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***Marin County Housing Element
Supplement to the 2007
Countywide Plan EIR***

***Final
Supplemental Environmental
Impact Report***

***Response to Comments to the
Draft Supplemental Environmental
Impact Report AMENDMENT***

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY

State Clearinghouse No. 2012072028

JUNE 2013

MARIN HOUSING ELEMENT FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT RESPONSE TO COMMENTS AMENDMENT

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INTRODUCTION

The *State CEQA Guidelines* requires that the lead agency (Marin County) prepare and certify a Final Environmental Impact Report (EIR) that includes responses to comments on the Draft EIR before considering a project for approval.¹ The lead agency may provide an opportunity for review of the Final EIR by the public or commenting agencies, and this review should focus on the responses to comments on the Draft EIR, in accordance with *State CEQA Guidelines* Section 15089.

The lead agency must, however, provide each public agency that commented on the Draft EIR with a copy of the lead agency's proposed response to that agency's comments at least ten days before certifying the Final EIR (see Public Resource Code Section 21092.5). Lead agencies are not required by Public Resources Code Section 21092.5 to provide precertification responses to individuals and organizations that commented on the Draft EIR, although they may choose to do so.

The Marin County *Environmental Impact Review Guidelines* do, however, provide for a minimum ten-day period for review of the Final EIR prior to any action to certify it. The County's guidelines state that the review of a Final EIR shall exclusively focus on the adequacy of the response to comments on the Draft EIR. A separate public hearing to receive testimony on the recommendation to certify or certification of a Final EIR shall not be required. Written comments received on the Final EIR response to comments within the review period deadline shall be considered, together with any written or oral response from staff or the EIR preparer, at the time action is taken by the recommending body and by the decision making body prior to certifying the Final EIR.

Marin County prepared, and on April 29, 2013 circulated, the *Marin County Housing Element Supplement to the 2007 Countywide Plan EIR Final Supplemental Environmental Impact Report—Response to Comments to the Draft Supplemental Environmental Impact Report*. A notice of availability of the Final EIR for review, and notice of the public meeting of the Planning Commission to consider a recommendation for certification of the Final SEIR was published and began a 19-day review and comment period on the Final SEIR, which ended on May 17, 2013.² In accordance with the County *Environmental Impact Review Guidelines* summarized above, written responses to comments received during the 19-day review and comment period have been prepared. These responses address issues raised regarding the Final SEIR Response to Comments. These written comments and responses present amplifications, clarifications and / or additional information which in some cases may result in minor and insignificant modifications to the SEIR. They do not, however, raise new or substantially more severe significant impacts or new mitigation measures or alternatives not considered in the SEIR and do not require recirculation for further review and comment in accordance with *State CEQA Guidelines* Section 15088.5. The written responses together with the comments are incorporated as a minor amendment to the Final SEIR.

¹ In this situation a Supplemental EIR has been prepared. The *State CEQA Guidelines* and the Marin County *Environmental Impact Review Guidelines* are the same for a Final Supplemental EIR as for a Final EIR.

² The initial comment period was from April 29, 2013 until 4:00 PM on Monday May 13, 2013. In response to several requests for a time extension, the comment period was extended to 5:00 PM on Friday May 17, 2013.

PERSONS COMMENTING

Marin County received a total of 127 letters and other communications (such as emails) during the 19 day review and comment period. A complete list of the 127 letters received is in the Appendix. On the list in the Appendix each letter is numbered, the commentator's name and affiliation if any is given, and each letter is classified into one of four groups (or a combination of one or more groups) as follows:

- Request for time extension (**Time Extension**)
- Comment on the adequacy of the Response to Comments (**EIR**)
- Comments on the merits of the Draft Marin Housing Element (**Merits**)
- In several situations the commentator submitted a duplicate of a letter already submitted or added his or her name to a form letter (**Form Letter**)

Comments That Do Not Raise Issues Related to Adequacy of Previous Responses

As noted above, and in the Appendix, several of the letters simply requested a time extension for review of the Response to Comments, were a form letter, or were comments regarding the merits of the Marin Housing Element. In addition several of the letters provided comments on Plan Bay Area.³ Plan Bay Area is an integrated long-range transportation and land-use/housing plan for the San Francisco Bay Area. It includes the Bay Area's [Regional Transportation Plan](#), which the Metropolitan Transportation Commission (MTC) updates every four years, and the Association of Bay Area Governments' (ABAG's) [demographic and economic forecast](#), which is updated every two years. Plan Bay Area is a separate project that is being prepared and reviewed under CEQA by different lead agencies, and is not a part of the *Draft Marin County Housing Element*.

State CEQA Guidelines section 15088(c) states that the focus of the responses to comments received on an EIR shall be on the disposition of significant environmental issues. Responses are not required to comments regarding the merits of the project. Comments on the merits of the project will be forwarded to the Marin County decision makers for consideration prior to taking action on the *Marin County Housing Element*.

Furthermore, as discussed above, the Marin County *Environmental Impact Review Guidelines* state that the review of a Final EIR shall focus exclusively on the adequacy of the response to comments on the Draft EIR. Therefore, specific responses need only be provided to comments raising concerns about the adequacy of responses presented in the Final SEIR regarding the comments on the Draft SEIR.

Where comments on the merits of the *Marin County Housing Element* are raised, the comment is noted for consideration by the Marin County decision makers during the review of the proposed project, following certification of the SEIR. If a comment raises a topic unrelated to the adequacy of the previous responses in the Final SEIR, it is also noted for consideration by the County, but no response is required. The intent of this approach is to recognize the comment, so it can be considered

³ *Draft Plan Bay Area*, Association of Bay Area Governments and Metropolitan Transportation Commission, March 2013.

in its proper context, and to focus the Amendment’s responses on comments regarding the environmental review process as provided for under County guidelines. Many of the comments express opinions about aspects of the *Marin Housing Element* and, thus are included in the Final SEIR and this Response to Comments Amendment to the Final SEIR for consideration by Marin County decision makers.

Comments Reviewed in this Addendum

This Addendum focuses on those letters that raised comments on the adequacy of the response to comments on the Draft SEIR. The letters included here are as follows:

Letter Number	Author
19	Reed and Margaret Kathrein
20	Riley Hurd III, Ragghianti / Freitas,
22	Ann Fromer Spake
28	Richard Grassetto , Grassetto Environmental Consulting / Patricia Jeffery, Placemakers
53	Deana Dearborn
72	Jessica Middleton
83	Lisa Culbertson Simmons, Organized Residents of Marinwood
101	Rachael Koss, Adams, Broadwell, Joseph and Cardozo,
106	Thomas and Susan Monahan, Lucas Valley Ranch Capital Partners LLC
118	Tenley Foran
124	Bruce Carmendelle, Lucas Valley Estates Homeowners Association
125	David Schnapf, Marin Conservation League
126	John Rojas, Mont Marin San Rafael Park Neighborhood Association
127	Justin Kai, Organized Residents of Marinwood

RESPONSES TO COMMENTS

All comments received that address the adequacy of the responses to comments contained in the Final SEIR are presented in the following pages. The original letters are reproduced and comments are numbered for referencing with responses. Some responses refer readers to other comments or responses in this section, or to the pages in the *Response to Comment to the Draft SEIR* where specific topics are discussed. As stated in the Introduction, in several situations a commentor submitted a duplicate of a letter already submitted or added his or her name to a form letter. As appropriate, these commentors are noted under the appropriate communication.

Reed and Margaret Kathrein

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San Rafael, California 94903
Telephone: 510/725-3030
Reed.Kathrein@gmail.com

May 14, 2013

VIA EMAIL

Jeremey Tejirian
Environmental Planning Manager
Community Development Agency
envplanning@marincounty.org

Re: Comments to the 2012 Draft Marin County Housing Element Final Supplement to the 2007 Countywide Plan Final Environmental Impact Report (“SIER”)

Dear Mr. Tejirian:

These comments are in addition to the comments we sent to the Community Development Agency on February 11, 2013, and the February 19, 2013, and responded to in the Final Supplement to the Final Environmental Impact Report. Those comments are incorporated by reference as comments to the Final SEIR.

First, we appreciate the attempt to address our comments, but for the most part we find them non-responsive, circular or unintelligible. We therefore repeat our comments as unaddressed, and continue to find the Final SEIR inadequate.

1 We repeat: the Final SEIR provides an incomplete analysis and discussion of the conflicts between the Housing Element, the proposed new Affordable Housing Combined Zoning District (“AH Zoning District) and the selected sites and the primary principles of the Countywide Plan. As confirmed by your response to our comments, there is no such analysis with respect to the conflicts of each of these to the Countywide Plan Guiding Principles.

To respond that affordable housing is one of the Countywide Plan principles does not mean that all other principles can be ignored. The impact of departing from each principle should have been analyzed and addressed.

To respond that each site will be analyzed latter, and have a further EIR process, fails to provide the County with an analysis of the cumulative impacts and effects before approving the 2012

Rachel Warner
May 14, 2013
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Housing Element. Before the County goes down the road of approving an ad hoc zoning district the County and its residents should understand the cumulative impact that it could represent.

The Final SEIR's failure to address cumulative impacts is representative of the worst kind of "planning." In reality, there is no plan but convenience and the present whim of three supervisors. This hardly fulfills the 2007 Marin Countywide Plan statement---"*The needs of the future must not be sacrificed to the demands of the present.*"

The Final SEIR continues to fail to address those conflicts with the Guiding Principles and analyze the impacts of ignoring them. There are always choices to be made. Absent addressing the differences between following the other principles and the impacts of not following the principles, the Supervisors have insufficient information to make an informed decision.

Primarily the SEIR fails to analyze the single or cumulative impacts of adding a new AH Zoning Districts capable of being plunked in anywhere in Marin County at the whim of three Supervisors, without due regard to the other Guiding Principles and policies of the Countywide Plan.

The Guiding Principles set out in the 2007 Countywide Plan, which are not addressed or analyzed in the SEIR with respect to the adding AH zoning anywhere in the Countywide Plan, include:

- Lowering greenhouse gases;
- Protecting and restoring open space, wilderness, and damaged ecosystems, and enhance habitats for biodiversity;
- ***Reducing dependence on single occupancy vehicles, conserving resources, improving air quality, and reducing traffic congestion;***
- Providing and maintaining well-designed, energy efficient, ***diverse housing close to job centers, shopping, and transportation links;***
- Promoting ***infill development***, and reuse and redevelop underused sites.

The Countywide Plan also seeks to reduce out county's "*ecological footprint through strategic infill that supports affordable housing for members of the workforce at selected mixed-use locations near existing jobs and transit...*"

Though obvious that the Draft Housing Element does not meet any of these principles, the Final SEIR is silent on how the Draft impacts these goals, and silent on the potential cumulative impact of plunking down affordable housing anywhere in the county in any quantity at anytime.

The Final SEIR fails to contain a full analysis of individual and cumulative impacts of creating an *ad hoc* AH Zoning District where intense housing can be placed anywhere in the County, *and compare* those impacts to the impacts of placing such districts in those locations identified in the 2007 Countywide Plan as appropriate for affordable housing, namely--- areas of in-fill, redevelopment, or close to job centers, shopping, and transportation links.

2

Thus, the Final SEIR should have analyzed and compared the conflicts of *ad hoc* AH Zoning Districts (and each proposed site individually and cumulatively) to the 2007 Guiding Principle that would restrict such zoning restricting to ***areas of infill and redevelopment and close to job centers, shopping, and transportation links***, or areas currently designated for medium to high density residential land uses (Town Center), including:

- A comparison of the cumulative air pollution created;
- A comparison of the cumulative run-off pollution created, and impact on streamside conservation;
- A comparison of the additional cumulative costs of providing public transportation;
- A comparison of the cumulative impacts on recreation, including biking, hiking and other outdoor activities;
- A comparison on the cumulative increase of the number of vehicles required and the traffic impacts;
- A comparison of the cumulative impacts of light pollution on existing residential neighborhoods and and designated land uses ;
- A comparison of the cumulative impacts on aesthetics, including the aesthetics of putting high density multi-story housing in already built up by one or two story single family residences, and the design elements of those residences;
- A comparison of the cumulative impacts of increased noise to residences and agricultural uses in the vicinity of the project;
- A comparison of the cumulative need for added police and fire protection far from where it is currently available;
- A comparison of the cumulative impact on schools within the AH Zoning Districts;
- A comparison on the cumulative impact on future parks;
- A comparison on the cumulative impact and costs of making water and waste treatment available and the cost to the county of extending water and waste treatment to the proposed sites;
- A comparison of the cumulative impact on animal life, including habitat destruction;
- A comparison of the cumulative impact of the lack of a tax base to cover and waivers of impact costs on the community and the county residences..

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Without this analysis, the Guiding Principles of the 2007 Countywide Plan, have no real meaning, and the residents of the county and their representatives, no real facts.

These impacts are new and not analyzed in the 2007 Countywide Plan or EIR. The AH Zoning District was not contemplated at the time of the 2007 EIR, nor analyzed.

Very truly yours,

/s/

Reed and Margaret Kathrein

RRK:rrk

RESPONSE TO LETTER NO. 19 -- REED AND MARGARET KATHREIN (MAY 14, 2013)

Response to Comment 19-1

The *Countywide Plan* serves as the constitution for land use in the unincorporated portions of Marin County. The long-range planning document describes goals, policies, and programs to guide land use decision-making. State law requires a community's general plan to be internally consistent. This means that the housing element, although subject to special requirements and a different schedule of updates, must function as an integral part of the overall general plan, with consistency between it and the other general plan elements. Once the general plan is adopted, all development-related decisions in unincorporated areas must be consistent with the *Countywide Plan*. If a development proposal is not consistent with the *Countywide Plan*, the proposal must be revised or the *Countywide Plan* must be amended.

The *Countywide Plan* is structured around the goal of building sustainable communities. Each of the three other elements in the *Countywide Plan* addresses sustainability: the Natural Systems and Agriculture Element, the Built Environment Element, and the Socioeconomic Element. The *Countywide Plan* Guiding Principles related to housing are excerpted below.

- Supply housing affordable to the full range of our workforce and diverse community. We will provide and maintain well designed, energy efficient, diverse housing close to job centers, shopping, and transportation links. We will pursue innovative opportunities to finance senior, workforce, and special needs housing, promote infill development, and reuse and redevelop underutilized sites.
- Provide efficient and effective transportation. We will expand our public transportation systems to better connect jobs, housing, schools, shopping, and recreational facilities. We will provide affordable and convenient transportation alternatives that reduce our dependence on single occupancy vehicles, conserve resources, improve air quality, and reduce traffic congestion.
- Foster businesses that create economic, environmental, and social benefits. We will retain, expand, and attract a diversity of businesses that meet the needs of our residents and strengthen our economic base. We will partner with local employers to address transportation and housing needs.

Affordable Housing Combining District and Countywide Plan Consistency

The Affordable Housing (AH) Combining District will allow compact affordable housing development up to 30 units per acre to occur on portions of larger sites specifically named in the housing element that are otherwise governed by a lower density zone. The maximum number of units currently allowed by the *Countywide Plan* land use determines the maximum units allowed on each property. The AH Combining District does not represent an increase in unit capacity compared with current land use on the proposed sites. The impact of units developed at more compact densities, as opposed to larger single family zoning dispersed over a greater amount of site acreage, would not necessarily increase impacts and would decrease some impacts. Specific impacts would be evaluated through the CEQA review of any development proposal. In addition, any development proposal on a site with an AH Combining District will be required to comply with all *Countywide Plan* policies and programs.

Response to Comment 19-2

As noted in the previous response, the Draft SEIR is a supplement to the *2007 Countywide Plan EIR* and need only contain information necessary to address changed conditions that would occur upon implementation of the *2012 Draft Housing Element*. The *2007 Countywide Plan EIR* cites numerous policies and programs, which as a program level EIR would serve to mitigate impacts associated with implementation of the *Countywide Plan* along with the updated housing element.

It is not clear what the commentor means by “*ad hoc*” AH Zoning Districts. As discussed on page 35 of the Draft SEIR and further described in a CDA fact sheet¹ four properties in the 2007 to 2014 Planning Period have been identified as candidates for the AH Combining District. The four properties are St. Vincent’s / Silveira (housing site 5), Golden Gate Seminary (housing site 12), Marin City CDC (formally known as Oak Hill School) (housing site 13), and Grady Ranch (housing site 16). As stated in program **1.c**, the AH Zoning District would only apply for certain sites specified in the Housing Element. Additional sites for the 2014 to 2022 planning period are listed, but consistent with program **1.c** would need to be identified in a subsequent Housing Element. The identification of potential sites for the 2014-2022 planning period does allow for a cumulative analysis as discussed in the comment.

¹ *Proposed Affordable Housing Combining District Case Studies*, Community Development Agency Planning Division, revised January 24, 2013.



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Comment Letter 20

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RILEY F. HURD III
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May 14, 2013

Via E-Mail Only

(housingelement@marincounty.org)

Marin County Planning Commission
3501 Civic Center Drive, Room #308
San Rafael, CA 94903

**Re: Proposed Affordable Housing Overlay for the GGBTS property:
Comments regarding the 2012 Draft Marin County Housing Element
AND the accompanying Final SEIR**

Dear Members of the Planning Commission:

Our office continues to represent the Seminary Neighborhood Association in connection with the GGBTS property in Strawberry. This letter is further correspondence regarding the proposed amendments to the 2012 Draft Marin County Housing Element (and related legislative actions), as well as the accompanying Final SEIR. Specifically, we are writing to address the proposed rezoning of the GGBTS property as an Affordable Housing Combined Zoning District.

FSEIR Comment Responses

1 The responses to the comments made in regards to the FSEIR's treatment of the GGBTS property do not resolve the issues presented. For example, Mr. Josh Sale rightly made the distinction that automobile trip generation is significantly lower for live-work scenarios as opposed to general affordable housing. (Sale letter, February 18, 2013.) The County's response to this was as follows:

"It is acknowledged that similar to affordable housing projects, live-work projects have the potential for lower trip generation per household compared to market-rate housing." (Response to Comment 34-1.)



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This response misses the entire point of the subject comment, and thereby leaves unaddressed the fact that the FSEIR fails to account for the increased trip generation of the AH overlay, as opposed to the existing entitlements, which are admittedly only for student or faculty housing.

Another example of an inadequate response is found in Response to Comment 50-1, which supposedly addresses our point that the GGBTS property is so large and varied, that there is no meaningful way to perform an environmental or code review of the proposed zoning change without knowing which 2, of the 73, acres are up for consideration. Response to Comment 50-1 states, in part, the following:

2

“The Community Development Agency staff has conducted a case study of how the AH zone could be applied to this property. Use of the AH zone would allow the clustering of housing in order to reduce or completely avoid adverse environmental impact.”

This response is problematic for two reasons. First, the referenced case study contains a gross misstatement about the development rights currently assigned to the GGBTS property. Specifically, page 3 of the January 24, 2013, study states that under the AH Combined Zoning District there would be, “60 affordable units on 2 acres, **leaving remaining 33 market units.**” The property’s currently remaining entitlement is not for a single market unit, it is for student and faculty housing only. The continued failure to grasp this critical distinction results in a flawed environmental analysis.

Second, to suggest that the mere clustering of units would avoid all of the identified environmental impacts is overly simplistic, not supported by evidence, and would not survive a legal challenge. Grouping units together does not somehow make the GGBTS site closer to transit or services, and, as has been repeatedly stated in past correspondence, is a development pattern in direct conflict with the Strawberry Community Plan.

The comment responses have not adequately addressed the identified flaws in the FSEIR.

Housing Element Inconsistency

Please refer to our letter of February 8, 2013, for a detailed explanation of why the proposed Housing Element is inconsistent with the Strawberry Community Plan,



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3 thereby creating horizontal inconsistency within the Countywide Plan. We wish to supplement that analysis only by pointing out that the FSEIR comment responses time and again attempt to assuage commenters' concerns by stating that the, "siting of potential housing would be evaluated through the project planning processes, and subject to Master Plan consistency." Why is the Strawberry Community Plan continually and systematically left out of the required analysis framework in both the Housing Element and the FSEIR? One reason could be that the SCP simply does not permit the type of development contemplated by the AH overlay.

AH Overlay Process

The Seminary Neighborhood Association is a group of interested neighbors that has been in existence for over three years. County staff and elected officials have been well aware of the Association's keen interest in the future of the GGBTS property. Accordingly, it came as a disappointing surprise to find the GGBTS property listed, without notice or warning, as a candidate for the AH overlay in the Draft Housing Element. It was most surprising because there was ample opportunity for the County to reach out to the Association about this possible designation and have a constructive discussion before simply proposing it. Using these available lines of communication would have been helpful in this matter, and they should be utilized in the future.

Conclusion

While there may be a prospect for affordable housing at the GGBTS site, the currently proposed zoning overlay is not the appropriate manner in which to facilitate possible opportunities, as it directly conflicts with already existing regulations, while also ignoring the community processes of past and present. It is therefore requested that the Planning Commission:

1. Withhold from applying the currently proposed affordable housing overlay to the GGBTS property;
2. If such an overlay is desired, engage the community to develop a program that takes into account the mandates of the SCP, or proposes an appropriate SCP amendment, while also specifically identifying where on the property the overlay will apply, and;



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3. Amend the Draft Housing Element to add language recognizing the fact that 1 unit of affordable housing is not equal to one unit of student housing and that existing entitlements must be adjusted equitably if/when any affordable housing project is considered or approved.

Thank you for your attention to these important matters.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive, flowing style.

Riley F. Hurd III

CC: Seminary Neighborhood Association
Scott Hochstrasser
Supervisor Kathrin Sears

RESPONSE TO LETTER NO.20 – RILEY F. HURD, RAGGHIANI|FREITAS LLP (MAY 14, 2013)

Response to Comment 20-1

The Draft SEIR evaluates environmental changes that would occur from implementation of an update to the Housing Element of the *Countywide Plan*. As stated in Response to Comment 34-1 in the *Response to Comments to the Draft SEIR*, the amount of trip reduction may be quantified at a project specific level as explained below.

As discussed in Response to Comment 50-2 in the *Response to Comment to the Draft SEIR*, CDA staff recommended a revision to the *Draft Housing Element* to acknowledge existing entitlements for 93 multi-family units for students or faculty for the Golden Gate Baptist Theological Seminary (housing site 12). Furthermore, it is acknowledged in Response to Comment 34-1 in the *Response to Comment to the Draft SEIR* that live-work projects have the potential for lower trip generation per household compared to market-rate housing. However, as noted in the Draft SEIR the amount of trip reduction is difficult to reflect using the Marin Countywide Travel Demand Model, which relies on socio-demographic inputs at a coarse traffic analysis zone level. The traffic forecasting methodology used in the Draft SEIR does not account for potential lower trip generation of affordable housing, as well as live-work projects, and is therefore considered conservative.

The nearest traffic screenline to housing site 12 is screenline 4 (Highway 131/Highway 101 to E. Strawberry) and the nearest intersection studied is intersection C (Redwood/Tiburon) (see **Exhibit 3.0-30**). The traffic model does identify that a significant cumulative traffic impact would occur in the PM peak hour at eastbound State Route 131 from U.S. 101 to Strawberry Drive (Screenline #4) and at Intersection C (Redwood Highway Frontage Road at Tiburon Boulevard [SR-131]) in the AM peak hour. Although not a substitute for a site-specific traffic analysis, this analysis indicates that housing development at housing site 12 would contribute to identified significant traffic impacts. As stated in Response to Comment 20-2, if 60 units of affordable housing were to be developed on housing site 12 a traffic study would be required to determine project-specific impacts.

Response to Comment 20-2

The Strawberry Community Plan (SCP) is the key public policy document governing development of the Golden Gate Seminary site. The 1982 Amendment to the Strawberry Community Plan included policy and development recommendations for the Golden Gate Seminary property. In 1984 the Seminary submitted a Master Plan and Rezoning for their property, which closely comported with the 1982 SCP's Seminary guidelines. The 60 units of for sale housing specified in the Master Plan and the Amendment have been built. Remaining under the Strawberry Community Plan are 90 to 100 units of student housing (which were described in more detail in the Master Plan as 93 units of student and faculty housing). Unless the SCP is amended, any units developed on this site will have to be consistent with this provision. For example, if 60 units of affordable housing were to be developed on the site a traffic study would be required to determine whether the impacts were consistent with those described in the 1984 Master Plan. The SCP specifies areas where there should be very limited or no development, including the Forested Knoll and the Seminary Vista West; consistent with the SCP these areas would not be appropriate for the AH district.

Response to Comment 20-3

Please see Response to Comment 20-2 in regard to consistency with the Strawberry Community Plan.

Attn. Jeremy Tejirian, Planning Manager
Marin County Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, Ca. 94941 (envplanning@marincounty.org)

May 14, 2013

**Regarding Responses to Comments on letter No.11 - Ann Spake (February 5, 2013)
submitted to the Draft SEIR regarding the Marin County Housing Element and
the Housing Element's Tam Junction Affordable Housing Opportunity Sites.**

**Comments on these responses and the
Final 2012 Supplementary Environmental Impact Report**

In regard to response 11-1

1

Response states that the Draft program level EIR focuses on the overall effect of this Housing Element and therefore doesn't consider project-specific information. I would submit that when it chooses to specify and do a cursory review of specific sites, thereby targeting them for development, that it is not confining itself to overall effect. In fact, the overall effect is to reduce future in-depth project-specific review. As you indicate in Response 11-29 and 11-31 the information in this program DSEIR may help streamline future, tiered environmental review, because it provides program level information and data about each housing site identifying impacts and mitigations of specific sites. In addition, there were 42 significant adverse impacts already overridden that could not be mitigated sufficiently in the 2007 EIR. Any concerns which have increased in their known significance that have not been adequately analyzed or mitigated in this 2012 EIR should not be likewise dismissed.

CEQA does require that significant effects be discussed with emphasis in proportion to their severity and probability of occurrence. The CEQA Guidelines also state, "an agency must use its best efforts to find out and disclose all that it reasonably can." The CEQA Guidelines further clarify the meaning of a significant effect on the environment as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project." Therefore, it is standard practice in CEQA analyses to use a "reasonable" or "realistic" worst-case analysis based on potentially expected worst-case conditions. The potential increased bonus densities allowed (upon request and qualification) by the addition of the AH Combined District Housing Sites such as #19 create new and substantially more severe potential significant impacts than are fully analyzed or considered with feasibly mitigations.

In regard to response to 11-2

2

The severity of impacts are not just measured as you would suggest by the gross total of population and housing units in a county as they are primarily experienced, i.e. impact, on the local level where they are located potentially affecting access and egress in congested excessive traffic

area, over crowded schools, insufficient infrastructure, services and employment to name a few. Therefore the EIR conclusions are superficial and do not reflect the actual considerations which should guide land use decisions.

In regard to response 11-3

3 The Draft EIR inadequately addresses the identified 'new' significant impacts or increases in severity of previously identified impacts such as sea level rise.

In regard to response 11-5

The SEIR does not address the worst traffic conditions that would be created by the project. It does not reference accurately the huge increasing regional recreational traffic concentrated in about seven months of the year in which the Tamalpais Valley and Almonte residents are barely able to enter or exit their own community for essential services or emergencies. Anyone who suggests existing conditions should allow more traffic has never had a loved one having a heart attack in an ambulance unable to get out to the hospital. With additional residential development precisely where the traffic is most obstructed and backed up, the LOS rating may only be considered F, i.e. the same by the EIR, because you have no G (growing worse) rating! This alone should advise against and eliminate proposed increased residential development.

4 The regional traffic referenced above is going to one of the world's largest urban national parks. Over 7 million people live within a 1-hour drive of GGNRA. The GGNRA is visited by about 17 million people each year from across the US and around the world. Muir Woods receives about 750,000 visitors annually through Tam Valley. Trips to GGNRA account for 50 percent of all visits to the 29 national parks in California. Muir Beach, and Muir Beach Overlook (with spectacular panoramic views in every direction) are 3 miles west of Muir Woods.

In addition, traffic destinations include Mount Tamalpais, Stinson Beach, Tennessee Valley, and Point Reyes National Seashore located along the west coast of Marin County approximately 30 miles north of the City of San Francisco. The Seashore draws visitors with both its shoreline and over 150 miles of hiking trails as well as attraction of Bolinas Ridge, Olema Valley and Tomales Bay. The Seashore averages over 2 million visitors each year who are drawn to the unique geography of the Point Reyes peninsula, the rich cultural and historic setting, and the dramatic natural environment, which is recognized locally, nationally, and globally as a center of biodiversity. As previously mentioned, the Seashore along with GGNRA, is part of the Golden Gate Biosphere Reserve designated by UNESCO as an area of global significance.

As such traffic is likely to continue to grow unavoidably, increases from additional housing will inevitably aggravate an already highly constrained condition and should not be allowed.

In regard to response 11-6

5 The transportation analysis cannot make such a conclusion that the Housing Element would have a

less-than-significant impact on emergency access. The issue is not that of 'new facilities' but rather of impassable traffic congestion with one lane in and one lane out for medical and fire emergency vehicles with cars and trucks often backed up onto the freeway 101 and Highway 1. ANY

additional obstruction would aggravate an already untenable situation, especially for senior residents in jeopardy with critical medical conditions and those residents residing on hillsides with annual high fire risks in an increasingly warmer, dryer climate. Both climate change and additional population require additional services, including fire, for which public funding is shrinking. In a major fire, swift and sufficient personnel for defense is critical, especially when services from outside the area will be delayed by access problems.

In regard to response 11-7

"The Draft SEIR air quality analysis used the screening tools provided by BAAQMD and did NOT conduct any refined analysis." The Highway Screening Analysis tool is questionable. I have recently seen one of their maps on an enlarged display for the Bay Plan and it showed a Highway 101 marker next to Green Gulch Ranch which is actually not 101 but rather Highway 1!

6

You state that "For a State Highway" the DEIR considers Highway 1 to have a "relatively low volume of traffic and truck traffic"! Since when is a volume of over a million cars a year a low volume?? Since when is truck transport to Mill Valley, West Marin and Tam Valley industrial area (including building materials trucking) in targeted Tam Valley area added to the above vehicle traffic not constituting a major road with significant impact? Concrete experience contradicts your models and forecasts. Highway 101 is considered heavily traveled by this SEIR but there is no recognition that much of its heavy travel in Southern Marin exits and enters at its convergence with Highway 1 and Shoreline Highway near 2 of the sites identified in the Tamalpais Area. The addition of new traffic lights in the area causes additional backups and air quality impacts from idling vehicles in all directions affecting all new proposed housing sites who will have sensitive receptors. The DSEIR doesn't make a refined analysis but it makes unrefined conclusions that health impacts will not be significant.

The DSEIR says it only addresses outdoor air exposure to TACs and then discounts the importance of this exposure by saying that people spend more than 90% of their time indoors. Concern with health impacts should include the awareness that we have a national obesity public health crisis in part related to too much time spent indoors with insufficient exercise. If we are planning for the future we must ensure that outdoor air is healthy to foster increased time spent outdoors and that outdoor active space is readily available as part of residential living areas.

In regard to response 11-8

7

The numbers you indicate as allowed flights under the FAA would almost double the average daily operations per week as yet unconfirmed by its manager. Future rules haven't even been submitted in draft form so assumptions cannot be made about the number allowed in the future. The GGNRA has been under pressure from the private company to expand its allowed air tours.

The assessment of commercial air tour operations on units of the national park system is different in many respects from other aviation assessments. Air tour aircraft operations differ from the average national air transportation system operations, occurring in most cases seasonally, and only during daylight hours thereby concentrating the occurrences of flights and noise impacts. Air tour aircraft are by nature flying low for sightseeing purposes, and in national parks are often operating relatively close to the ground in low ambient sound environments. These factors require specialized noise assessment.

With millions of visitors wanting to experience the GGNRA, some of which by aircraft tours, the potential impacts of noise on adjacent development in concentrated periods of the day and year should be considered an adverse impact especially for senior housing development with its sensitive receptors at elevated cardiac risks. Noise is not isolated from different sources but experienced together from ground and air traffic. When it is noisy it doesn't matter which source is the noisiest, especially when the noise level exceeds the 55dB CNEL already. As noted in your Response 11-61 noise exposure at both housing sites 14 and 19 exceed CWP residential noise and land use compatibility guidelines for single-family homes. Residential use for anyone should be avoided in such locations. These 'short-term' noise impacts already disturb residents living within the 1/2 mile radius of the GGNRA.

