Immanuel Bereket

Subject: FW: CDA Recommendation

From: County of Marin <noreply@formresponse.com>
Sent: Monday, March 18, 2024 11:21 PM
To: Sackett, Mary <Mary.Sackett@MarinCounty.gov>
Subject: Re: CDA Recommendation

You don't often get email from noreply@formresponse.com. Learn why this is important

Contact Us

Email To:	mary.sackett@marincounty.gov
Get Page URL	https://www.marincounty.gov/
To:	Mary Sackett
From:	Yoli Hickman
Sender's Email Address:	yolihickman@icloud.com
Subject:	CDA Recommendation
Message:	Hello Mary, I am writing to object to the CDA recommendations that would adversely affect Lucas Valley. We need your support to preserve Lucas Valley's character and beauty. Thank you Mary for representing us. Sincerely, Paul and Yoli Hickman 6 Blue Oak Court San Rafael, CA 94903

You can edit this submission and view all your submissions easily.

Immanuel Bereket

Subject: FW: Development Code Amendments

From: County of Marin <noreply@formresponse.com>
Sent: Thursday, March 21, 2024 9:29 AM
To: Sackett, Mary <Mary.Sackett@MarinCounty.gov>
Subject: Re: Development Code Amendments

Contact Us

Email To:	mary.sackett@marincounty.gov
Get Page URL	https://www.marincounty.gov/
To:	Mary Sackett
From:	Ginny Pheatt
Sender's Email Address:	ginnypheatt@gmail.com
Subject:	Development Code Amendments
Message:	Mary, as you know I live very close to 1501 Lucas Valley Rd and close to other sites identified for development in Lucas Valley. For this reason, I am concerned about the possible changes to the code amendments. I ask that you consider voting no on any changes to development amendments placed before the Board of Supervisors. Thanks Ginny

You can edit this submission and view all your submissions easily.

Immanuel Bereket

Subject: FW: Major concern over proposed development code amendments

From: Susan Morgan <susanemorgan@gmail.com>
Sent: Sunday, March 17, 2024 7:06 PM
To: Sackett, Mary <Mary.Sackett@MarinCounty.gov>
Cc: Kristen Brooks <kristenbrooksmd@gmail.com>; ginnypheatt@gmail.com; Kelby Jones <kelbymjones@gmail.com>; Meehyun Kurtzman <meehyun@me.com>; gervais tompkin <gervais.tompkin@gmail.com>; Julia Reinhard <Julia.Reinhard@MarinCounty.gov>
Subject: Major concern over proposed development code amendments

Dear Supervisor Sackett,

The leadership team at Lucas Valley for Responsible Growth is deeply concerned about the Marin County Planning Commission's decision to approve development code amendments proposed by the staff at Marin's Community Development Agency (CDA.) These amendments could increase the development potential of many properties up to tenfold.

Per this article in the Marin IJ, there is a "long list of neighborhoods that would be affected. In many of the areas — such as upper Lucas Valley, Santa Venetia, the hills of Sleepy Hollow, the San Rafael-Kentfield border and Marin City — the density range varies from a high of one residence per acre to a low of one per 10 acres. Eliminating the provision means the development potential would increase tenfold. 'The numbers could be huge in areas where we had previously decided development should be minimized,' [Planning Commissioner] Dickenson said."

As demonstrated in our recent fire evacuation drill, our community is not prepared nor is adequate infrastructure in place for the densities previously approved in the most recent Housing Element. Further increasing density, potentially tenfold, would compound wildfire danger for all residents of Lucas Valley. We anticipate much outcry from our community and predict that residents will feel "sold out" by the County government, including the Board of Supervisors, since a much lower number was agreed and finalized in the very recent and extensive Housing Element process.

We hope you will oppose these development code amendments which are an affront to the spirit of the Housing Element as originally proposed. While we understand that some changes may be required to comply with state laws, we believe that the proposal by CDA, which was approved by a divided Planning Commission, goes too far. Per the Marin IJ article, Commission Desser and Dickenson agree with our view.

We hope that the Supervisors will do their best to protect Marin communities from inappropriate and dangerous development that will most certainly lead to strained relationships with your respective constituents.

Would you please let us know at your earliest convenience your position on this matter and how you intend to vote? If you foresee voting to approve the amendments, can you please provide details on how you will ensure that development will not exceed the density represented in the current HE as you have assured us in past discussions?

We expect this to be a topic that will be raised by concerned residents in attendance at your public meeting with the Lucas Valley Homeowners Association on 3/25. We hope you will come prepared to answer related questions as specifically as possible.

Thank you.

Sincerely,
Susan Morgan on behalf of the LVFRG Leadership Team

Immanuel Bereket

Subject: FW: Concerning updates on housing issues and related legislation

From: Lucas Valley for Responsible Growth <lvforresponsiblegrowth@pb02.wixemails.com>
Subject: Concerning updates on housing issues and related legislation
Date: March 18, 2024 at 8:47:35 PM PDT
To: Susan Morgan <susanemorgan@gmail.com>
Reply-To: Lucas Valley for Responsible Growth <lvforresponsiblegrowth@gmail.com>

Can't see this message? View in a browser

LUCAS VALLEY FOR RESPONSIBLE GROWTH

Dear Lucas Valley neighbors,

In this newsletter, the leadership team at Lucas Valley for Responsible Growth (LVFRG) wants to call your attention to a concerning trend in housing legislation that ramped up in 2023 and is continuing in 2024. This trend will affect future housing development in Lucas Valley as well as throughout Marin and the state.

As part of the mission of LVFRG, we aim to help our community voice opposition to legislation and regulations that we believe are not in the best interest of Lucas Valley. We also will strive to partner with other Marin advocacy groups to increase voter awareness and amplify our community's concerns.

SPECIAL NOTE for Lucas Valley Homeowners Association members: *On Monday, March 25th at 6 PM our District Supervisor, Mary Sackett will hold a Town Hall at the LVHA Clubhouse to discuss county updates and housing updates. Marin County's Community Development Director, Sarah Jones and Marin Municipal Water District Director Matthew Samson will participate*. ***There will be time for Q&A. PLEASE ATTEND! It is an important opportunity to express your commitment to our community, ask questions, and voice concerns.***

Concerning Trends in Housing Legislation:
Since 2017, the California legislature has enacted over 150 housing laws, including 37 in the 2023 session. These laws and their enabling regulations, administered by the California Department of Housing and Community Development (HCD), have steadily eroded local control of housing development and imposed increasing penalties on jurisdictions that do not meet the housing allocations assigned to them by public officials. Judging by the continuing housing crisis, they have been largely ineffective, yet the legislative onslaught continues.

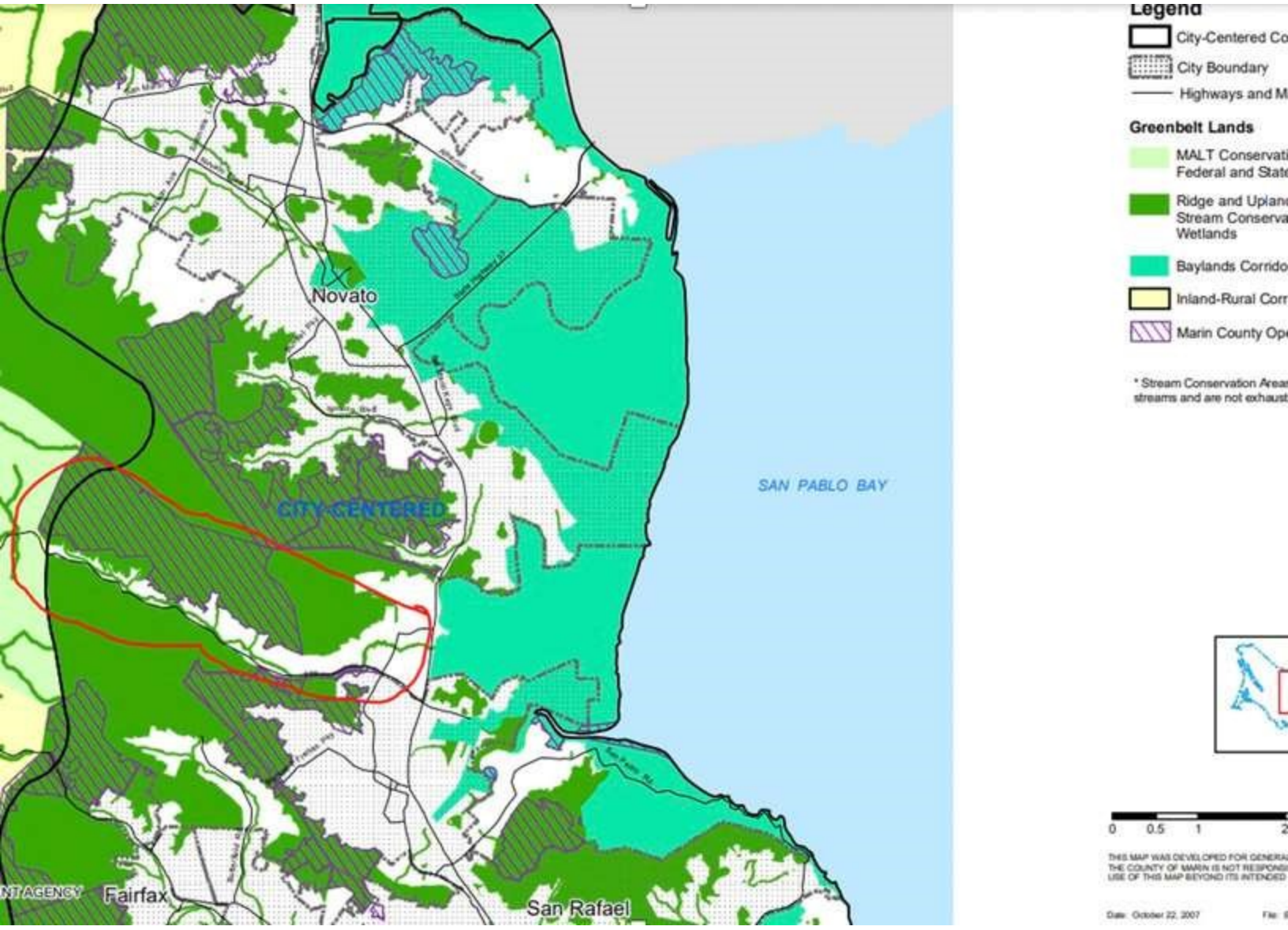
Though LVFRG supports growth in affordable housing units, after responsibly ensuring that adequate infrastructure is in place to keep all Valley residents safe and able to access sufficient municipal resources, we do not support state-wide mandates that do not offer any modifications at the community level. **We must be vigilant and make our voices heard, as more of this type of legislation is being proposed for 2024.**

