 Created By: Mary Lasater

Printed By: maryl

APN:	0304-151-50-0-000						
Described As:	CLINEMILLER SUB PTN LOT 314 DESC AS FOL COM AT NE COR SD LOT TH WLY 70 FT ALG NLI SD LOT TH SLY TO A PT ON S LI SD LOT WHICH IS 105 FT WLY FROM SE COR THEREOF TH ELY ALG SD SLY LI 105 FT TO SE COR TH NLY ALG ELY LI SD LOT TO TRUE POB TOGETHER WITH PTN SW1/4 SEC 12 TP 2N R 1W BEG AT SE COR SW 1/4 SW 1/4 TH N 0 DEG 01 MIN E 84.62 FT TO S LI CLINEMILLER SUB TH N 89 DEG 56 MIN 32 SECONDS W 105 FT TH S 11 DEG 55 MIN 05						
	SECONDS W 86.37 F						
	SECONDS E 122.81 F						
Address:	39495 NORTH SHOR						
City:	UNINCORPORATED			RDINO			
Billing Address:	13527 RYE ST 5 SHEI	RMAN OAKS (CA 91423				
Assessed Owner(s):	POLIZZI, GARY J						
Search As:	Tax ID 304-151 Parcel	50				_	
Tax Rate Area:	057-018		Value	_	Conveyar	nce Date:	08/13/2004
		Land:		278,586.00	Conveyin	ig Instrument:	708000
Use Code:	510	Improvements	:	351,692.00	Date Trar	nsfer Acquired:	
SINGLE FAM	ILY RESIDENCE	Personal Prope	erty:		Vesting:	-	
Region Code:		Fixtures:			Year Buil	lt:	
Flood Zone:		Inventory:			Year Last	t Modified:	
Zoning Code:							
Taxability Code:			Exemptions				
		Homeowner:		7,000.00		Square Footag	e
Tax Rate:	1.080000 %	Inventory:			Land:		
		Personal Prope	erty:		Improven	nents:	
		Religious:					
Bill #:	140227152	All Other:			Tax Defa	ulted:	
Issue Date:	09/19/2014	Net Taxable	e Value:	623,278.00	Total Tax		6,836.40
Installment	Amount	Penalty	Due Date	Status		Payment Date	Balance
1st	3,418.20	341.84	12/10/2014	PAID		12/03/2014	0.00
2nd	3,418.20	351.84	04/10/2015	UNPAI	D		3,418.20
						Total Balance:	3,418.20
Bonds: 0	Parcel Changed: Y	es So	ld to State: 0	Me	llo-Roos:	N NSF	: N
			-				
Account		n Description					Amount
AA01-AA		L TAX LEVY					6,232.78
AE01-SL0		ORCEMENT					5.30
AE01-SP0		OR CONTROL	_				2.30
AR01-SL		USE - SWMD					85.14
SB01-DD0					244.94		
SB02-DD0		LLEY UNIFIE					220.64
WH01-ST	01 BEAR VALLEY MEASURE Q						45.30
Underlying Parcels:		Future Parcels:			Related Pa	rcels:	
0304-151-42-0-000							
0304-151-43-0-000							

THIS INFORMATION IS PROVIDED FOR CUSTOMER SERVICE PURPOSES ONLY. PROPERTY INSIGHT DOES NOT WARRANT, NOR GUARANTEE THE ACCURACY NOR COMPLETENESS OF THE INFORMATION SHOWN ON THIS R

RECOMPING REQUESTED BY Colamonwealth Land Title Co. WHEN RECORDED MAIL THIS DOCUMENT AND TAX STATEMENTS TO:

Gary J. Polizzi

13527 Rye St. #5 Sherman Oaks, CA 92423

Sherman Oaks, CA 92423

Recorded in Official Records, County of San Bernardino 8/13/2004 LARRY WALKER 1:00 PM Auditor/Controller - Recorder EΜ 604 Commonwealth Title Doc#: 2004-0586891 Titles: - 1 Pages: 3 Fees 42.00 Taxes 467.50 Other 0.00 PAID \$509.50

APN: **304-151-42 & 43** Escrow No: **02700535**-806-LF Title No: **2700535**

Space above this line for Recorder's use

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS <u>\$467.50</u>, CITY TAX <u>0.00</u> unincorporated area,, AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Robert W. Peterson and Marie Peterson, husband and wife, as joint tenants

hereby GRANT(S) to

Gary J. Polizzi , A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

the following described real property in the unincorporated area (Fawnskin) County of San Bernardino, State of California:

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

See Exhibit "A"

Commonly known as: 39495 North Shore Drive, Fawnskin, CA 92333

Dated: Jupe 9, 2004

Robert W. Peterson

STATE OF CALIFORNIA

ne

} ss: Ange 05 COUNTY OF

On

before me, <u>Teresa E.</u>

Marie Peterson

_____Notary Public,

personally appeared <u>Robert W. Peterson and Marie Peterson</u> personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS AS DIRECTED ABOVE

EXHIBIT "A"

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Parcel No. 1:

All that portion of Lot 314 of Clinemiller Subdivision, in the County of San Bernardino, State of California, as per map recorded in Book 20, page(s) 19 and 20, of Maps, in the office of the County Recorder of said County, described as follows:

Commencing at the Northeast corner of said lot;

Thence Westerly 70.00 feet along the North line of said Lot;

Thence Southerly to a point on the South line of said Lot which is 105.00 feet Westerly from the Southeast corner thereof;

Thence Easterly along said Southerly line to said Southeast corner;

Thence Northerly along the East line of said Lot to the point of beginning.

Parcel No. 2:

That portion of the Southwest ¼ of Section 12, Township 2 North, Range 1 West, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the official plat thereof, described as follows:

Beginning at the Southeast corner of Lot 314, Clinemiller Sub-division, as per plat recorded in Book 20 of Maps, Pages 10 and 20, records of said County, as said corner is shown on Parcel Map No. 514 and recorded in Book 4 of Parcel Maps, pages 96 and 97, records of said County;

Thence along the South line of said Lot 314, North 89° 56' 32" West 105.00 feet to the Southwest corner of that certain Parcel of Land conveyed to Esther A. Austin and recorded in Book 7265, Provident Funding Associates, L.P., a California Limited Partnership 987 of Official Records of said County;

Thence South 11° 55' 05" West 86.57 feet to a point on the South line of the aforesaid Southwest ¼ of Section 12;

Thence along said line South 89° 53' 49" East 122.81 feet to the Southwest corner of Fawnskin Subdivision, as per plat recorded in Book 21 of Maps, pages 54 and 55, records of said County;

^{*} File No: 02700535

.

•

Thence along the West line of said Fawnskin Subdivision, North 0° 01' East 84.62 feet to the point of beginning.

Exhibit F





COUNTY OF SAN BERNARDINO ENVIRONMENTAL MANAGEMENT GRO

> SHARON W. HIGHTOWER Director of Planning

> >

385 North Arrowhead Avenua • San Bernardino, CA 92415-0180 • (714) 387-4091 Fax No. • (714) 387-3223

May 1, 1992

EXPIRATION DATE: December 9, 1994

Ken Discenza Site Design Associates, Inc. 8085 La Mesa Blvd., Ste 100 La Mesa, CA 92041 Urban Environs 300 East State Street, Ste 420 Redlands, CA 92373

RE: PD/89-0053/M331-9/PUDP; PD/89-0054/M331-9/PUDF; PD/89-0055/ M331-9/TR12217; BEAR VALLEY PLANNING AREA; CATS #05175CF2; APPLICANT: SITE DESIGN ASSOCIATES, INC.

Dear Applicant:

This is to advise you that after completion of the environmental review process, and due consideration thereof, the above referenced projects were conditionally APPROVED by the San Bernardino County Board of Supervisors at their meeting on December 9, 1991. Said subdivision and development plans were found to be in compliance with County policies and regulations and were approved subject to the conditions as set forth in the attached pages 1 through 21 of Tentative Tract 12217.

Time limitations for Planned Developments: A conditionally approved Planned Development for a phased project shall be subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

Time limitations for Tentative Tracts: This approval shall become null and void if all conditions have not been complied with and the occupancy or use of the land or recordation of a final map has not taken place within 36 months of the effective date. One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration. PLEASE NOTE: This will be the only notice given of the above specified expiration date. The applicant is responsible for initiating extension requests.

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Please contact this office by mail or by telephone at (714) 387-4155 if additional information is required.

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1. .

sincerely,

Mike Williams

MIKE WILLIAMS, Senior Planner Mountain/South Desert Planning Team

MW:js

Paul Mordy, Deputy County Counsel Surveyor Department Land Development Engineering/Roads Section cc: Land Development Engineering/Drainage Section Department of Environmental Health Services Building & Safety Department City of Big Bear Lake Department of Water & Power City of Big Bear Lake Department of wheel -Forestry & Fire Warden Department Philip D. Kohn, Rutan & Tucker Irving Okovita, Okon Development Company file.

Page 1 of 21

SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

GENERAL ON-GOING CONDITIONS

PLANNING DEPARTMENT (714) 387-4155

This conditional approval is for a Planned Development 1. consisting of an eight (8) lot Subdivision, including 133 condominium units, 2-man-made ponds, and boat marina with other open space/recreational amenities on 28.2 acres generally located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robin Drive in the Fawnskin area. This project will be a six (6) phase development, with each of the six (6) phases being constructed in sequence and coinciding with the six (6) numbered lots of subdivision Tract 12217.

*2. Time limitations for Planned Developments: A conditionally Revised by approved Planned Development for a phased project shall be Staff 4-28-92 subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain building permits for at least one (1) phase of the project within five (5) years of the development plan conditional approval and, as applicable, within each succeeding five (5) year period.

- Time limitations for Tentative Tracts: This approval shall 28. become null and void if all conditions have not been complied with and the occupancy or use of the land or recordation of a final map has not taken place within 36 months of the effective date. One extension of time, not to exceed 36 months, may be granted upon written application and payment of the required fee to the County Planning Department not less than 30 days prior to the date of expiration. PLEASE NOTE: This will be the only notice given of the above specified expiration date. The applicant is responsible for initiating extension requests.
- The applicant shall ascertain and comply with requirements 3. of all State, County and local agencies as are applicable to the project area. They include, but are not limited to the Transportation/Flood Control, Fire Warden, Building and Safety, and the State Fire Marshall.
- In compliance with San Bernardino County Development Code 4. Section 81.0150 the applicant shall agree to defend at his sole expense any action brought against the County, its agents, officers, or employees, because of the issuance of such approval, or in the alternative, to relinquish such The applicant shall reimburse the County, its approval.
- * NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(B)

> agents, officers, or employees, for any Court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition.

**5. The County is in the process of developing and implementing development impact fees for various infrastructure and capital facilities needs generated by new development. These fees will provide for various capital facilities including, but not limited to, roads, libraries, museums, parks (local and regional), open space, flood control, drainage, water sewer, courts, jails, other law enforcement facilities, fire fighting facilities and equipment and geographic mapping database development. This project shall be subject to all such development impact fees which are in effect prior to the issuance of final development permits (i.e., occupancy permit).

Exterior Construction activity shall be prohibited from **6. December 1 to April 1, to minimize disturbance to Bald Eagle 305 12-09-91 habitat.

> If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall amploy a wildlife biologist to evaluate the level of disturbance and the effect on the wintering Bald Eagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to the Environmental Team of the County Planning Department in advance of the anticipated construction.

The marina shall not be used from December 1 to April 1, to **7. protect wintering Bald Eagles.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 8. Noise levels shall be maintained below County Standards, Development Code Section 87.0905(b).
- Refuse disposal service shall be provided by a DEHS approved 9. and permitted waste hauler.
- 10. A Special Use Permit may be required to monitor the operation

* NON-STANDARD CONDITION(5) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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**6a. Revised by 30S 12-09-91

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to insure the protection of the public's health, safety and welfare.

CONCURRENTLY WITH THE BOARD OF SUPERVISORS ACTION ON THE PROPOSAL. THE FOLLOWING CONDITIONS SHALL BE MET:

11. Revised by BOS 12-09-91

Pursuant to California State Assembly Bill 3158, the applicant shall pay a fee of \$850.00 to the Department of Fish and Game. The fee shall be submitted to the Clerk of the Board of Supervisors upon filing of the Notice of Determination along with any filing fee required by the Clerk. The applicant should be aware that Section 21089(b) of the Public Resources Code provides that any project approved under CEQA is not operative, vested or final until the required fee is paid. Proof of fee payment may be required prior to issuance of building permits or final recordation of a map.

PRIOR TO ANY LAND DISTURBANCE, THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

- Prior to any tree removal, the applicant/owner shall obtain, **12. as necessary, a Timberland Conversion and/or Harvest Permit(s) from the California Department of Forestry and a 1601-1603 permit from the California Department of Fish and Game. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.
- **13. Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Game, in accordance with Sections 1601-1603 of the State Fish and Game Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. Copies of these permits shall be filed with the Planning Department or submit evidence from the Trustee Agency that a permit is not required.

BUILDING & SAFETY DEPARTMENT (714) 387-4246

A tree removal plan, permit and preconstruction inspection, in compliance with the county's plant protection and management ordinance, shall be approved prior to any **14. disturbance and/or removal of any protected tree or plant.

+ NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE (#)

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DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 15. A Hazardous Materials Handler Permit and/or Hazardous Waste generator Permit shall be required. For information, call Hazardous Materials Field Services at (714) 387-3080.
- 16. Prior to issuance of a Demolition Permit, a vector control survey must be conducted to identify any vector problems and implement mitigation measures.

PRIOR TO RECORDATION THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

- **17. The owner shall provide a reliable and assured water supply adequate in quantity and quality to meet health and safety code requirements and in compliance with the County's recently approved Assured Water Implementation Plan. The Big Bear Department of Water and Power requirements are shown as Conditions of Approval (No.'s 26-28 & 82).
- *18. A Composite Development Plan shall be required to show the following items:
 - A. Building setback lines shall be as shown on the Final Development Plan and on the Composite Development Plan.
 - B. Setbacks from drainage areas.
 - C. Structures shall not extend into Lake Management easement, unless otherwise quitclaimed, or a valid encroachment permit shall be obtained.

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- D. A statement shall be added to the Composite Development
 Plan that in the event the applicant (or its successor) determines to operate the project for timeshare use, then the following requirements apply:
 - 1. The applicant (or its successor) shall be required to provide documentation satisfactory to the County that proper arrangements have been made to insure all buildings and common area landscaping and improvements will be maintained in a manner acceptable to the County and consistent with other conditions of project approval.
 - 2. The project shall be subject to any regulations governing timeshare uses which may be enacted on a countywide or areawide basis, and the applicant (or its successor) shall comply with all such regulation.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- *19. Easements of record not shown on the tentative map shall_be relinquished or relocated. Lots affected by proposed easements or easements of record, which cannot be relinquished or relocated, shall be redesigned or a valid encroachment permit shall be obtained.
- *20. The applicants shall abate the existing structural encroachment from the parcel to the west or obtain a Lot Line Adjustment prior to Final Map recordation.
- 21. All access drives shall be a minimum of twenty-four (24) feet wide to facilitate two-way traffic, except as shown on the approved Development Plan Map.

**22. The following changes and corrections shall be incorporated by into the final CC&R's which are part of the subdivision tract:

- A. The boat marina shall not be used from December 1 to April 1 to protect wintering bald eagles.
- B. No individual owners or lessees of individual condominiums shall have the authority to initiate any changes to any structure on the property or to make any changes involving the landscape that will adversely affect the bald eagle, either directly or indirectly. Any minor modifications proposed that are determined not to affect the bald eagle must still have the prior express written approval from the Board of Directors, and such changes shall conform to the architectural provisions of this Declaration.
- C. A Homeowners Association shall assume responsibility for maintaining the on-site water features.
- D. The boating marina shall be maintained by the owner/developer in accordance with the Big Bear Municipal Water District permits.
- E. The shoreline access/pedestrian easament shall be referenced and retained as accessible to accomplish its intended purpose.
- 23. A copy of the CC4R's shall be submitted for Planning Director final review and approval. The CC4R's shall also include other applicable items specified in these conditions of approval.
- 24. A Homeowners Association shall be established for the purpose of carrying out the intent of the Planned Development Application.
- * NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

Revised by PC 11-21-91

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

25. The Planned Development report text shall be revised by addendum to incorporate any additional corrections and omissions required by Planning staff or the Planning Commission.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 866-5050

**26. Revised by PC 11-21-91 The developer must comply with the requirements of County's Assured Water Program by participating in the DWP's approved program. The current cost for the additional 50% Assured Water is \$284.00 per unit. For this project, the ratio of program components shall be 1/2 retrofit and 1/2 wastewater recharge.

- **27. The developer must provide (at his cost and at DWP specifications) for 100% of the project's estimated water demand at maximum day demand usage by providing a new operational well to the DWP (or a portion of a new well's capacity) and the necessary piping to connect to the DWP system.
- **28. The developer must contribute sufficient monies or construct a reservoir with the storage requirements as identified in the feasibility study for the tract dated February 7, 1990.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

- 29. Two points of ingress and egress will be required to each phase.
- **30. The developer shall participate with their fair share in mitigating the regional traffic problems in the Big Bear area, including a contribution to signals at the Stanfield Cutoff/State Highway 18 intersection. In the event that the proposed "Transportation Fee Program for Big Bear" is adopted prior to the issuance of building permits, the developer shall participate in this program in lieu of the above.
 - 31. Trees, irrigation systems and landscaping shall not be installed on public right-of-way and shall be as specified in County Transportation/Flood Control Department standards for tree planting.
 - 32. Construction of private roads and private road related drainage improvements shall be inspected and certified by the engineer.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

- 33. Existing utility poles shall be shown on the improvement plans and relocated as necessary without cost to the County.
- 34. Slope rights shall be dedicated on the final tract map where necessary.
- **35. Vehicular access rights shall be dedicated on State Highway 38.
- *36. An approved type wall/barrier shall be required along the rear of any double frontage lots and shall be constructed outside of the public road right-of-way.
- **37. Dedication shall be granted on North Shore Drive, S.H. #38 as necessary to concur with the Master Plan of Highways. This dedication is to be coordinated with the State Department of Transportation (Cal Trans, District 08).
- **38. Any change to this project (as currently proposed) which may be necessitated by the State Department of Transportation recommendations, must be incorporated prior to recordation to the Final Map.
 - 39. The applicant shall present evidence to the Land Development Engineering Division that he has tried to obtain a letter of non-interference from any utility company that may have rights of easement within the property boundaries.
- *40. Private roads to be constructed within this development shall be to Planned Development (PD) road standards per County Transportation/Flood Control Department policies and requirements or as approved, and shall not be entered into the County Maintained Road System.
- 41. All required road and drainage improvements shall be bonded in accordance with the County Development Code unless constructed and approved prior to recordation of Final Map.
- 42. Turnarounds at dead end streets shall be in accordance with the requirements of the County Transportation/Flood Control Department and the Forestry and Fire Warden Department.
- **43. On State Highway #38 (North Shore Drive) at the project entrance, a left turn lane shall be required for both east bound and west bound traffic (opposite Canyon Road).
 - 44. Street type entrance(s) shall be provided to the entrance(s) of this development at North Shore Drive.

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 45. Emergency access roads shall be designed to provide legal vehicular access to the County Maintained Road System to standards acceptable to the County Transportation/Flood Control Department and Forestry and Fire Warden Department. This will entail design (and construction) of channel crossings for 100-year Q with bulking. These shall be shown on the Final Map and confirmation of maintenance arrangements satisfactory to the County shall be provided before approval of the Final Map.
- 46. Trees, irrigation systems, landscaping required to be installed on public right-of-way within this tract area shall be maintained by other than the County Transportation/Flood Control Department, and shall be as specified in County Transportation/Flood Control standards for tree planting. Maintenance procedures acceptable to Transportation/Flood Control Department shall be instituted prior to recordation.

LAND DEVELOPMENT ENGINEERING/DRAINAGE SECTION (714) 387-4040

- 47. Adequate San Bernardino County Drainage Easements (minimum 15 feet wide) shall be provided over the natural drainage courses and/or drainage facilities. The easements shall be designed to contain the 100-year frequency storm flow plus bulking and freeboard per County Standard Criteria.
- 48. Minimum finish floor elevations shall be 6747 feet.
- **49. Grading plans shall be submitted to Land Development Engineering/Drainage Section, for review.
 - 50. Adequate rolls shall be provided on the entrance roads to the site at North Shore Drive to minimize the possibility of street flow entering the site.
 - 51. In addition to the Drainage Requirements stated herein, other on-site or off-site improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this department.
- **52. All necessary permits for taking material from the lake shall be obtained prior to recordation. This shall include a shore line alteration permit from Big Bear Municipal Water District.
- **53. Proof that the lake owners have approved the proposed filling shall be supplied to this department.

* NON-STANDARD CONDITION(S) ' **ENVIRONMENTAL MITIGATIVE MEASURE(S)

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4246

54. Written clearance shall be obtained from the designated California Regional Water Quality Control Board (listed below) and a copy forwarded to DEHS for storm water drainage/runoff from landscaping.

Santa Ana Region, 6809 Indiana Avenue, Riverside, CA 92506, 714/782-4130.

- 55. The location of trash enclosures shall be indicated on the Development Plan for proper handling and collection of solid wastes generated by the development.
- 56. Sewage disposal shall be by connection to County Service Area 53-B. The applicant shall submit evidence of installation and/or service to DEHS for approval and submit evidence of service to Building and Safety at the time of construction plan submittal.
- **57. The water purveyor shall be City of Big Bear Department of Water and Power. Submit evidence of installation and/or service to DEHS for approval.
- **58. Source of water shall meet water quality and quantity standards. Test results which shown source meets water quality and quantity standards shall be submitted to DEHS.
- **59. The operation of a public water supply system shall be subject to the condition that entity or association acceptable to DEHS assume responsibility for maintenance and operation.
- **60. The following are the steps that must be completed to meet the requirements for installation and/or finance of the on-site/off-site water system and/or sever system:
 - A. Where the system is to be installed prior to recordation:

The water system, fire hydrants, and/or sever system shall be installed in accordance with requirements of the State Health and Safety Code, and in accordance with plans approved by the water and/or sewering utility and the governing fire protection authority. The plans shall be reviewed by a Civil Engineer, registered in the State of California, and contain required certificates and approval signatures. It is the developer's responsibility to submit to the <u>LAND DEVELOPMENT ENGINEERING</u> <u>DIVISION</u> a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- B. Where a bond is to be posted in lieu of installation of the improvement:
 - 1. The domestic water plan and/or sewer plan which meets the requirements of the State Health and Safety Code shall be reviewed by a Civil Engineer, registered in the State of California, and approved by the water or sewering utility and the governing fire protection authority. The plans shall contain the required certificates and approval signatures. A copy of the approved plan shall be submitted to the <u>LAND DEVELOPMENT ENGINEERING</u> <u>DIVISION</u>.
 - 2. Said engineer shall determine the amount of bond necessary to install the improvements.
 - a. This amount plus ten percent shall be posted with the County of San Bernardino. A statement signed by the engineer stating that the amount of bond recommended is adequate to cover the cost of installation of the improvement shall be included with the estimate and submitted to the LAND DEVELOPMENT ENGINEERING DIVISION.
 - b. Or, in cases where the water agency or severing agency is a governmental subdivision, the bond in the amount of 110 percent of the cost of installation of the improvement may be placed with the agency. A signed statement from that agency stating that financial arrangements have been completed shall be submitted to the <u>LAND DEVELOPMENT ENGINEERING</u> DIVISION.
 - 3. Prior to release of the bond for the improvement, the utility of jurisdiction shall submit a signed statement confirming that the improvement has been installed and meets the requirements of all appropriate State and County laws pertaining to such improvement. It is the developer's responsibility that such signed statement is filed with the LAND DEVELOPMENT ENGINEERING DIVISION.
- **61. Provide a letter from the Sanitary Engineering Section, State Health Department, stating they have reviewed the water system and concur with Big Bear Water and Power findings that additional supplies of adequate quality and
 - * NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

quantity of water are available to meet Health and Safety Code requirements.

**62. An acoustical study shall be performed to assess noise levels at the development and shall be reviewed and approved by the Department of Environmental Health Services. Detailed noise analysis and precise mitigation measures shall be submitted to the Department of Environmental Health Services for review and approval prior to recordation. Specifically addressing, 1) North Shore Drive, 2) marina, 3) tennis courts, 4) pool/health club, 5) tram/bus loading area, 6) pond pumps/motors, an 7) any other noise generating sources. Prior to the issuance of building permits, a report stating that the recommended mitigation measures have been implemented shall be submitted to the Department of Environmental Health Services and the building plans shall be so certified by the acoustical engineer. A fee will be charged for review of the acoustical study and payment will be required prior to issuance of approval/denial letter.

BUILDING & SAFETY DEPARTMENT (714) 387-4246

- **63. A preliminary soils report shall be filed with and approved by the Building Official prior to recordation of the final map.
 - 64. For projects where grading is to be done, grading plans are to be submitted to and approved by the Building and Safety Department prior to recordation.
 - 65. Submit plans and obtain building permits for required walls.

FORESTRY AND FIRE WARDEN (714) 387-4213

- 66. Construction plans shall comply with FIRE REVIEW AREA 2 requirements.
- 67. Private road maintenance, including but not limited to grading and snow removal, shall be provided for prior to recordation or approval. Written documentation shall be submitted to the fire agency having jurisdiction. Private fire access roads shall provide an all weather surface with minimum paving width of twenty (20) feet.

PRIOR TO GRADING PERMITS THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

- **68. Prior to any tree removal, applicant/owner shall obtain, as necessary, a Timberland Conversion and/or Harvest Permit(s)
 - NON-STANDARD CONDITION(8)
 - **ENVIRONMENTAL MITIGATIVE MEASURE(S)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

> from the California Department of Forestry and a 1601/1603 permit from the California Department' of Fish and Game. A copy of said permit(s) shall be submitted to the Planning Department. Should said trustee agency determine individual authorization not be required, a letter of exemption so stating from the appropriate agency, shall be submitted to the Planning Department.

LAND DEVELOPMENT ENGINEERING/ROADS SECTION (714) 387-4040

69. An encroachment permit, or authorized clearance, shall be obtained from the County Transportation/Flood Control Department prior to issuance of a grading permit by the Building and Safety Department.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES (714) 387-4677

- 70. Plague has been shown to be endemic to the San Bernardino Mountain area. The disease is carried by fleas on wild rodents, including ground squirrels. It is known that ground squirrels are currently in the San Bernardino mountain area; therefore, for land development, the following control measures shall be completed prior to grading:
 - A. A survey of the subject area by a qualified vector biologist or biologist for the presence of ectoparasites and ground squirrel numbers.
 - B. If it is determined by the survey that the number of ground squirrels is high, then prior to grading, a control program to include ectoparasite suppression immediately followed by a rodent suppression program would be performed.
- 71. Any abandoned wells on the property or similar structures that might result in contamination of underground waters shall be destroyed in a manner approved by DEHS prior to grading.

BUILDING AND SAFETY DEPARTMENT (714) 387-4246

72. An erosion and sediment control plan and permit, shall be submitted to and approved by the Building Official prior to any land disturbance.

PRIOR TO BUILDING PERMITS THE FOLLOWING CONDITIONS SHALL BE MET:

PLANNING DEPARTMENT (714) 387-4155

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 73. Easements of record not shown on the tentative map shall be relinquished or relocated. Lots affected by proposed easements or easements of record, which cannot be relinquished or relocated, shall be redesigned or an encroachment permit shall be acquired.
- 74. A final grading plan shall be required. Said grading plan shall be submitted to the Building and Safety Department for review and approval. All on-site cut and fill slopes shall:
 - A. Be limited to a maximum slope ratio of 2 to 1 and a maximum vertical height of thirty (30) feet. Setbacks from top and bottom of slopes shall be a minimum of one-half the slope height from top and bottom of slopes shall be a minimum of one-half the slope height.
 - B. Be contour-graded to blend with existing natural contours.
 - C. Be a part of the downhill lot when within or between individual lots.
- 75. A copy of the final grading plan, approved by Building and Safety, shall be submitted to the Planning Department when graded cut slopes exceed five (5) feat in height and fill slopes exceed three (3) feat in height.
- 76. Four (4) copies of a landscape and irrigation plan for the planting (indigenous landscaping shall be utilized to minimize water consumption) and permanent irrigation system for the development, including setback areas and parkways, shall be submitted to the Planning Office prior to issuance of building permits for review and approval, to include the following:
 - A. Voltage boxes, mailboxes, trash enclosures, maintenance structures, backflow devices, automatic controls, air conditioning/heating units, atc., to e shown on the plan and screened with landscaping and/or decorative fencing/trim.
 - B. A permanent automatically-controlled irrigation system.
 - C. Landscaping shall consist of drought tolerant, fireresistant vegetation capable of surviving the soil and climatic conditions natives of the mountain environment.
 - **D. As part of the required Landscape Plan, the applicant/owner shall retain a qualified Registered Professional Forester (RPF), acceptable to the County,

NON-STANDARD CONDITION(8)

**ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

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to prepare a forest conservation plan and insect infestation prevention program to include guidelines for tree preservation both during and after construction.

- E. Trees, shrubs and ground covers in the following quantities shall be required as follows:
 - **1. All tree removal and site revegetation shall be in accordance with the Forester's report as submitted with the development plan. The removal and replanting shall be supervised by an individual to be approved by the San Bernardino County Planning staff.
 - 2. Shrubs (50% 1 gallon/50% 5 gallon), minimum average of one (1) per each one hundred (100) square foot of total landscaped area.
 - 3. Ground cover from flats at a minimum spacing of eight (8) inches on center.
 - **4. Consult the Mountain Planning Team (714/387-4155) for recommended species suitable for planting in the mountain area.
- F. Parking areas screened with landscaping where practical.
- G. The units shall be screened or partially masked from the viewshed on the lake and from the south shore, by fast-growing pines or other conifers that accomplish the intended purpose.
- H. Landscape detail of trash enclosures on landscape plan.
- I. The sign lettering copy, location and elevations for any on-site identification sign shall be shown on the plan.
- J. The method of screening of outdoor storage shall be specified.
- 77. Four (4) copies of an irrigation plan shall be submitted for Planning Department review and approval when slope planting is required. Slopes required to be planted shall be provided with an approved system of irrigation, designed to cover all portions of the slope. A functional test of the system may be required. The maintenance of graded slopes and landscaped areas shall be the responsibility of the developer/property owner until the transfer to individual ownership or until the
- * NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

> maintenance is officially assumed by a County Service Area. All irrigation systems, where required, shall be designed on an individual lot basis unless commonly maintained in an approved manner.

- *78. A maintenance plan for the required landscaping and the complex water features proposed by the developer shall be approved by the Planning Department. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period. The maintenance of graded slopes, landscaped areas and water features shall be the responsibility of the developer until the transfer to the Homeowners Association.
- 79. Commitment shall be obtained in writing from the severing agency indicating that the agency has the capacity to furnish said service to the subject property. A copy of the commitment shall be provided to the Planning Department.
- 80. Applicant shall submit the approved site plan (brownline or original) with an application for a Land Use Compliance Review, prior to the issuance of building permits.
- **81. Prior to issuance of building permits, the developer shall provide certification from the appropriate school district as required by California Government Code Section 53080(b) that any fee charge, dedication or other form of requirement levied by the governing board of the district pursuant to Government Code Section 53080(a) has been satisfied.

BIG BEAR LAKE DEPARTMENT OF WATER AND POWER (714) 833-5050

**82. The developer must construct and dedicate to DWP (at his cost and at DWP specifications) the on-site and off-site water facilities necessary to provide the required domestic and fire flow to the project. The DWP will attempt to assist the developer in investigating financing alternatives for capital improvements such as Mello-Roos reimbursement agreements, etc.

LAND DEVELOPMENT_ENGINEERING/ROADS_SECTION_(714)_387-4040

- 83. Roads within this development shall not be entered into the County Maintained Road System.
- * NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

*84. Road sections bordering the tract shall be designed and constructed to Road Standards of the State Department of Transportation, and to the policies and requirements of the County Transportation/Flood Control Department and in accordance with the Master Plan of Highways.

85. An encroachment permit, or authorized clearance, shall be obtained from the State Department of Transportation prior to issuance of a grading permit by the Building and Safety Department.

- **86. An encroachment permit shall be required from the State Department of Transportation prior to any construction within their right-of-way.
 - 87. Road improvement plans for State Highway 38 shall be submitted to the State Department of Transportation by a register civil engineer. Left turn lane to be installed per traffic report and Caltrans requirements.
 - 88. Any grading within the road right-of-way prior to the signing of the improvement plans shall be accomplished under the direction of a Soil Testing Engineer. Compaction tests of embankment construction, trench backfill and all subgrades shall be performed at no cost to San Bernardino County and a written report shall be submitted to the Contracts Division of the Transportation/Flood Control Department, prior to any placement of base materials and/or paving.
 - 89. Final Plans and profiles shall indicate the location of any existing utility facility which would affect construction.
 - 90. A thorough evaluation of the structural road section, to include parkway improvements, from a qualified materials engineer, shall be submitted to the Transportation/Flood Control Department.
 - 91. Right-of-way and improvements (including offsite) to transition traffic and drainage flows from proposed to existing, shall be required as necessary.

LAND DEVELOPMENT ENGINEERING/DRAINAGE SECTION (714) 387-4040

92. Adequate provisions shall be made to intercept and conduct the offsite tributary drainage flow around or through the site in a manner which will not adversely affect adjacent or downstream properties.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

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- 93. Permanent channel improvements shall be required for the natural drainage course traversing the southwest portion of the site. The channel shall be designed to contain 100year storm flow plus bulking and freeboard, per County standard criteria.
- 94. Adequate provisions shall be made to intercept and conduct upstream overflow from the natural drainage course around the site into Big Bear Lake in a manner which will not adversely affect adjacent properties.

FORESTRY AND FIRE WARDEN DEPARTMENT (714) 387-4213

- 95. All new construction shall comply with the existing Uniform Fire Code Requirements and all applicable statutes, codes, ordinances, or standards of the Fire Department.
- 96. Prior to any construction occurring, all flammable vegetation shall be removed from each building site a minimum distance of thirty (30) feet from any flammable building material, including a finished structure.
- 97. Prior to Building permits being issued approved fire hydrants and fire hydrant pavement markers shall be installed. Fire hydrants shall be 6" diameter with a minimum one 4" and one 2 1/2" connection. The hydrant and fire hydrant markers shall be approved by Fire Department. All fire hydrant spacing shall be 300 feet with the exception of single family residential which may be increased to 600 feet maximum.
- 98. Prior to issuance of building permit a fuel modification zone in compliance with county standards is required.

DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES

- 99. Plans for swimming pool(s) and restroom facilities shall be approved by DEHS prior to construction.
- 100. Plans for refuse storage areas and collection which meet guidelines of DEHS shall be submitted prior to construction.
- 101. Verification of application for sign registration and plot plan approval by DEHS must be submitted prior to the issuance of a building permit for the installation, wiring, remodeling or reconstruction of any freestanding sign or portion thereof which has an area of eighteen (18) square feet or greater and/or which has a height of six (6) feet or greater.

PRIOR TO OCCUPANCY THE FOLLOWING CONDITIONS SHALL BE MET:

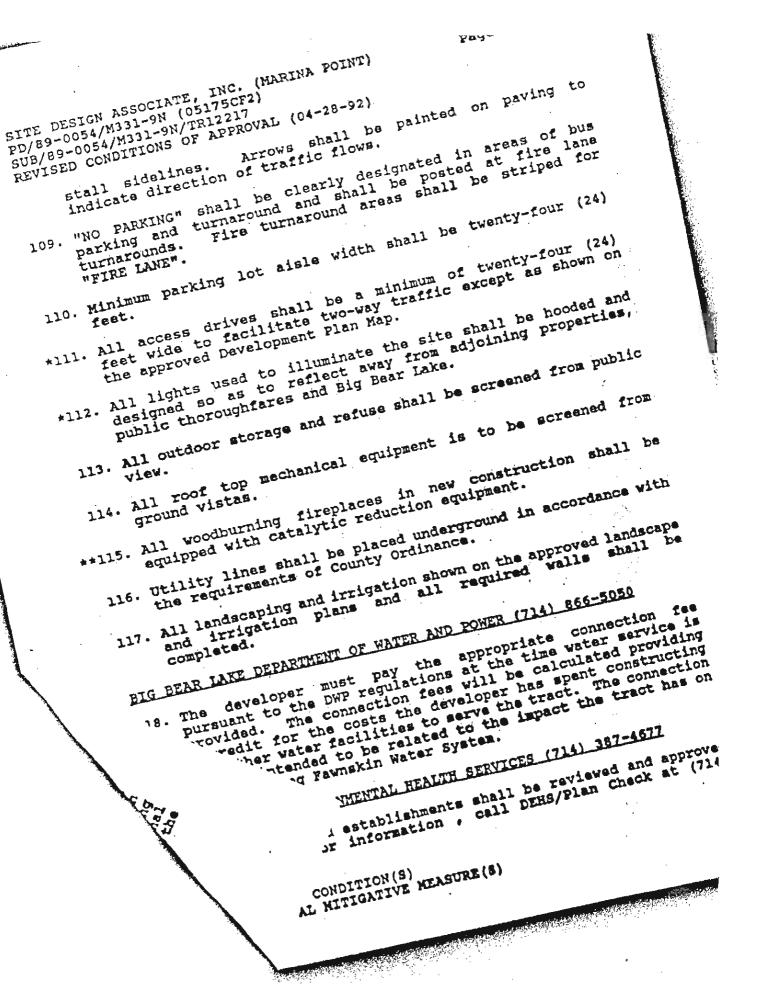
* NON-STANDARD CONDITION(8)
**ENVIRONMENTAL MITIGATIVE MEASURE(8)

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SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

PLANNING DEPARTMENT (714) 387-4155

- 102. No sign shall interfere with a driver's or pedestrian's view of public rights-of-way or in any other manner impair public safety, or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.
- *102a. The amenities shown as part of Lots A and B shall be installed with the first phase of construction or bonding guaranteeing completion of subject amenities provided prior to occupancy of Phase II.
 - 103. Off-street parking, loading and access drives shall be surfaced with a minimum of two (2) inches of road-mixed surfacing, County Department of Transportation and Flood Control Specification No. 38. Landscaping shall be provided for the parking area(s).
- 104. One (1) permanently maintained loading space, measuring not less than ten (10) feet in width and twenty (20) feet in length, shall be provided.
- *105. A minimum of 264 parking spaces shall be provided. One hundred thirty-three (133) of these required spaces shall be in enclosed garages. The space sizes shall be a combination of full size spaces (9' X 19') and compact spaces (7 1/2' X 15') per the Final Development Plan. A minimum of two (2) handicapped spaces to be fourteen (14) by nineteen (19) in size, and outlined to show a nine (9) foot parking area, and a five (5) foot loading/unloading area. The arrangement and design of this space shall be subject to Chapter 2-71 of Title 24 of the California and shall be identified as required in Section 22511.8 of the California Vehicle Code.
- *106. Handicapped parking spaces shall be located as near as practical to the primary entrance of the clubhouse or shall be located to provide for safety and optimum proximity to the entrance(s) of the building.
- 107. If wheel stops are installed in parking space, the distance from the end of the space to the rear of the wheel stop shall not exceed two (2) feet.
- 108. Individual parking stalls shall be clearly striped and permanently maintained with double or hairpin lines on the surface of the parking facility, with the two (2) lines being located an equal nine (9) inches on either side of the
- * NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)



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- 120. Plans for swimming pool(s) and restroom facilities shall be reviewed and approved by DEHS. For information, call DEHS/Plan Check at (619) 243-8141.
- 121. Plans for underground tanks shall be reviewed and approved by DEHS. For information, call DEHS/Hazardous Materials Field Services at (714) 387-3080.
- **122. The applicant shall install a standard grease trap to intercept surface runoff carrying petroleum products. It shall be connected to a clarifier/interceptor as part of a separate subsurface disposal system built to U.P.C. standards. Separate plans shall be submitted to the Building and Safety Department for approval.
 - 123. Prior to occupancy, a "Business Plan" as defined in Chapter 6.95 of the Health and Safety Code, detailing the plan for emergency release or threatened release of hazardous materials and wastes, may/shall be required. Obtain clearance from DEHS/Hazardous Materials Section. For information, call Emergency Response/Enforcement at (714) 387-3044.
 - 124. If necessary, the applicant shall obtain a "Permit to Construct" and/or any appropriate permits from the local Air Pollution Control District (listed below). A copy of any written clearance shall be provided to DEHS.

Air Pollution Control District (Desert Basin), 15428 Civic Drive, Victorville, CA 92392, (619) 243-8200.

125. Prior to any occupancy of the resort, a Certificate of Final Completion shall be issued by the Building & Safety Department, after which an application shall be submitted to DEHS for a Certificate of Occupancy.

FORESTRY AND FIRE WARDEN (714) 387-4213

126. The street address shall be posted with a minimum of four (4) inch numbers, visible from the street and during the hours of darkness the numbers shall be low voltage internally electrically illuminated. Posted numbers shall contrast with their background and be legible from the street in accordance with the Uniform Fire Code. Where building setbacks exceed 100 feet from the roadway, additional contrasting four (4) inch numbers shall be displayed at the property access entrance.

* NON-STANDARD CONDITION(8) **ENVIRONMENTAL MITIGATIVE MEASURE(8)

Page 21 of 21

SITE DESIGN ASSOCIATE, INC. (MARINA POINT) PD/89-0054/M331-9N (05175CF2) SUB/89-0054/M331-9N/TR12217 REVISED CONDITIONS OF APPROVAL (04-28-92)

- 127. Prior to final inspection or occupancy the development and each phase thereof shall have two (2) points of vehicular access for fire and other emergency equipment, and for routes of escape which will safely handle evacuations as required in the development code.
- 128. Prior to final inspection or occupancy, private roadways which exceed 150 feet in length shall be approved by the Fire Department having jurisdiction, and shall be extended to within 150 feet of, and shall give reasonable access to all portions of the exterior walls of the first story of any building. An access road shall be provided within 50 feet of all buildings if the natural grade between the access road and the building is in excess of 30 percent. Where the access roadway cannot be provided, an approved fire protection system or systems shall be provided, as required and approved by the Fire Department.
- 129. Prior to final inspection or occupancy, this development shall comply with Fire Safety Overlay conditions as adopted in County Ordinance Number 3341. The development is located in Fire Review Area 2 (FR-2).

BUILDING AND SAFETY DEPARTMENT (387-4246

- **130. The applicant shall remove any paving, asphalt and construction debris from the lakefront area in front of the site.
- **131. The applicant shall install state-of-the-art water conservation devices/fixtures in all units.
 - *132. A grading quality control engineer is required for this project.

* NON-STANDARD CONDITION(S) **ENVIRONMENTAL MITIGATIVE HEASURE(S)

Exhibit G

REFLORDED AT PEQUEST OF: AND MAIL TO BIG BEAR PROPERTIES INC. P.O. BOX 35917 1749 SOUTHLA CIENECA BLVD. LOS ANGELES, CA. 90035 ATTN: BRIDNI WEBER

83-108602

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AGREEMENT

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Big Bear Properties, Inc., a Delaware corperties, inc., a Delaware corperties, inc., a Delaware corperties, a municipal water district (herein the "District"), do enter into this Agreement on this 187 day of February, 1983, for the C purposes and upon the facts as follows:

WHEREAS, the Superior Court of the State of California for the County of San Bernardino did, on September 22, 1982, make and enter its judgment in favor of BBP and against the District in that certain action entitled <u>Big Bear Properties</u>, Inc., a corporation v. Big Bear Municipal Water District, and bearing that Court's Action No. VCV 2782 (herein the "Judgment");

WHEREAS, under the terms of the Judgment, the District was held bound by certain contractual obligations entered into by its predecessor in interest with respect to the land lying below the high water line of Big Bear Lake in the County of San Bernardino (herein the "Lake Bottom Land"), which agreement gave to BEP the right to purchase up to 200 acres of Lake Sottom Land, which land was to be designated from time to time during a twenty year period ending on December 31, 1988, for \$1,000 per acre upon certain terms and conditions, all of which are set forth in the Judgment which, by this reference, is incorporated herein and are depicted in the shoreline map

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attached hereto, marked Exhibit "A" and, by this reference, incorporated herein; ...

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WHEREAS, the Judgment is not yet final and the. District has not yet made a determination as to whether or not it intends to pursue an appeal from such Judgment;

WHEREAS, BBP and the District have had discussions with respect to the final resolution of the pending legal action, and specifically have discussed (1) a modification of certain BBP's rights given to it under the terms of the Judgment, specifically relating to the number of acres of Lake Bottom Land which it could purchase from the District, (2) two specific development projects which BBP has presented to the District, and (3) the District's waiver of its right to pursue an appeal from the Judgment and to allow the same to become final; and

WHEREAS, following such negotiations, the parties now desire to memorialize an agreement whereby (1) BBP has agreed to limit the number of acres of Lake Bottom Land which it will seek to purchase from the District under the terms of the Judgment, (2) the rights and obligations of the parties under the terms of the Judgment have been modified in certain particulars, (3) the District has agreed in concept to two specific development projects, and (4) the District has agreed to waive and abandon its right to appeal from the Judgment.

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NOW, IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES . HERETO, as follows:

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1. That BBP has heretofore submitted specific development plans to the District with raspact to the Lake Bottom Land abutting or contiguous to the parcels of real property described in paragaph 2, below, and those plans are hereby approved in concept by the District's Board of Copies of the renderings submitted with such Directors. specific development plans are attached hereto and incorporated herein as Exhibits "B", "C" and "D", respectively, and are intended to represent such specific proposals in this Agreement. The District acknowledges, subject ţο ≿<u>ከ</u>e provisions of paragraph 7 below, that the general subjective oriteria of the Judgment have been met by the development plans represented by Exhibits "B", "C" and "D", although it is possible that certain changes may be required to assure technical feasibility. It is further understood that Exhibits "C" and "D" represent alternative plans for a development relating to the property described in paragraph 2 b, below. The plan represented in Exhibit "C" will only become operative if BBP is able to acquire certain contiguous land from the City of Big Bear Lake. If BEP is unable to acquire such land within such period of time and upon such terms as are satisfactory to BBP, then the development represented in Exhibit "D" will be adopted and put into effect.