In regard to response 11-9

8 | The Countywide Plan already made clear (and overrode) the significant impact of a severe seismic event. Since 2007 the predictions have indicated that that is exactly what can be expected in the coming years of this Housing Element. While different amounts of an earthquake, which is already considered severe, may sustain the same type of impact, the effect on an increased number of residents and properties will alter the cumulative effect, including potentially losses in human life as well as financial costs from property losses. The response 11-65 admits that "implementation of the mitigation policies and programs would not eliminate all structural damage, injuries, or death from seismic-related ground failures, especially for severe seismic events". We have an opportunity to avoid these by exercising the precautionary principle and not placing more residences in such hazardous areas within approximately 10 miles of 2 faults. Such areas include the Tamalpais area with landfill on top of bay mud with bedrock reached at depth of about 80-90 feet. It is already subject to subsidence, liquefaction and lateral displacement, conditions inappropriate and expensive for proposed housing development.

In regard to response 11-10

9 | Analysis is inadequate due to the fact that an EIR must include mitigations that can be evaluated NOW as to whether or not they have merit. To propose to study, develop sea level rise scenarios or develop a plan in the future does not legally constitute mitigation. This information is necessary for decision-makers to decide if sites identified are suitable for residential use. CEQA is not meant to be a post hoc rationalization of decisions that have already been made. To suggest that analysis

will be done in the future defers the public and planner's ability to ascertain whether or not and where feasible mitigations will exist to affect the extent of the impacts. Implementation of the proposed land uses in this Housing Element could result in an increase in the land use development within areas which will be regularly inundated by sea level rise by mid-century. If development precedes knowledge about sea level rise and requisite mitigation it may preclude existing community's ability to adequately mitigate and thereby adversely and irreversibly affect the safety of not only future but existing residents. Response 11-11 acknowledges that "It is difficult to predict the effects of sea level rise over the long-term..." and as the expected lifetime of housing structures is likely to be to 2100, the precautionary principle should obviate placement of additional development in its path.

In regard to response 11- 11

10 | Where there is minimal distance from the wetlands, Richardson Bay and Coyote Creek priority should be given to use of available land as buffer not just for people but also for habitat migration essential to other species including those endangered, those that are resident and those that rely on our area during migration on the Pacific Flyway. As noted in Response 11-13 "potential impacts on wildlife habitat and movement opportunities would remain a significant unavoidable impact" and I would add unacceptable considering the future constriction which will occur.

In regard to response 11-12

11 | The recurrent water quality problems of Richardson Bay indicated by public bacterial contamination warnings indicates that there is insufficient level of current protection. Certainly LID design, stormwater quality requirements and retrofitting will hopefully improve future conditions, at times the existing conditions would advise against water contact and the flooding of these impacted waters has increased in frequency creating both health and safety risks.

In regard to response 11-13

12 | As quoted above in response 11-11 there seems to be an acceptance of degradation of the life-sustaining habitat of other species. This is ecologically a denial of our interdependence and the basis of our planetary crisis. We must seek a more appropriate paradigm to be sustainable.

In regard to response 11-14 & 11-45

13 | Regardless of legal requirements to avoid addressing impacts of new development on overcrowded local schools, common sense and communities recognize the impacts and will oppose the increased development when resources are not available to ameliorate the results. The inability of some communities to mitigate such impact should influence the land use choices and planning decisions.

In regard to response 11-17

14 | To say that implementation of this proposed Housing Element "would not increase the severity of identified impacts to Biological Resources" without site-specific review in WCAs and SCAs is to

prejudge an impact without sufficient environmental review.

In regard to response to 11-19

15 There are social and economic impacts to environmental considerations; they need to be considered when making decisions regarding impacts of as well as on environmental conditions.

In regard to response to 11-20

16 This supplement does not make the previous EIR adequate for the housing as revised when it limits its review to unsubstantiated future mitigations and doesn't examine the impact of cumulative incremental effects in constrained areas.

In regard to response 11-24 (& 46-5)

17 "Housing site 19 is included in the list of AH Combined District Sites for the 2014-2022 Planning Period."
Increased densities above those identified in the Draft SEIR is a realistic worst-case scenario that must be analyzed in a revised EIR and circulated for public review and comment. CEQA does require that significant effects be discussed "with emphasis in proportion to their severity and probability of occurrence." The CEQA Guidelines also state, "an agency must use its best efforts to find out and disclose all that it reasonably can." The CEQA Guidelines further clarify the meaning of a significant effect on the environment as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project." High density housing (especially with an added density bonus) will create a new substantial adverse environmental impact in this highly constrained area which is neither consistent with development in the area nor envisioned in the 2007 CWP which acknowledged the constraints when it removed the area from the Housing Overlay Designation (HOD). Likewise noted is the comment from Randy Greenberg that "AH is publicly funded and should not be in hazardous areas". When such a condition is already known, such as in Tam Valley, such housing should not even be proposed!

In regard to response to 11-29 & 11-31

18 See comment on response to 11-1

In regard to response 11-46

19 Traffic analysis using 2009 population and housing in its model does not reflect the escalating growth in regional traffic through the Tamalpais Valley area described in my comments in Response 11-5 therefore it cannot reflect the cumulative impact of increased residential traffic plus growing regional recreational traffic.

In regard to response to 11-52

20 This response illustrates how the Draft DSEIR narrows the mitigation requirements to those impacts specifically identified by this 'program' level review. This potentially obviates future site-specific assessment and assumes the accuracy of a document which claims to focus on a broad overall effect.

21 In regard to response to 11-53

How does the current planning agency propose to guarantee maintenance of an air filtration system over the lifetime of a building? It is assumed that if a filtration system is necessary for healthy air indoors due to the adverse impacts of TACs, then the outdoor air would pose a serious health threat and residential use should be avoided. Considering the need for increased and readily accessible outdoor use it would be unhealthy to live in an area with impaired air quality. Likewise there is consensus about the many adverse health impacts of TACs, short-termed and life-long. As residential development is unlikely to be reduced once built and air quality may become more compromised in heavily congested areas in the future, wisdom would direct future residential development away from such areas.

22 In regard to response to 11-57

As you responded the conversion from commercial to residential land use requires additional site assessment and would likely require additional remediation. In sum, there are a variety of verified potential sources of hazardous materials which will compromise and/or create accelerated expense to development of proposed residential land use in the area.

23 In regard to response to 11-61

See comments in regard to response to 11-8 & 11-53

24 In regard to response to 11-62

See comments in regard to response to 11-8

Common sense says that if you were nearby a helicopter taking off intermittently throughout the day you would definitely consider the noise excessive as related to normal sounds one expects in a residential setting! Increased flights affect the accuracy of maps used in the past to evaluate the impacts.

25 In regard to response to 11-65

See comments in regard to response 11-9

26 In regard to responses to 11-66,67,68,69,70,71,72,73,74 regarding sea level rise

See comments in regard to response 11-10

27 In regard to response to 11-84

"Sea level rise poses a challenge in locations where existing and future development borders sensitive baylands habitat and land area is not available to serve as a buffer zone." Existing development will need to be evaluated based on future study as yet not available as to whether it is sustainable when predicted to be inundated within the century. Change is inevitable but growth is optional especially under these circumstances and therefore 'future development' should be avoided

which would obviate the requisite solutions or compound the adverse impacts.

28

In regard to response to 11-87

The revised policy allowing higher densities for new housing units in sensitive habitat areas defies the very concept of an environmental protection policy. Overriding adverse impacts and streamlining CEQA review will facilitate such inappropriate and deleterious development. It also assumes that there is public benefit in adversely impacting a sensitive environment with which we are ultimately interconnected and affected by such encroachment.

29

In regard to response to 11-96

The Housing Element implements housing in spite of the conditions which are considered to be significant and unavoidable. However, sites in the Housing Element are avoidable where constraints would have adverse impacts on the extent of development and the development itself would aggravate existing problems. The challenges of sustaining our water supply through conservation requires recognition of limits to growth, especially with the changes and unpredictability of climate change. If the Housing Element development is already considered to have severe impacts then it needs to be reevaluated and reduced to a level that does not potentially cause severe water impacts.

30

In regard to response to 11-98

Waste disposal agencies have different capacities and will probably experience differences in their ability to serve additional residential development.

31

In regard to response to 11-108

The Housing Element targets (identifies) specific sites for development within the timeframe of the 2 Housing Cycles. It is the intention of this assessment that many of these will be developed, as feasible, to satisfy the State and regional housing unit development expectations. Annual progress reports regarding implementation will be required and repercussions will result. To say that this 2012 Draft Housing Element does not propose any development is disingenuous and misleading. In addition once a site is identified for specific potential allowable density, a developer can claim a right to the maximum level of development as submitted to the State in the Housing Element.

32

In regard to responses to 11-11, 11-13, 11-17, 11-20, 11-76 through 11-87

According to the Final Supplementary Environmental Impact Report : "Section 15151 of the *State CEQA Guidelines* states that an EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." However, the analysis in this SEIR lacks sufficient analysis to make "intelligent" and well-informed land use decisions, some of them irreversible and many significant and adverse, affecting people, other species and the sustainability of the environment for many decades to come.

Proposed development will potentially have an adverse effect on sensitive or endangered species, inhibit restoration of historic wetlands and preclude ability to allow for migration inland as sea level rises. Some of proposed development also falls within wetland (WCA) or stream (SCA) conservation areas. The following expert information from a watershed perspective underscores the interconnections: the significance of the biological resources which may be jeopardized, the potential consequences of adjacent development on these habitats and the resultant potential impacts on current and proposed residents.

In its *Draft Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California*, the USFWS has included Mill Valley's shoreline in the Central/South San Francisco Bay Recovery Unit. Major threats to these communities include climate change, habitat loss and degradation, and invasion by exotic species such as non-native cordgrass species. (Mill Valley General Plan Draft 2040)"

"The tidal-terrestrial transition zone (T-zone) occupies the gradient between the intertidal zone and terrestrial (i.e., levee faces, valleys, hillsides, alluvial fans, and bluffs) and/or fluvial (i.e., rivers and streams) environments. The T-zone provides a number of valuable ecosystem functions and services, and also serves as accommodation space for estuarine transgression and floodwater dispersal/storage as sea level rises in the future. The T-zone is also one of the most heavily impacted areas of the Bay ecosystem, and emerging plans call for the conservation and reconnection of a T-zone where tidal marshes and their terrestrial connections can be created or allowed to naturally evolve. " (http://www.sfei.org/TZone_SouthSFBay. Downloaded 5/13/2003)

"San Francisco Bay wetland managers are looking landward for ways to accommodate accelerated sea level rise due to climate change. A major concern is that sea level rise will drown existing tidal marshes except for a narrow ring of marshland between the Bay and the built environment. This would eliminate many of the Bay's ecological services, as well as many of the ecological connections to the terrestrial environment upon which these services depend. Emerging plans therefore call for the conservation and reconnection of a tidal-terrestrial transition zone (T-zone) where tidal marshes and their terrestrial connections can be created or allowed to naturally evolve." *An Assessment of the South Bay Historical Tidal-Terrestrial Transition Zone* Erin Beller, Micha Salomon, Robin Grossinger • San Francisco Estuary Institute • Publication #693 • May 2013 produced for the U.S. Fish & Wildlife Service Coastal Program

When wetlands are defined in accordance with the federal definition, the wetlands themselves are "waters of the state." California Water Board - Draft Water Quality Control Policy for Wetland Area Protection and Dredged or fill Permitting. See 40 C.F.R. § 230.3 (s)-(t) ("waters" include "wetlands"); Wat. Code, § 13050, subd. (e) (defining "waters of the state" more broadly than EPA defines "waters of the United States").

“Tidal marsh studies indicate that they are an important defense against sea level rise in vulnerable communities. “[T]he research forecasts that under faster sea-level rise rates, salt marshes could bury up to four times as much carbon as they do now.” (United States Geological Survey 2012 *Salt Marshes May Slow Climate Warming . . . For A While* Categories: Ecosystems, Featured Posted on September 26, 2012 at 11:00 am. Last update 12:57 pm By: Catherine Puckett cpuckett@usgs.gov & Hannah Hamilton hhamilton@usgs.gov).

Tidal marsh development depends upon healthy supplies of plant communities, nutrients and alluvial deposition. This would be immitigable and the negative and associative costs, to the environment and the community, of losing tidal marsh wetlands far exceeds benefits derived from housing development.

Diverse Upland transition areas tidal-terrestrial transition zones (T zones) above wetlands, known as ecotones, would be absent without tidal marshes and would be impacted by sea level rise adversely should tidal marsh plant community accretion not keep pace with the rising sea level. Thus the proposed development would ultimately make human communities more vulnerable to flooding, CO₂ release into the atmosphere, pollutants, loss of biodiversity and resilience. The T transition zone and habitat would be lost. Tidal marsh vegetation community regimes, sediment deposition from creeks, fluvial geomorphologic evolution and habitats would be unable to adapt to projected sea level rise conditions. This would damage and potentially obliterate remnant Endangered Species Act protected Critical Habitat should this project go through. Examples of this are occurring today and documented in Bothin Marsh and Coyote Creek’s Richardson Bay terminus during the King tides of 2012/2013 (San Francisco Estuary Partnership, California Coastal Commission)

Wetlands (tidal marshes) and their ecosystem services are protected from having no net loss and Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act) to protect wetlands and riparian areas for water quality goals. With impacts of sea level rise already manifesting, mitigation of wetland losses may only be possible through tidal marsh natural enhancements (such as the horizontal levee (the Bay Institute 2013) and inland migration. Storm water run off currently filtered by the tidal marshes will flow straight into the bay off further impermeable hardscaping and pollute the Bay waters further as a result of this project. The proposed increased development will significantly impact the tidal marsh by preventing adaptation of the tidal marsh through natural processes rendering compliance immitigable.” (Laura Chariton, MA Riparian Policy and Restoration)

Eelgrass beds in Richardson Bay deprived of natural sediments and nutrients would be impacted. Eelgrass beds right off shore of the marshes are hatching grounds for keystone species of herring that support bird, fish and marine mammal populations.

Both Eelgrass beds and tidal marshes are considered important for habitat, food sources, biodiversity and carbon sequestration. Those significant functions would be significantly impacted by adjacent development. Tidal marsh biodiversity and resilience would be lost from the disconnection of nutrient and natural sediment deposition. “ Upland erosion and construction activities can increase sedimentation which can smother eelgrass. Shoreline structures built over the water prevent eelgrass from getting enough light for growth. Excessive nutrients can accelerate algae growth on eelgrass blades, blocking out light. Within San Francisco Estuary, Richardson Bay stands out as a particularly unique location for eelgrass restoration. It harbors the second largest extant eelgrass bed in the estuary, and plants with the most genetic diversity of six beds sampled. **Further, a model of environmental conditions in the estuary has identified Richardson Bay as the area with the greatest area suitable for restoration (Merkel and Associates 2004). Hence, Richardson Bay is highly valued both for its existing eelgrass resources and its potential for restoration.**”(http://richardsonbay.audubon.org/all-about-eelgrass) http://sfep.sfei.org/our-projects/fish-and-wildlife-recovery/eelgrasshabitat/ (Laura Chariton, M.A. Riparian Policy and Restoration)

Implementation of the proposed development could have a substantial adverse effect, either directly or through habitat modifications, on species identified as candidate, sensitive, or special-status in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service and the National Audubon Society. "Impacted animals include steelhead, salt marsh harvest mouse, tide water goby, clapper rail, and Point Reyes bird’s beak. Given the extensive list of species utilizing the subject property area it is advised to be certain that no other species is a candidate or listed species. The lessened observance of certain species would necessitate this comprehensive inquiry.” (Laura Chariton, MA Riparian Policy)

Focused surveys to determine the locations and extent of special-status species populations have not been conducted in support of this programmatic SFEIR. Until and unless it is determined that each species does not carry potentially new information regarding endangered species status comprehensive biological studies need to occur.

The PDA and adjacent area in Tamalpais Valley are home to known Federally and State listed endangered species such as the Pt. Reyes Bird’s Beak plant, Salt Marsh Harvest Mouse, Tide Water Goby (*Eucyclogobius newberryi*), Clapper Rail and listed threatened Steelhead (*Oncorhynchus Mykiss*) and provide habitat for both a resident and Pacific Flyway migratory bird population as well as many other species. **Development in or adjacent to their habitat could have significant unavoidable adverse impacts.**

“The San Francisco Bay estuary, though severely fragmented and modified, represents the largest extent of tidal marsh in the western United States. Projected sea-level rise of 0.3-1.5m poses further threat to several endemic tidal marsh species such as the salt marsh harvest mouse, California clapper rail, and California black rail that are listed as federally endangered or state threatened species.” (USGS website, <http://www.werc.usgs.gov/Project.aspx?ProjectID=88>, downloaded 5/13/2003)

It is listed as a migration corridor that includes (125 Birds Species, 75 Species of Butterfly,). Under the National Audubon Society, Bothin Marsh is also listed as an Important Bird Area. Greater and Lesser Scaup, Bufflehead and Ruddy Duck also are found during the migration period. Hundreds of shorebirds, especially Western Sandpiper, utilize the exposed mudflats of Bothin Marsh and the greater Richardson Bay daily during migration. “Bothin Marsh, is managed by Marin County Open Space District. This wetland, along with the wetlands of Corte Madera, represents the majority of the tidal marsh habitat of west-central San Francisco Bay. The estuarine wetlands of San Francisco (which includes Richardson) and San Pablo Bays are recognized together as a Western Hemisphere Shorebird Reserve Network (WHSRN) Site of Hemispheric Importance for shorebirds - the highest possible ranking.” (National Audubon Society website, <http://netapp.audubon.org/iba/Site/148>, downloaded 5/14/2003)

The U.S. Fish and Wildlife Service (USFWS) calls for the recovery of several species that depend on tidal marsh, including salt marsh harvest mouse (*Reithrodontomys raviventris*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), California clapper rail (*Rallus longirostris obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), Samuel’s (San Pablo) song sparrow (*Melospiza melodia samuelis*), long-billed curlew (*Numenius americanus*), California sea-blite (*Suaeda californica*), and Pacific cordgrass (*Spartina foliosa*), green sturgeon (*Acipenser medirostris*) in Richardson Bay among others. In addition, the National Marine Fisheries Service (NMFS) has identified marsh habitat and its surrounding coastal waters as “essential fish habitat” and strives to protect this sensitive area for the fish species that depend on it for food and shelter.

Bothin Marsh Marin County Open Space area lists these species present that will be affected by environmental changes:

Bird Species: Allen’s Hummingbird, American Avocet American coot, American Crow American Kestrel, American Pipit, American White Pelican, American Wigeon, Anna’s Hummingbird, Barn Owl, Barn Swallow, Barrow’s Goldeneye, Belted kingfisher, Black Phoebe, Black Scoter, Black –bellied Plover, Black-crowned Night Heron, Black-necked Stilt, Blue winged Teal, Bonaparte’s Gull, Brandts’s cormorant, Brant, Brewer’s

Blackbirds, Brown Pelican, Brown-headed Cowbird, Bufflehead, Burrowing Owl, California Gull, Canada Goose, Canvasback, Caspian Tern, Cinnamon Teal, Clapper Rail, Clark's Grebe, Cliff Swallow, Common Goldeneye, Common Loon, Common Raven, Common Yellowthroat, Cooper's Hawk, Double-crested Cormorant, Dunlin, Eared Grebe, Eurasian Wigeon, European Starling, Forster's Tern, Gadwall, Glaucous-winged Gull, Golden-crowned Sparrow, Great Blue Heron, Great Egret, Greater Scaup, Greater White-fronted Goose, Greater yellowlegs, Green Heron, Green-winged Teal, Heermann's Gull, Herring Gull, Hooded Merganser, Horned Grebe, House Finch, House Sparrow, Killdeer, Least Sandpiper, Lesser Scaup, Lesser Yellowlegs, Lincoln's Sparrow, Loggerhead Shrike, Long-billed Curlew, Long-billed Dowitcher, Mallard, Marbled Godwit, Marsh Wren, Merlin, Mew Gull, Mourning dove, Northern Harrier, Northern Mockingbird, Northern Pintail, Northern Rough-winged Swallow, Northern Shoveler, Osprey, Pacific Loon, Peregrine Falcon, Pied-billed Grebe, Red Know, Red-breasted Merganser, Red-necked Grebe, Red-necked Phalarope, Red-tailed Hawk, Red-throated Loon, Red-winged Blackbird, Redhead, Ring-billed Gull, Ring-necked Duck, Rock Pigeon, Ruddy Duck, Ruddy Turnstone, Rufous Hummingbird, Sanderling, Savannah Sparrow, Say's Phoebe, Semi-palmated Plover, Semi-palmated Sandpiper, Sharp-shinned Hawk, Short-billed Dowitcher, Short-eared Owl, Snowy Egret, Song Sparrow, Sora, Surf Scoter, Tree Swallow, Turkey Vulture, Violet-green Swallow, Virginia Rail, Western Grebe, Western Gull, Western Meadowlark, Western Sandpiper, Whimbrel, White-crowned Sparrow, White-tailed Kite, White-throated Swift, White-winged Scoter, Willet

Butterfly Species: Acmon Bue, American Lady, Anise Swallowtail, Arrowhead Blue, Blue Copper, Boisduval's Blue Bramble Hairstreak, Brown Elfin, Cabbage White, California Dogface, California Sister, California Tortoiseshell, Calliope Fritillary, Checkered White, Cloudless Sulphur, common Branded Skipper, Common Buckeye, Common Checkered-Skipper, common Ringlet, common Sootywing, common Wood-Nymph, Coronis Fritillary, Dotted Blue, Eastern Tailed-Blue, Edith's Checkerspot, Eufala Skipper, Field Crescent, Fiery Skipper Gorgon Copper Gray Haristreak, Great Basin Wood-Nymph, Great Purple Hairstreak, Gulf Fritillary, Hoary Comma, Large Marble, Marin Blue, Milbert's Tortoiseshell, Monarch, Mormon Metalmark, Mountain Mahogany Haristreak, Mournful Duskywing, Mourning Cloak, Mylitta Crescent, Northern Checkerspot, Northern Cloudywing, Orange Sulphur, Pacuvius Duskywing, Painted Lady, Pale Swallowtail, Persius Duskywing, Pipevine Swallowtail, Propertius Duskywing, Purplish Copper, Red Admiral, Rural Skipper, Sachem, Sandhill Skipper, Sara Orangetip, Satyr Comma, Silver-spotted Skipper, Silvery Blue, Small Checkered Skipper, Spring Azure, Sylvan Hairstreak, Tailed Copper, Two-tailed Swallowtail, Umber Skipper, Variable Checkerspot, West Coast Lady, Western Pine Elfin, Western Pygmy-Blue, Western Tailed-Blue, Western Tiger Swallowtail, Woodland Skipper

Mammals: Big Brown Bat, Common Gray Fox, Harbor Seal, Black-tailed Jackrabbit, Little Brown Bat, Yuma Myotis (Bat) Salt Marsh Harvest Mouse, Northern River Otter, Striped Skunk, Raccoon, Opossum

Reptiles/ Amphibians – Pacific Tree Frog

Numerous Mollusks and Invertebrates

New sightings of Pacific Ocean Otters in the area need to also be considered.

Restoration of Oyster Beds and retention of Eel grass bed in the vicinity are critical.

Potential local effects on special-status species could occur as a result of habitat fragmentation, increased human intrusion into areas, introduction of invasive species, disruption of migratory corridors and the temporary and/or permanent removal or conversion of vegetation and habitat necessary for species breeding, feeding, dispersal or sheltering. Because implementation of land use proposed in the Housing Element may result in adverse effects on special-status plants and wildlife these impacts should be considered potentially significant. Listed affected species would include: salt marsh harvest mouse, California clapper rail, Tidewater Goby, Pt. Reyes Bird Beak and Steelhead.

Construction and/or ongoing operations could result in direct mortality of special-status plants and wildlife, entrapment in open trenches, and general disturbance "light pollution" due to noise or vibration during pile-driving, earthmoving, and other construction activities. Construction-generated fugitive dust accumulation on surrounding vegetation and construction-related erosion, runoff, and sedimentation could degrade the quality of adjacent vegetation communities, affecting their ability to support special-status plants and wildlife. Affected species would include: Mammals : Big Brown Bat, Common Gray Fox, Harbor Seal, Black-tailed Jackrabbit, Little Brown Bat, Yuma Myotis (Bat) Salt Marsh Harvest Mouse, Northern River Otter, Striped Skunk, Raccoon, Opossum and Fish : Steelhead, Tidewater Goby, pacific herring, bat rays, sculpin, three-spined stickleback, California Roach

Implementation of the proposed Housing Element could interfere substantially with the movement of native resident species or impact a migratory wildlife corridor.

“Most of the contiguous migration corridors have been lost to development. The remaining corridors are more critical than ever in supporting biologic and habitat processes to occur. Therefore, further degradation would be equivalent to a taking of species that rely on those corridors and violates of State and Federal Fish and Wildlife Codes. (Laura Chariton, M.A. Riparian Policy)

To say that implementation of this proposed Housing Element "would not increase the severity of identified impacts to Biological Resources" without site-specific review is to prejudge an impact without sufficient environmental information and review.

CEQA does require that significant effects be discussed with emphasis in proportion to their severity and probability of occurrence. "Section 15151 of the *State CEQA Guidelines* states that an EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." However, the analysis in this DEIR lacks sufficient analysis to make "intelligent" and well-informed land use decisions, some of them irreversible and many significant and adverse, affecting people, other species and the sustainability of the environment for many decades to come.

Mrs. Ann Fromer Spake
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Mill Valley

RESPONSE TO LETTER NO.22 – ANN FROMER SPAKE (MAY 14, 2013)

Response to Comment 22-1

Please see Responses to Comments 22-16, 28-3, and *Master Response 3 – Environmental Review of Housing Projects*.

Response to Comment 22-2

As stated in the *2007 Countywide Plan Draft EIR* discussion of Impact 4.1-2, substantial growth and concentration of population would be a significant and unavoidable impact. Please see *Master Response 3 – Environmental Review of Housing Projects*.

Response to Comment 22-3

Please see Responses to Comments 22-26 and 28-18.

Response to Comment 22-4

Typical traffic studies are conducted for when the Proposed Project (in this case the *2012 Draft Marin County Housing Element*) would contribute the highest trip generation to the road network. In addition, these studies focus on the highest peak traffic periods. Typically these occur during the weekday AM and PM peak periods.

The traffic analysis conducted for this SEIR was based on the worst case condition for the *2012 Draft Marin County Housing Element*. This is correlated to when the project's trip generation would be at its highest. Based on trip generation rates defined by the Institute of Transportation Engineers (ITE), this typically occurs during the weekday peak traffic periods when work trips by commuters and school trips (AM) and shopping trips (PM) are at their highest and usually represent worse conditions than weekend recreational traffic. This is verified by weekday and weekend traffic counts and survey data. Therefore the traffic analysis focused on identifying the worst case for the project traffic, for both existing conditions and future 2035 conditions.

While traffic during weekend conditions associated with recreational activity going to and from the national parks has been observed to be high in some areas of Marin County, implementation of the *2012 Draft Marin Housing Element* would not add significantly to these conditions because the trip generation associated with housing projects is not at its highest levels during these weekend times (compared to weekday daily periods).

Response to Comment 22-5

Emergency access is discussed in Section 16 Transportation/Traffic of the Draft SEIR, and would be further analyzed at a project level during site-specific environmental reviews. Please see *Master Response 3 – Environmental Review of Housing Projects*.

Response to Comment 22-6

Air quality impacts associated with Highway 1 traffic were based on predictions made by BAAQMD, utilizing the District's Google Earth Highway Screening Analysis Tool. As stated in Response to Comment 11-7 in the *Response to Comments to the Draft SEIR*, the relatively low volume of traffic

and truck traffic (for a State Highway) would not result in significant health impacts beyond 10 to 25 feet from the edge of the highway traffic lanes. As a result, the Draft SEIR air quality analysis of toxic air contaminant (TAC) exposure found that Highway 1 would not pose significant health effects to any of the housing sites. The addition of new stop lights on Highway 1 would not affect the BAAQMD predictions using the Google Earth Highway Screening Analysis Tool.

Response to Comment 22-7

As explained in Response to Comment 11-8 in the *Response to Comments on the DSEIR*, the best available information regarding existing and future operations at Richardson Bay Heliport were used to determine that heliport noise is not a major contributor to ambient noise levels at housing sites 4, 9, 12, 13, 14, 18 to 25, 50, and 51, and is not considered excessive because noise levels do not exceed 55 dB CNEL.

The commentor states that aircraft-related noise exposure should be identified as significant particularly at senior housing sites due to the potential for elevated cardiac risks. The World Health Organization² (WHO) has summarized numerous scientific studies of the cardiovascular and physiological effects attributable to noise. According to the WHO, "...only a few studies on environmental noise have shown that populations living in noisy areas around airports and on noisy streets have an increased risk for hypertension. The overall evidence suggests a weak association between long-term environmental noise exposure and hypertension..." The data summarized in the scientific studies suggest that much higher noise levels, as compared to the noise levels at the housing sites, would be necessary before cardiovascular effects would be expected.

Response to Comment 22-8

This comment does not address the adequacy of the Response to Comment 11-9, but rather reaffirms the commentor's opinion that additional residences should not be constructed in Tam/Almonte area because of risks of seismic activity and liquefaction. Inclusion of this comment will make the commentor's opinion available to Marin County decision makers for consideration.

Response to Comment 22-9

Please see *Master Response 1 – Sea Level Rise* in the *Response to Comments to the Draft EIR* and Responses to Comments 22-26 and 28-17.

Response to Comment 22-10

This comment is not on the adequacy of Response to Comment 11-11 in the *Response to Comments to the Draft SEIR* as required by CEQA. This comment will be provided to Marin County decision makers for consideration.

Response to Comment 22-11

This comment does not address the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment will be provided to Marin County decision makers for consideration.

²Accessed via <http://www.who.int/docstore/peh/noise/Comnoise-3.pdf>, May 2013.

Response to Comment 22-12

This comment does not address the adequacy of the response to comment in the *Response to Comments to the Draft SEIR*. The comment will be provided to Marin County decision makers for consideration.

Response to Comment 22-13

This comment does not address the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment will be provided to Marin County decision makers for consideration.

Response to Comment 22-14

Response to Comment 11-17 on page 103 of the *Response to Comment to the Draft SEIR* cites the referenced *Countywide Plan* policies and programs (Draft SEIR page 97) that would mitigate impacts to biological resources that would occur upon implementation of the *Countywide Plan*. These policies and programs would have the same effect on implementation of the *2012 Draft Marin County Housing Element*. Also, please see Response to Comment 28-12.

Response to Comment 22-15

CEQA does not require an EIR to analyze social and economic impacts, see *State CEQA Guidelines* section 15131. This comment is also related to the merits of the project. Inclusion of this comment will make the comment available to Marin County decision makers for consideration.

Response to Comment 22-16

The SEIR analyzes the significant environmental effects of proposed changes in the Housing Element of the *Countywide Plan* in the context of overall *Countywide Plan* development. Therefore, as discussed in Response to Comment 11-20 in the *Responses to Comments to the Draft SEIR*, consistent with the State CEQA guidelines the SEIR evaluates the cumulative impacts related to the proposed changes in the Housing Element.

Response to Comment 22-17

The Tam Junction retail site (housing site 19) is one of 14 AH Combining District sites listed for the 2014 to 2022 planning period. Please note that program 1.c of the *2012 Draft Housing Element* states the AH Combining District would only apply to certain sites specified in the housing element. The listed sites for the 2014 to 2022 planning period will be specified in a future housing element in order to be consistent with program 1.c.

The list of Affordable Housing (AH) Combining District Sites specifies that housing site 19 would be limited to two acres at 30 units per acre

Regarding the application of housing density bonuses, please see Response to Comment 101-4.

Response to Comment 22-18

Please see Response to Comment 22-1.

Response to Comment 22-19

This comment does not introduce new information then what was addressed in Response to Comment 11-46 in the *Response to Comments to the Draft SEIR*. No further response is necessary.

Response to Comment 22-20

Response to Comment 11-52 in the *Response to Comments to the Draft SEIR* refers to new air quality mitigation (**New Mitigation Measure Air Quality-1**) which would revise *Countywide Plan* program **AIR-2.c** requiring screening of new projects for potential TAC or PM_{2.5} exposure using updated BAAQMD CEQA Analysis Tools. This revision is needed to address changed conditions brought about by the update BAAQMD analysis tools.

Response to Comment 22-21

This comment presents additional information related to Comment 11-53 in the *Response to Comments to the Draft SEIR*; however it is not a comment on the adequacy of the responses to comments in the *Response to Comments to the Draft SEIR*. The comment will be provided to Marin County decision makers for consideration.

Response to Comment 22-22

This comment is not on the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment is noted and will be provided to Marin County decision makers for consideration. Please see Response to Comment 22-7.