Upcoming Marin Supervisor Vote in mid-April:
Marin's Community Development Agency (CDA) is recommending changes to our development code, citing recent housing legislation and the need for consistency with the Countywide Plan. Marin's Planning Commission voted 6 to 1 against recommending adoption of the current Housing Element (an element of the Countywide Plan) which the Board of Supervisors subsequently approved in

January of 2023.

The new CDA recommendations include a new set of “objective” design standards intended to replace the process of public input to project design review. **CDA’s current recommendations include the removal of a key provision limiting the maximum density (the number of housing units per acre) allowed for development in specified areas to the low end of the density range established by the Countywide Plan.**

This provision applies to areas with sensitive habitat or within the Ridge and Upland Greenbelt or the Baylands Corridor, and properties lacking public water or sewer systems (exceptions may be considered for housing affordable to lower-income households). Limiting development in these areas, including the Ridge and Upland Greenbelt areas surrounding Lucas Valley, has until now preserved the unique character of Marin. **This change would have little impact on the availability of affordable workforce and senior housing. Yet it could dramatically, and irrevocably alter the character of our community.**



The leadership team at Lucas Valley for Responsible Growth is deeply concerned about this proposal which could increase the development potential of many properties as much as tenfold. This article in the Marin IJ provides more details.

As demonstrated in our recent fire evacuation drill, our community is not prepared nor is adequate infrastructure in place for the densities previously approved in the Housing Element. Further increasing density, potentially tenfold, could create a dangerous environment for all residents of Lucas Valley.

Another CDA recommendation would increase the housing height restriction from 30 ft. to 45 ft. throughout the county, with no evidence that a three-story limit has stifled needed housing development.

All of these Development Code amendments will be on the Board of Supervisors agenda in mid-April. Please educate yourselves and voice your views on these issues.

Our hope is that the Supervisors will do their best to protect Marin communities from inappropriate and dangerous development.

HOW YOU CAN HELP

Call or email our Supervisor, Mary Sackett to express your views on this issue.

- Email Supervisor Sackett
- Call her office and convey your views to a staff member - 415 473- 7331

Contact all members of the Marin Board Board of Supervisors

- Email The Board
- Call the Board at 415-473-7331

Thank you for your ongoing attention to these issues and your help to better prepare and sustain our Lucas Valley community!

The LVFRG Leadership Team - Kristen Brooks, Kelby Jones, Meehyun Kurtzman, Susan Morgan, Ginny Pheatt and Gervais Tompkin

About LVFRG

Your street address
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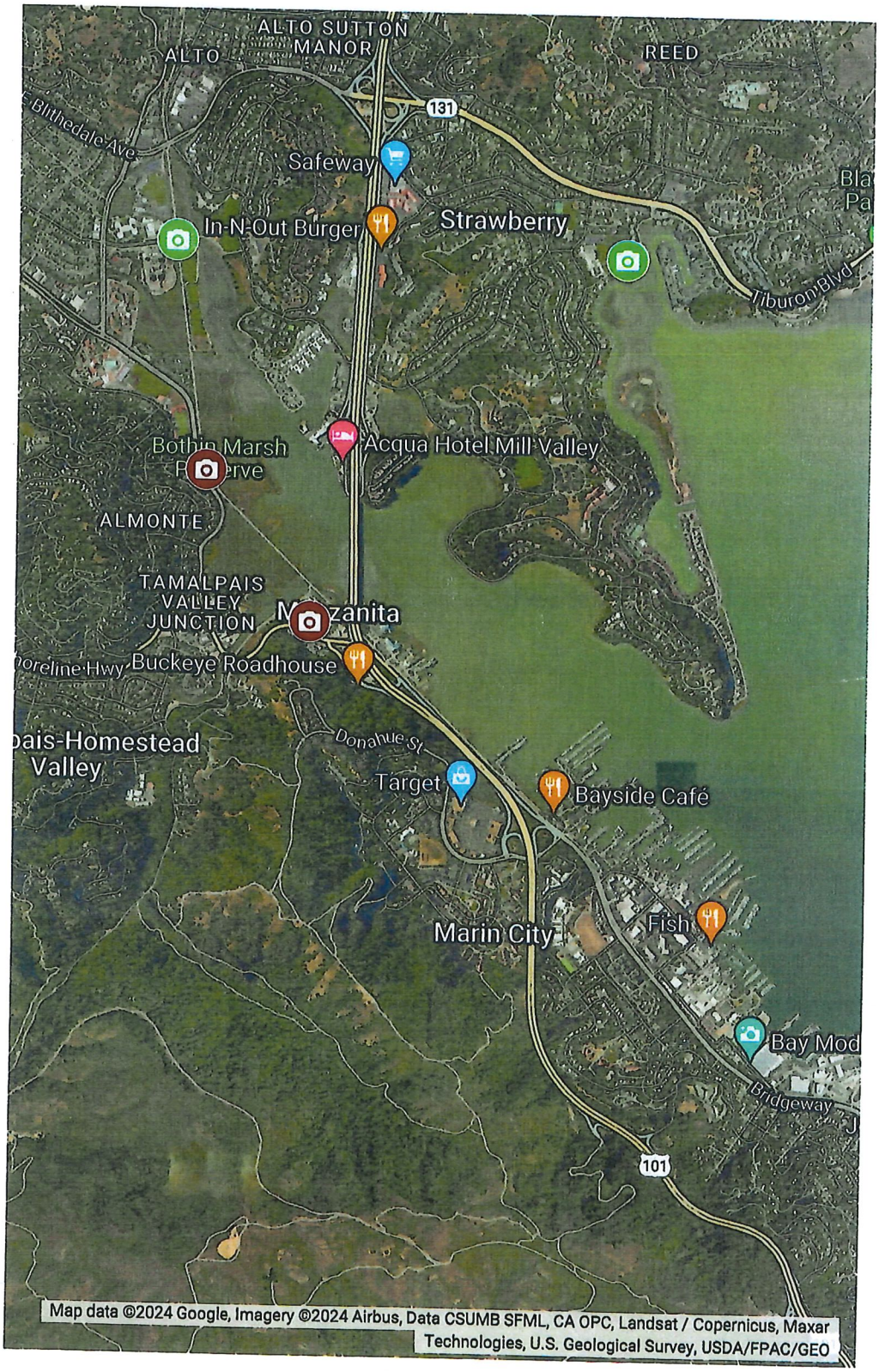
King Tide viewing in Marin

Accessible during high tides

- Bahia
- Belvedere
- Black Point
- Corte Madera
- Mill Valley
- Point Reyes Nat'l Seashore
- San Rafael (bridge)
- San Rafael (Canal)
- San Rafael (McInnis)
- Santa Venetia
- Strawberry
- Sausalito
- Tiburon
- Tiburon & Belvedere



Flooding can block access during high tides

- Bolinas Lagoon

* PRINTED 1/3/2024 FROM EMAIL SENT BY MARIN COUNTY RE: KING TIDES FLOODING

Comments and changes to proposed Marin County Code

From: jack krystal (jkrystal@yahoo.com)

To: housingelement@marincounty.org

Date: Monday, January 2, 2023 at 02:44 PM PST

1. 22.14.060/8. b. Delete ",,,subject to approval of U.S. Army core of Engineers and other trustee agencies."