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2. Subject to the provisions of paragraphs 3 and 4 below, BBP agrees that the number of acres of Lake Bottom Land which it may hereafter acquire under the Judgment shall be a reduced to a maximum of 28.7, as follows:

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I.

A. Not more than 19.3 acres shall be designated from take Bottom Land abutting or contiguous to the following parcels of real property located in the County of San Bornardino, as more particularly reflected in Exhibit "B" hereto;

> (1) Consisting of that portion of the 403 acres and legally described in that certain corporation grant deed dated January 2, 1969 and recorded on January 7, 1969, as Instrument No. 112 in book 7160, pages 731-739 in the official records of the Recorder of Sam Bernardino (Sometimes referred to as the "North Shore"; see parcel "B-1" in Exhibit "A" to the Judgment), now owned by BBP.

> (2) Consisting of approximately 9 acres and legally described in that certain corporation grant dead dated March 31, 1969 and recorded on April 14, 1969, as Instrument No. 592 in book 7214, pages 34-35 in the official records of the Recorder of San Bernardino (sometimes referred to as "Wally's Camp"; see parcel "B-3" in Exhibit "A" to the Judgment).

> (3) Consisting of approximately 4.3 acres and legally described in that cortain corporation grant deed dated June 2, 1969, as Instrument No. 114 in book 7244, pages 590-591 in the official records of the Recorder of San Bernardino (sometimes referred to as "Moon Camp"; see parce1 "B-4" in Exhibit "A" to the Judgment).

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b. Not more than 9.4 acres shall be designated from Lake Bottom Land abutting or contiguous to the following parcel of real property located in the County of San Bernardino, as more particularly reflected in the alternative plans represented in Exhibits "C" and "D" hereto:

That portion of that certain parcel of real property located in the County of San Bernardino, consisting of approximately 67 acres and legally described in that certain corporation grant deed dated January 2, 1969, as recorded on January 7, 1969, as instrument No. 124 in book 7160, pages 759-760 in the official records of the Recorder of San Bernardino (sometimes referred to as "Eagle Point No. 5"; see parcel "J-1" in Exhibit "A" to the Judgment) now owned by BBP.

3. In the event that the United States Department of Agriculture, Porest Service (herein the "Forest Service") seeks to acquire for public recreational purposes Lake Bottom Land abutting or contiguous to any of the following parcels of real property, then BBP will exercise its option to acquire from the District not more than 30 acres of such Lake Bottom Land and the District hereby acknowledges BBP's right to do so under the terms of the Judgment:

> a. Consisting of a portion of the 403 acres legally described in that certain corporation grant deed dated January 2, 1969 and recorded on January 7, 1969, as Instrument No. 112 in book 7160, pages 731-739 in the official records of the Recorder of San Bernardino (sometimes referred to as the "North Shore"; see parcel "B-1" in Exhibit "A" to the Judgment), now owned by the Forest Service.

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b. Consisting of approximately 5 acres and legally described in that certain corporation grant deed dated March 31, 1969 and recorded on April 14, 1969, as Instrument No. 591 in book 7214, pages 32-33 in the official records of the Recorder of San Bernardino (sometimes referred to as "Good Luck Camp"; see parcel "B-5" in Exhibit "A" to the Judgment).

c. Consisting of that portion of approximately 38.1 acres and legally described in that certain corporation grant deed dated June 2, 1969 and recorded on June 5, 1969 as Instrument No. 117 in book 7244, pages 596-597 in the official records of the Recorder of San Bernardino (sometimes referred to as "Marrone's Camp" and/or "Cedar Point"; see parcel "B-8" in Exhibit "A" to the Judgment) now owned by the Forest Service.

d. Consisting of approximately 6.8 screa and legally described in that certain corporation grant deed dated June 4, 1969 and recorded on June 5, 1969 as Instrument No. 116 in book 7244, pages 594-595 in the official records of the Recorder of San Bernardino (sometimes referred to as "Juniper Camp", see parcel "B-11" in Exhibit "A" to the Judgment).

 With respect to the maximum acreage limitations specified in paragraphs 2 and 3, above, it is understood:

a. That such maximum acreage shall not be impaired or reduced by the assertion or claim, whether or not successful, of any assignes, of BBP who may have received an assignment, prior to the date of the Judgment, to acquire some portion of the option rights to the 200 acres of Lake Bottom Land granted to BBP by the agreement enforced by the Judgment. In this connection, BBP represents to the District that only

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one such assignment may be outstanding and it involves no more than five acres of Lake Bottom Land abutting or contiguous to the parcel of real property described in paragraph 3.c., above,

b. That such maximum acreage shall be measured at the high water line not on the lake bottom. The parties hereto acknowledge that it may be necessary for BBP to utilize acreage in excess of such maximums, as measured on the lake bottom, in order to carry out the development plans represented by Exhibits "B", "C" and "D" hereto and to achieve, after completion of excavation and filling, the net maximum acreages provided for in paragraphs 2 and 3, above, as measured at the high water line. Therefore, the District hereby agrees to permit such utilization of the Lake Bottom Land as may be reasonably required in order to carry out the said development plans and to achieve such net maximum acreages at the high water line.

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5. With respect to those acres of Lake Bottom Land (up to a maximum of 30 acres) to be acquired by the Porest Service and abutting or contiguous to the parcels of real property referred to in paragraph 3 above, BBP agrees:

a. To condition any assignment to the Forest Service of BBP's rights under the Judgment, with respect to said acres, by the requirement that such Lake Bottom Land, as may be acquired from the District by the Forest Service, will be used only for public recreational purposes and any deed given by the District to the Forest Service aball contain appropriate clauses, which shall provide for reversion to the

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District of title to any Lake Bottom Land acquired from the District and subsequently used by the Forest Service for non-recreational purposes. For purposes of this Agreement, the term "recreational purposes" shall be deemed to include the establishment, operation and/or maintenance of any environmental or wildlife preserve or reserve.

b. That it will not hereafter assign any of its rights under the Judgment to any party other than the Forest Service.

G. That no plan of development for said 30 acres of Lake Bottom Land has been submitted to the District. When, and if, such plan is received by the District, the Board of Directors will review, and approve or disapprove, such plan in accordance with the standards and general rules set forth in paragraph 7, below and in accordance with the provisions of the Shoreline Alteration Plan adopted as Municipal Water District Resolution No. 194 by the District on January 15, 1982, the provisions of which are represented and depicted on an exhibit to said Resolution, a copy of which exhibit is attached hereto, marked Exhibit "E" and, by this reference, incorporated herein.

6. The District hereby agrees to waive and abandon any right it may have to appeal from the Judgment. The District's Notice of Appeal which has heretofore been filed with the Clerk of the Superior Court for the County of San Bernardino, will be forthwith withdrawn.

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7. The District shall retain all of its rights under

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the Judgment to review, and to approve or disapprove, SUL specific plan for excavation and filling, except that the District further agrees that it will make no objection to any of the written plans for excevation and filling of Lake Bottom Land hereafter submitted either by the Forest Service (in connection with Lake Bottom Land abutting parcels B-1, B-5, B-8 and/or B-11) or by BBP, or any of its successors, assigns, designees or grantees, based solely upon the number of acres of Lake Bottom Land to be developed pursuant to such plans for excavation and filling and thereafter acquired pursuant to the terms of the Judgment. Nor will the District hereafter raise any objection to any written plans for development 8.0C excavation and filling of Lake Bottom Land which are hereafter submitted by BBP based upon issues of development design, density and related esthetic and environmental considerations where such plans contorm to the basic development plans represented by Exhibits "B", "C" and "D" hereto and which are hereby approved in concept by the Board of Directors of the provided, however, nothing herein shall be construed District. to limit the power and authority of the Board of Directors under the terms of the Judgment to require, review, consider and approve the detailed plans for a specific excavation and filling of Lake Bottom Land. Specifically, the following general rules shall apply:

a. There must be presented to the Board of Directors of the District specific written plans for the excavation and filling of any Lake Bottom Land to be purchased under the Judgment and such plans must be approved by a

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majority vote of the Board of Directors, but the Board of Directors shall not unreasonably withhold such approval.

b. The Board of Directors of the District shall not approve any plans for such excavation and filling if said plans would in any manner create a hazard to navigation on Big Bear Lake, interfere with the natural channel in the lake or unreasonably interfere with the use and enjoyment of other parcels of real property abutting the shoreline of Big Bear Lake which are not owned by BBP.

G. The Board of Directors of the District shall have the further right to impose such reasonable conditions upon its approval of any such specific written plans for excavation and filling of the Lake Bottom Land as the said Board of Directors shall deem to be reasonably necessary in order to protect and preserve the quality and condition of Big Beat Lake and the lakeshore area.

G. The deed of the District conveying the Lake Bottom Land which is the subject of any exercise by BBP of an option right under the Judgment or this Agreement shall contain a reversionary clause under which title to said land conveyed shall revert to the District if the proposed excavation and filling described in said specific written plans theretofore aproved by the District shall not be completed within three years after the date of said deed.

e. The party purchasing such Lake Bottom Land, in preparing said specific written plans and carrying out the excavation and filling work described therein, shall have the right to make use of materials from the bottom of Big Bear Lake.

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All lots developed within any subdivision f ... created from the parcels of Lake Bottom Land described in paragraph 2, above, shall be developed only with single family (detached) residential homesites, except as otherwise required by applicable law, ordinance or regulation; provided, however, that BBP warrants and represents that it will neither apply for nor seek, directly or indirectly, the passage, enactment, adoption or amendment, by any governmental agency, of any law, ordinance or regulation which would require a development within said subdivision of other than single family (detached) residential homesices. ABP further warrants and represents that in the event such a law, ordinance or regulation is BBP will hereafter passed, enacted, adopted or amended, exercise its best efforts to obtain a variance therefrom so as to allow the development contemplated herein. A breach of any of said warranties and representations by BBP shall deprive BBP of the right to rely upon or enforce the aforesaid exception to this subparagraph.

8. It is understood that any plan for the excavation and filling of Lake Bottom Land may also have to be approved by a number of other governmental agencies, including the City of Big Bear Lake, the County of San Bernardino and the Department of Fish and Game of the State of California.

9. It is understood and agreed that the previous notice of intent to exercise the option by BBP on May 14, 1981 (see Exhibit "B" to the Judgment"), which referred to 11.8 ~11-

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deres abutting "Moon Camp" (parcel "B+4" as reflected in Exhibit "A" to the Judgment) shall be modified so as to include the contiguous parcels described in paragraph 2a, above, and known as "North Shore" (portion of parcel "B-1" now owned by BBP), "Wally's Camp" (parcel "B-3") and "Moon Camp" (parcel "B-4") but that the maximum number of acres of Lake Bottom Land to be acquired by BBP or its successors, assigns, designees or grantees abutting or contiguous to these parcels shall be 19.3.

10. BBP, in carrying out any excavation and filling, pursuant to a plan approved by the District, shall not reduce the water storage capacity of the Lake, except as may be reasonably and temporarily required by the process of the excavation and filling itself.

11. It is further expressly agreed and understood that to the extent that BBP or the Forest Service hereafter determine not to acquire the total number of acres of Lake Bottom Land provided for in paragraphs 2 and 3, above, that such circumstance will not thereafter permit or allow BBP to transfer such right to a different parcel. The acreage limitations described in paragraphs 2 and 3, above, are intended as specific maximums (as measured at the high water line) and the failure to acquire the maximum number of acres a allowed with respect to a particular parcel or group of parcels will not increase the maximum number of acres allowed for a different parcel or parcels.

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12. Except as expressly provided for in this Agreement, all of the rights and obligations of the parties as provided for under the terms of the Judgment remain in full force and effect.

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WHEREFORE, the parties hereto have executed this Agreement on the first day and date hereinabove written.

BIG BEAR PROPERTIES, INC., a Delaware corporation

Ðy President

AX. By Secretary

BIG BEAR MUNICIPAL WATER DISTRICT

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ACKNOWLEDGEMENT

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STATE OF CALIFORNIA) COUNTY OF LOS ANGELES)

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On February 18, 1983, before me, the undersigned, a Notary Public in and for said county and state, personally appeared <u>KOUDTUIL</u> (<u>DEPURN</u>), known to me to be the President and <u>DEPUND</u> (known to me to be the Secretary of Big Bear Properties, Inc., a Delaware corporation, the corporation that executed the within Agreement, and who are known to me to be the persons who executed the within Agreement on behalf of Big Bear Properties, Inc., and acknowledged to me that such corporation executed the within Agreement pursuant to a resolution of its Board of Directors.

WITNESS my hand and official-seal.

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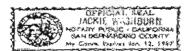
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STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO)

On February 12, 1983, before me, the undersigned, a Notary Public in and for said county and state, personally appeared for the formal state, personally resident and for the formal state, personally known to me to be the Secretary of the Board of Directors of the Big Bear Municipal Water District, a municipal water district, the agency that executed the within Agreement, and who are known to me to be the persons who executed the within Agreement on behalf of the Big Bear Municipal Water District, and acknowledged to me that such agency executed the within Agreement pursuant to a resolution of its Board of Directors.

WITNESS my hand and official Seal.

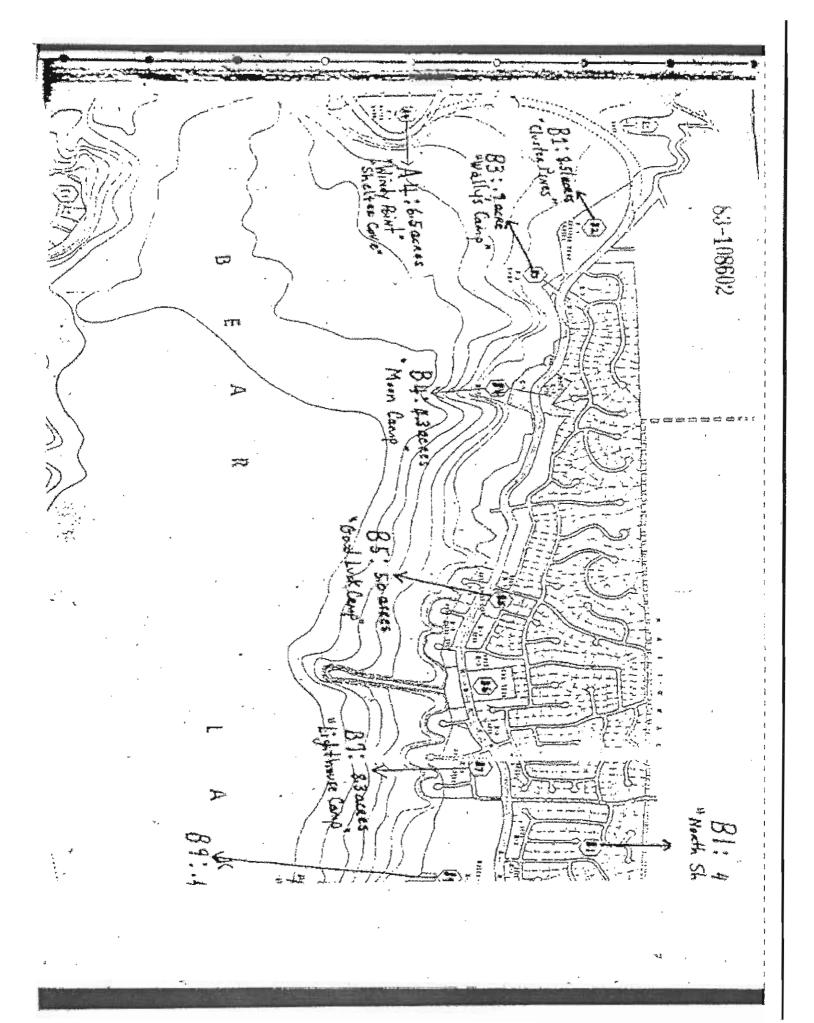


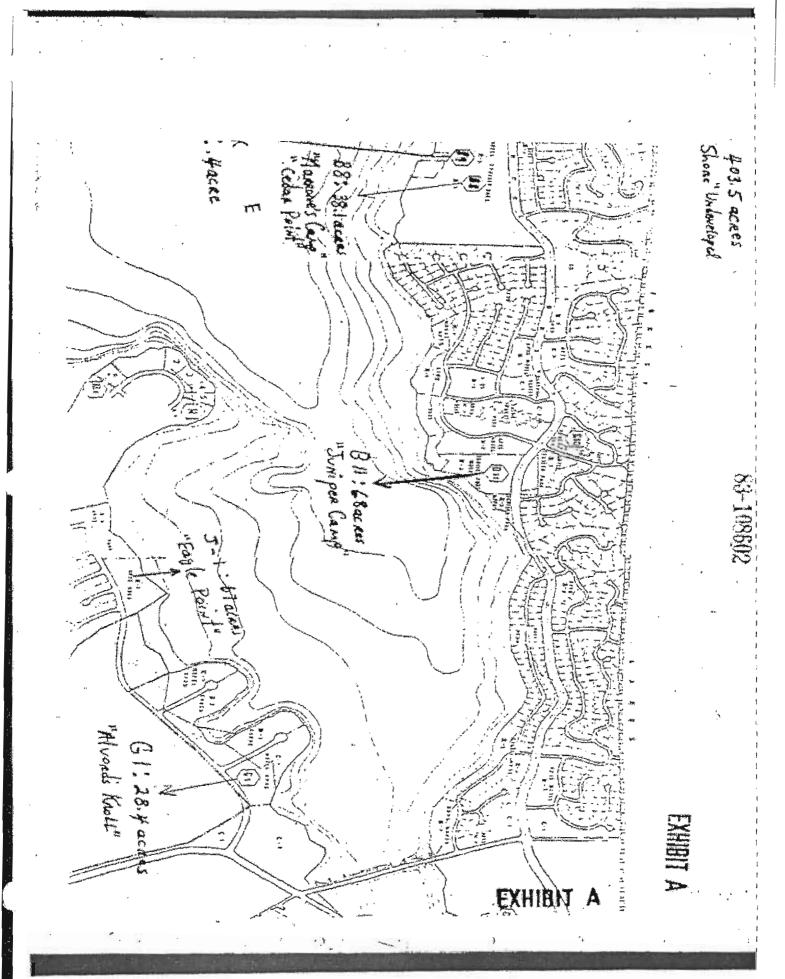
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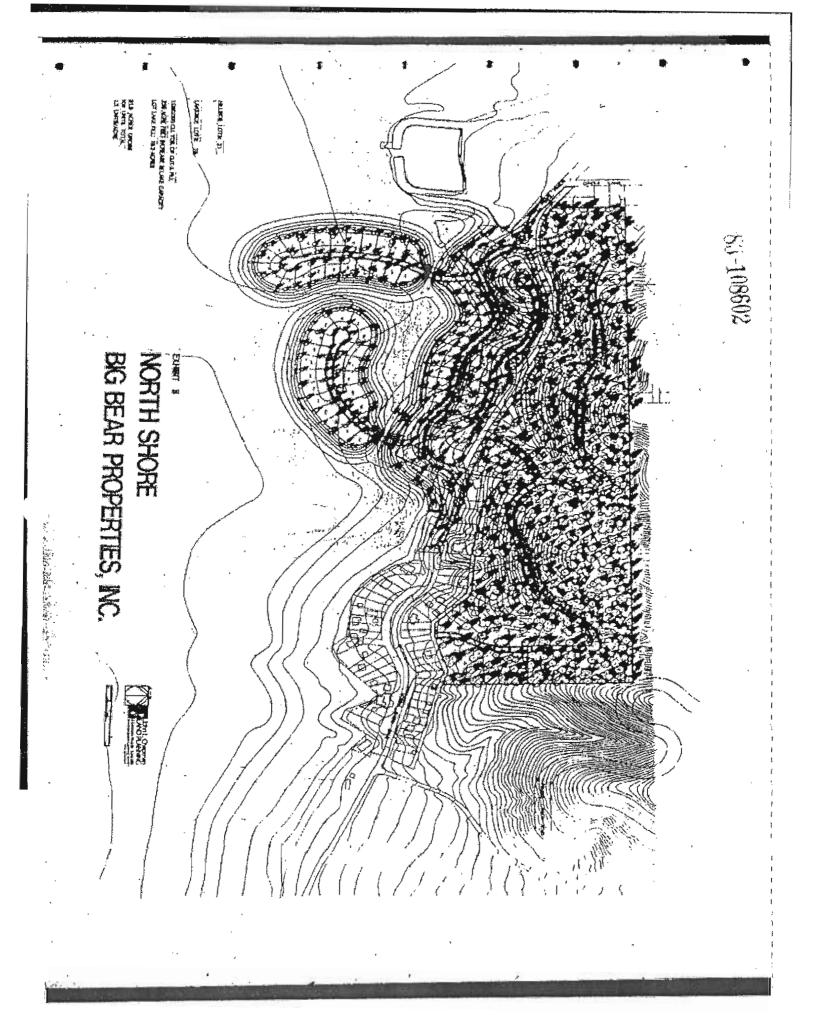
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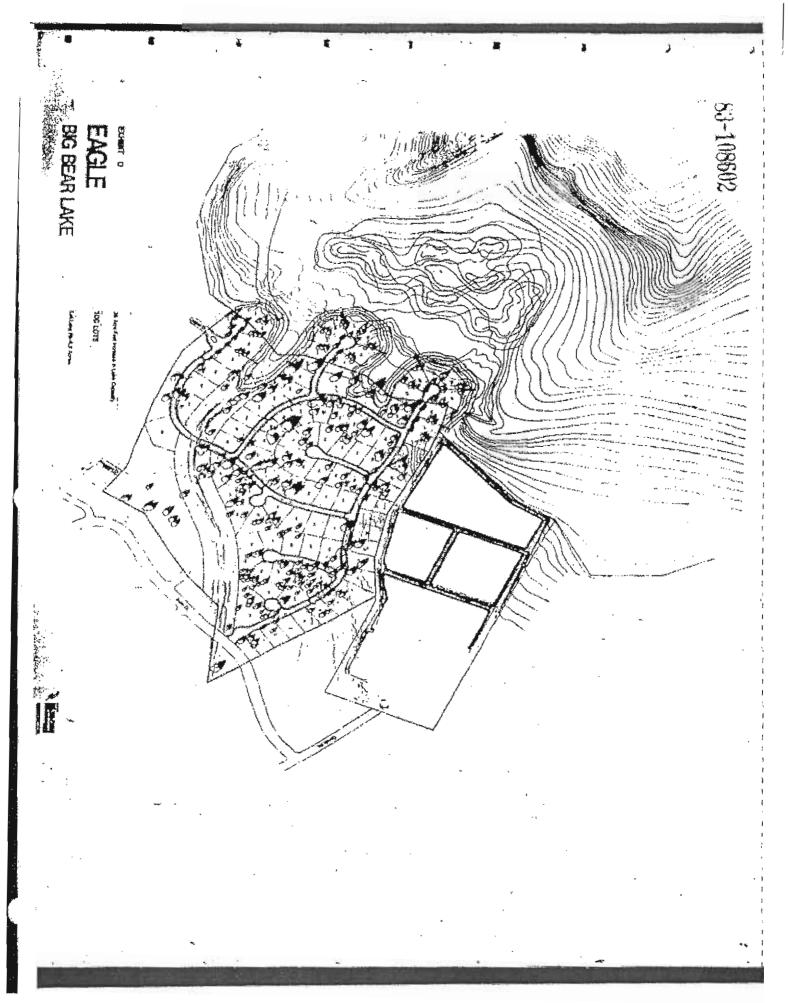




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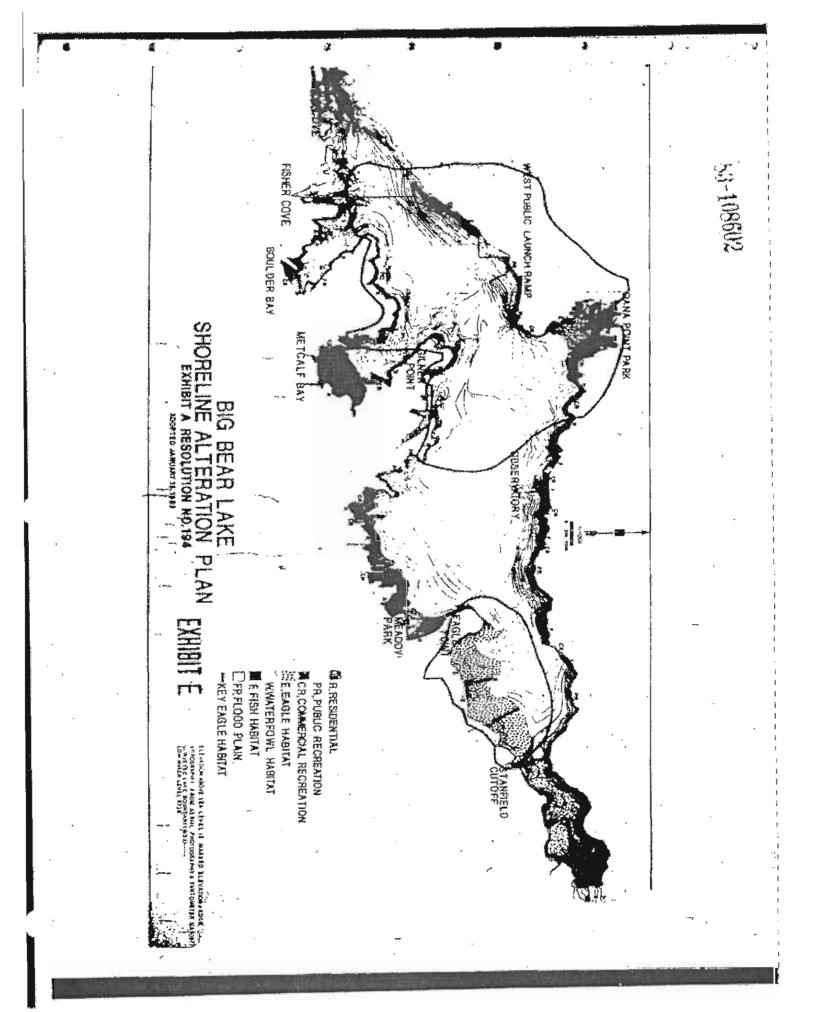


Exhibit H

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TT 12217/Fawnskin Marina Cove Associates Page 1 of 10

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CONDITIONS OF APPROVAL:

Building and Safety:

Tentetive (1/6/83

A preliminary soil report, complying with the provisions of Ordinance #2159 shall be filed with and approved by the Director of Building and Safety prior to recordation of the final map.

2.) Grading plans to be submitted to and approved by the Building and Safety Department.

) Obtain a demolition permit for building to be demolished. Underground structures must be broken in, back filled and inspected before covering.

4. Submit plans and obtain building permits for walls required by others.

Drainage Section/Surveyor:

6.)

8)

Adequate provisions shall be made to intercept and conduct the offsite tributary drainage flow around or through the site in a manner which will not adversely affect adjacent or downstream properties.

Adequate San Bernardino County Drainage Easements (minimum 15' wide) shall be provided over the natural drainage courses and/or drainage facilities. The easements shall be designed to contain the 100-year frequency storm flow plus bulking and freeboard per County Standard Criteria.

Grading plans shall be submitted to this office for review, if applicable.

Adequate rolls shall be provided on the entrance roads to the site at Big Bear Boulevard to minimize the possibility of street flow entering the site.

9. In addition to the Drainage Requirements stated herein, other "onsite" or "off-site" improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office.

Permanent channel improvements shall be required for the natural drainage course traversing the southwest portion of the site. The channel shall be designed to contain 100-year storm flow plus bulk-ing and freeboard, per County standard criteria.

Adequate provisions shall be made to intercept and conduct upstream overflow from the natural drainage course around the site into Big Bear Lake in a manner which will not adversely affect adjacent properties.

All fill to be placed below existing elevation 6745 feet shall be taken from Big Bear Lake. All necessary permits for taking material from the lake shall be obtained prior to recordation.

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TT1∠217/Fawnskin Marina Cove Associates Page 2 of 10

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Tentetive

CONDITIONS OF APPROVAL (continued):



Proof that the lake owners approve of the proposed filling shall be supplied to this office.

Environmental Health Services:

14.) Sewage disposal shall be by connection to CSA 53B.

15. The water purveyor shall be Southern California Water Co.

16.

The following are the steps that must be completed to meet the requirements for installation and/or finance of the water system and/or sewer system.

A. Where the system is to be installed prior to recordation:

The water system, fire hydrants, and/or sewer system shall be installed in accordance with requirements of the State Health and Safety Code, and in accordance with plans approved by the water and/or sewering utility and the governing fire protection authority. The plans shall be reviewed by a civil engineer, registered in the State of California, and contain required certificates and approval signatures. It is the developer's responsibility to submit to the spaveron's office, LAND DEVELOPMENT DIVISION, a copy of the approved plan and a signed statement from the utility of jurisdiction confirming that the improvement has been installed and accepted.

- 8. Where a bond is to be posted in lies of installation of the improvement:
 - The domestic water plan and/or sever plan which meets the requirements of the State Health and Safety Code shall be reviewed by a Civil Engineer, registered in the State of California, and approved by the water or severing utility and the governing fire protection authority. The plans shall contain the required certificates and approval signatures. A copy of the approved plan shall be submitted to the surveyor's office, LAND DEVELOPMENT DIVISION.
 - Said engineer shall determine the amount of bond necessary to install the improvements.
 - a. This amount plus ten percent shall be posted with the County of San Bernardino. A statement signed by the engineer stating that the amount of bond recommended is adequate to cover the cost of installation of the improvement shall be included with the estimate and submitted to the SURVEYOR'S OFFICE, LAND DEFELOPMENT DIVISION.
 - b. Or, in cases where the water agency or sewering agency is a governmental subdivision, the bond in the amount of 110 percent of the cost of installation of the improvement may be placed with the agency. A signed statement from that agency stating that financial arrangements have been completed shall be submitted to the surveyor's orrice, LAND DEVELOPMENT DIVISION.
 - 3. Prior to release of the bond for the improvement, the utility of jurisdiction shall submit a signed statement confirming that the improvement has been installed and meets the requirements of all appropriate State and County laws pertaining to such improvement. It is the developer's responsability that such signed statement is filed with the surveron's orrice, LAND DEVELOPMENT DEVISION.

Provide a letter from the Sanitary Engineering Section, State Health Department, stating they have reviewed the water system and concur with Southern California Water Company's findings that additional supplies of adequate quality and quantity of water are available to meet Health and Safety Code requirements.

T: .2217/Fawnskin Marina Cove Associates Page 3 of 10

CONDITIONS OF APPROVAL (continued):

Forestry and Fire Warden:

- 18) Development shall provide for safe and ready access for fire and other emergency equipment, and for routes of escape which will safety handle evacuations. Access roads shall be paved.
- 19, Road maintenance, including but not limited to grading and snow removal, shall be provided for.

Big Bear Lake Fire Department:

- 20. The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on the public street or on the site of the premises to be protected as required and approved by the Chief. (UFC 10.301c.) All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207a.
 - 1) An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed when any portion of the building protected is in excess of 150 feet from a water supply on a public street, there shall be provided on site fire hydrants and mains capable of supplying the required fire flow. The required fire flow for your project is 2,500 GPM as predicated by PUC General Order No. 103 Ref: Land Use/minimum required fire flow. This fire flow is in addition to the average daily consumption. Fire flows are calculated at 20 psi residual for two (2) hours duration.
- 22. All fire alarm slystems, fire hydrant systems, fire extinguishing systems (including automatic sprinklers), wet and dry standpipes, basement inlet pipes, and other fire protection systems and pertinents thereto shall meet the approval of the fire department as to installation and location and shall be subject to such periodic tests as required by the Chief. Plans and specifications shall be submitted to the fire department for review and approval prior to construction (U.F.C. Section 10.301e).
- 23. When fire protection facilities are to be installed by the developer, such facilities including all surface access roads shall be installed and made serviceable prior to and during the time of construction. When alternate methods of protection, as approved by the Chief, are provided, the above may be modified or waived. (UFC Section 10.301d).

A letter from the local water purveyor (Southern California Water Co.) is required prior to recordation of the final map for Tract #12217. This letter is to specify what off-site as well as onsite requirements will be required of the developer in order to meet the 2,500 G.P.M. fire flow requirement for a two (2) hour duration. NOTE: No fire flow capability exists on site. Nearest hydrant (No. 19) located off-site was recently flow tested and calculated to be 290 G.P.M. at 20 psi residual. Existing water delivery system is more than 2,200 GPM deficient. Also, the

TT 12217/Fawnskin Marina Cove Associates Page 4 of 10

TENTOTIVE

CONDITIONS OF APPROVAL:

Big Bear Lake Fire Department (continued):

community of Fawnskin has a zoned water system with a total reservoir capacity of only 187,000 gallons. Therefore, this Fire Department is requiring the construction of a new reservoir with a minimum storage capacity of 300,000 gallons designed to meet the two (2) hour duration fire flow requirement for this 132 unit condominium project.

No wood shake siding or roofing materials allowed. Any use of such materials will necessitate an increase of 500 G.P.M. fire flow as well as a 60,000 gallon increase in reservoir capacity.

26. Fire flow requirements were predicated on the Plot Plan dated March 29, 1982. Calculations were based upon four (4) unit buildings, two stories in height. Any revisions or substantial changes in design or location of the clustered units will be subject to review by the Fire Chief.

Spacing indicated between the four (4) unit buildings is as little as five (5) feet. This Fire Department requires a minimum of 20 feet separation between each four (4) unit building. This spacing of buildings prohibits encroachment by eaves, cantilevering of walls, decks and other appendages.

28. A minimum of nine (9) on-site fire hydrants are required.

29. All fire hydrants shall be a dry barrel type as approved by the Fire Chief.

30. All fire hydrants shall be a Muellar or Waterous type.

- 31. Each fire hydrant shall have three (3) discharge parts. One 4" NST and two (2) 25" NST.
- 32. Fire hydrants shall be located at intervals of approximately 350 ft. meeting the approval of the Fire Chief.
- 33. All on-site fire hydrants shall be installed, tested and accepted as meeting fire flow requirements prior to the placement of combustible building materials on site.
- 34. Every building hereafter constructed shall be accessible to fire department apparatus by way of access roadways with all-weather driving surface of not less than 20 feet of unobstructed width, with adequate roadway turning radius capable of supporting the imposed loads of fire apparatus and having a minimum of 13 feet 6 inches of vertical clearance. (UFC Section 10.207a). NOTE: Roadway must be able to support vehicle weight of 40,000 lbs.
- 35. The access roadway shall be extended to within 150 feet of all portions of the exterior walls of the first story of any building. Where the access roadway cannot be provided, approved fire protection system or systems shall be provided as required and approved by the Chief. (UFC, Section 10.207c).

TT 12217/Fawnskin Marina Cove Associates Page 5 of 10

Tentetive

CONDITIONS OF APPROVAL:

Big Bear Lake Fire Department (Continued):

- 36. The access roadways shall be provided and maintained in a passable condition at all times. Any obstruction or impedance to reasonable access may be removed at the owner's expense, forthwith by any public safety agency, and the expense of removal is to be borne by the owner of the obstructing property. "NO PARKING" signs and/or other appropriate notice prohibiting obstructions may be required and shall be maintained.
- 37. The proposed names for all new streets must have the approval of the Fire Chief.

Planning Department

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Environmental Hearing Officer

All existing perch trees should be retained unless removal is required for reasons of public safety. (Consult with USFS to determine importance of site for perching.)

Construction shall not be allowed from December 1 to April 1.

Marina shall not be used from December 1 to April 1.

Compliance with conditions of the Big Bear Municipal Water District Shorezone Plan.

Install state-of-the-art water conservation devices in all units. Revegetate with native plants.

Revegetate with fast-growing pines or some other conifers in order that the units will eventually be screened or partially masked from the viewshed on the lake and from the south shore.

*44.) Applicant to pay "per-unit" mitigation fees to the school district in amounts specified by the district and/or Board of Supervisors if and when the district files for relief pursuant to the current County School Fee Ordinance.

Planning Department:

A commitment shall be obtained, in writing, from the sewering agency. 45. Said commitment to indicate that the agency has the capacity to furni said sewer service to the subject project and that all necessary arrangements have been made with said agency to supply such services. A copy of the commitment to be filed with the Planning Department.

46. Obtain a letter of non-interference from any utility company that may have rights of easement within the property boundaries. The letter must be obtained prior to approval of the final map.

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CONDITIONS OF APPROVAL:

Planning Department (continued):

47. Easements of record not shown on the tentative map shall be relinguished or relocated. Units affected by proposed easements or easements of record, which cannot be relinguished or relocated shall be redesigned.

Utility lines shall be placed underground in accordance with the requirements of County Ordinance.

A final grading plan shall be required. Said grading plan shall be submitted to the Department of Building and Safety for review and approval. All on-site cut and fill slopes shall:

a) be limited to a maximum slope ratio of 2 to 1. Setbacks from top and bottom of slopes shall be a minimum of one-half the slope height.

b) be contour graded to blend with existing natural contours.

A copy of the final grading plan, approved by Building and Safety, shall be submitted to the Planning Department when cut slopes exceed five (5) feet in height and fill slopes exceed three (3) feet in height.

Three (3) copies of a Landscaping Plan shall be submitted for Planning Department review and approval. Said Landscape Plan shall include the following:

The required slope planting. Plant ground covers by hydroseeding on the surfaces of all cut and fill slopes and shoulder areas between tops of fill slopes and toes of cut slopes and the edge of adjacent paved private roads, parking areas, etc. Additionally, ground cover plantings will extend to 6 feet beyond tops of cut slopes and toes of fill slopes. Planting of trees and shrubs will begin approximately 12 feet from the edge of private roadways and parking areas on the slopes rather than only above the height of 15 feet. Shrubs will be planted by seeding at the rate of approximately 20 shrubs per 1,000 square feet, and trees on fill slopes will be planted from 75%-1 gallon and 25%-5 gallon size at the rate of 6 trees per 1,000 square feet. All tree, shrub and ground cover species to be adapted to soil and climatic conditions at the project site, and are subject to final approval by the County Planning Department.

The 10 foot Planter Strip. Screen shall be provided along the northern boundary of the project with trees and shrubs.

All proposed walls.

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TT _2217/Fawnskin Marina Cove Associates Page 7 of 10

CONDITIONS OF APPROVAL:

Planning Department (continued):

52. A maintenance plan for the required landscaping shall be approved by the Planning Director. Said plan shall include the use of a temporary irrigation system. Temporary irrigation will be provided by the landscape contractor during the period of landscape establishment and maintenance, and for the period of time to include one full dry season (May-November). Plant species will be used which will survive on seasonal rainfall after the initial establishment period. The maintenance of graded slopes and landscaped areas shall be the responsibility of the developer until the transfer to the Homeowner's Association.

- 53. All landscaping and irrigation, (as shown on the approved landscape and irrigation plans), all private streets, the recreational facilities, interior sidewalks, street lighting and the required walls shall be completed or suitable bonds posted for their completion.
- 54. The Homeowner's Association By-Laws and Declaration of Covenants, Conditions and Restrictions shall be reviewed by the Planning Department. Said documents shall include maintenance of the common areas, recreation facilities, sidewalks, landscaping, walls, parkways, private streets, slope areas and marina.
- *55. All recreation facilities shall be installed or bonded for prior to recordation of each phase. Recreation facilities shall include the swimming pool, tennis courts and recreation buildings.
 - 55a. Included on the final tract map shall be the following:
 - a) all accessory uses;
 - b) all walkways;
 - c) all tridges;
 - d) all parking spaces;
 - e) the marina shall be given a lettered lot.

Road Section/Surveyor:

- 56. Roads within this development shall not be entered into the County Maintained Road System.
- 57. Any grading within the road right of way prior to the signing of the improvement plans shall be accomplished under the direction of a Soil Testing Engineer. Compaction tests of embankment construction, trench backfill and all subgrades shall be performed at no cost to San Bernardino County and a written report shall be submitted to the Contracts Division prior to any placement of base materials and/or paving.
- 58. Final plans and profiles shall indicate the location of any existing utility facility which would affect construction.

59. Slope rights shall be dedicated on the final tract map where necessary

TT 12217/Fawnskin Marina Cove Associates Page 8 of 10

CONDITIONS OF APPROVAL:

Road Section (continued):

60. A thorough evaluation of the structural road section, to include parkway improvements, from a qualified materials engineer, shall be submitted to Transportation Department.

Vehicular access rights shall be dedicated on State Highway 38, North Shore Drive.

62. Trees, irrigation systems and landscaping shall not be installed. on public right-of-way.

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An encroachment permit shall be required from the State Division of Highways prior to any construction within the right-of-way.

- 64. Road improvement plans for State Highway 138 shall be submitted to the State Division of Highways by a Registered Civil Engineer.
- 65. Dedication shall be granted on State Highway 138 (half-width R/W 52 feet half width curb separation, 40 feet), as necessary to concur with the Master Plan of Highways. This dedicaction is to be coordinated with the State Division of Highways.

Design and location of tract entrances will require approval of Caltrans prior to recordation of final map.

Two points of ingress and egress will be required to each tract phase, and west entrance shall be (re)located to face existing Barbara Lane.

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. Any change(s) to this project as currently proposed, which may be necessitated by Caltrans requirements. must be incorporated prior to recordation.

Large Scale Housing Project #M330-9N - Fawnskin Marina Cove Associates Page 9 of 10

Planning Department:

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CONDITIONS OF APPROVAL - LARGE SCALE HOUSING PROJECT:

1. The location and development plan shall become null and void unless all conditions have been complied with and the occupancy or use of the land or existing structures authorized by such location and development plan has taken place within three years after approval of said Location and Development Plan (Site Approval). Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in this section, the Planning Director may grant an extension of time for a period of not to exceed an additional twenty-four (24) months.

Sediment control devices such as peripheral berms, filter traps, sediment basins or other measures not located in proposed fill or excavation areas shall be constructed prior to all other land disturbances. Sediment control devices such as diversion berms, sediment traps, filter berms, sand bags, vegetative stabilization, etc., shall be used to prevent off-site sedimentation at all times.

No grading shall be permitted during the rainy/snowy period (December 1 through April 1.)

Maintenance of all erosion and sediment control devices shall be accomplished as necessary to prevent erosion and off-site sedimentation; maintenance will include repair of measures damaged by any sub-contractor including those of the public utility companies.

All disturbed areas shall be protected to control erosion and to prevent sedimentation of adjacent properties, storm sewers and/or streams.

*6. / Adequate parking shall be provided for members, trailers, and guests.

Building permits shall not be issued for purposes applied for until the following conditions have been met:

- 7. A sign plan shall be submitted to the Planning Department for review and approval, showing types, size, location, type of construction and materials.
- 8. Tract Map 12217 shall be recorded prior to the issuance of building permits.

Subject property shall not be occupied and/or used for purposes applied for until the following conditions have been met:

- 9. If permanent refuse receptacles are used, they:
 - a) shall be adequately screened from view, landscaped and shall be inaccessible to dogs, cats or vermin animals, and placed conveniently for collection. Frequency of pickup shall be such as to prevent overflow and emission of odor.
 - b) shall not be located within the setback areas described in conditions.

Exhibit I

FINAL

FOCUSED

ENVIRONMENTAL IMPACT REPORT

PROJECT:

LOCATION:

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132 Unit Condominium on 12 Acres North Shore of Big Bear Lake San Bernardino County

APPLICANT:

Marina Cove Associates/Shardel Development

PREPARED BY: San Bernardino County Planning Department

Environmental Analysis Section

DRAFT DATE:	January	12, 1983		· · ·,	
			· • .		
FINAL DATE:	March 7,	1983			

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F. Law Enforcement/Fire/Emergency

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ENVIRONMENTAL IMPACT REPORT FINALIZATION

At the Environmental Review Board hearing on February 8, 1983, the findings were that the Environmental Impact Report (EIR) is ADEQUATE with the changes and that the project will have three cumulative SIGNIFICANT ADVERSE EFFECTS as indicated on the Summary of Environmental Effects Table. CHANGES: Page 2(B) - next to last sentence should read: "General public use of the marina will <u>terminate</u> after project buildout". Page 3: in the last sentence, should read: "along the shore to the <u>east</u>".

The Board requests the following insert be added to the traffic section on Page 22:

Highway 38 and Highway 18 (Big Bear Dam)

The intersection of Highways 38 and 18 meet at Big Bear Lake dam. Current ADTs west of the dam along Highway 18 are 3,700. Current traffic on Highway 38 leading to the project site is 1,500 ADT.

Project generation at the dam will increase by 419 (average) ADT. The increase should not cause a significant impact to the existing intersection configuration (personal communication with George Boone, Caltrans).

Impacts: Project would represent a 26% increase in peak hour traffic. Mitigation: None required.

This packet, in combination with the Draft EIR, constitutes the Final Environmental Impact Report.

Southern California Water Company: Water Letter Already Issued

II. PROJECT DESCRIPTION

A. Location

The site is in the San Bernardino Mountains on the north shore of Big Bear Lake, east of Fawnskin and on the eastern extent of Grout Bay.

(See Figures 1 & 2)

B. Project Characteristics

The project subject to County action consists of:

1. Zone Change from "Flood Plain - 1 - Flood Hazard" to

"Multiple Family Residential" on 5.22 acres (to allow construction on previous fill);

 132-condominium units on 12.5 acres (Tract 12217) includes interior ponds, tennis courts and parking;

3. 8-lot subdivision on 12.5 acres.

Overall density approximates 10.5 units/acre. Two Hundred Ninety Three (293) parking spaces are included, averaging 2.2 spaces/unit. The plot plan indicates approximately one-half acre of ponds to be incorporated into project design to enhance the site's "lakefront" character. An existing marina with a rock jetty will probably remain as a major feature associated with the proposed General use. Public use of the marina max occasions over after project build-out. The

project will displace an active trailer/recreational vehicle park (Cluster Pines) which has existed on the site for many years.

