

FORM FOR RESPONDING TO GRAND JURY REPORT

Report Title: *The WinCup/Tam Ridge Residences: How Did It Come to Pass?*

Report Date: June 18, 2015

Public Release Date: June 24, 2105

Response by: September 18, 2015

FINDINGS

- I (we) agree with the findings numbered: 3,4,6
- I (we) disagree wholly or partially with the findings numbered: 1,2,5

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered 1,2 have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered N/A have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered 4 require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered 3 will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 9/17/2015

Signed: Carla Bondar

Number of pages attached

Attachment to Grand Jury Report Response by the Town of Corte Madera
Report Title: The WinCup/Tam Ridge Residences: How Did It Come to Pass?
Report Date: June 18, 2015
Date of Response: September 17, 2015

FINDING #1: *ABAG's mistaken over allocation of the RHNA 244 dwelling units, combined with the affordable housing lawsuit, and availability of the WinCup property were major factors leading to Corte Madera Town Council's embedding WinCup in the Town's General Plan.*

The Town Council partially disagrees with Finding No. 1. We do agree that over-allocation of our RHNA numbers, a prior affordable housing lawsuit, and the availability of the WinCup site to use for RHNA compliance were factors in the identification of the WinCup site as a site which could accommodate a significant portion of the Town's RHNA quota, and the ultimate approval of the Tam Ridge Residences development.

However these do not represent all of the factors involved in the Town's decision making process. Other factors included the financial stress that the Town was under due to the economic downturn which began in 2007, and how that economic downturn would have heightened any impacts from another lawsuit. Another factor was the concern that the Town has very limited space to provide for required housing (almost half of the land within the Town limits is either marsh land or is underwater) and finding property available to provide for the RHNA requirements presented the obvious challenges.

It is unclear why the WinCup site was embedded in the 2009 General Plan update. The then-Planning Director served as the Town's expert on the General Plan and managed its update process culminating in its 2009 adoption. The Council at the time was not aware that embedding the WinCup site into the Land Use Element in the General Plan Update process was in any way an unusual process, nor that it would result in any entitlement of the site with regard to densities or other granting of rights. The Town Council was advised that including the WinCup site in the General Plan Update would assist the Town in conveying its intention to meet its RHNA quota.

FINDING #2: *With no project specific EIR required for the WinCup project, and with the WinCup project embedded in the General Plan and General Plan EIR approval process, there was minimal public awareness of the project.*

The Town Council partially disagrees with Finding No. 2. We do agree that having the EIR for the project embedded in the Town's General Plan Update did reduce the amount of public awareness for the project. However, the Town would like to point out that this wasn't done by the Council intentionally, and that there was more than a "minimal" amount of public awareness. Efforts were made to inform the public. The project and its impacts were discussed during both General Plan meetings and Housing Element Update meetings; nevertheless, the Town does recognize that this did lead to a far lower level of public awareness for the project than what should have been presented to the public. In the future, project specific EIR's will be required for any project which may have significant impacts on the environment.

It should be noted that at the time of approval of the General Plan Update in April 2009, the Town Council was unaware that no project specific EIR would be required. In fact, the then-Planning Director specifically advised the Town Council of the following: "Mr. Pendoley stated that there are no plans for the WinCup property at this time; however, if an application is received at the density allowed for in the GP, the project would require an EIR, public hearing, and more substantial traffic studies than those already performed."* The Town Council did not knowingly attempt to limit public awareness or input, nor did they knowingly attempt to subvert a project specific EIR process.

There was ample public notice, but the lack of public awareness shouldn't be blamed entirely on the Town. The Grand Jury's response failed to recognize the meetings of the Citizens Advisory Committee for the Housing Element (except for a cursory mention in the Chronology portion of the Appendix) that included discussions of WinCup's potential development. The Committee was comprised of 15 members, all residents of the Town. The meetings were held on August 18th, September 2nd, September 30, 2009; October 21st, November 4th, November 18th, December 10th and January 13th. These meetings were all public noticed. Also, notices appeared in the newspaper and on the Town's sign.