2. 22.14.060/10. a. IV. Delete the proposed "Deed Restriction." It is overreaching! It is not equitable and in conflict with the Safety element requirements. Lenders and title companies will not accept it.

Best wishes and a Happy New Year,

Jack Krystal

Re: Housing site: 260 Redwood Hwy, Almonte

From: jack krystal (jkrystal@yahoo.com)

To: housingelement@marincounty.org; lthomas@marincounty.org

Date: Monday, November 21, 2022 at 05:30 PM PST

Jillian and Leelee,

I am hoping that the information and corrections I provided below were provided to the consultants -IMG- and was taken into account during the preparation of the DHEIR and what the Board of Supervisors and the public will be reviewing, before they reach a well-informed decision.

In addition, and as I pointed to in my comments during the last webinar with the consultants, the Board of supervisors, the Planning commission and the Planning Department regarding the proposed revisions to the Marin County Code - Title 22, Development Code...these

changes will have major legal and economic impacts on owners of waterfront or other property that may/will be affected by Sea Level rise and as a result of the Special Purpose and combining districts-Chapter 22.14-also refer to the contents of pages 11-64 through 11-66 in the Development Code Amendment.

The restrictions that will be imposed will not allow similar waterfront properties that are presently build out and used in Marin County to be built upon, facing cases of Inverse condemnation. Also, in Section 1V... selective property owners will be forced to give up their rights and record a Deed Restriction that will

absolve everyone else of any responsibilities or obligations caused by damage or consequences from Sea Level rise, or other related causes - this will include providing or loosing utilities, access, public infrastructure, etc. that now serves these properties. Obviously, neither a Construction nor a Permanent Lender would find this acceptable. This is overreaching and

simply WRONG!

Please pass on the contents of this communication, the prior emails and what I stated in the last webinar to the acting Planning director, the County Legal Department and the Principals of the Consulting firm that is preparing the Report so that I can receive an acknowledgement of it's receipt and what action they will take on

it subject!

Thanks, and best wishes, Jack

NEWS > ENVIRONMENT

Marin weighs zoning changes over sea-level threat

By RICHARD HALSTEAD | rhalstead@marinij.com | Marin Independent Journal

PUBLISHED: October 13, 2022 at 1:46 p.m. | UPDATED: October 13, 2022 at 1:50 p.m.

Some property owners along the bay shoreline in unincorporated Marin would face new regulations for building on their land under a proposal reviewed by county supervisors and planning commissioners.

The officials held a discussion Tuesday about changing the standards for properties that lie within the county's Bayfront Conservation Combining District zone. If adopted, the changes would mark the first time that sea-level rise adaptation measures have been incorporated into the county's development code.

The regulations would implement policies contained in a new safety element for the county's general plan, which is in the works.

The safety element, the county's first since 2007, is required by the state in tandem with the county's update of its housing element. The housing element lays out a plan for meeting the state's mandate to zone for the creation of 3,569 new residences in unincorporated areas from 2023 to 2031.

The bayfront conservation zone was created to prevent deterioration of environmental quality; ensure that potential hazards associated with development do not endanger public health; maintain options for restoring former tidal

The zone was superimposed upon areas of agricultural, residential or commercial zoning districts. Land located in the zone must conform to requirements of its primary zoning district as well as the bayfront conservation zone's rules. If there is a conflict, bayfront conservation regulations take precedence.

The regulations under consideration would apply to new development on land within the bayfront conservation zone where a minimum sea-level rise of 3.3 feet is predicted to occur between 2050 and 2070.

The rules would mandate that the lowest habitable floor area of new buildings be elevated at least 3 feet above the base flood elevation, unless there were other site specific factors that make this elevation infeasible.

Hard shoreline protection improvements would be allowed only when nature-based shoreline protection improvements and hybrid improvements had been demonstrated to be infeasible.

Property owners would be required to record a deed restriction against the property agreeing to certain stipulations. The deed restriction would acknowledge that the site is subject to sea-level rise hazards and that the property owner assumes sole responsibility for all risks of potential damage caused by sea-level rise.

The deed restriction would release the county from any claim for personal injury, property damage or inverse condemnation. It also would acknowledge that sea rise might damage public infrastructure on the land and that it might not be in the public interest of the county to repair or replace such infrastructure in the future, even if that renders the property uninhabitable.

Finally, the deed restriction would recognize that county provisions prohibit the occupancy of structures where sewage disposal or water systems are rendered inoperable, and would commit property owners to the demolition and removal of any structures on their land that the effects of sea level make unsafe.

Planning commissioner Peggy Curran and Supervisor Damon Connolly both expressed a level of discomfort regarding the proposed changes.

"I'm wondering if other communities have adopted similar language or if we're out in the forefront creating this language," Curran said, calling the changes sweeping.

"It is fair to say that on a community-wide basis that we want to prepare, we want to mitigate," Connolly said. "When incidents or disasters happen, we want to clean up collectively. How does that interrelate with the idea of putting liability on the resident or the homeowner in terms of risk?"

Connolly said more outreach needs to be done to stakeholders such as neighborhood associations and realty groups.

"It sounds like it really isn't fully fleshed out at this point," Connolly said.

Supervisor Stephanie Moulton-Peters spoke in favor of the changes.

"This is where the conversation is going," Moulton-Peters said. "At some point, government is going to have to put people on notice. If they want to improve properties in these sea-level rise areas, it's on them. I found this the most gentle way to enter into this. There will only be selected sites that will develop in this area now."

Don Dickenson, president of the Planning Commission, asked whether the Community Development Agency intends to move all of the properties subject to 3.3 feet of sea-level rise between 2050 and 2070 into the bayfront conservation zone.

"There are a lot of these 3.3-foot sea level areas that are being left out of the development code changes," Dickenson said.

He said these include the Bird Land subdivision in Tamalpais Valley and parts of Tam Junction, Corte Madera, Santa Venetia and Novato.

Tom Lai, director of the Community Development Agency, said that while there is no plan to apply the bayfront conservation zone to these properties immediately, that will eventually need to happen.

Nearly all of Tuesday's meeting, which was to review the proposed safety element update, was taken up with discussion of the proposed bayfront conservation changes. There was, however, some discussion about wildfire risk, another major concern of the safety element.

Leslie Lacko, a county planner, said most of the public comments the county has received regarding the safety element update concern wildfire risk.

Lacko said some members of the public have pointed out that Senate Bill 99, signed by Gov. Gavin Newsom in 2019, requires the safety element to identify residential developments in any hazard area that does not have at least two emergency evacuation routes.

The county plans to incorporate a Marin Wildfire Prevention Authority study evaluating fire evacuation routes, which is in the works, into the safety element eventually, but the study isn't expected to be completed before county supervisors vote on the safety element on Jan. 24.

Marin County Planning Manager Jeremy Tejirian said Tuesday that the California Department of Forestry and Fire Protection recently approved the county's safety element regardless.

"That is an important milestone," he said.

The day before the meeting on the safety element, California Attorney General Rob Bonta released a set of best practices that local jurisdictions should adhere to when assessing the potential wildfire dangers of proposed developments.

"Local governments have a responsibility to address wildfire risks associated with new development projects early in the planning process when changes to these projects can still be made," Bonta said.

Tags: environment, health, Marin County, newsletter, Real estate, Sea level rise

Richard Halstead | Reporter

Richard Halstead is a news reporter covering Marin County news, politics, health care, social services, Fairfax and San Anselmo.

rhalstead@marinij.com

Follow Richard Halstead @HalsteadRichard

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We invite you to use our commenting platform to engage in insightful

Immanuel Bereket

From: Rich Perlstein <rich@polskyarchitects.com>
Sent: Friday, January 5, 2024 10:56 AM
To: Jeremy Tejirian; Immanuel Bereket
Cc: Mike Folk; Sean Kennings; Kathleen Heimerman; Jared Polsky
Subject: Suggested revisions to the Form Based Code provisions
Attachments: A1.7 SITE SLOPE ANALYSIS WITH BLDGS 12-20-2023.pdf

Hello Jeremy, Happy 2024. We've been going through the slope analysis process described in the proposed FBC revisions, to see what the practical application of the revised development percentages might be for our proposed project at 404 San Francisco Avenue in San Anselmo. Summarizing- based on our analysis below we realize that the strict application of the FBC provisions would be very complicated and tricky. While the allowable percentage calculations are most easily applied to sites that have only a few slope categories (if the intent is to limit the percentage within each of those slope ranges individually), for our project it would be challenging, because by my calculations (still to be back-checked by our Civil Engineering team) there are 26 different regions of the varying slopes to be tabulated.

