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