III. REGIONAL SETTING

The existing trailer park and associated marina uses have substantially

(2)

altered the site's natural characteristics; however, fairly healthy stands of young and mature yellow pines remain throughout the site away from the lakefront. The shoreline is devoid of vegetation. The rock jetty/marina is one of the most heavily used on the north shore. The surrounding land uses consist of the town of Fawnskin and single family residential units to the northwest and sparse development/open space along the shore to the most. Residential, tourism and water sports provide most of the human activity in the Grout Bay region, mostly during summer months.

			GENERAL ASSESSMENT	
				•
	·	•	Nitiation	Significance
		Impact	Mitigation	Significance
	1.	Construction on old fill	Adequate new fill material, compaction, "pile" footings, etc.	Non-Significant
	•			
	2.	Water:		
	2.	Water:		
		a) Contribution to valley-wide ground	Only available on a regional scale	Protector
		water overdraft		Cumulative:
				Significant
	.•	 b) The Fawnskin ground water overdraft 	Only available on a regional scale	Project sestion
-				
	3.	Incremental effect upon	Tree planting; revegetation of shoreline; non-construction	Non-Significant
		eagle habitat in winter around Grout Bay; lake sedimentation; aesthetics	and no marina use during winter months; offsite mitigation per	• • •
			the Big Bear Mutual Water Dis- trict's conditions, etc.	
	4.	Land Use Alteration and	Landscaping, tree planting will	Non-Significant
		effect on adjacent resi-	be partially effective	
		dents (view obstruction). Existing use currently		
		contributes to conflicts.		
	5.	Traffic:		
		a) Increased use of Highway 38 (North Shore Drive) still	Left Turn Lanes and Cal Trans encroachment permit	Non-Significant
		well within capacity		
	-	 b) Intersection of Highway 38 and Stan- field Cut-Off 	None required	Non-Significant
		•		· .
			· · · · · · · · · · · · · · · · · · ·	
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SUMMARY OF ENVIRONMENTAL EFFECTS (Refer to the Environmental Impact Report Ι٧. for listing of all Impacts and Mitigation Measures)

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VII. CUMULATIVE IMPACTS

Combined with a recently approved mobilehome subdivision on the north shore, the project will result in higher <u>year-around</u> traffic loads on Highway 38 (North Shore Drive), Stanfield Cut-Off and on Highway 18 (Big Bear Boulevard). This and other recently approved projects within the basin will accentuate what may already be an over-commitment of local water supplies. Multi-story buildings will contribute to the disruptions of natural vistas from viewsheds on the lake and on the south shore. Population increases and service needs for this and other projects will contribute to north shore urbanization.

VIII. PROJECT ALTERNATIVES

1 No Project:

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Lower Density Condominiums:

3. Single Family Residential:

Mobilehome Park/Subdivision:

5. Public Park/Marina/Campground, etc:

Retention of current, seasonal use trailer park.

Resulting in same types of impacts, but of lesser magnitude. Less return to developers, but still possibly an economic alternative. Better opportunity for tree retention.

More consistent with surrounding land uses, less intense impacts, but possibly only marginal return to developers due to cost of services, etc. Better options for tree retention, eagles, etc.

Similar, but "more organized" more yearround than current trailer/vehicle park. Probably same level of impacts as proposed project. Fewer design options. Similar or more intense conflict with adjacent residential.

Less intense effect on wintering eagle populations due to predominately summertime usage. Provide better service to existing, local populations. Public use of marina would be more consistent with use of remainder of site, less conflicts, etc. Allows retention of integrity

(7)

ENVIRONMENTAL IMPACT EVALUATION

IX. NATURAL RESOURCES

Note: Although not considered "environmentally significant" by the Environmental Review Board, the following sections on Soils, Biota, Land Use, Aesthetics and Services are included as a means of identifying the mitigation measures that will have to be adopted as conditions of project approval in order to confine impacts to less than "signi-

ficant" levels.

A. Soils

Current Status

A portion of the site contains "fill" soils, mostly near the marina and shoreline.

Impact

Weight of the buildings could result in subsidence of "fill" soils, especially if water saturated, thereby creating potential structural defects, (i.e.: similar to the conditions affecting recently constructed condominiums on the south shore).

Mitigation

Subsidence and soil "breakdown" can be effectively reduced or eliminated by import of adequate fill material, compaction, "pile" footings or other standards applied via building permits.

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B. Hydrology

Flood Control

The portions of the site within and abutting natural drainage courses are subject to infrequent flood hazards from overflow, erosion and debris deposition. The site, in general, is subject to infrequent sheet overflow from thunderstorms. Portions of the site below 6745' (above sea level) are subject to inundation from the lake in the event of a major storm.

Impact

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Mitigation

On-site inundation from lake water and overflow from runoff can be mitigated by elevating dwelling unit pads to 6747' (4' above the dam spillway elevation of 6743') and by elevating garage floors to a minimum elevation of 6745' (See Appendices 8 (2).

Water Quality

Impact/Mitigation

The dwelling units will be sewered (Appendix 12). Erosion and sedimentation to the lake from grading and soil disturbance can be mitigated by conditions of County and Big Bear Municipal Water District

approval (See Appendices 9 £ 12).

C. <u>Biota</u>

Current Status

The site is within "key" perching and foraging habitat for wintering bald eagles in Big Bear Valley (USFS letter - Appendix 7). The current, predominately summertime use of the project site does not substantially affect this habitat integrity. However, because of the existing relatively dense development (without significant tree canopy) along Grout Bay west of the site, this eagle habitat is already stressed. No trees of existing "perch" caliber exist on the site. Waterfowl habitat along the site's shoreline is marginal due to lack of vegetation and inadequate water depth.

Impact

Project build-out will incrementally stress the region's remaining habitat due to some loss of "potential" perch trees and due to population-related pressures during winter periods.

<u>Mitigation</u>

The applicant has agreed to the following conditions:

- No construction from December 1 to April 1 (to avoid disturbance to wintering eagle populations).
- 2. Marina to be closed from December 1 to April 1.
- 3. Adherence to conditions of Big Bear Municipal Water District's shore zone alteration permit (i.e.: planting of willows along shoreline, erosion control, off-site waterfowl enhancement near Stanfield Cut-Off, etc.). Such mitigation will constitute an improvement over existing conditions. (Note: Big Bear Municipal Water District owns Big Bear Lake and has jurisdiction over shoreline use).

(14)

4. Retention of some of the existing conifers and planting of fast growing pines which may become future eagle perch trees.
 Note: Implementation of the above conditions will reduce project impact to a

level less than "significant".

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X. DETAILED ANALYSIS: HUMAN RESOURCES

A. Population - Land Use - Planning

Current Status

The current population of the immediate Fawnskin area (E.D.46V) is 323 (1980 Census). E.D.46V boundaries are at Del Mar on the west, to Polique Canyon Road on the east, the lake on the south and the USFS on the north. The current population of the Big Bear Valley region (Census Tract 102.01) approximates 8,500. Summertime populations at the trailer park might reach 200. Some of the trailers/recreational vehicles periodically utilizing "Cluster Pines" seem to be dispersed at random, especially during summer months when the "park" probably operates close to capacity, providing the basis for the term "Clutter Pines", sometimes attributed to the site. The marina is a major boat launch on the north shore. Single family residential units exist west of the site. Fawnskin is comprised primarily of residential and commercial uses. Most of the shoreline east of Grout Bay is publicly - owned open space managed by the United States Forest Service.

Impact

Build-out of the 132 units could allow approximately 250-300 part-orfull time residents, a (worst case) 30-40% increase over Fawnskin's current population (which now includes residents of the trailer park to be replaced) and approximately a 1-3% increase in Big Bear Valley's part/full time population. Implications of this population increase and/or change are difficult to determine since the site currently houses at least 100-200 people during summer months. The most likely effect will be the extension of traffic and service demands throughout a greater portion

(16)

of the year. A condominium in Big Bear Valley could be used for snow and lake-oriented recreation on a part time or time share basis; or on a full time basis by permanent residents, but most likely a mix of the above.

The existing "residents" using Cluster Pines as a permanent or part time home will be displaced to other such parks on or off the mountain, or will be forced to alter their lifestyles. Similar facilities in Big Bear Valley are transitioning to more permanent residential uses; therefore it can be assumed "displacement" to areas in the valley near the lake may not be an option for all of the park users or residents. Conversion of the site will reduce the current "affordable" housing in the mountains by about 100-200 trailer spaces.

The site will be converted to a more stable and conventional residential facility, possibly constituting a net-benefit to some residents, particularly those in the immediate vicinity of Grout Bay.

Continued use of the marina by Bear Valley residents and the general public may create traffic, noise and other conflicts with the condominium owners/users.

The project will probably result in a greater use of skiing facilities by Bear Valley residents; however, it is difficult to determine if such use will constitute a net increase since the project's future residents may presently be commuting to the valley's ski facilities.

Mitigation

None required.

The Environmental Review Board did not consider such impacts to be "environmentally significant". Population and land use related impacts are assessed in other sections of this Environmental Impact Report.

B. Traffic/Transportation

Note: The information for this traffic section was supplied by the applicant. Report prepared by: Lawrence S. Eisenhart, Consulting Engineer, November 1982 (on file with Planning Department).

Current Status

The local roadways serving and most affected by the site are State Route 38 (North Shore Drive), providing direct access on the north; Stanfield Cut-Off (County Road) providing the closest line between the north shore and the south shore commercial area, and Highway 18 (main north and south access to the mountains and also "Big Bear Boulevard").

Capacity is greatly exceeded on Stanfield Cut-Off and Big Bear Boulevard on a regular basis during peak periods (weekends of good skiing, summer weekends, holidays, etc.). Travel on Big Bear Boulevard even on weekdays during non-peak hours can still be a challenge.

Current site usage of the "park" generates an ADT of 319 during the summer months. Very little traffic is generated during the winter months, due to declining use levels. Winter ADT for the existing use is approximately

32.

Impact

Route 38 (North Shore Drive) will be the most affected road.

History of Existing Roadway Volumes

ROUTE 38 (NORTH SHORE) Between Big Bear Dam and Holcomb Valley Road

YEAR	PEAK HOUR	PEAK MONTH ADT	ANNUAL ADT
1977	240	1350	1100
1978	260	1600	1200
1979	240	1350	1100
1980	240	1250	1100
1981	330	1750	1500

West of the Marina Cove project (cumulatively with approved projects), the change equals:

1395 x .3 = 418.5 1395 - 418.5 = 976.5 V/C = 482/976.5 = .49

Reduction in service levels can be expected.

Impact Summary

The additional traffic generated from the development of 132 condominium units over that being generated from the existing trailer park will not cause a severe impact on Route 38 traffic circulation with mitigation listed below. There is sufficient excess capacity on Route 38 in the vicinity of the site to provide an acceptable level of service. Sight distance on Route 38 at the main entrance to the project site is adequate for prevailing speeds.

Project-related traffic will incrementally add to the already stressed condition at the intersection of Highway 18 and Stanfield Cut-Off.

The Highway 38/Stanfield Cut-Off intersection will not be significantly affected.

Mitigation

Left turn lanes should be provided for east and west traffic at the intersection of Highway 38 and the project's main entrance and Canyon Road to reduce the potential for rear end accidents.

The eventual installation of a signal at Highway 18 and Stanfield Cut-Off will somewhat alleviate the project's incremental impact. A monetary contribution by the applicant towards the cost of the signal would be the most effective mitigation.

The project will not stress the Highway 38/Stanfield Cut-Off intersection to a level warranting signalization.

(23) 780 of 947 C. Aesthetics

Current Status

The site's trailers and recreational vehicles currently contribute to a somewhat "cluttered" appearance.

Impact

The plot plan indicates a fairly neat clustering of condominiums, constituting to some viewers a net improvement; however, the multi-story units (up to 3 stories) will be more visible over a greater distance, mostly from the lake and south shore. The project design, especially with a half-acre of ponds, does not allow retention of many of the site's trees which would help to balance the scenic alterations. The permanent residential atmosphere will create a more urban appearance, especially over the short term due to a substantial loss of the existing pine stands.

Mitigation"

In order to confine the substantial aesthetic alterations to a relative short term, the applicants have agreed to revegetate the site with fast growing pines or other conifers in order that the units will eventually be screened or partially masked, particularly from the southern viewshed.

D. Severs

No significant impact with mitigations adopted as conditions of approval (See Appendix 12).

E. Schools

Current Status

Schools within the Bear Valley Unified School District are generally operating above capacity (Appendix 10).

(25)

XI. BIBLIOGRAPHY

- 1. Information received from applicant and others (See Appendices).
- Traffic Report for Marina Cove Associates Large Scale Housing.....' Eisenhart - November, 1982.
- 3. Big Bear Mutual Water District Shorezone Ordinance
- 4. "Big Bear Valley Water Resources Report and Management Plan" by

C. M. Engineering

XII. CONSULTATION/CONTACTS

Environmental Review Board

Jere Mitchell/Steve Loe/Genine Derby - United States Forest Service Mrs. Edward Hothan - Resident

Irv Okovita - Applicant

Jim Hicks - Engineer

Doreen Liberto - Planning Department

Paul Draga - North Shore Improvement Association

Steve Foulkes/Frank Gehrke - Big Bear Mutual Water District

Gary Wentz - Big Bear City Community Services District

Mike Perry - Special Districts Department

Joe Rowe - C. M. Engineering

Ross Burke - Southern California Water Company

George Boon - Cal Trans

Anwar Wagdy - County Transportation Department

Pat Murphy - City of Big Bear Lake

XIII. PREPARATION STAFF

San Bernardino County Planning Department Charles H. Bell - Senior Environmental Specialist Fred Hinshaw - Environmental Specialist

Helen Smith - Secretary

XIV. COST OF THE ENVIRONMENTAL INPACT REPORT

TOTAL \$1000.00

* per County Fee Schedule

XV: RESPONSE TO COMMENTS

See Pages 28(a) through 28(q).

Exhibit J

From: Irv Okovita <Irv@okondevelopment.com> To: khlawfirm <khlawfirm@aol.com> Cc: apk.llc <apk.lic@gmail.com>; kpolin <kpolin@jonesday.com> Subject: February 2014 Date: Wed, Feb 19, 2014 11:31 am Attachments: Hicks-Hardwick_Plat_12-29-1975.pdf (5889K)

Anthony

In response to your February 17, 2014 letter, please be advised that If you continue with threats of litigation, I will cease any further communication and have our attorneys respond in kind.

Your and claims are egregious and baseless. Big Bear Properties acquired approximately 2,500 acres of upland property contiguous to **B**ig Bear Lake in January 1969 from Big Bear Development Company. As part of this sale, Bear Valley Mutual Water Company also entered into a binding contract with Big Bear Properties for 200 acres of lakebottom land that could be filled above the 72.4 contour (identical to the spillway elevation of 6,742.6). In 1976, Big Bear Properties sold approx. 4 of the lakebottom acres to the Whighams who filled and incorporated the property into the RV-park, campground and marina operations. The attached plat map is self-explanatory. As successors in interest, Marina Point Development Associates owns the property which is fully approved for redevelopment.

I informed Gary in the attached e-mail that we would look to minimize the drainage wall before re-starting work and that counterproductive assertions are not in his best interests. No fill is to be placed within 20' of Gary's boundary with only minor grading proposed to improve drainage. This corridor benefits Gary as it provides lake access. Our desire has been to be a good neighbor. We expect the same in return.

Irv Okovita President

Oko Investments, Inc. /Okon Development, Co.

Real Estate Investments & Development

Direct: (619) 417 - 4416

Office: (858) 755-2616

http://www.okondevelopment.com/

Attached	Message
From:	Irv Okovita <irv@okondevelopment.com></irv@okondevelopment.com>
To:	apk.llc@gmail.com
Subject	Marina Point
Date:	Tue, 10 Dec 2013 17:10:20 -0800

I told you when we met onsite that I do not tolerate threats of frivolous lawsuits. If you prefer having attorneys involved, I will cease all further discussion with you.

I informed you that we are not building the drainage wall required by the County until next spring. At that time, you and I can meet and explore the options. I am trying to be a good neighbor and would appreciate the same in return. Thanks.

Irv Okovita President

Oko Investments, Inc. /Okon Development, Co.

Real Estate Investments & Development

Direct: (619) 417 - 4416

Office: (858) 900 - 2007

http://www.okondevelopment.com/

From: <u>khlawfirm@aol.com</u> [mailto:khlawfirm@aol.com] Sent: Tuesday, December 10, 2013 3:07 PM To: <u>Irv@okondevelopment.com</u> Cc: <u>apk.llc@qmail.com</u> Subject: Polizzi v. Okoviata et al

Please see attached letter.

Anthony Kornarens

Law Office Of Anthony Kornarens 2907 Stanford Avenue Marina del Rey, CA 90292 310.458.6580 Telephone 310.230.5104 Facsimile

Exhibit K

	DEWAR AND MOPFIFT 80-012331 RECORDER IN OFFICE OF COMPACT OFFICE OF	
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terenenen i	Big Bear Properties, Inc.	
	1749 South La Cienega Blod. 4.00 Los Angoles, Calif. 90035	
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-	Mr. & Mrs. Chester P. Whigham	
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2144 2144	and and	
	Corporation Grant Deed	
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ł	FOR A VALUABLE CONSIDERATION, reseips of which is hereby scenowledged.	
r.	EEAR VALLEY MUTUAL RATER COMPANY a proposation organized under the laws of the state of	
	hereby GHANTS w	l
	BIG BEAR PHOPERTIES, INC.	
	the following described real property in the County of Sun Bermancino . State of California	
The other states	SEE EXHIBIT "A" ATTACHED HENETO AND BY THIS REFERENCE IS MADE A PART HERELF.	
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	Assessor's Parcel No. 304 082 13	
Ì	The undersigned grantor declares that the Documentary	QU
	Transfer Tax is \$4.40 and that it was computed on the full value of the property conveyed. The undersigned	0
	grantor further declares that the property conveyed is in an unincorporated area of the County of Man Bernardino,	TPO2TA-DQ
		, X
	In Witness Whereof, sold exeparation has caused its exeparate name and seal to be affixed become and this instru- ment to be executed by Re-	10 10 10 10 10 10 10 10 10 10 10 10 10 1
	Dated Exercised 14, 1979	1
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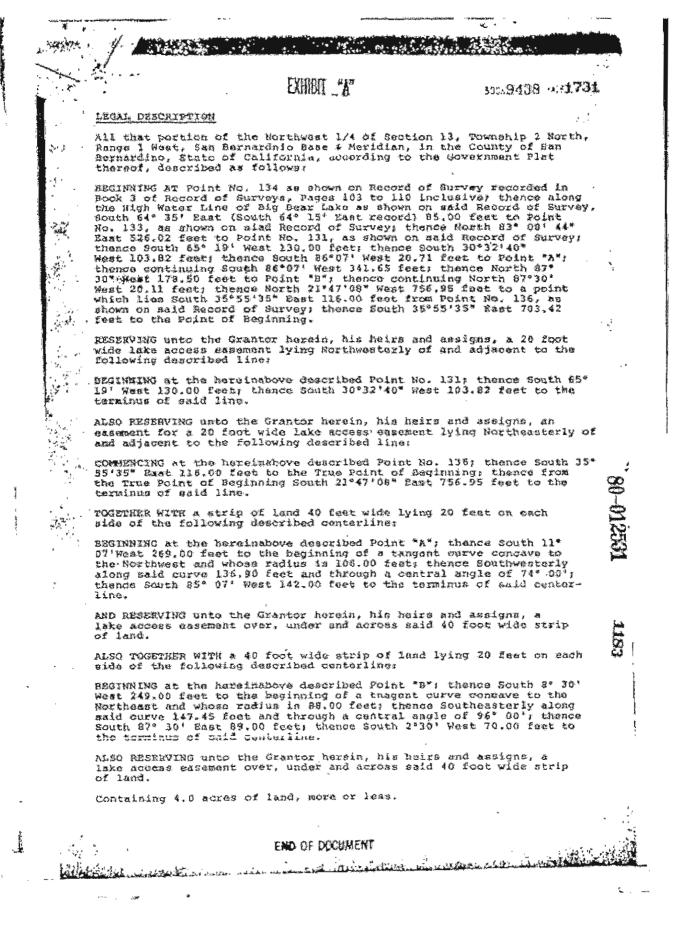


Exhibit L

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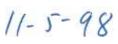
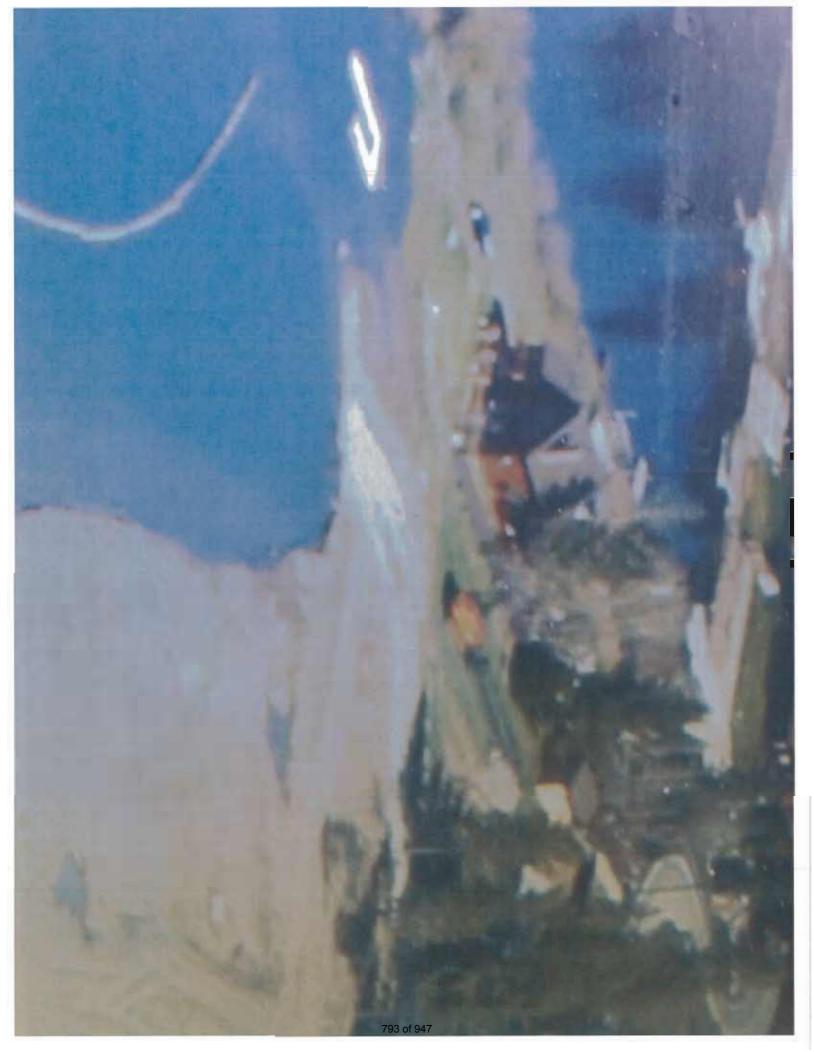
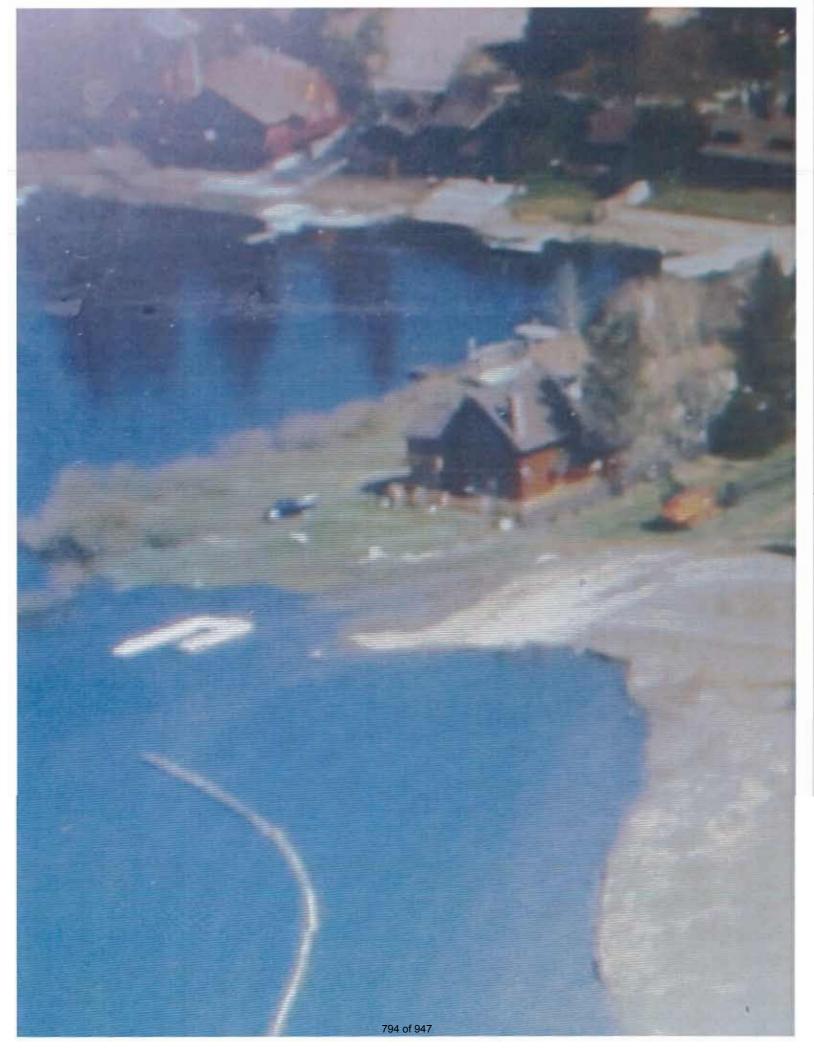
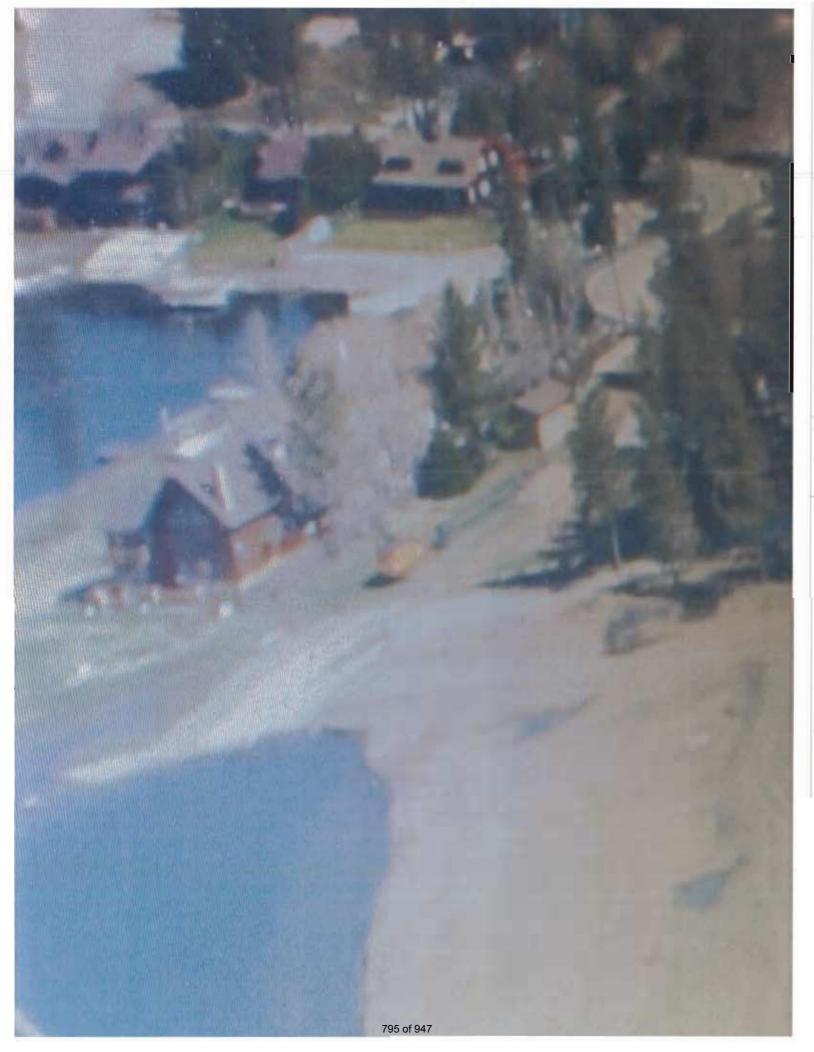
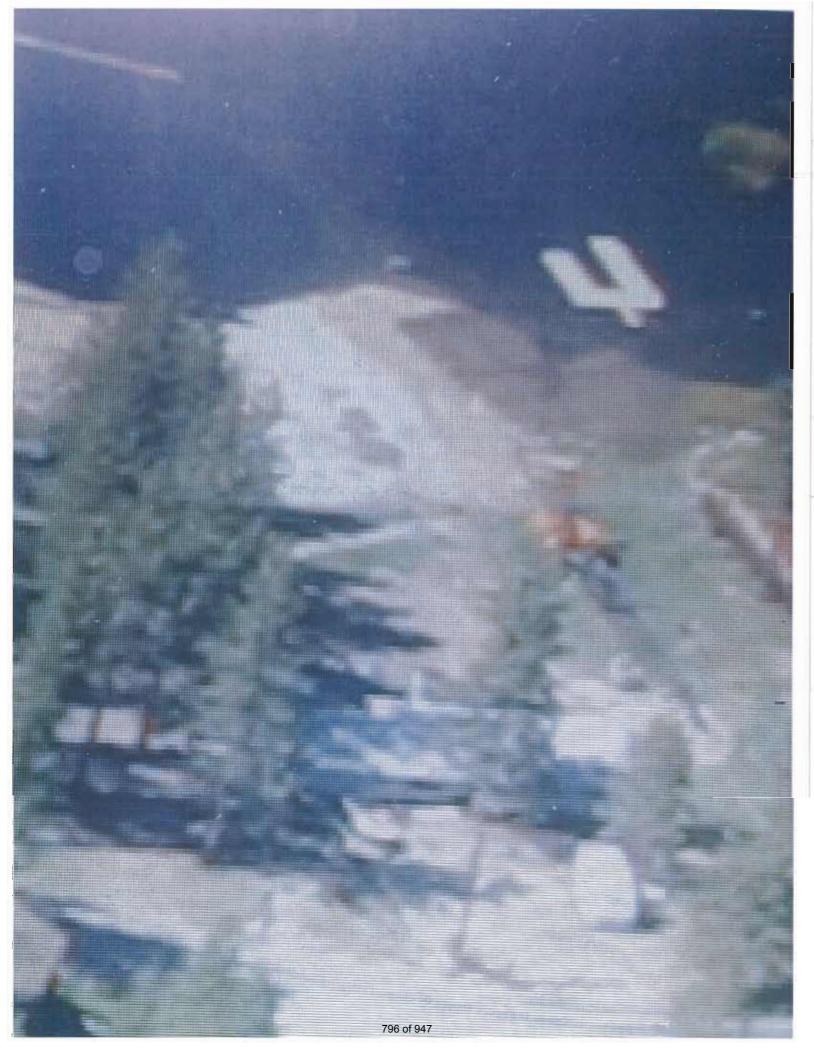


