2014/2015 MARIN COUNTY CIVIL GRAND JURY

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

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

SUMMARY

The Marin County Civil Grand Jury received a complaint concerning Tam Ridge Residences (hereafter referred to as WinCup) at the former WinCup factory site. The complaint charged malfeasance and bribery; it also questioned the integrity of the Town of Corte Madera’s Town Council and Planning department members.

Through interviews and review of relevant documents, the Grand Jury’s investigation found neither malfeasance nor bribery. The Town of Corte Madera (hereafter referred to as Town) in the main complied with the public notice requirements and held the required public meetings. However, the fact that the WinCup project was embedded in the Town’s General Plan and was not specifically noted on the Town Council’s agendas resulted in the public not actually knowing it was to be considered. When the WinCup development became physically visible, the community reacted by questioning the process by which this project was approved, feeling that they were not given sufficient notice and opportunity for input. Concerns included traffic, parking, and concessions made to the WinCup property owner.

The Grand Jury identified a number of factors in the WinCup approval process that led to the public outcry, including but not limited to:

1. In 1998, a group of housing advocates brought a lawsuit against the Town for not having a state required certified Housing Element. The purpose of the Housing Element is to ensure that local governments adequately plan to meet the housing needs of all people within the community, regardless of their income. The lawsuit was settled at great expense and thereafter the Town’s officials were very concerned about future lawsuits. Harsh economic conditions prevailed while the Town’s officials were considering the WinCup Project and more than one Town official indicated that another lawsuit would have been disastrous.

2. Prior to the Town officials’ adoption of the 2007-2014 Housing Element, astute developers and housing advocates (both internal and external to town staff), saw the opportunity to meet and even exceed state housing and planning mandates. Coincidentally, for the 2007-2014 time period for housing planning, the Association of
Bay Area Governments 1 (ABAG) mistakenly over-allocated the Town’s Regional Housing Needs Allocation2 (RHNA) as 244 dwelling units.

3. Corte Madera’s General Plan update for 2007-2014 was underway in 2006 when the WinCup property owner requested that the WinCup development be embedded in the Town’s General Plan. The WinCup owner requested a higher density of 25.1–40 dwelling units per acre, as opposed to the earlier 15.1-25.0 units per acre. This higher density was passed within the Town’s General Plan, although Town officials, through interviews, informed the Grand Jury that the Town Council perceived that the new higher density was negotiable. It was not.

4. The Grand Jury learned during its investigation that it is uncommon for a municipality in California to approve a specific project embedded in its General Plan. However, since WinCup was embedded in the General Plan, no project specific Environment Impact Report (EIR) was required or completed. Rather, the EIR for WinCup was included in Corte Madera’s General Plan EIR. A separate WinCup EIR would have placed the WinCup development in the public domain for a more comprehensive environmental analysis, a key process for citizen review and input.

5. The approval of the WinCup project included significant but unavoidable environmental effects identified in the General Plan Environmental Impact Report. The Town Council accepted these via a Statement of Overriding Considerations.3

6. While the General Plan has a strong policy requiring responsible planning for the area around the WinCup property4, the Town Council chose to override that policy by approving this high-density development.

7. In April 2011, the Town Council approved two specific ordinances permitting the WinCup development. Once these ordinances were approved, the property was formally entitled. Thereafter, the public would only be permitted to provide input concerning the design details (e.g. color, style, etc.) of the structure.

The Grand Jury recommends that the Town ensure that the public is actually and clearly informed about potential actions to be discussed and taken, and that the Town require project specific EIRs for all projects that may have a significant impact on the environment.

Additionally, the Grand Jury recommends that Corte Madera’s Town Council create a standing Design Review Committee and develop a Community Plan for the Tamal Vista Corridor.

1 See Glossary for definition, p. 11.
2 See Glossary for definition, p. 13.
3 Town of Corte Madera General Plan Draft EIR, Volume 1 April 2008 - Section 7.3 Long Term Implications of the Project.
4 Corte Madera General Plan April 2009 – Policy (LU-1.6).
BACKGROUND

The Marin County Civil Grand Jury received a citizen’s complaint alleging illegal activities involving construction of the Tam Ridge Residences in Corte Madera, located at the former WinCup factory site. The complainant charged malfeasance and bribery, and questioned the integrity of Corte Madera’s Town Council and Planning Department members. The Grand Jury determined that an investigation was warranted.