More specifically: You'll see from the color codings on our site plan that there's certainly no regularity to the geometric shapes of our different slope sections. The FBC's section on Slope Standards says several things. The first is that it talks about areas "… allowed to be developed", but doesn't clarify what "developed" means. Is it the building footprints? That plus the required entrance areas? Does it include all paved areas, or just the parking areas but not at grade walkways? Or any area that's been graded as well? then is the strict intent to calculate and then limit development for instance to the lower percentage of the 25%+ sloped areas, and each polygonal area is controlled uniquely?

In the proposed revised table:

04.050 Slope Standards

1. **Intent.** This Section provides the topography. For the purposes of

   A. Table A (Maximum Amount o developable area for sloped Section and the maximum al portions of design sites. Refe portion(s) of a site.

   B. Developments subject to Ch a maximum grade of 15 perc sloped portion(s) of a site.

   C. Only the Pocket Neighborho allowed in the >25% categor

Table 04.050.A: Maximum Am

Portions of Design Site with Existing Slope	Up to 1 acre

Development Site percentages are listed for up to one acre, then 1-3 acres, then over 3 acres. In our view the math would be ridiculous unless the site is dealt with in aggregate which is what my table suggests. Otherwise for any particular sloped segment, which development percentage should be applied, and in what ratio? And I've calc'ed 27 discrete sloped areas. Do we then need to designate what we consider the first gross acre of land, then calc the slope ranges and areas only within that acre? Then designate acres two and three, again calculating the slope ranges for those two acres? Then the remaining acreage, same again?

My working conclusion is that what looks to be a simple math exercise to apply the Table 04.050.A of the FBC for a ministerial path to approval, could be very difficult to near impossible when dealing with a larger site of varied terrain such as what we have, if we must strictly deal with each slope segment's development maximum individually. The more viable and workable application would be to aggregate all of the incremental slope/ percentage calculations in order to arrive at the net development cap on the site for purposes of limiting development based on the varied slopes. This is what the table on our attached sheet illustrates. Using these calculations the maximum development allowed on the property is about 136,678 SF. While we haven't finalized the GSF of the development, just ballparking a conservative 750 SF per average unit size (though our micro unit studios and carriage apts would be smaller) is 750 x 90 units = 67,500. Even adding up to 15,000 for the commons building and utility spaces for a total of 82,500 GSF we would still be at only 60% of the maximum potential allowed based on the aggregate property.

We're interested to see what your take might be on this approach. Thanks for your assistance.

Richard H. Perlstein AIA
Polsky Perlstein Architects
469B Magnolia Ave.
Larkspur, CA 94939
415-927-1156 x302
rich@polskyarchitects.com

S.F. Avenue- Slope Analysis per F.B.C. rules

12/20/23

AREA TAKEOFFS						
Slope Range		**0- 5.99%**	**6- 9.99%**	**10-14.99%**	**15-25%**	**>25%**
			497.00	1820.00	751.00	696.00
			6613.00	8108.00	477.00	1427.00
			3026.00	204.00	8063.00	40167.00
			404.00	154.00		368.00
			8051.00	55.00		
			1756.00	5099.00		
			482.00	1280.00		
			1730.00	2323.00		
			1190.00	493.00		
			1586.00			
Totals			**25335.00**	**19536.00**	**9291.00**	**42658.00**
Total sloped areas >6%	**96820.00**					
Site Area (GSF)	**196607.00**					
Net Site Area <6% (by subtraction)		**99787.00**				

Applying F.B.C. proposed Table 04.050.A "Maximum Sloped Areas to be Developed", calculated over the total site area:

ALLOWABLE DEVELOPMENT AREA (AGGREGATE)					
Slope Range	**0- 5.99%**	**6- 9.99%**	**10-14.99%**	**15-25%**	**>25%**
First 1 acre- allowed % development	100%	100%	100%	75%	10%
Site is 4.5 acres; use 2/9 of area of the above totals	22175	5630	4341	2065	9480
Allowable development first acre	**22175**	**5630**	**4341**	**1549**	**948**
Total allowable development based on first acre	**34642.68**				
Acres 2 and 3- allowed % development	100%	70%	50%	25%	10%
Site is 4.5 acres; use 4/9 of area of the above totals	44350	11260	8683	4129	18959
Allowable development for acres 2 and 3	**44350**	**7882**	**4341**	**1032**	**1896**
Total allowable development for acres 2 and 3	**59501.36**				
Over 3 acres- allowed % development	100%	70%	25%	10%	10%
Site is 4.5 acres; use 1/3 of area of of area the above totals	33262	8445	6512	3097	14219
Allowable development remaining 1 1/2 acres	**33262**	**5912**	**1628**	**310**	**1422**
Total allowable development based on final 1 1/2 acres	**42533**				
Total aggregate allowable development	**136678**				

POLSKY PERLSTEIN ARCHITECTS
4698 Magnolia Avenue
Lafayette, CA 94549
Phone 415 927 1156
Fax 415 927 1847
www.polskyperlstein.com

SORICH COMMONS

404 SAN FRANCISCO AVE.
SAN ANSELMO CA
AP#

PRELIMINARY

DATE	Δ	DESCRIPTION	BY

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE THE ORIGINAL AND UN-PUBLISHED WORK OF POLSKY PERLSTEIN ARCHITECTS AND MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT THE EXPRESS WRITTEN CONSENT OF POLSKY PERLSTEIN ARCHITECTS

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PRINT DATE	12/20/23
DRAWN	RP
JOB #	2116
SCALE	NOTED

SITE SLOPE ANALYSIS

SHEET

A1.7

LITTORAL DEVELOPMENT CO.

PO Box 3016
San Rafael, CA 94912
415-457-2800

May 19, 2022

Thomas Lai
Director
Marin County Community
Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Leelee Thomas
Deputy Director of Housing
Marin County Community
Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

RE: Marin County Housing Element Opportunity Site List

Tom and Leelee,

Pursuant to my April 5, 2022, letter requesting site suitability analysis of my property in Mill Valley, the "Jack Krystal Hotel Site" (APN: 052-227-09) located at 260 Redwood Hwy Frontage Road, I am following up to reiterate that Littoral Development Co. (Littoral) is committed to a 73-unit hotel project at this location, in addition to a suitable number of housing units. However, as I stated in my April letter, the Housing Element analysis for the property needs to evaluate the mixed-use hotel project to support senior, work force, and affordable housing. Without the hotel project and parking garage, as stated in the approved "Tam Valley Plan", there is no viable solution to build 'stand-alone' affordable housing. Littoral is a strong advocate for affordable housing in Marin County but the reality of this type of development is unlikely without some type of financial support to physically construct the project. The policies and environmental conditions based on only housing will not provide an accurate analysis for the project site and I urge you to reconsider the baseline development for this site as part of your Housing Element evaluation. Furthermore, I would be happy to assist the County in providing additional information for future development scenarios, such as a prior EIR and other pertinent documents provided to the C.D.A., during the prior hotel master plan applications.

The ongoing flooding due to non-operating flood gates and blockage of access to or from Hwy #1 and Hwy #101 by the Highway Patrol due to the lack of maintenance, and repairs and subsidence of nearby properties and building improvements as an impediment to the present and future residents, tenants, clients, visitors, businesses, etc., as well as a serious danger to health, safety and access for medical, fire, flooding and safety assistance from governmental officials, county agencies, fire and police departments. These conditions must be corrected as soon as possible.

Our project team will be developing a working site plan for submission as a formal application to the Community Development Agency later in 2022, we hope you keep us updated about the environmental review process for the Housing Element and how we can work collaboratively to ensure a viable outcome for this site and Marin County.

Please do not hesitate to call me at (415) 457-2800 or contact me via email at jkrystal@yahoo.com if you have questions or concerns regarding this request. I continue to look forward to the results of the Housing Element update.

Sincerely,

Jack Krystal

Jack Krystal
Littoral Development

cc: Marty Zwick, zwick@zarch.com
Sean Kennings, sean@lakassocaites.com

Immanuel Bereket

From: Jennifer Bair <jennb178@gmail.com>
Sent: Sunday, January 7, 2024 8:14 PM
To: Immanuel Bereket
Subject: Marin County Planning Codes for Garage Set-Backs
Attachments: image.tiff; 20-42 Topo 3-29-2021.pdf

Hi Manny,

On December 8th my architect, Ryan Morris, and I met with Michelle in Planning. Michelle was incredibly helpful and a pleasure to meet with and very good at explaining how County codes would be interpreted now that we have enough information to know how the codes apply to my property, 126 Belvedere Dr, Mill Valley, CA 94941. See that attached as-built of my home on the topo survey.

