December 6, 2022

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

SUBJECT: Housing Element Update – Sites Hearing

Dear Supervisors,

RECOMMENDATION:
Review and approve staff’s recommendation for candidate housing sites that address the State-mandated Regional Housing Need Allocation (RHNA) for the 2022-2030 planning period.

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 at all income levels 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 submitted to the State Department of Housing and Community Development (HCD) for review and certification no later than January 31, 2023. This report and related presentation continue previous discussions around the Housing Element site selection process. Your Board has discussed sites at four joint workshops with the Planning Commission, including:

- December 7, 2021: Your Board adopted a set of guiding principles to direct the site selection process.
- March 1, 2022: Staff provided a summary of community input and presented two (2) alternative sites list based on this feedback.
- March 15, 2022: Staff presented a recommended sites list per direction given at the March 1st meeting.
- April 12, 2022: Your Board reviewed and approved Staff’s recommended sites list based on direction given at the March 15th meeting.

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
responsible for implementing the statewide housing goals, housing element legislation was originally enacted in 1969, requiring all local governments to prepare and implement housing elements as part of their general and countywide plans.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 known as the Regional Housing Need Allocation (RHNA), which determines the fair share of housing needs for each county, city and town in California. 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 to housing development. It also creates goals, policies, and programs for the development, preservation and improvement of housing. The Housing Element plans for new housing for 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. If a local government does not meet the housing element requirements, it faces the possibility of litigation from the Attorney General or other interested parties, which could result in the loss of land use discretion, housing grant ineligibility, and other penalties.

**Site Selection**
Changes in state housing legislation have altered the landscape for residential development. In the last five years, approximately 70 pieces of housing related legislation have been signed into law. Among other things, these laws streamline residential development, permit increased densities and waivers of development standards when affordable units are included, reduce discretionary review, and hold local governments accountable for the production of a fair share of new housing development. Based on these changes, the County is facing a new paradigm and will need to approach residential development differently in order to have a certified housing element.

A key component of the Housing Element update is the identification of opportunity sites suitable for residential development, including vacant sites and sites having the potential for redevelopment that can be developed for housing within the planning period. Environmental conditions (e.g., steep slopes, biological habitat, agricultural lands) and hazards (e.g., wildland fires, sea level rise, flooding) may constrain development opportunities and may require significant modifications to existing land use policies and development standards for the County to meet its RHNA requirements.

The Housing Element also has a new requirement to focus on addressing fair housing and patterns of segregation. The housing element statute requires the County to identify sites throughout the community, in a manner that is consistent with its duty to affirmatively further fair housing (AFFH). In the context of AFFH, the site identification requirement involves not only an analysis of site capacity to
accommodate the RHNA, but also whether the identified sites serve the purpose of replacing segregated living patterns with truly integrated and balanced living patterns. Site selection must also serve to provide access to high resource areas, such as high-quality jobs, schools and public transportation, and to serve to transform racially and ethnically concentrated areas of poverty into areas of opportunity.

State Law Considerations
When evaluating the appropriateness of sites for residential development at all income levels, several factors must be considered including physical features (such as susceptibility to flooding, slope instability or erosion), other environmental considerations, and location, which includes proximity to transit, job centers, and public or community services. The site selection process must also address State regulatory standards that apply when considering how a site can be counted toward the RHNA.

1) Lot Size: To be considered appropriate to accommodate lower-income units, a site must be between 0.5 and 10 acres in size. Lots that are larger than 10 acres or smaller than 0.5 acres may be considered for lower-income units (but will require evidence that they are adequate sites for lower income housing) and may also be considered for moderate and above-moderate income units.

2) Default Density: Sites zoned to allow at least 20 dwelling units per acre are “deemed appropriate" to support housing affordable to lower-income households (low-, very-low-, and extremely-low-income households). Although the law establishing this “default density” (AB 1537) will sunset in 2028, near the end of the 2023-2030 housing element planning period, the County may continue to use this density as the default density throughout the current housing element period. Nonetheless, the County may want to consider higher densities to accommodate the increased RHNA, which will generally result in fewer sites designated for rezoning. Staff has included densities of 30 dwelling units per acre for some sites.

3) Trends (Vacant Sites and ADUs): Housing Element legislation requires the estimated development potential on vacant lands and for accessory dwelling units (ADUs) to be based on the density of actual residential developments and past production (construction) trends, as well as evidence of the affordability of ADUs.

4) Recycling Prior Sites: Vacant sites identified during two consecutive prior RHNA cycles and non-vacant sites identified during a prior cycle must be described as to why they are currently viable if they have not yet been developed. They 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 standards may be required.

5) Development on Non-vacant Sites: If a non-vacant site, which is a site with any improvement (e.g., buildings or other permanent: structures, paved parking lots, income producing improvements such as crops, high voltage power lines, etc.) is identified for redevelopment (from an existing use to a residential use), the
County must provide a detailed analysis demonstrating the site's suitability for and the likelihood of residential development. If more than half of the required lower income sites are proposed on non-vacant land, then the existing uses are presumed to impede residential development unless there is substantial evidence that a site is likely to develop for housing in the next eight years. Property owner interest in transitioning the site to a residential or mixed-use development is one example of such substantial evidence.

