October 18, 2016

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Public hearing on proposed resolution to establish a Jobs/Housing Linkage Fee for Residential Care and Skilled Nursing Facilities and a Rental Housing Impact Fee for new development.

Dear Supervisors,

RECOMMENDATION:

Staff recommends that the Board take the following actions:

1. Conduct a public hearing and adopt the proposed resolution approving the Jobs/Housing Linkage Fee for Residential Care and Skilled Nursing Facilities (Exhibit A).
2. Conduct a public hearing and adopt the proposed resolution approving the Rental Housing Impact Fee (Exhibit B).

SUMMARY:

On August 23, 2016, your Board considered proposed resolutions to clarify the applicable Jobs/Housing Linkage Fee for Residential Care and Skilled Nursing Facilities and set the fee schedule for the Rental Housing Impact Fee. Your Board continued the hearing to provide the public with additional time to comment. In response to this continuance, staff received one public comment (Attachment 5), which is attached along with the response (Attachment 4) from the author of both the Commercial Linkage Fee Nexus Study: Retirement Care and Skilled Nursing Facility (“2016 Nexus Analysis”) and the Rental Housing Impact Fee Nexus Analysis (“2015 Nexus Analysis”) (Attachment 3).

The County requires that most new commercial and residential development contributes to affordable housing through the provision of units or fees. Neither of these proposals is new as the County’s Development Code currently requires these fees. The proposed ordinances are intended to provide transparency and increased certainty for developers proposing these types of developments by establishing a specific fee amount which can be used in feasibility evaluations. In order to provide flexibility and options for developers, there is discretion to allow developers to meet their inclusionary requirement through the provision of on-site units rather than through fees.
DISCUSSION:

During the extension for public comment, Staff received a comment letter from Neil Sorenson, who also spoke at the August 23, 2016 public hearing in which your Board first heard the proposed resolutions.

Mr. Sorenson's letter (Attachment 5) asserts inaccuracies of construction costs, the affordability gap calculations, employment densities and forecasts, and the relative impact of lower-wage workers on the County’s affordable housing market. It also claims that the 2016 Nexus Analysis lacks fundamental data to support its recommendations.

Marian Wolfe, economic consultant at Vernazza Wolfe Associates, Inc. and author of both the 2015 and 2016 Nexus Analyses, responds to and clarifies questions concerning methodology in an attached memo (Attachment 4). Her response corresponds to Mr. Sorenson's comments on a point-by-point basis, and is best viewed alongside Mr. Sorenson's letter dated September 9th of this year. These responses are summarized below:

1. **Nomenclature.** The proposed resolutions and accompanying Staff Reports use appropriate terminology consistent with Title 22 of the County's Development Code. Nonetheless, a clarification of definitions, land use designations, and applicability is provided below, under the "Background" section.

2. **Accuracy of data.** Prototypical developments, including space utilization and employment densities, are modeled in accordance with common and widely-accepted practices when developing nexus analysis.

**Potential revenue.** Since revenues generated by jobs/housing linkage fees are earmarked for the Housing Trust Fund, and therefore do not impact County budgetary operations, an assessment of potential revenues is not a necessary or appropriate extension of the scope of the study. Affordable housing impact fees are established and designed as a mitigation technique in response to the adverse effects of each new development on the affordable housing market. In the past two years, Housing Trust funds have been used to support acquisition and dedication of 56 homes as affordable housing including: Forest Knolls Mobile Home Court in the San Geronimo Valley, Piper Court Trailer Court in Fairfax, and Ocean Terrace Apartments in Stinson Beach.

3. **Accuracy of employment figures.** The American Seniors Housing Association (ASHA) data proposed by Mr. Sorenson as an alternative lumps together several types of facilities as "senior living centers." However, the residential care facilities have a broader definition and as a matter of Fair Housing, the County Code does not include age-discriminatory language in
its land use definitions. Furthermore, the data reported by ASHA is imprecise as it lumps together several types of facilities that have disparate employment densities and land use classifications due to: variations in intensity and frequency of services provided; environmental, social, and economic realities of unique development areas; and, physical building constraints and allocations of space by use; among others.

Staff is unable to substantiate the anticipated employment density calculations extrapolated by Mr. Sorenson, as the Nexus Analysis rests on the primary input of employment densities figured proportionately by land use (2016 Nexus Analysis, Table 3), not a projection for number of living units.

4. Commutes. According to the 2010-2014 American Communities Survey (ACS) data, sixty-five percent (65%) of Marin County employed-residents also work in the County. The sixty percent (60%) “non-commuting” County-employed residents asserted in Mr. Sorenson’s comments are out-of-date, having been retrieved from the 2002 Commercial Linkage Fee Study and not the 2016 Nexus Analysis.

The 2016 Nexus Analysis finds the maximum justifiable fee to mitigate the total affordable housing impacts associated with the development of Residential Care and Skilled Nursing Facilities to be $184/sq. ft. and $217/sq. ft., respectively. In accordance with accepted nexus methodology, the maximum justifiable fee is not modified to account for only those employees likely to live inside the County. The proposed fees however, reflect a greater than ninety percent (90%) discount off the maximum justifiable fee—a reduction which more than accounts for any “commuter discount” that could be requested.

