Avocet Research Associates
Wildlife Biology

Mr. Tim Haddad
Environmental Coordinator
Marin County Community Development Agency
3501 Civic Center Dr., Room 308
San Rafael, CA 94903-4157

September 7, 2005

RE: Draft Environmental Impact Report on Lawson's Landing Master Plan.

Dear Mr. Haddad,

Please accept these comments, provided in reference to the Draft Environmental Impact Report (DEIR) for the Lawson's Landing Master Plan, Marin County California, into the public record.

I will confine my specific comments to the contents of Section 4 ("Biological Resources") of the DEIR after some introductory comments regarding contradictions and inconsistencies within the DEIR that hinder a coherent discussion of the proposed project.

General comments
The lack of a comprehensive and informative description of existing conditions undermines the ability of the public to evaluate the proposal and it's various alternatives. Throughout, the DEIR omits available information on existing conditions or refers selectively to outdated information. The ecological values of the Tomales Dune system have been fully described in scoping comments appended to the Initial Study and EIR as well as publications of non-governmental organizations (Environmental Action Committee of West Marin, Sierra Club, etc.). Accurate descriptions of baseline conditions provided in those documents are ignored, understated, or used selectively in the DEIR, making it impossible to accurately evaluate potentially significant impacts.

By ascribing the conditions that have evolved under the lax enforcement of existing regulations as "existing," the DEIR attempts to render inconsequential the conditions that would have existed (and potentially still do), had those existing regulations been stringently upheld. The truth is, that despite the *laissez faire* attitude of the county and the developers, the natural dynamism of the system, though compromised, has persisted and

is still in a condition that can be salvaged if proper planning and regulation is initiated. Past violations of existing laws and regulations should not be used to perpetrate future transgressions that further degrade environmental quality.

For a rational set of alternatives to be developed, it is critical that the underlying document set forth the actual site conditions that will reasonably be expected to occur if "No Action," is taken. No action should include cessation of current transgressions rather than acceptance of them as the *status quo*. The No Action alternative is the baseline against which other alternatives are measured and for any plan to be effective, that baseline must be reliable.

Biological Resources

"*It is difficult to accurately assess the degree to which impacts to sensitive habitats can be avoided, however, because a specific footprint for each of the proposed facilities has not yet been determined, and wetlands, as defined by the Coastal Act, have not yet been determined*". DEIR's Biology section, Impact 4.13-1 (p. 4.13-15).

The key point, excerpted above, is accurately stated in the DEIR. Proper wetland determination would allow critical evaluation of potential alternatives. In its current form, the site description in the DEIR is inadequate to determine real environmental impacts and consequences of the proposed project. Background materials and technical reports were included as appendices to the Initial Study that provide information for the description to be properly informed.

To remedy the shortcomings of the DEIR, it should be recast to amplify the geomorphic-hydrologic classification of the wetlands at the site so that its resource value can be accurately characterized. The DEIR uses the simple phrase "wet meadow" (Sec. 4.13-5), to encompass an ecologically dynamic complex thereby understating its resource value..

The wildlife value and the seasonal variability of the habitats are not fully described. The dynamic nature of the wetlands—expanding and contracting—results in an episodic resource that is seasonally available. The ephemeral nature of this seasonality is responded to by wetland-dependent species whose life cycles are attuned to these episodes of hydration and desiccation. Temporal availability becomes critically important to a variety of species that have been documented using these wetlands over the years. Most (but not all) of these species are listed in the special-status plant and wildlife section, but the magnitude of their dependence on this resource is not fully recognized.

Although not current listed as a species of concern, the occurrence of Pacific Golden Plover (*Pluvialis fulva*) in the slack pond boundaries of the wetland "meadows" is the most emblematic and informative example of this periodicity and of the rarity of this unique habitat. The Tomales dune slacks are one of the few places where this arctic breeding shorebird is found in winter in North America (AOU 1983, Mlodinow 1993, Small 1994). Other shorebirds also forage in this area episodically, and these wetlands contribute to the overall biodiversity of the Tomales Bay shoreline.

The occurrence of Western Snowy Plover (*Charadrius alexandrius nirvosus*) at Tomales dunes and Tom's Point is a significant and well-documented annual occurrence that is downplayed and barely discussed in the DEIR. The scoping letter by Point Reyes Bird Observatory Research Associate Fred Hanson (2002) addresses the issue in depth and points to the relationship between human use of the site and apparent lack of nesting by snow plovers. The DEIR dismisses the plover presence and reports that, although birds were present during the nesting season, "None of these birds were nesting." A more accurate description of the circumstances would have stated that presence of snowy plovers during the nesting season is suggestive of nesting in the area, and, although no nests were found in the three site visits by the consultants, nests are notoriously hard to find. Furthermore, if plovers were not nesting, it may well be that disturbances associated with high levels of (non-permitted) human use (foot traffic in the dunes, unleashed dogs, ravens, etc.) are precluding nesting at an otherwise appropriate location.

The discussion under EQ 4.2-14 fails to address the exclusion of snowy plovers by increased and non-permitted human use of the site. Such omissions (the sparse discussion of Myrtle Silverspot habitat is another example) overlook cumulatively significant changes to biological resources.

These cumulatively (but unacknowledged) significant changes, the result of non-permitted use, are then incorporated into the "No Action" alternative creating the erroneous scenario that current conditions constitute the least compromised environmental baseline. The "No Action" alternative should consider the site's condition if regulatory procedures and permits had been assiduously enforced. If the residences on site had been removed or relocated at an earlier date and human use was never allowed to increase to current levels, what would the conditions have been? Would plovers be nesting now? Probably. Would forage plants of the Myrtle Silverspot have become established? Possibly.

As others have pointed out, in order to comply with CEQA, the No Project Alternative should assume all un-permitted development and activities being removed from the site. This includes uses lacking County, State or Federal (RWQCB, ESA, CWA) permits.

Cattle grazing in wetland habitats at the site is described under current conditions. There should be consideration within the project alternatives of eliminating grazing in wetlands and thereby improving rather than further impoverishing wetlands on the site. Destruction of wetlands can not be remedied through mitigation. The mitigations outlined in the DEIR to not compensate for wetland losses.

Many of the mitigations, or planning efforts, are deferred to the future. The ultimate environmental health of the site is dependent on the success of proposed events like the "Dune Restoration and Monitoring Plan" (4.2-62). Because the protection of resources at the site is contingent on the viability of such a plan, it should be developed and reviewed prior to approval of the Project.

Conclusion
I would like to join others to request that the DEIR be rewritten to properly characterize the site, that alternatives be considered to reduce human impacts, and that the reversal of wetland degradation be demanded by the county and other relevant agencies as a condition for the permitting of any public activities that may impact Tomales Dunes.

Thank you for your attention to this important issue and your protection of this valuable resource.

Sincerely,

Jules Evens,
Principal.

cc:
Representative Lynn Woolsey
Environmental Action Committee of West Marin

References

American Ornithologists' Union. 1983. Check-list of North American birds. 6th ed. American Ornithologists' Union. Washington, D.C.

Baye. P. 2002. A Biogeographic Assessment of Lawson's Landing. Report to Environmental Action Committee of West Marin.

Mlodinow, S. 1993. Finding the Pacific Golden-Plover (*Pluvialis fulva*) in North America. Birding 25:322-329.

Pacific Watershed Association. 2002.

Small, A. California birds: their status and distribution. Ibis Publishing Co., Vista, Ca.