

COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

Thomas K. Lai
DIRECTOR

August 9, 2022

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
415 473 2255 TTY

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

www.marincounty.org/cda

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

SUBJECT: Housing Element Update: Proposed Countywide Plan
Amendments and Rezoning

Dear Supervisors and Commissioners,

RECOMMENDATION:

1. Receive public comments and provide feedback to staff on proposed Countywide Plan Amendments and Rezoning Considerations

SUMMARY:

The Community Development Agency is in the process of updating the Housing and Safety Elements, which are integral parts of the Countywide Plan (CWP). The Housing Element update will establish a strategy for meeting housing needs for the 2022-2030 planning period. The Safety Element is being updated to incorporate policies focused on responding to potential adverse impacts associated with climate change, as well as specific new State law requirements related to flood and fire hazards. The Housing Element must be adopted by January 31, 2023.

Changes to the Countywide Plan and proposed rezonings discussed below are necessary for the County to meet the State requirements to reduce barriers to housing development and meet the Regional Housing Need Allocation.

Under State law, the Housing Element is required to include an assessment of fair housing to address barriers to fair housing choice and identify sites and programs that provide housing opportunities for lower income families and individuals near high quality schools, employment opportunities, and public transportation. State law also requires local governments to identify meaningful goals to address the impacts of systemic issues such as residential segregation, housing cost burden, and unequal educational or employment opportunities to the extent these issues create and/or perpetuate discrimination against protected groups. These requirements will be incorporated into the Housing Element, including the site selection recommendation. Ultimately the Countywide Plan amendments and rezoning will assist in the Housing Element goals of developing more affordable housing.

Today's hearing is an opportunity to receive public comments and to request feedback to staff on the proposed Countywide Plan Amendments and Rezoning considerations.

BACKGROUND:

The California State Legislature has found the availability of housing to be of statewide importance. To ensure that counties and cities recognize their collective responsibility in implementing the statewide housing goals, housing element legislation was originally enacted in 1969, requiring all local governments to prepare and implement housing elements as part of their general plans. State legislation enacted in 1980 required councils of governments (the Association of Bay Area Governments (ABAG) for Bay Area counties) to determine the existing and projected housing needs at all income levels for each city and county in the region, which is then to be addressed in each local jurisdiction's housing element. This process became the Regional Housing Need Allocation (RHNA), which determines the fair share of housing need for each county, city and town in California. The RHNA for the unincorporated area of Marin County is 3,569 units, with 1,734 affordable to lower income households, 512 for moderate income households, and 1,323 above moderate income households.

Every eight years, all California jurisdictions are required to revise and update their individual Housing Elements consistent with State law. Marin County is updating its Housing Element along the same timetable as other Bay Area jurisdictions.

The Housing Element identifies and analyzes existing and projected housing needs and constraints in order to create goals, policies, and programs for the development, preservation and improvement of housing. The Housing Element plans for new housing across all income levels to meet the RHNA and the local housing needs of the community. As part of the plan, the site inventory identifies sites in the unincorporated County where new housing may be built. Sites in the inventory must be zoned appropriately to allow for affordable housing development, according to state law. If a local government does not meet the housing element requirements, they face the possibility of litigation, which could result in the loss of land use discretion, housing grant ineligibility, and other penalties.

Four concepts from housing element legislation informed the development of the proposed Countywide Plan amendments and rezonings: Default Density, Reusing Sites from Previous Housing Elements, No Net Loss, and Buffer.

1. Default Density

To be considered viable for the purpose of supporting housing affordable to lower-income households (including low, very low, and extremely low income households), the property must be zoned to support at least 20 dwelling units per acre ("default density")¹. The County may want to consider higher densities

¹ SB 106 extended the sunset date on a 2014 law that recognizes Marin as a suburban county for the purposes of developing affordable housing and establishes the default density at 20 units per acre; the law will sunset in 2028 but no change will be needed in the housing element or zoning until the next housing element is due in 2031.

to accommodate the unincorporated area's increased RHNA for lower income households, encourage affordable housing, and ensure an efficient use of the limited available sites.

"At least" means the density range allowed under zoning has to allow the default density. For example, if a jurisdiction has a default density of 20 units per acre and the zoning allows for a range of 20 to 30 units per acre, the zoning is considered appropriate to accommodate the RHNA for lower income households.

2. Reusing Sites from Previous Housing Elements

In order to include sites used in previous housing element cycles (that were not developed) to meet the current RHNA, the County must take additional actions to ensure and demonstrate viability of those sites. These sites include vacant sites identified during two consecutive prior RHNA cycles and non-vacant sites identified during a prior cycle. These sites must allow "by-right" approvals if they are identified as suitable for lower income housing in the new housing element. "By-right" approval means that if a project provides at least 20 percent affordable units and requires no subdivision, the project is exempt from review under the California Environmental Quality Act, and only design review based on objective standards² may be required.