The reason I am writing is to address the following County Code regarding garages and setbacks:

Under Dev Code sec. 22.20.090(E)(2), garages, carports, or other structures used exclusively for storing vehicles only can be built within three feet of the front and side property lines. Here is
the Code section in its entirety, allowing limited exceptions:

What was frustrating about the outcome of that meeting are that the two codes currently dictating garage placement in the County of Marin ***have a disproportionate negative impact on lots like mine, where a majority of the slope is located in the back one-third of the lot. Because the slope of the back third of my property is roughly 67% , and is therefore "unusable" due to landslide concerns (there have been 5 on my street), making any building on the slope considerably more expensive to build, and/or made it prohibitive. Hence, the current codes negatively impact lots like mine more so than most lots in the County.*** It appears the existing code assumes that if the front half of the lot isn't greater than 20%, then the assumption is the back half isn't, allowing the property owner the ability to build on the back half of the lot and set their garage further back on the property. Unfortunately, this is not the case for me, and a few of my neighbors, who have the threat or reality of landslides with which to contend and a considerably higher cost to build on unstable soil. In addition to the codes noted below, they further penalize property owners like me because the the 25 foot front setback (which is considerably greater than all of the cities in Southern Marin (most are 15 feet)) ***doesn't take into account that the slope from my front property line to my 25 foot setback is 20%!*** Therefore, to get a moderately sloped driveway I have to set my garage further back into my lot, leaving less space for my ADU and/or home and/or creating a greater expense by clearing out more soil and building retaining walls further back into my property to house a driveway at 25 feet. For this reason, the original developer that built my home in 1949 took the cheap and easy way out, with the County's permission at that time, and set my garage back 30 feet from the street to get a 16.7% grade versus a 20% grade at 25 feet and/or doing what he should have done to begin with and sink the garage to allow for easier car access and more room on the flat section of my lot for building a moderate sized home. It is frustrating to me that the County is letting 1949 developers set the tone for our neighborhood as the methods are outdated and cheap, negatively impacting real estate values.

The first option cited below disproportionately impacts lots like mine because the County is choosing to determine the 20% slope not from the front set-back of 25 feet to the street, of which I would qualify, because the slope is 20% to my setback, but instead, the above code states from the "front property line to half way back the lot", which negatively impacts the most desirable and cost effective places to build. Why half way back vs to the setback? Particularly since a 25 foot setback is the longest setback in Marin County. As for the 2nd option, (after "or") if a developer chooses, for cost reasons, to slope the front property to the street, it doesn't show the actual 5 foot height difference between my 25 foot setback and street level, which is also unfair to property owners like myself . It is not easy to walk up or maintain a 20% slope lawn, especially as one ages, and it is expensive to put in retaining walls, which show the slope at 20% to my front setback.

One might ask, why not try for a variance given my argument above? The reason is simple, it's a lot more time and money and we were told it is highly unlikely it will pass. At age 63, I don't have the time or resources to try for a variance, particularly if it gets shot down. I don't believe, nor do I have the resources, to try to convince the County via my desire to build an ADU on my property so that I can continue to live in Marin County, that it is my responsibility. Hence, I am writing to you and your team to appeal to your logic and to see whether my position holds enough merit for you to revisit the language above in this particular code? ***There is a need for additional housing in Marin and several of my neighbors have garages that sit within three to five feet of their front setback so at some point in the Planning Dept's history, my argument must have made sense because these projects were approved.*** *In fact, when I purchased my property I visited the planning Dept and was told by a young man working at the desk that the County was more likely to approve front setback exceptions on lots like mine due to the slope.* Yet, here we are five years later and I can't believe how much things have changed. ***Hence, I am asking the County to reconsider how they word code below to accommodate all Marin County residences that have to file through the County, not just those with large lots or large flat lots. I would great appreciate if the current code can be revisited with an open mind by its creators and/ or enforcers to see, if indeed, there is merit to my argument.***

I believe the first code should read: *In any zoning district allowing residential uses, where the slope of the setback of the parcel, beginning at the street access side is 20 percent or more to the front setback as defined by that location OR, …*

One point Michelle made is that the County doesn't require covered parking to the same degree as some Marin Cities, and while that can be a good thing, there are far more car break-ins and window smashing in Marin today and the best way to prevent that is to offer residents the ability to garage their automobiles. I work in the insurance industry and I also know you can get better auto rates if you park your car in a garage. Likewise, parking in a garage lessens sun damage to the interior and exterior of your car. If the garage is attached, it also provides a safer entry into your home by being able to close the garage door before exiting your car. As a 63 year old woman living alone, safety is important to me. And, while I am within a half mile of a bus stop, and promote public transportation, which I use when commuting, I do not like leaving my automobile sitting outside when I'm not home, so to me, lessening the value of homeowners being able to construct garages on their property in a more economical way is disheartening, particularly when we pay a high price to purchase our homes and also pay high property taxes.

Warmest Regards,
Jenn

Jennifer Bair
jennb178@gmail.com
(415) 722-7886

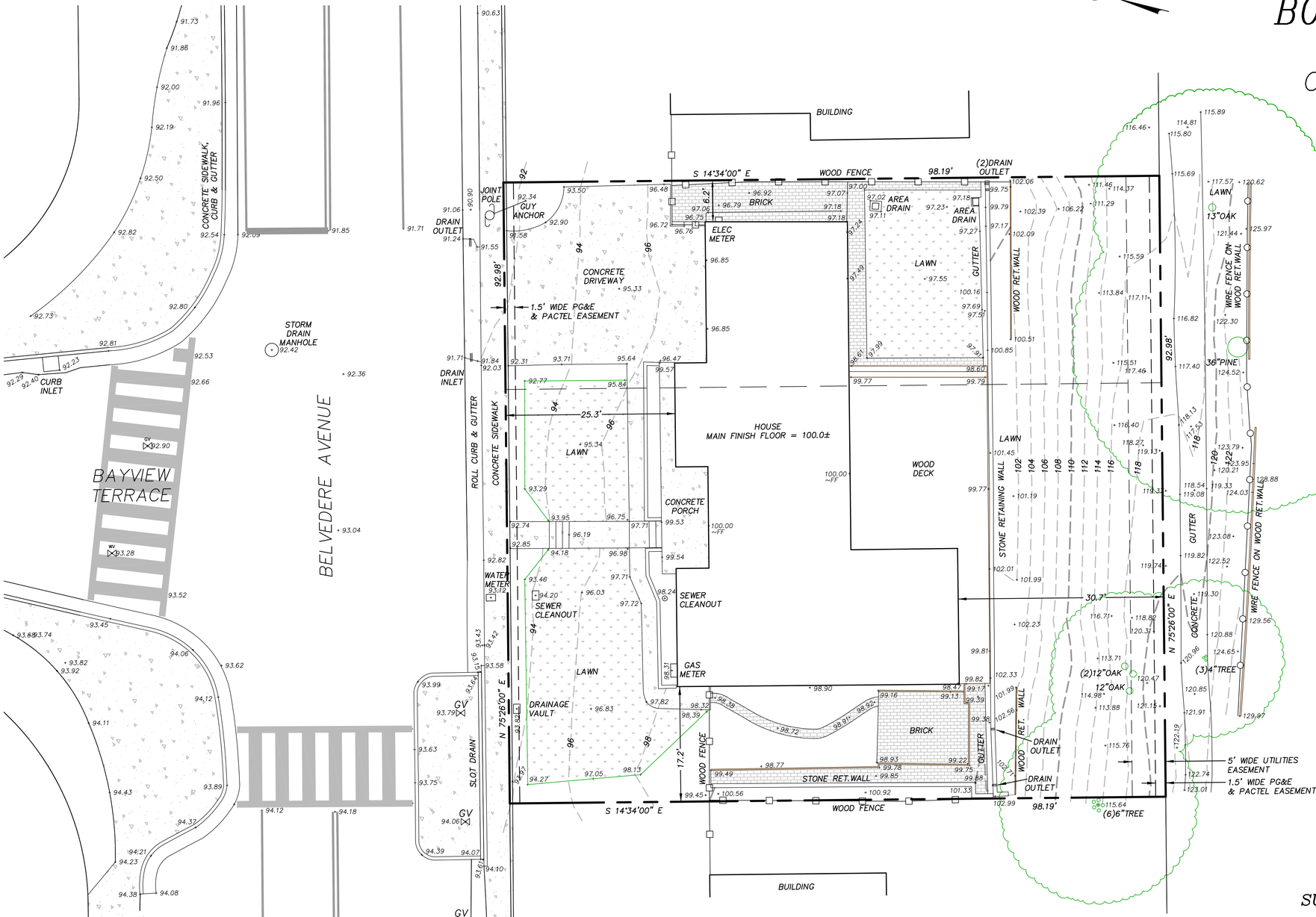
TOPOGRAPHIC AND BOUNDARY SURVEY

126 BELVEDERE DRIVE

CITY OF MILL VALLEY

MARIN COUNTY – CALIFORNIA

SCALE: 1 INCH = 8 FEET JUNE 2020



GRAPHIC SCALE

8 0 4 8 16 32

(IN FEET)

1 inch = 8 ft.