FINDING #3: *Town officials relied on outside consultants and professionals for input to the Town's planning and approval process; in retrospect, some Town officials believe they were misled into approving a project different than what was originally represented.*

The Town Council agrees with Finding No. 3. Town officials did rely on outside consultants and professionals for input to the Town's planning and approval process. However the Town would like to point out that this is not necessarily abnormal for a project of this size. The Town also agrees that some Town officials believe they were misled into approving a project different than what was originally represented; however the degree to which they feel that they were misled varies. Nevertheless the Town does agree with this finding.

There are two areas in which some of the Councilmembers believe the Town Council was misled. Both of these are related to statements made to the Council by the Town's then-Planning Director, not outside consultants as Finding 3 implies. The first pertains to the designation of density at the WinCup site of 25-40 units per acre in the 2009 General Plan Update. It is the opinion of a majority of Councilmembers that the Council and the Citizens Advisory Committee were advised that if a project for that site was proposed, the Council would have the authority to decide the appropriate density within that 25-40 units per acre range. However, legally that authority rested solely with any future developer and not the Council. By approving the General Plan Update in 2009, the Council unwittingly exposed the Town to accepting the 40 units per acre that MacFarlane Partners ultimately sought for the Tam Ridge Residences development. The second area in which some Councilmembers believe the Council was misled is with regard to the then-Planning Director's erroneous statement to the Council that a project specific EIR would be required for a development at the WinCup site (see response to Finding 2 above).

* Source: Minutes of the April 21, 2009 meeting of the Corte Madera Town Council, page 11.

FINDING #4: *The renderings provided by the owner did not adequately convey the mass and density of WinCup, thus keeping the public uninformed concerning the magnitude of the development.*

The Town Council agrees with Finding No. 4. The Town found that the renderings were misleading when compared to the actual materials used for the buildings, as well as the actual mass and density.

FINDING #5: *The lack of a Community Plan which still does not exist today for the Fifer/Tamal Vista Boulevard community area, as required by the General Plan, demonstrates the shortcomings of the Town's official planning process.*

The Town Council partially disagrees with Finding No. 5. The Town agrees that a Community Plan still does not exist today for the Fifer/Tamal Vista Boulevard community area as required by the General Plan; however, it more so demonstrates the lack of available funding due to budget constraints and lack of available staff rather than demonstrating the shortcomings of the Town's official planning process. It should be noted that since the mid 2000's the Town's staffing levels were reduced from 62.25 equivalents full time positions to 43.25 positions, representing a decrease of over 30%. We have only started refilling some of those positions over the past year.

FINDING #6: *The Town's efforts to include and inform citizens of the planning and approval process were in the main consistent with general guidelines, yet the community was not provided sufficient clarity to provide meaningful input.*

The Town Council agrees with Finding No. 6. The Town Council and staff have sought to improve public outreach in recent years as described in the Town's response to Recommendation 2, below.

RECOMMENDATION #1: *The Town of Corte Madera must seriously consider requiring project specific EIRs for all projects that may have a significant impact on the environment.*

Recommendation No. 1 has been implemented. The Town Council has directed staff that they must seriously consider requiring project specific EIRs for all projects that may have a significant impact on the environment in accordance with CEQA guidelines.

RECOMMENDATION #2: *The Town of Corte Madera must ensure that government procedures are performed in a fully transparent manner, specifically notify the public about projects in lay person's terms and use social media to promote project awareness.*

Recommendation No. 2 has been implemented and will continue to be enhanced. The Town has developed a new website that is state of the art in public outreach and interactive capabilities. We continually utilize social media websites, the Independent Journal and the Twin Cities Times for notifications. In addition the Town is planning on purchasing a digital Marquee that will be located on Tamalpais Drive in front of our Community Center which will greatly improve our ability to provide information to the public at large. Finally, the Town Council has directed staff

to use layman's terms in describing projects, in identifying the purpose of agenda items, and in identifying the impacts and ramifications of the projects.