3. No Net Loss

This law requires adequate sites to be available at all times throughout the RHNA planning period to meet the County's remaining unmet housing needs for each income category. The County must add additional sites to its inventory if land use decisions or proposed development results in a shortfall of sufficient sites to accommodate its remaining housing need for each income category. In particular, the County may be required to identify additional sites according to the No Net Loss Law if the County approves a project at a different income level or lower density than shown in the sites inventory. Lower density means fewer units than the capacity assumed in the site inventory.

4. Site Inventory Buffer

To ensure that sufficient capacity exists in the Housing Element to meet the RHNA throughout the planning period, HCD recommends the County create a buffer in the housing element inventory of at least 15 to 30 percent more units than required, especially for the lower income RHNA. The County can add additional sites to meet the buffer or can also create a buffer by using a minimum density to ensure sites develop consistent with the number of units in the site inventory.

DISCUSSION:

In order to achieve the RHNA assigned to the unincorporated County, changes must be made to the Countywide Plan. In addition, some sites in the Housing Element inventory need to be rezoned to accommodate the units assigned to them and meet the densities needed to encourage and facilitate affordable housing.

Countywide Plan Amendments

Many goals, policies, and implementation programs in the CWP aim to limit

development to the lowest end of the permitted range in certain areas, including in areas of environmental sensitivity, and limited water and sewer resources. These include policies to protect streams, Ridge and Upland Greenbelt Areas, wetlands, riparian areas and the Baylands. Limiting development to the lowest end of the permitted range is also encouraged in the CWP for locales beyond the current municipal and community water service areas that rely on individual groundwater wells, surface water, or small spring-based systems. While these concerns are fully recognized, limiting development to only the lowest end of the permitted range constrains new housing, including the potential for affordable housing projects to be permitted at a higher density.

The Countywide Plan amendments currently proposed fall into the following four categories and are summarized below: exceptions to existing CWP policies, eliminating existing policies, policies specific to certain sites, and policies related to Community Plans. More detailed descriptions of the specific policies and proposed changes are included in Attachment 1.

1. Exceptions to existing CWP policies

There are existing CWP policies that only allow development to occur at the lowest end of the density range, including in the Ridge and Upland Greenbelt, Baylands Corridor, areas with sensitive habitat, and areas without water or sewer connections (Policy CD-1.3, Program Cd-5.e). While affordable housing may be exempt from these requirements, proposed changes would clarify that on housing element sites, affordable housing developments are not limited to the lowest end of the density range. These proposed changes would clarify that these policies apply to all sites in order to better facilitate affordable housing development at densities other than the lowest end of the applicable density range.

2. Eliminating existing CWP policies

The proposed CWP amendments would eliminate one policy: *Consider Annexation of Urbanized Area (Program CD-6.a)*. The stated intent of the policy is to encourage annexation of lands proposed for intensified development by calculating density at the lowest end of the CWP designation range, thereby allowing less-intensive development than would be permitted by the neighboring city or town. While this policy currently allows housing affordable to very low- or low-income residents to be developed above the lowest end of the density range, staff is proposing to eliminate this policy entirely, as these areas are all located in typically urbanized areas with access to transportation and other local services, and therefore may prove to be less constrained than other unincorporated areas.

3. Policies specific to regional sites

Amendments to the CWP to accommodate increased densities on the regional sites identified in the draft sites list, including St. Vincent's/Silveira and the Buck Center sites, are needed if the sites are identified for housing in the RHNA. The Buck Center site change would also necessitate an adjustment of the City Centered Corridor boundary into the Inland Rural Corridor to include all or a

portion of the Buck property. St. Vincent's would require changes to the Natural Systems Goals and Policies and the St. Vincent's and Silveira Land Use Policy Map.

4. Policies related to community plans

Although the County's 21 community plans are considered part of the CWP, where there are differences in the level of specificity between a policy in a community plan and a policy in the CWP, the document with the more specific provision prevails. Some policies in community plans contain standards that are inconsistent with state law including standards for development density, floor area ratio, setback, and building height. The proposed change would clarify that the CWP would govern if there are differences with respect to the afore-mentioned standards.