APPROACH

The Grand Jury conducted an eight-month investigation including eighteen interviews with the complainant and relevant project participants. Interviews were conducted with past and present Town Council members, administrative personnel, and a Planning Commission board member. The Grand Jury consulted with a member of the Marin County Counsel’s office, newspaper journalists, professional consultants, citizen’s activist group members and Marin County residents. Additionally, the following records and documents were reviewed:

- Town Council and Planning Commission meeting agendas and minutes 2008-2012
- Corte Madera Town resolutions and ordinances
- Internal communications among Corte Madera personnel
- General Plan Draft EIR (Vol. 1 & 2), April 2008
- Corte Madera Updated General Plan, 2005
- General Plan Revised Final EIR, April 21, 2009
- ABAG Planning Program, Service Programs, and Strategic Plan
- CEQA Statutes and Guidelines
- RHNA document
- Newspaper articles including comments, opinions, editorials and letters to the editor
- Online sources

DISCUSSION

WinCup the Site

The WinCup site has a long and varied history. In 1969, HandiKup opened in Corte Madera and at one point employed approximately 250 workers. In 1986, it became known as WinCup, which was named for the Styrofoam cups and the name is identified with the property today. Currently, the development of the Tam Ridge Residences (commonly referred to as WinCup), a yet to be completed six-building, four story complex, is as noticeable in its imposing presence and colors as was its predecessor factory, with its vapor rising over Highway 101.
California Housing and the Planning Mandate
In 1998, the Town’s Housing Element, a critical piece of its General Plan, had not been certified by the state. As a result, a group of housing advocates brought a lawsuit against the Town. The lawsuit was settled at great expense to the Town, approximately $400,000. In addition, the Town agreed to adopt a state certified Housing Element, with new zoning districts that either required affordable housing or offered incentives for affordable units. This settlement made the current Town officials aware that future projects must contain an affordable housing component. Accordingly, the Town's Housing Element was ultimately certified by the State in 2011.

Through interviews, the Grand Jury learned that the absence of a California State certified Housing Element could result in additional legal entanglements, including mandatory compliance via a court order, suspension of local control on building decisions, court approval of housing developments, and substantial attorneys’ fees.

Town officials were aware that they needed to secure the State housing certification to avoid further litigation. During this period, without the Housing Element completed and certified, astute developers and housing advocates (both internal and external to town staff), saw opportunities to meet and even exceed state housing and planning mandates.

Association of Bay Area Governments (ABAG) Allocation
The State of California requires that every county, town and city plan for housing to accommodate future growth. Each county, town and city is assigned a Regional Housing Needs Allocation (RHNA). This allocation determines the number of dwelling units for which each county, town and city must plan. ABAG assigns RHNA allocations to communities in Marin, including Corte Madera. With that allocation, the Town is required to start planning for the next General Plan update, often referred to as the ‘housing cycle’, a seven-year planning window.

For the 2007-2014 Corte Madera General Plan update, ABAG declared the RHNA to be 244 dwelling units. This turned out to be an over-allocation for a town with a population of 9,253 and 2.7 square miles of developable land. While the Town formally protested the allocation, ABAG rejected the protest and the 244 dwelling units became the Town’s baseline for planning and could not be changed. Later, for the 2015-2022 Housing Cycle, ABAG acknowledged the over-allocation and assigned a reduced allocation of 72 dwelling units to the Town. The new allocation of 72 dwelling units for the 2015-2022 Housing Cycle was decided well into the construction already taking place at WinCup, with 180 dwelling units.

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6 See Glossary for definition, p. 12.
7 Town of Corte Madera Planning Commission Staff Report January 9, 2015 - http://www.ci.corte-madera.ca.us/ArchiveCenter/ViewFile/Item/303
8 See Glossary for definition, p. 13.
9 2010 United States Census
The Town’s Financial Strain
During the Town’s consideration of WinCup, harsh economic conditions prevailed. The economy was in the middle of the Great Recession, sales tax revenues were down, property taxes were stagnant, the Park Madera Center purchase was creating increased financial pressure, and the Town needed new revenues. “Corte Madera depends on sales tax revenue as a major source of funding for the town. As a result, the town was hard hit by a 23% decline in sales tax revenues over the past seven years.” More than one Town official indicated that another lawsuit would have been disastrous.