RECOMMENDATION #3: *The Town of Corte Madera's Town Council should create a standing Design Review Committee and, in instances where project impact warrants clarification, require a three-dimensional rendering of the proposed structure.*

Recommendation No. 3 will not be implemented. In the Town Council's judgment, the Town's Planning Commission has the qualifications and the expertise to understand projects that are presented to them, the knowledge to recognize whether or not the projects comply with local and State requirements, and the capacity to assess the impacts that may be generated by a project. The Planning Commission is properly positioned to require an applicant to make the changes necessary to mitigate those impacts where appropriate. Three-dimensional renderings of projects will be required at the Planning Commission's discretion when such a submittal is necessary and appropriate.

The Town Council has directed Town Planning staff to ensure that language is added to every project approval that clearly explains the Town's expectations that a finished project must substantially match any renderings provided to the Town and that complete materials and sample boards be provided for significant projects under consideration by the Town.

RECOMMENDATION #4: *The Town of Corte Madera's Town Council must develop a Community Plan for the Fifer/Tamal Vista Boulevard community area and the other three areas identified in the General Plan, to be implemented prior to the expiration of the current development moratorium.*

Recommendation No. 4 may or may not be implemented at the Town's discretion. The Town recognizes the purpose and importance of Community Plans but also acknowledges the steep costs involved in preparing, environmentally clearing, and ultimately adopting each Community Plan. It is possible that a less-costly alternative such as a neighborhood study may be implemented by the Town rather than adoption of a complete Community Plan. The Town is intending on undertaking such a study of the Tamal Vista Corridor within the next year. Due to many factors, including such things as budget constraints, changes in community vision, etc., the Town will not commit to a timeframe for implementation of other Community Plans or neighborhood studies.



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September 17, 2015

The Honorable Judge Faye D'Opal
Marin County Superior Court
PO Box 4988
San Rafael, CA 94913-4988

Dear Judge D'Opal:

This letter is the official response to the Marin Civil Grand Jury's report, *The WinCup/Tam Ridge Residences: How Did It Come to Pass?* (hereinafter "the report") by the Town Council of the Town of Corte Madera. The Town Council appreciates that the Grand Jury recognized many of the numerous factors which led to the approval of that development; however, there are some points which were either overlooked or not fully explained in the report. The Town Council, therefore, seeks to provide additional information in this letter, as well as respond to the report's findings and recommendations.

The report correctly explains the steep Regional Housing Needs Allocation (RHNA) quota which the Association of Bay Area Governments (ABAG) assigned to Corte Madera for the planning period 2007-2014, and the fact that ABAG later admitted that a mistake had been made and the quota was too large. Unfortunately, ABAG's admission was too late for a revision to be made and Corte Madera was obligated to meet a RHNA quota of 244 new housing units for the period 2007-2014. The Grand Jury report correctly states that the Town of Corte Madera appealed the RHNA allocation of 244. That appeal was denied by ABAG. It is the opinion of the Town Council that had ABAG used appropriate due diligence in reviewing the Town's appeal of its RHNA allocation, the mistake in ABAG's calculation may have been discovered in time to allow for a correction. Had that happened, the WinCup site never would have been earmarked by the Town for 180 units.

There were many public meetings to discuss how to meet the Town's RHNA housing allocation. These meetings were held over many years by a Citizens Advisory Committee, the Planning Commission, as well as the Town Council. Throughout the process, there was difficulty finding adequate sites around Corte Madera to meet the 244 RHNA quota. Corte Madera is a tiny town, with less than 2.7 square miles of land (excluding bay waters and marshland). The Town is essentially built out, with only a

handful of undeveloped parcels mainly located on steep hillsides. Infill development was the only practical way to meet the housing quota, and placing a large portion of those units at the soon-to-be vacant WinCup site was reluctantly recommended by staff, the Citizens Advisory Committee, the Planning Commission as well as the Town Council. Any alternative would have created significant impacts to multiple existing neighborhoods, including squeezing out existing moderate-income households to make way for newer, more dense developments and its associated traffic and other impacts.