Response to Comment 22-23

Please see *Master Response 3 – Environmental Review of Housing Projects* in the *Response to Comments to the Draft SEIR* for information distinguishing program level environmental review from site specific review.

Response to Comment 22-24

This comment is not on the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment is noted and will be provided to Marin County decision makers for consideration.

Response to Comment 22-25

This comment is not on the adequacy of the *Response to Comments to the Draft SEIR*. The comment will be provided to Marin County decision makers for consideration.

Response to Comment 22-26

There is no deferral of analysis, as *Master Response - 1 Sea Level Rise* describes in detail both the current status of the various federal agency and government positions on local and regional planning for sea level rise adaptation and the County's ongoing efforts to integrate sea level rise considerations into the development of its watershed management plans and flood control efforts. These management plans, including the current Southern Marin Watershed Management Plan study cited in Master Response 1, are considering many structural and non-structural approaches to limiting sea level rise flooding impacts on both existing and potentially new development and redevelopment in the

County. Thus, avoidance of new development or redevelopment in areas subject to sea level rise flooding, as well as expansion of conservation areas (e.g. tidal marsh) are being considered along with structural measures (e.g. enhanced capacity stormwater pumping stations, fortified and raised levees) as potential solutions to mitigate the increased flood risk.

Response to Comment 22-27

The comment contains additional information expressing the opinion of the commentor and is not on the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. For additional information regarding the topic of Sea Level Rise please see Response to Comment 22-26.

Response to Comment 22-28

This comment is not on the adequacy of responses to comments in the *Response to Comments to the Draft SEIR*, but rather summarizes environmental points raised in previous comments. The comment will be provided to Marin County decision makers for consideration.

Response to Comment 22-29

This comment is not on the adequacy of responses to comments in the *Response to Comments to the Draft SEIR*. The comment is noted and will be provided to Marin County decision makers for consideration.

Response to Comment 22-30

This comment is not on the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment is noted and will be provided to Marin County decision makers for consideration.

Response to Comment 22-31

This comment is not on the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment is noted and will be provided to Marin County decision makers for consideration. It is noted that this SEIR contains a program level environmental analysis of the proposed changes in the inventory of housing sites.

Response to Comment 22-32

The proposed project is an update to the Housing Element of the *Countywide Plan*, which is the general plan for Marin County. Hence, a program level EIR is appropriate pursuant to *State CEQA Guidelines* section 15168. Please see response to comments 46-3, 53-8, and *Master Response 3 – Environmental Review of Housing Projects*.

Response to Comment 22-33

A detailed response to comments from this commentor was provided in the Responses to Comments 11-11 and 11-13 in the *Response to Comments on the Draft SEIR*. These included a review of the determinations made in the Draft SEIR regarding housing sites 14 and 18 and their proximity to coastal salt marsh, important wildlife habitat, and the numerous special-status species that are associated with the marshland and open water habitat of Richardson Bay. A detailed discussion of the potential impacts of development and land-use activities projected by the *Countywide Plan* is provided on pages 98 through 100 of the Draft SEIR. As noted on page 96 of the Draft SEIR, insufficient

setbacks from riparian vegetation, marshlands and other wetlands, valley oak woodlands, and other sensitive natural communities can contribute to incremental loss and incursion into the natural community types, compromising their habitat value and eventually preventing natural regeneration. This can be true for development adjacent to marshland habitat such as Richardson Bay.

The commentor provided information on the importance of “tidal-terrestrial transition zones”, which are at risk in locations where existing or proposed development borders existing tidal marshland and there are no remaining uplands to allow for future migration of emergent marshlands to higher elevations as sea levels continue to rise, as well as the importance of wetland habitat and eelgrass beds of Richardson Bay. There are few opportunities to accommodate anticipated changes in future marsh elevations as a result of sea level rise around the fringe of Richardson Bay due to the extent of existing development, which generally extends to the edge of the existing marsh zone. Protections provided under the Wetland Conservation Area and Baylands Corridor policies in the *Countywide Plan* would ensure minimum setbacks from existing marshland habitat that would serve to at least partially address future changes in marshland habitat in Richardson Bay and other areas subject to tidal influence in eastern Marin County.

As summarized on page 90 of the Draft SEIR, Programs **BIO-2.a** (*Require Site Assessments*) and **BIO-3.c** (*Require Site Assessment*) require a site assessment by a qualified professional where proposed development applications may adversely affect sensitive resources, including occurrences of special-status species, occurrences of sensitive natural communities such as coastal salt marsh habitat, and incursion into a Wetland Conservation Area which would encompass any marshland habitat associated with Richardson Bay, Bothin Marsh, Coyote Creek and the lower reaches of other tributary drainages. Conformance with these policies would ensure that specific development applications would be required to consider any potential direct or indirect impacts on wetland habitat, including those associated with Richardson Bay for housing sites 14 and 18. Policy **BIO-5.2** (*Limit Development and Access*) serves to limit development so that it does not encroach into sensitive resources and requires an environmental assessment where development is proposed within the Baylands Corridor. Other policies require that tidelands be left in their natural state, that marshlands be restored, preservation of freshwater habitat, restrictions on access, and encouraging open space acquisition of larger parcels.

Any future development applications associated with housing sites adjacent to sensitive bayland or marshland habitat of concern to the commentor would require a site assessment to evaluate potential impacts at a project-specific level of detail, as well as appropriate recommendations for sensitive habitat avoidance and mitigation, where necessary. This would include consideration of both direct and indirect impacts associated with development such as the effects of additional light and human activity on any nearby sensitive habitat areas, possible disruption of migratory corridors, and effect on special-status species. Where appropriate, this would include consideration of the numerous special-status species identified by the commentor. Conducting the required site assessment, identifying any sensitive resources in the vicinity, and providing the appropriate avoidance or mitigation would ensure compliance with *Countywide Plan* Goal **BIO-5** (*Baylands Conservation*) and Policy **BIO-5.2** (*Limit Development and Access*). No detailed plans for future uses at any of the housing sites have been prepared at this time, and providing a more detailed review of is not possible or necessary as part of the SEIR on the 2012 *Draft Marin County Housing Element*.



Comment Letter 28

Mr. Jeremy Tejirian
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County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
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Sent by Email: envplanning@marincounty.org

May 16, 2013

SUBJECT: COMMENTS ON THE ADEQUACY OF THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE MARIN COUNTY HOUSING ELEMENT UPDATE PROEJCT

Dear Mr. Tejirian;

Grassetti Environmental Consulting (GECo) and PLACEMAKERS have been retained by the Lucas Valley Homeowners Association to review the adequacy of the Supplemental Environmental Impact Report (EIR) for the Marin County Housing Element Update project. As Principals of the firms, Patricia Jeffery and I have conducted this review to determine whether, in our professional judgment, the Final Supplemental EIR (FSEIR) conforms to the basic requirements of CEQA and its implementing Guidelines. Our qualifications include a combined 60+ years of preparing and reviewing CEQA documents. Our qualifications are attached to this letter.

Our conclusions are based on site visits to some of the proposed Housing Element (HE) sites and review of relevant portions of the HE, Draft and Final SEIRs, and comments submitted to the County on the FSEIR. We understand that the comment period for the Draft SEIR has closed, and therefore no formal responses to comments on the DSEIR are required, however, the County is required to consider all relevant correspondence submitted to it prior to taking an approval action (see, for example, Galante Vineyards v. Carmel Valley Water District, 1997).

As detailed in this letter, the FSEIR contains a number of substantive deficiencies, most of which have been previously placed into the record in comments on the DSEIR. Therefore this letter discusses the previously identified deficiencies in a CEQA-adequacy context. The deficiencies fall into the following general categories:

- Adequacy of review time
- Appropriateness of using a Supplement to the 2007 Countywide Plan Update EIR (CWP EIR) for the HE

- Problems with readability/organization of CEQA documents
- Lack of an analytical trail from setting to impact to mitigation and significance
- Unstable project description
- Failure of responses to comments to address substance of comments
- Impermissible use of a Plan-to Plan analysis
- Problems with mitigation measures
- Other problems with document organization and content
- Failure to assess alternatives
- Technical deficiencies

Adequacy of Review Time

1

The County has provided an 18-day review period for the FSEIR. This is a 400-page document with numerous complex issues. It is unclear how either the numerous commentors or the County's decision-makers can fully digest, research, and interpret the hundreds of pages of comments and responses. The responses herein are provided in rudimentary form due to the minimal review period.

Appropriateness of Using a Supplement to the 2007 CWP EIR for the HE

2

An EIR must identify and focus on the possible significant environmental impacts of a proposed project. (PRC §21100(a)(1), CEQA Guidelines §15126(a). The analysis should clearly identify both direct and indirect impacts, both for the short-term and the long-term. An EIR should also discuss the environmental specifics of the affected area; anticipated physical changes; anticipated alterations to ecological systems; changes induced by population concentrations; and other aspects of the resource base such as scenic quality. (CEQA Guidelines §15126(a)). "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines §15144). PRC 21100(b)(5) requires that an EIR include a detailed statement setting forth the growth inducing impacts of a project. See also Guideline 15126(g). It requires a discussion of the ways in which the project would foster population growth, either directly or indirectly. Once identified, PRC Section 21002 and Guideline 15126(c) require the EIR to include mitigation measures to minimize, reduce and avoid such impacts.

The County elected to prepare a supplement to its 2007 CWP EIR to address the HE update rather than preparing a new EIR for this update. This has resulted in inadequate treatment of impacts and mitigation measures. Nearly all of the comment letters received on the DSEIR either provide or request more specific analyses, to which the FSEIR responds either that those will be deferred to project-specific CEQA reviews or that the DSEIR includes detailed analyses. The former is impermissible deferral of analysis (as detailed in the discussion of technical deficiencies, below) and the latter is

disingenuous – the readers have already found the discussions in the DSEIR inadequate, so directing them back to those discussions is unresponsive.

The HE, while technically a GP element, is more akin to a Specific Plan or General Plan Amendment in terms of level of detail. It identifies a specified number of housing units to be developed in a specific time period on 49 clearly delineated sites. The County acknowledges that detailed suitability/constraints evaluations were conducted on each of the sites but then falls back on generic impacts and mitigation assessments identified in the 2007 CWP EIR. The end result is a disconnect between the level of detail provided in the SEIR and the level of detail available for impact assessment. Approval of the HE requires an amendment to the general plan (GPA) and the rezoning of numerous parcels identified in the HE. The DSEIR should have been evaluated at a similar level of detail as other GPA/rezonings, which is to say, at a more detailed level. The DSEIR seems to argue that, because it is a program-level report, it can rely on plan-level analyses. There are two types of program-level reports – those on “plans”, such as the County’s CWP, and those on a connected series of actions, such as developing 49 specific sites with specific numbers of housing units. The County has erroneously used a broad-brush level of review that does not evaluate the site-specific impacts of the 49 sites identified in the HE. Reading through the comment letters, this disconnect is the source of most of the comments. Concerned residents have provided detailed analyses and data in response to the identification of the 49 sites and the FSEIR has, in many cases refused to acknowledge that information.

The lack of a detailed analysis of impacts is even more problematic considering the availability of existing analyses/information on major environmental impacts associated with development of some of the main HE sites. For example, the County recently prepared a Supplemental EIR for a proposed development on the Grady Ranch site. That EIR, and the comments on it (including comments submitted by GECONS on December 20, 2011 and January 30, 2012, hereby incorporated by reference), identified potentially significant impacts associated with providing water and sewer services to that site; potentially significant impacts to biological resources including salmon fisheries in Miller Creek associated with the need for large-scale grading of that hilly site to accommodate development; and potentially significant impacts to slope stability and water quality. In fact the California Regional Water Quality Control Board, in its April 16, 2012 letter regarding the Grady Ranch Project (hereby incorporated by reference), specifically called out these issues of geology, hydrology, water quality, and fisheries as potentially significant impacts. Similarly, the Las Gallinas Sanitary District is currently preparing plans to address flooding issues along the lower reaches of Miller Creek. That flooding has historically affected much of the Silveira property, including major flooding upstream of the railroad crossing in the past few years. It is likely that this flooding is one of the reasons that the Silveira property was never developed – it has historically been part of the delta of Miller and Las Gallinas Creeks. This flooding will be substantially exacerbated by sea level rise. The County is well aware of these issues,

having been involved in planning for parks and flood control near the mouth of these creeks, and is required to consider and disclose this information in the DSEIR. Contrary to the approach taken in this document, CEQA does not permit impact assessments to willfully ignore relevant information on project sites.

CEQA does not permit an EIR to defer analyses for which information is available at the time of preparation of the document, particularly if that analysis is essential to identifying impacts and mitigation measures. As will be discussed under “Technical Issues”, below, this EIR’s failure to investigate technical issues results in significant impacts going unaddressed and unmitigated.

Problems with Readability/Organization of CEQA documents

3 Certification of an EIR may be set aside where the agency fails to comply with the information disclosure requirements of CEQA, even though the agency’s decision would not have been affected by the non-compliance (*Ultramar, Inc. v. South Coast Air Quality Management District* (1993) 17 CA4th 689,703. In *Environmental Planning and Information Council v. County of El Dorado*, (3d Dist. 1982) 131 Cal. App. 3d. 350, 357, the court found an EIR deficient because information “[had to] be painstakingly ferreted out” of the EIR or the administrative record to determine the impacts. In that case, information concerning impacts was so convoluted and dispersed that the EIR actually “mislead the public as to the reality of the impacts and subvert[ed] full consideration of the actual environmental impacts which would result” *Id.* at 358. “A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.” *Kings County Farm Bureau et al v. City of Hanford*, (5th Dist. 1990) 221 Cal.App.3d 692, 712.

Although CEQA documents are legal documents, they are also intended to be read and understood by the general public. As described in the Marin Conservation League’s comment letters on the DSEIR, the DSEIR was extremely difficult to read because it was mostly a cross-reference to the 2007 CWP EIR. This problem is equally acute in the FSEIR, where printed versions of the electronic document posted on the County website lack comment numbers on the letters, and readers are directed back to the DSEIR’s confusing structure for (non-existent) information in response to their comments.

Lack of an Analytical Trail from Setting to Impact to Mitigation and Significance

4 The DSEIR identifies generic impacts of the HE, and only then if they differ from those already addressed in the CWP EIR. The SEIR then concludes that, if mitigation measures reduce significant impacts to a less-than-significant level for the overall implementation of the CWP, they would also mitigate significant impacts associated with the HE to a less-than-significant level. Yet the DSEIR provides no analytical trail

linking the existing conditions at the 49 sites to the impacts of developing the sites. And the County assumes the general plan-level mitigation measures are adequate to mitigate significant impacts associated with the specific 49 sites identified in the DSEIR. The reader is expected to trust that somehow the overall EIR on the CWP is adequate to address impacts on the HE identified 49 project sites. The DSEIR does identify whether or not the CWP impacts and mitigations are relevant to the 49 sites, but fails to assess the impact severity and effectiveness of CWP mitigation measures as applied to the 49 sites. As identified under Technical Deficiencies, below, this has resulted in unsupported findings with respect to mitigation effectiveness and, ultimately, impact significance

Unstable Project Description

5

A project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. (Laurel Heights Improvement Assn. v. Regents of the University of California (Laurel Heights I) (1988) 47 Cal.3d 376. The project description must be accurate and consistent throughout an EIR. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (County of Inyo v. City of Los Angeles (3d Dist. 1977) 71 Cal.App.3d 185, 193, Discussion following CEQA Guidelines §15124). The primary harm caused by shifts among different project descriptions is that the inconsistency confuses the public and the commenting agencies, thus vitiating the usefulness of the process "as a vehicle for intelligent public participation." (Inyo v. City of L. A. 71 Cal.App.3d at 197-198). Simply put, an EIR cannot analyze a moving target.

The Project Description is incomplete. It provides a selective discussion of some HE implementing programs and references Appendix G - HE Program Implementation (DSEIR page 38). The Project Description should present a complete list of the HE implementing programs to clearly establish they are part of the Project Description. The analysis of the HE implementing programs in the DSEIR is spotty at best, in many instances neglecting to discuss the effects of the implementing programs at all. All of the implementing programs should be comprehensively analyzed in the FSEIR.

Failure of Responses to Comments to Address Substance of Comments

6

When a comment raises a significant environmental issue, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted. There must be good faith, reasoned analysis in response. Conclusionary statements unsupported by factual information will not suffice." (CEQA Guidelines, § 15088, subd. (c); Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1124 (Laurel II).)

The recent *Flanders v. City of Carmel* (January 4, 2012) decision amplifies this responsibility, stating:

The City's obligation under CEQA was to explain in the FEIR in detail giving reasons why.....[it rejected a specific comment] The City made no effort to satisfy its obligation.....The purpose of CEQA is to inform both the public and the decision makers, before the decision is made, of any reasonable means of mitigating the environmental impact of a proposed project. *The City's failure to respond to this significant comment violated its duty under CEQA, and the trial court correctly found that the City's certification of the FEIR was therefore invalid.* [emphasis added]

The FSEIR's responses to many, if not most, of the comments are similarly deficient. The FSEIR does not provide good faith responses to most comments. In a large number of instances, the FSEIR refers the commentor to the original DSEIR section that the commentor, in their written letter, provided evidence was potentially deficient. The substance of the comment is therefore dismissed out of hand. Similarly, many comments are responded to with a cursory, repeated statement that the comments are on the HE and not the DSEIR, and therefore a response that would adequately address public comments specific to the DSEIR was not provided. . A careful reading of many of the County responses to comments indicate that they are, in fact, on the DSEIR, and not just the HE. Furthermore, other responses state that the vague CWP program mitigation measures would mitigate the very specific impacts identified in the public comments. No analytical or evidence-based bridge from the policy-level "mitigation" to the specific on-the-ground impact identified by the comment is presented showing how this mitigation would, in fact, occur or providing any evidence at all that the policy or program would effectively mitigate the identified impact. Several, but by no means even a majority, of these types of non-responsive responses to significant comments are identified in the Technical Deficiencies section of this letter.

Impermissible Use of a Plan-to-Plan Analysis

7 The impacts of the Project must be evaluated based on the situation on the ground, not on the General Plan (*City of Carmel-By-The-Sea v. Board of Supervisors of Monterey County* (1986) 183 CA3d 229). Yet the bulk of the DSEIR is spent comparing impacts of the proposed HE update to the impacts of the 2007 CWP EIR, including the current HE. This is a plan-to-plan comparison, which is prohibited under CEQA. The SEIR must compare impacts of the project with existing on the ground conditions. The substantive effect of this false comparison is readily apparent in the DSEIR and FSEIR's assumptions that CWP EIR mitigations would effectively reduce the project's impacts to less-than-significant, even though, as identified in numerous comments, many of those measures are general policies or programs that have not yet been implemented, a full six years after the CWP's adoption.

Problems with Mitigation Measures

Deficiencies in the mitigation measures identified in the SEIR include:

8

- Many mitigation measures are set forth at a planning level and are not/cannot be analytically related to the identified impacts at the 49 sites. In short, there's no evidence that they would actually mitigate the identified impact, yet the DSEIR assumes full mitigation.
- Many of the mitigation measures identified in the DSEIR rely on programs identified in the CWP EIR *that have not yet been implemented*. If a program has not yet been implemented and there is neither a funding or schedule commitment for its implementation, it cannot be assumed to actually mitigate anything.
- Many mitigation measures are based on verbs such as "study", "consider", "develop a plan", "cooperate with", "participate in", or "monitor". These mitigation measures do not assure that any actual mitigation will occur.
- Many mitigation measures are applied in the absence of identifying the intensity or extent of the impact. Absent knowledge of the severity of the impact, the reader can't be assured that a mitigation measure would be effective. In fact, the DSEIR has not presented mitigation measures that identify specific and effective measures to reduce project impacts associated with the identified 49 project sites to a less-than-significant level. The EIR applies vague, general mitigation measures to unspecified impacts and then assumes full mitigation.

Other Problems with Document Organization and Content

9

The DSEIR is not organized like an EIR, nor does it include all the required contents of an EIR. Specifically, the DSEIR is essentially an Initial Study checklist, with additional boxes for comparisons with the CWP EIR and changes in other conditions. It therefore is limited to discussion of items in the Initial Study Checklist boxes. It fails to include the following requisite EIR items:

- It does not have any setting sections that describe existing 2012/2013 conditions on the ground, as are required in an EIR (Guidelines Section 15125).
- The impacts discussions focus heavily on compliance with the CWP EIR, but in many cases, the document fails to clearly identify project impacts.
- The Summary discussions do not address specific impacts of the HE, but rather focus on a comparison of general project impacts with those identified in the CWP EIR.

- There is **no** discussion of alternatives anywhere in the document (see discussion below)

Failure to Assess Alternatives

As detailed in the Laurel Heights 1 decision (Laurel Heights Improvement Association of San Francisco, Inc., v. The Regents Of The University Of California, Supreme Court of California, 47 Cal. 3d 376, 1988), failure to adequately consider alternatives is insufficient for CEQA compliance.

10

“Finally, we note that alternatives and mitigation measures have the same function - diminishing or avoiding adverse environmental effects. The chief goal of CEQA is mitigation or avoidance of environmental harm. To argue that only mitigation measures need be discussed overlooks the fact that alternatives are a type of mitigation.

“We hold that under CEQA an environmental impact report must include a meaningful discussion of both project alternatives and mitigation measures.....

The DSEIR fails entirely to identify or assess alternatives to the proposed HE plan and 49 sites either in the summary (as required under Guidelines section 15123(b) (1), or anywhere else in the DSEIR (as required under Guidelines Section 15126.6). Please note that the alternatives to the CWP in the CWP EIR have no relevance to the DSEIR update, which is required to address alternatives to the selected strategies/sites in the updated HE. The CWP EIR alternatives cannot and do not substitute for the DSEIR alternatives because they are alternatives to different projects.

Technical Deficiencies

This discussion lists just a few of the many technical deficiencies in the document. Given time constraints imposed by the 18-day review period, it is not possible to list all of the problems. Therefore, the items identified below should be considered examples of the problems, and not an inclusive list.

11

- General comment - there are lists of “constraints” at each site for many of the resource categories, but no actual impacts are described....and no analytical chain showing how the identified CWP policy/program mitigations actually mitigate the impacts.

12

- Response 5-3 Mitigation relies on unimplemented programs identified in the CWP. The response is inadequate, it is not acceptable to make a general statement that essentially “the County is working on this”.

- 13 • Circular responses to comments that refer commentor back to the page commented on:
 - 5-1 (Master Response 3), 5-4, 5-7 (comment included detailed visual impacts comment - no response); 5-9 (no response to detailed water supply comment); 8-6, 11-15.
- 14 • In many instances, responses state the comment is on the HE and not the EIR. , when that's just not the case. A simple reading of the comment and response is all that's necessary to determine that many of the responses do not apply to the comments. For example: 3-1, 4-1, 6-1, 7-1, 11-26, 11-27, 11-36, 11-37, 11-88, 11-89, 11-91.
- 15 • Response otherwise fails to address substance of comment:
11-10, 11-66 through 11- 70, 11-71 through 11-74 (Master Response 1 doesn't address the actual comment), 46-12.
- 16 • Aesthetics - the impact analysis fails to adequately address the visual impacts associated with implementation of HE Program 1.p Adjust Height Limits for Multi-family Residential Buildings which would allow multi-family housing to exceed the multi-family height limits identified in the Development Code. The DSEIR determined the Project would not result in new or substantially more severe significant impacts. This is false because the DSEIR did not identify and analyze new aesthetic impacts associated with implementation of HE Program 1.p. CWP policies and mitigation measures in the CWP EIR did not account for multi-family housing being allowed to exceed established height limits. Also, HE Programs 1.a, 1.c, and 1.m would encourage increased densities and building massing at most of the 49 sites above what is allowed in the CWP and these potential impacts were not analyzed in the DSEIR.
- 17 • GHG mitigations recommend establishing a planning process. This is deferring - doesn't mitigate
- 18 • Sea level rise/flooding
 - Master Response 1 provides generic information that is never applied to the sites in the element - it's entirely useless in that it fails to address potential impacts.
 - Mitigation measures Flooding Hazard -1, -2, and 3 don't assure mitigation because instead of any actual commitment to mitigate they require that the County cooperate, consider, participate in plan, develop substantially similar measures, or consider in future environmental review the flooding impacts associated with sea level rise (SLR).
 - The sites are known and the SLR estimated for the sites are available, therefore this is improper deferral of analysis.

- There's no response to comment on flood hazards in Tam Junction (response 3-1).
- No response to detailed comments provided by comments 43-1, 46-15.

19

- Sea level rise discussion is deficient because it –
 - Fails to consider back up of Miller Creek onto Silveira site.
 - Fails to consider 2100 SLR. Why arbitrarily use 2050 SLR estimates for housing that should last 75-100 years?

20

- There is no actual water supply information; no update in supplies/demand.

21

- Land Use – the impact analysis fails to address potential conflicts associated with the rezoning of numerous parcels. The HE recommends establishing an Affordable Housing (AH) Combined District that would permit 30 dwelling units per acre on 18 sites identified in the DSEIR (HE Program 1.c). This increase in density was not addressed in the CWP EIR (except for the St. Vincent's & Silveira which identified 221 housing units consistent with the DSEIR), yet the Land Use and Planning section of the DSEIR concludes there are no significant land use impacts. The land use analysis included in the DSEIR is inadequate and must be revised to evaluate potential land use impacts associated with HE Program 1.c

The DSEIR fails to address consistency with CWP policies pertaining to transit access and nearby retail and public services. Grady Ranch is located more than four miles from any public transit, retail and public services.

22

- Noise the DSEIR does not identify specific mitigation measures for the 49 sites.

23

- Response 11-8 - Noise: The SEIR uses incorrect metrics on helicopter noise – the maximum noise levels for repeated single-event noise identified in KJOB v. Port of Oakland decision should be used.

24

- Public Services – the impact analysis fails to address the environmental impacts associated with development of the housing sites identified in the Project Description (with the exception of the Marinwood Plaza and St Vincent's/Silveira sites which are addressed in the CWP EIR). The DSEIR relies on the public services impact analysis included in the CWP EIR and provides no updated analysis to account for higher densities at many of the housing sites identified in the DSEIR Project Description. The public services analysis included in the DSEIR is inadequate and must be revised to account for increased densities and intensity of use at the majority of the housing sites.

25

- Schools – the construction of two new schools will be required for the Dixie School District (Master Response 2, pp. 17/18), but there is no analysis, even at a program level, of the potential environmental effects of the construction of two new school sites. According to Master Response 2, Dixie School District has

investigated the potential of constructing a new school at the St Vincent's/Silveira site. This will require transporting children located on the west side of Highway 101 across the freeway. This represents a potentially significant traffic impact that is not addressed in the FSEIR.

26

- Population concentrations - 68% of the housing units identified for 2007 - 2014 would be concentrated in Lucas Valley and Marinwood. This represents a significant burden on public services in these two small communities, but there is no analysis in the Public Services section of the DSEIR addressing the capacity of public service providers to meet the significant demands of the 546 housing units designated for the Lucas Valley and Marinwood communities. The public services analysis included in the DSEIR is inadequate and must be revised to analyze impacts to public services resulting from the 49 housing sites.

27

- Traffic - impacts of specific projects are not considered, even though specific affected roadways are known.

CONCLUSIONS

It is our professional opinion that the deficiencies described above are substantial and render the SEIR inadequate to meet basic CEQA analysis and disclosure standards. The County should prepare and re-circulate for public review a revised SEIR addressing the issues identified in this letter. We appreciate the opportunity to review this document and are available to answer any questions that you may have regarding these comments.

Sincerely



Richard Grassetto

A handwritten signature in black ink that reads "Patricia Jeffery". The signature is written in a cursive, flowing style.

Patricia Jeffery, AICP

Attachments Richard Grasseti Qualifications
Patricia Jeffery Qualifications

RESPONSE TO LETTER NO. 28 – RICHARD GRASSETTI, GRASSETTI ENVIRONMENTAL CONSULTING AND PATRICIA JEFFERY, PLACEMAKERS, (MAY 16, 2013)

In addition to comments received from Richard Grassetto, Grassetto Environmental Consulting and Patricia Jeffery, Placemakers, the following individuals submitted the same comments:

Bruce Carmendelle, Lucas Valley Estates HOA
Deana Dearborn
Denise K. Castellucci
Eric Egan
Janice Cunningham
John H. Rojas, San Rafael Park Neighborhood Association
Justin Kai, Organized Residents of Marinwood
Lisa Culbertson Simmons, Organized Residents of Marinwood
Maia McGehee & Paul Gusciora
Meehyun Kim Kurtzman
Raymond Day
Stephen Nestel

Response to Comment 28-1

This comment is not on the adequacy of the response to comments in *Response to Comments to the Draft SEIR*. The Marin County *Environmental Impact Review Guidelines* provide for a minimum ten-day period for review of the Final EIR prior to any action to certify it. The initial comment period was from April 29, 2013 until 4:00 PM on Monday May 13, 2013. In response to several requests for a time extension the comment period was extended to 5:00 PM on Friday May 17, 2013, for a total of 19 days.

Response to Comment 28-2

The proposed project is an update to the Housing Element of the *Countywide Plan*, which is the general plan for Marin County. Hence, a program level EIR is appropriate pursuant to *State CEQA Guidelines* section 15168. Also, please see Response to Comment 46-3 in the *Response to Comments to the Draft SEIR* and *Master Response 3 – Environmental Review of Housing Projects*. The proposed Grady Ranch development project was the subject of a separate, project-level Supplemental EIR, which is acknowledged in this SEIR.³

Response to Comment 28-3

Pursuant to *State CEQA Guidelines* sections 15162 and 15163, this SEIR analyzes the proposed changes in the Housing Element, changes in circumstances or new information. Please see Response to Comment 46-2 in the *Response to Comments to the Draft SEIR*. The completed CEQA Appendix G environmental checklist is included in the EIR in order to inform the reader of the analytical process that was used by the County to determine which resource areas may have new or substantially more severe significant impacts due to proposed changes in the Housing Element.

³ *Grady Ranch Precise Development Plan - Amendment to the Final Supplement to the Grady Ranch/Big Rock Ranch Master Plan 1996 Final Environmental Impact Report*, Ascent Environmental, Inc., Feb 2012.

Response to Comment 28-4

Please see Responses to Comments 28-3 and 83-6. Except as revised in this SEIR, all of the 2007 *Countywide Plan EIR* mitigation measures, which were previously adopted and incorporated into the *Countywide Plan* when it was approved, would be implemented if applicable to a future development project.

Response to Comment 28-5

The project description is accurate, stable and finite. Chapter 2.0 of the Draft SEIR provides a detailed description of the 2012 *Draft Marin County Housing Element*. As noted on page 37 of the Draft SEIR Section V of the 2012 *Draft Housing Element* contains Goals, Policies, & Programs. Footnote 25 states that the complete list of the goals, policies, and program are on pages V-1 through V-14 of the 2012 *Draft Housing Element* and are included in Appendix C of the Draft SEIR.

Response to Comment 28-6

CEQA requires responses to comments on significant environmental issues (Public Resources Code section 21091(d)(2)(B)). The commentator does not provide any examples of failure to respond to comments on significant environmental issues.

Response to Comment 28-7

Please see Responses to Comment 28-3 and 28-12. As CEQA requires, this SEIR compares the proposed changes in the Housing Element to current environmental conditions. In order to ensure that the comparison is to current environmental conditions, each environmental topical section begins with an Updated Setting description.

Response to Comment 28-8

As a part of the County's adoption of the *Countywide Plan* in 2007 a Mitigation Monitoring and Reporting Program (MMRP) was adopted. The mitigation measures adopted as a part of the *Countywide Plan* in 2007 remain in effect. The adopted MMRP lists the agency or entity responsible for implementation of individual mitigation measures. The MMRP also provides guidance on monitoring and reporting actions to ensure that implementation procedures are followed. Six new or amended mitigation measures have been identified in this SEIR. A new MMRP for these six mitigation measures has been prepared.

Response to Comment 28-9

The proposed project is an update to the Housing Element of the *Countywide Plan*, which is the general plan for Marin County. Hence, a program level EIR is appropriate pursuant to *State CEQA Guidelines* section 15168. Please see Response to Comment 46-3 in the *Response to Comments to the Draft SEIR* and *Master Response 3 – Environmental Review of Housing Projects*. Pursuant to *State CEQA Guidelines* sections 15162 and 15163, this SEIR analyzes the proposed changes in the Housing Element, changes in circumstances or new information. Please see Response to Comment 46-2 in the *Response to Comments to the Draft SEIR*. Furthermore, *State CEQA Guidelines* section 15120 states that the format of an EIR may be varied. The completed CEQA Appendix G environmental checklist is included in the SEIR in order to inform the reader of the analytical process that was used by the County to determine which resource areas may have new or substantially more severe significant impacts due to proposed changes in the Housing Element.