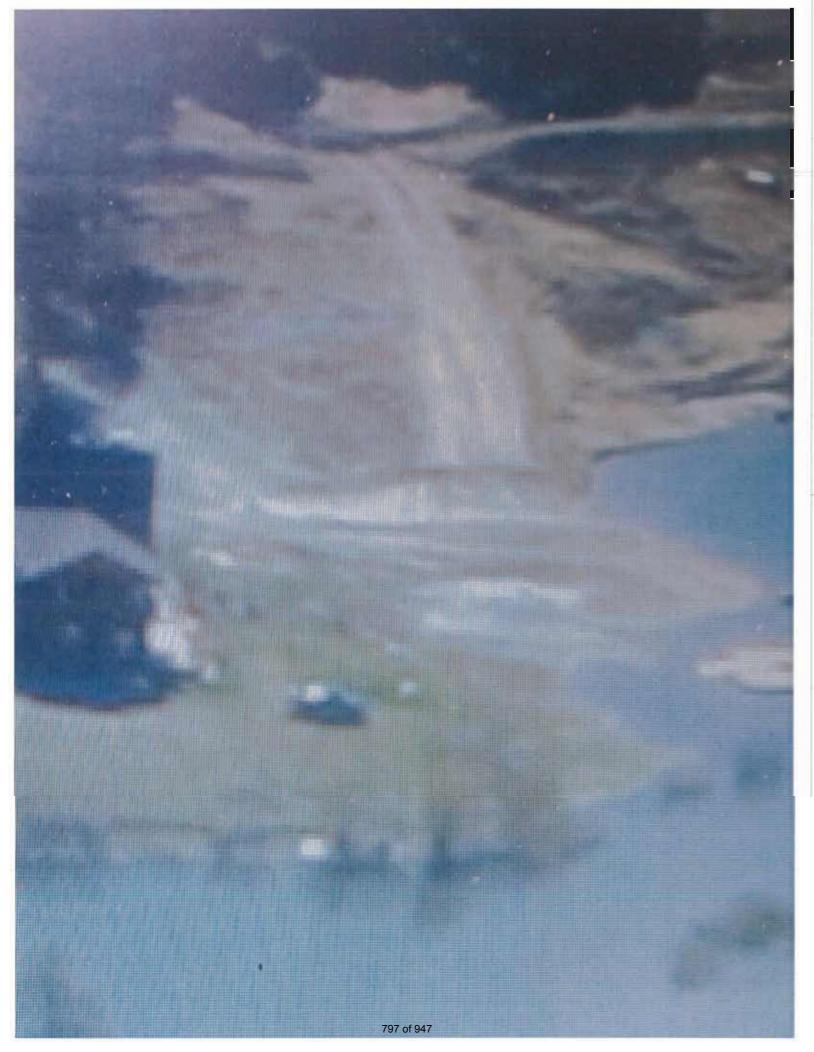
Exhibit M

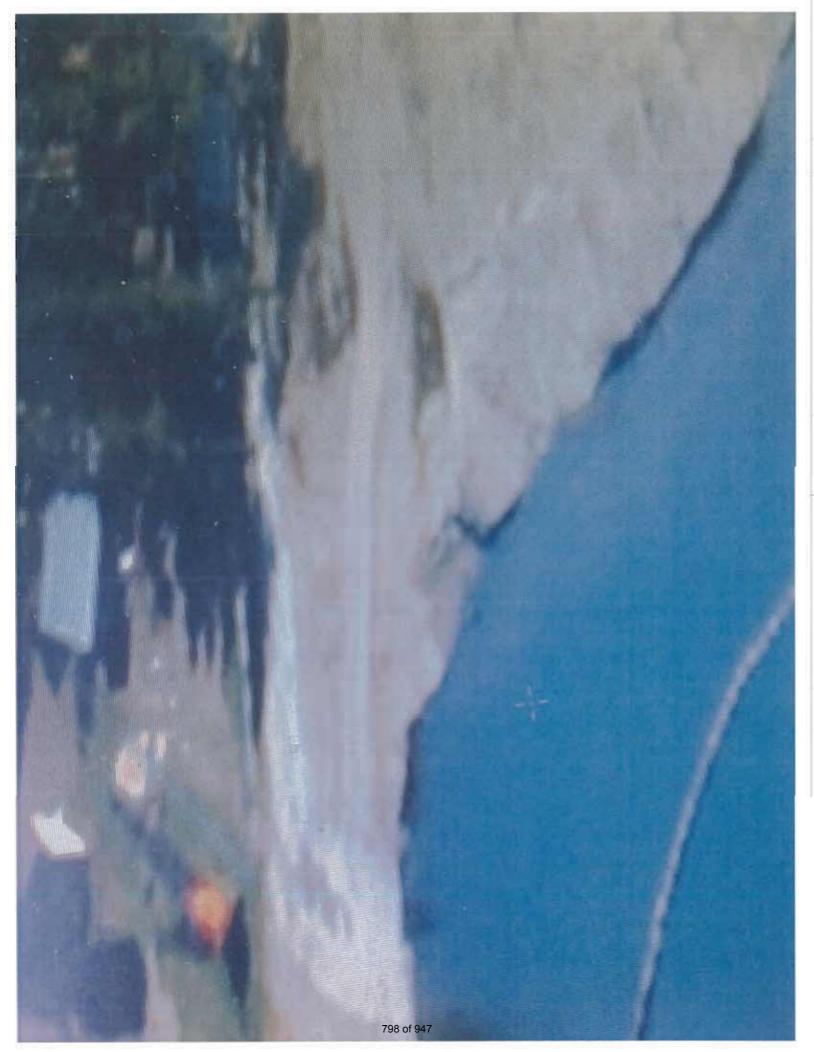


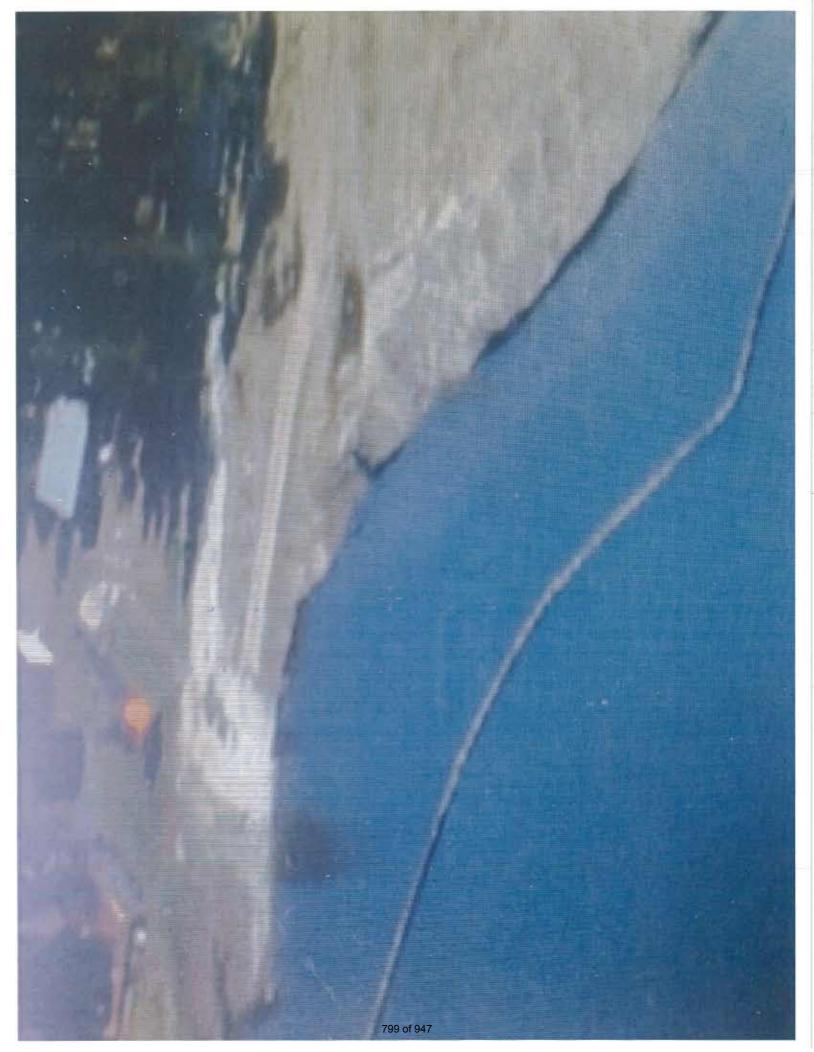


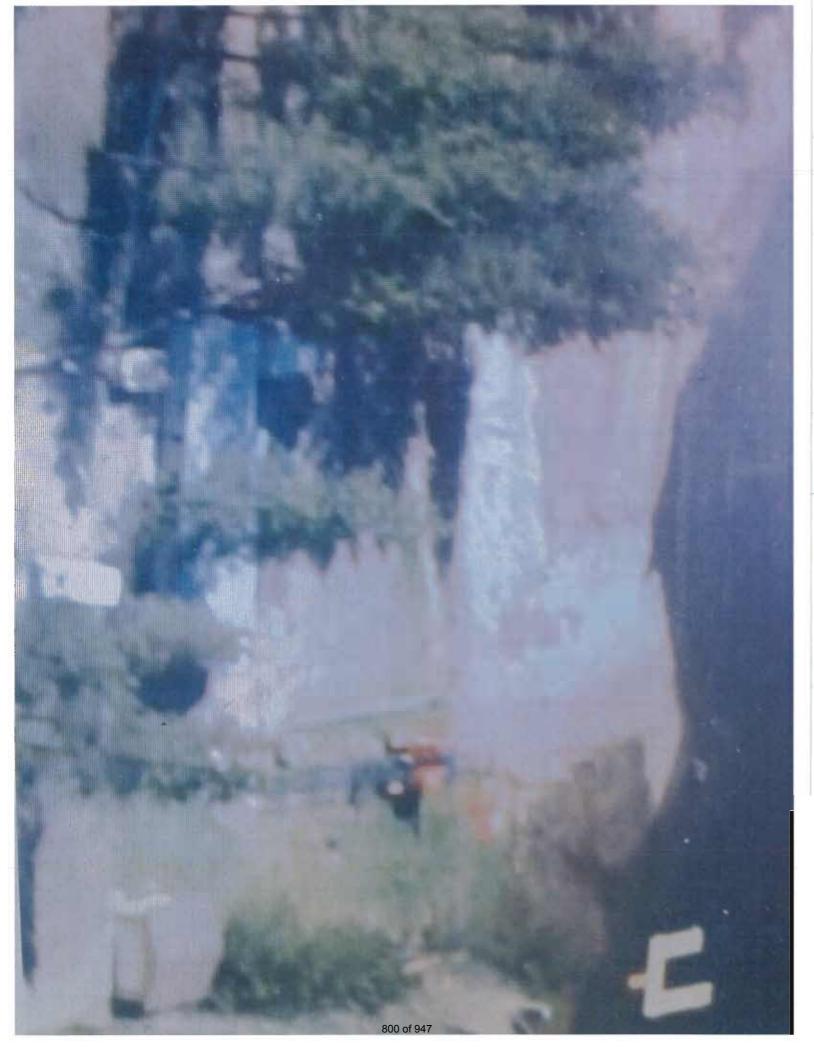














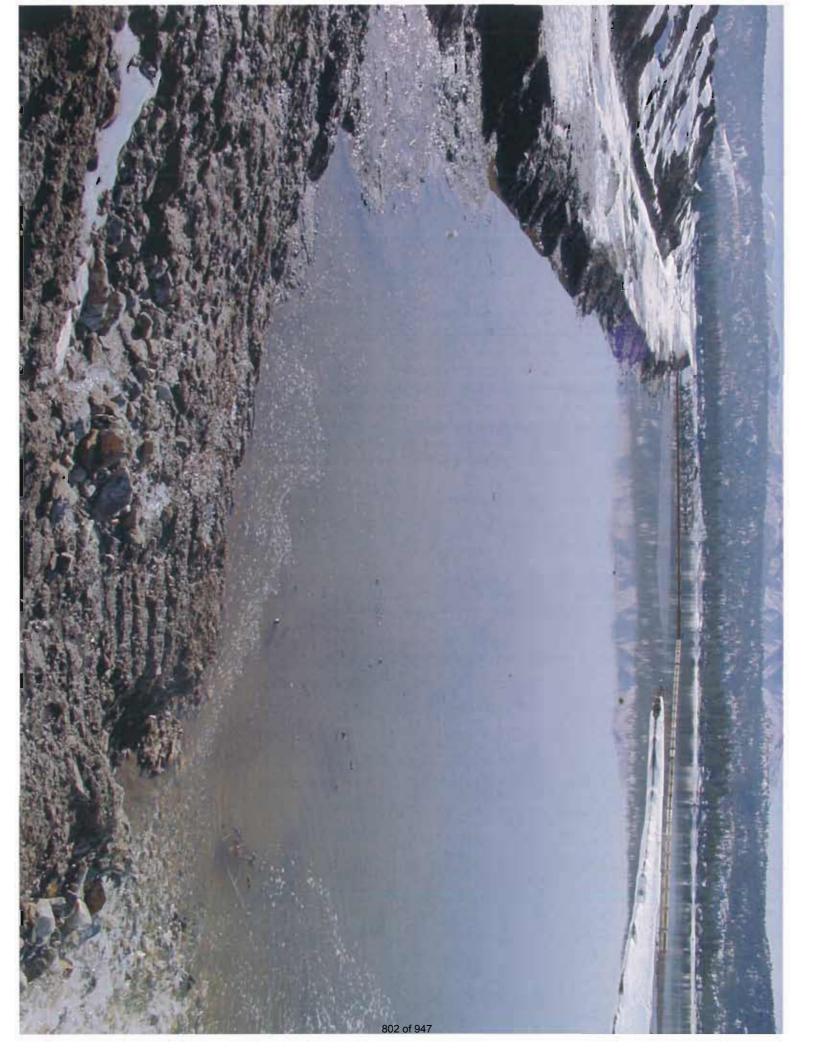
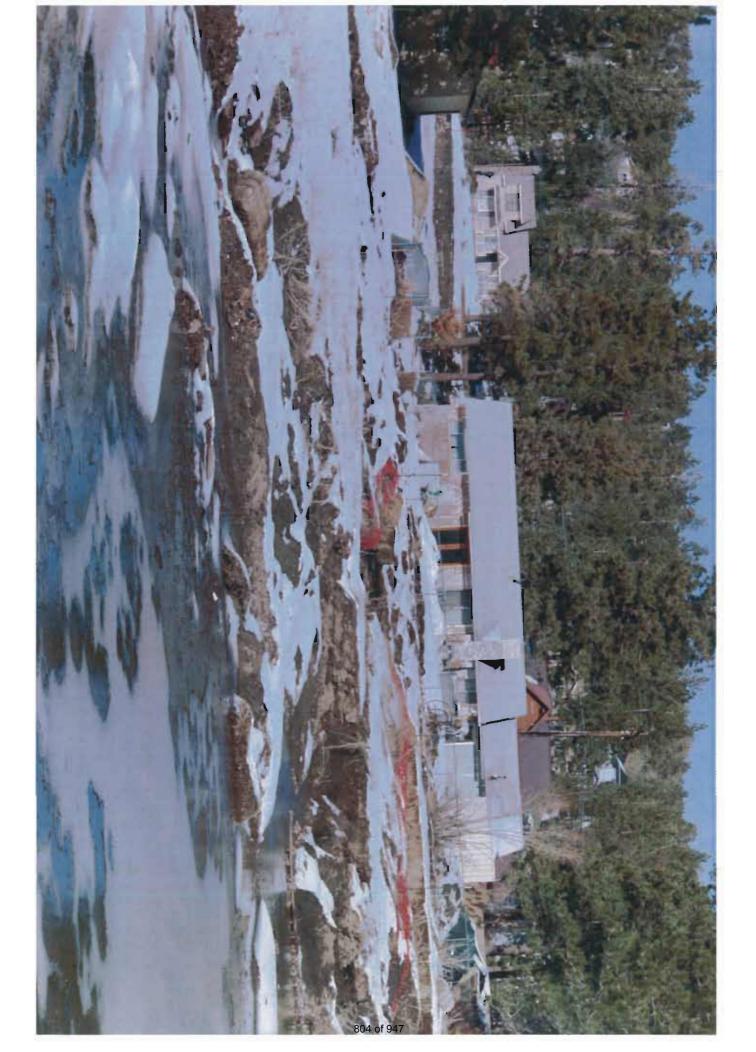
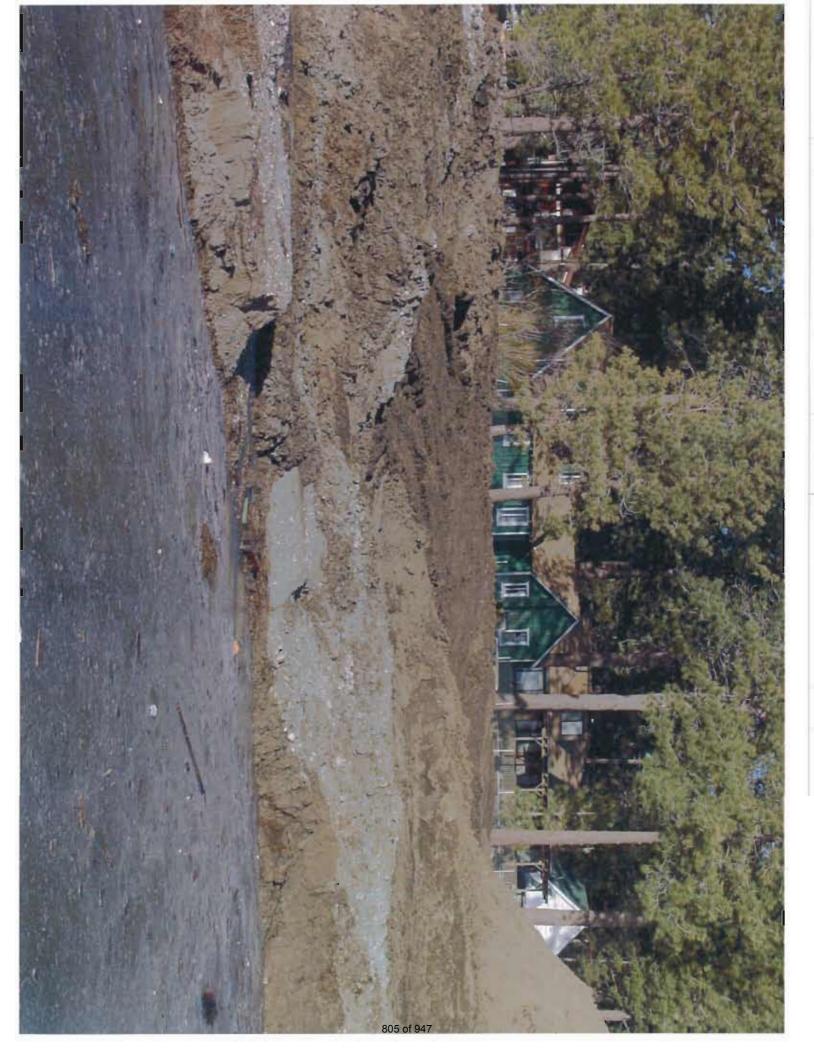
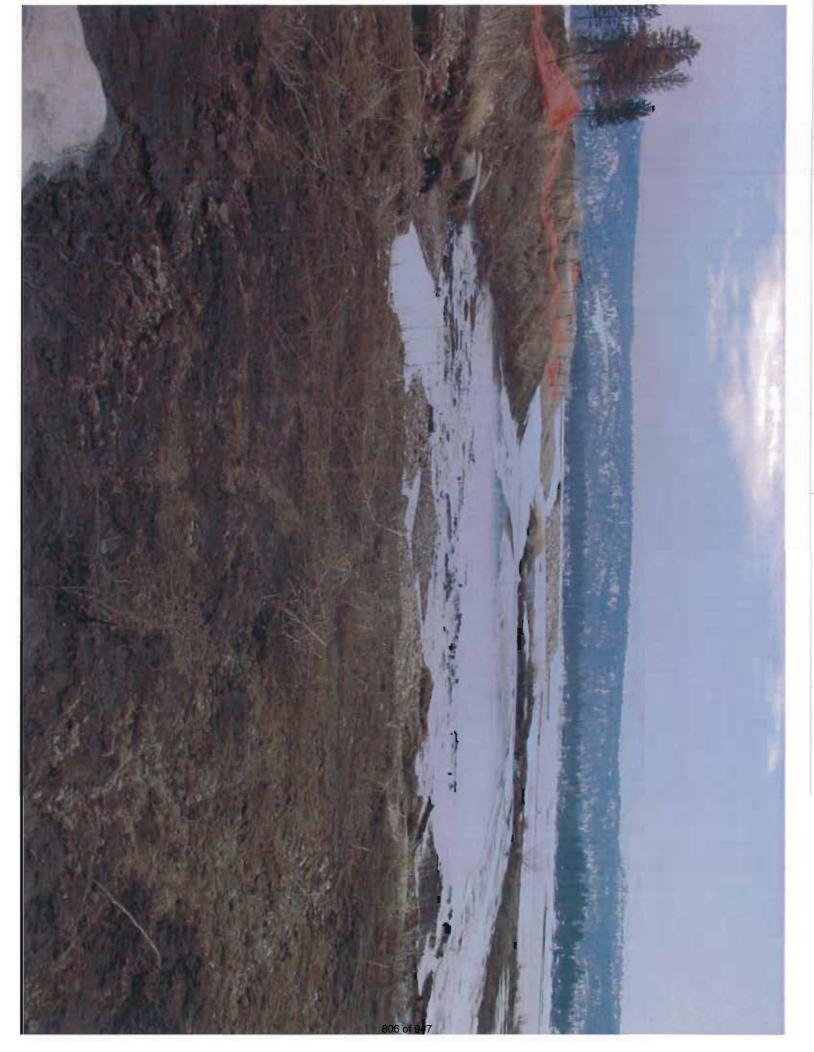


Exhibit N







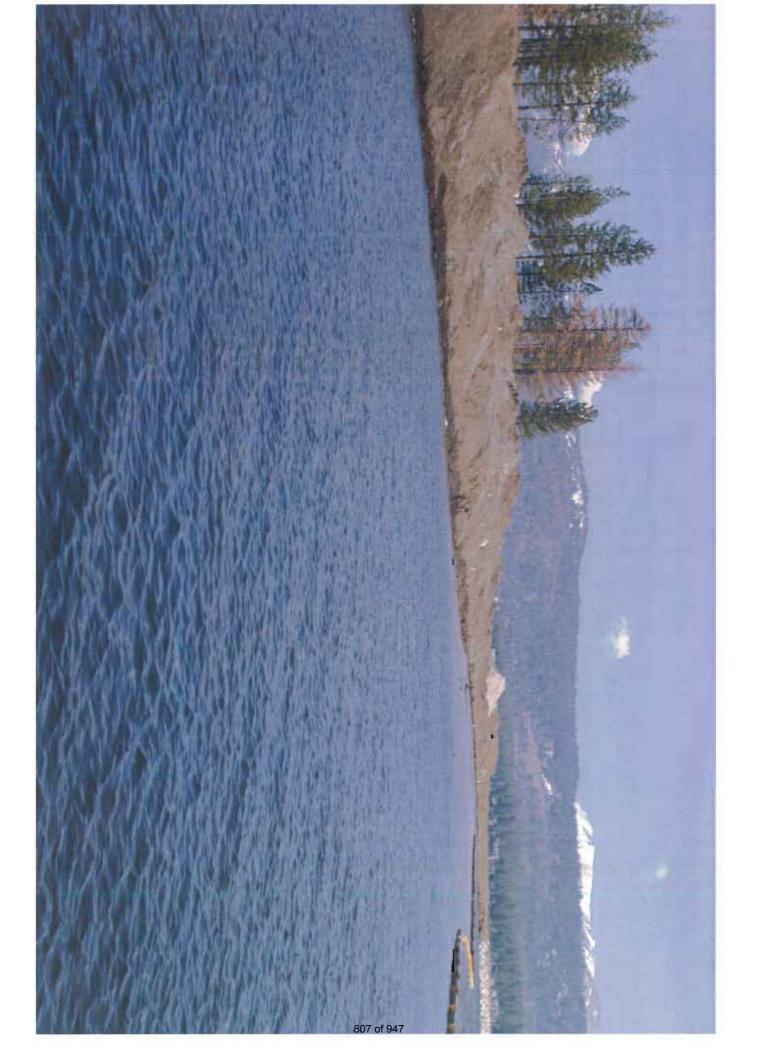
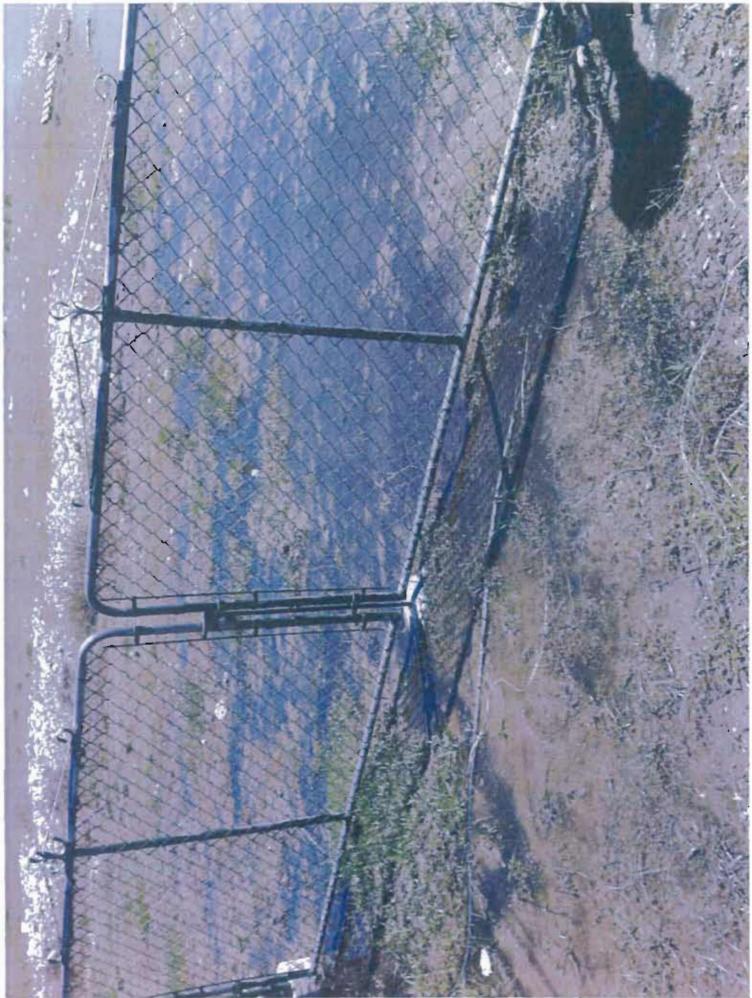
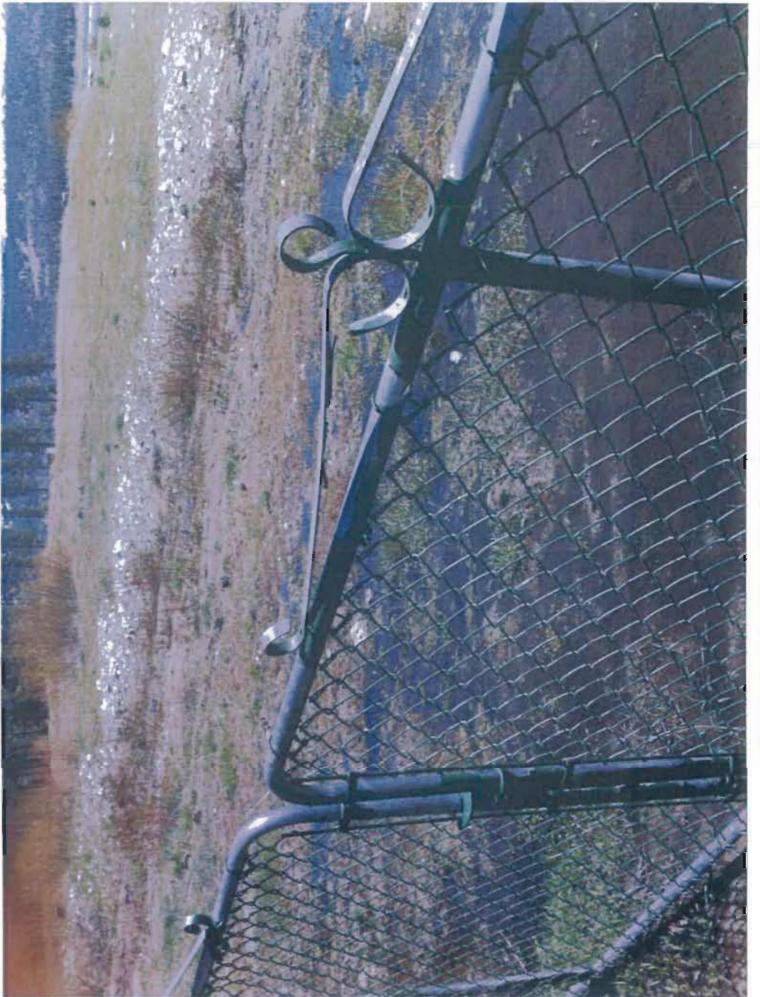
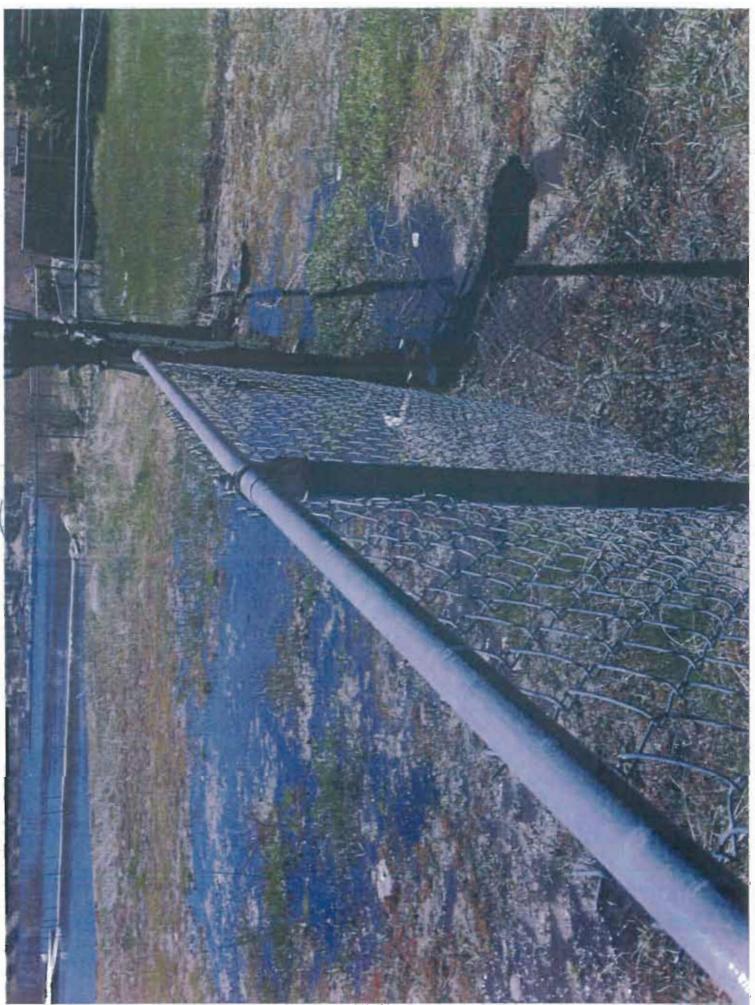


Exhibit O









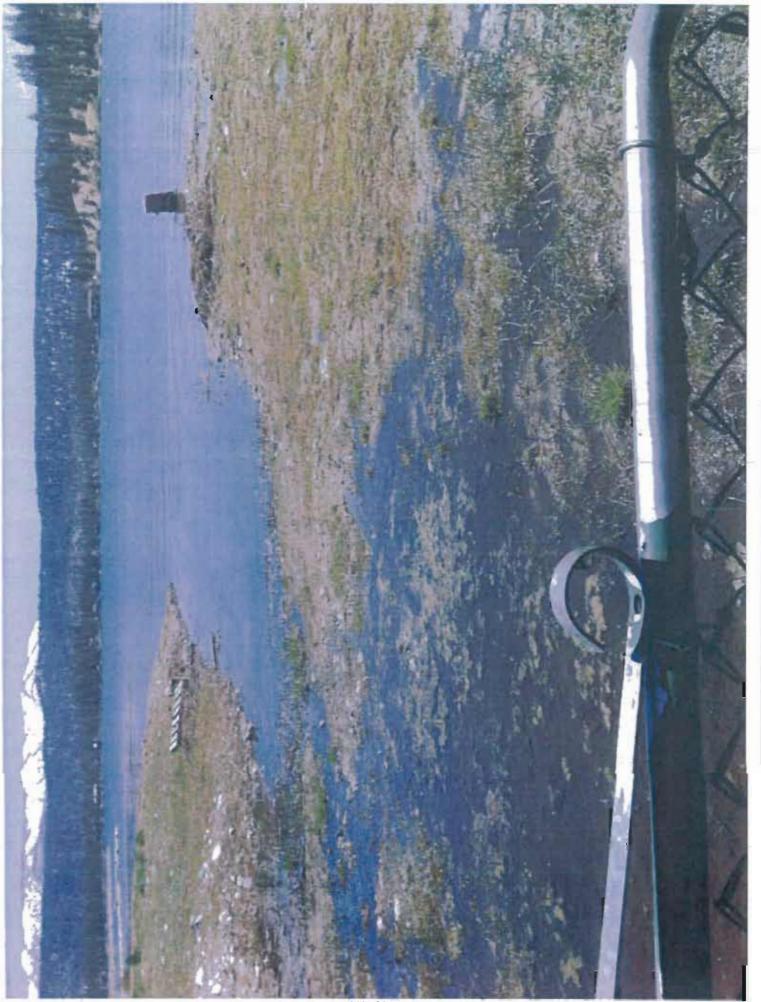


Exhibit P



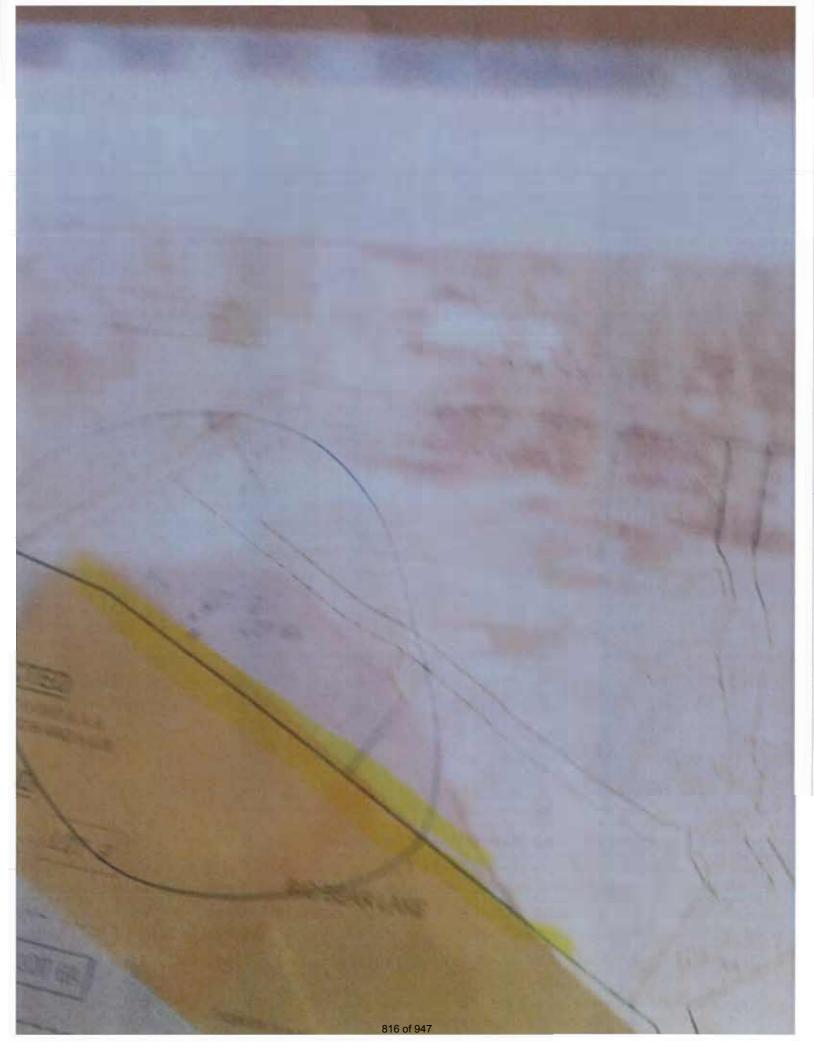
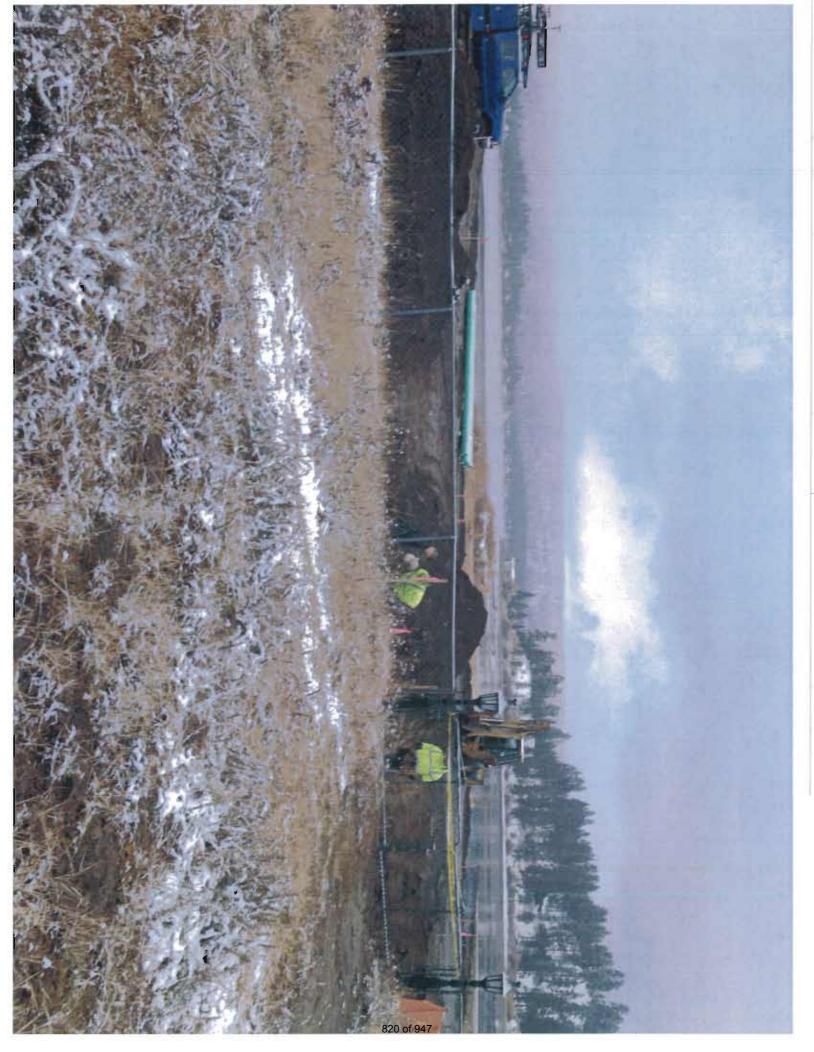


Exhibit Q



















SITE DESIGN ASSOCIATES, INC EL CAJON, CALIFORNIA 9202 (619) 442-8467

Exhibit R



PUBLIC NOTICE

APPLICATION FOR PERMIT

LOS ANGELES DISTRICT

Public Notice/Application No.:SPL-2010-00838-GSComment Period:04/6/2011 through 05/6/2011Project Manager:Gerardo Salas; 213-452-3417;Gerardo.Salas@usace.army.mil

<u>Applicant</u> Irv Okovita Marina Point Development Associates P.O. Box 577 Del Mar, California 92014 <u>Contact</u> Kenneth Discenza Site Design Associates, Inc 1016 Broadway, Suite A El Cajon, California 92021

<u>Location</u>

North shore of Big Bear Lake in the eastern portion of Grout Bay in the Community of Fawnskin in San Bernardino County, California. The lake is located approximately 35 miles northeast of the City of San Bernardino. (Project is located at: lat: 34.263299long: -116.938766).

Activity

To (a) rehabilitate and reopen the Marina Point Development Associates (MPDA)Marina and adjacent boat channel through the dredging and shoreline protection initiated on Big Bear Lake under USACE 404 Permit No. 89-050-KC; (b) to authorize the previously initiated unauthorized work undertaken based on MPDA's understanding and belief that the work did not require authorization from USACE; (c) to authorize the discharge of fill material into waters of the United States undertaken by the USACE Initial Corrective Measure Order (ICMO) dated October 16, 2003, September 28, 2005, and November 18, 2005. The attached plan shows the limits of the dredge and shoreline protection to be completed. For more information see page 3 of this notice.

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344). Comments should be mailed to:

LOS ANGELES DISTRICT CORPS OF ENGINEERS ATTN: CESPL-RG-2010-00838-GS P.O. BOX 532711 LOS ANGELES, CALIFORNIA 90053-2325

Alternatively, comments can be sent electronically to: Gerardo.Salas@usace.army.mil

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

<u>EIS Determination</u>- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

<u>Water Quality</u>- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency.

<u>Coastal Zone Management</u>- This project is located outside of the coastal zone and will not affect coastal zone resources.

<u>Cultural Resources</u>- The latest version of the National Register of Historic Places has been consulted and this site is not listed. Further, a cultural resources records search was conducted, and no cultural resources are recorded within the project area (California Archaeological Inventory). This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

<u>Endangered Species</u>- Preliminary determinations indicate that the proposed activity would not affect federally-listed endangered or threatened species, or their critical habitat. Therefore, formal consultation under Section 7 of the Endangered Species Act does not appear to be required at this time.

<u>Public Hearing</u>- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent. The basic project purpose of the MPDA Project is aquatic recreation. The project is water dependent.

<u>Overall Project Purpose</u>- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to rehabilitate the existing marina and adjacent boating channel on Big Bear Lake, San Bernardino County, California.

The Big Bear Municipal Water District (BBMWD), the owner of the Lake, is requiring the applicant to remove years of built up silt that has eroded into the lake from the jetties, shoreline and other off-site upland areas in order to reduce boating hazards in the area. The proposed work would also improve the lake's water quality, increase the lake's water volume, enhance the lake's shallow water habitat with undulating bottom contours at varying levels, and protect the lake from future erosion and siltation.

Additional Project Information

Baseline information-The project site is contained within the 34 acre MPDA project area. In the project area, approximately 11.36 acres of upland area are not within the Corps jurisdiction. A large part of the project area, 15.87 acres, is comprised of "Open Water/Unvegetated Lake Bottom/Pond" type habitat. Additional habitat types consist of 5.78 acres of aquatic beds, 0.75 acres of slope stabilization measures, 0.11 acre of montane riparian scrub, and 0.07 acre of emergent wetland.

<u>Project description-</u> MPDA proposes to complete the dredging and shoreline protection initiated on Big Bear Lake under USACE 404 Permit No. 89-050-KC. Upon completion, impacts to waters of the United States would total 11.72 acres of waters of the United States, including 0.06 acre of emergent wetland and 0.13 acres of temporary impacts for haul roads.

The MPDA site is located on decades old landfill, and operated as a year-round RV park campground and marina from the 1950's to 2001. A boat landing permit issued by BBMWD covers the marina operations and a sphere of influence extending 600 feet into the lake. As a result of years of built up silt that eroded into the lake from the landfill that comprise the shoreline and jetties and other upland properties, the BBMWD required MPDA to remove the silt for boating safety and to protect the shoreline from future erosion.

On September 10, 1991, the USACE issued a 404 permit (Permit No. 89-050-KC) to MPDA that authorized the dredging of the BBMWD lake bottom adjacent to MPDA property and erosion protection on the shoreline. The USACE granted 3 extensions of the original 404 permit, with the last extension granted on August 16, 2000, which had an expiration date of September 10, 2002.

In July 2002, MPDA brushed and cleared a portion of the upland property in preparation for commencing the shore-zone improvements with the original USACE 404 permit. MPDA also had requested another USACE permit extension, which expired when the USACE was unable to act on the extension prior to the expiration date.

In June and July of 2003, MPDA conducted work below 6,742.3 based upon communications between USACE and MPDA, and MPDA's understanding that dredging work was permissible without a permit. On July 23, 2003 the USACE issued a Cease and Desist Order (Enforcement Case No. 200300558-FT) to MPDA for discharging dredge or fill material into Big Bear Lake below the OHWM. On October 16, 2003, the ACOE issued an Interim Corrective Measures Order ("ICMO") that ordered MPDA to conduct remedial activities. MPDA completed most of the work by December 17, 2003 when activities ceased due to weather and lack of rip rap to complete the erosion protection on an exterior section of the marina jetty.

MPDA resumed construction of the project in April 2004, but the work was subsequently stopped by a temporary restraining order issued by the U.S. District Court on April 16, 2004 and a preliminary injunction against MPDA on May 20, 2004. Additional work was subsequently completed in 2005 under a RGP and two additional ICMO's that were issued by the USACE and approved by the U.S. District Court.

On June 12, 2006 the U.S. District Court issued a decision in the action Center for Biological Diversity et al v. MPDA et al that placed a permanent injunction on MPDA's further development of the project without court approval. On May 15, 2009 the U.S. 9th Circuit Court of Appeals ordered the District Court to reverse its judgments and findings against MPDA and dissolved the injunction. On September 9, 2009 the U.S. District Court reversed and dismissed the ESA and CWA cases and dissolved the injunction. Completion of the shore-zone improvements are now allowed to proceed.

The nature of the activity for this project includes after-the-fact authorization for work in jurisdictional waters of the United States that was undertaken between September 10, 2002 and July 23, 2003 based upon MPDA's understanding that the work did not require authorization from USACE, and after-the-fact authorization for work conducted pursuant to the USACE Initial Corrective Measure Order (ICMO) dated October 16, 2003 (Sheet 1 of 8); ICMO dated September 28, 2005 and ICMO dated November 18, 2005 (Sheet 3 of 8); and authorization for work required to complete the balance of the project.

The attached plans dated 8/10/2010 depicts the following items of work for which this application seeks authorization (see Sheet 4-8 of 8):

1. Complete the shoreline protection along the east side of the Marina Point Property by undertaking the following actions: (a) Install a temporary 190-foot long and 15-foot wide haul road (0.13 acre temporary impact) along the top of the proposed slopes on the east side of the drainage as depicted on Sheet 4 of 8 as attached. The road is to be removed upon completion of the work; (b) Replace the temporary quarry waste placed in February 2005 with a rip rap energy dissipater at the pipe outlet; (c) Grade the west bank and the east bank of the drainage leading to the Big Bear Lake to create a variable 2:1 to 5:1 slope. This work would dredge 670 cubic yards of silt material and require 1,670 cubic yards of fill to create the slopes. This work would impact 1.05 acres of waters of the United States below the ordinary high water mark (OHWM) of Big Bear Lake, which the Corps has determined to be 6743.2 MSL.

2. Dredge the silt material from the inside of the existing marina to a depth of 6725 MSL with bottom dimensions of 260-feet by 400-feet. This would remove approximately 28,570 cubic yards of silt material. Included is 4,925 cubic yards of material to be removed from the south side of the marina jetty in order to reopen the marina to Big Bear Lake. This includes removal of the rip rap and quarry waste placed on the outside of the jetties for temporary protection. All four sides of the inside of the marina jetty are to be finished to the existing configuration with 2:1 slopes. This work requires 2,700 cubic yards of fill below the OHWM. The slopes on the inside of the marina are to be protected from erosion by placing 2,630 cubic yards of quarry waste (8" minus) rock on all slopes and 910 cubic yards of rip rap at the south entrance. Construction of a temporary 280-foot long haul road is required to complete the dredging. The location of the temporary haul road is depicted on Sheet 4 of 8. This road would be 30 feet wide and requires 1,830 cubic yards of fill material that would be removed upon completion of the work. This work would impact 4.80 acres waters of the United States below the OHWM of Big Bear Lake.

3. The exterior sides of the marina jetties have been partially armored with a combination of two feet of rip rap (12-inch-plus) over one foot of quarry waste (8" minus) material in accordance with the ICMOs. Additional armoring is proposed to repair and complete the slope protection by the placement of rip rap and quarry waste from the top of the existing rip rap to the top of the slopes at elevation 6744.5+/- MSL. This includes the slope protection wrapping to the interior side of the jetty at the south entrance that is being reopened. This quantity of slope protection fill is approximately 830 cubic yards of rip rap. This work would impact 0.26 acres of waters of the United States below the OHWM of Big Bear Lake.

4. Complete the dredging of silt material along the west side of the Marina Point Property to provide a minimum 50-foot bottom width channel from the end of the current dredged channel by the west jetty north along the Marina Point Property and connect to an existing channel at the northwest end of the dredged area to provide circulation of lake water for better water quality and boat safety. This area would be dredged to a depth of 6725 to 6730 MSL with an undulating bottom for shallow water fish habitat. The portions of the channel west of the Marina Point Property would be dredged or filled to 5:1 side slopes for erosion protection. This dredging would remove approximately 3,500 cubic yards of material and require 2,840 cubic yards of fill on slopes below the OHWM. A 190 foot portion of the existing 15-foot wide haul road would be stabilized along the top of the proposed slopes below the OHWM, and a temporary 24" drain pipe would be installed. The road and pipe would be removed upon completion of the work. The location of the haul road is depicted on Sheet 4 of 8, attached. The west shoreline would be further protected with 761 linear feet of 36" +/- masonry retaining wall placed one foot easterly of the property line and backfilled to elevation 6743.3. This requires 2,840 cubic yards of fill below the OHWM. The south end of the west side where slopes vary from 2:1 to 5:1 would require slope protection similar to the protection on the exterior of the jetties. This includes 160 cubic yards of quarry waste and 320 cubic yards of rip rap placed below the OHWM. This work would impact a total of 2.07 acres of waters of the United States below the OHWM of Big Bear Lake. Silt curtains would be placed at locations depicted on Sheet 4 of 8 and would remain in place and adjusted as required throughout the construction period and removed upon completion.

5. Pursuant to notification from the Corps June 30, 2003 and the Corps' Cease and Desist Order dated July 23, 2003, MPDA now seeks after-the-fact authorization from the USACE for:

(i) Work undertaken by MPDA between September 10, 2002, and July 23, 2003 that involved the discharge of fill material into 0.46 acres of waters of the United States for the removal of rock from the

shoreline and the dredging of 7,925 cubic yards of silt from the lake bottom in the northwest corner of the project site that was excavated to a depth of 6725 MSL.

(ii) Work completed by MPDA under the ICMO dated October 16, 2003 involved the discharge of fill material into 2.90 acres of waters of the United States below the OHWM that consisted of: the dredging of 14,115 cubic yards of silt from the lake bottom around the marina jetties (the dredge was excavated to a depth of 6725 MSL); creating a temporary desiltation basin by closing the marina; placing 4,225 cubic yards of fill to complete the slopes on the marina jetties and west shoreline; and placing 4980 cubic yards of quarry waste and rip rap on the outside of the marina jetties.

(iii) Work completed by MPDA under the ICMOs dated September 28, 2005 and November 18, 2005 that involved the permanent discharge of fill material into 1.30 acres of waters of the United States for stabilizing and installing erosion protection below the OHWM by: installing a temporary bench along the west shoreline by removing 3,000 cubic yards of previous fill; installing 280 cubic yards of crushed stone in a geo-cellular confinement system; and the placement of 970 cubic yards of rip rap along the south side of the marina jetty.

Please see the table below for a summary of impact areas by work items:

Proposed Impact Areas		Existing Impacted Areas (Acres) After-the-fact Permits			RGP 63 ⁽⁵⁾ Impact Area	Total Impacted Areas		
Work type/Action	Proposed Areas (Acres) ⁽¹⁾	5.(i) Work Sept. 2002 to July 2003	5.(ii) ICMO October 2003 ⁽²⁾	5.(iii) ICMO Sept. 2005 & Nov. 2005 ⁽³⁾	RGP 63 dated Jan. 2005 ⁽³⁾	Total Permanent Impact (Acres)	Total Temporary Impact (Acres)	Grand Total Impacted Areas
1. East side of MPDA shoreline protection	1.050	0.250	0.000	0.000	0.050	0.985	0.065	1.050
2. Interior of Marina Development and Protection ⁽⁴⁾	4.800	0.000	0.000	0.000	0.000	4.800	0.000	4.800
3. Exterior of Marina shoreline protection	0.260	0,350	2.340	0.406	0.000	2.340	0.000	2.340
4. West side of MPDA shoreline protection ⁽⁴⁾	2.070	2.160	0.560	0.894	2.330	3.465	0.065	3,530
Total Proposed Area Impacted	8.180	2.760	2.900	1.300	2.380	11.590	0.130	11.720

Notes:

(1) Overlaps areas of work conducted between Sept. 2002 to July 2003, in all ICMOs and RGP

(2) Overlaps areas of work conducted between Sept. 2002 to July 2003

(3) Overlaps areas of work conducted between Sept. 2002 to July 2003 and the ICMO dated Oct. 2003

(4) Includes 0.05 Acres of Emergent Wetland per the Merkel & Associates, Inc. Report dated 5/07/2007

(5) This work was previously permitted by USACE Regional General Permit 63 and not part of this current permit application

<u>**Proposed Mitigation**</u> – The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines.

The following is the applicant's proposed mitigation statement and proposal. The applicant is not proposing any additional mitigation beyond their proposed project:

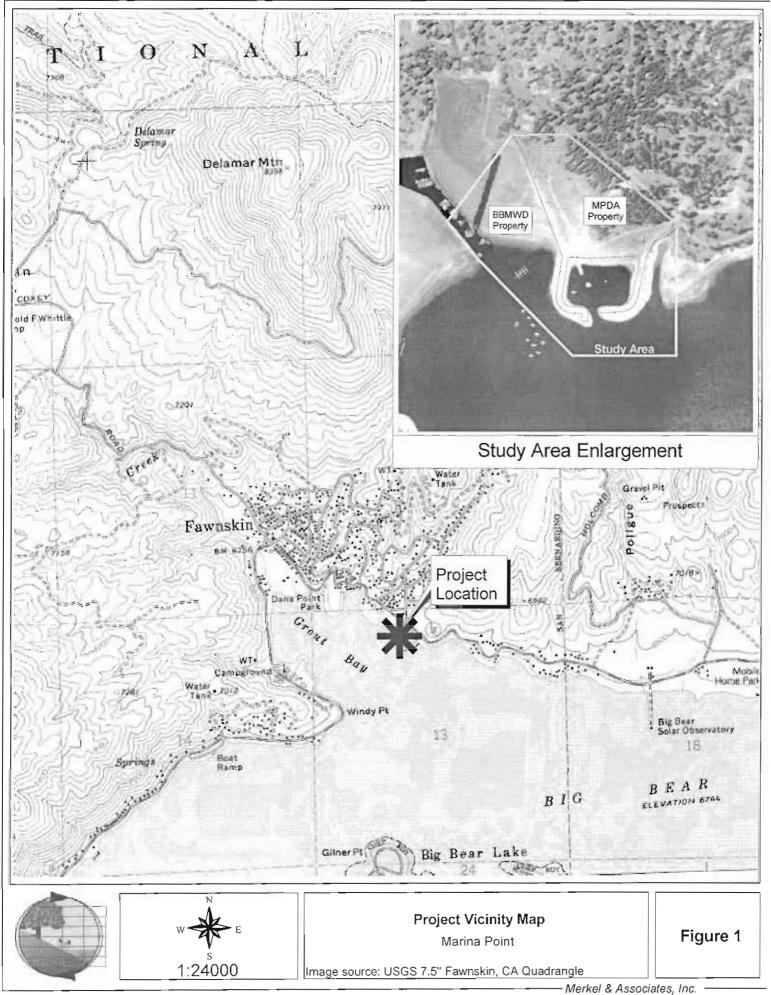
Big Bear Municipal Water District, the owner of Big Bear Lake, is requiring the applicant to remove years of built up silt that eroded into the lake from the jetties, shoreline and other off-site

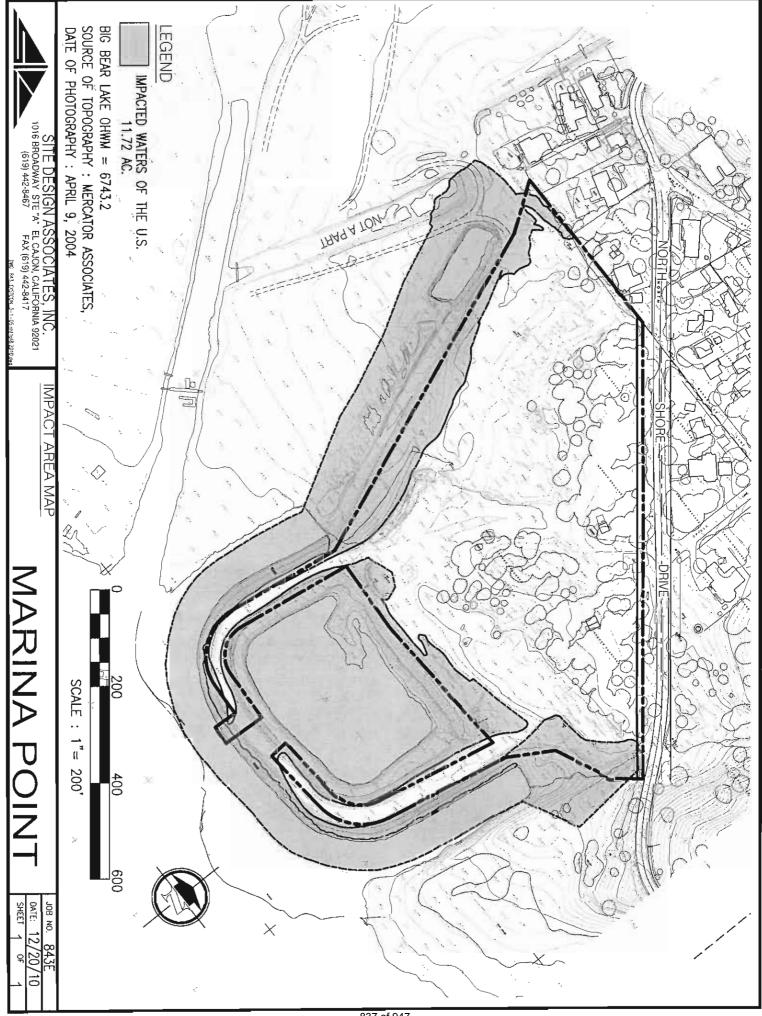
upland areas in order to reduce boating hazards in the area; improve the lake's water quality; increase the lake's water volume; enhance the lake's shallow water habitat; and to protect the lake from future erosion and siltation. The off-site work would have a beneficial impact on waters of the United States. Further, the Big Bear Municipal Water District's ("BBMWD") Shorezone Alteration Permit initially covered 13.45 acres of the lake bottom. The area has now been reduced to 11.72 acres to minimize the amount of impact to the waters of the United States. The shore-zone improvements and shoreline protection on BBMWD property would have a beneficial effect on the habitat in the waters of the United States and is being conducted by MPDA at its sole cost as compensatory mitigation.