5. Accuracy of affordability gap calculations. An “affordability gap” is defined as the difference between the total development costs of affordable housing and the amount that households can afford to pay.

Mr. Sorenson claims that the affordable housing construction costs used to inform the affordability gap calculations are overstated, and result in a greater affordability gap figure. Mr. Sorenson supports this statement with commercial construction costs, which have been conflated with affordable housing construction costs. The discussion of construction cost accuracy is continued in response to comment #6.

6. Accuracy of construction costs. The commercial construction costs provided by Mr. Sorenson to support the assertion that the Nexus Analysis overstates the cost of developing affordable housing (and thereby the affordability gap), are not applicable. Due in large part to the costs associated with building bathrooms and kitchens, per square foot construction costs are
greater for residential, as opposed to commercial, projects. For this reason, it is inaccurate to use commercial construction costs for an affordability gap calculation.

The second point of Mr. Sorensen’s argument stems from a discussion of multi-family housing development costs provided in the County’s 2015-2023 Housing Element which estimated construction costs to be $219/sq. ft.—a figure significantly less than the amount of $504/sq. ft. used in the affordability gap calculations of both the 2015 and 2016 Nexus Analyses. The multi-family housing development costs represented in the Housing Element are, for the purposes of these analyses, not applicable for several reasons: the calculations do not include the cost of land; cost estimates reflect prices and trends of the Bay Area as a whole, and are not specific to Marin; without carefully reviewing the pro forma statements supporting the costs, it is impossible to know what soft or hard costs were included as compared to the figures used in the Nexus Analysis; and the cost of developing affordable versus market-rate housing is commonly known to be greater on a square foot basis, even after accounting for prevailing wage requirements.

7. Employees living in Marin. Mr. Sorensen appears to suggest a forty to sixty percent (40-60%) discount to the Rental Housing Impact Fee to account for employees who choose to live outside the County. The 2015 Nexus Analysis (p. A-8, Table A-4) recommends consideration of a deeper 85% discount.

8. Development fees. The aggregate impact of all development-related fees raises a policy issue that can be considered by the Board in connection with the adoption of new fees or changes to existing fees. The proposed Jobs/Housing Linkage Fees and the Rental Housing Impact Fee are not new or additional fees, however, the proposed resolutions are intended to establish a consistent methodology of calculating the fees. Reducing the Jobs/Housing Linkage Fee to 10% of the legally justifiable amount would minimize the impact of the fee on the developer’s bottom line and create greater predictability regarding the cost of permits in the early stages of development.

BACKGROUND:

JOBS/HOUSING LINKAGE FEE FOR RESIDENTIAL CARE AND SKILLED NURSING FACILITIES:

The County Development Code establishes inclusionary requirements for non-residential development structured as a per square foot charge based on development type, however, no specific fees are provided for Residential Care or Skilled Nursing Facilities. As currently structured, applicants are required to provide staff with data and statistics on new jobs generated by the proposed development that would be taken into consideration with other relevant data to customize a fee
determination unique to that development, based on providing housing for twenty-five percent (25%) of the lower-income employees in the proposed development. Seeking to minimize this burden, to promote greater clarity for developers of these facilities, and to ensure the application of an impact fee equitable to both the County and prospective developers, staff proposes the establishment of a jobs/housing linkage fee for Residential Care and Skilled Nursing Facilities.

In accordance with Marin County Development Code, Section 22.22.100, the proposed ordinance would apply to developments containing a Residential Care Facility and/or a Skilled Nursing Facility.

*Residential Care Facilities* are defined in the County Development Code as a: "land use [consisting] of a dwelling unit licensed or supervised by any Federal, State, or local health/welfare agency which provides 24-hour nonmedical care of unrelated persons who are disabled and in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in a family-like environment. This land use includes licensed senior care facilities. For purposes of calculating residential densities, a unit that contains a food preparation area is not counted as a separate residential unit if meal service is provided at least twice a day as part of the residential care component."

Residential Care Facilities serve clients with a variety of needs. As a result, the California Department of Social Services, the organization that issues and administers licenses for many types of Residential Care Facilities, identifies several subgroups of facilities including "Retirement Care Facilities," "Adult Residential Care Facilities," "Assisted Living Facilities," "Residential Care Facilities for the Chronically Ill," and "Residential Care Facilities for the Elderly." While it is not possible to provide for every single facility subgroup or colloquial designation in our Development Code, all proposed facilities that meet the larger definition of a Residential Care Facility are treated as such for purposes of development standards and process, and also by the herein proposed inclusionary fee.