In regards to alternatives, the four alternatives that were analyzed in the 2007 *Countywide Plan EIR* are summarized on pages 9 to 11 of the Draft SEIR. The alternatives ranged from 31,686 to 32,831 housing units, and the modified alternative that ultimately was adopted allows for 31,623 housing units. The proposed 2012 *Draft Marin County Housing Element* does not propose to increase the total number of housing units than what would already occur with implementation of the *Countywide Plan*. As discussed in *State CEQA Guidelines* Section 15163(b) a supplement to an EIR need contain only the information necessary to make the previous EIR adequate for the project as revised. Therefore it was not necessary to revise the alternatives discussion of the 2007 *Countywide Plan EIR*.

Response to Comment 28-10

Please see Response to Comment 28-9.

Response to Comment 28-11

All new or substantially more severe significant impacts due to proposed changes in the Housing Element of the *Countywide Plan* are described in the Draft SEIR. Accordingly, the analysis in the Draft SEIR will help facilitate future, tiered environmental review, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing future site-specific development projects.

Response to Comment 28-12

As a part of the County's adoption of the *Countywide Plan* in 2007 a Mitigation Monitoring and Reporting Program (MMRP) was adopted. The mitigation measures adopted as a part of the *Countywide Plan* in 2007 remain in effect. The adopted MMRP lists the agency or entity responsible for implementation of individual mitigation measures. The MMRP also provides guidance on monitoring and reporting actions to ensure that implementation procedures are followed. Six new or amended mitigation measures have been identified in this SEIR. A new MMRP for these six mitigation measures has been prepared.

Response to Comment 28-13

This comment refers to multiple comments and responses to comments contained in the *Response to Comments to the Draft SEIR*. Comments related to visual impacts, or aesthetics (Comment 5-7 and 8-6) were adequately responded to. The basis of Comment 5-7 is the reliance on implementation of *Countywide Plan* policies and programs as a mitigation measures to address aesthetical impacts. This comment is responded to in Response to Comment 5-3.

Implementation of the 2012 *Draft Housing Element* would not expand or increase demand on water supply other than what was addressed in the 2007 *Countywide Plan EIR*. Therefore, there is no need to expand the analysis discussion beyond what is discussed within the Utilities and Service Systems section of the Draft SEIR beginning on page 261. If future development subsequent to approval of the 2012 *Draft Housing Element* is found to require construction of new water supply facilities, existing *Countywide Plan* policies and programs would mitigate construction related impacts.

Response to Comment 28-14

The *Response to Comments to the Draft SEIR* accurately characterizes the comments received on the Draft SEIR. As stated on page 2 of the *Response to Comments to the Draft SEIR*, comments received on the Draft EIR can generally be classified into one of three categories – project merits / process

comments, commentor opinion, and questions regarding adequacy of Draft SEIR. For example Comment Letter 3 from Sustainable TamAlmonte (dated February 5, 2013) begins with Re: **Merits** (*emphasis added*) of the 2012 Draft Marin County Housing Element's Tam Junction Affordable Housing Opportunity Sites. Comment Letter 4 from Sustainable TamAlmonte (dated February 6, 2013) begins with Re: **Merits** (*emphasis added*) of the 2012 Draft Marin County housing Element's Programs.

Response to Comment 28-15

Master Response 1 – Sea Level Rise provides information in response to comments received regarding this issue. Please see Response to Comment 28-18 below for additional information.

Response to Comment 28-16

The *2007 Countywide Plan EIR* does provide policies and programs that would serve to mitigate aesthetic impacts associated with implementation of the policies and programs of the *2012 Draft Housing Element* as discussed on pages 58 through 60 in the Draft SEIR. Program **1.p** calls for considering allowing increases to height limits for multiple family residential buildings depending on whether they meet certain side yard setbacks. The intent is that when buildings have increased setbacks from property lines, it may be appropriate to allow them to also have an increased height. Please see *Master Response 3 – Environmental Review of Housing Projects*, and Response to Comment 53-8.

Response to Comment 28-17

This comment is not on the adequacy of the responses to comments in the *Response to Comments to the Draft SEIR*. Mitigation measures to address greenhouse gas emission require the continued implementation of the Marin County Greenhouse Gas Reduction Plan (Countywide Plan Mitigation Measure 4.3-6(a)).⁴ One of the key components of greenhouse gas emission reduction identified in the plan is energy conservation. The County has adopted energy efficiency standards for single family and multiple family residential development.⁵

Response to Comment 28-18

The Draft SEIR concludes that the *2012 Draft Marin County Housing Element*, including several of the identified potential housing sites in the Tam Junction area, would result in a significant impact due to flooding associated with climate change and sea level rise (see pages 178 through 181 of the Draft SEIR.). Revised mitigation measures to address the identified impacts are included in the *Response to Comments to the Draft SEIR*. There is no deferral of analysis. *Master Response - 1 Sea Level Rise* describes in detail both the current status of the various federal agency and government positions on local and regional planning for sea level rise adaptation and the County's ongoing efforts to integrate sea level rise considerations into the development of its watershed management plans and flood control efforts. These management plans, including the current Southern Marin Watershed Management Plan study cited in Master Response 1, are considering many structural and non-

⁴ *Marin County Greenhouse Reduction Plan*, Marin County Community Development Agency, October 2006.

⁵ Marin County Code, Title 19 *Energy efficiency standards for Single Family dwellings, multifamily residential and commercial construction*, November 30, 2010.

structural approaches to limiting sea level rise flooding impacts on both existing and potentially new development and redevelopment in the County. Thus, avoidance of new development or redevelopment in areas subject to sea level rise flooding, as well as expansion of conservation areas (e.g. tidal marsh) are being considered along with structural measures (e.g. enhanced capacity stormwater pumping stations, fortified and raised levees) as potential solutions to mitigate the increased flood risk.

Note that projections to year 2100 incorporate a greater degree of uncertainty than those for year 2050. In most sea level rise predictions, the range of possible rises in sea level increases the further distant the prediction date. Furthermore, different climatic assumptions are used to derive (model) least extreme to most extreme climate and sea level rise scenarios. For this reason, BCDC has recommended planning for predicted 2050 sea level rise levels, with the proviso that any flood control infrastructure be adaptable to additional sea level rise impacts to the year 2100. **New Mitigation Measure Hydrology, Water Quality and Flooding Hazard-2** reflects this recommendation.

As noted in Master Response-1, FEMA does not currently incorporate sea level rise predictions into the development of its Flood Insurance Rate Maps (FIRMs) that delineate special flood hazard zones (SFHAs). As also noted, recent legislative initiatives at the federal level may allow FEMA to consider sea level rise in the near future. However, as noted above, the County Department of Public Works and the County Flood Control and Water Conservation District are actively considering predictions in their flood control planning efforts and associated capital improvements.

Response to Comment 28-19

The 2007 Countywide Plan EIR discussed flooding impacts on the Silveira property. The commentor is correct that predicted sea level rise will increase flooding risk and will likely expand the areas mapped as SFHAs by FEMA on the current FIRM for this area. See Responses to Comments 28-18.

Response to Comment 28-20

Please see Response to Comment 28-13.

Response to Comment 28-21

Please see Response to Comment 49-1 in the *Response to Comments to the Draft SEIR* for information regarding implementation of Housing Element Program 1.c and increased housing densities. In regard to Grady Ranch it is acknowledged that currently there is no bus service to the Grady Ranch area, and there are no reasonably foreseeable plans to extend bus service to this area. Furthermore, as stated in Checklist Sections 17(a) and 17(d) of the Draft SEIR Grady Ranch would be required to be annexed into the LGVSD for wastewater service and annexed into the MMWD for water service.

Response to Comment 28-22

The Draft SEIR provides an in-depth program-level review of the noise impacts related to proposed housing sites. Regarding site-specific review of future proposals to develop individual housing sites, please see *Master Response 3 – Environmental Review of Housing Projects*. The information contained in the Draft SEIR may help facilitate future, tiered environmental review, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing the development of specific housing sites. Please see response to comment 22-7.

Response to Comment 28-23

The SEIR uses the correct metric to evaluate the compatibility of potential housing sites with aircraft noise exposure. Title 21 of the California Code of Regulations (Caltrans, 1990) sets forth the State of California's airport noise standards.⁶ In the findings described in Section 5006, the standard states the following: "A level of noise acceptable to a reasonable person residing in the vicinity of an airport is established as a community noise equivalent level (CNEL) value of 65 dB for purposes of these regulations. This criterion level has been chosen for reasonable persons residing in urban residential areas where houses are of typical California construction and may have windows partially open. It has been selected with reference to speech, sleep, and community reaction." Additionally, this same significance criterion was used to evaluate aircraft noise exposure as part of the recent Gness Field Airport EIR.⁷ Please see Response to Comment 22-7.

Response to Comment 28-24

The Draft SEIR provides an in-depth program-level review of the proposed housing sites. Regarding site-specific review of future proposals to develop individual housing sites, please see *Master Response 3 – Environmental Review of Housing Projects*. The information contained in the Draft SEIR may help facilitate future, tiered environmental review, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing the development of specific housing sites. Checklist Section 14 (Public Services) in the Draft SEIR provides an updated setting discussion and discusses public services impacts. Checklist Section 17 (Utilities and Service Systems) in the Draft SEIR provides an updated setting discussion regarding wastewater, water, and solid waste and discusses potential impacts to these systems.

Response to Comment 28-25

The Draft SEIR provides an in-depth program-level review of the proposed housing sites. Regarding site-specific review of future proposals to develop individual housing sites, please see *Master Response 3 – Environmental Review of Housing Projects*. The information contained in the Draft SEIR may help facilitate future, tiered environmental review, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing the development of specific housing sites.

With regard to transporting students to schools, traffic generated by schools typically impacts the weekday AM peak hour and the Midday peak hour, with little impact on the PM peak hour. The impacts are typically very localized in the immediate school vicinity. When a new school is proposed, then a focused traffic study should be conducted by the lead agency to determine if there will be project-specific impacts. However, at the programmatic level that the SEIR was prepared, the traffic modeling accounts for all these additional impacts under the cumulative conditions.

⁶ *California State Noise Standards Regulations*, Title 21 Division of Aeronautics, Accessed via http://flyquiotoak.com/source/pdf/Tab%204g%20PDF%20links/Local_Regional/California%20State%20Noise%20Standards%20Regulations.pdf, May 2013.

⁷ *Gness Field Airport Draft EIR*, Landrum & Brown, December 2011, Accessed via <http://www.gnessfieldeis-eir.com/pdf/Volume2/d-4.7%20Noise.pdf>, May 2013.

Response to Comment 28-26

The Draft SEIR provides an in-depth program-level review of the proposed housing sites. Regarding site-specific review of future proposals to develop individual housing sites, please see *Master Response 3 – Environmental Review of Housing Projects*. The information contained in the Draft SEIR may help facilitate future, tiered environmental review, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing the development of specific housing sites. Checklist section 14 (Public Services) in the Draft SEIR provides an updated setting discussion and discusses public services impacts. Checklist section 17 (Utilities and Service Systems) in the Draft SEIR provides an updated setting discussion regarding wastewater, water, and solid waste and discusses potential impacts to these systems.

Response to Comment 28-27

The Draft SEIR provides an in-depth program-level review of the proposed housing sites. Regarding site-specific review of future proposals to develop individual housing sites, please see *Master Response 3 – Environmental Review of Housing Projects*. The information contained in the Draft SEIR may help facilitate future, tiered environmental review, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing the development of specific housing sites. Checklist Section 16 (Transportation/Traffic) in the Draft SEIR provides an updated setting discussion and discusses transportation impacts.

From: Deana Dearborn [mailto:deana.dearborn@gmail.com]
Sent: Friday, May 17, 2013 1:08 PM
To: EnvPlanning
Subject: Housing Element DSEIR response comments

Please find attached a letter in response to the Housing Element DSEIR comments. I have also endorsed two letters written by others also attached.

Thank you,
Deana Dearborn

Subject: Housing Element DSEIR
To: envplanning@marincounty.org
May 17, 2013

Dear Mrs. Warner,

Thank you for your response to my previous letter dated January 13, 2013 which included comments on the SEIR for the Marin County Housing Element. My new comments are contained in bold below:

1. Original Comment: 546 units listed in the Marinwood/ Lucas Valley area and only 317 outside this area is absurd. This will greatly affect our resources such as schools, public safety, traffic, noise, clean air, etc. The plan talks about a range of density, but proposes to concentrate that density in the Marinwood/ Lucas Valley area.

County Response: This is a comment on the merits of the *2012 Draft Marin County Housing Element* and not on the adequacy of the SEIR. Inclusion of these comments in this *Response to Comments* document will make the commentor's views available to the Marin County Planning Commission, the Marin County Board of Supervisors, and other public officials who will make decisions about the *2012 Draft Housing Element*. No further response is necessary.

1

What is the purpose of the SEIR if the county is not going to address issues such as population concentrations of 70% of the housing units identified for 2007 – 2014 in one area, namely, Lucas Valley and Marinwood. This represents a significant burden on public services in these two small communities, but there is no analysis in the Public Services section of the DSEIR addressing the capacity of public service providers to meet the significant demands of the 546 housing units designated for the Lucas Valley and Marinwood communities. The public services analysis included in the DSEIR is inadequate and must be revised to analyze impacts to public services resulting from the 49 housing sites. In addition, the impact analysis fails to address the environmental impacts associated with development of the housing sites identified in the Project Description (with the exception of the Marinwood Plaza and St Vincent's/Silveira sites which are addressed in the County Wide Plan, CWP, EIR). The DSEIR relies on the public services impact analysis included in the CWP EIR and provides no updated analysis to account for higher densities at many of the housing sites identified in the DSEIR Project Description. The public services analysis included in the DSEIR is inadequate and must be revised to account for increased densities and intensity of use at the majority of the housing sites.

The following added information by the County in the Master Comments section is concerning:
“While the SEIR provides an in-depth program-level review of the proposed housing sites, each

individual housing site will separately and subsequently receive additional review if and when individual development applications are received by Marin County. This SEIR will help facilitate future, tiered environmental review, as appropriate, because it provides program level information and data about each housing site, which identifies potentially significant environmental impacts and associated mitigation measures that may be used in analyzing future site-specific development projects. This approach should not reduce the ability of citizens to participate in the County review process for individual housing sites.”

I do not agree that this SEIR provides an in-depth program-level review of the impacts to the Lucas Valley and Marinwood communities. Due to the high concentration, 70% of all Unincorporated Marin housing allocation for 2007-2014, occurring in Lucas Valley and Marinwood, and the clear lack of depth analysis covered in this SEIR, I request that the County evaluate the use of this document in future approvals and consider instead a more concentrated area to perform a true cumulative review of every proposal that comes forth within the area. Comparing a 70% housing concentration to one large community consisting of 5 square miles, to the overall impact of the whole county, is unrepresentative and misleading.

2

2. Original Comment: The Rotary Field site on the 2014-2022 list is reserved as open space to be developed into much needed sports fields for our children. We currently have inadequate fields for baseball, soccer and lacrosse.

County Response: This is a comment on the merits of the *2012 Draft Marin County Housing Element* and not on the adequacy of the SEIR. Inclusion of these comments in this *Response to Comments* document will make the commentor's views available to the Marin County Planning Commission, the Marin County Board of Supervisors, and other public officials who will make decisions about the *2012 Draft Housing Element*. No further response is necessary.

Let me be more specific, I request that you remove the Rotary Field site from consideration if it is indeed reserved open space. If the sites listed in the Housing Element include designated open space than there should be no shortage of sites within Marin County, as 80% of the land is designated open space, and thus no reason to concentrate 70% of the housing for the 2007-2014 designation period in the Marinwood Lucas Valley area.

3. Original Comment: The information published on page 226, Public Education Services, is lacking at best. Does not address the significant potential impact to Dixie School District, should any form of family housing be constructed. I am not sure that the following statement is correct, “The Dixie Elementary School District, which is governed by San Rafael City Schools ...”. Being that this plan proposes 546 units in the Dixie district and even more when you consider San Rafael High School District, you would think the preparer of this document would do a little more research than consult a brochure for San Rafael and not at all consult with the Dixie School District.

County response: Please see *Master Response 2 – Dixie School District*. In response to the comment the third paragraph on page 226 of the Draft SEIR is revised as follows (footnotes omitted): SB 50 (Government Code § 65955 *et seq.* and Education Code § 17629 *et seq.*) establishes fees for the impacts of development on the need for schools. When new development pays the SB 50 fees, no other CEQA mitigation for impacts on schools may be required. School districts are involved in capacity expansion projects. This includes the Mill Valley Elementary School District reconstruction of the Edna Maguire School. In 2010 the Ross Valley School District's Measure A was passed to fund campus improvements. Construction of the District's first project, improvements to White Hill Middle School, began in spring

2012. Novato School District's San Ramon Elementary is planning construction for a new multipurpose room. New residential development is required to pay school development fees to offset the cost of accommodating increased enrollment. For example the San Rafael Elementary and San Rafael High School Districts levy a School Facilities Fee of \$2.97 per square foot of new residential development for the purpose of raising funds to provide classrooms for students generated by new residential construction. The Dixie Elementary School District, which is governed by San Rafael City Schools and feeds future enrollment into the San Rafael High School District, levies a fee of \$2.06 per square foot of new residential development. The fees are used for modernization, construction, and/or expansion of the District's school sites.

3

I fully understand the application of SB50 in relation to the impacts of constructing new schools as a result of development. It is clear that the intent of this law aims to protect neighborhood schools to alleviate the cost burden of needing to construct new facilities. However the main concern of myself and others in the Lucas Valley and Marinwood communities is not about the cost of new facilities as we are aware of the on-going cost to maintain and staff these school facilities. This is not covered in SB50 and thus SB50 should not apply in the effort to mitigate this requirement. Should a non-profit developer, who is exempt from the very property taxes that fund the on-going cost of education in our community, not be required to participate in that funding then there is a significant impact on the community. There are many appropriate mitigations depending on the specifics of the development such as limiting the number of units, limiting the number of school age children, limiting the number of bedrooms, asking for funding from the developer on a per child basis, asking for funding from the developer on a yearly basis. The county should take the school impact seriously when performing site specific environmental reviews and when the project comes forth for final approval through the public process.

4. Original Comment: I have not been through the entire plan, but from what I have read the plan does not seem to address how you will ensure that housing is provided for Marin's workforce, residence and special needs populations. From what I can tell the plan dictates where housing will be placed, but does not ensure that the occupants of this housing will work in Marin. It seems that there should be a requirement for occupants of all developments listed in the plan to provide proof of work in Marin, be unable to work (disables) or no longer in the workforce (seniors). There should be an assigned governmental body to ensure and audit this.

County Response: This is a comment on the merits of the *2012 Draft Marin County Housing Element* and not on the adequacy of the SEIR. Inclusion of these comments in this *Response to Comments* document will make the commentor's views available to the Marin County Planning Commission, the Marin County Board of Supervisors, and other public officials who will make decisions about the *2012 Draft Housing Element*. No further response is necessary.

4

Let me be more specific, is there a program to monitor and report back on whether goals of the Housing Element are being achieved? If not, why not? If so, can you provide a copy of this plan to the public? Will results be available to the public?

The Housing Element should have a clear and measurable goal. What is the goal of the Housing Element? Is it just to comply with state mandated housing? If so than the County should seriously challenge the amount of housing being allocated. Is it to provide housing for the workforce commuting into Marin County? If so than there should be a plan in place to track how much of the housing is being occupied by workers within the community. Is the goal to force diversity as identified in the HUD agreement? If so results should also be made public.

5. Original Comment: The overlay district bumps up the density to 30 units per acre at Marinwood Plaza. This is not consistent with the predominantly single family residence neighborhood. A density of 30 units per acre in Marinwood/ Lucas Valley is not a preservation of community character and does not comply with the aesthetics of the community. The 3 story height is higher than any building in the vicinity.

County Response: This is a comment on the merits of the *2012 Draft Marin County Housing Element* and not on the adequacy of the SEIR. Inclusion of these comments in this *Response to Comments* document will make the commentor's views available to the Marin County Planning Commission, the Marin County Board of Supervisors, and other public officials who will make decisions about the *2012 Draft Housing Element*. No further response is necessary.

5

“Aesthetics – the impact analysis fails to adequately address the visual impacts associated with implementation of HE Program 1.p Adjust Height Limits for Multi-family Residential Buildings which would allow multi-family housing to exceed the multi-family height limits identified in the Development Code. The DSEIR determined the Project would not result in new or substantially more severe significant impacts. This is false because the DSEIR did not identify and analyze new aesthetic impacts associated with implementation of HE Program 1.p. CWP policies and mitigation measures in the CWP EIR did not account for multi-family housing being allowed to exceed established height limits. Also, HE Programs 1.a, 1.c, and 1.m would encourage increased densities and building massing at most of the 49 sites above what is allowed in the CWP and these potential impacts were not analyzed in the DSEIR.” Taken from a letter written by Grasseti Environmental Consulting, dated May 16, 2013.

In addition, the 30 units per acre does not comply with the character of the surrounding environment. In fact, the highest density found in Marinwood/ Lucas Valley is 12 units per acre. I realize that this is not a specific comment on this SEIR, however since the County is trying to attached density increases to the Housing Element approval at the Grady Ranch and St Vincent’s sites then one of two outcomes should be required. One, the increased density should be analyzed in the SEIR or two, the increased density should not be approved and rather requested in future development requests where it can be analyzed with a site specific EIR. Saying that this is not applicable is not acceptable.

6. Original Comment: Two sites in the Marinwood vicinity (Marinwood Plaza and St Vincent’s) are located adjacent the 101 freeway. There are significant unavoidable air quality issues at these sites. There are many studies showing that air quality has a more significant impact on younger ages, such as children. This does not seem to be the most appropriate place for family housing and as such should be limited on these two sites. There is a mitigation measure for sensitive receptors MM4.3-3. Who is the audience for this and who approves the analysis?

County Response: Air quality impacts are discussed on pages 69 through 86 of the Draft SEIR. **Exhibits 3.0-4** and **3.0-5** present results of a screening level analysis performed using BAAQMD tools for the *2012 Draft Housing Element* sites. Both Marinwood Plaza (housing site 1) and St. Vincent’s and Silveira (housing site 5) are included in **Exhibit 3.0-4**. Mitigation Measure 4.3-3 of the *2007 Countywide Plan EIR* provides measures in regard to the need to provide buffer zones for potential sources of odor/toxics. This mitigation measure revised the proposed *Countywide Plan* policies and programs plus recommended the addition of a new program regarding the need for a health risk analysis for sensitive receptors. The Draft SEIR recommends a revision to *Countywide Plan* Program **AIR-2.c** (*Health Risk Analysis for Sensitive Receptors*). The Board of Supervisors is responsible for adopting the policies and programs. The Marin County Community Development Agency would be responsible for monitoring their implementation. Also, please see Responses to Comments 11-7 and 11-52.

6

“The impacts of the Project must be evaluated based on the situation on the ground, not on the General Plan (City of Carmel-By-The-Sea v. Board of Supervisors of Monterey County (1986) 183 CA3d 229). Yet the bulk of the DSEIR is spent comparing impacts of the proposed HE update to the impacts of the 2007 CWP EIR, including the current HE. This is a plan-to-plan comparison, which is prohibited under CEQA. The SEIR must compare impacts of the project with existing on the ground conditions. The substantive effect of this false comparison is readily apparent in the DSEIR and FSEIR’s assumptions that CWP EIR mitigations would effectively reduce the project’s impacts to less-than significant, even though, as identified in numerous comments, many of those measures are general policies or programs that have not yet been implemented, a full six years after the CWP’s adoption.” Taken from a letter written by Grasseti Environmental Consulting, dated May 16, 2013.

“This mitigation measure revised the proposed *Countywide Plan* policies and programs plus recommended the addition of a new program regarding the need for a health risk analysis for sensitive receptors.” **The answer refers to a new program therefore how can you be sure to mitigate this significant impact?**

7. Original Comment: There are 4 significant traffic intersections listed in the Marinwood area, yet there is no mention that these would need to be mitigated by developers.

County Response: Impacts 4.2-14 through 4.2-19 in the *Countywide Plan Final EIR* describe impacts at the eight intersections locations studied. Mitigation measures for each of the intersections at which there would be a significant impact are identified. The agencies responsible for the implementing each mitigation measure are also identified.

7

“The impacts of the Project must be evaluated based on the situation on the ground, not on the General Plan (City of Carmel-By-The-Sea v. Board of Supervisors of Monterey County (1986) 183 CA3d 229). Yet the bulk of the DSEIR is spent comparing impacts of the proposed HE update to the impacts of the 2007 CWP EIR, including the current HE. This is a plan-to-plan comparison, which is prohibited under CEQA. The SEIR must compare impacts of the project with existing on the ground conditions. The substantive effect of this false comparison is readily apparent in the DSEIR and FSEIR’s assumptions that CWP EIR mitigations would effectively reduce the project’s impacts to less-than significant, even though, as identified in numerous comments, many of those measures are general policies or programs that have not yet been implemented, a full six years after the CWP’s adoption.” Taken from a letter written by Grasseti Environmental Consulting, dated May 16, 2013.

Please provide specifics on who, the County, Developers, tax payers, etc, is responsible for these mitigation measures?

8. Original Comment: I feel that traffic at Lucas Valley and Mt. Shasta/ Mt. Lassen during mornings and afternoons when school starts/ gets out should be evaluated for the need for a traffic light. Increased traffic along with an increase in student population, will increase the left turn safety risk at these intersections.

County Response: Comment noted. The Draft SEIR contains a traffic analysis utilizing an updated traffic model that incorporates more recent demographic information. Using this model the traffic analysis found with implementation of the *2012 Draft Housing Element* no new significant impacts or any increase in severity of a previously identified significant impact would occur. This analysis evaluates the impacts of

implementing the Housing Element at a program level. The nearest traffic screenline location evaluated is screenline 15 (Lucas Valley Road between Las Gallinas Ave, and Los Gamos). The screenlines contain roadway segments thought most likely to be significantly impacted by development. A summary of information is provided in **Exhibit 3.0-25** and **3.0-26**. This information should be useful for project specific CEQA analysis that would occur subsequent to the implementation of the Housing Element.

8

This answer is acceptable assuming that any project that is applied for undergoes a full cumulative environmental impact report that incorporates the opportunity for public input. Based on my understanding of the Housing Element, other Countywide plans and new laws being passed, the intention is to streamline the process if specific criteria is met, such as meeting affordable housing inventory, and my worry is that mitigation of traffic impacts will be lost in the approval process.

The evaluation of traffic safety should be considered as the specific intersections mentioned are ones used by many people when driving children to and from school as well as by school buses. This puts an additional need of mitigation on these particular intersections as under typical traffic studies they most likely would not have the quantity of traffic to qualify for safety enhancements, however due to increased school enrollment, the sensitivity of children and peak traffic periods I hope these intersections will be seriously considered as plans come forward for approval.

9. Original Comment: Short term construction related emissions should be expanded to include:
 - a. No idling near existing occupied structures of any kind.
 - b. Air monitoring for all construction sites creating dust.
 - c. Construction sites should have a 24 hour contact number. 48 hours is too long to respond to certain issues.
 - d. Construction hours should be limited to 8:00 AM to 5:00 PM Monday through Friday.
NO EXCEPTIONS

County response: Per *Countywide Plan* Programs **AIR-1.b** and **AIR-1.g**, the County uses the BAAQMD CEQA Guidelines to evaluate construction impacts from projects. These guidelines include reasonable and feasible construction mitigation measures to control emissions at construction sites.

9

Please include information found in specific references in your response. It is unreasonable for the public to track down information and cross references to other plans. The SEIR is confusing enough as is.

10. Original Comment: There is missed health risk at the Marinwood Plaza site which is a cell tower.

County response: There is a communications compound located at 197 Marinwood Avenue, which is to the south of the proposed Marinwood Plaza development. AT&T, Sprint, and T-Mobile operate towers within a fenced area at the south end of the property. The Federal Communications Commission (FCC) has determined that cell towers do not pose a health risk to nearby residences because radio frequency emissions from antennae result in exposure levels on the ground that are typically thousands of times below safety limits. "Cellular radio services transmit using frequencies between 824 and 894 megahertz (MHz). Transmitters in the Personal Communications Service (PCS) use frequencies in the range of 1850-1990 MHz. Antennas used for cellular and PCS transmissions are typically located on towers, water tanks or other elevated structures including rooftops and the sides of buildings. The combination of antennas and associated electronic equipment is referred to as a cellular or PCS "base station" or "cell site." Typical heights for free-standing base station towers or structures are 50-200 feet. A cellular base station may utilize several "omni-directional" antennas that look like poles, 10 to 15 feet in length, although these types of antennas are less common in urbanized areas. In urban and suburban areas,

cellular and PCS service providers commonly use "sector" antennas for their base stations. These antennas are rectangular panels, *e.g.*, about 1 by 4 feet in size, typically mounted on a rooftop or other structure, but they are also mounted on towers or poles. Panel antennas are usually arranged in three groups of three each. It is common that not all antennas are used for the transmission of RF energy; some antennas may be receive-only. At a given cell site, the total RF power that could be radiated by the antennas depends on the number of radio channels (transmitters) installed, the power of each transmitter, and the type of antenna. While it is theoretically possible for cell sites to radiate at very high power levels, the maximum power radiated in any direction usually does not exceed 50 watts. The RF emissions from cellular or PCS base station antennas are generally directed toward the horizon in a relatively narrow pattern in the vertical plane. In the case of sector (panel) antennas, the pattern is fan-shaped, like a wedge cut from a pie. As with all forms of electromagnetic energy, the power density from the antenna decreases rapidly as one moves away from the antenna. Consequently, ground-level exposures are much less than exposures if one were at the same height and directly in front of the antenna. Measurements made near typical cellular and PCS installations, especially those with tower mounted antennas, have shown that ground-level power densities are thousands of times less than the FCC's limits for safe exposure. This makes it extremely unlikely that a member of the general public could be exposed to RF levels in excess of FCC guidelines due solely to cellular or PCS base station antennas located on towers or monopoles. When cellular and PCS antennas are mounted at rooftop locations it is possible that a person could encounter RF levels greater than those typically encountered on the ground. However, once again, exposures approaching or exceeding the safety guidelines are only likely to be encountered very close to and directly in front of the antennas. For sector-type antennas, RF levels to rear are usually very low." Concerns regarding non-thermal effects of electromagnetic fields associated with cell towers have increased along with the proliferation of cell towers in communities across the country. Studies have been undertaken to further understand potential health risks associated with cell towers, future regulatory and policy positions will reflect changes associated with knowledge gained. On September 30, 2010, SiteSafe, Inc. of Arlington, Virginia conducted a site inspection of the communications compound at 197 Marinwood Avenue. Observations and monitoring completed during the site inspection indicated that the communications compound was in compliance with FCC operating guidance. Measurements taken at 17 locations around the cell towers indicated that radio frequency emissions were less than one percent of the FCC Public Exposure Limit, and well within operating standards considered by the FCC to be safe. The communications compound appears to be operating legally and within current FCC safe-operating parameters.

10

My comment was geared to include this in an environmental review, which appears to have been done. The risk and responsibility of an adverse health hazard lies with the owner of the compound, the developer of the adjacent property and the County. The only additional questions I have for edification purposes only is what duration of time were the health hazards analyzed for? For example did the report take into consideration the construction of family housing, at which exposure could take place for 24 hours/ 7 days a week, assuming worst case, that a homebound person were living in one of the units?

11. Original Comment: An archaeologist should be consulted as to the probability of archaeological artifacts being found near the St Vincent's site as there are known findings on this site. Should an archaeologist be retained as part of the construction process? Is an archaeological monitoring plan required? Is training required? Would other close by sites be potentially impacted as well?

County response: Comment noted. As discussed on page 112 of the Draft SEIR the *Countywide Plan* contains policies and programs to protect archaeological resources. Program **HAR-1.d** requires archaeological surveys prior to new development when located within archaeological resource areas.

Policies **SV-4.1** and **SV-4.2** both preserve known archaeological resource and protect newly encountered resources discovered during construction.

11

Please include information found in specific references in your response. It is unreasonable for the public to track down information and cross references to other plans. The SEIR is confusing enough as is.

12. Original Comment: Mitigation Measure 4.7-2(c) requires additional information. Where does funding come from? Is there an impact fee charged to developers for this?

County response: It is the responsibility of the Marin County Board of Supervisors to budget the necessary funding for the *Countywide Plan's* programs.