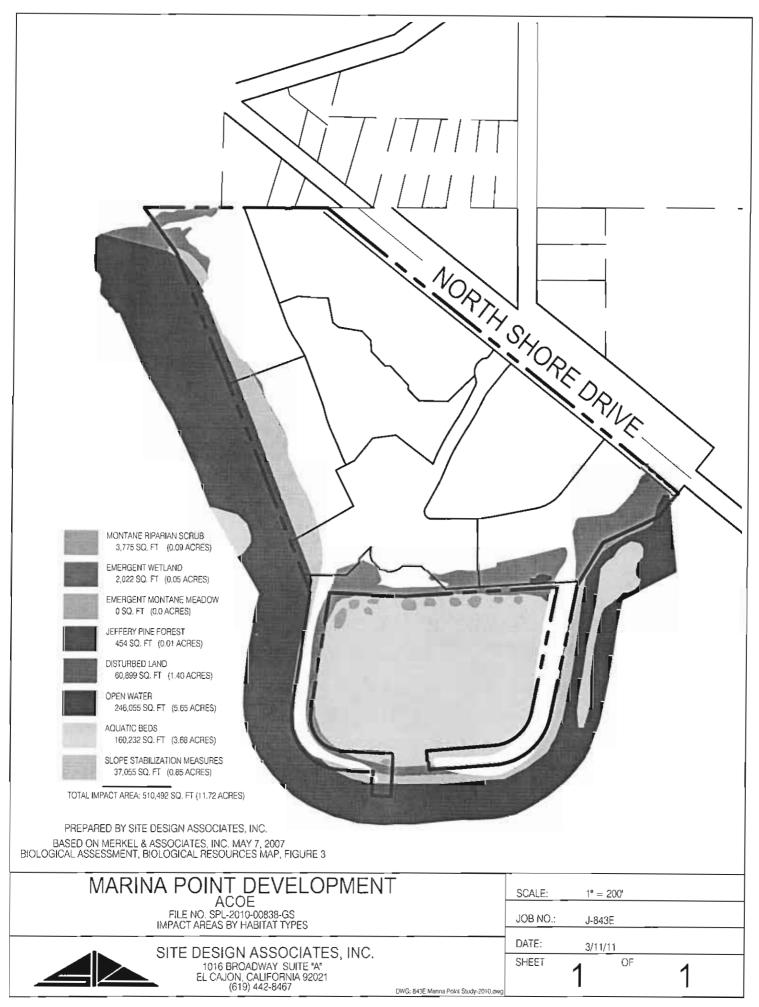
Proposed Special Conditions

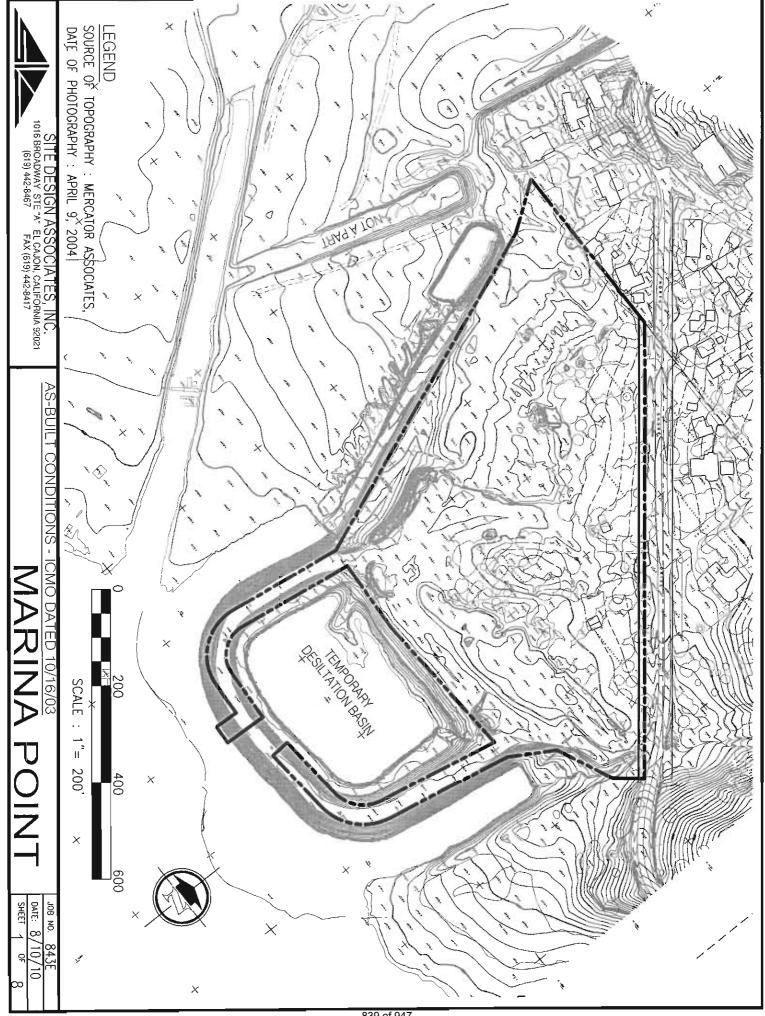
The following list is comprised of proposed Permit Special Conditions, which are required of similar types of projects: None proposed at this time.

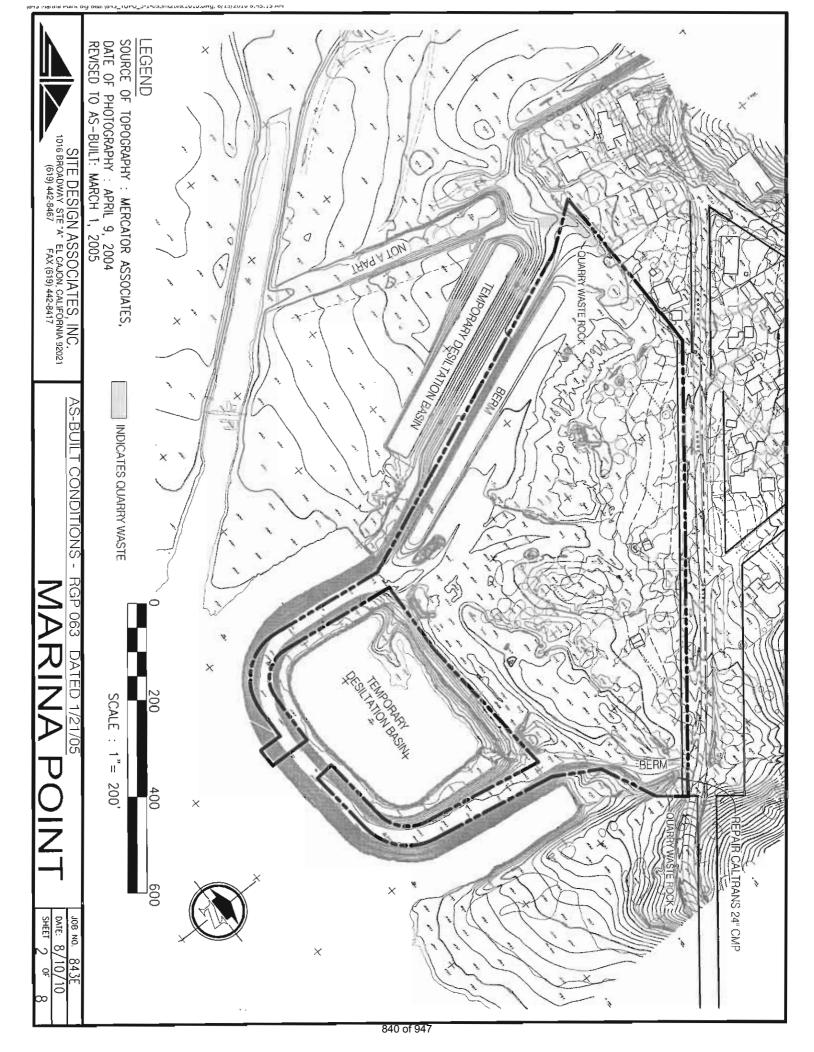
For additional information please call Gerardo Salas of my staff at 213-452-3417 or via e-mail at Gerardo.Salas@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.

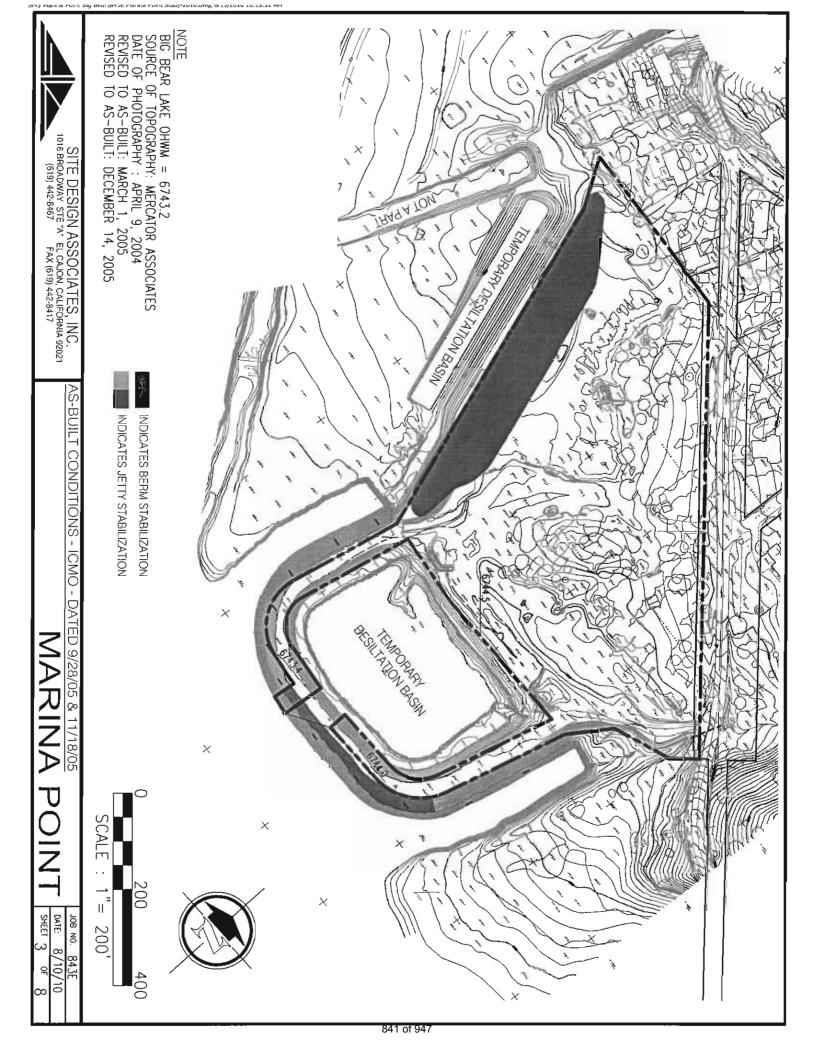


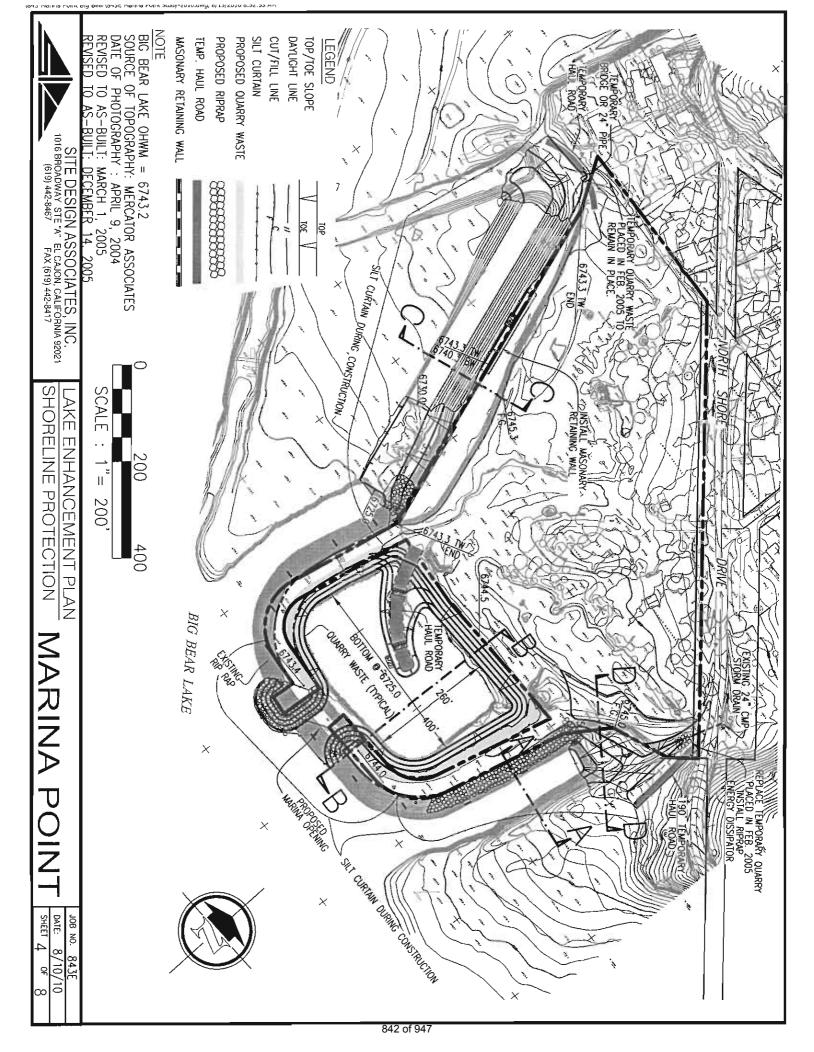


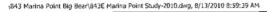


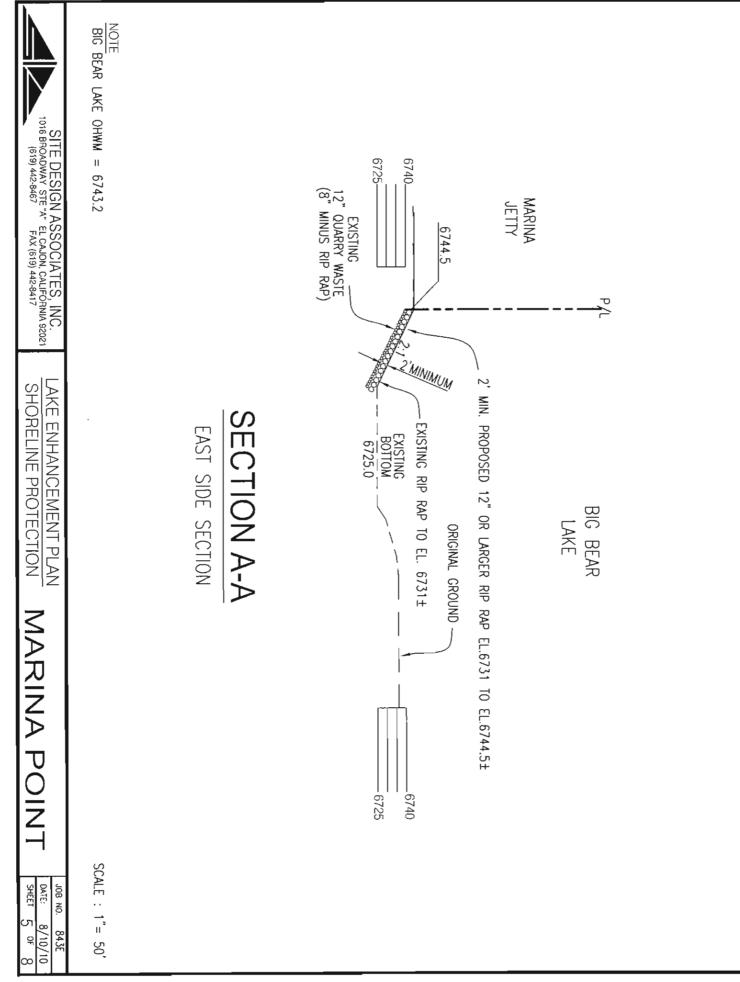


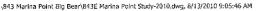


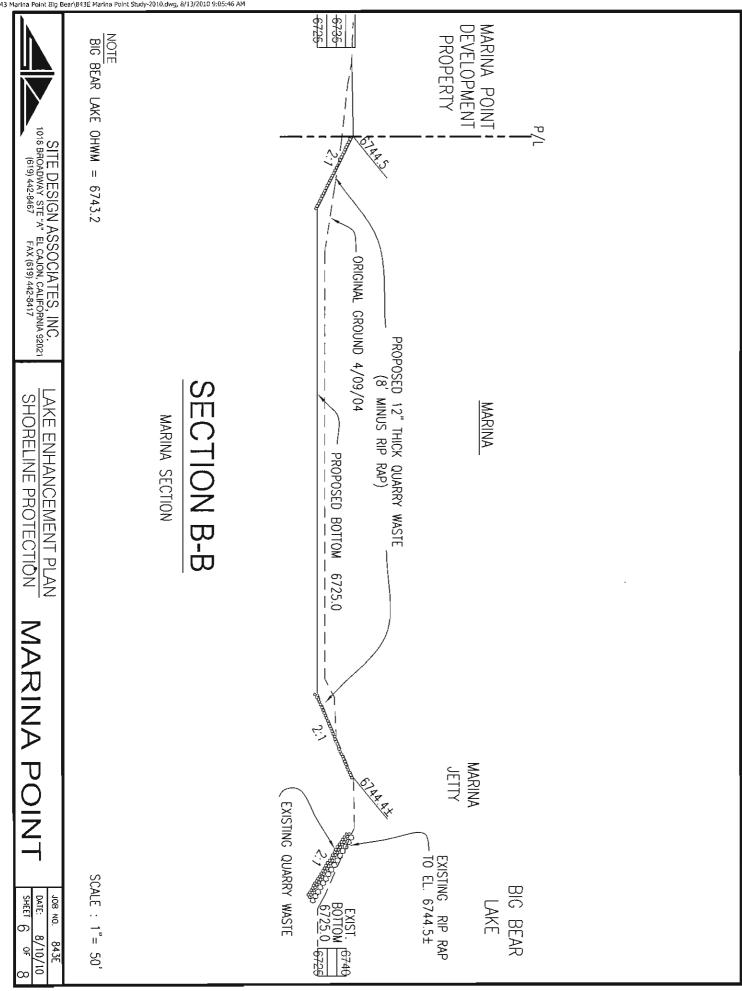


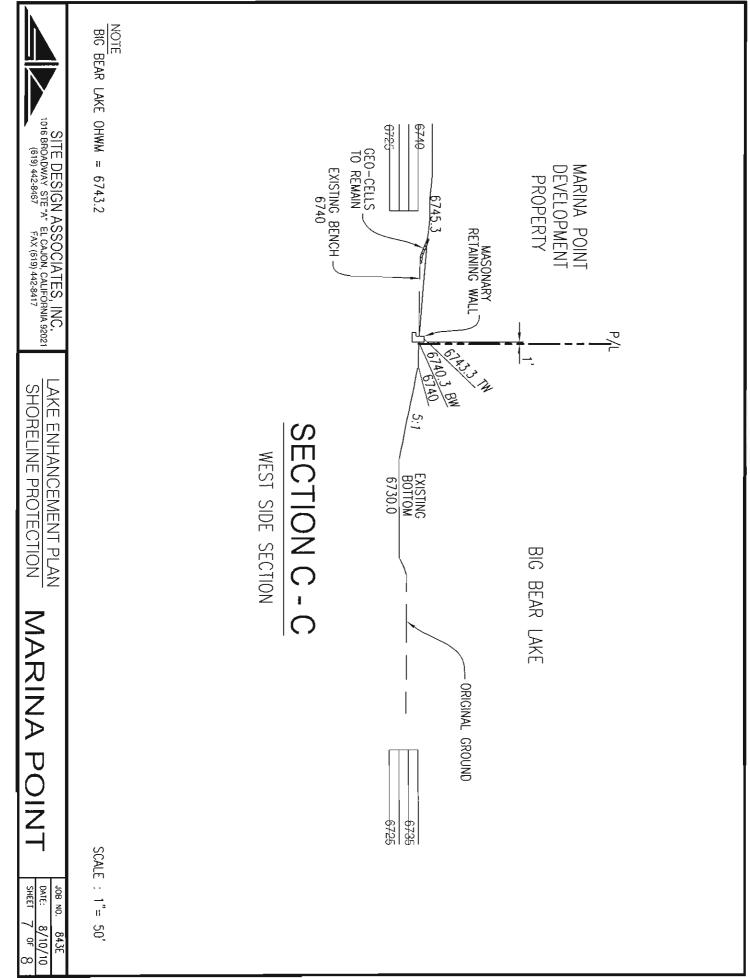












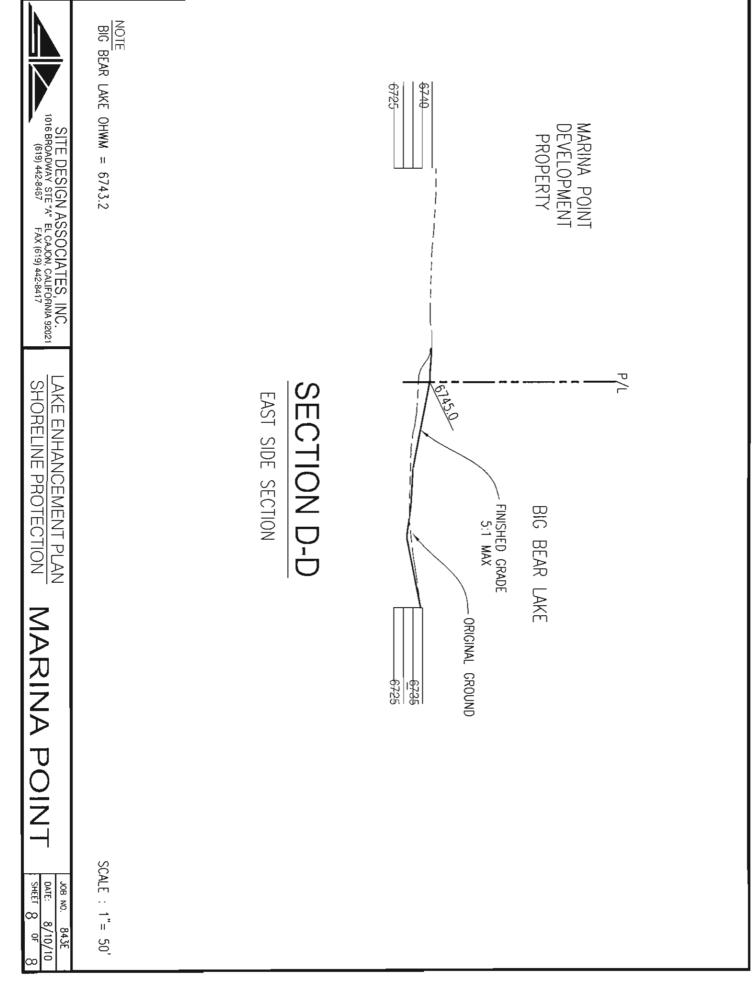


Exhibit S

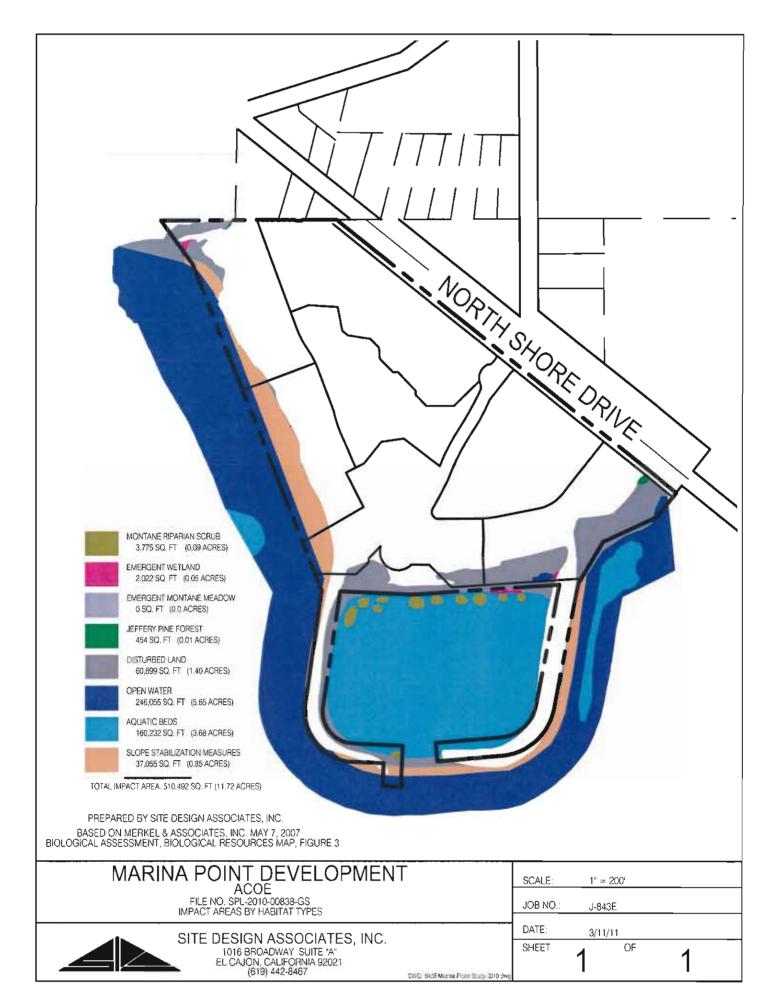


Exhibit T

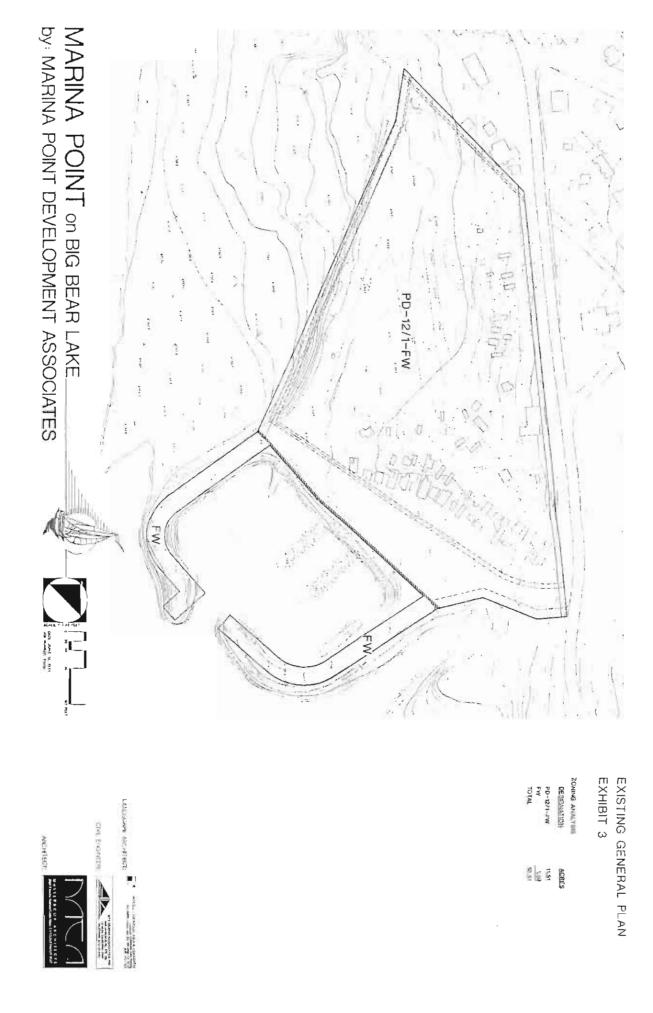
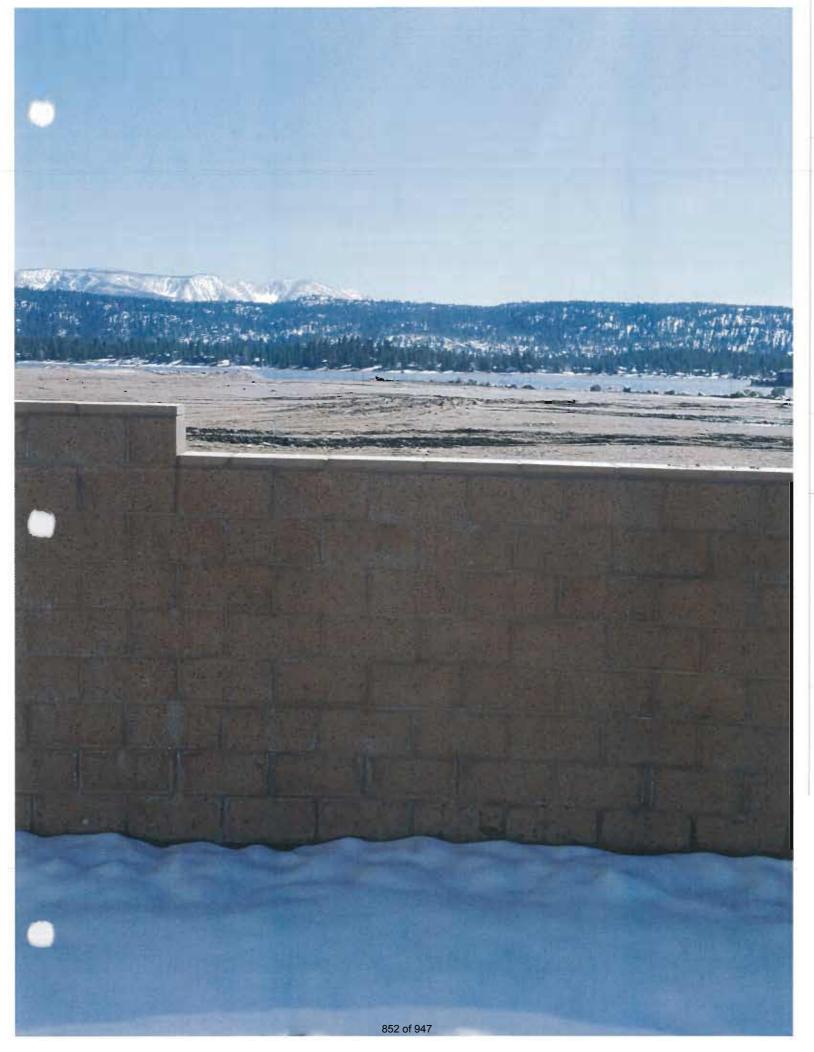
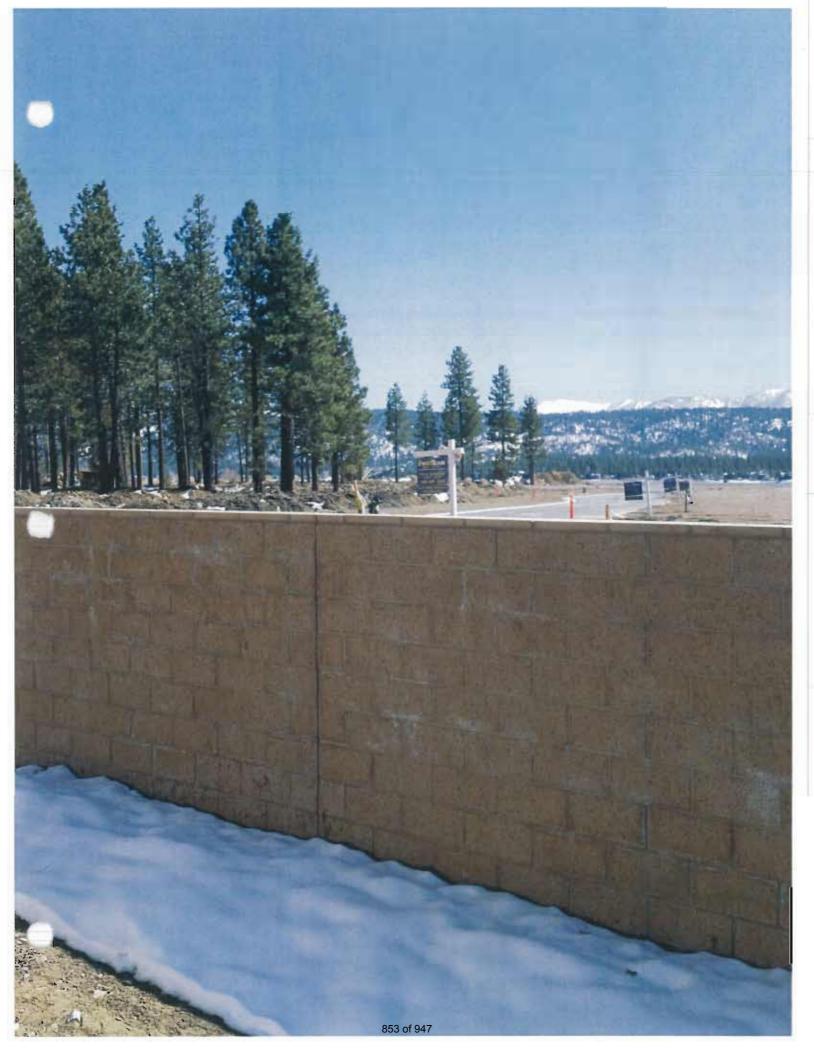
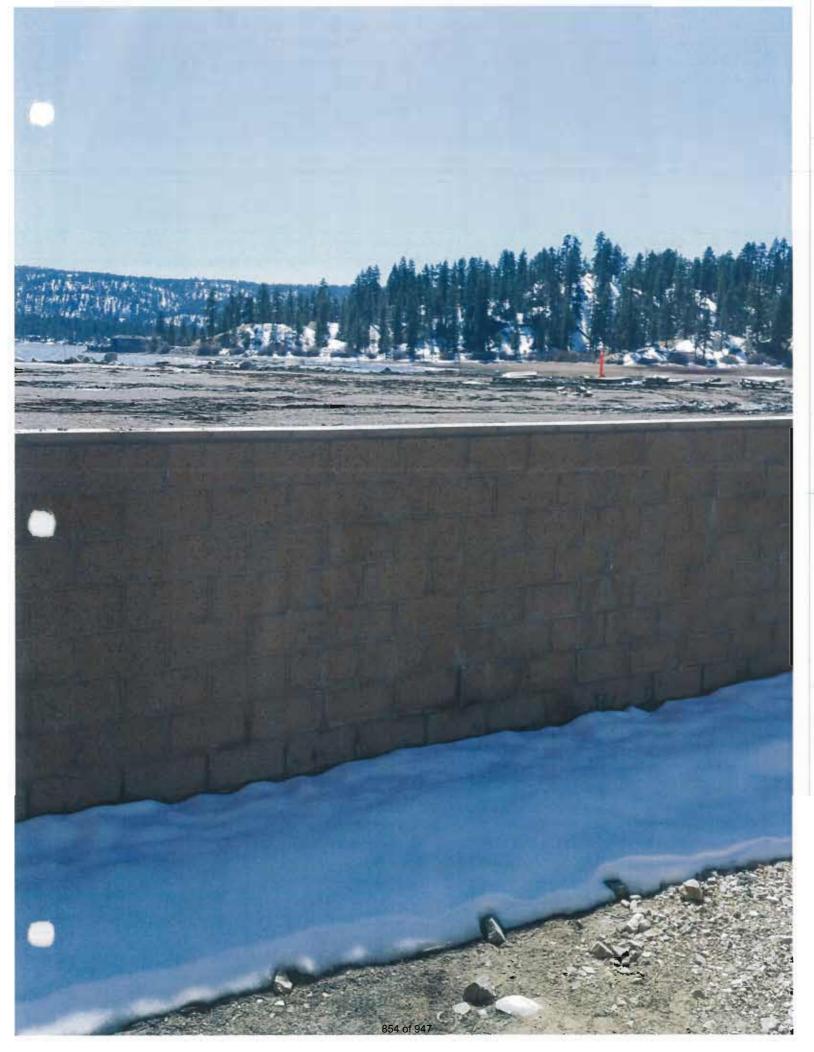
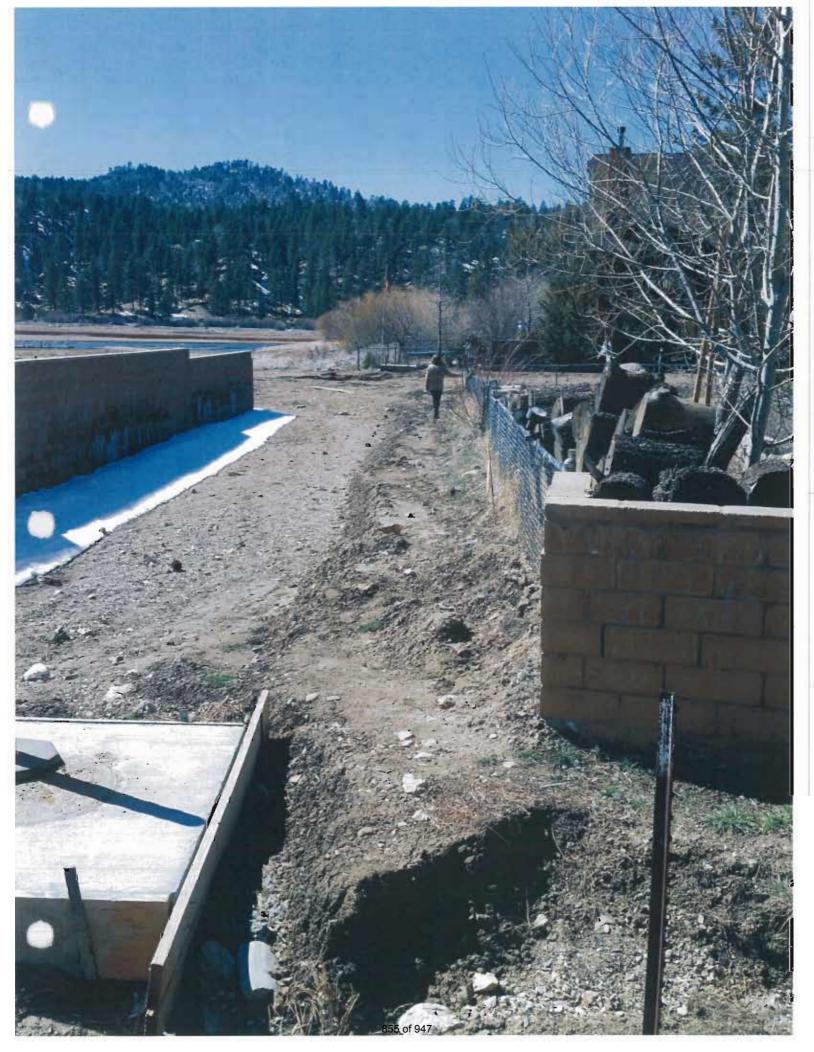


Exhibit U









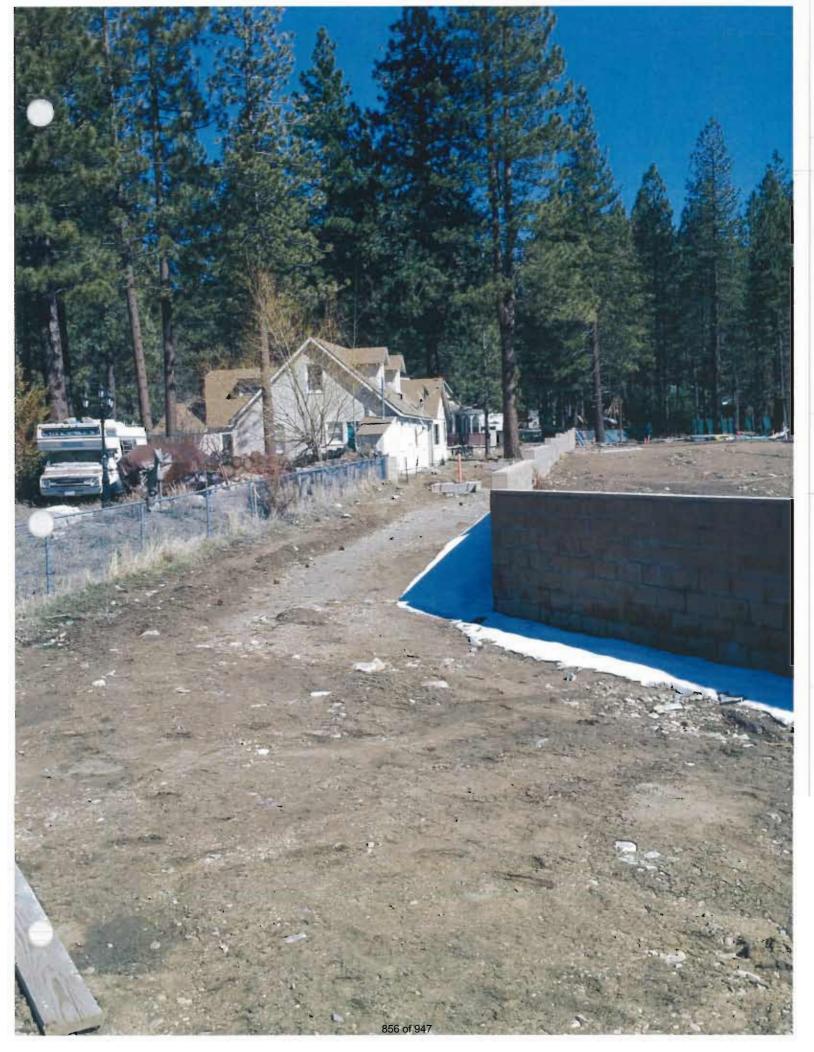


Exhibit V

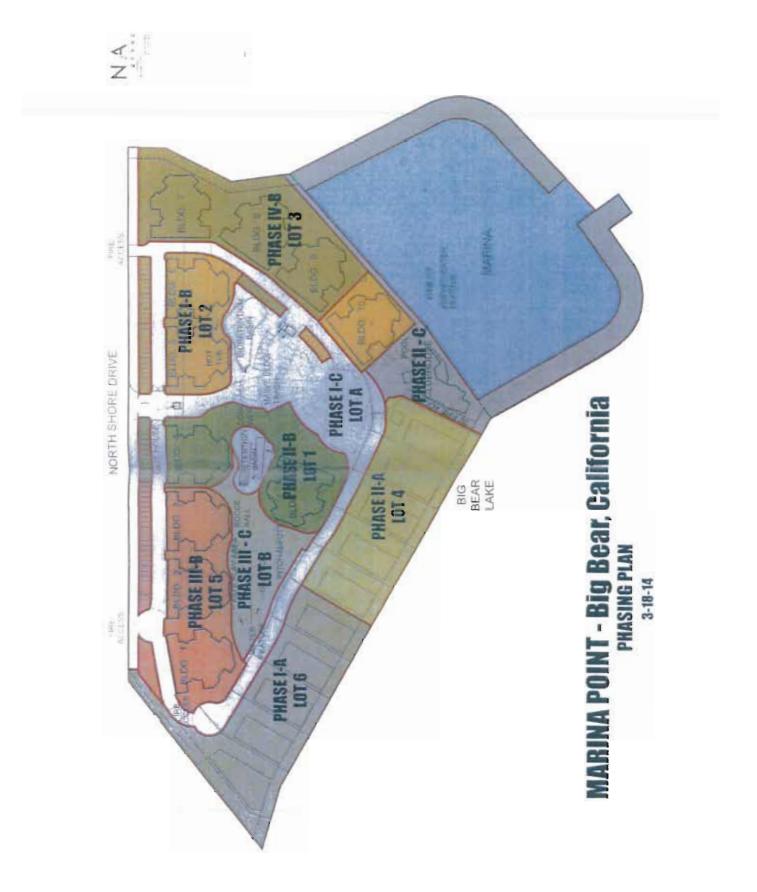
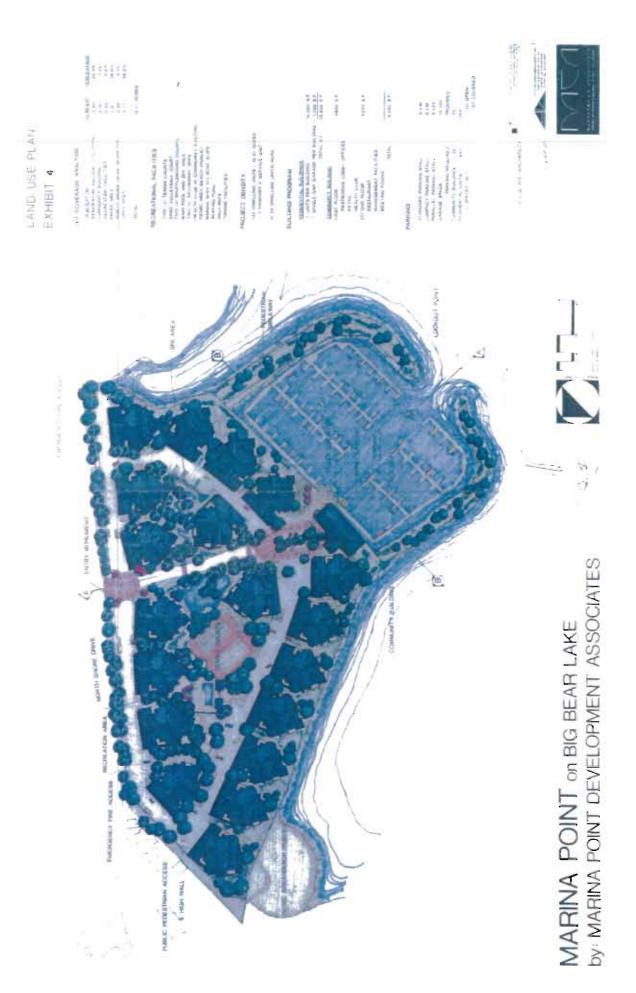
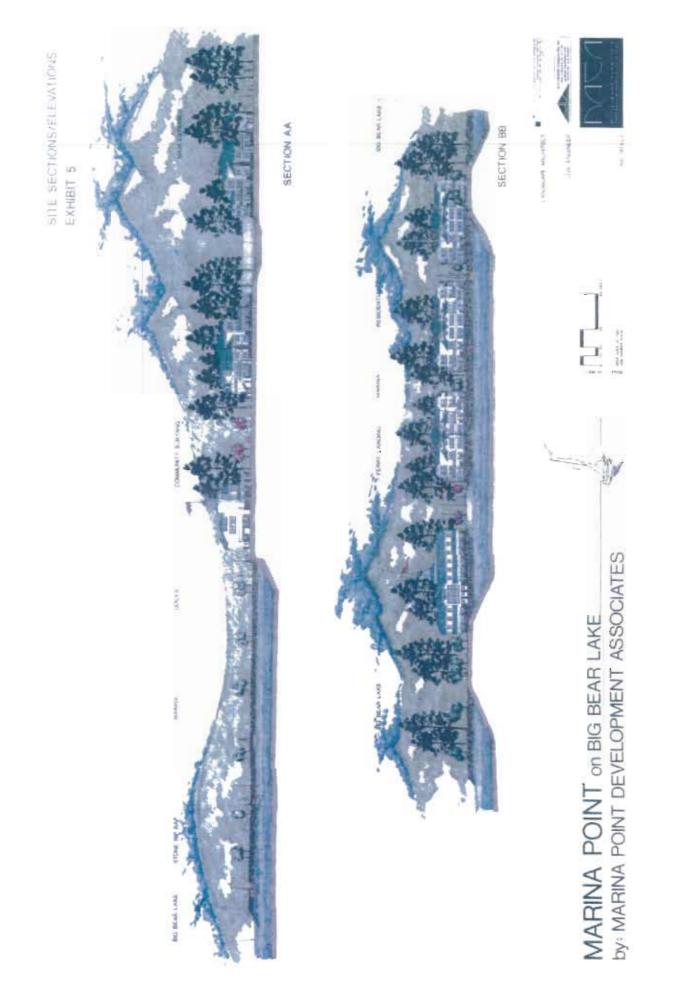
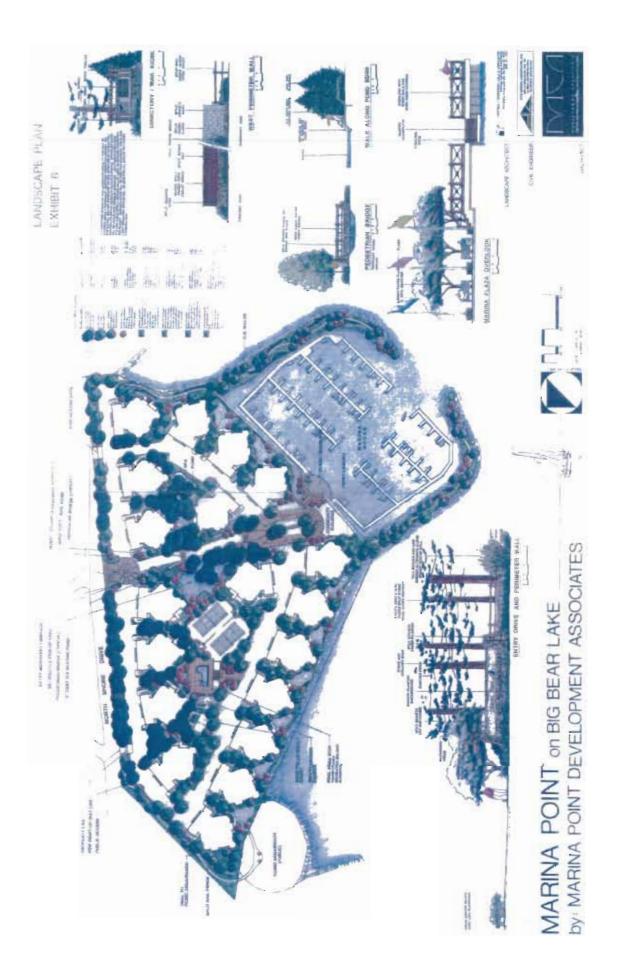
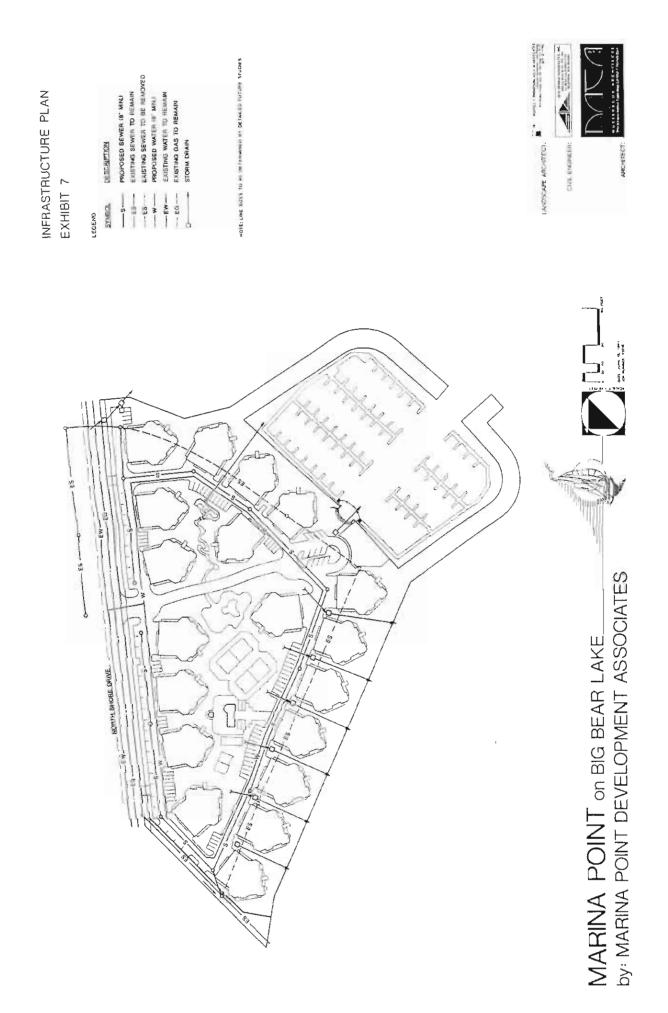