LEGAL DESCRIPTION

THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE GRANT DEED TO JENNIFER TOBY BAIR, AS TRUSTEE, OF THE JENNIFER TOBY BAIR REVOCABLE TRUST DATED SEPTEMBER 25, 2018, RECORDED OCTOBER 25, 2018 AS DOCUMENT NUMBER 2019–040174, MARIN COUNTY OFFICIAL RECORDS.

ASSESSOR PARCEL NUMBER:

043–043–28

LOT AREA:

9,130 ± SQUARE FEET

NOTES:

1. CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.
2. BASIS OF ELEVATION: ELEVATIONS SHOWN ARE ON AN ASSUMED DATUM. MAIN FINISH FLOOR ELEVATION = 100.00 FEET
3. 2' CONTOUR INTERVAL.

SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A TOPOGRAPHIC AND BOUNDARY SURVEY MADE BY ME OR UNDER MY DIRECTION AT THE REQUEST OF:
JENNIFER BAIR IN: APRIL 2020

I HEREBY STATE THAT THE TOPOGRAPHY AND BOUNDARIES SHOWN ON THIS MAP IS BASED UPON A SURVEY MADE BY ME, DYLAN M. GONSALVES, PLS 8475

ON JULY 9, 2020

I FURTHER STATE THAT TO THE BEST OF MY KNOWLEDGE ALL PROVISIONS OF APPLICABLE LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

DYLAN M. GONSALVES — 3–29–2021 DATE

LICENSED LAND SURVEYOR — DYLAN M. GONSALVES — PLS 8475 — STATE OF CALIFORNIA

DMG ENGINEERING, Inc.
30 OAKVUE COURT
PLEASANT HILL, CA 94523
PHONE: (925) 787–0463
FAX: (925) 287–8503

DMG ENGINEERING, Inc.
RESTRICTED ENGINEERING DRAWINGS

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REVISIONS

NO.	DATE	DESCRIPTION	BY

TOPOGRAPHIC AND BOUNDARY SURVEY
126 BELVEDERE DRIVE
CITY OF MILL VALLEY – CALIFORNIA
SCALE: 1 INCH = 8 FEET JUNE 2020

SHEET 1
OF 1 SHEETS
ORIG.DWG: 7–17–2020
REV.DWG: 3–29–2021
JOB: 20–42

E:\Land Projects 2006\2041BAIR\dwg\20–42 Topo 7–17–2020.dwg 3/29/2021 2:15:12 PM U

Immanuel Bereket

From: Jeremy Tejirian
Sent: Tuesday, February 6, 2024 4:51 PM
To: Immanuel Bereket
Subject: FW: Comment for February 5, 2024, Planning Commission Meeting
Attachments: Corcoran v Marin County Tentative Ruling - Opinion.pdf

Please attach this to your supplemental memo for the next hearing. Thanks.

From: PlanningCommission <PlanningCommission@marincounty.org>
Sent: Tuesday, February 6, 2024 3:05 PM
To: Immanuel Bereket <Immanuel.Bereket@MarinCounty.gov>
Cc: Jeremy Tejirian <Jeremy.Tejirian@MarinCounty.gov>
Subject: FW: Comment for February 5, 2024, Planning Commission Meeting

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From: John Bruce Corcoran <brucecorcoran@msn.com>
Sent: Tuesday, February 6, 2024 2:43 PM
To: PlanningCommission <PlanningCommission@marincounty.org>
Cc: Stephanie MoultonPeters <Stephanie.MoultonPeters@MarinCounty.gov>
Subject: Fw: Comment for February 5, 2024, Planning Commission Meeting

> You don't often get email from brucecorcoran@msn.com. Learn why this is important

Dear Planning Commission,

I am re-sending my February 5, 2024, letter to the Planning Commission to correct a grammatical error in the last sentence. Please use this updated copy for the public record.

Sincerely,

Bruce Corcoran
415-383-5340 (H)

From: John Bruce Corcoran <brucecorcoran@msn.com>
Sent: Monday, February 5, 2024 12:15 PM
To: planningcommission@marincounty.org <planningcommission@marincounty.org>
Cc: smoultonpeters@marincounty.org <smoultonpeters@marincounty.org>
Subject: Comment for February 5, 2024, Planning Commission Meeting

Bruce Corcoran

184 Great Circle Drive

Mill Valley, CA 94941

Planning Commission via E-mail: planningcommission@marincounty.org

RE: Planning Commission Meeting on February 5, 2024. Request to delay taking final action on the 2024 Development Code Amendments

February 5, 2024

On December 31, 2022, Acting CDA Director Sarah Jones was notified that the Countywide Plan amendments were problematic because they contained precedence clauses, which are unlawful. The Countywide Plan and Housing Element and community plans must be internally consistent, but the proposed text stated that when there is a conflict in standards or policies, then the Countywide Plan and Housing Element override community plans. This language is considered to be a 'precedence clause,' which court decisions have found to be unlawful because of the state law requirement that a general plan and its component parts must be internally consistent.

At a 7 ½-hour marathon Planning Commission meeting on January 5, 2023, County Planning Commissioners voted to deny the Housing Element and could not recommend approval of the Housing Element to the Board of Supervisors. Nevertheless, in a rush to meet the January 31, 2023 deadline for submitting the Housing Element to HCD, the Supervisors approved the Countywide Plan amendments and Housing Element with precedence clauses anyway at another 7-hour marathon meeting on January 24, 2023.

Consequently, on April 21, 2023, I filed a lawsuit against Marin County known as *"Corcoran v Marin County."* It claims that the Countywide Plan's use of precedence clauses is unlawful and unnecessarily strips community plans of authority and integrity by ceding local control of development to unelected County planners. My case applies to all 24 community and area plans.

The Honorable James T. Chou originally managed my case. A hearing was set for December 20, 2023, but before the case was heard it was reassigned to the Honorable Sheila Shah Lichtblau. On January 30, 2024, Judge Lichtblau issued a Tentative Ruling, (attached to this e-mail), which agrees that the precedence clauses currently in the Countywide Plan are unlawful. At the hearing on January 31, 2024, Judge Lichtblau took my case under advisement. Her final ruling is pending.

If the Countywide Plan's precedence clauses are found to be unlawful, then the Commission's proposed action to amend the Development Code in a manner inconsistent with the community plans in the County will also be

unlawful. Therefore, to avoid the potential of having to readdress this matter in the future, I respectfully ask the Planning Commission to delay taking any final action on the 2024 Development Code Amendments until Judge Lichtblau has issued a final ruling in my case.

Sincerely,

Bruce Corcoran

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/31/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301159

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: JOEY DALE

PETITIONER: BRUCE CORCORAN vs. RESPONDENT: COUNTY OF MARIN	

NATURE OF PROCEEDINGS: WRIT OF MANDATE HEARING

RULING

Petitioner's unopposed Motion to Augment the Administrative Record is GRANTED. Petitioner's Motion for Judgment under Code of Civil Procedure section 1094 is GRANTED, in part, as follows:

Within one hundred and fifty (150) days from the date of this Order, the County SHALL bring the 2023 amendments to the Countywide Plan ("CWP") and County of Marin's 2023-2031 Housing Element ("Housing Element") into compliance with statutory requirements as outlined within this Order, including but not limited to, by removing the void precedence clauses and specifically identifying the inconsistencies between the relevant documents, and identifying the method, timeframe, and funding for reconciling them.

BACKGROUND

This case concerns a facial challenge to the Housing Element and accompanying amendments to the County's general plan (known as the "Countywide Plan" and sometimes referred to herein as "CWP"). Petitioner claims that this legislation violates State law, and unlawfully overrides Community Plans. The writ seeks to challenge language in the CWP text amendments which subordinate the Community Plans to the CWP, Housing Element policies, and implementing ordinances. The gravamen of the writ is that this language constitutes an unlawful "precedence clause" under the applicable legal framework.