6) **No Net Loss**: The purpose of the No Net Loss Law is to ensure that development opportunities remain available throughout the planning period to accommodate a jurisdiction's entire RHNA, especially for lower- and moderate-income households. Under this law, if the County approves a project with a different affordability level or residential density below than shown in the County's Housing Element, the County must make written findings showing that the reduction is consistent with the Countywide plan, including the Housing Element, and that either the remaining sites identified in the Housing Element are adequate to accommodate the jurisdiction's share of the regional housing need by income level, or other sites in the County are zoned appropriately to accommodate that income level. If neither of these findings can be made, the County must identify and make available additional sites within 180 days, typically through rezoning. If a site designated for lower or moderate-income units develops at a lower density or with fewer lower or moderate-income units than specified in the Housing Element, the County could be required to add additional sites, unless the sites list has additional sites for lower income units. Therefore, it is recommended that additional sites be included above the RHNA for lower and moderate-income categories to provide a “buffer”. The state recommends a buffer of between 15 and 30%.

**DISCUSSION:**

Staff and MIG, Inc., the consultant retained by the County to support the Housing and Safety Element updates, identified the universe of sites for consideration. This was fine-tuned and narrowed down to the candidate housing sites, factoring in environmental constraints, state laws around site suitability, and local knowledge through community input. On April 12, 2022 at the Joint Board and Planning Commission Work your Board approved the list to be included in the Draft Housing Element.

After extensive outreach to the public and discussion with the Board of Supervisors and Planning Commission, the Draft Housing Element, including the candidate sites, was submitted to HCD for a 90-day review period on July 19, 2022. Staff received a comment letter from HCD on October 17, 2022, which included feedback for some minor revisions. The sites list presented today incorporates the feedback received from HCD, consideration of the Draft Environmental Impact Report (DEIR) and changed circumstances on a number of the sites on the candidate list. Over time, since the candidate list was developed, new information has become available, and circumstances have changed on some of the sites. Therefore, additional changes are recommended to the sites list. Your Board may want to consider changes in the following categories:
Comments from HCD: The response letter to the draft Housing Element received in October 2022 had no comments on specific sites. However, staff are required to provide more information and analysis on realistic capacity, suitability of non-vacant sites and sites that are larger than 10 acres.

Environmental Review Impact Report (EIR) alternatives: The Draft EIR found that future potential development facilitated by the Project¹ would result in 15 significant unavoidable impacts. This EIR identified mitigation measures for each impact, if mitigation was available. In some instances, the mitigation would not be sufficient to reduce the impact to a less-than-significant level and in other cases it is not definite whether the mitigation would be sufficient due to the uncertainty of future conditions that could exist at the time a development proposal is submitted. Pursuant to CEQA, the Draft EIR identifies and evaluates alternatives to the Project.

A link to the EIR and its alternatives is included:

Changed Circumstances or additional information: Between April and November of this year, some sites in the inventory have changed status. Specifically, 10 sites have been removed, or had units reduced or adjustments made to the assumed affordability levels. Attachment 1 contains a detailed list of sites that were changed or eliminated.

One site has a unique situation, and staff is requesting further direction from your Board. Oak Hill Apartments is proposed to be developed on unused state property in the unincorporated area of San Quentin as a result of an executive order to identify State-owned sites to address the California housing crisis. The proposed development will be comprised of two affordable residential communities—115 apartments developed by Eden Housing targeted for lower income families, and 115-135 apartments to be built by Education Housing Partners (EHP) for income qualifying teachers and staff of local school districts and County employees. This site was included in the County’s Draft Housing Element which was submitted and reviewed by HCD. Oak Hill is located within the sphere of influence (SOI) of the City of Larkspur (City) and City staff have expressed their intent to annex the property into the City. They have also expressed their interest in having the Oak Hill site on their housing element sites list and most recently requested that the County enter into an agreement to allow them to count at least 50% of the units in their housing element. This would require that the County identify alternative sites that could accommodate lower and moderate-income units. Staff have identified the following possible alternatives.

1. Continue to include the full number of low- and moderate-income units on the County’s Housing Element sites list and do not enter into an agreement with the City. At the time of annexation, the City would be able to count these units on their Annual Progress Report (APR) toward progress of meeting their RHNA.

¹ Project in this case means the Draft Housing and Safety Elements
2. **Enter into an agreement to share 25% of the units with the City.** Under this scenario the County would need to identify sites to accommodate 62 additional lower and moderate income units.

3. **Enter into an agreement to share 50% of the units with the City.** Under this scenario the County would need to identify sites to accommodate an additional 125 lower and moderate income units.

On November 17, the Affordable Housing Board Subcommittee, made up of Supervisors Connolly and Rodoni, met and reviewed the proposed site changes. The preferred site list included in Attachment 2 reflects their feedback and provides alternatives depending on your Board’s direction related to Oak Hill. Staff is asking for your direction on the Oak Hill project and on the alternatives sites to accommodate the changes circumstances.

**TIMELINE AND NEXT STEPS:**
The public draft EIR comment period ended Monday, November 21, 2022. This Draft EIR review period also included a public hearing on November 16, 2022, to receive comments on the adequacy of the Draft EIR. Release of the Final EIR, and separate hearings before the Planning Commission and then the Board of Supervisors to consider the Final EIR for certification, will occur in early 2023.

Staff will present the Final Housing and Safety Elements and associated work to the Planning Commission and Board of Supervisors at future hearings in Winter 2022/23. Attachment 4 includes a detailed schedule for the remainder of the project timeline.

**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.

**FISCAL/STAFFING IMPACT:**
There is no general fund impact; funding to complete the Housing and Safety Elements is available in CDA's budgets.
REVIEWED BY:
☐ Department of Finance
☐ County Administrator's Office
☒ County Counsel
☐ Human Resources
☒ N/A
☒ N/A
☐ N/A
☒ N/A

SIGNATURE:

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Senior Planner

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ATTACHMENTS:

1. Sites Update (Changed Circumstances)
2. Recommended Site List with changes
3. Recommended Site List with changes (Larkspur alternative)
4. Schedule