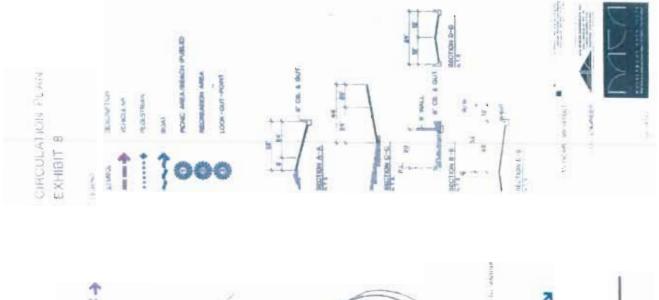
Exhibit W









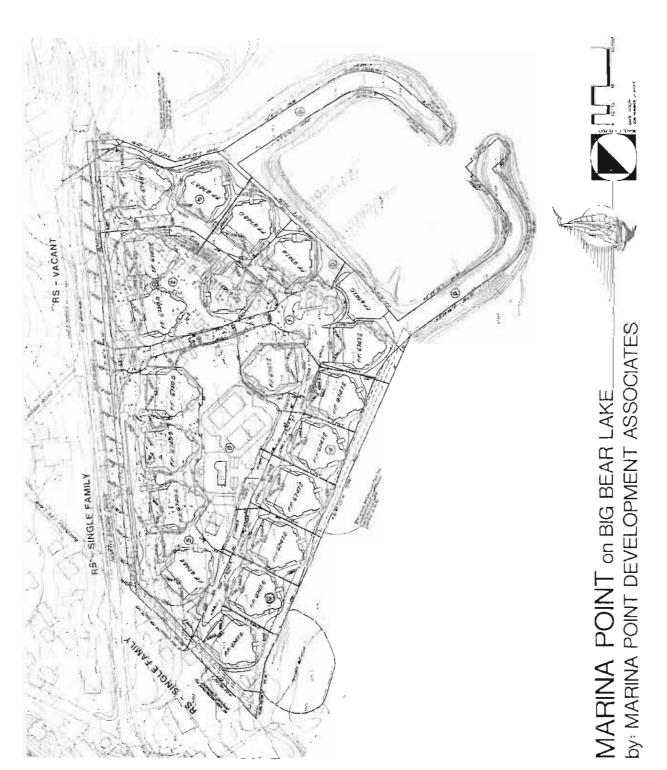


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by: MARINA POINT DEVELOPMENT ASSOCIATES



GRADING PLAN EXHIBIT 9

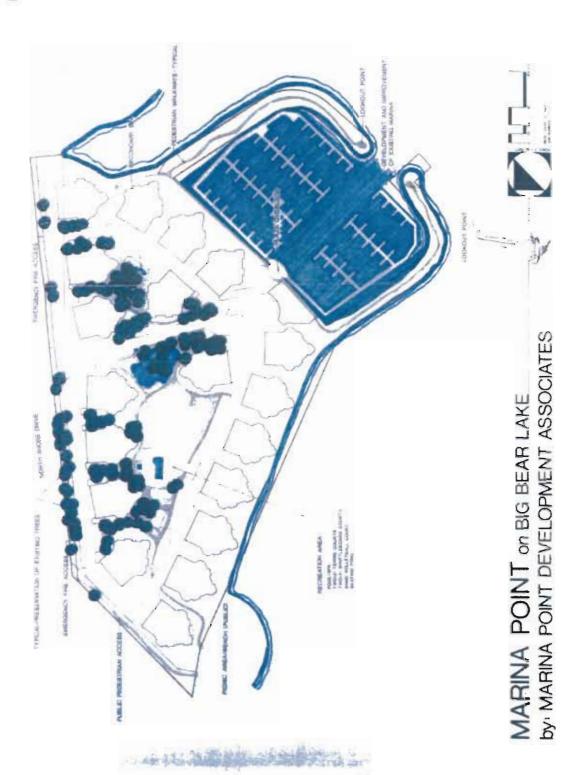




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CONSERVATION/ OPEN SPACE PLAN EXHIBIT 10



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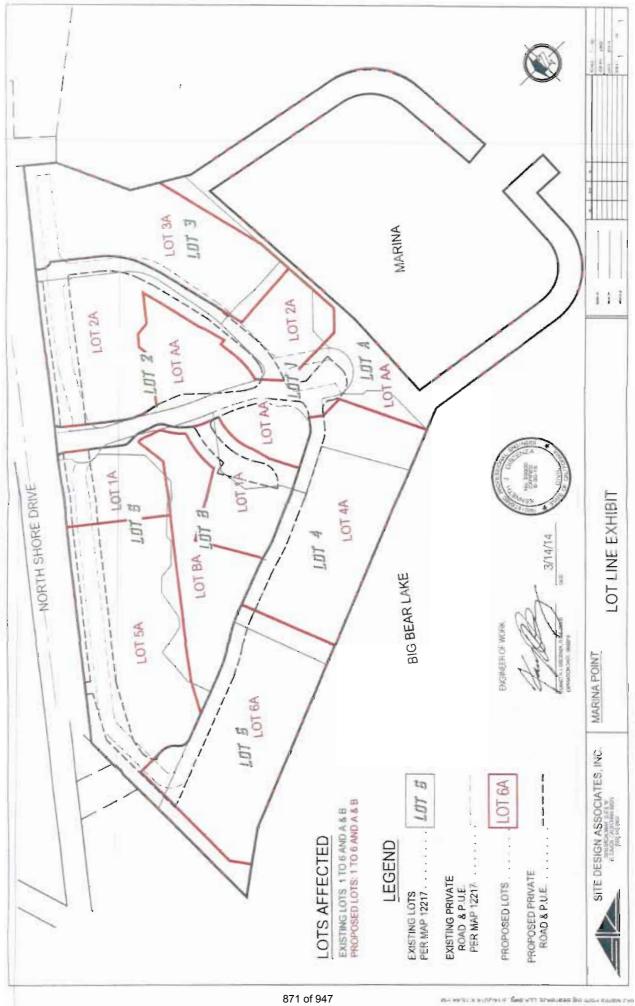
⁸⁶⁶ of 947

Exhibit X





Exhibit Y



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Exhibit Z

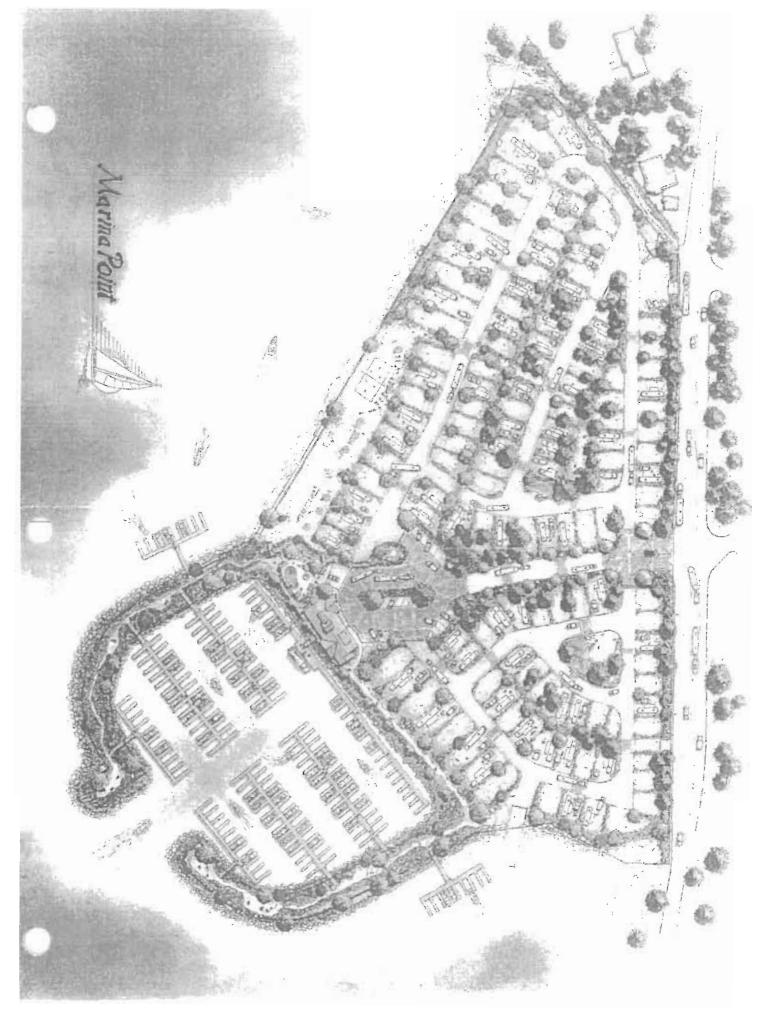


Exhibit AA

LAND USE SERVICES DEPARTMENT

ADMINISTRATIVE OFFICE 385 North Arrowhead Avenue • San Bernardino, CA 92415-0187 (909) 387-4141 Fax (909) 387-3223 http://www.sbcounty.gov/landuseservices



COUNTY OF SAN BERNARDINO

CHRISTINE KELLY Director

September 14, 2011

Irving Okovita Okon Development Co. P.O. Box 577 Del Mar, CA 92410

SUBJECT: MARINA POINT PLANNED DEVELOPMENT – RESPONSE TO LETTER DATED SEPTEMBER 2, 2011 REGARDING CONDITION COMPLIANCE REVIEW FOR THE PROPOSED GRADING OF TRACT 12217, BIG BEAR/3RD SUPERVISORIAL DISTRICT, P201000499.

Dear Mr. Okovita,

On August 25, 2011 County Planning sent a letter to Marina Point Development Associates (MPDA) identifying the items that needed to be addressed prior to issuance of a grading permit for the Marina Point Project (Project), located on the north shore of Big Bear Lake near Grout Bay. In this letter, County staff informed you that a grading permit could be issued upon completion of Condition Nos. 13 and 52. The County Department of Public Works, Land Development, also identified several items that needed to be addressed prior to issuance of a grading permit. MPDA responded by letter on September 2, 2011, asserting that these conditions had already been satisfied, or were no longer required. Below is a more detailed analysis from County Planning addressing the technical aspects of these conditions and potential solutions for deferring all or some of these conditions, considered in the order presented in MPDA's September 2 letter:

CONDITION NO. 13 (Mitigation Measure).

13. Prior to any alteration of any wetland habitats, the required permits shall be obtained from the Department of Fish and Game in accordance with sections 1601-1604 of the State Fish and Game Code, and from the U.S. Army Corps of Engineers, in accordance with dredge and fill permits, Section 404. <u>Copies of these permits shall be filed with the County Planning Division or submit evidence from the Trustee agencies that a permit is not required.</u>

MPDA Response to Condition No. 13

On July 22, 2007, the [U.S. Army Corps of Engineers (ACOE)] issued the attached "Jurisdictional Determination" that confirmed that no jurisdictional wetlands exist above the Ordinary High Water Mark ("OHWM"). "By this letter, the ACOE confirms there are no jurisdictional wetlands on the uplands. The attached December 1, 2011 "Routine Jurisdictional Determination Wetland Report" conducted by Merkel & Associates provides a detailed description of site conditions and the history of ACOE's 404 permit issued for the shore-zone repairs and improvements. There were no adjacent wetlands below the OHWM that were identified other than a small patch of partially submerged ephemeral habitat of montane riparian scrub that has now been inundated by the lake and considered to be open water.

	i	Board of Supervisors	
GREGORY C. DEVEREAUX Chief Executive Officer		BRAD MITZELFELTFirst District JANICE RUTHERFORDSecond District JOSIE GONZALES	NEIL DERRY

In October 2009, the development injunction resulting from litigation by partles opposed to the project was dissolved and the alleged [Endangered Species Act (ESA)] and [Clean Water Act] claims dismissed. In August 2010, MPDA re-applied for a new 404 permit since the Corps regulates fill placed below the OHWM on [Big Bear Municipal Water District (BBMWD)] property. The attached Public Notice was advertised by the ACOE in April 2011, and the Environmental Assessment required for permit reissuance is currently in process.

County Response to MPDA

It has been confirmed by the ACOE that no ACOE jurisdictional wetlands exist on this site above the OHWM, and a 404 permit from ACOE would not be required for the disturbance of any areas that are not considered "Waters of the U.S." However, the grading plans on file with County Building and Safety show substantial improvements along the lake shore, which does require a 404 permit. The Public Notice issued by ACOE indicates that, while approximately 11.36 acres of the site is considered upland area and not within ACOE jurisdiction, there is 15.87 acres that is comprised of "Open Water/Unvegetated Lake Bottom/Pond" type habitat. Impacts to "Waters of the U.S." would total 11.72 acres, according to the ACOE.

Condition No. 13 also requires the applicant to obtain a shoreline alteration agreement from the California Department of Fish and Game (CDFG) prior to conducting any work within CDFG jurisdiction. Again, the proposed grading plans show substantial improvements in areas that are clearly CDFG jurisdiction.

At this time the County cannot issue a grading permit for improvements within ACOE and CDFG jurisdiction without the appropriate permits and approvals from these agencies. However, the County could consider the approval of a revised grading plan that does not include construction and improvements within ACOE and CDFG jurisdictional wetlands. The revised grading plan shall clearly define the ACOE and CDFG jurisdiction as defined and agreed to by these agencies. The revised grading plan shall clearly define the ACOE and CDFG jurisdiction shall also be submitted showing how the downstream wetlands will be protected during and after construction. Prior to beginning work, all ACOE and CDFG jurisdictional areas shall be clearly delineated in the field with the installation of a four foot high orange fence separating the ACOE and CDFG Jurisdiction from the construction area.

CONDITION NO. 52 (Mitigation Measure)

52. <u>All necessary permits</u> for taking material from the lake shall be obtained prior to recordation. This shall include a shoreline alteration permit from BBMWD.

MPDA Response to Condition No. 52

County included these off-site environmental mitigation measure conditions of approval after consultation between representatives of [U.S. Fish & Wildlife Service (FWS)], BBMWD, CDFG, County, City of Big Bear Lake, and the property owner. These conditions were satisfied prior to the recordation of the Final Map, as required, by BBMWD's issuance of the attached Shorezone Alteration Permit (SAP). Note that the SAP was executed in

perpetuity and MPDA has a bond posted with BBMWD to insure completion of the repairs on BBMWD property, which also satisfies these County conditions of approval. MPDA has submitted the plans to BBMWD for completing the remaining work, which conforms to the originally approved plans and SAP. BBMWD is currently conducting an initial environmental study and directed to confirm with the County that the [Environmental Impact Report (EIR)] and [California Environmental Quality Act (CEQA)] certification, conducted by the County as the lead agency, remains in full force and effect. BBMWD has been provided with the February 26, 2007 final ruling of the Superior Court that "No supplemental EIR is necessary or ordered", when it denied CEQA mandamus and dismissed the CEQA complaint against the County.

The revised Condition Compliance Release (CCR), however, continues to require the above conditions to be satisfied prior to issuance of the grading permit. MPDA provided extensive documentation regarding the prior grading permits issued by the County including the attached 2004 permit that limited the work to the uplands until the [ACOE] reissued its 404 permit. To avoid further delay and carry costs, MPDA requested the Planning Department to limit the grading permit to the upland as the County did in 2004. No work below the OHWM on BBMWD property would commence until the appropriate permits are reissued. No response to this request has been received by MPDA.

County Planning Response to MPDA

Condition No. 52 requires <u>all necessary permits</u> for taking material from the lake to be obtained prior to recordation of the final map. It appears that a permit was issued by BBMWD on September 6, 2001, with construction to begin no sooner than September 12, 2001 and completed by November, 30 2002. Therefore, it appears that this permit has expired unless extended by BBMWD.

In the absence of a current permit from BBMWD the County cannot issue a grading permit for improvements along the lake shore. However, the County could consider the approval of a revised grading plan that does not include construction and improvements along the lake shore. The revised grading plan shall clearly define the BBMWD property boundary. The revised grading plan shall clearly show the limits of grading outside of the BBMWD boundary. An erosion control plan shall also be submitted showing how the lake shore will be protected during and after construction. Prior to beginning work, the boundary of BBMWD shall be clearly deliniated in the field with the installation of a four foot high orange fence separating the BBMWD boundary from the construction area.

CONDITION NO. 85 (Mitigation Measure).

85. An encroachment permit, or authorized clearance, shall be obtained from the State Department of Transportation prior to issuance of a grading permit by the Building and Safety Division.

MPDA Response to Condition No. 85

County condition #85 relates to Caltrans encroachment permit required prior to grading and condition #86 refers to the same permit required prior to construction in Caltrans right of way. The road improvement work is also an off-site environmental mitigation measure

condition of approval that MPDA bonded with Caltrans when it issued its encroachment on December 5, 2000 prior to recordation of the Final Map.

Caltrans did not extend its permit in December 2010 and required MPDA to update the road improvement plans to current standards to re-issue the encroachment permit. These plans were submitted to Caltrans and re-issuance of the permit is pending. The MPDA bond posted with Caltrans remains active and should satisfy these conditions. MPDA also requested the County to limit the grading permit to exclude work in the Caltrans right of way until the permit is re-issued.

County Response to MPDA

The grading plans show offsite work being proposed within Caltrans right-of-way and that an encroachment permit is required from Caltrans to perform that work. Prior to placing a restriction on the grading permit for grading to be limited within the developer's property, in the absence of the encroachment permit from Caltrans, Public Works/Land Development Division will require a letter from Caltrans stating that Caltrans does not have any objection on issuing a grading permit by the County within the private property areas.

CONDITION NO. 69.

69. An encroachment permit, or authorized clearance, shall be obtained from the County Transportation/Flood Control Department prior to issuance of a grading permit by the Building and Safety Division.

MPDA Response to Condition No. 69

This was a standard condition of approval that is not applicable since the MPDA site does not front on a County road. This condition was satisfied as described in the 2003 Planning memo.

County Response to MPDA

Public Works/Land Development Division concurs with MPDA's response and therefore waives condition No 69.

CONDITION NO. 92

92. Adequate provisions should be made to intercept and conduct the tributary off site - on site drainage flows around and through the site in a manner which will not adversely affect adjacent or downstream properties at the time the site is developed.

MPDA Response to Condition No. 92

Condition #92 above is misstated in the revised CCR. This condition is required to be satisfied prior to the issuance of building permit and not required prior to issuance of the grading permit. These drainage facilities are also included on the grading plan. Moreover, this condition is satisfied by the road and drainage bond posted with the County.

County Response to MPDA

Any disturbance of land during grading which redirects and/or concentrates flow without adequate mitigation measures has the potential to affect adjacent and/or downstream properties, which may initiate legal actions against the County. Therefore, this condition shall be required to be fulfilled prior to the issuance of the grading permit.

WQMP REQUIREMENT (Not a Condition of Approval)

<u>WQMP</u>. A completed Water Quality Management Plan (WQMP) shall be submitted for review and approval. Copies of the WQMP guidance and template can be found at: <u>http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/stormwater/sb_wqmp.shtml</u>

MPDA Response

MPDA applied for the grading permit in September 2010 and was informed in April 2011 that all the plans were approved. A WQMP was never identified as being required prior to issuance of the grading permit. Should the County require a WQMP, MPDA would agree to prepare and submit a WQMP as a construction change after issuance of the grading permit for the original project.

County Response to MPDA

A WQMP was not a requirement by the Regional Water Quality Control Board for this area . at the time of plan approval. However, Public Works/Land Development Division is agreeable to revise the condition to reflect that an approved WQMP must be in place prior to the issuance of the building permit.

WQMP INSPECTION FEE (Not a Condition of Approval)

WQMP Inspection Fee. The applicant shall deposit an inspection fee for WQMP in the amount of \$2,600 to Land Development Division.

MPDA Response

MPDA is willing to deposit the inspection fee for the WQMP if required.

CONDITION NO. 93

93. Permanent channel improvements shall be required for the natural drainage course traversing the southwest portion of the site. The channel shall be designed to contain 100-year storm flow plus bulking and freeboard, per County standard criteria.

MPDA Response

This condition is required to be satisfied prior to the issuance of building permits and not required prior to issuance of the grading permit. These drainage facilities are also included on the grading plan. Moreover, this condition is satisfied by the road and drainage bond posted with the County.

County Public Works Response to MPDA

Public Works/Land Development Division is agreeable to revise condition No 93 to reflect that hydraulic calculations shall be submitted to show that the proposed channel shall convey a 100-year storm flow plus bulking and freeboard.

MPDA CONCLUSION

MPDA believes the Planning Department is not justified in withholding the grading permit issuance. MPDA now faces a loss of another construction season at considerable cost due to County condition # 6 that prohibits exterior construction during December 1 to April 1 of each year. This condition was included as an environmental mitigation measure to minimize disturbance to the bald eagle prior to the delisting of the bald eagle from the Endangered Species Act.

MPDA has over \$2,800,000 of improvements bonds posted with the County and other agencies since the Final Map was recorded in December 2000 and MPDA continues to incur substantial bond premiums. The work covered by the bonds are required to be installed by this coming December or another extension must be applied for and granted by the County Board of Supervisors.

As a result, MPDA respectfully requests the County to issue the grading permit, and revise condition 6 to allow MPDA to work during the winter months by having a wildlife biologist monitor any disturbance and effect on the wintering bald eagle similar to that provided for in condition 6a.

County Planning Response to MPDA

Condition of approval No. 6 and 6a prohibit all exterior construction activity from December 1 through April 1. These conditions are also mitigation measures, which read as follows:

- 6. Exterior construction activity shall be prohibited from December 1 to April 1, to minimize disturbance to Bald Eagle Habitat.
- 6a. If the applicant/developer proposes to engage in interior construction activity, from December 1 to April 1, they shall employ a wildlife biologist to evaluate the level of disturbance and effect on the wintering Bald Eagles. This Biologist/Monitor shall have the responsibility and authority to terminate inside construction practices which in his estimation will disturb Bald Eagle activities. The applicant shall submit an agreement or contract to verify the scope and authority of work to Environmental Team of the County Planning Department in advance of the anticipated construction.

Bald eagles were removed from the federal list of threatened and endangered species on August 9, 2007, and are no longer protected under the ESA. However, bald eagles remain protected under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act. Both laws prohibit killing, selling or otherwise harming eagles, their nests, or eggs. The FWS has recently revised a final rule on two new permit regulations that would allow for the take of eagles and eagle nests under the BGEPA. Also, the bald eagle is still classified as a "fully protected bird" under California law.

The BGEPA prohibits anyone from taking, possessing, or transporting a bald eagle or golden eagle, or the parts, nests, or eggs of such birds without prior authorization. This includes inactive nests as well as active nests. Take means to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb. Activities that directly or indirectly lead to take are prohibited without a permit. In consideration of the current federal and state laws prohibiting the take of Bald Eagles, the County, alone, does not hold the authority to revise a mitigation measure that is related to an Impact on the Bald Eagle. This would involve input from other resource agencies.

Therefore, given the project's potential to disturb roosting or foraging eagles, the applicant should contact the local offices of the FWS and CDFG for advice and recommendations on how to avoid such disturbance and whether a permit is necessary from either agency. Prior to issuance of a grading or building permit for exterior construction activities between December 1 and April 1, County Planning would require the applicant to either obtain a permit or provide confirmation from FWS and CDFG that a permit is not necessary for this site.

If you have any questions please feel free to call me at 909-387-4115.

Sincerely, Chris Warrick, Planner

County Planning Division

cc: Dena Smith, Deputy Executive Officer Christine Kelly, Director of Land Use Services Bobby Lewis, Planning Director Bart Brizzee, County Counsel Annesley Ignatius, Public Works -- Land Development Harmon Randall, County Building and Safety Gia Kim, Public Works - Land Development Ken Discenza Site-Design Associates

Exhibit BB

FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING THE ENVIRONMENTAL EFFECTS OF THE MARINA POINT PLANNED DEVELOPMENT

2

The San Bernardino County Board of Supervisors, in approving the Marina Point Planned Development Environmental Impact Report relating to the development of a proposed destination resort located in the Fawnskin area of San Bernardino County, makes findings and adopts the Statement of Overriding Considerations hereinafter set forth.

I. PROJECT_SUMMARY

The proposed project is a planned development, hereinafter referred to as the "Project," located in the Community of Fawnskin along the east shore of Grout Bay, Big Bear Lake. Specifically, the project site is located on the southwest side of North Shore Drive, approximately 315 feet south of Red Robbin Road. The site is a previously disturbed lakeside property with an existing deteriorated recreational vehicle park and commercial marina located on it. The total Project will consist of 28.2 acres of which 3.42 acres will compromise a commercial marina, 12.28 acres include lake enhancements and the remaining 12.50 acres is for land use.

The proposed Project was previously reviewed by the Planning Department, and was known as Marina Cove. The original submittal was approved on March 17, 1983, with the San Bernardino County Board of Supervisors adopting of a statement of overriding considerations and certifying a project EIR (no SCH#).

In January 1989, while the project was in the latter stages of processing a final subdivision map, Southern California Water Company, the local water purveyor who were being taken over by the City of Big Bear Lake, withdrew their letter of availability for the project. As a result of the revocation, the project was unable to satisfy the conditions of approval relating to water services and thus unable to record the final map prior to the Project approval expiration date of March 17, 1989.

The Project was later refiled in April of 1990 with modifications to the ownership structure and to the Project. The revised project proposed a fish lagoon and spawning streams which complicated reviews through the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and California Department of Fish and Game. As a result of the complexities of the environmental issues, the County's environmental review period ran out of time on May 4, 1991 due to project streamlining limitations and the Project was administratively withdrawn and refiled.

Subsequently, a project very similar to the design of the 1983 project was resubmitted. The Project consists of a 132 unit destination resort development, Tentative Tract 12217, on 28.2 acres in the Fawnskin area. The proposed Project density on the 12.5 acre land use portion is 10.6 units/acre, which is less the General Plan Land Use District's allowable 12 units/acre.

This current Project employs the use of the 1983 Project EIR along with overriding considerations on cumulative significant traffic and water consumption issues pursuant to CEQA Guidelines, Section 15131. The Project 1983 EIR is utilized because the present design issues, circumstances and impacts are similar to the 1983 Project.

The current Project is reviewed with an Initial Study incorporating by reference the relevant sections of both the 1983 Project EIR and relevant information from the Bear Valley Community Plan (BVCP) EIR (Certified 12-5-88, SCH#88032108) cited to characterize the anticipated environmental effects.

In accordance with Sections 15063 and 15082 of the CEQA Guidelines the County of San Bernardino, as the lead agency, prepared an Initial Study, a Notice of Preparation and an availability of an Environmental Impact Report (SCH#91082092) herein after referred to as the ER: These were circulated to the State Clearing House, various public agencies and Interested parties.

The Board of Supervisors of the County of San Bernardino having studied the development plans and environmental documents, as required by the CEQA process, approves the proposed development and finds that the EIR adequately addresses the environmental effects of the Project as adopted.

Impacts identified in the EIR have been assessed for significance, avoidability and the extent to which the significant impacts can be mitigated to levels of non-significance. Mitigation measures are proposed to mitigate certain impacts to non-significant levels and to lessen the degree of some unavoidable impacts.

Each of the non-significant impacts of the Project are listed below. In addition, each to the significant imitigatable impacts of the Project are described in association with a finding and substantiation of the finding. An analysis of the Project's benefits and alternatives follow. Finally, unavoidable adverse impacts of the Project, as well as beneficial impacts and overriding considerations, are addressed below.

U. FINDINGS

A. NON-SIGNIFICANT IMPACTS

The impacts which the EIR found to be non-significant, thus not requiring any mitigation measures, are as follows:

(1) <u>Aviation Safety:</u> The EIR concludes that the Project's potential impacts upon Aviation Safety will be insignificant since the airport is located further to the east in the valley.

(2) <u>Hazardous Water/Radioactive Materials</u>: The EIR concludes that although there is a potential for incidental oil/gas spills relating to the Marina, the Project's impact on Hazardous Waste/Radioactive Materials are insignificant.

(3) <u>Cultural/Paleontological Resources:</u> The EIR concludes that the Project's impact on Cultural/Paleontologic Resources will not be adversely affected. Conversion from the current (R.V. park to an attractive development with replacement landscaping will probably enhance the appearance of the site.

(4) <u>Solis/Agriculture:</u> The EIR concludes that the Project's impact upon soils for agriculture will be insignificant since the site does not contain suitable soil for agriculture. The EIR also concludes the impact from the dredge and fill operation will modify soil types and that with proper soil management should improve overall fertility and stability. (5) <u>Mineral Resources</u>: The EIR concludes the Project's potential impact upon mineral resources will be insignificant since the Project is not located within the identified mineral resource area.

(6) <u>Energy:</u> The EIR concludes the Project's potential impact upon natural resource consumption is insignificant since the replacement of the existing R.V. Park by the Project should be more energy efficient.

(7) <u>Housing/Demographics/Socioeconomics</u>: The EIR concludes the **Project's potential** impact upon housing will be insignificant since the R.V. park was never a **primary full time** residence for tenants and not subject to mobile home conversion regulations.

(8); Land Use: The EIR finds that the Project represents a substantial alteration to the existing land-use, although the use and density are consistent with the County General Plan. The site having been extensively disturbed by the R.V. Park and commercial marina has degraded the more naturally appearing condition along the lakeside. The EIR concludes that the perception of many of the surrounding property owners is that the Project will organize the site and improve its appearance from the lake and highway even though the density is associated with more urban type developments.

B. MITIGABLE IMPACTS AND MITIGATION MEASURES

Mitigable impacts and measures imposed to mitigate them to a non-significant level are discussed below.

1. NATURAL HAZARDS:

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(a); Potential Significant Impact:

Significant potential exists that existing fill soils near the marina and shoreline will result in subsidence thereby creating possible structural defects.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 64 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potentially significant impacts can be mitigated to insignificant levels through soil engineering solutions such as removal and compaction, use of reinforced foundations or pile footings.

(b) Potential Significant Impact:

Potential exists that there may be adverse impacts to people or property as a result of geologic hazards such as earthquakes, mudsilde or ground failure.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 64 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potentially significant impacts can be mitigated to insignificant levels through soil engineering solutions identified in the required soils report and geologic hazard investigation

(c) Potential Significant Impact:

Potential exists that there may be adverse impacts to people or property as a result of water related seismic hazards.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 64, would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potentially significant impacts can be mitigated to insignificant levels through soil engineering solutions identified in the required soils report and geologic hazard investigation.

(d) Potential Significant Impact:

Potential exists that the dredge and fill operation will result in deposition, erosion, or siltation into Big Bear Lake.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 13, 19, 20, 21, 53, 54, 56, 64, 74, and 76 would reduce the environmental effects to levels of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through:

- Compliance with Big Bear Municipal Water District's Shorezone Alteration Permit's Conditions of Approval of the which requires a double silt curtain be installed during the dredging operation and the protection of all fill slopes with rip rap.

- Implementation of the Regional Water Quality Control Board's permit and Conditions of Approval which requires engineered erosion protection measures and desiltation basins.

- Organization of off and onsite drainage flows per County Drainage Section requirements.

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- Compliance with an erosion and sedimentation control plan and permit, which is to be approved by the County Office of Building and Safety prior to any land disturbance.

(e) Potential Significant Impact:

Potential exists that the dredge and fill operation will result in a decrease in the amount of surface water of Big Bear Lake.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 13 and 54 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through implementation of the Conditions of Approval of: Big Bear Municipal Water District Shorezone Alteration Permit, U.S. Corps of Army Engineers Section 404 Permit, and Department of Fish and Game Section 1601-1603 Permit.

(f) Potential Significant Impact:

Potential exists that there may be significant adverse impacts due to exposure to floods.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 49, 50, 51, 52, 53, 101, 102, and 103 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated through elevating building areas and increasing the depth of shallow water levels during the dredge and fill operation. On and off site drainage flows will be per County Land Development/Drainage Section requirements. The design features required by the County Building Department will minimize the potential of innundation to Insignificant levels.

(g) Potential Significant Impact:

Potential exists that there may be significant adverse impacts due to exposure

to fires.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 67, 68, 85, 86, 87, 88, 89, 91, 132, 133, 134 135, 136, 141, and 142 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The Project site lies within the county fire safety overlay districts, Review Area 2. The Fawnskin area is recognized as generally having inadequate fire flow and the project site is located in this category. The Project will provide extensive improvements to the water distribution infrastructure system serving the project as mitigation for inadequate fire measures currently in place. The Project will comply with Uniform Fire Code requirements (300,000 gallons water storage @ 2,500 G.P.M.) plus full fire sprinkling of buildings. These measures have been determined by the fire authority to be appropriate mitigation which would reduce the potential impacts to levels of nonsignificance.

(h) Potential Significant Impact:

Potential exists that the Project may result in significant adverse erosion impacts.

Findina:

The mitigation measures contained within the EIR and Condition of Approval ... 13, 21, 51, 52, 53, 56, 64, 65, 74, 76, and 77 would lessen this environmental effect to a level of non-significance.

Facts In Support of Finding:

A detailed erosion and sedimentation plan and permit will be required by the Office of Building and Safety prior to any land disturbance. Similar permits will be required by the Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the Big Bear Municipal Water District. In addition all slopes will be limited to a maximum ratio of 2 to 1 and be contour-graded to blend with existing natural contours. The implementation of the measures contained in these permits will reduce potential significant impacts to levels of Insignificance.

2. MANMADE HAZARDS:

(a) Potential Significant Impact:

Potential exists that the Project may result in significant adverse noise impacts.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 6, 9, and 63 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The Project will comply with County Development Code Section 87.0905(b) and will maintain noise levels below those standards. There will also be a prohibition of construction during the December 1 to April period and compliance with the Department of Environmental Health Services noise attenuation requirements. The implementation of these mitigations measures will reduce potential significant impacts to levels of insignificance.

3. NATURAL RESOURCES:

(a) Potential Significant Impacts:

Significant potential exists that the Project may contribute incrementally to the the impacts on the region's remaining perching and foraging habitat for wintering bald eagle.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 9, 27-A, 27-B, 54, and 43 (of revised planning conditions) would lessen this environmental effect to a level of non-significance.

Facts In Support of Finding:

The site is located within the Key Habitat for the wintering bald eagles. However, the EIR concluded that no perch trees exist on the site and the foraging habitat is not of a good quality due to the lack of ideal shallow lake bottom and shoreline vegetation which attract waterfowl, a good food source for eagles.

These potential adverse significant impacts can be mitigated to insignificant levels through:

- compliance with a prohibition of construction from December 1 to April 1,

- the closing of the marina form December 1 to April 1,

- adherence to the Big Bear Municipal Water District's shoreline alteration permit,

- retention of a significant number of trees to provide habitat for future perching habitat

- planting of fast growing conifers, which may become perch trees

(b) Potential Significant Impact:

Potential exists that the Project will result in the deterioration air quality.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 122, and 130 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

Installation of catalytic reduction equipment in all wood burning fireplaces and the requirement that the Project obtain a permit or clearance form the local Air Pollution Control District will reduce potential impact to insignificant levels.

(c) Potential Significant Impact:

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Significant potential exists that the Project may result in adverse impacts to the lake's water quality during the dredge and fill operation.

Finding:

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The mitigation measures contained within the EIR and Condition of Approval 13, 19, 20, 21, 53, 54, 56, 64, 74, and 76 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through:

- Compliance with Big Bear Municipal Water District's Shorezone Alteration Permit's Conditions of Approval of the which requires a double silt curtain be installed during the dredging operation and the protection of all fill slopes with rip rap.

- Implementation of the Regional Water Quality Control Board's permit and Conditions of Approval which requires engineered erosion protection measures and desiltation basins.

- Organization of off and onsite drainage flows per County Drainage Section requirements.

- Compliance with an erosion and sedimentation control plan and permit, which is to be approved by the County Office of Building and Safety prior to any land disturbance.

(d) Potential Significant Impact:

Potential exists that the Project will contribute to obstruction of views along State Highway 38!

Finding:

The mitigation measures contained within the EIR and Condition of Approval 78 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing open space and views to the lake is largely public ownership as National Forest and thereby reduces the potential significance of the project in the context of the entire expanse of shoreline on the North shore of Big Bear Lake. Project design standards included in the project further mitigates the the intrusion of structures into the existing scenery/viewscape.

(e) Potential Significant Impact:

Potential exists that the Project may result in significant impacts to the aesthetics of the area and the view from the lake.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 78 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing site currently contributes to a detractive cluttered appearance. The Project's landscape plan would incorporate a landscape buffer on Highway 38 and a revegetation plan utilizing fast growing conifers which will eventually screen units from the southern viewshed.

3. MANMADE RESOURCES:

(a) . Potential Significant Impact:

Potential exists that the Project will result in significant impacts related to a need for new or substantial alteration to the area's water system.

Finding:

The mitigation measures contained within the EIR and Condition of Approval 58, 61 and Department of Power conditions of approval would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing RV Park currently obtains water service from the Big Bear Department of Water and Power. The Project will providing a new onsite system with the cost borne by the developer. The system will be designed to such standards that they may be turned over to the respective district for maintenance and operation.

(b) Potential Significant Impact:

Potential exists that the Project will result in significant impacts related to a need for new or substantial alteration to the sewer systems.

Finding:

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The mitigation measures contained within the EIR and Condition of Approval 57 and 61 would lessen this environmental effect to a level of non-significance.

Facts in Support of Finding:

The existing RV Park is currently serviced by the County Area 53B for sewage disposal. Because major site grading and filling will be taking place, a new on-site system will be constructed by the developer. The cost of the systems will be borne by the developer and the system will be designed to such standards that it may be turned over to the respective district for maintenance and operation.

(c) Potential Significant Impact:

Significant potential exists that the Project will contribute to an increase in traffic hazards to motor vehicles and bicyclists.

Finding:

The mitigation measures contained the EIR and Condition of Approval 93, 95, 96, and 100 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

The potential significant impacts of increased traffic hazards can be mitigated by installing road improvements per Cal Trans and the County Office of the Surveyor (Land Development Roads Section). These improvements include a left hand turn lane that will be installed per the traffic engineer's report.

(d) Potential Significant Impact:

Significant Potential Impacts exists that the development of the Project would require new or altered fire protection services.

Finding:

The mitigation measures contained the EIR and Condition of Approval 5, 88, 91, 135, 141, and DWP's conditions of approval would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

The Project will be required to provide new water storage and distribution facilities which will comply with the necessary fire flow requirements. Another mitigating measure reducing, the potential impact to levels of nonsignificance will be the Project participation in a Mello-Roos or special improvement zone funding for expansion of local fire protection services.

(e) Potential Significant Impact:

Significant Potential Impacts exists that the development of the Project would require new or altered school services.

Finding:

The mitigation measures contained the EIR and Condition of Approval 83 would reduce this environmental effect to a level of non-significance.

Facts in Support of Finding:

These potential adverse significant impacts can be mitigated to insignificant levels through the payment of the Project's share of school improvement fees as part of the building permit process.

III. DEVELOPMENTS BENEFITS

The San Bernardino County Board Of Supervisors finds that the Project will generate the following benefits in both the planning area and in the surrounding communities:

A. LAND USE:

- The Project will provide numerous benefits to the area including conversion of the existing detractive recreational vehicle park into a high quality destination resort community which benefits include extensive recreational facilities, creation and extension of infrastructure, provision for public access to the lake and picnic area.

- High quality development will positively impact property values adjacent to the Project and in both the Fawnskin and Big Bear Valley area, thus increasing the area's tax base.

- The Project's land use plan maintains aproximately 78% of the Project (22 acres) for open space and recreational facilities. Project design maximizes retention of existing trees and proposes extensive tree planting and revegetation in a five acre area currently devoid of vegetation. Natural wildlife habitat improved as a result of lake enhancements and revegetation.

- Project provides land uses which are more compatible with adjacent land uses or existing uses.

B. HOUSING

- The Project will provide additional recreational housing to a more diverse population than is currently provided for in the area.

- The development of quality Project, that is compatible with the character of the land and is efficiently situated, comprises an additional significant beneficial impact.

- The Project is expected to attracted new residents to the area thereby stimulating the Fawnskin's local economy and the construction job market throughout Big Bear Valley.

- The Project will help to satisfy the continued high demand for recreational facilities in Big Bear Valley.

C. PUBLIC SERVICE

- The Project will provide a variety of leisure time activities, including active and passive recreation.

- The Project would provide a significant upgrade to the area's domestic water infrastructure and aleviate current defficient fire flow to the benefit of existing and future residents. | Development of the Project will provide the financial means for the developer to participate in providing these public benefits.

fees for various infrastructures and Capital Facilities including roads, libraries, museums,

parks, open space, flood control, drainage, water, sewer, courts, jails, other law enforcements facilities, fire fighting facilities and equipments, geographic mapping, and data base development.

D. FISCAL

- The high quality nature of the Project will have an overall positive effect on the community of Fawnskin's tax base and will tend to increase property values elsewhere in the area, which in turn will generate increased tax revenues. The Project, itself will provide additional tax revenues to the County which could exceed \$400,000 per year.

IV. PROJECT ALTERNATIVES

The California Environmental Quality Act requires discussion of reasonable alternatives that could feasibly obtain the Project's basic objectives. In the 1983 EIR, five alternatives were considered and evaluated, No Project, Reduced Density, Single Family Residential, Mobilehome Park, Public Park/Marina/Campground and Restaurant/Lodge. As part of the EIR, the Initial Study developed and evaluated three alternatives, No Project, Reduced Density, and Different Location. For purposes of this document each different alemative is described.

1. <u>No Project:</u>

The No Project alternative assumes that no development would occur and that the site would be retained in its present developed state as an aesthetically detractive R.V. park and commercial marina. This alternative would essentially maintain the exiting environmental conditions of the subject property as discussed in various sections of the EIR.