*Skilled Nursing Facilities* are defined by the County Development Code as, "a medical care facility providing care for physically or mentally disabled persons, where care is less than that provided by a hospital or other acute care facility." Common names for Skilled Nursing Facilities may include "Convalescent Homes," "Rest Homes," and "Nursing Homes." Skilled Nursing Facilities fall under the land use designation of "Medical Services—Extended Care."¹

¹ Marin County Development Code Section 22.130.030. "Medical Services—Extended Care (land use). This land use consists of the provision of nursing and health-related care as a principal use, with in-patient beds. This land use includes: board and care homes; convalescent and rest homes; extended care facilities; and skilled nursing facilities that are licensed or supervised by any Federal, State, or local health/welfare agency. Long-term personal care facilities that do not emphasize medical treatment are included under 'Residential Care Facilities' and 'Group Homes.'"
The 2016 Nexus Analysis finds that a jobs/housing linkage fee is justified to mitigate the housing affordability problems generated by employment growth associated with the development of Residential Care and Skilled Nursing Facilities. It calculates the maximum justifiable fee for fiscal year 2016 to be $184 per square foot (sq. ft.) for Residential Care Facilities, and $217 per square foot (sq. ft.) for Skilled Nursing Facilities. However, staff recommends adopting a discounted fee schedule based on approximately ten percent (10%) of the maximum justifiable fee, detailed below in Table 1.

<table>
<thead>
<tr>
<th>Facility type</th>
<th>Fee per square foot</th>
<th>Percent Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Care</td>
<td>$18/sq. ft.</td>
<td>90.22%</td>
</tr>
<tr>
<td>Skilled Nursing</td>
<td>$21/sq. ft.</td>
<td>90.32%</td>
</tr>
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**RENTAL HOUSING IMPACT FEE:**

Similar to the fee for Residential Care and Skilled Nursing Facilities, the Rental Housing Impact Fee is currently in our Development Code however; no specific fee schedule is established.

The Rental Housing Impact fee applies to new multi-family rental housing, governed under the "Multi-Family Dwellings" land use designation, which the County's Development Code defines as that "[consisting] of multiple detached dwellings on the same lot, or a building or a portion of a building used and/or designed as residences for two or more families living independently of each other. Includes: duplexes, triplexes, fourplexes and apartments (five or more units under one ownership in a single building); and townhouse development (three or more attached single-family dwelling where no unit is located over another unit). Second units and farm worker housing are not considered in the calculation of the number of units for this definition and do not convert a single-family residential development into a multi-family development."²

In concert with this definition, second units and agricultural worker housing are exempt from this fee. In addition, homes deed-restricted as affordable to low- and moderate-income households are also exempt from the Rental Housing Impact Fee.

The 2015 Nexus Analysis calculates the maximum justifiable fee; adjusted for inflation, the maximum justifiable fee for fiscal year 2016-2017 is fifteen dollars and seventy-five cents per square foot ($15.75/sq. ft.).

Understanding that smaller rental units tend to be more affordable than larger units, and therefore likely represents a lesser impact on the affordable housing market, staff recommends that your Board adopt the Rental Housing Impact Fee with a

² Marin County Development Code Section 22.22.020.
graduated fee schedule to exact impact fees at lower rates for smaller units, as described below in Table 2.

<table>
<thead>
<tr>
<th>Floor Area per unit (sq. ft.) and additions</th>
<th>Fee per square foot</th>
<th>Percent Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 500</td>
<td>$5/sq. ft.</td>
<td>68.25%</td>
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<tr>
<td>500 &lt; and &lt; 1,000</td>
<td>$10/sq. ft.</td>
<td>36.51%</td>
</tr>
<tr>
<td>≥ 1,000</td>
<td>$15/sq. ft.</td>
<td>4.76%</td>
</tr>
</tbody>
</table>

CONCLUSION:

Almost forty years ago, the County established the first inclusionary policy which requires new development to contribute to the need for affordable housing. The County has commissioned numerous nexus studies that have established that new residential growth leads to more demand for goods and services, which then leads to the creation of lower-wage retail and service jobs to serve those new residents. When new commercial space is built, some of the jobs for the new employees also will be in lower-paying occupations. These lower-wage jobs do not pay enough for those workers to afford market-rate housing, so more affordable housing is needed. The proposed fees will help offset these impacts associated with Residential Care and Skilled Nursing Facilities and Market Rate Rental Housing and assist the County in addressing the need for affordable homes.

FISCAL/STAFFING IMPACT:

The proposed fees would result in no impact to the General Fund. All revenue generated by these fees would be deposited in the County’s Housing Trust Fund (MUNIS fund number 2070) and dedicated to the development and preservation of housing affordable to low- and very-low-income households.

REVIEWED BY:    (These boxes must be checked)

[X] Department of Finance    [X] N/A
[X] County Counsel    [ ] N/A
[X] Human Resources    [X] N/A

Respectfully submitted,

Debbi La Rue
Planner

Brian C. Crawford
Director
Attachments:
1. Resolution to adopt the Jobs/Housing Linkage Fee for Residential Care and Skilled Nursing Facilities.
2. Resolution to adopt the Rental Housing Impact Fee.
5. Administrative Record (comments received):