Rezoning

In order to identify the sites and establish the number of units necessary to accommodate the County's share of the regional housing need for lower-income households, the Housing Element must include an analysis that shows how the proposed zoning district and allowable density will encourage and facilitate the development of housing for lower-income households. The County must factor site constraints and feasibility based on the history of development patterns in identifying the number of units of lower income housing for each RHNA site. For example, if a 10-acre site is zoned to allow development at the default density of 20 units per acre, but 4 acres of this site are very steep and 1.5 acres are impacted by flooding, only 4.5 acres can be used in determining the potential number of units that can be assigned to this site. Although a site would be zoned to a maximum density of 20 units per acre, or 200 units,² the RHNA sites list would only be allowed to show that the site could accommodate 90 units of lower income housing. This may create confusion for the public and does not preclude an applicant from proposing a market-rate development that only provides the required 20% of the units for inclusionary housing.

Staff initially studied two alternative rezoning options for affordable housing sites in the RHNA inventory, ultimately combining aspects of both of them in order to create a solution that would be acceptable by the California Department of Housing and Community Development (HCD), be compliant with state law, and facilitate affordable housing development, while managing site constraints.

Rezoning to Default Density

The first option studied was a rezoning a number of the affordable housing sites to a minimum of 20 units an acre, the county's default density. This alternative would rezone the RHNA sites that accommodate lower income units to a minimum density of 20 units per acre, consistent with the County's default density to demonstrate feasibility for affordable housing under State law³. For example, on a

² 20 units an acre x 10 acres = 200 units,

³ The densities of sites identified in the inventory must be sufficient to encourage and facilitate the development of housing affordable to lower-income households (Section

10-acre site, this zoning would allow 200 units (although this would be unlikely to be achieved due to site constraints). Additionally, a developer could apply for a density bonus, and this site may be eligible for 300 to 360 units or more⁴. While this alternative is simple and clear for the community and developers to understand and complies with HCD requirements, it does not provide incentives for affordable housing, and creates uncertainty by possibly allowing for more housing units on sites than contemplated in the sites list.

Affordable Housing Overlay

The second option considered was to utilize the County's existing Affordable Housing Overlay (AH) zone. The AH would leave the underlying zoning in place for market rate development and apply an overlay that would allow only affordable housing at higher densities. HCD guidelines state that the affordability requirements in an overlay zone must include sufficient incentives and available subsidies to make development feasible and more profitable than developing at the underlying zoning. A requirement with 100 percent affordability could be a constraint to using the overlay depending on the level of subsidy needed per unit and the availability of funding. To attempt to demonstrate feasibility for affordable housing, the County would need to show there is sufficient funding available (e.g. through the County's Affordable Housing Trust Fund) to subsidize a higher percentage of affordable housing. This alternative, if implemented alone, would not comply with HCD guidelines, therefore staff identified a recommended alternative approach.

Recommended Alternative

The recommended alternative blends elements of the options discussed above, while remaining in compliance with state law. Under this approach, the County would meet its requirements for rezoning by:

- providing zoning to accommodate a specified number of units per site as referenced in the Housing Element sites list;
- rezoning defined portions of sites to a higher density; and
- allowing streamlined review of affordable housing that meet specified requirements.

This recommended alternative approach would apply to all sites identified for lower income units and would incentivize construction of affordable housing for specified projects that may qualify for ministerial review, including a streamlined process for subdivision, if needed.

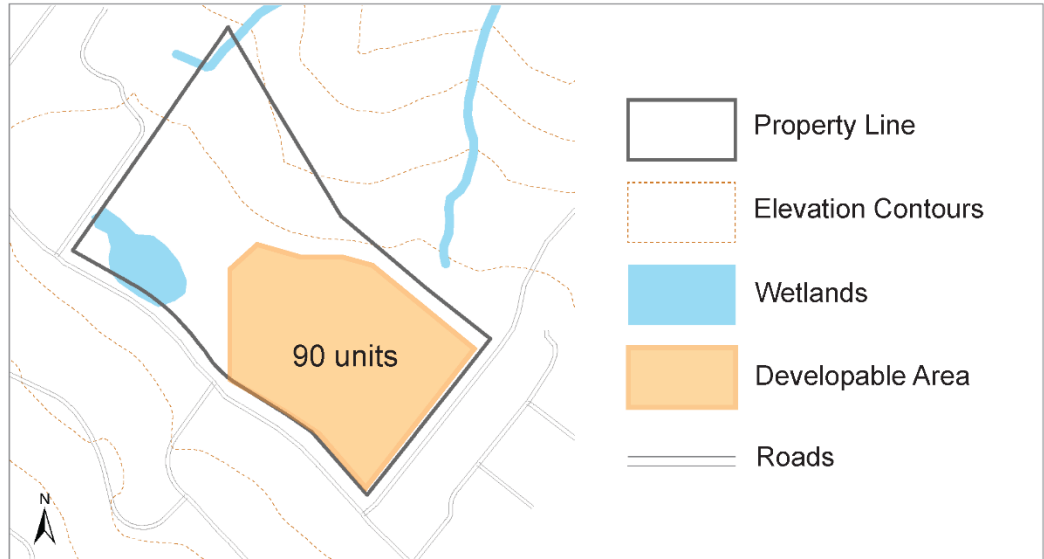
A map or other visual will illustrate the boundaries of the portion of the site that is designated for affordable housing in the Development Code. The Development Code amendments include a procedure to change the site boundary, if needed, but the size of the area identified for increased density will not change.