The No Project Alternative would eliminate the net increase in vehicles trips of 244 ADT and could be considered environmentally superior to the Project since it eliminates certain unavoidable cumulative effects of the Project.

However, the No Project Alternative would eliminate the desirable improvements to the infrastructure of the area's water system and fire protection that would accrue through project implementation of new storage and distribution facilities. This alternative would also eliminate the general community benefits associated with modern, well-designed residential development. Important Project benefits would not be provided. For example no infrastructure fees would be raised, lake enhancements, lake access, tree preservation, could also not be provided.

2. Reduced Density:

This alterative would result in the same types of impacts as the Project but of lesser magnitude. It would reduce the level of additional traffic contributing to existing transportation network within the valley. However, the BVCP EIR determined that any incremental addition to current traffic volumes will contribute to a cumulative significant effect on transportation/circulation. Consequently, this alternative would not be a viable alternative in the terms of reducing the cumulative impacts to transportation/circulation.

The Reduced Density alternative would also not be economically feasible due to the substantial cost of providing utility infrastructure, on and offsite improvements and extensive recreational facilities.

3. Single Family Residential:

Same impacts as Project but to even a lesser degree. Possibly more consistent with surrounding land uses. However, not economically feasible due to the cost of providing infrastructure, services, recreational facilities. Important Project benefits would not be provided.

4. Mobile Home Park/Subdivision:

This alternative would be more organized and more year round than the existing R.V. park but would produce the same level of impacts as the proposed Project. Design options would be fewer and there would be more intense conflict with the adjacent residential uses.

5. Public Park/Marina/Campground:

1. . . .

This alternative would result in less intense effects due to a predominantly summertime use. However, summer impacts would be similar to proposed Project. The alternate would present more conflict with adjacent residential uses and would provide only seasonal cash flow to the developer. Thus important improvements to the area's utility infrastructure could not be provided.

6. <u>Restaurant/Lodge:</u>

This alterative would result in similar environmental effects as proposed project. There would possibly be greater opportunities for open space retention but would result in intense conflicts with adjacent residential uses. This alternative could be viable if the facilities would be large enough to justify cost of infrastructure.

7. Different Location:

This alterative considers qualitatively the use of a different project site for the construction of the Project. A major premise of this alternative is that there is a site available elsewhere within the Big Bear Valley area which could accommodate a development of this scope and which would result in less overall environmental impacts.

However, a Different Location alternative would not produce a reduction in cumulative impacts to transportation/circulation since the Big Bear Community Plan EIR, identified the entire Big Bear Valley as the area subject to the cumulative impacts from additional vehicle trips. Since the Proposed Project is on the North Shore, with its lighter traffic, the Project site would possibly generate less traffic impacts onto congested areas of Big Bear Valley than would a Different Location.

Similarly, the Project site is in the North Shore ground water sub-basin, an area of the Big Bear Valley where a groundwater supply is currently underdrafted. If the Different Location alternative were in an overdrafted area in Big Bear Valley the impacts on water supply would be greater than the proposed Project site.

Consequently, locating the Project in a different location within the Big Bear Valley would not reduce cumulative impacts. The EIR concludes that this alternative would result in similar impacts as the Project and would require similar levels of mitigation, and is thus not considered environmentally superior to the Project.

V. <u>SIGNIFICANT UNAVOIDABLE ADVERSE</u> EFFECTS OF THE PROJECT

The California Environmental Quality Act (CEQA) requires a public agency to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve a project. The San Bernardino County Board of Supervisors proposes to approve the Project despite certain unavoidable adverse cumulative effects identified in the EIR. Therefore, the San Bernardino County Board of Supervisors, having reviewed and considered the information contained in the EIR and the record, makes the following statement of overriding considerations which have been balanced against the unavoidable adverse impacts of the Project.

(a) Significant Unavoidable Impact:

Construction of the project will contribute to cumulative traffic impacts in the Big Bear Valley region.

Finding:

Mitigation measures found in the EIR and Conditions of Approval 32, 93, 96 and 104 would lower the impacts associated with the Project's

contribution to cumulative traffic impacts in Big Bear Valley. However, due to the EIR's findings that any incremental increase in vehicular trips from the Project results in regional cumulative traffic impacts, these mitigation measures can not reduce the impacts below a level of significance.

Facts in Support of Finding:

The mitigation measures contained in the EIR include; the installation of left hand turn lanes at the intersection of Highway 38 and the Project's main entrance to reduce any potential for rear end accidents, and a monetary contribution towards a traffic signal at highway 18 and Stanfield Cut-Off.

The mitigation measures contained in the Conditions of Approval include:

- Project participation in the Transportation Facilities Fee Program if adopted or a fair share contribution toward the mitigation of the regional traffic impacts.

- Project contribution of its share of development impact fees, if adopted, for various infrastructures and capital facilities, including roads.

- Road sections bordering the Project would be designed per State Department of Transportation's standards and to the County Transportation / Flood Control Department in accordance with the Master Plan of Highways.

- Dédication will be granted on Highway 38 to concur with the Master Plan of Highways.

<u>Alternatives:</u>

1. <u>No Project Alternative:</u>

The EIR finds that this alternative would eliminate the net increase in vehicles of 244 ADT and thus the undesireable cumulative traffic impacts. However, the No Project alternative would result in the continued use of the site as an existing rundown recreational vehicle park with current traffic impacts. The EIR concludes that while this alternative is the most environmentally superior, this option would also eliminate the desirable infrastructure improvements in the Fawnskin water system and the general community benefits associated with a well designed modern development.

2. Reduced Density:

The EIR finds that this alternative would result in similar impacts to that of the Project but of lesser magnitude. However, given that any incremental addition to current traffic volumes will contribute to a significant effect on transportation/circulation, the EIR concludes that this alternative is not viable in terms of reducing the cumulative traffic impacts. Furthermore, given the sustantial cost of providing infrastructure, services, improvements, recreational facilities, this alternative is economically infeasible. As a result, important Project benfits could not be financed.

3. Single Family Residential:

While the EIR does not specifically address traffic impacts within the Single Family Residential Alternative, it is assumed, however, that this option would reduce the level of additional vehicular trips from the Project site and thus, the significant cumulative effect on regional traffic. The EIR concludes that this option would provide marginal economic returns to the developer due to the cost of providing services. Without the means to finance infrastructure costs, this alternative would be infeasible and important Project benefits would not be provided.

4. Mobile Home Park/Subdivision:

The EIR concludes that the Mobile Home Park alternative would result in similar levels of impacts as the Project including unavoidable cumulative impacts on transportation/circulation. Design options would be fewer with this alternative and there would be more intense conflict with the adjacent residential uses.

5. <u>Public Park/Marina/Campground:</u>

The EIR concludes that this alternative could probably provide a reduction in traffic impacts during the winter, spring, and fall, but not during the summer. Therefore, this alternative would continue to contribute to the cumulative significant effects on traffic transportation /circulation. Since cash flow would seasonal, with possible marginal economic returns, important Project benefits would not be provided.

6. Restaurant/Lodge:

While the EIR does not address whether this option would result in greater or lesser cumulative traffic impacts than the proposed Project, it is assumed that the impacts would be directly proportional to the magnitude of the Restaurant/Lodge. In order for this option to be economically feasible, given the cost of the utility infrastructure, site improvements, and amenities, the Restaurant/Lodge would have to be of a substantial size. This would probably result in this alternative producing environmental effects similar to that of the proposed Project, including the unavoidable cumulative impact on regional transportation/circulation.

7. Different Location:

The EIR concludes that a different location is not a viable option as it would not result in reducing traffic effects. The BVCP EIR identifies the entire Big Bear Valley as being the area subject to cumulative impacts and any additional vehicle trips anywhere in the valley would contribute to regional traffic effects.

(b) Significant Unavoidable Impact:

While the ground water sub-basin underlying the Project is determined to be in an underutilized condition, construction of the project would contribute incrementally to the overall groundwater water supply overdraft in the Blg Bear Valley region.

Finding:

Mitigation measures found in the EIR and Conditions of Approval 5, 22, 59, 60, 61, 62 and (42). would lower the impacts associated with the Project's contribution to cumulative water supply overdraft in Big Bear Valley. However, due to the EIR's findings that any incremental increase in water use over the existing water use results in regional cumulative impacts, these mitigation measures can not reduce the impacts below a level of significance.

Facts in Support of Finding:

The mitigation measure contained in the EIR would require the project to meet the 'assured water supply' provisions of the Bear Valley Plan Area General Plan Standards.

The mitigation measures contained in the Conditions of Approval include:

- Project providing a reliable and assured water supply adequate in quantity and quality to meet health and safety code requirements; in compliance with Section (s) BV2.0801(d) (2) (A) (i).

Provide a letter from the Sanitary Engineering Section, State Health Department that they have reviewed the water system and concur with Big Bear Water and Power findings that additional supplies of adequate quality and quantity of are available to meet health and safety Code requirements.

- Install indigenous landscaping and an automatically controlled irrigation system to minimize water consumption.

- Install state-of-the-art water conservation devices in all units and revegetate he site with native drought resistant plants.

<u>Alternatives:</u>

1. <u>No Project Alternative:</u>

The EIR finds that the No Project Alternative would result in possibe elimination of a net increase of water use and thus the undesireable cumulative regional impacts. However, this option would result in the continued use of the site as an recreational vehicle park with its current use of water. The EIR concludes that while this alternative is the most environmentally superior, this option would also eliminate the desirable infrastructure improvements in the Fawnskin water system along with general community benefits associated with a well designed modern development.

2. <u>Reduced Density:</u>

The EIR finds that this alternative would result in similar impacts to that of the Project but of lesser magnitude. However, given that any incremental water use will contribute to a significant cumulative effect on regional water supplies, this alternative is not viable in terms of reducing the overall cumulative impacts. The EIR also concludes that this alternative would provide less economic return. With the cost of utility infrastructure, site improvements and extensive amenities, a Reduced Density alternative would be economically infeasible and would result in important Project benefits not being provided.

3. Single Family Residential:

The EIR finds that this Alternative would result in similar impacts to that of the Project but to even a lesser magnitude. While not addressed specifically, cumulative water supply impacts are assumed to be included. The EIR concludes that this option would provide marginal economic returns to the developer due to the cost of providing services. Without the means to finance infreastructure costs, this alternative would be infeasible and important Project benefits would not be provided.

4. Mobile Home Park/Subdivision:

The EIR concludes that this Alternative would result in similar levels of impacts as the Project. While not addressed specifically, cumulative water supply impacts are assumed to be included along with the unavoidable cumulative impacts on regional water supplies. Design options would be fewer with this alternative and there would be more intense conflict with the adjacent residential uses.

5. Public Park/Marina/Campground:

While the EIR does not address whether this option would result in greater or lesser cumulative water supply impacts, it is assumed that the impacts would potentially be less during the winter, spring, and fall, but similar to the Project during the summer. The EIR concludes that this alternative would only provide seasonal cash flow which could make this alternative infeasible thus eliminating the desirable infrastructure improvements in the Fawnskin water system and increased fire protection services and other desireable Project benefits.

6. <u>Restaurant/Lodge:</u>

While the EIR does not address whether this option would result in greater or lesser cumulative water supply impacts than the proposed Project, it is assumed that the impacts would be directly proportional to the magnitude of the Restaurant/Lodge. In order for this option to be economically feasible, given the cost of the utility infrastructure, site improvements, and amenities, the Restaurant/Lodge would have to be of a substantial size. This would probably result in this alternative producing environmental effects similar to that of the proposed Project, including the unavoidable cumulative impact on regional water supplies.

7. Different Location:

The EIR concludes that a different location is not a viable option as it would not result in reducing water consumption effects. The BVCP EIR identifies the most of Big Bear Valley as being subject to water supply overdraft. Since the Northshore ground water basin underlying the Project site is determined to be underutilized, the Different Location Alternative would be probably be inferior to that of the Project.

VI. STATEMENT OF OVERRIDING CONSIDERATIONS

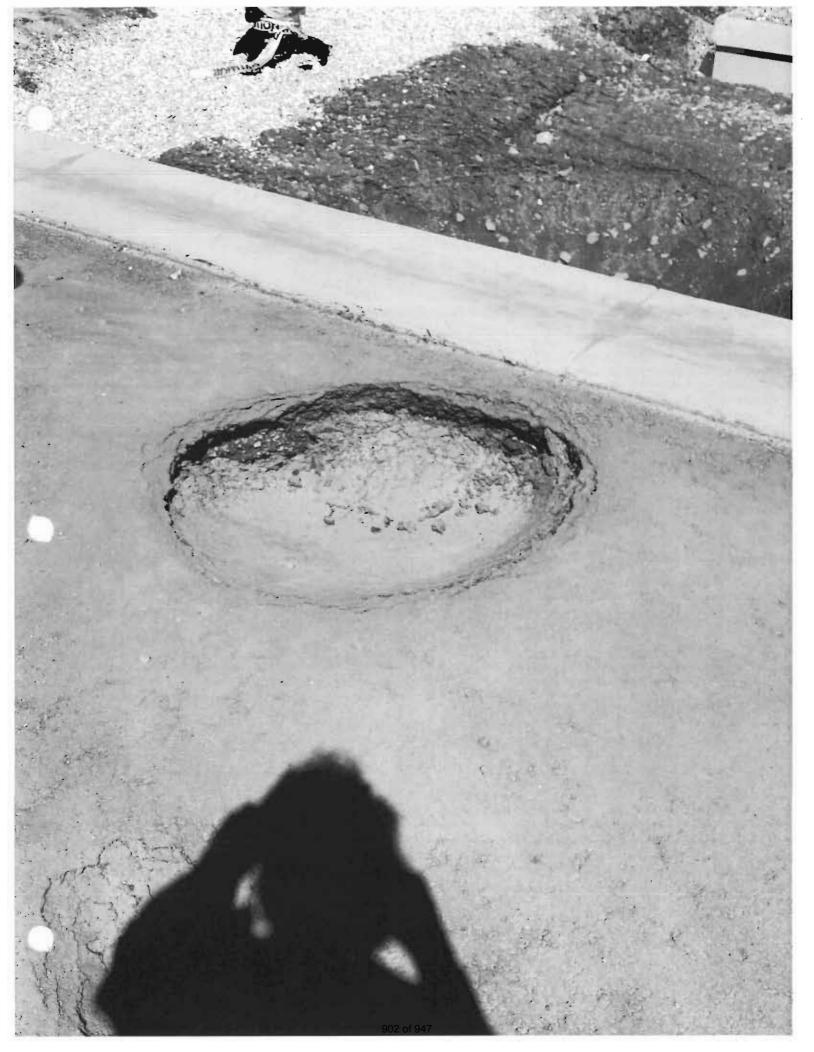
The Board of Supervisors of San Bernardino County adopts this Statement of Overriding Considerations with respect to the nonmitigable impacts identified in the EIR, specifically those, impacts associated with cumulative traffic and water supply impacts within Big Bear Valley.

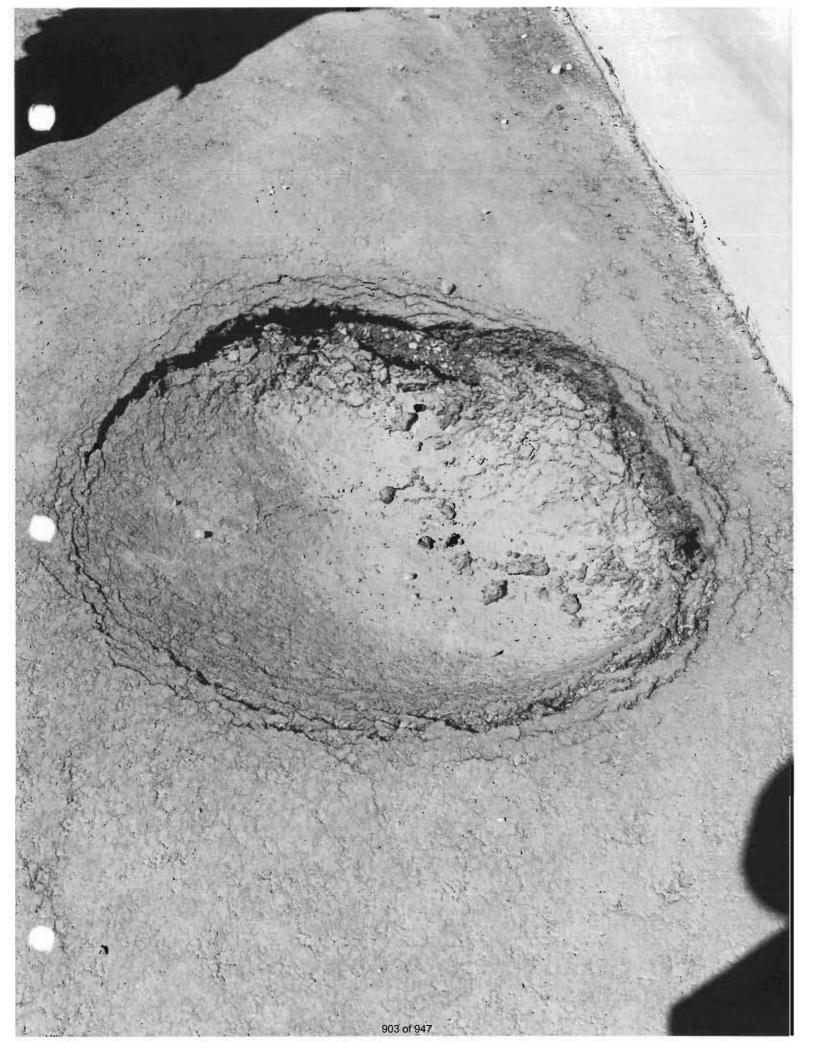
The Board hereby finds that the Project will provide numerous benefits to the area as described in Section III of this document. The Board further finds that all mitigation measures identified in the EIR, except for those found to be infeasible, have been imposed to lessen the impacts to the greatest extent possible, and furthermore finds that the No Project Alternative, Reduced Density Alternative, Single Family Residential Alternative, Mobilehome Park Alternative, Public Park/Marina/Campground Alternative, Restaurant/Lodge Alternative, and Different Location Alternative are infeasible because, as discussed above, they have similar environmental impacts, do not provide the benefits described herein, or are socially or economically infeasible.

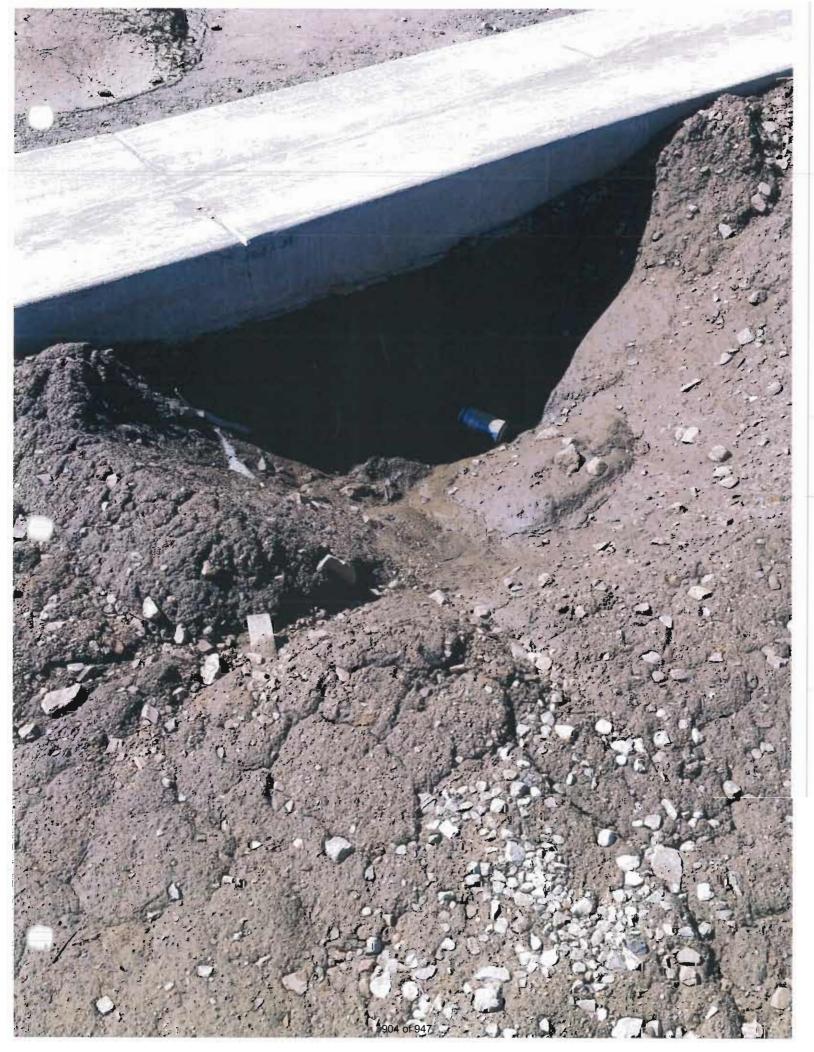
Cal. PUD res §21002 provides that "in the event specific economic, social, and other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof." Section 21002.1(c) states that "In The event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, the project may nonetheless be approved or carried out at the discretion of a public agency." Administrative Code Title 14, §15093(a) states: "If the benefits of a proposed project outweigh the unavoidable adverse environmental adverse effects, the adverse environmental effects may be considered "acceptable".

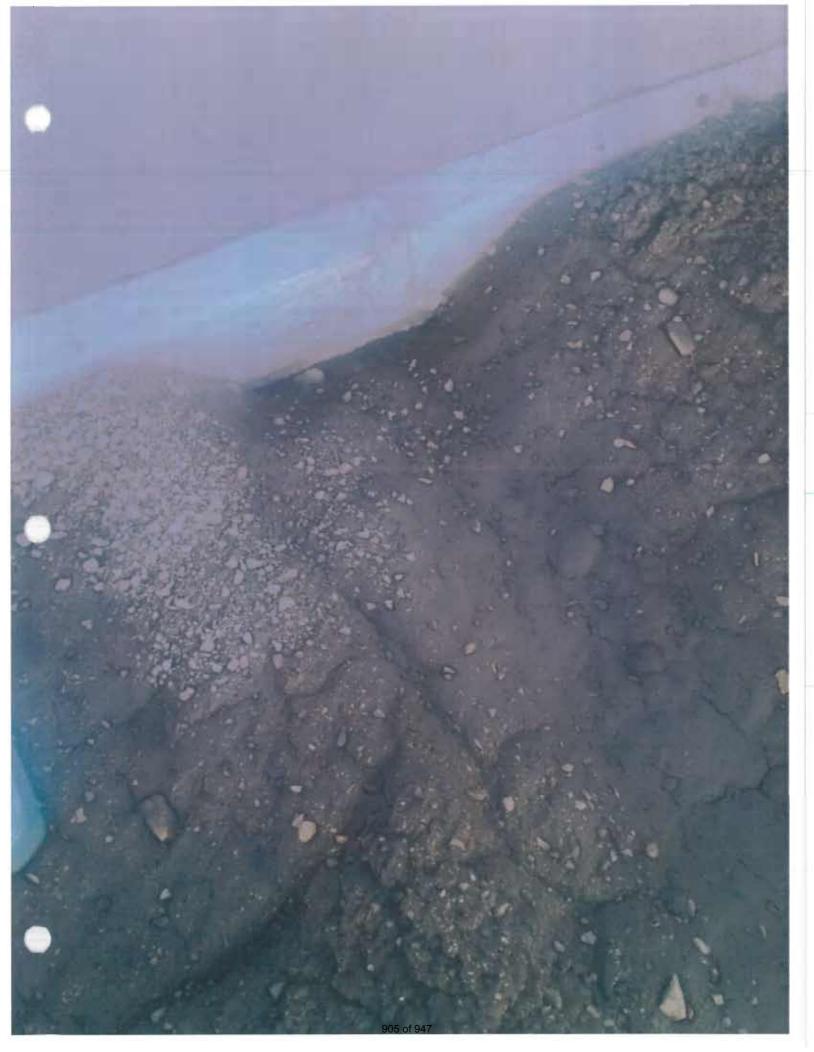
Based on the above discussion and on the evidence presented, the Board of Supervisors finds that the benefits of the Project outweigh the potential cumulative adverse environmental impacts associated therewith.