13. Original Comment: I feel each site should be responsible to prepare an energy reduction plan as part of their Building permit application. This should be reviewed by an energy design expert as part of the Building permit review. Items that could be included would include: Building materials, construction waste plan, recycling plan during construction and for the life of the project, how they propose to reduce emissions, energy efficient construction materials and methods, etc. A professional should be consulted on what should be included in such plan.

County Response: This is a comment on the merits of the *2012 Draft Marin County Housing Element* and not on the adequacy of the SEIR. Inclusion of these comments in this *Response to Comments* document will make the commentor's views available to the Marin County Planning Commission, the Marin County Board of Supervisors, and other public officials who will make decisions about the *2012 Draft Housing Element*. No further response is necessary.

12

This response is not acceptable as there is a requirement under the Green House Gas (GHG) Emissions section, pages 133-139, to mitigate GHG emissions. My comment is a suggestion, which is common in other jurisdictions, on a way to limit GHG emissions. Your response is dismissive and I ask that you reconsider this request or respond with details on a similar and applicable requirement already in place at the County.

14. Original Comment: Further evaluation should be performed on the concentration of greenhouse gas emissions in Marinwood/ Lucas Valley area. The listed projects estimate 3873.41 MT of GHG Emissions in this localized area. The significance of this is not clear from the Draft SEIR. How is the threshold determined? Do they look at the overall area? Do they breakdown into localized areas? Should this be looked at cumulatively between the 2007-2014 and 2014-2022? Does that change the overall impact? These numbers seem very high for the stand alone Marinwood/ Lucas Valley area.

County Response: Emissions of greenhouse gases from projects and plans represent a cumulative impact that contributes to global warming and the associated adverse environmental effects. The impact of the *2012 Draft Housing Element* is evaluated by assessing whether direct and indirect emissions associated with the plan would contribute substantially to a significant cumulative impact. An emission per capita threshold is used to measure the plan's impact and evaluate the significance (see pages 131-132 of the Draft SEIR). Cumulative emissions from implementation of the element and not just one project or subset of projects are used to evaluate this effect.

Since the plan proposes to concentrate 70% of required housing for unincorporated Marin contained in the 2007-2014 Housing Element in one area consisting of 5 square miles I think it is not

13

only appropriate, but mandatory, that this impact be evaluated for the cumulative immediate area and not the entire county. This is not just a global warming issue, but a health issue for the residents of the area and needs to be properly evaluated.

15. Original Comment: The document is overall lacking in that it identifies broad significant issues that need to be mitigated, but does not mention how these will be mitigated. Is it the responsibility of the developers, county, existing residents, etc.?

County Response: This Draft SEIR has been prepared by Marin County in accordance with the California Environmental Quality Act, including *CEQA* (Public Resources Code sections 21000-21178.1), the *State CEQA Guidelines* (California Code of Regulations, Title 14, Sections 15000-15387), and the Marin County Environmental Impact Review Guidelines. In addition to this document a revised Mitigation Monitoring and Reporting Program (MMRP) will be prepared. One of the requirements of a MMRP is that it identifies the entity that is responsible for each mitigation monitoring and reporting task. A MMRP was prepared for the *Countywide Plan Final EIR* and it will be revised and updated as necessary for the *2012 Draft Housing Element SEIR*.

14

The response provided does not answer the question asked. I think the larger issue is the overall lack of detail of how all issues identified in this SEIR will be mitigated. It is simply unreasonable to think that an SEIR for a Plan (The Housing Element) with so many unknowns could accomplish the goals of an EIR, which is to identify and mitigate environmental impacts. This is why it is of utmost importance to NOT let this SEIR now or in final form serve in any way to circumvent a full cumulative EIR on every single project that is brought forth under this plan. This document should not be used in any way, shape or form to expedite or lower the level of environmental review on any site identified in the Housing Element.

Original Comment: I would appreciate if you could respond via email to how many people from each unincorporated area is represented on the Housing Element Task Force. Who was the representative(s) for the Marinwood/ Lucas Valley area? How was the task force decided upon?

15

These questions were not answered in your responses. Please provide the requested answers.

16

New Comment: Since the cumulative number of housing units allocated in the Housing Element to the Marinwood/ Lucas Valley area exceeds 500, I request that a comprehensive water evaluation be completed and results published and mitigated as part of this EIR process. The basis of this request is a requirement for any project larger than 500 units to prepare a water assessment. Since this the Housing Element is one plan, with one area's allocation of 546 units feeding off the same water source, it is more than reasonable to perform an assessment to know the cumulative impact to water resources and cost of mitigating these impacts.

I would like to add the following statement made taken from a letter written by Grassetti Environmental Consulting, dated May 16, 2013, as it is directly applicable to many responses provided by the County to my letter.

“The FSEIR’s responses to many, if not most, of the comments are similarly deficient. The FSEIR does not provide good faith responses to most comments. In a large number of instances, the FSEIR refers the commentor to the original DSEIR section that the commentor, in their written letter, provided evidence was potentially deficient. The substance of the comment is therefore dismissed out of hand. Similarly, many comments are responded to with a cursory, repeated statement that the comments are on the HE and not the DSEIR, and therefore a response that would adequately address public comments specific to the DSEIR was not provided. A careful

reading of many of the County responses to comments indicate that they are, in fact, on the DSEIR, and not just the HE. Furthermore, other responses state that the vague CWP program mitigation measures would mitigate the very specific impacts identified in the public comments. No analytical or evidence-based bridge from the policy-level “mitigation” to the specific on-the-ground impact identified by the comment is presented showing how this mitigation would, in fact, occur or providing any evidence at all that the policy or program would effectively mitigate the identified impact. Several, but by no means even a majority, of these types of non-responsive responses to significant comments are identified in the Technical Deficiencies section of this letter.”

Lastly, I endorse the attached letter written by Grassetti Environmental Consulting, dated May 16, 2013.

Thank you for your consideration,

Deana Dearborn
315 Pinewood Drive
San Rafael, CA 94903
510-812-4869

May 17, 2013

Jeremy Tejjirian, Planning Manager
Marin Community Development Agency
Marin County Civic Center
3501 Civic Center Drive, Suite 308
San Rafael, CA. 94903
envplanning@marincounty.org

Re: Comments to the FSEIR of the 2012 Draft Housing Element Update

Dear Mr. Tejjirian,

I am a resident of Marinwood. I am part of a group of concerned residents who have been researching the housing element along with other housing plans for our community which includes areas within the Community Service District ("CSD") and the Dixie School District. We refer to ourselves as Organized Residents of Marinwood and share common concerns with the Housing Element for Unincorporated Marin being finalized in the SEIR.

I received a copy of the independent technical review of the FSEIR prepared for the Lucas Valley Homeowners Association by the Consultant Team of Grassetti Environmental Consulting and PLACEMAKERS (see attachment).

I would like to take this opportunity to submit my comments on the FSEIR of the draft 2012 Housing Element Update. Relevant to the specific legal issues identified herein, I adopt and include all comments documented in the Grassetti/ PLACEMAKERS' report.

RESPONSE TO LETTER NO.53 DEANA DEARBORN (MAY 17, 2013)

Response to Comment 53-1

Please see Response to Comment 28-24.

Response to Comment 53-2

This comment is on the merits of the *2012 Draft Housing Element*, and not the adequacy of the response to comments in the *Response to Comments on the Draft SEIR*. The comment will be provided for Marin County decision makers for consideration.

Response to Comment 53-3

The environmental impact associated with demand for new schools is related to the occurrence of environmental impacts resulting from the construction of new facilities. This is the specific topic within purview of the CEQA review. This impact is discussed in the *2007 Countywide Plan EIR* under *Impact 4.10-12 Demand for Public Education Services*.

As discussed in *Master Response 3 – Environmental Review of Housing Projects* each individual housing site will separately and subsequently receive additional review if and when individual development applications are received by Marin County. The commentor is correct that the County should take the school impact seriously when performing site specific environmental reviews and when the project comes forth for final approval through the public process.

Response to Comment 53-4

Each housing element update includes a review of the policy and program accomplishments of the prior housing element. For example a full review of the 2003 Housing Element's goals, objectives, policies, and programs, as well as a detailed description of progress towards implementation, is contained in Appendix B: Evaluation of 2003 Housing Element Programs in the *2012 Draft Marin County Housing Element*.

Response to Comment 53-5

Please see Response to Comment 28-16.

Response to Comment 53-6

Please see Response to Comment 28-7.

Response to Comment 53-7

Please see Response to Comment 28-7. As a part of the County's adoption of the *Countywide Plan* in 2007, a Mitigation Monitoring and Reporting Program (MMRP) was adopted. The mitigation measures adopted as a part of the *Countywide Plan* in 2007 remain in effect. The adopted MMRP lists the agency or entity responsible for implementation of individual mitigation measures. The MMRP also provides guidance on monitoring and reporting actions to ensure that implementation procedures are followed. Six new or amended mitigation measures have been identified in this SEIR. A new MMRP for these six mitigation measures has been prepared.

Response to Comment 53-8

Both the existing Housing Element (Program **HS-3e** *Apply CEQA Exemptions and Expedited Review*) and the proposed 2012 Draft Housing Element (Program **2.q** *Consider CEQA Expedited Review*) call for expedited environmental review and consideration of an area-wide environmental assessment or Program EIR to assess area wide infrastructure and other potential off-site impact to expedite the processing of subsequent affordable housing development proposals. This is not a change in Housing Element programs. Any future program level EIR intended to further facilitate a tiered level environmental review, or subsequent site-specific environmental reviews would be required to meet CEQA requirement at that time. Traffic safety at specific intersections is more appropriately studied when a specific development plan for a project that been filed with the County. For more information regarding this SEIR relationship to potential future environmental review please see *Master Response 3 –Environmental Review of Housing Projects*.

Response to Comment 53-9

Construction-related emission measures recommended by the Bay Area Air Quality Management District (BAAQMD) are listed on page 77 of the Draft SEIR.

Response to Comment 53-10

Measurements reported in the referenced report were a series of individual measurements taken at various locations at the site to provide a real-time data set. Mathematical modeling using the site's antennae configuration and supplemental electronics was used to generate a theoretical maximum radiation field to evaluate potential impact around the tower. Both the real-time measurements and the results of the mathematical modeling were reportedly within acceptable operating criteria as mandated by the U.S. Federal Communications Commission, as described in the publication of Bulletin -65 from the Federal Communications Commission's Office of Engineering Technology.⁸

Response to Comment 53-11

Countywide Plan Program **HAR-1.d** and Policies **SV-4.1** and **SV-4.2** are explained on pages 112 and 113 of the Draft SEIR.

Response to Comment 53-12

2012 Draft Housing Element Program **1.n** (*Promote Resource Conservation*) calls for the continual promotion of development and construction standards that encourage resource conservation through materials selection, water conservation, community design, and energy efficiency. Please see Appendix C of the Draft SEIR for full text of Program **1.n**. Furthermore, as noted on page 137 of the Draft SEIR, Chapter 19.04 of the Marin County Municipal Code contain the county's energy efficient standards for new construction including multiple family housing.

⁸ SiteSafe RF Compliance Experts; T-Mobile Site BA1002A, Marinwood Plaza Site Compliance Report; November 3, 2010.

Federal Communications Commission Office of Engineering & Technology; Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields; OET Bulletin 65, Edition 97-01, August 1997.

Response to Comment 53-13

The Draft SEIR contains a discussion of Greenhouse Gas Emissions as needed to supplement the *2007 Countywide Plan EIR*. CEQA does not require further analysis.

Response to Comment 53-14

The commentor's opinion regarding subsequent environmental analysis is noted. Please see Response to Comment 53-8 above and *Master Response 3 – Environmental Review of Housing Projects*. Please see Response to Comment 22-16.

Response to Comment 53-15

Pursuant to the Marin County *Environmental Impact Review Guidelines*, review of a Final EIR shall exclusively focus on the adequacy of the response to comments on the Draft EIR. This comment does not address environmental issues but will be provided to Marin County decision makers for consideration.

Response to Comment 53-16

This comment is not on the adequacy of the responses to comments in the Final SEIR. The comment is noted and will be provided to Marin County decision makers for consideration.

Mr. Jeremy Tejirian
Planning Manager
County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
Sent by Email: envplanning@marincounty.org

May 17, 2013

SUBJECT: COMMENTS ON THE FINAL SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT FOR THE MARIN COUNTY HOUSING
ELEMENT

Dear Mr. Tejirian;

I am writing my comments to you regarding the Final Supplemental Environmental Impact Report (FSEIR) for the Marin County Housing Element. There are many deficiencies in this report. Here are just some:

1

• Public Services – the impact analysis fails to address the environmental impacts associated with development of the housing sites identified in the Project Description (with the exception of the Marinwood Plaza and St Vincent's/Silveira sites which are addressed in the CWP EIR). The DSEIR relies on the public services impact analysis included in the CWP EIR and provides no updated analysis to account for higher densities at many of the housing sites identified in the DSEIR Project Description. The public services analysis included in the DSEIR is inadequate and must be revised to account for increased densities and intensity of use at the majority of the housing sites.

2

• Schools – the construction of two new schools will be required for the Dixie School District (Master Response 2, pp. 17/18), but there is no analysis, even at a program level, of the potential environmental effects of the construction of two new school sites. According to Master Response 2, Dixie School District has investigated the potential of constructing a new school at the St Vincent's/Silveira site. This will require transporting children located on the west side of Highway 101 across the freeway. This represents a potentially significant traffic impact that is not addressed in the FSEIR.

3

• Population concentrations – 68% of the housing units identified for 2007 – 2014 would be concentrated in Lucas Valley and Marinwood. This represents a significant burden on public services in these two small communities, but there is no analysis in the Public Services section of the DSEIR addressing the capacity of public service providers to meet the significant demands of the 546 housing units designated for the Lucas Valley and Marinwood communities. The public services analysis included in the DSEIR is inadequate and must be revised to analyze impacts to public services resulting from the 49 housing sites.

4

• Traffic – impacts of specific projects are not considered, even though specific affected roadways are known.

The County should prepare and re-circulate for public review a revised SEIR addressing the valid concerns in this letter- they are substantial.

Sincerely,

Jessica Middleton (Lucas Valley resident)

RESPONSE TO LETTER NO.72 JESSICA MIDDLETON (MAY 17, 2013)

In addition to comments received from Jessica Middleton, the following individuals submitted the same comments:

Marissa Diaz
Noah Rolland
Zoë Rolland

Additionally, the comments in this comment letter are the same as comments in Comment Letter No. 28. Accordingly responses to these comments refer the reader to responses to Comment Letter No. 28.

Response to Comment 72-1

Please see Response to Comment 28-24.

Response to Comment 72-2

Please see Response to Comment 28-25.

With regard to transporting students to schools, traffic generated by schools typically impacts the weekday AM peak hour and the Midday peak hour, with little impact on the PM peak hour. The impacts are typically very localized in the immediate school vicinity. When a new school is proposed, then a focused traffic study should be conducted by the lead agency to determine if there will be project-specific impacts. However, at the programmatic level that the SEIR was prepared, the traffic modeling accounts for all these additional impacts under the cumulative conditions.

Response to Comment 72-3

Please see Response to Comment 28-26.

Response to Comment 72-4

Please see Response to Comment 28-27.

From: Lisa Culbertson [mailto:lisaculbertson@hotmail.com]
Sent: Friday, May 17, 2013 1:35 PM
To: EnvPlanning
Cc: Lisa Culbertson
Subject: Comment on the FSEIR for the Draft Housing Element

May 17, 2013

Jeremy Tejjirian, Planning Manager
Marin Community Development Agency
Marin County Civic Center
3501 Civic Center Drive, Suite 308
San Rafael, CA. 94903
envplanning@marincounty.org

Re: Comments to the FSEIR of the 2012 Draft Housing Element Update

Dear Mr. Tejjirian,

I am a resident of Marinwood. I am part of a group of concerned residents who have been researching the housing element along with other housing plans for our community which includes areas within the Community Service District ("CSD") and the Dixie School District. We refer to ourselves as Organized Residents of Marinwood and share common concerns with the Housing Element for Unincorporated Marin being finalized in the SEIR.

I received a copy of the independent technical review of the FSEIR prepared for the Lucas Valley Homeowners Association by the Consultant Team of Grasseti Environmental Consulting and PLACEMAKERS (see attachment).

I would like to take this opportunity to submit my comments on the FSEIR of the draft 2012 Housing Element Update. Relevant to the specific legal issues identified herein, I adopt and include all comments documented in the Grasseti/ PLACEMAKERS' report.

My legal comments in combination with the technical conclusions provided by the environmental consultant summarize inadequacies of the FSEIR in evaluating the potential adverse impacts of the draft 2012 Housing Element Update upon Marinwood and the Valley.

In light of these environmental and legal issues, I request that the County prepare and re-circulate a revised SEIR. I request that the resulting SEIR address all stated deficiencies in overseeing the creation of a sustainable plan for housing. By mandate of state and local law, I also request that the process allow for meaningful collaboration with and review by the public.

Summary of the Legal Issues

1

In summary and as detailed below, the FSEIR fails to comply with the California laws which control affordable housing plans in jurisdictions statewide. Specifically, the FSEIR contravenes Legislative intent captured in the language of Government Code section 65580, et seq., which mandates (1) preserving and creating sustainable communities, (2) planning an equitable allocation of housing for all communities, and (3) community collaboration in planning affordable housing.

Also objectionable, the FSEIR for the Housing Element is internally inconsistent in contradicting the Guiding Principle of the County Wide Plan ("CWP"). The Guiding Principle identifies preserving the character of local communities as an objective of its plan. The CWP also requires community collaboration in developing affordable housing. The FSEIR violates the Precautionary Principle Ordinance of 2010, obligating all government powers and relevant agencies to provide full-disclosure of negative environmental and health impacts from any given development, and to work with communities toward mitigation where possible and in identifying alternatives. The FSEIR, in creating an unacceptable volume and density of housing sites in Marinwood/ Lucas Valley, and in failing to work with the effected communities, deviates from Marin's existing legal framework for the county in a critical and unacceptable way. In breaking with the county's "overarching" objectives to promote "sustainable" communities, the FSEIR fails to validate the Draft Housing Element.

California State Law for Planning Affordable Housing Mandates Responsible Planning

2

The laws that mandate planning for affordable housing in California, and how that process is carried out, are codified in Government Code sections 65580, et seq. Section 65580 captures the Legislative findings that make providing available housing of "vital statewide importance" and further directs local government to "facilitate the improvement and development of housing ... for the housing needs of all economic segments of the community." (Gov. Code sect. 65580 (a), (d).) However, local governments are not assigned this task at all cost and without considering the welfare of an existing community. In fact, section 65580 requires that governments account for essential impacts on local communities.

The Legislature recognizes that in carrying out this responsibility, **each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan** and to cooperate with other local governments and the state in addressing regional housing needs.

(Gov. Code sect. 65580(e), emphasis added.)

FSEIR on the Housing Element Fails to Consider Economic, Environmental or Fiscal Factors for Marinwood/ Lucas Valley.

The FSEIR on the Housing Element does not comply with codified Legislative findings in failing to address in any meaningful way the “economic, environmental, and fiscal factors” for Marinwood/ Lucas Valley, or the “community goals set forth in the general plan.”^{1[1]} First, this plan avoids planning for obvious fiscal impacts to Marinwood/ Lucas Valley and neighboring communities (including, but not exclusive to, all areas within the CSD) who share the same resources (ie, water, sanitation, fire, law enforcement, etc.) by identifying 546 housing sites in Marinwood/ Lucas Valley and seeking to rezone specified sites at 30 units per acre.

This volume of inventory sites upon local schools creates an unacceptable fiscal burden for both the tax-paying residents and the state. Accommodating up to 546 low-income households with school-age children at the three elementary schools within the Dixie School District which are already near to or at capacity, would be obviously impossible and require major facility development or acquisition. Paying for all of these students and their necessary educational needs (including teachers, staff, IEPs, afterhour care, etc.) would create an ongoing fiscal burden that could not maintain the quality of education that all future students deserve. There is currently only one middle school, Miller Creek. Terra Linda High School enrolls students from San Rafael proper as well and would be further impacted by the affordable housing sites allocated for incorporated San Rafael.

The FSEIR accords no consideration to accommodating or transporting all of these students. The foreseeable construction in expanding school campuses within the district would be concurrent with significant increase in traffic resulting from growing our community by hundreds of residents. Congestion, pollution, and noise, just a few of the obvious negative environmental impacts, are simply not accounted for in the FSEIR. (For further environmental issues not adequately reviewed by the FSEIR, refer to the attached Grasseti letter.)

Under California Law, SEIR Identifies Housing Sites Disproportionately Thus Inequitably Within Marinwood. Lucas Valley.

Section 65584(d) provides the ultimate California authority for planning housing for all income levels and accordingly mandates under section 65584 (d):

[t]he regional housing needs allocation plan **shall be consistent with** all of the following objectives: (1) Increasing the housing supply **and the mix of housing** types, tenure, and affordability **in all cities** and counties within the region **in an equitable manner**, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.

^{1[1]} Inconsistencies between the SEIR on the Housing Element and the County Wide Plan 2007 will be discussed later in this comment.

This statute leaves no discretion or exception to the mandate that each city be allocated a “mix of housing,” that mixed housing be “in all cities,” and that this allocation be made in an “equitable manner.” (Gov. Code section 65584(d)(1).

Clearly in allocating hundreds of affordable housing sites to one Marin community, Marinwood/ Lucas Valley, while allocating a fraction of affordable housing in most other cities, the FSEIR does not comply with the California statutes that dictate planning of affordable housing. Marinwood/ Lucas Valley residents already represent an economic “mix,” more mixed by income than many unincorporated and incorporated areas of Marin that are not being designated for anything close to 546 affordable sites. Also, the FSEIR does not account for the many existing households within Marinwood that would qualify by income for affordable housing themselves.

It is not equitable to plan for the majority of affordable sites in a community that does not have the fiscal resources or independent wealth to pay for this foreseeable increased demand while comparable allocations are not imposed upon other Marin communities (many/ most with a wealthier demographic and greater tax-base). Moreover, it is blatantly “inequitable” to so disproportionately burden one community in Marin county when the State of California requires participation by “all cities” in planning for “mixed” housing that “shall” include “low- to very low income households.” Subsequent sections of the Government Code provide an appeal process if a regional government allocates housing improperly; in submitting this SEIR, an appellate process would be the legitimate recourse given the blatantly improper allocation of housing within Marinwood/ Lucas Valley.

Marin County Wide Plan Mandates Local Collaboration in Creating “Sustainable Communities”

5

The Countywide Plan’s scope was revised in 2007 to plan for “sustainable” communities” – “[p]lanning sustainable communities is an overarching theme” expressed in the Guiding Principle of the CWP. In its mission statement, the CWP states:

The mission of the County of Marin is to provide excellent services that support healthy, safe and **sustainable communities**; preserve Marin’s unique environmental heritage; and **encourage meaningful participation in the governance of the County for all.**

(CWP, p. vii, emphasis added.) The Board of Supervisors in fact has adopted these community goals. (*Id.*) In order to achieve these goals, the CWP recognizes the critical importance of “promoting public participation” and “working in community partnerships” to maintain “quality of life.” (CWP, p. 1-4, Introduction.) Though the CWP establishes specific legal requirements for the plan, it also honors local control in recognizing that “within that framework each community has the latitude to design its own future.”

In an Introduction to Countywide Goals, the CWP states policies and programs are implemented to achieve, among other goals: (1) preserving Marin’s community character, whereby its residential neighborhoods “will be preserved and enhanced.”; (2) collaboration and partnerships,

whereby “**Marin public agencies, private organizations and regional partners will reach across jurisdictional boundaries to collaboratively plan for and meet community needs.**” (CWP, p. 1-15, emphasis added.)

The Draft Housing Element contravenes the Guiding Principles of the CWP in allocating to Marinwood/ Lucas Valley too much of the inventory intended for all of Unincorporated Marin. The planned inventory sites for this area will not preserve the existing community nor create a sustainable community in allocating over 60% (546 housing sites) of the affordable housing sites to a part of one district, that are intended for distribution throughout five districts. Moreover, this plan will irreparably destroy the character of the existing community in facilitating dense, 100% affordable housing developments that far exceed existing rural, quasi-rural, or even suburban density standards. Given regional objectives and incentives for developing affordable housing, the FSEIR fails to consider the plan’s urbanization of a community that is not urban by choice.

6

The Precautionary Principle Ordinance Prioritizes Preventing Unnecessary Health and Environment Risks Through Public Awareness and Participation in Harm Reduction

The FSEIR does not harmonize in its cursory assessment of the housing inventory assigned to Marinwood/ Lucas Valley with The Precautionary Principle Ordinance adopted by Marin County. The Precautionary Principle obliges county agencies to anticipate and prevent unwarranted impacts to health and the environment. It functions as a commitment by the Board of Superiors to the following:

A. Every person within Marin County has an equal right to a safe and healthy environment. Within the commons, areas that we all share, the air, water, soil, parks, paths, buildings and food must be of the highest quality so that all can enjoy a healthy, fulfilling and dignified life. ...

E. Alternatives assessment that the Precautionary Principle Ordinance initiates is a public and thus a more democratic process. Within the public process the immediate and long – term consequences as well as possible impacts to the local economy must be considered and examined. ...

(Precautionary Principle Ordinance 2010, emphasis added.) This ordinance requires that “[a]ll officers, boards, commissions, and departments of the County **shall** implement the Precautionary Principle Ordinance in conducting the County’s affairs.” (*Id.*, emphasis added.) Accordingly, harm reduction results from:

(1) Anticipatory Action – a **duty** by government to prevent harm;

(2) Right to Know – “[t]he community has a right to know complete and accurate information on potential human health and environmental impacts associated with the selection of products, services, operations or **plans**. The burden to supply this information lies with the proponent, not with the general public”;

(3) Alternatives Assessment – “An obligation exists to examine a full range ... [and] **select the alternative with the least potential impact on human health and the environment, including the alternative of doing nothing**”;

(4) Full Cost Accounting – “When evaluating potential alternatives, there is a **duty to consider all the reasonably foreseeable costs**, including raw materials, manufacturing, transportation, use, cleanup, eventual disposal, and health costs -- even if such costs are not reflected in the initial price. Short- and long-term benefits ...”; and,

(5) Participatory Decision Process – “**Decisions applying the Precautionary Principle Ordinance must be transparent, participatory, and informed by the best available science and other relevant information.**”

(*Id.*, emphasis added.)

7

FSEIR on the Housing Element Fails to Protect and Elicit Community Participation

The FSEIR, in planning the volume and placement of inventory sites in Marinwood/ Lucas Valley (ie, Marinwood Plaza), is not compliant with either the CWP or the Precautionary Principle. Residents have not been made aware of the Housing Element’s potential environmental impacts. Moreover, the process by which these sites have been designated has not sufficiently involved the community in a “participatory” role or “informed” the community as to relevant facts.

Marinwood Plaza, specifically, is identified as a residential site for high density affordable residences despite this site’s close proximity to a busy highway and despite known health risks to people who live near major roadways (particularly to the young, the old and those with pre-existing health issues). Also, the Plaza has known contaminants from several sources, hazardous to residential development. These contaminants are still in the process of being tested to determine the scope of the contamination which has spread off-site, and to determine if there is any impact effecting Miller Creek. As an inventory site for affordable housing, and as a potential Priority Development Area ("PDA"), it is foreseeable that Marinwood Plaza would not be subject to a full environmental impact report once the Housing Element is passed. The site has never undergone a meaningful environmental review for purposes of residential development in the FSEIR process for the Housing Element. Having a known, long-standing environmental hazard, the FSEIR must specify an actual mitigation or alternative for this site. The Plaza is not suitable as an inventory site and should not be designated for residential development until the existing contamination is completely contained and removed.

Moreover, the county requires identifying actual mitigation and alternatives to environmental risks.

The Precautionary Principle Ordinance requires a thorough exploration and a careful analysis of a wide range of alternatives. Based on the best available science, the Precautionary Principle Ordinance requires the selection of the alternative that presents the least potential threat to human health and the County's natural systems. Public

participation and an open and transparent decision making process are critical to finding and selecting alternatives.

Given the lack of commercial development, and in light of its location beside a major highway, the Marinwood Plaza is ideally situated for commerce. If the FSEIR truly considered economic factors for the local community, it could find this site more viable as a commercial development – mitigating an environmental issue and providing an alternative solution that addresses a community need. Given the fact that much of Marinwood must commute out of county to work, creating employment opportunities is more in line with economic realities; moreover, it would satisfy environmental objectives in not exposing families to unhealthy levels of pollutants in their homes and lowering the number of commuters by providing local jobs. This is but one alternative in a harm reduction analysis that could have been considered for this inventory site. Unfortunately no such harm reduction evaluation is noted in the FSEIR.

In not addressing real issues based on known factors and implications unique to developing each site, the FSEIR fails to identify for Marinwood/ Lucas Valley site-specific impacts or to correctly categorize them as substantial or cumulative. Ultimately, the FSEIR plans no true mitigations and identifies no alternatives, as is required by the county.

California Appellate caselaw, in fact, invalidates the authority of an agency regarding an EIR when

'... the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' As a result of this standard, '[t]he court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' . . ." ([Laurel Heights Improvement Assn. v. Regents of University of California \(1988\) 47 Cal. 3d 376, 392 \[253 Cal. Rptr. 426, 764 P.2d 278\]](#), (hereafter *Laurel Heights I*), fn. and citation omitted; see also [Western States Petroleum Assn. v. Superior Court \(1995\) 9 Cal. 4th 559, 573 \[38 Cal. Rptr. 2d 139, 888 P.2d 1268\]](#).)

[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

(*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1116-17, citations ommitted). The FSEIR in its treatment of Marinwood/ Lucas Valley “precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process,” and should thereby be deemed null.

Marinwood/ Lucas Valley will endure much negative foreseeable infrastructure impact with both economic and environmental consequences. There has been no open forum at a stage in the process that would have allowed for meaningful public input or response. Specifically, local

government (ie., the Board of Supervisors) including authorities directly responsible for the FSEIR have been remiss in failing to identify to the effected communities the implications resulting from the planned over-development. Despite the fact that the FSEIR has identified 546 sites in Marinwood/ Lucas Valley, government agencies involved in this planning process and responsible for authorizing it have failed to engage in a collaboration with the effected communities. In so doing, the review process under the FSEIR of the Draft Housing Element legally fails.

Regards,

Lisa Culbertson Simmons
Marinwood Resident

RESPONSE TO LETTER NO. 83 LISA CULBERTSON SIMMONS, ORGANIZED RESIDENTS OF MARNWOOD (MAY 17, 2013)

In addition to comments received from Lisa Culbertson Simmons the following individuals submitted the same comments:

Aaron Munter
Adrienne Hart
Amie Buecker
Amy Farrell
Ana Reza-Hadden
Andrea Paliulis
Andy Buecker
Angela Lee
Anita McKenzie
Ann Marie Martin
Barbara Layton
Barbra Rosenstein
Bonnie Keenan
Brett Wickens
Carol Sheerin
Carolyn Margiotti
Charles Ocat
Christina Ishibashi Bonner
Christine Nishinaga
Cynthia Langendorf
Dan Friedman
David Bobrow
Dayan Perera
Deana Dearborn
Denise K. Castellucci
Donna Andresen
Dr. Louis Stokes & Beverly Stokes
Ellis Heyer Coyne
Eric Andresen
Eric Bonner
Francie & Brian Burkhard
Gabriela Shea
Glenn Nishinaga
Heidi Zabit
Igor Grinchenko
Irene and Vincent Korsky
James Nielsen
Janet & James Leonard
Jennifer McConnell
Jessica Freilich
Joan Herriges
Joanne Herson
Joshua Nadelberg

Justin Kai
Kevin Butts
Kimberly Call
Liz McCarthy
Maia McGehee & Paul Gusciora
Maribel Cruz
Mary, James & Caroline Nielsen
Matt Egan
Meehyun Kim Kurtzman
Meredith Noyes
Meredith Schow
Michelle Rowley
Nannette Quigley
Page Hadden
Paul Franjeh
Peter Herschkorn
Pierre Littée
Raymond Sullivan
Regan Nadelberg
Robert Jones
Ryan Mize
Sabine Grandke-Taft
Scott Johnson
Sean Keenan
Soroor Iravani
Stacy Nelson
Stephen Nestel
Steve Clark
Steven Better and Kristina Raube
Takako Nishinaga
Tanya Powell
Thomas Sibbet
Wolfgang Taft

Ms. Culbertson Simmons on behalf of Organized Residents of Marin also submitted a copy of the comments prepared by Richard Grasseti, Grasseti Environmental Consulting and Patricia Jeffery, Placemakers. Please see responses to Comment Letter No. 28 above.