MOTION TO AUGMENT THE RECORD

Petitioner's unopposed Motion to Augment the Administrative Record to include the following document: General Plan Guidelines, Chapter 2, CA Office of Planning and Research (accessible at: https://opr.ca.govldocs/OPR_C2_final.pdf) is GRANTED. The document was cited in an email communication with a direct URL link containing the document to the County's planning

staff. (*Consolidated Irrigation Dist. V. Superior Court* (2012) 205 Cal.App.4th 697, 725 [a document cited in a communication submitted to a public agency citing the specific Web page containing the document may be considered readily available to agency personnel and thus part of the record for that agency's administrative action].)

REQUEST FOR JUDICIAL NOTICE

Respondent County of Marin's unopposed Requests For Judicial Notice Nos. 1-3 are GRANTED. (Evid. Code, § 452, subds, (b), (c), (h), § 453.)

WRIT OF MANDATE – MOTION FOR JUDGMENT

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." (Code Civ. Proc., § 1085, subd. (a).) A traditional writ of mandate under section 1085 is a method of compelling the performance of a legal, usually ministerial duty. (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 83-584.) "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has duty to perform; and the petitioner has a clear and beneficial right to performance." (*Id.* at p. 584 (internal citations omitted).)

When an administrative decision is reviewed under section 1085, judicial review is limited to an examination of the proceedings before the agency to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. (*Id.)*

Petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.)

Code of Civil Procedure section 1094 provides:

> "If no return be made, the case may be heard on the papers of the applicant. If the return raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.
>
> If a petition for a writ of mandate filed pursuant to Section 1088.5 presents no triable issue of fact or is based solely on an administrative record, the matter may be determined by the court by noticed motion of any party for a judgment on the peremptory writ."

This motion for judgment is brought under Code of Civil Procedure section 1094 on the basis that the writ filed presents no triable issue of fact and is based solely on the Administrative Record.

DISCUSSION

The writ seeks to challenge language in the CWP text amendments which subordinate the community plans to the CWP, Housing Element policies, and implementing ordinances. The gravamen of the motion is that this language constitutes an unlawful "precedence clause."

"A petitioner may challenge a general plan on the ground that it does not substantially comply with [the requirements in Government Code sections 65300 to 65307] by way of petition for writ of mandate under Code of Civil Procedure section 1085." (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 620, citation omitted; see also § 65751.) "Judicial review of a legislative act under Code of Civil Procedure section 1085 is limited to determining whether the public agency's action was arbitrary, capricious, entirely without evidentiary support, or procedurally unfair." (*Id.*, at p. 619-620, citation omitted.)

A claim that the adoption of a general plan amendment renders the general plan internally inconsistent "essentially raises a facial challenge." (*Id.*, at p. 621.) "This type of challenge is exacting" because it requires a petitioner to establish that the legislation is invalid in the "great majority of cases" or presents a "total and fatal conflict" with applicable law. (*Ibid.*) Moreover, "[t]he adoption of a general plan is a legislative act and is presumed valid." (*Id.*, at pp. 619-20, citations omitted.) And, "[l]ocal governments are vested with broad discretion in regulating the development and use of land." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1200.) Courts therefore "reconcile portions of a general plan if reasonably possible" (*Denham, LLC v. City of Richmond* (2019) 41 Cal.App.5th 340, 347), and "defer" to a local government's "interpretation of its own document" (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 249 [refusing to disturb a city's determination that zoning ordinances were consistent with the city's general plan].)

A court "cannot disturb a general plan based on violation of the internal consistency ... requirements unless, based on the evidence before the [governing body], a reasonable person could not conclude that the plan is internally consistent ... ." (*Citizens for Positive Growth, supra*, 43 Cal.App.5th at p. 619-620, internal citations omitted, emphasis added.)

Petitioner has the burden to show that an amendment rendered the CWP internally inconsistent. (*Denham, LLC, supra*, 41 Cal.App.5th at p. 347; *see also Haro v. City of Solana Beach* (2011) 195 Cal.App.4th 542, 550 [noting that a housing element certified by HCD "has a rebuttable presumption of validity."].)

CWP and Housing Element History and Contents

California law requires every city and county in the state to prepare and adopt a comprehensive long-range general plan for the physical development of the jurisdiction. (Petitioner's Excerpt of Record ("PER") 1625; Govt. Code, § 65300.)

The County of Marin first adopted a general plan, which it calls the "Countywide Plan" and is sometimes referred to herein as "CWP" in 1973. (PER 1625.) The most recent CWP was adopted in 2007, but has been amended several times. (PER 1617 [noting amendments in 2009,

2012, 2013, 2019 and 2023].) Most recently, the CWP was amended in connection with the County's adoption of the 2023-2031 Marin County Housing Element on January 24, 2023. (See PER 1617; Respondent's Excerpts of Record ("RER") 003728-33.) A number of unincorporated communities in the County are guided by "Community Plans." (PER 1906; see also PER 2513.) In 2012, the CWP was amended to incorporate these Community Plans as "part" of the CWP, and to note that their role was to provide specific direction regarding land use, transportation, community facilities, building design, and environmental quality, as well as issues unique to a particular community. (RFJN Ex. 4, at Ex. A, p. 2 (6/24 of pdf); see also PER 1906; PER 2513; PER 1648 [noting community plans provide "additional policy guidance"].) This description of the role of Community Plans added to the CWP in 2012 also specified that "where there are differences in the level of specificity between a policy in the Community Plan and a policy in the Countywide Plan, the document with the more specific provision shall prevail." (RFJN Ex. 4, at Ex. A, p. 2 (6/24 of pdf).)

In 2023 the CWP was amended to state that "for residential and mixed use projects where there are land use designation or development density and floor area ratio differences, the Countywide Plan shall prevail." (PER 1906.) The CWP also now states that "no provision of the Countywide Plan, including its community plans, may be applied by the County in a manner that conflicts with state housing law, or the policies and programs contained in the Housing Element and/or the ordinances implementing those policies." (PER 1645, 1648.) It further states, "[t]here are a number of community plans containing policies and programs to support implementation of the Countywide Plan. When reading, interpreting, and implementing the community plans, none of their provisions can conflict with the Countywide Plan or state housing law." (PER 1645.)

The Housing Element also discusses the role of community plans. For example, the introductory section states that even though the Housing Element is "subject to special requirements and a different schedule of updates," it "must function as an integral part of the overall general plan, with consistency between it and the other general plan elements." (RER 3742.)

The introduction also describes the relationship between the Housing Element and the over 20 "community or special area plans" in the unincorporated areas. (RER 3742-43.) Specifically, the Housing Element notes these plans "further detail the policies of the Countywide Plan as they pertain to specific areas." (RER 3742.) The Housing Element also notes, however, that many of these plans were enacted years ago, before the passage of new State requirements related to encouraging more affordable (and higher-density) housing. (RER 3743.) As a result, certain of these plans contain "goals, policies, and programs" that are different than the Countywide Plan. (RER 3743.)

At Chapter 5, the Housing Element describes in more detail the nature of these differences. Specifically, the Housing Element states that "many community plans have policies that are a barrier to multifamily housing." (RER 3870.) And in Appendix D (which addresses the County's plan to meet its obligation to affirmatively further fair housing), the County notes that certain Community Plans "exclusionary language for the development of multi-unit projects and include discriminatory language such as 'protecting community character.' " (RER 4377; see also PER 801 [staff presentation quoting exclusionary language such as "[d]iscourage any expansion of the areas designated for multi-family housing development"]; PER 3685 [introduction section of Strawberry community plan describing its "particular concern" about the "increasing number of

attached multiple residential developments."]; PER 3686 [Strawberry community plan goals section stating that the community "desires to retain a character that identifies the Strawberry area as a family oriented community" and that "if new development is to occur, it can strengthen this character by providing the traditional setting of detached single family units."] [emphasis in original].) As Appendix D notes, these Community Plan provisions "have the effect of limiting multi-unit housing." (RER 4377.)

The County asserts that it took two basic steps to address these differences. First, it added new "guidance" regarding how the County will weigh the community plan policies when evaluating them in light the State-mandated measures to encourage this kind of housing in the Housing Element. For example, the Housing Element states, ***"[w]here such conflict exists, the Countywide Plan prevails."*** (See RER 3986 (emphasis added); see also PER 2048 [same language in Countywide Plan].) The Housing Element further notes that this new "guidance" "restrict(s) the use of Community Plans where they are in conflict with additional multiunit development" in order to allow the immediate development of such units, in compliance with State law requirements. (RER 4377.) Second, the Housing Element includes programs to address and harmonize differences between the Housing Element and other planning policies, including policies in Community Plans, in the future. (See RER 4377 [Appendix D description of Community Plans noting that Housing Element includes a program to address differences with Countywide Plan].)