Exhibit CC



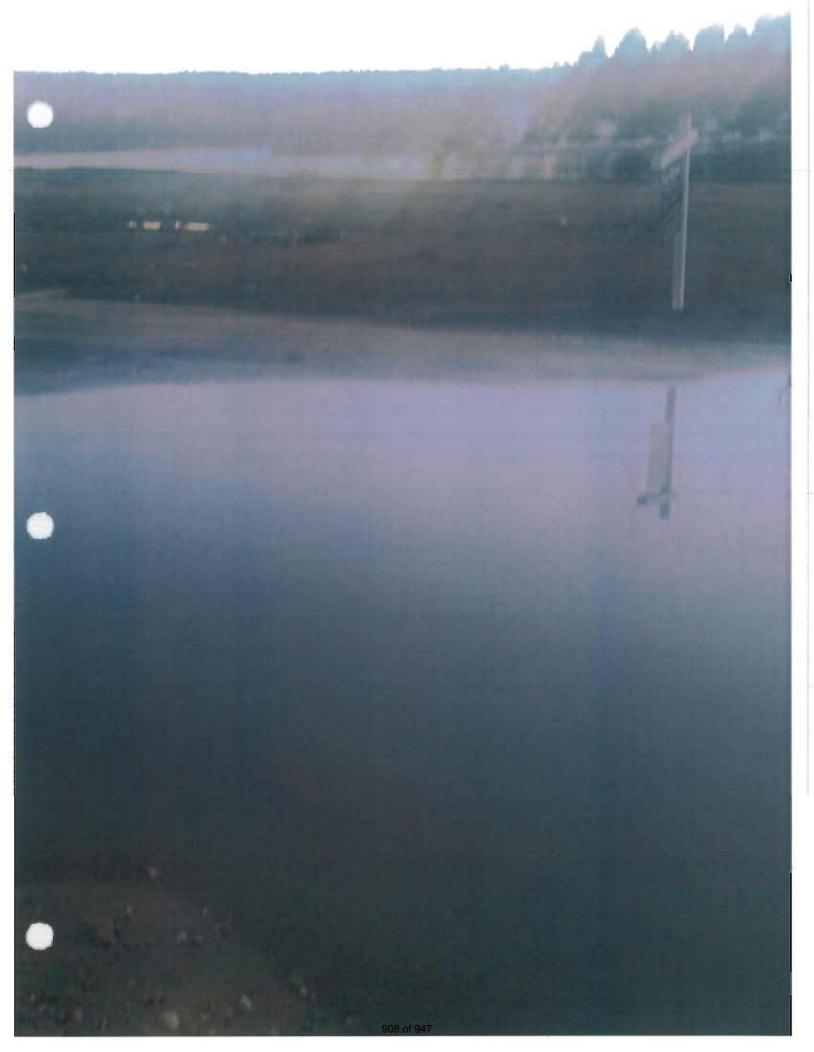


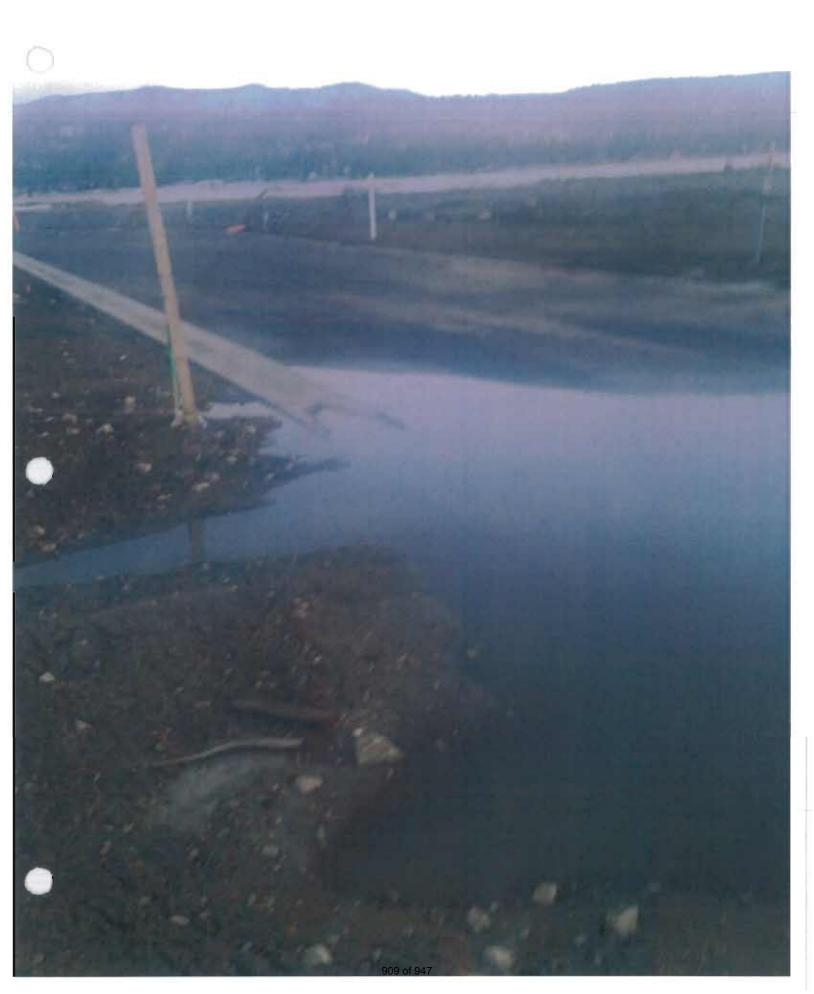




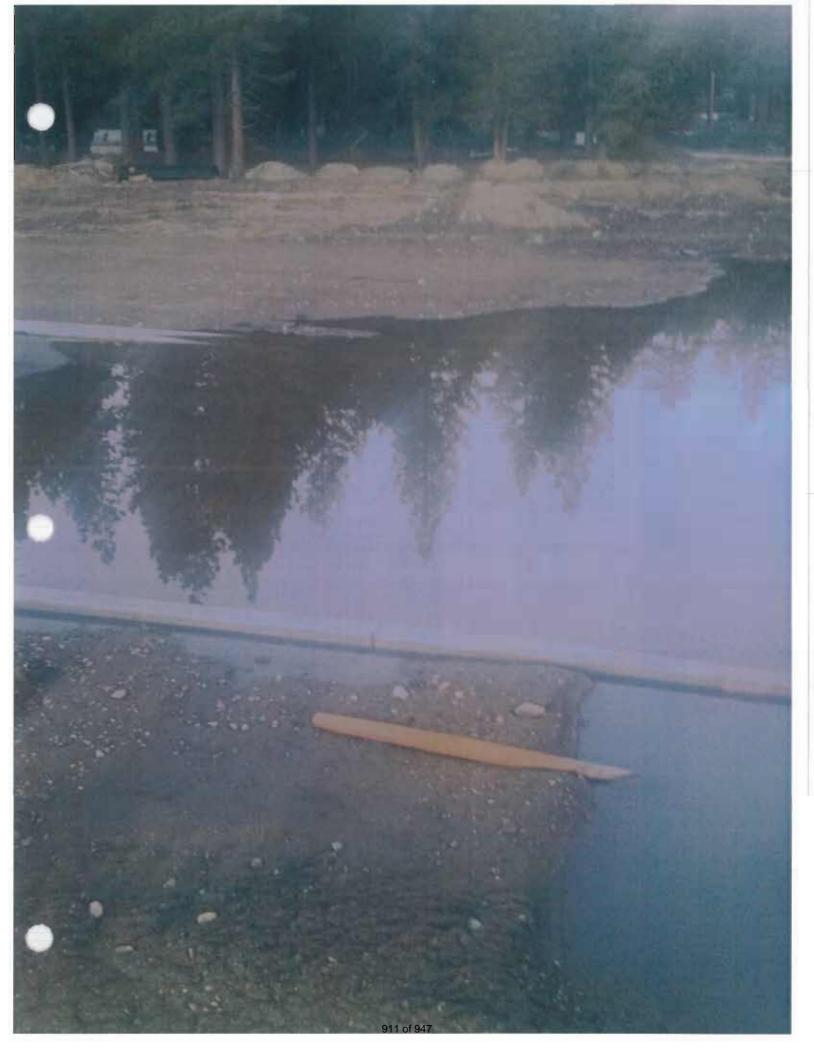


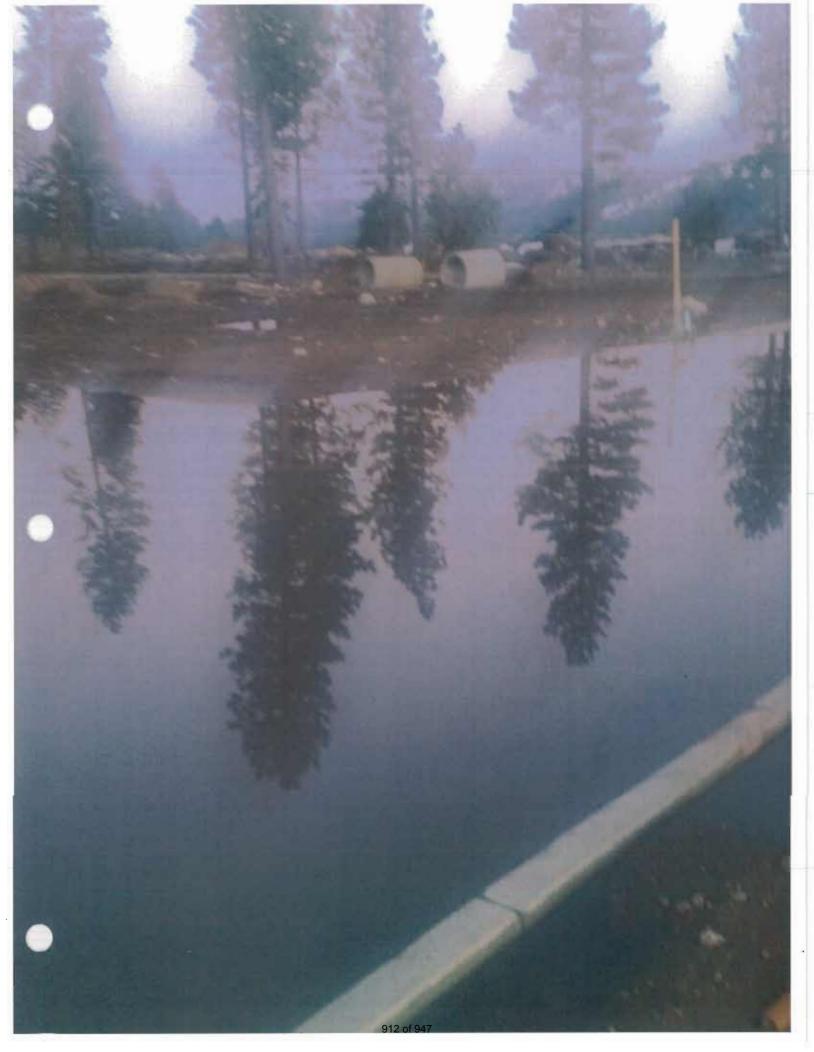


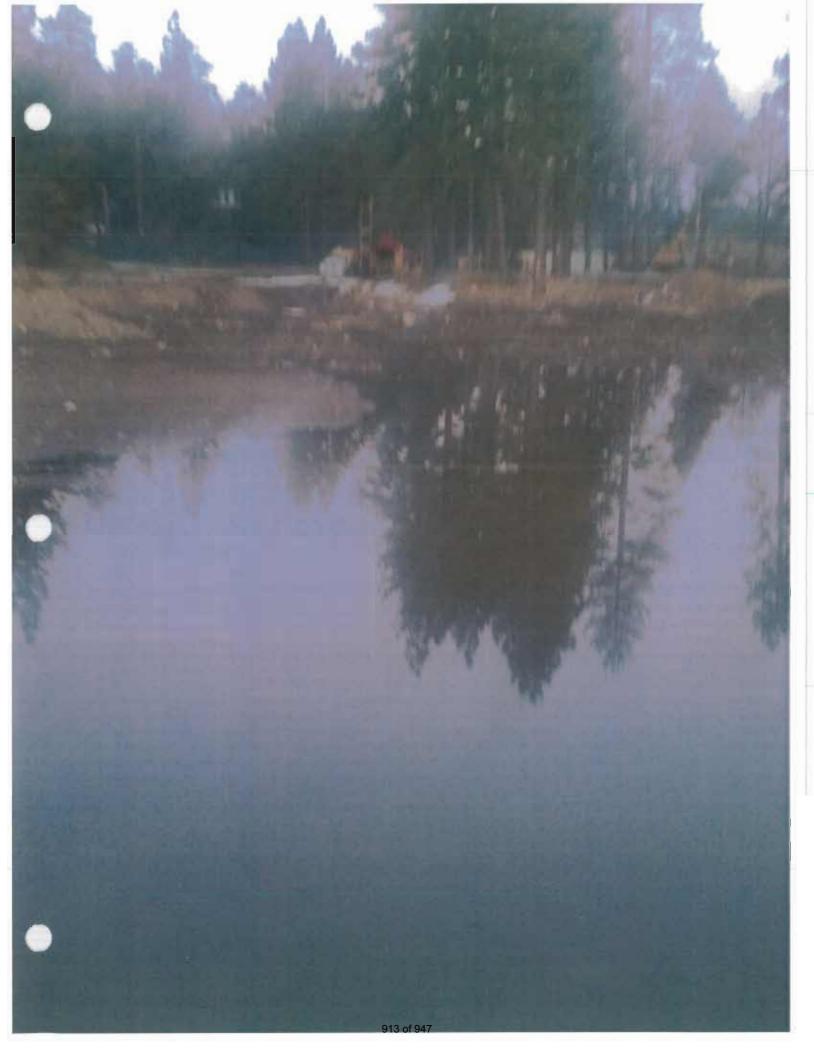


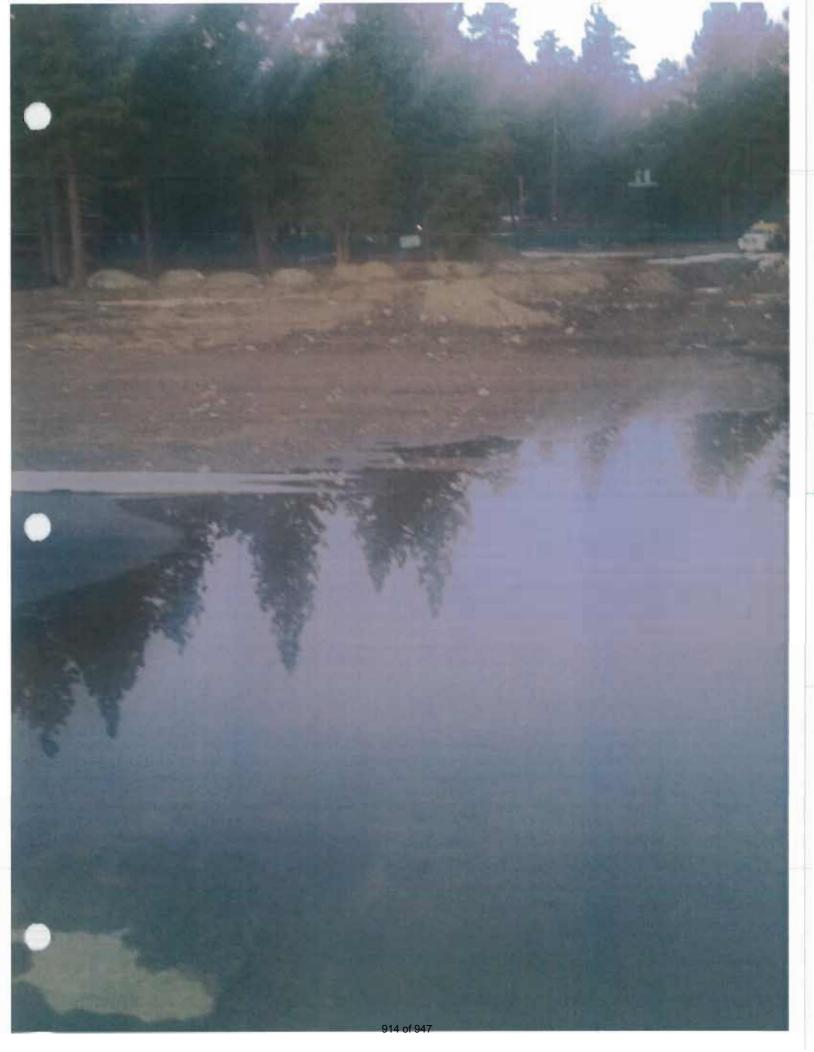


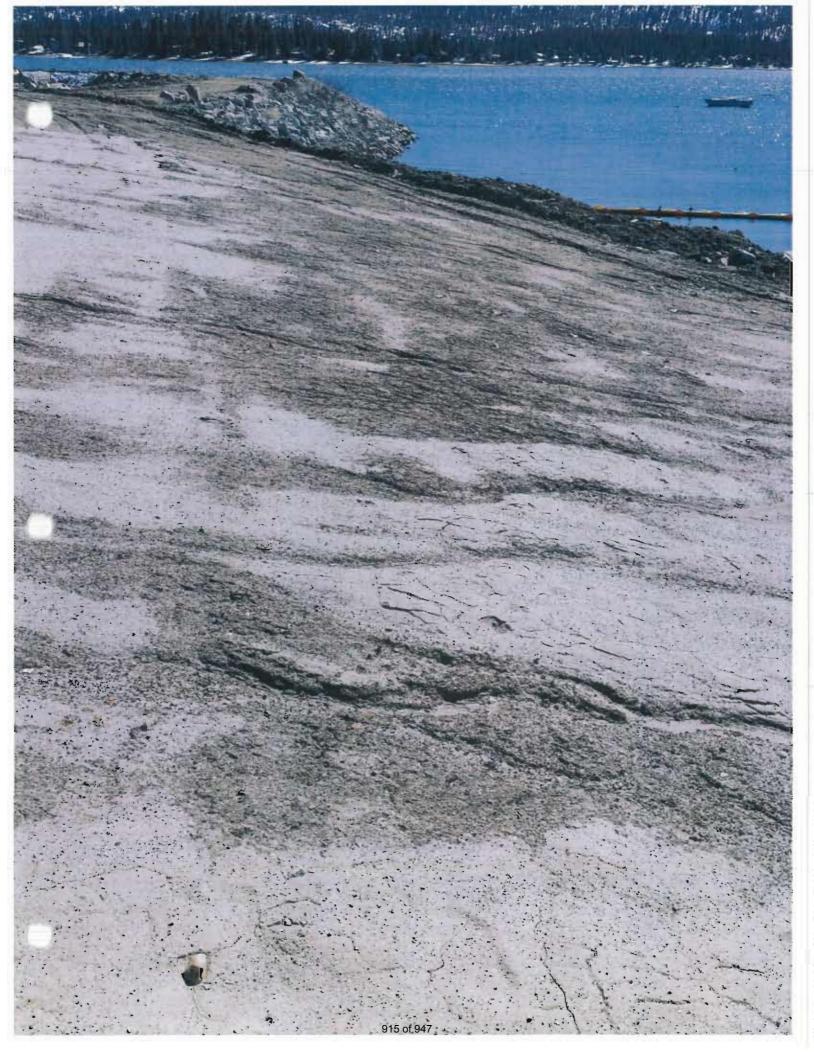


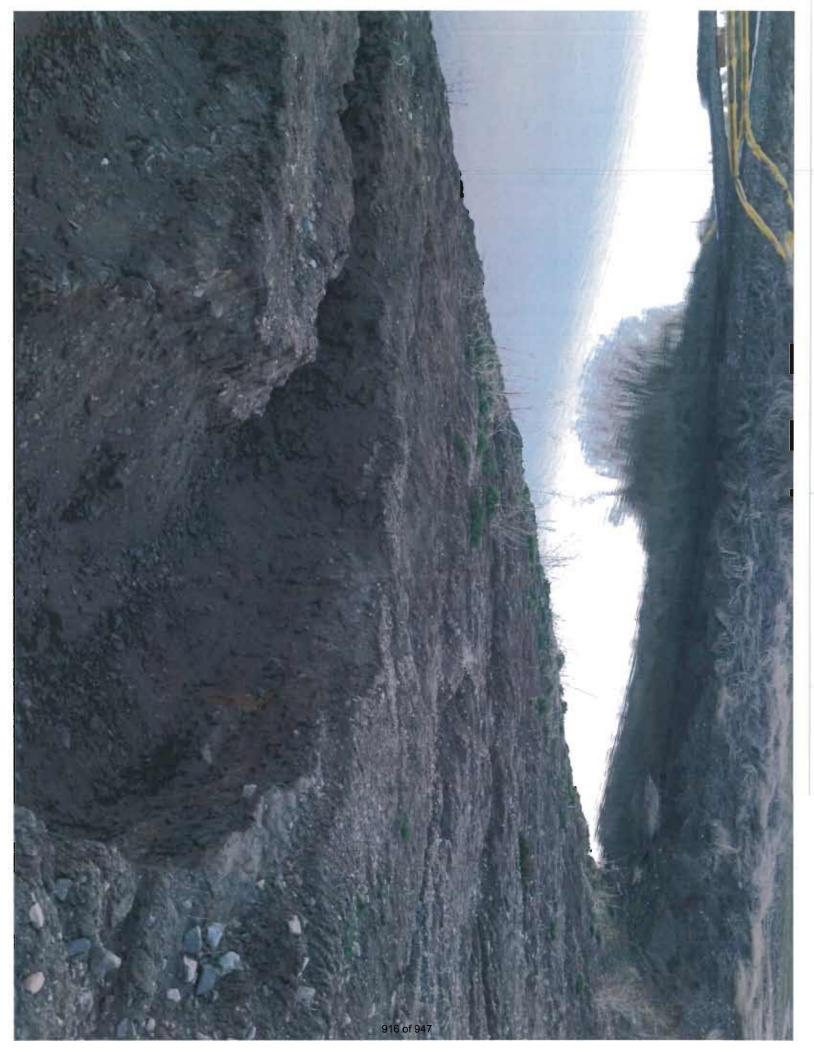


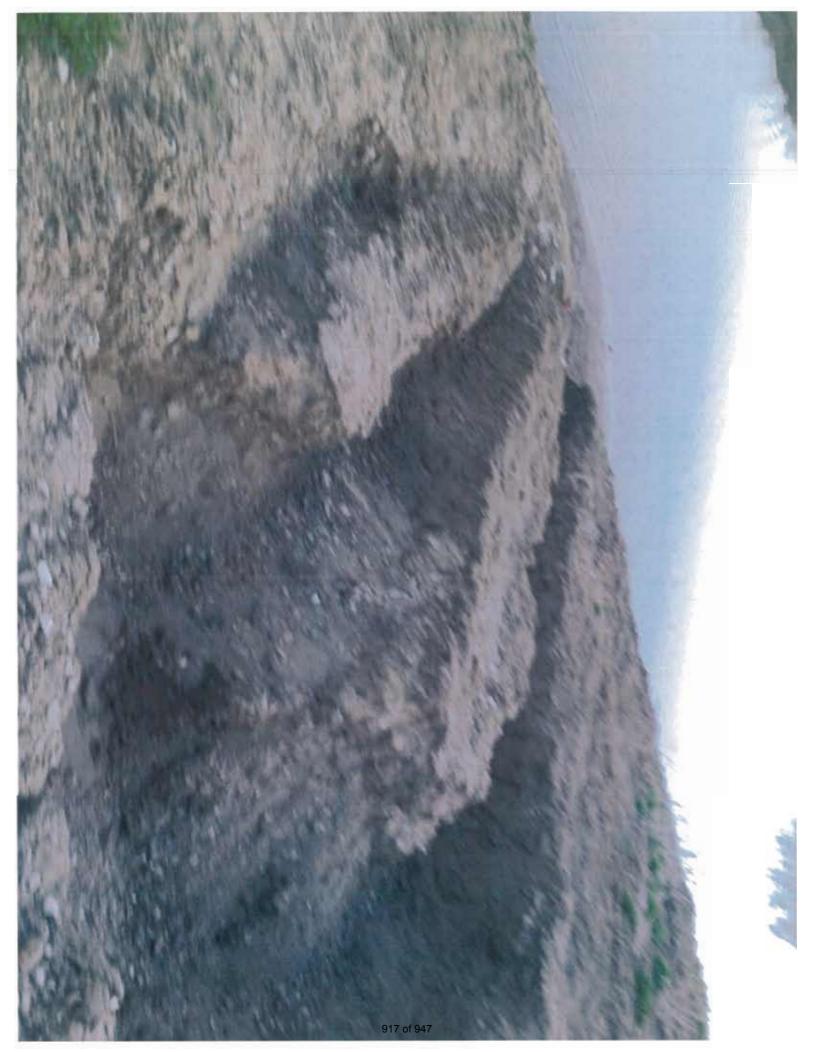


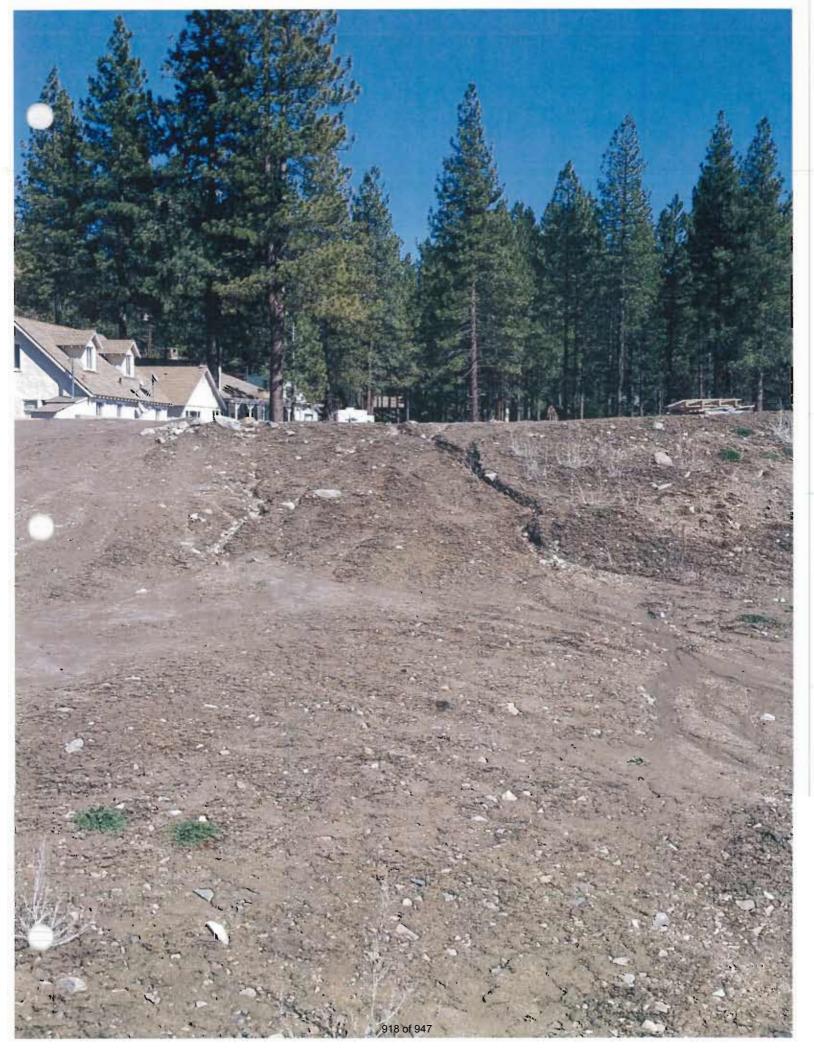


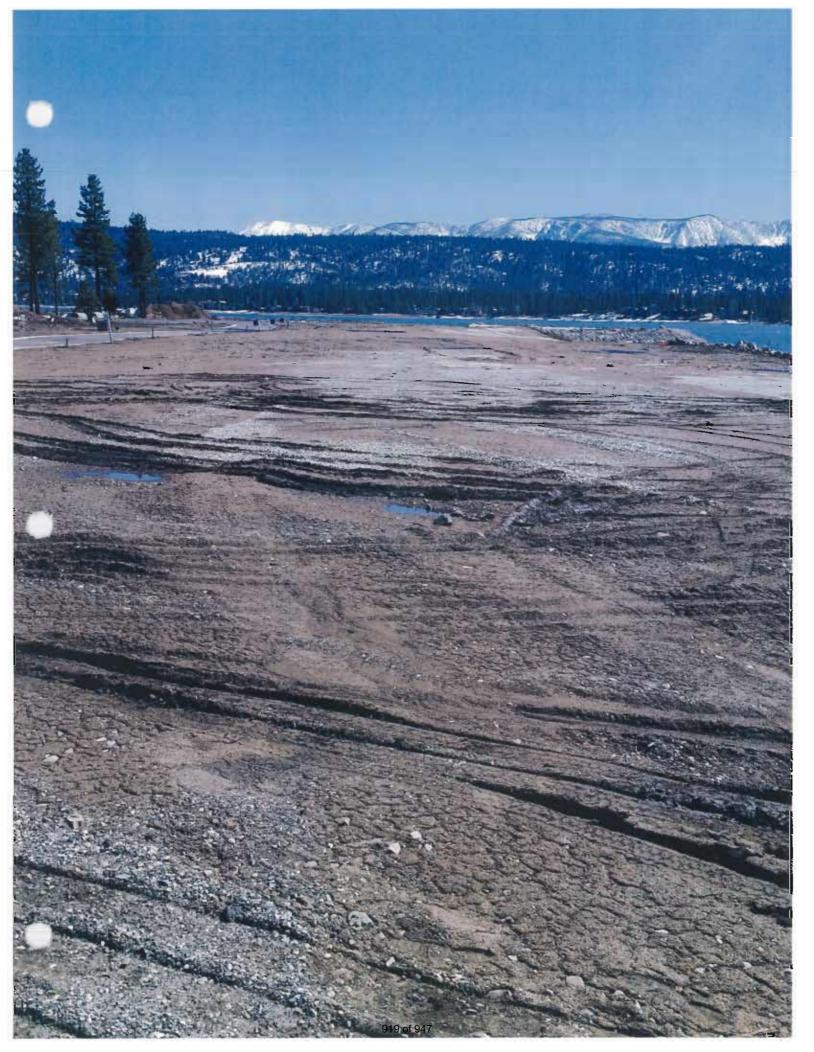


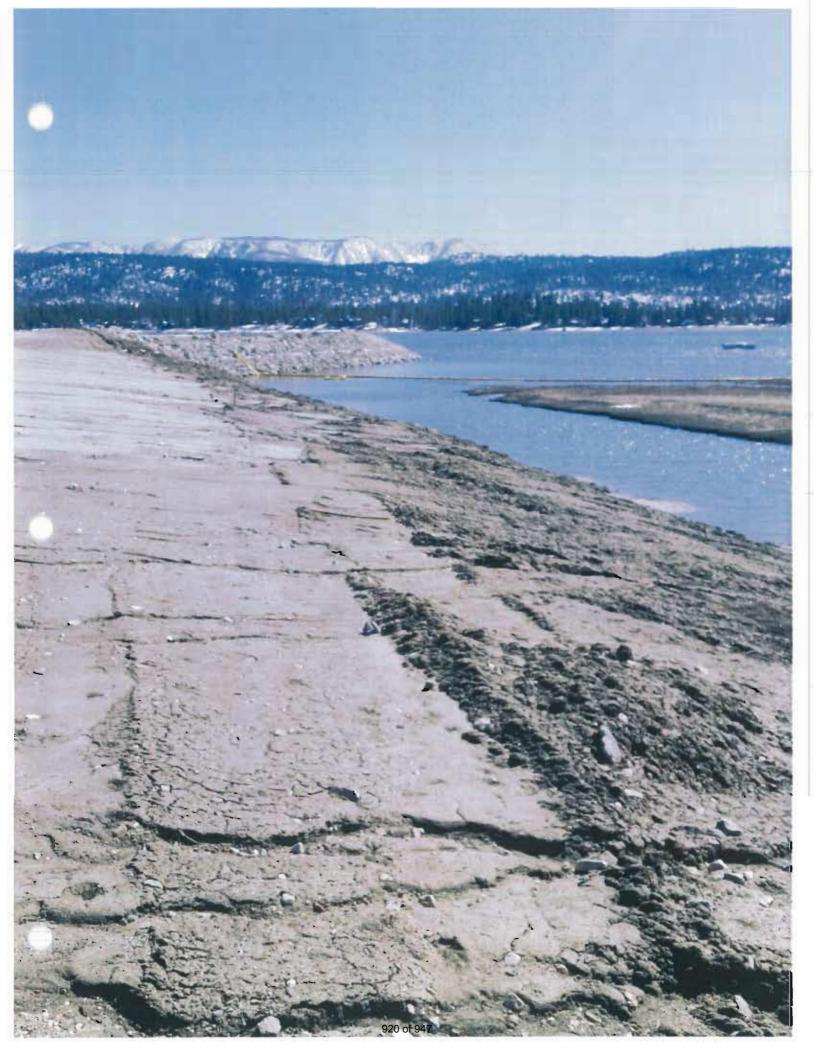
















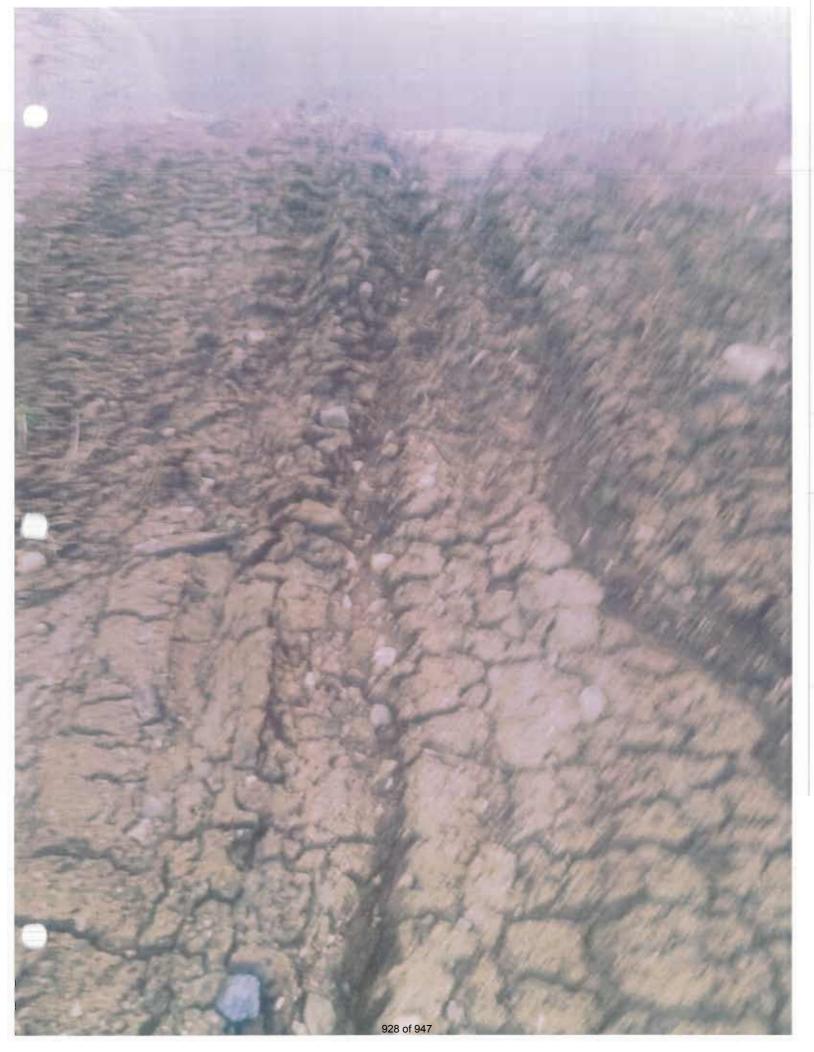


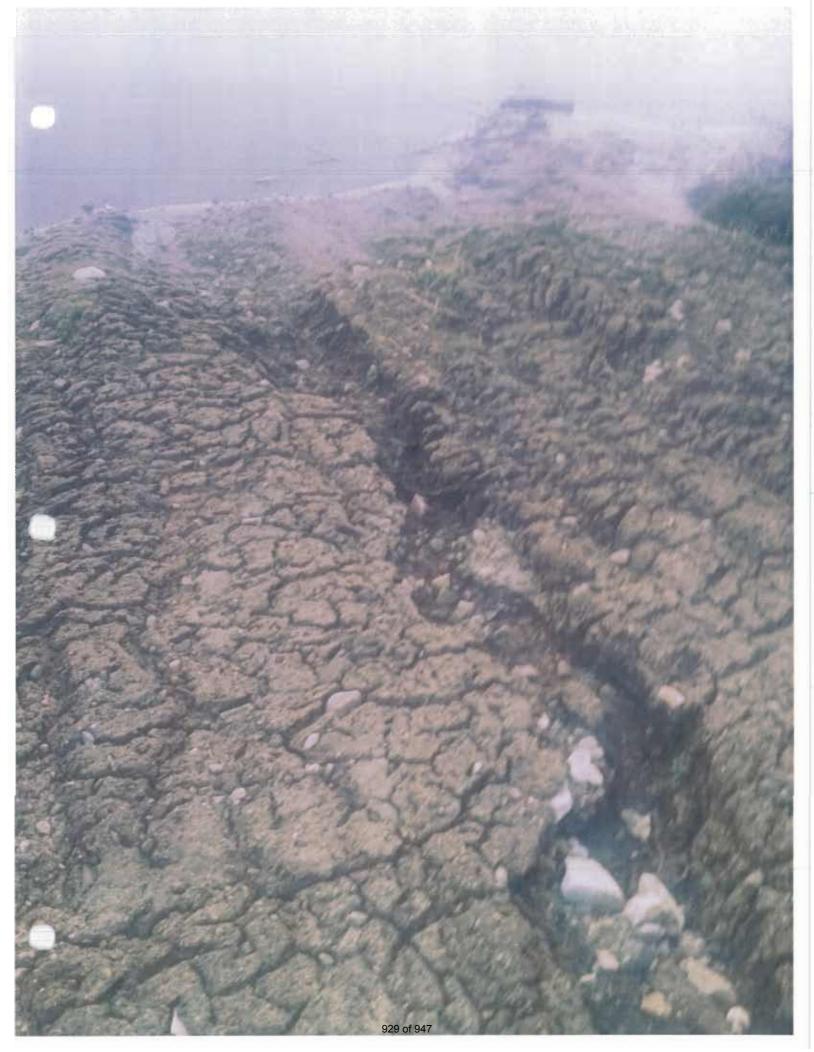


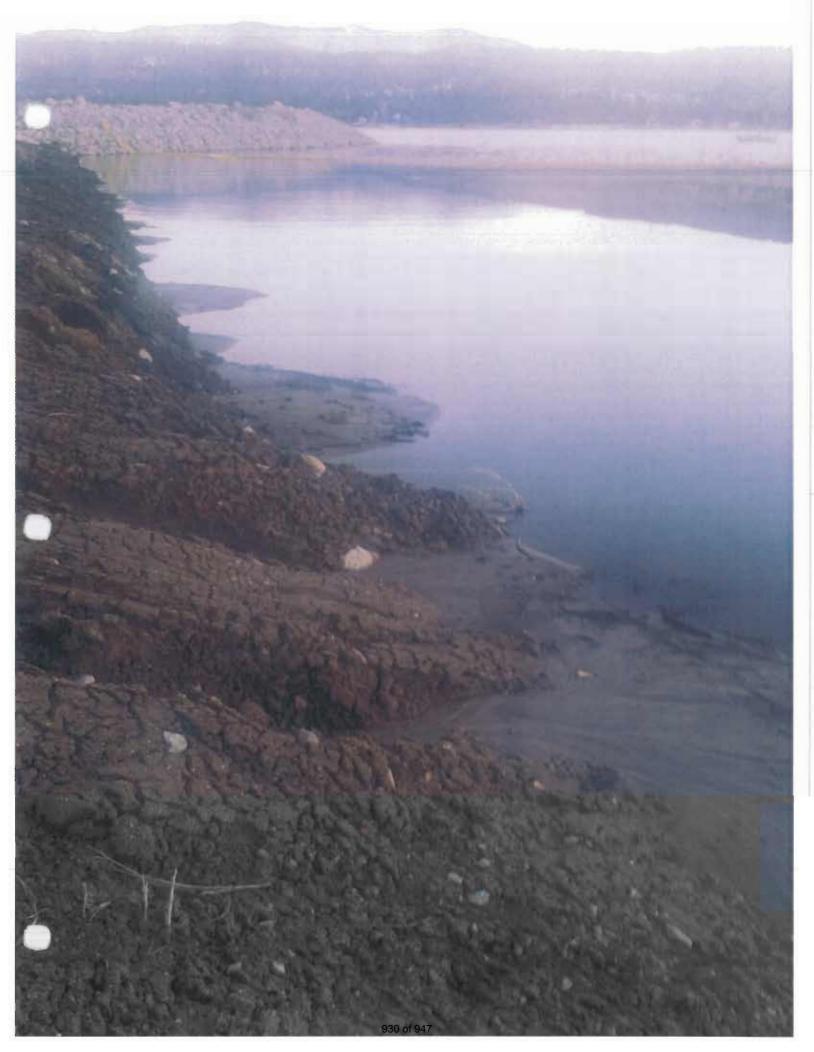


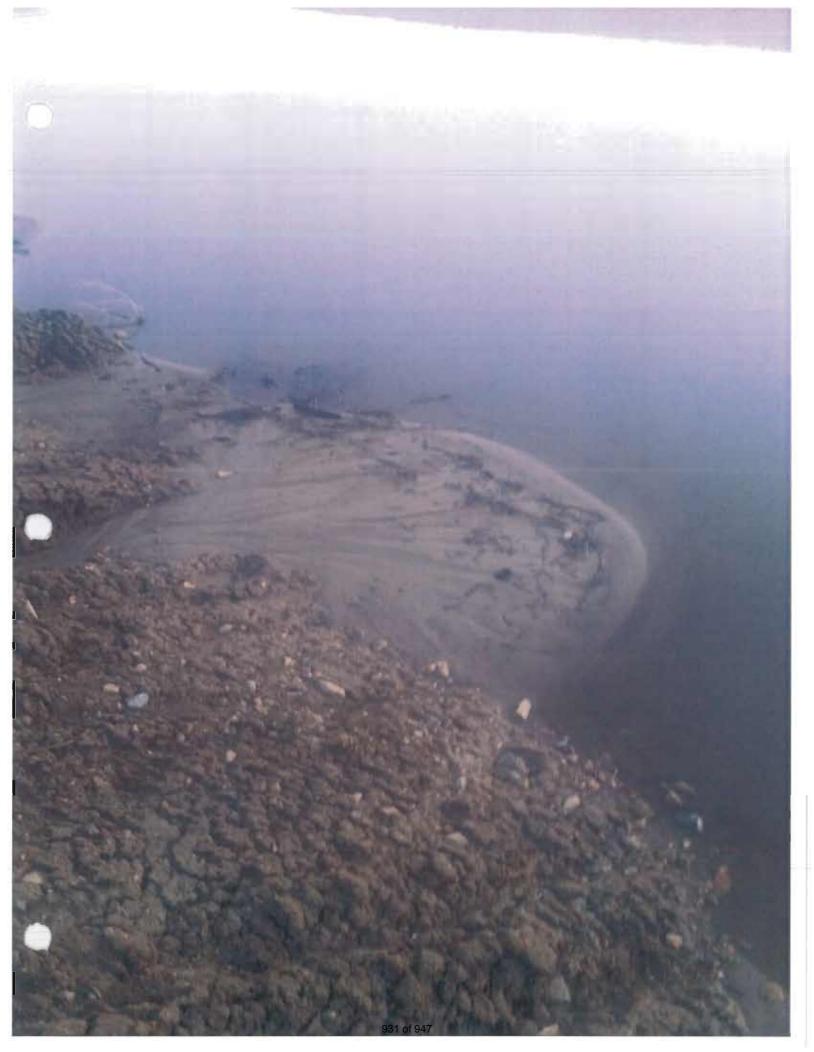




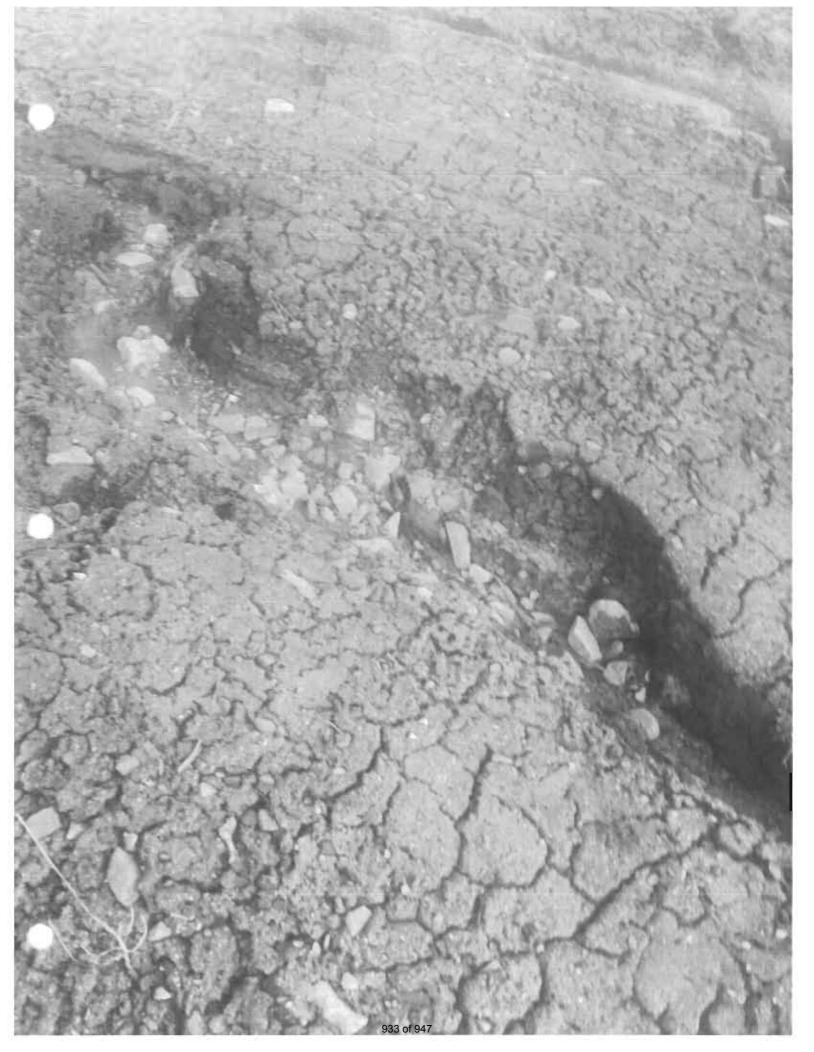








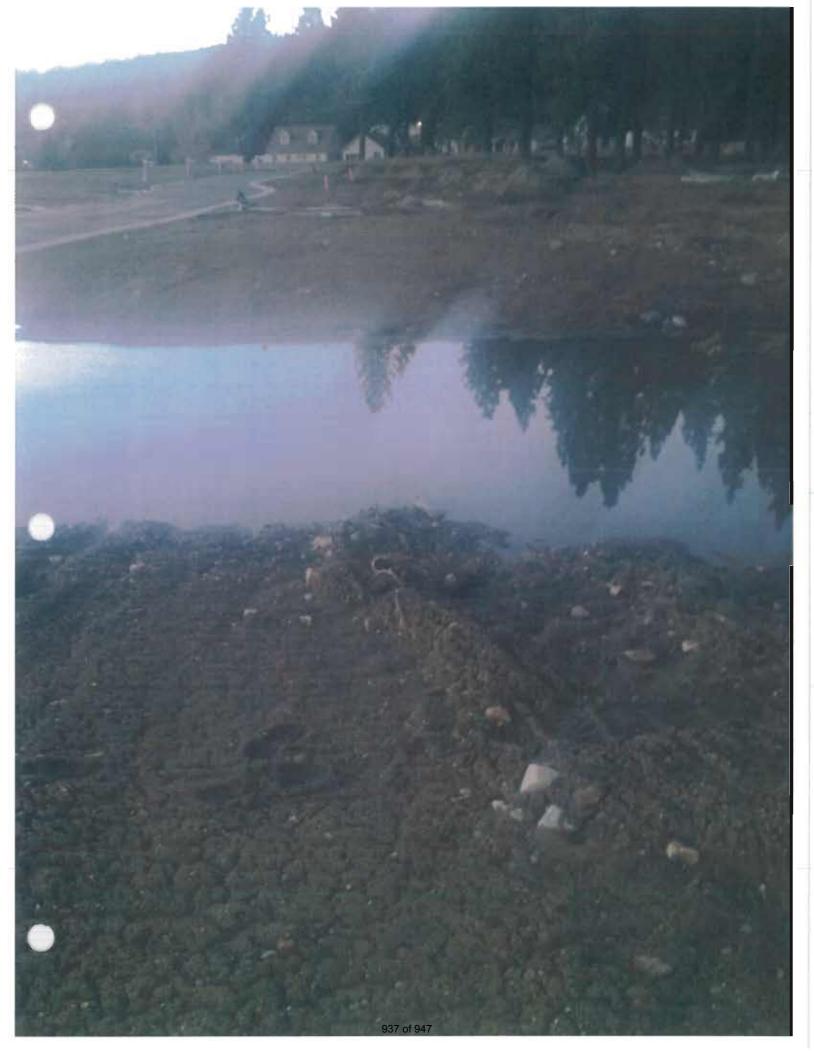


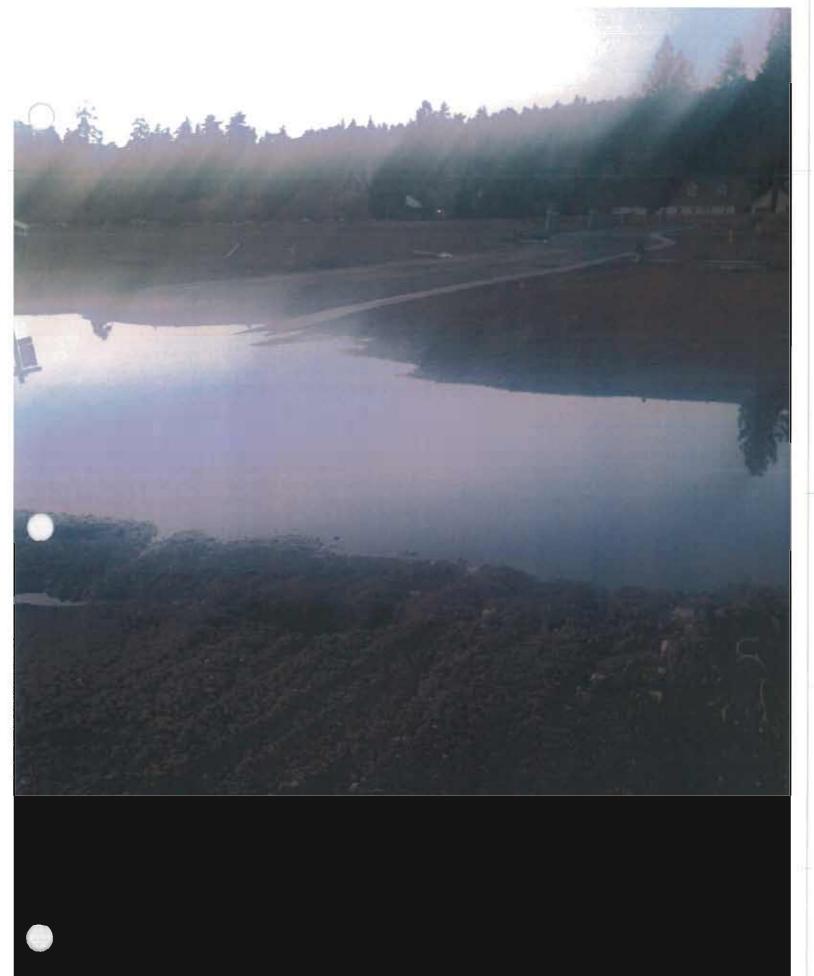


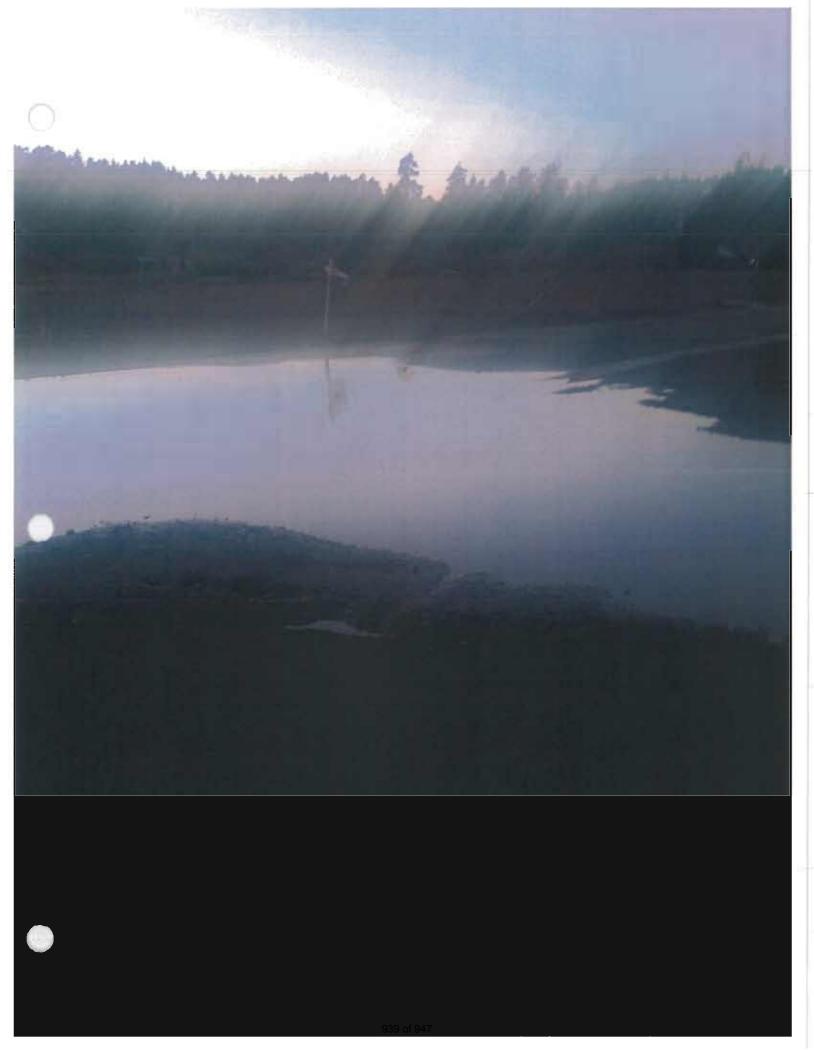












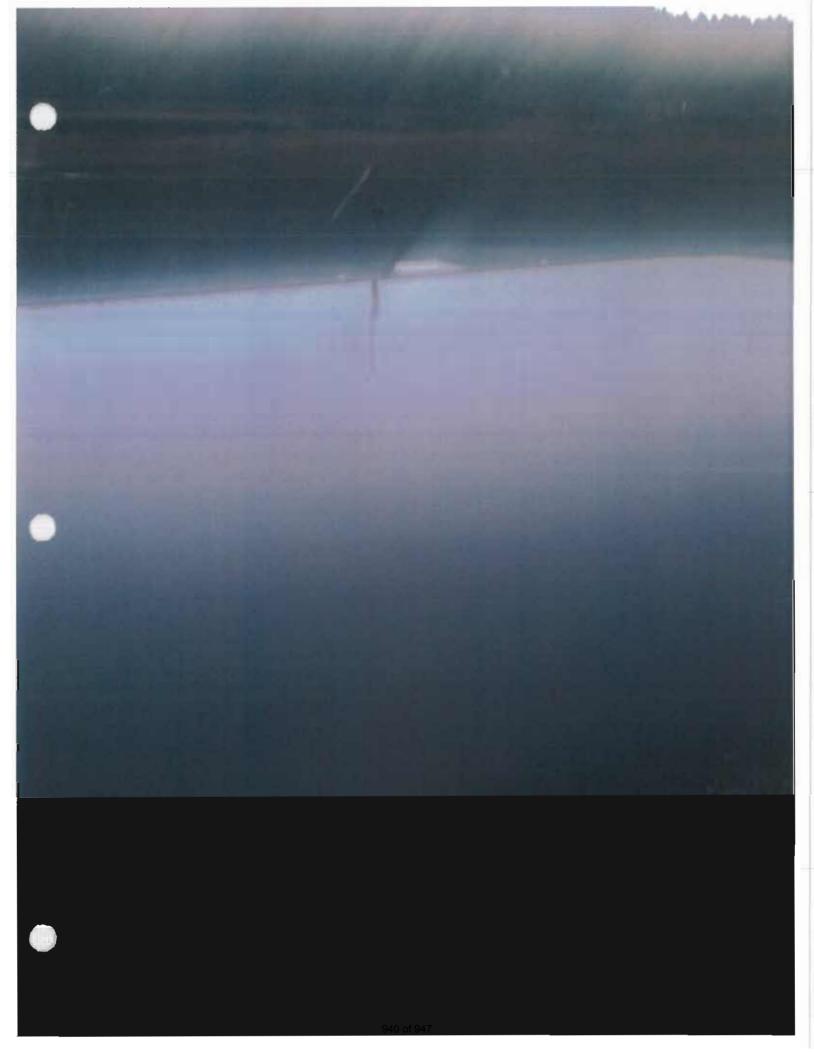
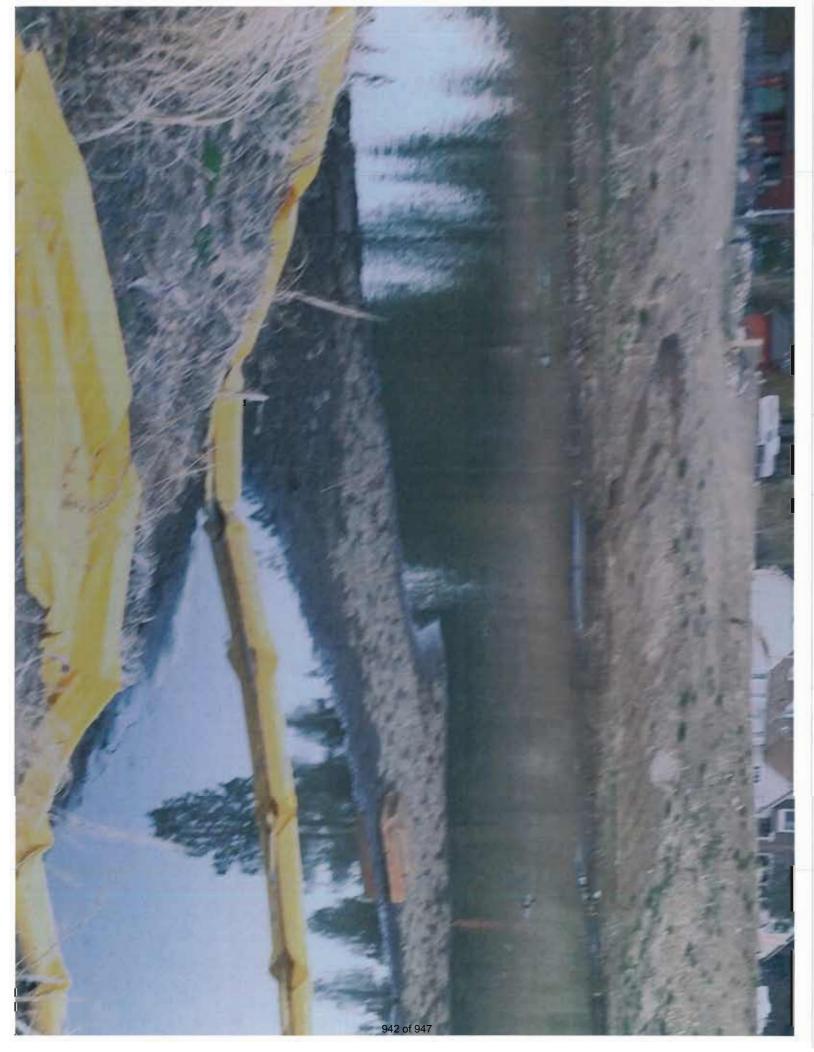


Exhibit DD



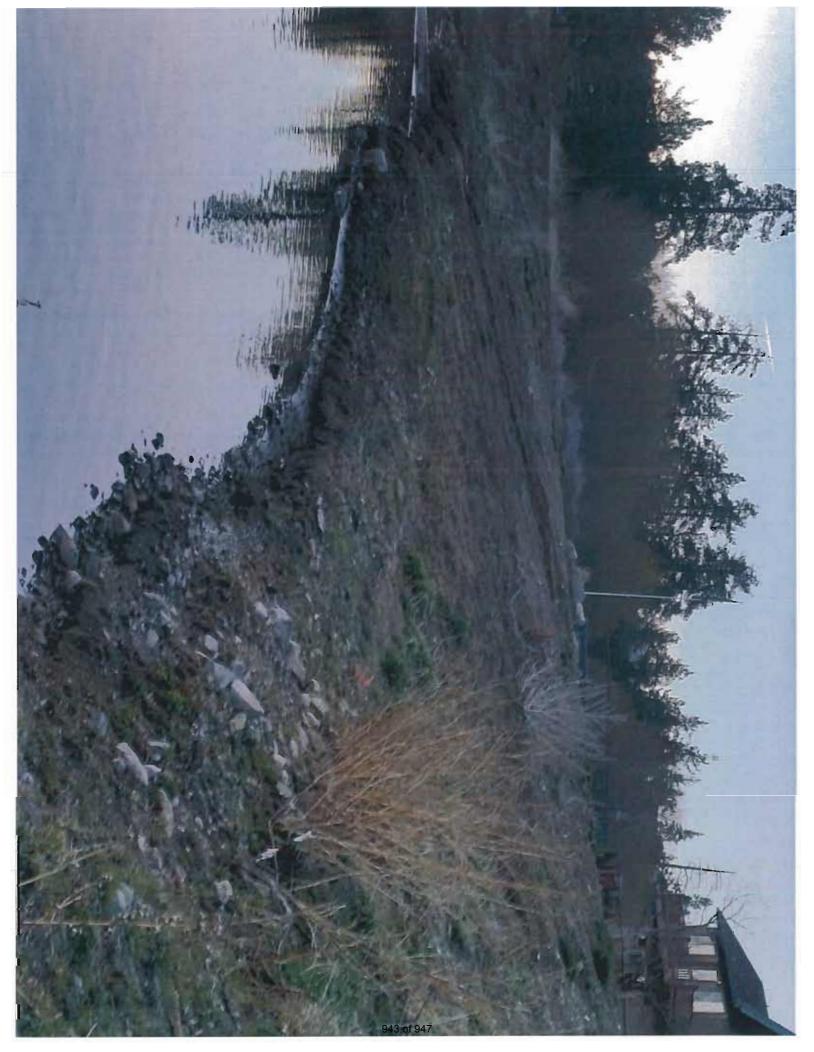


Exhibit EE

Department of Water



January 25, 2013

Jeremy Johnson Department of Public Works Land Development Division 385 E Third Street, Room 206 San Bernardino, CA 92415

RE: Recommendation for reduction of the performance bond for offsite water system infrastructure for Tract 12217.

Dear Mr. Johnson:

The Fawnskin Water System, operated by Big Bear Lake Department of Water & Power (DWP) has received several system upgrades in the past couple years, including two new wells. In addition, the DWP recently completed its 2010 Urban Water Management Plan, which concluded that customer water demand has declined in the past seven years. One of the results of these developments is the offsite water system infrastructure requirements for Tract 12217 could be modified to reflect the current water system capabilities. Specifically, constructing a new groundwater production well and being responsible for 90,000 gallons of water system storage are no longer necessary. Thus, the only remaining offsite water system requirements for Tract 12217 are 1,100 feet of 8 inch water line and a pressure reducing valve at the intersection of Mesquite and North Shore Drives.

Regarding these two remaining offsite water system improvement requirements, I have reviewed the engineer's estimate prepared by Kenneth Discenza, RCE, of Site Design Associates, Inc., and concur with the cost estimates in this document. Therefore, I recommend reducing the performance bond for offsite water system improvements for Tract 12217 to \$246,000. Feel free to contact me if you have any questions.

Sincerely,

Reginald A. Lamson, PE General Manager

> Department of Water and Power, City of Big Bear Lake 41972 Garstin Drive, P.O. Box 1929, Big Bear Lake CA 92315 • 909/866-5050 • Fax 909/866-3184 www.bbldwp.com

Reggie Lamson

From:	Reggie Lamson
Sent:	Thursday, November 14, 2013 8:57 AM
То;	'Bennett, Greg - LUS'
Subject:	RE: Marina Point TR 12217
Attachments:	20131114083548403.pdf

Good morning Greg,

Attached is the 9-25-09 Feasibility Study for Tract 12217. Since 2006 (the 9-25-09 Feasibility Study was based off of the DWP 2006 Master Plan), water usage in the Big Bear Valley has gone down significantly and new water use projections were developed in DWP's 2010 UWMP (adopted July 2012). Because the water use projections have gone down, the proposed 250,000 gallon Cline Miller Reservoir is no longer required for Tract 12217. Also, DWP constructed two new well pumping plants in 2011 and 2013, which have a combined pumping capacity to meet Fawnskin's ultimate demand at build out. The future pipeline by others shown on the attached Figure 1 was constructed by DWP in 2012. So the only infrastructure listed in the 9-25-09 Feasibility Study that is still required is the 1,100 LF of 8-inch pipeline and the 6inch PRV. I have not seen plans for these two remaining projects and I suspect the developer will not develop these plans until he is closer to constructing the initial phase of his project.

Let me know if this answers your question. Reggie

From: Bennett, Greg - LUS [mailto:Greg.Bennett@lus.sbcounty.gov] Sent: Wednesday, November 13, 2013 3:44 PM To: Reggie Lamson Subject: RE: Marina Point TR 12217

Reggie, we answered number one based on the Subdivision Map Act. We are just looking for an answer for number 2 below. Please let us know and thank you.



Gregory Bennett Staff Analyst I Land Use Services Department County of San Bernardino 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0187 T: (909) 387-3950 F: (909) 387-3223 E: Greg.Bennett@lus.sbcounty.gov

W: www.sbcounty.gov

"Our Job is to create a county in which those who reside and invest can prosper and achieve well-being,"

From: Bennett, Greg - LUS Sent: Wednesday, November 13, 2013 2:16 PM To: 'riamson@bbldwp.com' Subject: Marina Point TR 12217 Importance: High

Good Afternoon Reggie,

The County is looking to send this tract (Marina Point 12217) for a Time Extension to the Board of Supervisors on December 17, 2013.

Attached please find the two letters you sent us, one in January and the other in July, as well as the conditions of approval.

There are two questions we had:

- Does the \$246,000 represent 110% of the bonding amount, or is it 100%? Condition 60b indicates the bonding amount is 110% of the total cost. We want to make sure this is reflective of the amounts we are approving. (So, is it \$246,000 or \$271,000)
- 2. Also, because of the reduction, did the applicant submit new plans to the City? If so, who approved them and what date (we also need to know what the plan is, i.e. what it the plan officially called). This is merely for administrative reasons for the new agreement we have put together.

If there are no new plans submitted, then the one submitted on October 22, 2000, does that include the remaining work (construction of 1,100 feet of 8 Inch water line and a pressure reducing value at the intersection of Mesquite and North Shore Drives)? Could we get a copy of these plans?

Sorry for the long requests and questions. Please let me know if you have any questions or need further clarification. I left you a voice mail today at ~2 pm. I do not have voice mail so if you call back and I do not answer I will be away from my desk.



Gregory Bennett Staff Analyst I Land Use Services Department County of San Bernardino 385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415-0187 T: (909) 387-3950 E: Greg.Bennett@lus.sbcounty.gov W: www.sbcounty.gov

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