It would be interesting to see how other cities approached meeting their RHNA quotas during this time. Larkspur, for instance, had three large vacant parcels available to them, to which they allocated a total of 264 units. The Bon Air Center was identified for an additional 90 units. By contrast, Corte Madera had only one large, soon-to-be-vacant parcel: the WinCup site. It is the opinion of the Town Council that Corte Madera is built out to a greater degree than almost any other city in Marin, and this fact added to the difficulty in finding appropriate housing sites and to the higher density allowed at the WinCup site.

The planning process which was followed by the Town was managed by the then-Planning Director, consultant and the Town's attorney, with concurrence by the Town Council. The Grand Jury's report notes two significant outcomes of the process which was followed: The 2009 General Plan update entitled the WinCup property to a housing density of 25-40 units per acre, and the project which ultimately became the Tam Ridge Residences was cleared under the California Environmental Quality Act (CEQA) through the Town's 2009 General Plan Update Environmental Impact Report.

It should be noted that the Planning Director, consultant and Town attorneys who managed the 2009 General Plan and Housing Element updates acted as the Town's experts on state and federal housing law, as well as CEQA laws and processes. The Town Council, Planning Commission, and Citizens Advisory Committee are made up of citizen volunteers who, more than likely, have only a working knowledge of housing law and CEQA. While it is understandable that those citizen volunteers would seek guidance on legal and process issues from those who purport to be experts in those areas and who have been hired by the Town to provide such guidance, the Town Council recognizes that the ultimate responsibility for Town decisions rests with the Council and as such accepts responsibility for the decision making process. With the benefit of hindsight, it was a mistake not to question more thoroughly the Town's experts' advice and not to research more thoroughly the legal options available to the Town. This is not to say that with further consideration the WinCup site would not have been assigned just as many units in the final Housing Element; the fact remained that the Town had an enormous burden to accommodate 244 housing units in a 2.7 square mile, built out Town.

The Town Council appreciates the Grand Jury's efforts to paint a balanced, thoughtful analysis of the circumstances, demands and processes which combined to pave the way for the WinCup/Tam Ridge Residences development. The Town Council is unsurprised, but nonetheless pleased, that the Grand Jury found no malfeasance as alleged in a single complaint.

The planning and approval of the WinCup development was a complicated, years-long process that began with a hefty RHNA quota, was incorporated into an ongoing General Plan Update,

then was included in a Housing Element update, and finally became reality following a zoning amendment. The complexity inherent in state housing law, federal Housing and Urban Development rules, and RHNA requirements make the process of land use planning difficult, legally complex, and costly. But unfortunately even a well-intentioned process of this complexity can occasionally lead to poor outcomes. The Town Council accepts full responsibility for the decision-making surrounding the WinCup development, and pledges to continue to work to improve public outreach, planning processes, and environmental review processes. The Town has hired entirely new planning department staff and new attorneys, as well as a new consultant for the most recent Housing Element update. The Council will also continue its efforts to ensure future RHNA quotas from ABAG are reasonable for a town of Corte Madera's size so that our tiny, built out Town is never again forced to accommodate an unnecessarily large share of the region's housing.

Finally, the Town Council wants the Grand Jury to know that the method and the manner by which you commandeered our Council Chambers and our staff last November in order to review and copy files was an unnecessary misuse of power. Those actions caused a significant disruption to the normal functions of the Town's government. We hope that in the future the actions of the Grand Jury would be more professional when dealing with a public agency and that the best and most productive way to obtain information from us would be through open dialogue.

Sincerely,



Carla Condon
Mayor, Town of Corte Madera

Cc: Jack Nixon, Foreperson Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael CA 94913-4988



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September 17, 2015

The Honorable Judge Faye D'Opal
Marin County Superior Court
PO Box 4988
San Rafael CA 94913-4988

Dear Judge D'Opal:

In response to the Marin County Civil Grand Jury's invitation to respond to the June 18, 2015 report, "The WinCup/Tam Ridge Residences: How Did It Come to Pass," I concur with the response provided by the Corte Madera Town Council.

Sincerely,

David Bracken
Town Manager

Cc: Jack Nixon, Foreperson Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael CA 94913-4988