65583.2(c)(3)(A) &(B). "Default densities" identified in this section are deemed appropriate under state law to accommodate housing for lower income households.

⁴ A project with 15% very low income units is entitled to a 50% density bonus; a 100% affordable project is entitled to an 80% density bonus, or unlimited density if the site is within one-half mile of a major transit stop.

This recommended option would apply to all sites that have affordable units, including specific zoning for regional sites (St. Vincent's and Buck Center) to accommodate affordable and above moderate units on the same group of parcels. In the example 10-acre site, an affordable housing project could develop on a 4.5-acre zone at 20 units an acre. Figure 1 below illustrates this approach.

Figure 1: Example* of Recommended Rezoning Option



**This diagram is for illustrative purposes only.*

Density range and buffer

Within the recommended approach there are two density options under consideration, a higher density range and a lower density range. While both options are compliant with State law, selection of the lower density range option may require the County to find alternative sites to ensure that the County maintains a sufficient Site Inventory Buffer. To illustrate: a 4.5-acre area with a unit count of 90 could have a higher density range of 20-30 units per acre, yielding 90-135 units. A lower density range at 10-20 units per acre would yield 45-90 units. Both options could yield the assigned units in the site list (90), however they differ in the impact on the buffer. In the lower density range scenario, it is possible to have a project that yields less than the number of units assigned, therefore, an increased buffer would be needed to accommodate the potential loss and ensure RHNA units are developed over the eight-year cycle. Table 1 illustrates both scenarios. When staff return with proposed rezonings, it will include a recommended density range for each site.

Table 1: Example of Buffer Scenarios

	Smaller Buffer	Larger Buffer
Site Size	4.5 acres	4.5 acres
Density Range	20-30 units/acre	10-20 units/acre
Unit Yield	90-135	45-90
Buffer Status	No additional buffer needed	Additional buffer needed

TIMELINE AND NEXT STEPS:

An Environmental Impact Report (EIR) is being prepared to evaluate the impacts from the sites and proposed Housing Element policies and programs on the full scope of environmental resource topics covered under the California Environmental Quality Act (CEQA), including, but not limited to: biological and cultural resources, hazards, hydrology and water quality, public services, recreation, transportation, tribal cultural resources, and wildfire hazards. A final decision will not be made on sites until after the Final EIR has been considered and certified by the Board of Supervisors. The public draft EIR will be available for a 45-day review and comment period in September. This Draft EIR review period will also include a joint Board of Supervisors and Planning Commission public hearing to receive comments on the adequacy of the Draft EIR. There have been delays in the environmental review process that have impacted the overall schedule. The delays will postpone consideration of the Final EIR, Countywide Plan (Housing Element), Development Code amendments, and rezonings to January 2023. An updated schedule is provided in Attachment 2.

More information related to the Housing and Safety Element updates, including the Final Housing Element, will be presented at future workshops and at meetings of the Board of Supervisors and the Planning Commission.

EQUITY IMPACT:

The County believes in equitable communities, where all community members have access to healthy affordable housing. Evidence shows that access to stable, affordable housing in communities of opportunity has broad, positive impacts. It can lead to better health and education outcomes and higher lifetime earnings, especially for children. Under state law, the Housing Element is required to include an assessment of fair housing to address barriers to fair housing choice and identify sites and programs that provide housing opportunity for lower income families and individuals near high quality schools, employment opportunities and public transportation. State law also requires local governments to identify meaningful goals to address the impacts of systemic issues such as residential segregation, housing cost burden, and unequal educational or employment opportunities to the extent these issues create and/or perpetuate discrimination against protected groups.

These requirements will be incorporated into the Housing Element, including the site selection recommendation. Ultimately the Countywide Plan and rezoning will assist in the Housing Element’s goals of developing more affordable housing.

FISCAL/STAFFING IMPACT:

There is no general fund impact; funding to complete the Housing and Safety Elements is available in CDA’s budget.

REVIEWED BY:

- | | |
|---|---|
| <input type="checkbox"/> Department of Finance | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Administrator’s Office | <input type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

SIGNATURE:

Jillian Nameth Zeiger

Jillian Zeiger
Senior Planner

Leelee Thomas
Deputy Director

ATTACHMENTS:

1. Draft Countywide Plan Amendments
2. Updated Schedule

Note: Attachments 1 and 2 to be provided in the Agenda Update Memorandum.