Precedence Clause

A precedence clause in a general plan is impermissible. This principle was discussed in *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698 (*Sierra Club*). In that case, a county had adopted the open-space and conservation elements of its general plan, and the following year adopted the land use element. Realizing that the maps that were part of each element were inconsistent in some areas, and lacking time to resolve the inconsistencies, the county included the following provision when it adopted the land use element: " 'If any conflict exists between the adopted open space and conservation elements and this land use element, this element should take precedence until the open space and conservation can be reevaluated and amended, if necessary.' " (*Id.,* at p. 703.) Although the issue was later rendered moot, the appellate court considered whether this precedence clause was proper. (*Id.*, at pp. 707–708.) The court noted that the general plan guidelines adopted by the Office of Planning and Research required all elements of a general plan to have equal legal status: " 'For instance, the land use element and open-space element cannot contain different land use intensity standards rationalized by statements such as "if in any instance there is a conflict between the land use element and open-space element, the land use element controls." ' " (*Id.*, at p. 708.) The court therefore held that the precedence clause was void as prohibited by statute, including section 65300.5. (*Ibid.*)

In *Denham, LLC v. City of Richmond*, the court again addressed the issue of a precedence clause. In that case, respondent sought to distinguish the clause in *Sierra Club* on the ground it was broader than the clause at issue, expressly elevating one element of the general plan above another. The court in *Denham* was not persuaded and found that the effect of the clause at issue was the same—that is, to cause the open-space element, as amended by the initiative, to take precedence over the land use element's designation of the property for Hillside Residential use or its description of that use. The *Denham* court saw no reason why inconsistencies known or

unknown should be treated differently, whatever the reason the drafters included the precedence clause, under *Sierra Club* it was invalid. (*Denham, LLC v. City of Richmond, supra,* 41 Cal.App.5th at p. 351.)

Here, the County acknowledges that it developed and adopted the Housing Element ahead of the January 31, 2023 deadline with the explicit acknowledgment that it contained provisions in conflict with certain provisions in Community Plans related to multi-family housing. (PER 750, 738-43; RER 3743, 3986, 4377.) To ensure that these differences did not prevent the County from beginning to address its housing obligations immediately, the Housing Element and CWP amendments include language "restrict[ing] the use of Community Plans where they conflict with additional multi-unit development." (RER 4377.)

However, the County argues the differences between the Housing Element and Community Plans do not rise to the level of creating an internal inconsistency under Section 65300.5. Further, Respondent contends that even if they did (and they do not), as a result of more recent amendments to Section 65583(c), inconsistencies are permitted as long as there is a plan, a timeline, and a funding source for addressing them. (*See Friends of Aviara v. City of Carlsbad* (2012) 210 Cal.App.4th 1103, 1112-13; § 66754.) The County asserts that it has met this requirement because the Housing Element includes programs committing to do so. (See RER 3986-87, 3992, 4377, PER 1925, 1926, 1928, 1929, 1963, 2149; see also PER 1955, 1956, 1981, 2169.)

In summary, the County contends the Housing Element and CWP amendments appropriately acknowledge the existence of, and include measures to address, inconsistencies between the Housing Element and Community Plans.

In *Friends of Aviara*, the city adopted a revised housing element which identified an inventory of parcels which would be suitable for low-cost housing and a number of limitations in the land use element of the general plan which the city would change in order to permit the identified parcels to be developed as low-cost housing. The trial court determined that the revised housing element could make such proposed changes in the land use element, so long as the city adopted a timeline for making the changes. (*Friends of Aviara v. City of Carlsbad, supra,* 210 Cal.App.4th at p. 1106.) In that case, the Court of Appeal held that the Government Code expressly contemplates that in meeting its housing obligations a municipality will need to alter existing land use regulations, including existing limitations in other elements of an adopted general plan and that inclusion in the revision of a housing element of proposed changes to other land use regulations in a general plan was expressly contemplated by the Legislature and permitted on the condition the municipality sets forth a timeline for adoption of such proposed changes. (*Id.*)

The *Aviara* court explained: "Of particular concern to us in resolving Aviara's claims on appeal are portions of section 65583, subdivision (c), which require that a municipality adopt a program of actions the municipality will take to implement the policies and objectives of the housing element. Section 65583, subdivision (c) requires that a housing element contain: "A program which sets forth a schedule of actions during the planning period, each with a timeline for implementation ... that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls.... In order to make adequate provision for

the housing needs of all economic segments of the community, the program shall do all of the following:

'(1) Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning.... [¶] ... [¶]'

'(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. [¶] ... [¶]'

'(7) Include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals.'"

The Court found that the requirement that the housing element set forth "the means by which consistency will be achieved with other general plan elements" directly expresses the Legislature's understanding that, as is the case here, policies adopted in a housing element as a method of providing a defined number of housing units will almost inevitably create inconsistency with land use limitations set forth in other elements of a general plan. It is of course significant that this expression of the Legislature's understanding that inconsistencies will arise comes within the context of a specific provision that requires the municipality set forth a program, including a timeline, for resolving such inconsistencies. (*Friends of Aviara v. City of Carlsbad, supra,* at pp. 1110–11.)

Having reviewed the Excerpts of Record cited by both parties, the Court finds as follows: The 2023 CWP amendments and Housing Element create inconsistencies with existing Community Plans *and* contains a void precedence clauses. Instead of specifically identifying these inconsistencies and identifying the method, timeframe, and funding for reconciling them, the County relied on the improper precedence clauses to avoid them. These broad precedence clauses apply to all inconsistencies, known and unknown, those which arose out of attempts to develop more housing and those which did not, etc. This is improper. To the extent the County asserts that they have included programs (and funding) to reconcile inconsistences, the Court finds that those cited by Respondent are too vague and indefinite to satisfy section 65583, subd. (c)'s requirements. Many of them merely note "Existing Budget and May Require Additional Grants and Revenue" and "Completion of this task is dependent on acquiring additional funding." This failure to substantially comply with section 65583 coupled with the reliance on an improper precedence clause presents a total and complete conflict with applicable law. Accordingly, the Motion for Judgment under Code of Civil Procedure section 1094 is properly granted.

Remedy

Having found that the amendments contain unlawful precedence clauses and fail to meet section 65583, subd. (c)'s requirements, the parties disagree over which remedies are available.

Respondent contends that Petitioner's sole remedy is a writ ordering the County to commit to address such inconsistencies and a timeline for doing so. Petitioner seeks a writ of mandate "to set aside the County's Project approval until the County…[has resolved] internal inconsistencies within the CWP without the use of presence clauses." The law favors Respondent's position. (*See Denham, LLC v. City of Richmond, supra,* 41 Cal.App.5th at p. 353 [Once the trial court found that the general plan, as amended, violates section 65300.5's requirement of internal consistency [due to void precedence clause], it should have ordered the city to bring its general plan into compliance with statutory requirements]; *See also Friends of Aviara v. City of Carlsbad, supra,* 210 Cal.App.4th at p. 1113 [The trial court acted properly in requiring that the city adopt the timeline required by section 65583, subdivision (c). The trial court was not, as Aviara argues, required to order that the city vacate its adoption of the revision and wait until the land use elements could be amended before addressing its housing obligation].)

Accordingly, the Court ORDERS as follows:

Within one hundred and fifty (150) days from the date of this Order, the County SHALL bring the 2023 amendments to the CWP and Housing Element into compliance with statutory requirements as outlined within this Order, including but not limited to, by removing the void precedence clauses and specifically identifying the inconsistencies between the relevant documents, and identifying the method, timeframe, and funding for reconciling them.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2024 is as follows:
Zoom link for Courtroom H CIVIL 160 781 1385 passcode 082614
Meeting ID: 160 781 1385
Passcode: 082614

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

From: Greg Stepanicich <gregstepanicich@gmail.com>
Sent: Wednesday, February 7, 2024 5:07 PM
To: Jeremy Tejirian <Jeremy.Tejirian@MarinCounty.gov>
Subject: Wording Questions

Hi Jeremy,

I have the following two questions concerning language in the proposed Development Code amendments:

1. In Section 22.32.188(D)(7)(i), rather than referring to the density allowed on the parcel by the "local government" should we instead refer to the density allowed on the parcel by the "Land Use Element of the Communitywide Plan."

2. In Section 22.64.020 that refers to the three types of Housing Compliance Review applications, should Type I refer to "Development proposed in a HOD combining district, under the regulations of the Marin County Form Based Code? My understanding is that the FBC applies in all HOD combining districts or does it apply only if a Form Based combining district is also designated for the subject parcel? Stated another way is the FB combining district layered on top of the HOD combining district?

Next week, I will be on vacation in Steamboat Springs. When I return I would like to schedule a meeting with you at your convenience as I have some questions on the 1501 Lucas Valley project. In particular it would be helpful to review with you a plan or map showing how the development relates to the topography of the site. I have found this difficult to figure out from the plans shown on-line.

Thanks, Greg