Response to Comment 83-1

This comment makes reference to the County's Precautionary Principle Ordinance. The Precautionary Principle Ordinance was adopted by the Board of Supervisors on October 5, 2004.⁹ The precautionary principle is a translation of the German word, *Vorsorge*, which means, literally, "forecaring." It carries the sense of foresight and preparation, and is the common sense idea behind many adages: "Be careful." "Better safe than sorry." "Look before you leap." "First do no harm."

⁹ Resolution No. 2004-108, Resolution of the Marin County Board of Supervisors A Resolution to Continue to Incorporate the Precautionary Principle in County Operations, Adopted October 5, 2004.

The Precautionary Principle is an approach characterized by minimizing or eliminating potential hazards at the onset of an activity.

Implementation of the precautionary principle was not a new concept in Marin County, and County government has been a leader in making choices based on using best management practices that reflect the least environmentally harmful alternative. The precautionary principle is incorporated into the County's Strategic Plan and the *Countywide Plan*, and its application throughout County departments is detailed in the County Operations Report.

The FSEIR and the *Marin County Housing Element* are aligned with the precautionary principles approach as potential environmental impacts were identified and mitigated wherever possible. In addition, both documents further the goals of building sustainable communities by supporting a mix of housing types, densities, and designs affordable to the full range of our diverse community and workforce.

Response to Comment 83-2

This comment does not address the adequacy of the responses to comments in the Response to Comments to the Draft SEIR. This comment is noted and will be provided to Marin County decision makers for consideration.

Response to Comment 83-3

As stated in Response to Comment 5-5 in the *Response to Comment to the Draft SEIR* CEQA does not require an EIR to analyze social and economic impacts. See *State CEQA Guidelines* section 15131. The proposed project identifies 49 housing sites in two planning periods, 2007-2014 and 2014-2022. With regard to the impacts of the 2012 *Draft Marin County Housing Element* on the Dixie School District, please see *Master Response 2 – Dixie School District*.

With regard traffic generated by transporting students to future schools, please see Response to Comment 28-25.

Response to Comment 83-4

This comment does not address the adequacy of the responses to comments in the *Response to Comments to the Draft SEIR*. This comment is noted and will be provided to Marin County decision makers for consideration.

Response to Comment 83-5

This comment does not address the adequacy of the responses to comments in the *Response to Comments to the Draft SEIR*. This comment is noted and will be provided to Marin County decision makers for consideration.

Response to Comment 83-6

This is a comment on the merits of the 2012 *Draft Marin County Housing Element* and not on the adequacy of the SEIR. The potential for development of housing on 49 sites in the 2007-2014 and 2014-2022 Housing Element time frames is analyzed in every resource category and the cumulative context. The SEIR discloses new or substantially more severe significant impacts in the following three resources areas: Air Quality; Hydrology, Water Quality and Flooding Hazard; and Noise. As described on pages 41 to 44 of the Draft SEIR and in *Master Response 1 – Sea Level Rise*, six new or

amended mitigation measures have been identified, in response to new or substantially more severe significant impacts. CEQA does not require an EIR to analyze social and economic impacts, see *State CEQA Guidelines* section 15131. Please see Response to Comment 83-1.

Response to Comment 83-7

Both the proposed 2012 *Draft Marin County Housing Element* and this SEIR were the subject of significant public input and review.

A short summary of the efforts undertaken to solicit public input for the Housing Element is provided on page 13 of the Draft SEIR. Additional summaries of public meetings are included in Appendix C of the 2012 Draft Marin County Housing Element.

On July 13, 2012 Marin County issued a Notice of Preparation and Notice of Public Scoping Meeting and Notice of Public Workshop for the Draft SEIR. The public scoping period was from July 13, 2012 until 4:00 PM August 13, 2012. The Planning Commission held a public scoping meeting on August 2, 2012 to solicit comments on the scope of the SEIR. Workshops on the Draft Housing Element were held on August 29, and September 29, 2012.

Marin County prepared, and on December 20, 2012 circulated, the Draft SEIR on the proposed 2012 *Draft Marin County Housing Element* project. During the public review period from December 20, 2012 to February 19, 2013, comments on the Draft SEIR were received from governmental agencies and the public.¹⁰ On January 14, 2013 the Marin County Planning Commission conducted a public hearing during the public review period on the Draft SEIR.

Marin County prepared and on April 29, 2013 circulated the *Marin County Housing Element Supplement to the 2007 Countywide Plan EIR Final Supplemental Environmental Impact Report–Response to Comments to the Draft Supplemental Environmental Impact Report*. A notice of availability of the Final EIR for review and notice of the public meeting of the Planning Commission to consider a recommendation for certification of the Final SEIR was published and began a 19 day review and comment period on the Final SEIR ending on May 17, 2013.¹¹

With regard to the Marinwood Plaza site, please see the Responses to Comments 20-7 and 20-11 in the *Response to Comment to the Draft SEIR*. In regard to environmental analysis of the site when a future development project is proposed, please see *Master Response 3 – Environmental Review of Housing Projects*.

Please see Responses to Comment 83-1 and 83-6.

¹⁰ The comment period was originally set for December 20, 2012 to February 4, 2013. At the request of several individuals the comment period was extended to February 19, 2013.

¹¹ The initial comment period was from April 29, 2013 until 4:00 PM on Monday May 13, 2013. In response to several requests for a time extension the comment period was extended to 5:00 PM on Friday May 17, 2013.

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May 17, 2013

Comment Letter 101

Via Email

Jeremy Tejirian, Planning Manager
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
envplanning@marincounty.org

Re: Comments on the Final Supplemental Environmental Impact Report for the 2012 Marin County Housing Element

Dear Mr. Tejirian:

I write on behalf of Sustainable TamAlmonte and myself to comment on the County of Marin's Final Supplemental Environmental Impact Report ("Final SEIR") for the 2012 Draft Marin County Housing Element ("Project"). On February 19, 2013 submitted comments on the County's Draft SEIR for the Project. The Final SEIR includes responses to our comments. While the Final SEIR provides a few necessary revisions in response to our February 19, 2013 comments, the County's responses fail to cure most of the Draft SEIR's deficiencies identified in our comments. Therefore, our February 19, 2013 comments are applicable to the Final EIR and are incorporated by reference herein.

Like the Draft SEIR, the Final SEIR fails to disclose, analyze and mitigate the Project's potentially significant impacts and many of the Final SEIR's conclusions lack any supporting evidence. Therefore, the Final SEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA") and the County cannot approve the Project until an adequate EIR is prepared and circulated for public review.

In addition, we would like to point out that the County failed to provide documents in response to several requests made under the Public Records Act,¹

¹ Government Code § 6250 et seq.

CEQA and the California Constitution. The County has, therefore, violated State law and greatly limited the public's ability to adequately review and comment on the Draft SEIR and Final SEIR.

These comments were prepared with the assistance of technical expert Geoff Hornek. His comments are attached as Attachment 5.

Sustainable TamAlmonte is a group of Tam Valley and Almonte residents who want to preserve and enhance the environmental qualities of their unique bayside communities. The members of Sustainable TamAlmonte support truly sustainable land use and development in Tamalpais Valley and Almonte, and have grave concerns about the environmental, health and safety impacts that result from poor land use planning, including environmentally detrimental projects. Therefore, Sustainable TamAlmonte has a strong interest in enforcing environmental laws to protect the Tamalpais Valley and Almonte communities' valuable environmental resources, and the health and safety of current and future residents.

I am a resident of Tamalpais Valley. My family and I recreate in the Tamalpais Valley and Almonte neighborhoods. I want to preserve and enhance the environmental qualities of these unique bayside communities. I am concerned about sustainable land use and development in these areas, and the environmental, health and safety impacts that result from poor land use planning. As a resident whose family lives, works and recreates in the Tamalpais Valley and Almonte areas, my family and I will suffer the impacts from environmentally detrimental projects. I want to protect the Tamalpais Valley and Almonte communities' valuable environmental resources, and the health and safety of current and future residents.

1 I. **THE COUNTY VIOLATED THE PUBLIC RECORDS ACT, CEQA AND THE CALIFORNIA CONSTITUTION WHEN IT FAILED TO PROVIDE REQUESTED DOCUMENTS**

The Public Records Act provides the public with the right to access and obtain copies of public records.² In addition, Article I, section 3(b) of the California Constitution, provides a constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to

² Government Code § 6250 et seq.

information shall be narrowly construed. Finally, CEQA requires the County to make available for public review the full all documents referenced in an EIR for the entire public comment period.³

Accordingly, we requested documents related to the Project on October 22, 2012.⁴ The County Clerk responded to our request, stating that the Clerk's office had no responsive records, but that the Community Development Agency had responsive documents and would be responding to our request accordingly. However, we received no response from the Community Development Agency.

On January 9, 2013, we again requested documents related to the Project.⁵ At that time, the County had released the Draft SEIR with a comment deadline of February 4, 2013. Therefore, we expanded our request to include all documents referenced in the Draft EIR.

On January 11, 2013, the County responded, stating that “[a] substantial amount of information is publicly available on the county’s website” and “additional information is being compiled, which consists of public email communication on the housing element process, and GIS data in map form...”⁶ We received those documents via email on January 23, 2013.

On January 25, 2013, we emailed the County because we were concerned, in light of the limited number of documents provided to us on January 23, that there were outstanding documents responsive to our requests. We asked the County to clarify whether the documents the County provided to us on January 23, in addition to the documents posted online at the links provided by the County on January 23, were “all of the documents that comprise the administrative record, up this date, for the approval of the DSEIR for the 2012 Draft Housing Element.” On February 5, 2013, the County replied that it had provided all administrative record documents related to the DSEIR.⁷

Now, the Final SEIR states that “[a]ll of the documents listed in the bibliography are part of the administrative record of this SEIR, and are available

³ Pub. Resources Code § 21092(b)(1).

⁴ **Attachment 1:** Letter from Rachael E. Koss to Brian Crawford and Richard Benson, October 22, 2012.

⁵ **Attachment 2:** Letter from Rachael E. Koss to Brian Crawford and Richard Benson, January 9, 2013.

⁶ **Attachment 3:** Letter from Stacey Laumann to Rachael Koss, January 11, 2013.

⁷ **Attachment 4:** Email from Stacey Laumann to Rachael Koss, February 5, 2013.

for review upon request.”⁸ While some of the documents are available online via links provided, many of them are not. Therefore, we requested these documents on numerous occasions. Yet, the County failed to provide them. The County not only violated State law, but thwarted public participation in the review of the SEIR.

2

II. THE COUNTY IS MISLEADING THE PUBLIC WHEN IT STATES THAT SITE-SPECIFIC ENVIRONMENTAL REVIEW WILL OCCUR WHEN SPECIFIC DEVELOPMENT PROJECTS ARE PROPOSED

The County attempts to squelch public concern over the Project’s inadequately disclosed and inadequately analyzed impacts by stating that project-level environmental review would occur when specific development projects are proposed.⁹ The County’s attempt is misleading for two reasons.

First, the County uses vague and uncertain language to describe the potential for future project-level environmental review. For example, the County states, “additional site-specific review is *anticipated* for specific development projects when they are proposed.”¹⁰ Anticipating project-level review is very different from requiring project-level review. This is particularly concerning because most of the public is probably not familiar with the many CEQA exemptions that could apply to future site-specific projects.¹¹ Therefore, the County’s statement is misleading.

Second, in light of recent case law, the County’s statements, such as “[w]hen development projects are proposed for the identified housing sites, site-specific review based on the project applications will determine *the form of additional environmental review required*,”¹² are rendered completely meaningless. In *Concerned Citizens of Dublin v. City of Dublin*, the court held that an agency’s consideration of a whether an exemption applies to a project “is itself an environmental review.”¹³ In other words, when site-specific projects are proposed in accordance with the Project, the *County’s consideration of the applicability of CEQA exemptions would constitute environmental review*. Therefore, the public cannot be

⁸ Final SEIR, p. 281.

⁹ Final SEIR, p. 281.

¹⁰ *Id.*

¹¹ See, for example, Pub. Resources Code § 21159.23 Low Income Housing Exemption, Pub. Resources Code § 21159.24 Infill Housing Exemption, Cal. Code Regs. § 15194 Affordable Housing Exemption and Cal. Code Regs. § 15195 Residential Infill Exemption.

¹² Final SEIR, p. 281 (emphasis added).

¹³ *Concerned Citizens of Dublin v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1316-1317.

comforted by the County's statements that site-specific environmental review will occur when projects are proposed because that "additional environmental review required" may be nothing more than a CEQA exemption determination.

III. THE COUNTY CANNOT RELY ON THE 2007 COUNTYWIDE PLAN EIR TO APPROVE THE PROJECT

3

In our comments on the Draft SEIR, we explained why CEQA prohibits the County from relying on the 2007 Countywide Plan EIR to approve the Project. In short, the Project is outside the scope of the 2007 Countywide Plan EIR because the Project is more dense and intense than the project analyzed in the 2007 Countywide Plan EIR and because the 2007 Countywide Plan EIR expressly and repeatedly stated that the *Housing Element was not the subject of the Countywide Plan amendment or the 2007 Countywide Plan EIR*.

In response, the Final SEIR states that "the current Housing Element was incorporated into the 2007 Countywide Plan and adopted by the Board of Supervisors in November 2007."¹⁴ The Final SEIR completely misses the mark. The point here is that the 2007 Countywide Plan EIR did not analyze environmental impacts associated with the County's Housing Element. Therefore, the County cannot now tier from the 2007 Countywide Plan EIR which did not analyze the environmental impacts from the County's Housing Element.

IV. DENSITY BONUSES FOR SITE-SPECIFIC PROJECTS ARE LIKELY – DENSITY BONUSES ARE NOT SPECULATIVE

4

The County refuses to disclose and analyze the Project's "worst-case scenario" associated with likely density bonuses for site-specific projects. Once again, the County is misleading the public and is minimizing the Project's potentially significant impacts, in violation of CEQA.

In our comments on the Draft SEIR, we explained that CEQA requires "reasonable" or "realistic" worst-case analyses based on potentially expected worst-case conditions. Therefore, we explained, the County must disclose and analyze impacts associated with the realistic and reasonable scenario that, pursuant to density bonus law, the Project's identified housing developments would be developed at even greater densities – up to 35 percent or more – than were analyzed in the Draft SEIR. We provided ample evidence to support our comments.

¹⁴ Final SEIR, p. 282.

Despite evidence showing that the Project would likely result in development at densities much greater than the County analyzed in the Draft SEIR, the Final SEIR states that density bonuses are “speculative” and fails to provide worst-case scenario analyses. The County provides *no* evidence to support its argument.

5

V. THE FINAL SEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT HEALTH IMPACTS FROM SOIL AND GROUNDWATER CONTAMINATION

Our comments on the Draft SEIR provided substantial evidence in the form of expert testimony by Matt Hagemann that the Draft SEIR failed to disclose the extent of contamination on Project sites 4 and 19, as well as potential contamination on sites 9, 14 and 18. We provided substantial evidence that development of any of the Project’s identified sites in Tamalpais Junction (4, 9, 14, 18 and 19) pose potentially significant health risks to construction workers and future residents through vapor intrusion, dermal contact and inhalation. We explained that these significant impacts were not adequately disclosed or analyzed in the Draft SEIR (or 2007 Countywide Plan EIR). Further, we provided substantial evidence that the County must incorporate the installation of vapor barriers as a mitigation measure to reduce the Project’s significant impacts to future residents from exposure to toxic vapors. Finally, we provided substantial evidence that, if reduction of contamination below screening levels is not possible, residential development on the site should be restricted.

While the Final SEIR acknowledges additional potential sources of contamination identified by expert Hagemann, the Final SEIR fails to adequately disclose and analyze the presence and/or extent of contamination on the Tamalpais Junction sites. For example, the Final SEIR completely fails to acknowledge potentially significant impacts from the presence of benzene (a known human carcinogen) on these sites. The Final SEIR also fails to consider that, because soil vapor sampling investigations have not been conducted on these sites, it is impossible to determine the severity of health impacts to construction workers and future residents from contaminated soil and groundwater, or whether the impacts can be mitigated to a less than significant level.

The Final SEIR’s “solution” to its failed disclosure is that environmental site assessments (including soil, soil vapor and groundwater sampling) and remediation would occur *prior to grading and “other development activities.”*¹⁵ The County’s

¹⁵ Final SEIR, p. 297 (emphasis added).

approach turns CEQA on its head. Environmental problems should be considered at a point in the planning process “where genuine flexibility remains.”¹⁶ “A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.”¹⁷

Full disclosure of public health impacts, as required by CEQA, must include the precise locations of contamination, the types of contaminants involved, and the detected concentrations of those contaminants. A revised EIR must include this information. Furthermore, a revised EIR must propose a clear, effective and enforceable strategy for cleaning up the contamination to a level that is appropriate for the residential uses proposed by the Project. If clean-up below screening levels is not possible, residential development on Sites 4, 9, 14, 18 and 19 should be restricted.

6

VI. THE FINAL SEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT HEALTH IMPACTS FROM TAC EMISSIONS

Our comments on the Draft SEIR provided substantial evidence in the form of expert testimony by Geoff Hornek that the County failed to adequately disclose and analyze the Project’s potentially significant impacts from toxic air contaminant (“TAC”) emissions to future residents of the proposed Tamalpais Junction sites. Our comments provided substantial evidence that the County failed to disclose all sources of TAC emissions for the Tamalpais Junction sites and failed to disclose significant impacts from TAC emissions at those sites. In Mr. Hornek’s expert opinion, the Final SEIR suffers the same fatal omissions as the Draft SEIR.

In Mr. Hornek’s attached comments, he explains that his conclusions and comments in his February 18, 2013 letter are applicable to the Final SEIR. Specifically, the County’s screening risk assessment of TAC exposure for future residents of the Tamalpais Junction sites is inadequate. Further, there is no evidence that future, in-depth health risk assessments could assure that TAC exposure would meet BAAQMD standards. Thus, he concludes that the County

¹⁶ *Mount Sutro Defense Committee v. Regents of University of California* (1978) 77 Cal.App.3d 20, 34.

¹⁷ *Sundstrom v. County of Mendocino*, (1988) 202 Cal.App.3d 296, 307.

should remove the five Tamalpais Junction sites (4, 9, 14, 18 and 19) from the Project list.¹⁸

With respect to specific shortcomings in the Final SEIR, Mr. Hornek states that, in the absence of specific site plans for housing projects, the County's analysis of TAC emissions impacts fails to reflect a "worst-case scenario," as required by CEQA. For example, the County's analysis assumes, without support, that development setbacks from roadways will be 30 feet. This results in a *just* less-than-significant impact, *by a difference of 0.03*. Had the County used a slightly smaller setback of 25 feet, the result would be much different – the result would be a significant impact. The County's failure to provide a worst-case scenario analysis misleads the public and decision makers who likely will not take the time to calculate impacts based on various setback scenarios. The County's failure to provide a worst-case scenario analysis also fails to provide but a margin of safety for future residents. Without specific site plans, the County must provide a "worst-case scenario" analysis. As Mr. Hornek explains in his comments, this is particularly important for the Tamalpais Junction sites, where traffic on Highways 1 and 101 will increase.

Mr. Hornek also states that the Final SEIR fails to adequately disclose and analyze the Project's impacts from TAC emissions because it fails to consider the additive effects of all sources of TAC emissions for each of the Tamalpais Junction sites. As Mr. Hornek explains, when a project adds a new sensitive *receptor* to an area with existing TAC sources where the receptor is exposed to a TAC risk greater than 10 (as the MCHC proposes to do), the result is a *project-level* significant impact. This makes sense and is consistent with CEQA. When a sensitive receptor is exposed to TAC emissions that results in a cancer risk greater than 10, *regardless of the number of sources of emissions*, the result is a significant adverse project-level air quality impact that must be mitigated. The County fails to consider the additive effects of all sources of TAC emissions for each of the Tamalpais Junction sites and, therefore, fails to identify potentially significant impacts from TAC emissions.

Mr. Hornek also explains that the County failed to identify the Project's significant impacts from TAC emissions associated with diesel generator sources. He provides that the distances from the emergency diesel generator sources and the housing site are within 1000 feet (based on a "worst-case scenario" because there are no site specific plans) and when emissions from the generator sources are added

¹⁸ **Attachment 5:** Letter from Geoff Hornek to Rachael Koss re: Comments on Final Supplemental Environmental Impact Report for the 2012 Draft Marin Housing Element, May 17, 2013.

to risks from Highway 1, the Project results in significant impacts. The Final SEIR failed to identify these significant impacts.

Finally, according to the County, the two dry cleaners identified by Mr. Hornek in his February 19, 2013 comment letter no longer use PERC, the TAC associated with the risk listed by the BAAQMD screening data. As Mr. Hornek explains in his attached comments, assuming the County is correct that the dry cleaners do not use PERC, even without emissions from the dry cleaners, the Project poses a significant risk from TAC emissions to future residents proposed at the Tamalpais Junction sites. The County failed to identify these significant impacts.

In sum, the County failed to adequately disclose and analyze the Project's significant impacts from TAC emissions to future residents of the proposed Tamalpais Junction sites. According to Mr. Hornek,

[*a*]ll of the proposed sites in Tamalpais Junction sites are within 1000 feet of Highway 1 and/or Highway 101 and several stationary sources of TAC emissions. *All* of the proposed sites in Tamalpais Junction are subject to a cancer risk greater than 10. The MCHE results in significant impacts from TAC emissions for *all* of the Tamalpais Junction sites.

The Final SEIR fails adequately disclose and analyze these significant impacts. The County must prepare a revised EIR that fully discloses and analyzes the Project's impacts from TAC emissions and circulate it for public review.

7

VII. THE FINAL SEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS TO CULTURAL RESOURCES

Our comments on the Draft SEIR explained that the County's conclusion that the Project would result in less-than-significant impacts to cultural resources was unsupported. Specifically, we explained that the County's reliance on Countywide Plan policies and programs to reduce the Project's impacts to cultural resources was unsupported because there is no evidence that the County has implemented the identified programs contained in the Countywide Plan. We also provided new information, since adoption of the 2007 Countywide Plan and certification of the 2007 Countywide Plan EIR, which shows that the Project's impacts on cultural resources would be potentially significant. Without any support, the Final SEIR

dismisses the comments and evidence we provided and concludes, again without support, that the Project would result in a less-than-significant impact to cultural resources.

The Final SEIR argues that a recent amendment to the Countywide Plan strengthens policies and programs to protect cultural resources, including the future identification and protection of cultural resources. However, that same amendment also allows streamlined environmental review of affordable housing projects. Therefore, the County's response in the Final SEIR is of no importance and fails to support the conclusion that the Project would result in a less-than-significant impact to cultural resources.

8

VIII. THE FINAL SEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS FROM FLOODING

Our comments on the Draft SEIR explained that the County's proposed mitigation measure, Mitigation Measure Hydrology, Water Quality and Flooding Hazard-1, which requires the County to obtain BCDC's GIS files for County tidal inundation mapping and develop GIS layers, or prepare its own mapping based on predicted tidal elevations and topographic data, does not satisfy CEQA's requirements. The information obtained from Mitigation Measure Hydrology, Water Quality and Flooding Hazard-1 will be compared to housing development applications "to determine the suitability of the site for residential use and the need for design measures or other measures to reduce flooding risks."¹⁹

However, under CEQA, the County must determine *now* whether the sites identified for housing development are suitable for residential use; the County cannot wait until after Project approval. As we explained in our previous comments, the County's approach undermines the entire point of the CEQA process -- to offer the public and the decision makers the opportunity to weigh-in on a project's potentially significant impacts and an agency's proposed measures to mitigate those impacts. It is well-established that CEQA is not meant to be a *post hoc* rationalization of decisions that have already been made. "If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken."²⁰

¹⁹ Draft SEIR, p. 184.

²⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.

IX. CONCLUSION

While the Final SEIR provides a few necessary revisions in response to our February 19, 2013 comments, the County's responses fail to cure most of the Draft SEIR's deficiencies identified in our comments. Like the Draft SEIR, the Final SEIR fails to disclose, analyze and mitigate the Project's potentially significant impacts and many of the Final SEIR's conclusions lack any supporting evidence. Therefore, the Final SEIR fails to comply with CEQA and the County cannot approve the Project until an adequate EIR is prepared and circulated for public review.

Sincerely,

/s/

Rachael E. Koss

From: Rachael E. Koss [mailto:rkoss@adamsbroadwell.com]

Sent: Friday, May 17, 2013 4:13 PM

To: EnvPlanning

Subject: Sustainable TamAlmonte Comments on Marin County Housing Elements Final SEIR
(Attachments)

Mr. Tejirian:

These are Attachments 1 through 5 to Sustainable TamAlmonte's comments on the Marin County Housing Element's Final SEIR, which were sent in an earlier email.

Thank you,
Rachael

Rachael E. Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 voice, Ext. 20
(650) 589-5062 fax
rkoss@adamsbroadwell.com

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October 22, 2012

Via U.S. Mail and Email

Brain C. Crawford, Director
Community Development Agency
County of Marin
3501 Civic Center Drive
San Rafael, CA 94903
bcrawford@marincounty.org

Richard N. Benson, County Clerk
County of Marin
P.O. Box C
San Rafael, CA 94913
countyclerk@marincounty.org

Re: Public Records Act Request for 2012 Marin County Housing Element

Dear Mr. Crawford and Mr. Benson:

I am writing to request a copy of any and all documents and file materials referring or relating to the 2012 Marin County Housing Element ("Project"). The Project includes Marin County's preparation and environmental review of an updated Housing Element for the Countywide Plan.

This request includes, but is not limited to any and all correspondence, resolutions, memos, notes, analysis, electronic mail messages, files, maps, charts, and/or any other documents referring or relating to the Project. This request is made pursuant to the California Public Records Act. (Government Code §§ 6250, et seq.) This request is also made pursuant to Article I, section 3(b) of the California Constitution, which provides a constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed.

I request that, pursuant to Government Code section 6253.1, the County assist me in identifying records that are responsive to this request. As you know, the Public Records Act imposes affirmative duties on the responding agency to

assist the requester in at least three ways: (1) identifying records responsive to the request or its purpose; (2) describing the information technology and the physical location in which the records exist; and (3) providing suggestions for overcoming any practical basis for denial of records access. (Gov. Code, § 6253.1, subd. (a).) If you believe the descriptions of the categories of writings I request above are either too broad, ambiguous, duplicative or otherwise inadequate, please assist me in revising the language of my request or otherwise clarifying the request so that I obtain all of the information I seek without unduly burdening the County.

If any of the requested items are available on the Internet, I request that the County direct me to the appropriate site for accessing the documents. Pursuant to Government Code section 6253.9, if the requested documents are in electronic format and are 10 MB or less (or can be easily broken into chunks of 10 MB or less), please email them to me as attachments.

I request an estimate of the costs of production prior to the making of any copies. Please send the above requested items to:

Rachael Koss
309 Morning Sun Avenue
Mill Valley, CA 94941
rachaelkoss@hotmail.com

Please call me at (415) 233-3689 if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Rachael E. Koss

January 9, 2013

Via Email and U.S. Mail

Brian C. Crawford, Director
Community Development Agency
County of Marin
3501 Civic Center Drive
San Rafael, CA 94903
bcrawford@marincounty.org

Richard N. Benson, County Clerk
County of Marin
P.O. Box C
San Rafael, CA 94913
countyclerk@marincounty.org

Re: Public Records Act Request for 2012 Marin County Housing Element

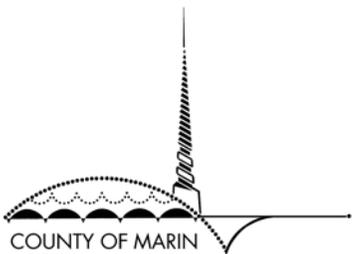
Dear Mr. Crawford and Mr. Benson:

On October 22, 2012, I submitted a request under the California Public Records Act for any and all documents and file materials referring or relating to the 2012 Marin County Housing Element ("Project") (see attached letter). I received a response from Mr. Benson stating that the clerk's office had no responsive records. However, Mr. Benson stated that the Community Development Agency had responsive documents and would be responding to my request accordingly. To date, I have not received any response from the Community Development Agency.

The Community Development Agency released its Draft Environmental Impact Report for the Project, with a comment deadline of February 4, 2013. Therefore, I request that the Community Development Agency **immediately** make available documents responsive to my request, in addition to all documents referenced in the Draft EIR for the Project. Without these documents, it is impossible for me to evaluate the adequacy of the Draft EIR.

I will contact Mr. Crawford today to set up a time to inspect the records.

Sincerely,
/s/
Rachael Koss



COMMUNITY DEVELOPMENT AGENCY

January 11, 2013 (by email only)

Rachel Koss
309 Morning Sun Avenue
Mill Valley, CA 94941

RE: Your Public Records Act Request for the 2012 Marin County Housing Element

Dear Ms. Koss,

This is in response to your letters dated October 22, 2012 and January 9, 2013, making a Public Records Act request for information related to the 2012 Marin County Housing Element and associated environmental review documents. In our phone conversations of January 10, 2013, you clarified that you are most interested in information related to the Housing Element Draft Supplemental Environmental Impact Report (DSEIR).

A substantial amount of information is publicly available on the county's website, www.marincounty.org/housingelement. Additional information is being compiled, which consists of public email communication on the housing element process, and GIS data in map form that was used to inform technical input to the DSEIR. Most of this GIS data is already publicly available on the County's [MarinMap website](#), however a separate version that identifies Housing Element sites was developed for technical expert use. These resources will be forwarded to you electronically the week of January 14, 2013.

Maps showing general location and adjacency of the proposed housing sites can be found on pages 20-28 of the DSEIR.

Technical information or research specifically prepared for the DSEIR was provided by subject expert sub-consultants in the form of DSEIR sections. Therefore, all technical reports were incorporated into the DSEIR document directly, and there are no separate technical reports that inform that document. The bibliography (Section 4.3) provides source information for other existing materials.

Below is a list of documents on the County's website which you may find useful. Each is hyperlinked to the information source on-line.

Primary "project" documents

- [Draft Supplemental Environmental Impact Report](#)
- [2012 Draft Marin County Housing Element](#)
- [November 2009 Draft Marin County Housing Element](#)
- [List of sites to be evaluated in the EIR for the 2007-2014 and the 2014-2022 Housing Element planning periods.](#) Note that an earlier June 27, 2012 version was replaced with the current link. That earlier version will be compiled in the forthcoming materials.
- [Marin Countywide Plan](#)

Board of Supervisors materials

- [May 5, 2009 Housing Element Update](#)
- [September 21, 2010 staff report](#) and [attachments](#)
- [June 28, 2011 staff report](#) and [attachment \(Task Force Final Report\)](#)

Planning Commission materials

- [April 13, 2009 staff report](#)
- [August 10, 2009 staff report](#) and [attachments](#)
- [October 12, 2009 staff report](#) and [October 2009 Draft Housing Element](#)
- [February 22, 2010 staff report](#), [attachments \(including HCD response letter\)](#) and [3rd party comments](#)
- [October 8, 2012 staff report](#) and attachments [1](#), [2](#), [3](#), [4](#), [5](#), [6](#) and [supplemental documents](#)
- [January 14, 2013 staff report](#)

Public Workshop summaries

- [Newsletter regarding Housing Element community workshops](#)
- [Housing advocates meeting \(2/3/09\)](#)
- [Development experts meeting \(2/25/09\)](#)
- [Public Workshop #1 \(3/7/09\)](#)
- [Public Workshop #2 \(3/11/09\)](#)
- [Workshop #1 & #2 presentation](#)
- [Public Workshops Summary Presentation \(April 28, 2009\)](#)
- [Public Workshops Presentation \(8/29/12 and 9/29/12\)](#)

Housing Element Task Force report and maps

- [Announcement and schedule](#)
- [Site Evaluation Map](#) (Large file size - recommended for broadband use only.)
- [Task Force Final Report](#)

Affordable Housing Inventory

- [Marin County Affordable Housing Inventory 2008](#)

Please let me know if there are other specific items which you would like provided to you. You may contact me directly via email (slaumann@marincounty.org) or phone (415.473.2698).

Sincerely,
Stacey Laumann
Planner

Cc by email: Brian C. Crawford
Rachel Warner
Leelee Thomas
David Zaltsman

- RE: Response to your request

To see messages related to this one, [group messages by conversation](#).

Laumann, Stacey (SLaumann@marincounty.org)

[Add to contacts](#)

2/05/13

To: 'rachael koss'

Cc: Crawford, Brian, Zaltsman, David, Sears, Kathrin



From: **Laumann, Stacey** (SLaumann@marincounty.org) You moved this message to its current location.

Sent: Tue 2/05/13 6:58 PM

To: 'rachael koss' (rachaelkoss@hotmail.com)

Cc: Crawford, Brian (BCrawford@marincounty.org); Zaltsman, David (DZaltsman@marincounty.org); Sears, Kathrin (KSears@marincounty.org)

Outlook [Active View](#)

2 attachments (total 9.5 KB)



AR-M455N_20130130_135810.pdf

[View online](#)



FW Corrected Date for SCH# 2012072028.eml

[Download](#)

[Download all as zip](#)

Hello Rachel –

Your information request was reiterated and clarified to me through two phone conversations on January 10, 2013. With that information, County staff has compiled and provided all administrative record documents related to the Draft Supplemental Environmental Impact Report for the Draft Housing Element. This information was sent you on January 11 and January 23, 2013.

The technical information or research specifically prepared for the DSEIR was provided by subject expert sub-consultants in the form of Draft SEIR sections. Therefore, all technical reports were incorporated into the DSEIR document directly, and there are no separate technical reports that inform that document. For example, the traffic report and data is presented on pages 239-260 in the Draft SEIR. The bibliography (Section 4.3) provides source information for other existing materials.

The communication and work of staff developing the Draft SEIR is covered under the deliberative process privilege. Therefore administrative staff documents and communications are not part of the public record.

I apologize if you feel there has been a break in communication. Unfortunately, neither Brian nor I received your email dated 1/30/13 at 22:25. I am now in receipt of that email through Ms. Rushton's 2/4/13 email to Supervisor Sears. This email addresses those questions.

Regarding the State Clearinghouse conflict of information, the closure date was an error of the Clearinghouse, and an email and letter to that effect are attached to this email, and also sent to you separately.

Sincerely,

Stacey Laumann

From: rachael koss [mailto:rachaelkoss@hotmail.com]
Sent: Friday, January 25, 2013 4:32 PM
To: Laumann, Stacey
Cc: Crawford, Brian
Subject: RE: Response to your request

Stacey:

Thank you for forwarding these documents. I want to make sure I understand your response correctly -- the documents you provided in the zip file, and the documents posted online at the links you provided, are all of the documents that comprise the administrative record, up to this date, for the approval of the DSEIR for the 2012 Draft Housing Element. Is that right?

Thank you,
Rachael

From: SLaumann@marincounty.org
To: RachaelKoss@hotmail.com
CC: BCrawford@marincounty.org
Subject: Response to your request
Date: Wed, 23 Jan 2013 18:42:17 +0000

Dear Ms. Koss,

This is to follow up on my previous response, dated January 11, 2013, to your Public Records Act request for information pertaining to the Draft Supplemental Environmental Impact Report for the 2012 Draft Housing Element.

Attached in a zip file are additional public documents not posted to our www.marincounty.org/housingelementor or <http://www.co.marin.ca.us/depts/CD/main/comdev/eir.cfm> websites.

An additional resource has been added to the housing element site. It is a GIS data map that contains information used in the environmental review analysis for the housing element project. You may access that map directly at http://www.marinmap.org/Geocortex/Essentials/MarinMap/Web/viewer.aspx?Site=CountyPolicy_Public_Facing&ReloadKey=True

The Tamalpais Community Plan may be of interest to you and can be accessed at <http://www.co.marin.ca.us/depts/CD/main/comdev/ADVANCE/CP.cfm>

I hope these materials are useful to you. If you would, please confirm receipt of this and my 1/11/13 email.

Sincerely,

Stacey Laumann
PLANNER

County of Marin

Community Development Agency

3501 Civic Center Drive, Suite 308

San Rafael, CA 94903
415 473 2698 T
415 473 7880 F
CRS Dial 711

slaumann@marincounty.org

Email Disclaimer: <http://marincounty.org/nav/misc/EmailDisclaimer.cfm>

--Forwarded Message Attachment--

From: TTaylor@marincounty.org
To: SLaumann@marincounty.org
Subject: FW: Corrected Date for SCH# 2012072028
Date: Tue, 5 Feb 2013 23:09:27 +0000

FYI: Regarding the correction made by the State Clearinghouse. Please see the attached letter that they sent us in hard copy and via email.

From: Christine Asiata [mailto:Christine.Asiata@OPR.CA.GOV]
Sent: Wednesday, January 30, 2013 1:16 PM
To: Taylor, Tammy
Cc: Scott Morgan
Subject: Corrected Date for SCH# 2012072028

Per your request, The State Clearinghouse corrected the error we made in the review dates. Our database is now correct and the attachment will go out to the reviewing agencies whom received your document.

We apologize for this error, please let us know if you have any questions or concerns.

Thank You!

Christine Asiata Rodriguez

Governor's Office of Planning and Research

State Clearinghouse

P.O. Box 3044

Sacramento, CA 95812

916 445-0613

Fax: 916 323-3018

GEOFFREY H. HORNEK

Environmental Air Quality and Acoustical Consulting
1032 Irving Street, #768
San Francisco, CA 94122
(414) 241-0236
ghornek@sonic.net

May 17, 2013

Rachael E. Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on Final Supplemental Environmental Impact Report for the 2012 Draft Marin County Housing Element

Dear Ms. Koss:

I have reviewed the County of Marin's Final Supplemental Environmental Impact Report (FSEIR) for the 2012 Draft Marin County Housing Element (MCHE), including responses to my February 18, 2013 letter regarding the County's Draft Supplemental Environmental Impact Report for the MCHE. As more fully explained below, the conclusions and comments in my February 18, 2013 letter are still applicable. The DSEIR screening risk assessment of toxic air contaminant (TAC) exposure for future residents of the five housing sites proposed for Tamalpais Junction is inadequate. Further, there is no evidence that future, in-depth health risk assessments could assure that TAC exposure would meet BAAQMD standards. Therefore, the County should remove the five Tamalpais Junction sites (4, 9, 14, 18 and 19) from the MCHE list and focus future residential planning on sites that clearly meet BAAQMD screening criteria with a health margin of safety.

First, in the absence of specific site plans for housing projects, my analysis reflects a "worst-case scenario," as required by the California Environmental Quality Act (CEQA). The County's analysis should do the same, but it does not. For example, the analysis should use minimum setbacks from roadways and TAC exposures in order to provide the public and decision makers with a "worst-case scenario." Take the example of site #18: my risk estimate is 13.5 at a 25-foot setback, while the County's risk estimate is 9.97 at a 30-foot setback. The County's use of a 30-foot setback results in a *just* less-than-significant impact by 0.03! Not only is that misleading to the public and decision makers who likely will not take the time to calculate impacts based on various setback scenarios, but it provides little in the way a margin of safety for future residents. Without specific site plans, the County must provide a "worst-case scenario" analysis. This is particularly important here where traffic on Highways 1 and 101 will increase.

Second, the additive effects of all sources of TAC emissions for each of the Tamalpais Junction sites should be considered for the project-level 10-in-a-million risk criterion. BAAQMD calls a risk from any one source a significant project-level risk if its impact on a sensitive receptor exceeds 10 in a million, while a significant cumulative risk occurs if the combined risk from all sources within 1000 feet of the sensitive receptor exceed

100 in a million. This makes sense if the project introduces a new *source* of pollutants affecting existing sensitive receptors around it (in this case, it could have an individual effect of less than 10 but still contribute to a total above 100). But, if the project adds a new *sensitive receptor* to an area with existing TAC sources where the receptor is exposed to a TAC risk greater than 10, as the MCHC proposes to do, the result is a project-level significant impact. This makes sense and is consistent with CEQA. When a sensitive receptor is exposed to TAC emissions that results in a cancer risk greater than 10, *regardless of the number of sources of emissions*, the result is a significant adverse project-level air quality impact that must be mitigated.

Consider these two hypothetical scenarios to illustrate the problem:

- **Project A**, which would locate a housing development at a site where there is only one existing TAC source within 1000 feet of the site, producing a cancer risk of 11 for future residents of the development. Under BAAQMD screening methodology and criteria, this would be a significant project-level impact because the project-level risk criterion is 10.
- **Project B**, which would locate a housing development at a site where there are 10 existing TAC sources within 1000 feet of that site with each individual TAC source producing a cancer risk of nine, and a total cancer risk of 90, for future residents of the development. Under the County's approach, there would be no significant project-level impact from any of the sources because each source individually would not exceed 10, and there would be no significant cumulative impact because the total risk would not exceed 100. In other words, there is no significant impact under either criterion for the residents of Project B even though their total risk would be 90, *almost 10 times* the risk to the residents of Project A. This makes no sense.

Thus, the County's approach fails to assure that new sensitive receptors with TAC risks above 10 but less than 100 would in all cases be identified as experiencing a significant impact requiring mitigation. By applying TAC screening analysis this way, the County has failed to identify potentially significant impacts from TAC emissions.

Third, the distances from the emergency diesel generator sources and the housing site are within 1000 feet (based on a "worst-case scenario" because there are no site specific plans). BAAQMD includes distance adjustment factors for diesel generators, but not for most other stationary sources. I did not apply the distance adjustment for the generators in my previous letter, but if I had, the distance-adjusted risk from the Crest Marin generator (3.16), when added to the risk from Highway 1 (9.7) results in a project-level risk over 10 for sites #4, #14 and #19. The County failed to identify these significant impacts.

Finally, according to the County, the two dry cleaners identified in my previous letter no longer use PERC, the TAC associated with the risk listed by the BAAQMD screening data. Assuming the County is correct, I have removed the dry cleaners from the screening table provided in my previous letter. However, the risks from Highway 1 and generator TACs still result in a risk greater than 10. Therefore, even without emissions from the dry cleaners, the MCHC poses a significant risk to future residents proposed at the Tamalpais Junction sites. The County failed to identify these significant impacts.

In short, the County failed to adequately disclose and analyze the MCHC's significant impacts from TAC emissions to future residents of the proposed Tamalpais Junction sites. *All* of the proposed sites in Tamalpais

Junction sites are within 1000 feet of Highway 1 and/or Highway 101 and several stationary sources of TAC emissions. *All* of the proposed sites in Tamalpais Junction are subject to a cancer risk greater than 10. The MCHÉ results in significant impacts from TAC emissions for *all* of the Tamalpais Junction sites. These impacts must be adequately disclosed and evaluated in a revised EIR that is circulated to the public.

Sincerely,

/s/

Geoffrey H. Hornek

RESPONSE TO LETTER NO. 101 RACHEL KOSS (MAY 17, 2013)

Response to Comment 101-1

County staff responded to the Public Records Act request through reasonable and diligent effort. Staff had numerous communications with Ms. Koss in an attempt to focus her request through email and phone calls. In an email correspondence from the Community Development Agency on February 5, 2013, staff specifically noted that the bibliography of the Draft SEIR provides source information for existing background materials. The majority of this information is readily available on the internet. Staff has not received any further request for additional information related the Draft SEIR Bibliography. The Community Development Agency has provided Ms. Koss access to the full bibliography as of June 7, 2013, which allows 30 days prior to anticipated Planning Commission action on the Final SEIR.

Response to Comment 101-2

Please see *Master Response 3 – Environmental Review of Housing Projects*. Master Response 3 accurately addresses the relationship of the SEIR to evaluation of future individual housing sites. Marin County’s environmental review process is further explained in the Community Development Agency’s Environmental Review Fact Sheet.¹² The level of environmental review that is required for any future development project will depend on the proposed project and the requirements of CEQA at the time the application is filed.

Response to Comment 101-3

Pursuant to *State CEQA Guidelines* sections 15162 and 15163, this SEIR analyzes the proposed changes in the Housing Element of the *Countywide Plan*, changes in circumstances or new information. Please see Response to Comment 46-2 in the *Response to Comments to the Draft SEIR*.

Response to Comment 101-4

Please see Response to Comment 46-5 in the *Response to Comment to the Draft SEIR*, which states that the size of the density bonus and whether a bonus would be requested for any particular site is speculative. This is further discussed below.

Under California law a housing development may be eligible to receive a density bonus of up to 35 percent for constructing very low or lower income households and senior housing. The amount of a bonus is contingent on the total units in a project, and the level of affordability of the units within the project. Marin County applies eligibility criteria for density bonuses based on the level of affordability in a project in excess of any affordable inclusionary units required by Chapter 22.22 of the Development Code.

The *Countywide Plan* evaluated residential capacity based on land use designations, and certain policy limitations, to establish a future buildout scenario. It did not assign additional capacity on certain sites to estimate possible State Density Bonus units. Consistent with that approach, residential capacity

¹² *Environmental review Fact Sheet*, Marin County Community Development Agency, revised 12/3/2009.

proposed for study in this SEIR relies on land use designations and certain feasibility assumptions for each site, without potential State Density Bonus units.

California's density bonus law was significantly revised in 2005, by Senate Bill 1818. Since 2006, there have been at least three residential subdivisions approved in unincorporated Marin County (650 N. San Pedro, Indian Valley, Elloway), and three new multi-family projects approved (Housing Site 9 Manzanita at 150 Shoreline, Fireside, and Toussin). Only one of these has applied for, or has been granted a density bonus pursuant to the County Density Bonus (Development Code Chapter 22.24.020.C) or the State Density Bonus (Development Code Chapter 22.24.030). The Toussin Senior Affordable Housing project applied a 20 percent density bonus to the 11 units allowed by the RMP-20 (Residential, Multi-family Planned, 20 units per acre) zoning district, to achieve a total of 13 units on the site at a final density of 34 units per acre. This increase resulted in a minor density increase over the general plan land use designation of MF-4 (Multi-family Residential, 11-30 units per acre), and would not change the analysis of impacts due to changes in the Housing Element.

Response to Comment 101-5

Please see Responses to Comments 46-11, 46-12, 46-17, 46-18, 46-19 and 46-20 in the *Response to Comment to the Draft SEIR*.

As explained in the Draft SEIR and the *Response to Comments to the Draft SEIR*, the SEIR was prepared as a program-level EIR. As stated on page 4 of the Draft SEIR, "This Draft SEIR is a program EIR under Section 15168 of the *State CEQA Guidelines*. As described in *State CEQA Guidelines* 15168(a)(3), a program EIR may be prepared on a series of actions that can be characterized as one large project and are related in connection with the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program."

With respect to health concerns from soil and groundwater contamination, at the program level a general assessment of potential threat to health was derived from a review of available databases and maps of hazardous materials sites, from a general review of each site's history, and from comments submitted by concerned citizens.

Furthermore, as stated on page 4 of the Draft SEIR, "As a program EIR, this document focuses on the overall effect of the *2012 Draft Housing Element*. While the Draft SEIR provides an in-depth program-level review of the proposed housing sites, each individual housing site will separately and subsequently receive additional review pursuant to CEQA, if and when individual development applications are received by Marin County."

The Draft SEIR identified sites having potential concerns regarding soil and groundwater contamination, and provides a basis for site-specific review during the development application process. None of the housing sites exhibited conditions that would cause a program-level rejection from consideration, such as (but not limited to) presenting an Immediate Danger to Life or Health, undergoing active Superfund remediation, or showing potential for the presence of unexploded ordnance.

One site was undergoing active remediation due to release of volatile organic compounds (VOCs) from a dry cleaner. Several other sites had undergone remediation and received closure letters from the regulatory agency for use as commercial/industrial facilities. It was noted in the Draft SEIR that the criteria for closure and reuse as a commercial/industrial facility are less stringent than for residential reuse, and additional environmental review would be necessary to evaluate the suitability of these sites for use as residential properties. Correspondence from the local oversight agency and data in the files

support the need for additional environmental review. Hence, prior to the submittal of a permit application for development, the developer will have had to conduct sufficient environmental assessments to further characterize potential site contamination. The goals of these assessments include:

- Identifying the types of contamination present,
- Estimated quantity of contaminated material, and
- Vertical and lateral extent of contamination.

The environmental assessments are completed as part of the due diligence process during the purchase of the property, which occurs before planning and permitting begin. At this point (before permit issuance and before grading begins), there is maximum flexibility available to reconcile mitigation of soil and groundwater contamination and site planning requirements. Developers are motivated to complete such assessments for reasons that include:

- Estimating potential clean-up costs,
- Understanding if site clean-up will necessitate changes to the as-planned development, and
- Comparing potential clean-up costs with investment returns anticipated from as-planned development.

It is preferable to complete environmental assessments that characterize site contamination at a point in time closer to the preparation of the subsequent CEQA review and the intent to develop (i.e. during the property transaction) and with regard to a development proposal. That is because site conditions change over time. The results of an assessment completed now may not represent site conditions in several years (when a potential developer is ready to start building) due to factors that include natural degradation of contaminants, or changes in environmental quality from the unplanned introduction of additional contaminants. Information from the environmental assessments conducted by the developer would be available for public review during the preparation of the subsequent CEQA review and before a permit-to-develop is issued.

Response to Comment 101-6

The response to this comment also addresses comments made by Geoff Hornek, which was provided as Attachment 5 to the commentor's letter.

New Mitigation Measure Air Quality-1 requires refined health risk assessments. These assessments would be used to provide specific site planning to avoid significant exposure, and if necessary, identify methods to reduce exposures where housing sites are developed in locations that would have significant risk. For example, the incorporation of mechanical ventilation systems with proper filtration could reduce exposures by 85 percent. The applications of the appropriate filtration systems would have to take into account that people spend some time outdoors. The level of filtration necessary to reduce exposures cannot be identified until exact exposures are known. This would occur when project designs are developed that provide the exact locations of future residences with respect to TAC sources. Please see Responses to Comments 11-7 and 46-13 in the *Response to Comments to the Draft SEIR*.

The Draft SEIR provided a reasonable “worst-case scenario” where health risk impacts were predicted using screening analysis tools and assuming lifetime (i.e., nearly continuous 70-year exposures at the sites). See Response to Comment 46-13 in the *Response to Comment to the DSEIR*, specifically the discussion for housing sites 9 and 18. The assumption for the 30-foot setback is based on examination of the site and an estimate of the very closest part of that site near Highway 1. The distance is based on an estimate from the nearest travel lane to a *possible* dwelling unit where residents would spend a majority of their lifetime. This distance takes into consideration the bicycle lane, sidewalk and State right-of way. The reported risk in the SEIR is based on a 25-foot setback from the nearest Highway 1 traffic lanes using BAAQMD Google Earth Highway Screening Analysis Tool. Excess lifetime cancer risk, which is the primary issue from Highway 1 traffic for this site, is based on a 70-year exposure period. It is unreasonable to assume that a new resident, as part of this project, would spend almost an entire lifetime at a distance of less than 25 feet from the closest Highway 1 travel lane at this site. That is the type of setting needed to trigger a significant excess cancer risk, based on BAAQMD’s screening tool. The commentor is inaccurately assuming excess cancer risk is 9.97 chances per million at 30 feet. That is the risk reported by BAAQMD for that roadway segment at 25 feet. Mr. Hornek inaccurately describes the cancer risk associated with Highway 1 as 13.5 per million at 25 feet. The actual excess lifetime cancer risk obtained from the BAAQMD tool is 13.5 per million at 10 feet from the travel lanes and 9.967 per million at 25 feet.

The County, in developing significance thresholds to apply to this project followed recommendations made by BAAQMD. These included single-source thresholds. For a single TAC source, the significant cancer risk threshold is 10 in one million. BAAQMD recommended a cumulative threshold for excess lifetime cancer risk of 100 in one million (see page 2-2 of the BAAQMD 2011 *CEQA Air Quality Guidelines*). The cumulative threshold applies to the additive effects of all sources within 1,000 feet of a site. These are the thresholds recommended by BAAQMD and included in the 2011 *CEQA Air Quality Guidelines* that were used in this evaluation.

Recognizing the BAAQMD thresholds, Mr. Hornek describes them as only applying to new emission sources. However, BAAQMD recommended that the 10 in one million excess cancer risk threshold be applied only to a single source affecting a new receptor (see Section 5.2: *Single Source Impacts*, page 5-3 of the BAAQMD 2011 *CEQA Air Quality Guidelines*). The interpretation of BAAQMD’s method for evaluating single source impacts to new receptors is further described in Table 1 of the BAAQMD’s *Recommended Methods for Screening and Modeling Local Risks and Hazards, Version 2.0*, dated May 2011. Section 5.0 (page 83) of that document describes the methods used to assess the additive effects of all sources. This document was provided by BAAQMD as a tool for evaluating health risk impacts in support of their 2011 *CEQA Air Quality Guidelines*. Mr. Hornek, in his February 19, 2013 letter to Rachael E. Koss, Adams Broadwell Joseph & Cardozo that was included in Ms. Koss’s comment letter on the Draft EIR, properly refers to the BAAQMD single-source and cumulative thresholds (see page 3 and Table 1).

Response to Comment 101-7

Please see Responses to Comments 46-14, 56-1, 56-2 in the *Response to Comment to the Draft SEIR* and Response to Comment 101-1. As explained in Response to Comment 46-14 in the *Response to Comment to the Draft SEIR*, consistent with *Countywide Plan* policies and programs, when Community Development Agency planners are working on a discretionary application, they review the County archeological sensitivity map in the geographic information system (GIS). If the project involves grading, then staff planners will request an archeological report for the project if an archeological report has not been completed for the property. If the archeological report indicates that the project could result in potentially significant impacts to cultural resources, then environmental

review would be conducted and if necessary mitigation measures would be imposed to reduce the impact to a less than significant level.

Response to Comment 101-8

Please see *Master Response 1 – Sea Level Rise*, which explains that some of the identified housing sites may be affected by future sea level rise, and identifies two new mitigation measures to reduce these impacts. As further explained in Master Response 1, agencies at all levels of government are continuing to work on improved mapping and modeling related to predicting the extent of sea level rise.

Lucas Valley Ranch Capital Partners LLC
2200 Lucas Valley Road
San Rafael, CA 94903

Comment Letter 106

May 17, 2013

VIA EMAIL & HAND DELIVERY
Marin County Planning Commission
3501 Civic Center Drive Room #329
San Rafael, CA 94903

Attn: Joan Lubamersky
Ericka Erickson
Peter Theran
Kathrine Crecelius
Don Dickenson
Wade Holland
John Eller
Debra Stratton
Board of Supervisors, et. al.

RE: 2012 Draft Housing Element
Final Supplemental EIR to the 2007 County Wide Plan Final Impact Report

Dear Planning Commissioners,

We support the County's efforts to create affordable housing in Marin County, however the proposed 2007-2014 Housing Element, Draft Supplemental Environmental Impact Report (DSEIR) and the Final Supplemental Environmental Impact Report (FSEIR) to the 2007 Marin Countywide Plan is inadequate and has significant unacceptable impacts to the entire county and neighborhoods where the proposed Affordable Housing Projects are located. We think approving the FSEIR as proposed is poor planning blindly following bad State law (Senate Bill 375) and the FSEIR should be denied or revised in a significant modification.

The County Wide Plan's (CWP) Environmental Impact Report shows that land uses and development consistent with the 2007 Countywide Plan would result in 42 significant unavoidable adverse environmental impacts. These impacts include, but are not limited to, noise, traffic congestion, flooding, impending sea level rise, air & noise pollution, endangering habitat and a potential water deficit.

The Marin County Planning Commission and Board of Supervisors had an opportunity to reduce these unfortunate impacts, but instead approved the CWP with a "Statement of Overriding Considerations," essentially stating that providing housing was more important than protecting the environment and public health and safety from the harm that such residential development could cause. This is inconsistent with decades of Marin County Planning & Policy making.

In late 2012, the Board of Supervisors adopted a Countywide Plan Amendment, regarding Policy CD-1.3, which diminishes a major protection for sensitive areas and allows more, higher-density housing to potentially be built in the Bay-lands' Corridor, the Ridge and Upland Greenbelts and on sites with sensitive habitat.

Marin County 2012 Housing Element goes beyond what is required by the state affordable housing quota and reduces local control and public input by fast-tracking permit review and streamlining environmental review of affordable housing.

Why are Marin County Planning Department, Planning Commission and Board of Supervisors pushing for more housing? Why is Marin County succumbing to the pressures of the California Department of Housing and Community Development (HCD) to fulfill the state mandated Regional Housing Needs Allocation (RHNA), a quota for housing units that each jurisdiction is supposed to plan for. If the County's Housing Element fails to meet its allocation, the following may occur:

1. Unincorporated Marin may not be eligible for regional One Bay Area Grant (OBAG) road improvement funding (\$10 million countywide).
2. The County could be subject to legal action by a third party.
3. The number of units designated for this Housing Element cycle may be carried over to the next housing cycle.

The impacts of noncompliance with the ABAG affordable housing numbers allocation are far less impactful than changing long standing protections of the environment. The County of Marin should follow the direction of the Town of Corte Madera and opt out of the ABAG/RHNA housing requirements. To simply conform to the ABAG/RHNA allocation is short sighted. The allocation is based on unrealistic job and population projections. The California Department of Finance's population report shows that between 2015 and 2025, Marin will experience a loss of population, not an increase.

Marin County needs to conduct a much more comprehensive, cumulative, and long-term analysis. The costs related to dealing with the significant adverse environmental impacts caused by overdeveloping our county far outweigh the ABAG grant or additional administration costs. Consider the staggering costs associated with increased sewer treatment; lack of water; cleaning up polluted waterways & habitats; increased traffic increased illness due to increased air pollution; costs associated with protect buildings from sea level rise & building in flood zones; as well as building new schools. The Planning Commission should recognize that the Housing Element, DSEIR, & FSEIR as a perpetuation of a bad State Bill (SB 375) and inappropriate imposition of that bill by Regional Authorities. It is the job of the Planning Commission to recognize that the DSEIR & FSEIR are inaccurate and incomplete. The Planning Commission should direct staff to significantly alter the DSEIR & FSEIR or reject them both in their entirety. It is clear that such an inaccurate, incomplete, and impactful program as the New Housing Element and its DSEIR & FSEIR will be challenged. Wouldn't it be better to properly redirect this program than to have it challenged?

Any significant housing growth in smaller communities such as Marinwood & Lucas Valley which are not supported by employment centers or public transportation would increase regional vehicle miles traveled and green house gas emissions. Spot zoning high-density (30 unit/acre) affordable housing projects in sub-urban single-family home residential neighborhoods is a bad idea. These neighborhoods such as Tam Valley, Marinwood, and Lucas Valley do not have adequate public transportation, public school capacities, sufficient public utility infrastructure, or employment centers necessary to support large high-density affordable housing projects as listed within the Housing Element. The housing Element is a bad fit which will fail to provide the end users of affordable housing with the infrastructure they need to succeed and will negatively impact existing property values, increase class room sizes, increase demands on public infrastructure, increase traffic, greenhouses gases, and pollution.

Many of the proposed Affordable Housing sites will impact the surrounding neighborhoods with unacceptable traffic, air quality, noise impacts, visual (aesthetic) impacts, and other social and environmental issues. We ask the Planning Commission to recommend to the Board of Supervisors to deny approval of the FSEIR for the Housing Element as submitted and to ask staff to revise it for the following reasons:

1. **Concentration** - Disproportionate amount of Affordable Housing Units within neighborhoods that will create undue strain on the environment, school districts, and public services. The impacts of concentrating affordable housing units was not discussed or studied in the DSEIR or the FSEIR.
2. **Adequacy of review time** - The County has provided an 18-day review period for the Final SEIR. The FSEIR has many complex issues and is over 400 pages long. We question how the public or the county decision makers can fully review, research, and interpret the hundreds of pages of the FSEIR in this time period, and make adequate comments.
3. **Alternatives** - The DSEIR and FSEIR fail to discuss alternatives. Under CEQA and EIR must include both project alternatives and mitigation measures. The EIR fails to identify or study alternatives to the proposed Housing Element or any of the affordable housing sites noted within the housing element. There are no discussions of alternatives in the DSEIR or FSEIR.
4. **Inadequate Responses** - The County's obligation under CEQA is to in detail explain in the FEIR the reasons why it rejected a specific comment or give adequate responses to comments posed. The FSEIR fails in to properly address many comments provided by repeating statements that the comments are on the Housing Element and not the Draft Supplemental EIR. No evidence of analysis was provided from the policy-level mitigation to the specific impacts identified by the comment is presented showing how this mitigation would effectively mitigate the identified impacts.
5. **Project Description** - The project description must be accurate and consistent throughout an EIR. The project description in the DSEIR is incomplete and provides a selective discussion of housing Element programs. The Project Description must present a complete list of the Housing Element's implementing programs to clearly determine they are part of the Project Description and must be comprehensively analyzed in the DSEIR. In many cases the DSEIR fails to examine the effects of the implementing programs.
6. **Mitigation Measures** - Many of the mitigation measures are based on terms such as "monitor", "study", "consider", and "participate in". These mitigation measures do not guarantee any real mitigation will occur. The EIR uses general mitigation measures to unspecified impacts and then assumes complete mitigation.
7. **Plan to Plan Analysis** - Evaluation of the Project (Housing Element) must be based on the on-the-ground situation and not the General Plan. The majority of the DSEIR is spent comparing impacts of the proposed Housing Element's updates to the impacts of the 2007 County Wide plan EIR. This plan-to-plan comparison is prohibited under CEQA. According to CEQA project impacts must be compared with on the ground conditions.

We oppose the proposed Housing Element as proposed and object to the DSEIR/FSEIR and find them both incomplete and their conclusions inaccurate. It is dumbfounding that the County continues to ignore the long standing tradition of Marin County as a leader in environmental protection and the ill advised pursuit of an unsustainable Housing Element and an inadequate DSEIR and FSEIR.

We agree with and preserve our legal rights to pursue our objection to the Housing Element, DSEIR, & FSEIR based on our objections above and the Marin Conservation League letter dated 2/19/13 and the Grasseti Environmental Consulting letter dated 5/17/13. If the County continues to ignore its constituents, fail to protect the environment, approve an incomplete and acceptable DSEIR, FSEIR & Housing Element, we shall be forced to take legal action. While we recognize the need for affordable housing but it should not be at the expense of long standing Marin County values, or at the expense of the residents of Marin County and its environment. We ask the Commission to recommend to the Board of Supervisors to modify the Housing Element and not approval the DSEIR/FSEIR in effort to represent the residents of Marin County and protect the environment for future generations to enjoy.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas & Susan Monahan". The signature is written in a cursive, flowing style with a long horizontal line extending from the left side.

Thomas & Susan Monahan
Lucas Valley Ranch Capital Partners LLC
2200 Lucas Valley Road
San Rafael CA 94903

**RESPONSE TO LETTER NO.106 THOMAS AND SUSAN MONAHAN – LUCAS VALLEY RANCH
CAPITAL PARTNERS LLC (MAY 17, 2013)**

Response to Comment 106-1

The potential for development of housing on identified housing sites has been analyzed in the SEIR according to every environmental topic required by CEQA and the cumulative context.

Response to Comment 106-2

This comment is on process of this project review and not the adequacy of responses to comments in the *Response to Comments on the Draft EIR*. As stated in Response to Comment 28-1 the Marin County *Environmental Impact Review Guidelines* provide for a minimum ten-day period for review of the Final EIR prior to any action to certify it. The initial comment period was from April 29, 2013 until 4:00 PM on Monday May 13, 2013. In response to several requests for a time extension the comment period was extended to 5:00 PM on Friday May 17, 2013, for a total of 19 days.

Response to Comment 106-3

The *2007 Countywide Plan EIR* analyzed four alternatives that are summarized on pages 9 through 11 in the Draft SEIR. The SEIR is supplemental to the *2007 Countywide Plan EIR* and need only address changes to the Countywide Plan that would result from implementation of the *2012 Draft Housing Element*, and therefore analysis of additional alternatives is not necessary.

Response to Comment 106-4

CEQA requires responses to comments on significant environmental issues (Public Resources Code section 21091(d)(2)(B)). The commentator does not provide any examples of failure to respond to comments on significant environmental issues.

Response to Comment 106-5

Please see Response to Comment 28-5.

Response to Comment 106-6

Please see Response to Comment 28-8.

Response to Comment 106-7

Please see Response to Comment 28-7.

From: tenley foran [mailto:tenleyforan@hotmail.com]
Sent: Friday, May 17, 2013 3:16 PM
To: EnvPlanning
Subject: Comments on Final SEIR Marin Housing Element

Dear Mr. Tejirian,

Please find attached my comments on the Final SEIR of the Marin Housing Element for consideration at the June 24, 2013 Planning Commission Meeting. I appreciate the opportunity to comment.

Tenley Foran

Dear Mr. Tejirian,

I am a Marinwood resident and I have concerns after reading the Final Supplemental EIR for the County Housing Element.

My comments are as follows:

1. 546 units listed in the Marinwood/ Lucas Valley area and only 317 outside this area is extremely disproportionate. This will greatly affect our resources such as schools, public safety, traffic, noise, clean air, etc. The plan talks about a range of density, but proposes to concentrate that density in the Marinwood/Lucas Valley area. We already suffer from freeway congestion, back-ups on freeway entrances and exits during commuter hours, parking in our retail centers is regularly full, and our schools are close to enrollment capacity. I don't see how our current infrastructure can accommodate this degree of housing density.

2. Two sites in the Marinwood vicinity (Marinwood Plaza and St Vincent's) are located adjacent the 101 freeway and near a cell tower. Although you refuted the negative health impact of housing near a cell tower the World Health Organization has classified RF Radiation as such: "Radiofrequency electromagnetic fields (RF), as emitted by cell towers, have been classified by the World Health Organization's International Agency for Research on Cancer (IARC) as a Class 2B "Possible Carcinogen." Additionally, from the American Academy of Pediatrics: "Concerns about the potential vulnerability of children to radio frequency (RF) fields have been raised because of the potentially greater susceptibility of their developing nervous systems; in addition, their brain tissue is more conductive, RF penetration is greater relative to head size, and they will have a longer lifetime of exposure than adults."

3. The CA Air Resources Board does not recommend that residences are built within 500 feet of a freeway; they cited that adverse health effects have been found in children living as far as 4,921 feet from traffic, and in recent studies have found the freeway emission plumes during the morning hour's travel further than previously understood - 0.93 miles. According to a report from CA Air Resources

Board children appear to be particularly vulnerable to the adverse effects of traffic emissions. From a CA Air Resources Board report: “Epidemiological studies have found significant associations of children living near high traffic areas with decreased lung function (Brunekreef et al., 1997; Gauderman et al., 2007), increased medical visits and hospital admissions for childhood asthma (English et al., 1999; Lin et al., 2002), increased wheezing (Venn et al., 2001), and increased childhood asthma and bronchitis (Kim et al., 2004; Gauderman et al., 2005; McConnell et al., 2006), including development of new asthma cases (McConnell et al., 2010; Gehring et al., 2010). Children living near busy roadways are especially likely to experience elevated exposures because they would also play outdoors in the neighborhood and typically would attend nearby schools. Their higher breathing rates per unit of body mass relative to adults (Adams, 1993) and their developing immune, neurological, and respiratory systems make them especially susceptible to impacts from air pollution. More importantly, results from the Southern California Children’s Health Study on the association of residential distance to traffic and lung function development, performed in the same general location as the Hu et al. study, found adverse health effects in children living as far as 1500 m (4921 ft) from roads (Gauderman et al., 2007). These are not unique findings; in the HEI (2010) report mentioned above, the authors noted that studies showed that people living up to 500 m (1640 ft) from heavy traffic are most at risk from the health effects of traffic pollution.”

Although you may disagree with the World Health Organization and the American Academy of Pediatrics regarding the risk of RF exposure from cell towers it is prudent to consider/analyze the cumulative effects of placing family housing near both a freeway and cell tower – along with closer analysis of the impact on children, in particular.

3. The Dixie School District is known for its distinguished schools. I understand that the Leroy F. Greene School Facilities Act of 1998 (“SB 50”) preempts local jurisdictions from devising their own requirements to mitigate or otherwise address impacts of new development on school facilities. There are several issues with SB 50. For one, Tier 3 funding is currently unavailable, which means less funds are available for any required new school structures. Additionally, SB 50 only helps fund the construction of school facilities. This leaves no funds for teacher’s salaries, school supplies, administrative expenses, and infrastructure requirements such as an extended bus school program. The nature of the proposed housing means that these residents would not pay the level of property taxes that current homeowners in the district pay to support the school district. How is it expected that we will then pay for the costs of a new school that is not covered by SB 50 in an environment where the average school funding per resident is much lower than it stands today? How in this situation will our schools remain California Distinguished? Isn’t there other aid the County can require from the State or from the developers, so we can maintain our high quality schools? If not, then a new development plan should be put in place that will keep our

schools distinguished. Quality of schools and education should never be compromised under any circumstances, and solutions should be found that are sustainable for the community as it stands today.

4. Traffic congestion, including local traffic, getting on and off the freeway at the Marinwood/St. Vincent's exit and inadequate public transit will be an even bigger issue with increased density. Currently between minimal public transit options, and freeway congestion it is difficult/if not impossible to commute to work and pick-up/drop-off children at school and daycare at all the times required to do those activities. Increased traffic congestion, which will lead to longer commute times, and no additional public transit support will place some families in an unsustainable situation. Traffic congestion and public transit needs to be mitigated before additional housing is put in. Not everyone can afford to live in the cities that are closer to their work, so families/individuals with longer commutes should be accounted for. A full analysis should be conducted to determine traffic impact and how it can be mitigated, so existing Marinwood/LV households can sustain their work and family commitments.

5

Thank you for your time and consideration regarding my points listed above.

Tenley Foran

Marinwood, CA

RESPONSE TO LETTER NO.118 TENLEY FORAN (MAY 17, 2013)

Response to Comment 118-1

This comment is not on the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. Inclusion of this comment will make the commentor's opinion available to Marin County decision makers for consideration.

Response to Comment 118-2

Please see Response to Comment 53-10 and Response to Comment 20-11 in the *Responses to Comment to the Draft SEIR*.

Response to Comment 118-3

Please see Response to Comment 11-7 in the *Response to Comments to the Draft SEIR* and Response to Comment 101-6. The significance thresholds and calculation methods utilized to predict health risks take into account effects of air pollution from freeways and the increased susceptibility of infants and small children to cancer causing TACs. BAAQMD developed the thresholds and prediction methodologies, recognizing that traffic and other sources of TAC emissions can have adverse effects on sensitive receptors, especially infants and small children. BAAQMD relied on information provided by the California Air Resources Board, as well as many of the studies identified by the commentor.

Response to Comment 118-4

The SEIR acknowledges that implementation of the *2012 Draft Housing Element* would require new school facilities in the Dixie School District (please see *Master Response 2 – Dixie School District*). This issue is addressed at a countywide level in the *2007 Countywide Plan EIR* under the discussion of *Impact 4.10-12 Demand for Public Education Services*. Further comments regarding SB 50 and school funding will be provided by staff to Marin County decision makers for consideration. No further response is necessary.

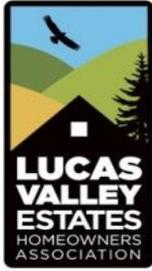
Response to Comment 118-5

The Draft SEIR discusses transportation impacts starting on page 239, this includes an analysis of screenlines and intersections located in the vicinity of the St. Vincent's and Marinwood properties. The same screenlines and intersections were analyzed in the *2007 Countywide Plan EIR* traffic analysis; however, the traffic analysis in the Draft EIR uses an updated traffic model that incorporates more recent demographic information.

As shown on **Exhibit 3.0-30** screenline 16 (Highway 101 – Pacheco Hill near Nave Drive and Miller Creek) and intersection G (U.S. 101 Southbound off-ramp at Miller Creek Road) and intersection H (U.S. 101 Northbound off-ramp at Miller Creek Road) are studied areas located nearest to the St. Vincent's / Silveira property (Housing Site 5) and Marinwood Plaza (Housing Site 1). Under cumulative conditions with project implementation screenline 16 would operate at acceptable levels of service. Regarding study intersections G and H: Under cumulative conditions with project implementation intersections G and H would operate at unacceptable levels of service. However, as stated on page 256 of the Draft SEIR, the following mitigation would result in acceptable LOS:

- Intersection G – Signalize the intersection.
- Intersection H – Signalize the intersection and add eastbound left and northbound left turn lanes.

However, the traffic analysis found that there would be no new significant impacts or any increase in severity of a previously identified significant impact resulting from implementation of the *2012 Draft Housing Element*. Please see Response to Comment 72-2.



May 16, 2013

Jeremy Tejjirian, Planning Manager
Marin Community Development Agency
Marin County Civic Center
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
Via email to: envplanning@marincounty.org

Re: Comments on the FSEIR of the 2012 draft Housing Element Update

Dear Mr. Tejjirian,

We are pleased to have received a copy of the independent technical review of the FSEIR prepared for the Lucas Valley Homeowners Association by the Consultant Team of Grasseti Environmental Consulting and PLACEMAKERS (copy attached).

1

The Board of Directors of the Lucas Valley Estates Homeowners Association would like to take this opportunity to submit our comments on the FSEIR of the draft 2012 Housing Element Update to include all comments identified and documented in the attached report. We would also like to express our concerns with the inadequacies of the FSEIR in evaluating the potential adverse impacts of the draft 2012 Housing Element Update.

We respectfully request that the County prepare and re-circulate a revised SEIR for public review that addresses the issues and omissions identified in the attached.

Sincerely,

Bruce Carmendelle,
President
Board of Directors
Lucas Valley Estates Homeowners Association

Attachment: 1

**RESPONSE TO LETTER NO.124 BRUCE CARMENDELLE, LUCAS VALLEY ESTATES
HOMEOWNERS ASSOCIATION (MAY 16, 2013)**

Response to Comment 124-1

Mr. Carmendelle, on behalf of the Lucas Valley Estates Homeowners Association submitted a copy of the comments prepared by Richard Grasseti, Grasseti Environmental Consulting and Patricia Jeffery, Placemakers. Please see responses to Comment Letter No. 28 above.

From: MCL [mailto:mcl@marinconservationleague.org]

Sent: Friday, May 17, 2013 1:46 PM

Comment Letter 125

To: EnvPlanning

Subject: 2012 Draft Marin County Housing Element - Comments on Final SEIR



May 17, 2013

Rachel Warner
Interim Environmental Coordinator
Community Development Agency
County of Marin
3501 Civic Center Drive
San Rafael, CA 94903

Subject: 2012 Draft Marin County Housing Element – Comments on Final SEIR

Dear Ms. Warner:

Marin Conservation League submits these comments on the Final SEIR for the 2012 Draft Marin County Housing Element. MCL supports the need for affordable housing in Marin, but we continue to have concerns about the Final SEIR. Our comments focus on the Final SEIR responses to MCL's comments on the Draft document. We appreciate that the FSEIR provides a more in-depth analysis of issues associated with sea-level rise, and has modified mitigation measures to reflect current data and programs. We believe that areas known to be vulnerable to flooding and projected sea level rise should not be considered appropriate sites for affordable housing.

1. Functions of the SEIR as a Program Document.

1 We noted in our comments that the Housing Element SEIR essentially supplements the Countywide Plan EIR by identifying any new or substantially more significant impacts due to implementing the Draft Housing Element, compared to impacts identified in the Countywide Plan (CWP) EIR. Too much of the analysis is spent on comparing the two documents rather than on shaping the Draft SEIR to be a useful first-order program EIR. The result will be that *two* program-level EIRs will have to be consulted as "First Tier" documents in future project-level environmental review. This makes for a cumbersome process!

The FSEIR responds to MCL's comment by citing CEQA Guidelines – *viz.*, that the FSEIR "... need only contain information necessary to make the 2007 CWP EIR adequate to address implementation of the policies and programs of the new housing element." While this may be a legally adequate response, we continue to believe that the CEQA process should facilitate rather than present obstacles to ongoing environmental review. The conservative approach taken by the consultant does nothing to facilitate future review.

We also noted that the Housing Element FSEIR will become out of date, as has the CWP EIR. The end-date for actual project development might occur years if not decades after the end of the 2014-22 RHNA cycle. At that time the SEIR would no longer suffice as a current program EIR for purposes of “tiering” subsequent environmental reviews of individual applications.

The FSEIR responds that the SEIR need not be updated to maintain compliance with CEQA, but rather the individual review of each housing site will require using up-to-date data that is pertinent to the subject of review. Although this approach would ensure that current data, such as for sea level rise and air quality, for example, will be referenced in site review, it could overlook current *cumulative* impacts that are a primary purpose of the SEIR. There should be some assurance that both cumulative as well as site-specific information will be considered where circumstances or data have changed over time.

2. Applicability of CWP Programs as Mitigation.

2 MCL noted many policies and programs in the CWP that were cited as mitigation measures in the Draft SEIR have not been implemented, and, therefore, it is not possible to insure that programs referenced as mitigation for significant impacts will be, implemented in the future.

The FSEIR response to our comment simply notes that CDA staff will continue working with the Board of supervisors to implement programs in the CWP. In our view, this means that future site-specific reviews will not be able to rely on the two program EIRs for applicability of mitigation measures based on the CWP policies and programs, but will have to review the program documents carefully to determine whether referenced programs have been implemented.

3. Adequate Site Descriptions.

3 MCL requested the Final SEIR contain an “environmental and land use profile” for each site, which compiles basic information about the site from each topic covered in the Draft SEIR. As the SEIR stands, the reader must consult numerous sections and tables in the document to assemble a useful description of each site. This is another example of how this document will complicate rather than facilitate future environmental reviews.

The FSEIR response is simply that the preparer of the SEIR is not responsible for reorganizing information in the document, and that the information is adequate for its intended purpose. This is not a helpful response.

4. Streamlining Environmental Review.

4 The 2012 Draft Housing Element goals and programs contain a number of references to streamlining and expediting review of development proposals. Although this may be useful in helping the County to meet affordable housing needs, the repeated theme of streamlining and other means of expediting permit review raises a number of concerns about future public process.

The response in the FSEIR is: “While this SEIR provides in depth program level review of the proposed housing sites that may be used to help streamline future tiered environmental review, additional site

specific review is anticipated for specific development projects when they are proposed.” We reiterate that each site must be given adequate and transparent environmental review.

5

In conclusion, we repeat our basic concern that individual housing sites will not receive adequate environmental review or opportunities for public engagement in future years or address conditions or public needs as they change over time. While we acknowledge the need for affordable housing and greater housing choices at all income levels in Marin, it must not occur at the expense of environmental quality or loss of transparency and public involvement in governmental decisions.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "David Schnapf". The signature is fluid and cursive, with the first name being more prominent.

David Schnapf
President
Marin Conservation League
1623-A Fifth Ave.
San Rafael, CA 94901
415-485-6257

RESPONSE TO LETTER NO.125 DAVID SCHNAPF, MARIN CONSERVATION LEAGUE (MAY 17, 2013)

Response to Comment 125-1

The SEIR analyzes the potential for development of housing on 49 sites, which are listed and mapped on pages 18 through 34 of the Draft SEIR. The analysis includes a review of potential housing sites and identifies mitigation measures contained in the *2007 Countywide Plan EIR*, and discloses the need for and identifies new mitigation measures where necessary. New or substantially more severe significant impacts are identified in the following three resources areas: Air Quality; Hydrology, Water Quality and Flooding Hazard; and Noise. The result of the SEIR is six additional mitigation measures as described on pages 41 to 44 of the Draft SEIR and *Master Response 1 – Sea Level Rise*.

With regard to future CEQA review, please see Response to Comment 53-8. Future development that occurs subsequent to implementation of the *2012 Draft Housing Element* would be subject to the requirements of CEQA at that time.

Response to Comment 125-2

As a part of the County's adoption of the *Countywide Plan* in 2007, a Mitigation Monitoring and Reporting Program (MMRP) was adopted. The mitigation measures adopted as a part of the *Countywide Plan* in 2007 remain in effect. The adopted MMRP lists the agency or entity responsible for implementation of individual mitigation measures. The MMRP also provides guidance on monitoring and reporting actions to ensure that implementation procedures are followed. Six new mitigation measures have been identified in this SEIR. A new MMRP for these six mitigation measures has been prepared.

Response to Comment 125-3

This comment does not address the adequacy of the response to comments in the *Response to Comments to the Draft SEIR*. The comment will be provided to Marin County decision makers for consideration.

Response to Comment 125-4

Please see Response to Comment 53-8.

Response to Comment 125-5

Please see Response to Comment 53-8.



Mont Marin San Rafael Park Neighborhood Association

Jeremy Tejjirian, Planning Manager
Marin Community Development Agency
3501 Civic Center Drive
Room 308
San Rafael, CA 94903
email: envplanning@marincounty.org

May 17, 2013

Re: Comments to the FSEIR of the 2012 Draft Housing Element Update

Dear Mr. Tejjirian

We are in receipt of a copy of the independent technical review of the FSEIR prepared for the Lucas Valley Homeowners Association by the Consultant Team of Grasseti Environmental Consulting and PLACEMAKERS (collectively, "the Consultants") (copy attached).

1 We are concerned by the findings of this report with respect to the adequacy of the SEIR in complying with the California Environmental Quality Act (CEQA), and in fully understanding the potential adverse impacts to our community and its surroundings associated with adopting the proposed Housing Element update. The Board of Directors of Mont Marin San Rafael Park Neighborhood Association would like to take this opportunity to submit our comments to the FSEIR to include all comments identified and documented by the Consultants.

We respectfully request that the County prepare and re-circulate a revised SEIR for public review that addresses the issues and omissions identified in the attached letter from the Consultants.

Sincerely,

/s/ John Rojas

John Rojas
President MMSRPNA
jhrojas435@comcast.net

Attachment 1

**RESPONSE TO LETTER NO.126 JOHN ROJAS, MONT MARIN SAN RAFAEL PARK
NEIGHBORHOOD ASSOCIATION (MAY 17, 2013)**

Response to Comment 126-1

Mr. Rojas, on behalf of Mont Marin San Rafael Park Neighborhood Association submitted a copy of the comments prepared by Richard Grasseti, Grasseti Environmental Consulting and Patricia Jeffery, Placemakers. Please see responses to Comment Letter No. 28 above.

Organized Residents of Marinwood

May 5, 2013

Jeremy Tejjirian, Planning Manager
Marin Community Development Agency
Marin County Civic Center
3501 Civic Center Drive, Suite 308
San Rafael, CA. 94903
envplanning@marincounty.org

Re: Comments to the FSEIR of the 2012 Draft Housing Element Update

Dear Mr. Tejjirian:

We are in receipt of the letter dated April 24, 2013, addressed to you from the Lucas Valley Homeowner's Association, Inc. (LVHA), regarding their opposition to re-zoning of any property west of Las Gallinas Avenue along the Lucas Valley Corridor for the purpose of constructing high density, low, affordable or market rate housing. We, the undersigned residents of Marinwood and lower Lucas Valley, known as Organized Residents of Marinwood, representing 749 residents, composed of 544 households, agree with and endorse LVHA's opposition. We would expand that stated territory to include all areas east of Las Gallinas Avenue currently designated as a potential Priority Development Area (PDA).

In addition, all of the signators of this letter endorse the following:

1. Opposition to any development sites that threaten Dixie School District schools and Terra Linda High School due to: (1) density, (2) number of affordable units, (3) the cumulative effect of the number of affordable units together with those of other sites, by not providing sufficient taxation, i.e., basic ad valorem taxes.
2. Opposition to planning in the Marinwood/Lucas Valley Corridor to enable over 70% of unincorporated Marin's affordable housing; specifically, opposition to planning 546 units within the Dixie School District of the required 773 units assigned to unincorporated Marin.
3. Opposition to rezoning any property to 30 units per acre (an urban standard) and to any density that exceeds the existing density in Marinwood/Lucas Valley, which is no greater than 11 units per acre
4. Opposition to a proposed concentration of 100% affordable housing at any site identified as a PDA; instead, reinstatement of the countywide standard of a mandated 20% affordable housing for new developments.

Organized Residents of Marinwood

5. A mandated cumulative environmental impact report on each designated site within an area bounded by Novato, the Civic Center, the San Francisco Bay and Nicasio (inclusive of Miller Creek and Gallinas watersheds).
6. A mandated full hazardous waste remediation prior to construction, and identification of all other existing environmental hazards, e.g., cell towers, proximity to highway, past contamination(s).
7. A mandated identification of any negative impact to Miller Creek, the watershed, the ground water, as well as a water supply assessment plan in light of the total number of housing units proposed in our area.
8. A mandated identification of any negative impact to sewer and storm water lines and treatment facilities.
9. Opposition to housing that is disproportionate in number to employment opportunities within the community, which is contrary to the purpose of supplying “workforce housing.”

We specifically oppose the inclusion of the Marinwood Plaza site as inventory in the Housing Element as currently proposed. We demand that our community have actual, relevant input with regard to the plan for the site, as is required by the 2007 County Wide Plan and the Marinwood Plaza Conceptual Master Plan. This Master Plan as approved by the Board of Supervisors, Reso #2006-146, did not comply with the Marinwood Guiding Principles which stated 20-50 affordable units which itself had not been vetted by the entire community. The community had previously agreed to 70 units, 20% of which would be affordable as proposed by a developer in 2006.

In agreement with the LVHA, we respectfully request that you join us in opposing any attempts to re-zone any of the available development sites in the areas described and honor our position as enumerated above.

Sincerely,

Organized Residents of Marinwood
(see signature pages attached)

RESPONSE TO LETTER NO.127 JUSTIN KAI, ORGANIZED RESIDENTS OF MARINWOOD

In addition to comments received from Justin Kai the following individuals submitted the same comments:

Denise K. Castellucci
Lisa Culbertson Simmons
Maia McGehee & Paul Gusciora
Raymond Day

Mr. Kai, on behalf of Organized Residents of Marin submitted a copy of the comments prepared by Richard Grassetti, Grassetti Environmental Consulting and Patricia Jeffery, Placemakers. Please see responses to Comment Letter No. 28 above.

In addition, the commentor submitted a series of points (numbered 1 through 9) regarding the merits of the Draft Housing Element. These comments were accompanied by 47 pages of a petition signed by members of the public. These comments are noted and will be provided to Marin County decision makers for consideration.

RECOMMENDED CHANGES TO MITIGATION MEASURES

In order to clarify the wording of **New Mitigation Measure Air Quality-1**, the following revision is recommended:

New Mitigation Measure Air Quality-1 Environmental review for applications for new housing projects that may have potentially significant toxic air contaminant (TAC) exposures, as identified in **Exhibits 3.0-4 and 3.0-5 of the Draft SEIR**, shall include a detailed analysis of the potential health risks from exposure of future residents to TACs using refined modeling techniques. This analysis shall identify both the level of TAC exposure and measures to reduce unacceptable exposures to a less-than-significant level. Mitigation measures that achieve compliance with the adopted standards of the BAAQMD for residential exposure to TACs shall be incorporated into the design of the project to reduce the risk to an acceptable level. Such measures would include, but are not limited to, site design, use of appropriate filtration in ventilation systems, vegetative barriers, or a combination of the measures.

***APPENDIX
LIST OF COMMENT LETTERS***

**2012 Draft Marin County Housing Element SEIR
Final SEIR Comment Letters (Comment Period Closed on May 17, 2013 at 5 pm)**

# of Commentors	Date Received or Postmarked	# of emails received, if more than one	Company or Group	Commentor's Name	Comment Catalog
Individuals					
1	04/14/13			Robert & Janet Phinney	Merits
2	04/22/13			John Wallace	Merits
3	04/29/13	3 emails		Kim Mollenauer	Merits
4	04/29/13			Philip Harvey	Time Extension
5	04/29/13	2 emails		Yoshi Tome and Suzie Buchholz Tome	Merits
6	04/30/13			Joanne Herson	Time Extension
7	04/30/13			Lissa L. Rapoport	Time Extension
8	04/30/13			Meehyun Kim Kurtzman, AIA LEED AP	Time Extension
9	04/30/13			Sarah Azerad	Time Extension
10	04/30/13			Shannon and Dominick Stallone	Time Extension
11	04/30/13			Terry Husebye	Time Extension
12	04/30/13			Wolfgang Taft	Time Extension
13	05/02/13			Steve Farac	Time Extension
14	05/04/13			Viviana Gaeta	Time Extension
15	05/06/13			Rebecca Andersen	Time Extension
16	05/06/13			Sabine Grandke-Taft	Time Extension
17	05/11/13			Gabriela Shea	Merits and Time Extension
18	05/14/13			Patricia S. Bender	Time Extension
19	05/14/13			Reed Kathrein	EIR
20	05/14/13			Riley F. Hurd III	Attorney Letter: EIR and Merits
21	05/14/13			Sara Huang	Merits
22	05/15/13			Ann & Eugene Spake	EIR

# of Commentors	Date Received or Postmarked	# of emails received, if more than one	Company or Group	Commentor's Name	Comment Catalog
23	05/15/13			Dennis Paul Finney	Merits
24	05/15/13			Lorri Leard	Merits
25	05/16/13			Adrian & Julie Jordan	Merits and Time Extension
26	05/16/13			Beverly Kleinbrodt Wood	Merits
27	05/16/13			Eric Egan	Merits
28	05/16/13			Patricia Jeffery	EIR
29	05/16/13			Ronette King	Merits and Time Extension
30	05/16/13			Sarah King	Merits
31	05/17/13			Aaron Munter	EIR and Merits (Form Letter)
32	05/17/13			Adrienne Hart	EIR and Merits (Form Letter)
33	05/17/13			Amie Buecker	EIR and Merits (Form Letter)
34	05/17/13			Amy Farrell	EIR and Merits (Form Letter)
35	05/17/13			Ana Reza-Hadden	EIR and Merits (Form Letter)
36	05/17/13			Andy Buecker	EIR and Merits (Form Letter)
37	05/17/13			Angela Lee	EIR and Merits (Form Letter)
38	05/17/13			Anita McKenzie	EIR and Merits (Form Letter)
39	05/17/13			Ann Marie Martin	EIR and Merits (Form Letter)
40	05/17/13			Barbara Layton	EIR and Merits (Form Letter)
41	05/17/13			Barbra Rosenstein	EIR and Merits (Form Letter)
42	05/17/13			Bonnie Keenan	EIR and Merits (Form Letter)
43	05/17/13			Brett Wickens	EIR and Merits (Form Letter)
44	05/17/13			Carol Sheerin	EIR and Merits (Form Letter)
45	05/17/13			Carolyn Margiotti	EIR and Merits (Form Letter)
46	05/17/13			Charles Ocat	EIR and Merits (Form Letter)
47	05/17/13			Christina Ishibashi Bonner	EIR and Merits (Form Letter)
48	05/17/13			Christine Nishinaga	EIR and Merits (Form Letter)
49	05/17/13			Cynthia Langendorf	EIR and Merits (Form Letter)
50	05/17/13			Dan Friedman	EIR and Merits (Form Letter)

# of Commentors	Date Received or Postmarked	# of emails received, if more than one	Company or Group	Commentor's Name	Comment Catalog
51	05/17/13			David Bobrow	EIR and Merits (Form Letter)- Received after the 5 pm Deadline
52	05/17/13			Dayan Perera	EIR and Merits (Form Letter)
53	05/17/13			Deana Dearborn	EIR and Merits
54	05/17/13			Denise K. Castellucci	EIR and Merits (Form Letter)
55	05/17/13			Donna Andresen	EIR and Merits (Form Letter)
56	05/17/13	2 Emails- Very Similar		Dr. Louis Stokes & Beverly Stokes	EIR and Merits (Form Letter)
57	05/17/13			Ellis Heyer Coyne	EIR and Merits (Form Letter)
58	05/17/13			Eric Andresen	EIR and Merits (Form Letter)
59	05/17/13			Eric Bonner	EIR and Merits (Form Letter)
60	05/17/13			Erika Bodo RN	Merits
61	05/17/13			Francie & Brian Burkhard	EIR and Merits (Form Letter)- Received after the 5 pm Deadline
62	05/17/13			Gabriela Shea	EIR and Merits (Form Letter)
63	05/17/13			Glenn Nishinaga	EIR and Merits (Form Letter)
64	05/17/13			Heidi Zabit	EIR and Merits (Form Letter)
65	05/17/13			Igor Grinchenko	EIR and Merits (Form Letter)
66	05/17/13			Irene and Vincent Korsky	EIR and Merits (Form Letter)
67	05/17/13			James Nielsen	EIR and Merits (Form Letter)
68	05/17/13			Janet & James Leonard	EIR and Merits (Form Letter)
69	05/17/13		Lucas Valley HOA	Janice Cunningham	EIR and Merits (Grassetti Letter)
70	05/17/13			Jennifer McConnell	EIR and Merits (Form Letter)
71	05/17/13			Jessica Freilich	EIR and Merits (Form Letter)- Received after the 5 pm Deadline
72	05/17/13			Jessica Middleton	EIR and Merits
73	05/17/13			Joan Herriges	EIR and Merits (Form Letter)
74	05/17/13			Joanne Herson	EIR and Merits (Form Letter)
75	05/17/13			Jody & Shane Kennedy	Merits

# of Commentors	Date Received or Postmarked	# of emails received, if more than one	Company or Group	Commentor's Name	Comment Catalog
76	05/17/13			John Bruce Corcoran	Merits
77	05/17/13			Joshua Nadelberg	EIR and Merits (Form Letter)
78	05/17/13			Judy Schriebman	Merits
79	05/17/13			Karen Madden	Merits
80	05/17/13			Kathi Ellick	Merits
81	05/17/13			Kevin Butts	EIR and Merits (Form Letter)
82	05/17/13			Kimberly Call	Merits
83	05/17/13			Lisa Culbertson Simmons	EIR and Merits
84	05/17/13			Liz McCarthy	EIR and Merits (Form Letter)
85	05/17/13			Luke Teyssier	Merits
86	05/17/13			Maribel Cruz	EIR and Merits (Form Letter)
87	05/17/13			Marissa Diaz	EIR and Merits (Form Letter)
88	05/17/13			Mary Nielsen	EIR and Merits (Form Letter)
89	05/17/13			Matt Egan	EIR and Merits (Form Letter)
90	05/17/13			Meehyun Kim Kurtzman	EIR and Merits- Grasseti Letter Attached
91	05/17/13			Meredith Noyes	EIR and Merits (Form Letter)- Receved after the 5 pm Deadline
92	05/17/13			Meredith Schow	EIR and Merits (Form Letter)
93	05/17/13			Michelle Rowley	EIR and Merits (Form Letter)- Receved after the 5 pm Deadline
94	05/17/13			Nannette Quigley	EIR and Merits (Form Letter)
95	05/17/13			Noah Rolland	EIR and Merits (Form Letter)
96	05/17/13			Page Hadden	EIR and Merits (Form Letter)
97	05/17/13			Paul Franjeh	EIR and Merits (Form Letter)
98	05/17/13			Peter Herschkorn	EIR and Merits (Form Letter)
99	05/17/13			Peter Keenan	Merits
100	05/17/13			Pierre Littée	EIR and Merits (Form Letter)

# of Commentors	Date Received or Postmarked	# of emails received, if more than one	Company or Group	Commentor's Name	Comment Catalog
101	05/17/13	2 Emails with Attachments	Adams, Broadwell, Joseph and Cardozo	Rachael Koss	Letter from Attorney: EIR
102	05/17/13			Raymond Day	EIR and Merits (Form Letters)
103	05/17/13			Raymond Sullivan	EIR and Merits (Form Letter)
104	05/17/13			Regan Nadelberg	EIR and Merits (Form Letter)
105	05/17/13			Robert Jones	EIR and Merits (Form Letter)
106	05/17/13			Robin Miller on behalf of Thomas and Susan Monahan	EIR and Merits
107	05/17/13			Ryan Mize	EIR and Merits (Form Letter)
108	05/17/13			Sabine Grandke-Taft	EIR and Merits (Form Letter)
109	05/17/13			Scott Johnson	EIR and Merits (Form Letter)
110	05/17/13			Sean Keenan	EIR and Merits (Form Letter)
111	05/17/13			Shawna O'Connor	EIR and Merits (Form Letter)
112	05/17/13			Soroor Iravani	EIR and Merits (Form Letter)
113	05/17/13			Stacy Nelson	EIR and Merits (Form Letter)- Received after the 5 pm Deadline
114	05/17/13			Stephen Nestel	EIR and Merits (Form Letter) + Grassetti Letter
115	05/17/13			Steve Clark	EIR and Merits (Form Letter)
116	05/17/13			Takako Nishinaga	EIR and Merits (Form Letter)
117	05/17/13			Tanya Powell	EIR and Merits (Form Letter)
118	05/17/13			Tenley Foran	EIR and Merits
119	05/17/13			Thomas Sibbet	EIR and Merits (Form Letter)
120	05/17/13			Wolfgang Taft	EIR and Merits (Form Letter)
121	05/17/13			Zoë Rolland	EIR and Merits (Form Letter)
122	05/19/13			Denise Castellucci	EIR and Merits (Form Letter) + Grassetti Letter- Received after the 5 pm Deadline

# of Commentors	Date Received or Postmarked	# of emails received, if more than one	Company or Group	Commentor's Name	Comment Catalog
123	05/19/13			Steven Better and Kristiana Raube	EIR and Merits (Form Letter) + Grasseti Letter- Received after the 5 pm Deadline
Local Groups					
124	05/17/13		Lucas Valley Estates Homeowners Association	Bruce Carmendelle	EIR- Grasseti Letter Attached
125	05/17/13		Marin Conservation League	David Schnapf	EIR and Merits
126	05/17/13		San Rafael Park Neighborhood Association	John H. Rojas	EIR- Grasseti Letter Attached
127	05/17/13	2 Emails- Very Similar	Organized Residents of Marinwood	Justin Kai	EIR and Merits