Town of Corte Madera General Plan Update – The Thinking Behind The Town’s Actions
The General Plan is intended to be the blueprint for future development and long range planning upon which the Town Council and Planning Commission base their land use decisions. The 2005 Town Draft General Plan Update mandated a four-area Community Plan, one area of which is Fifer/Tamal Vista Boulevard, which includes WinCup, with a 15.1–25.0 dwelling units per acre specification. In 2006, in response to a request by the WinCup owner, the General Plan Update was modified to include the WinCup development with a mixed use designation and an increased density of 25.1–40 dwelling units per acre. Interviews determined that Town management supported this increased change.

Interviews with Town officials also disclosed that it was not uniformly understood that the Town would be locked into as many as 40 dwelling units per acre at the developer’s discretion. There was a belief that the 25.1–40 dwelling units per acre was a negotiable range for discussion. It was not. The Grand Jury learned that several Town officials felt that they were misled by advisors regarding the allowable housing density. Any action by the Town Council to reduce the density could have left the Town open to legal action by the WinCup owner.

As noted, the General Plan requires the Town to develop a four-area Community Plan. The General Plan also includes a policy requiring responsible planning for all these community areas, including Fifer Avenue/Tamal Vista Boulevard. This policy states that until a Community Plan is adopted, all development continues using existing zoning. For WinCup this was to be 15.1–25.0 dwelling units per acre, not the 25.1–40 dwelling units per acre requested by the WinCup owner.

However, the Town Council chose to override the General Plan Update policy and approved a higher density development in the Fifer Avenue/Tamal Vista Boulevard area, as requested by the WinCup owner.

12 Corte Madera General Plan April 2009 – Policy (LU-1.6).
13 ibid
Even today, there remains no Community Plan, demonstrating serious shortcomings with the Town’s planning process.

The WinCup Approval Process
2001 – 2005
Updating a General Plan is a complex undertaking. Between 2001 - 2005, a General Plan Steering Committee met to facilitate public participation in the preparation of the General Plan Update. In May 2005, the Town's Planning Commission recommended a 2005 Draft General Plan Update to the Town Council for adoption. That plan included a four-area Community Plan, one of which was the Fifer Avenue/Tamal Vista Boulevard area, which included WinCup, and authorized mixed use commercial development with an allowable range of 15.1-25.0 dwelling units per acre. Development in Corte Madera exceeding the authorized density of 15.1-25.0 dwelling units per acre was not discussed at the Planning Commission or Town Council public meetings held regarding the 2005 Draft General Plan Update.

2006 – 2012
In 2006, WinCup Holdings Inc. filed for Chapter 11 protection. The General Plan approval process became more complex when the WinCup owners requested the inclusion of the WinCup property in the General Plan with the higher density allotment. Public meetings and input are required before a town can take action to approve a proposed project. However, a majority of the public meetings held to approve the WinCup project were centered on approving the General Plan update within which the WinCup project was embedded. Was it clear to the public that the process to build the Tam Ridge Residences was part of the General Plan update? Possibly not.

In 2008, the Town’s Planning Commission held 15 public meetings regarding the General Plan Update. Although the WinCup property was discussed at seven of the fifteen meetings, none of those meeting agendas specifically identified WinCup as a topic. It was discussed under the General Plan Update agenda item. Thus, the public had no specific notice that WinCup was going to be discussed.

On April 12, 2009, the Town Council approved the General Plan and associated General Plan Environmental Impact Report (EIR). Included in this General Plan was the WinCup development at the higher density. This included 180 units and 10,000 square feet of commercial space. Also included, but never built, was Village Property including 300 residential units. (See Appendix A for details of the Village Property and other community concerns.)

The Grand Jury learned during its investigation that it is uncommon for a municipality in California to approve a specific project embedded in its General Plan. Since WinCup was embedded in the General Plan, no project specific Environment Impact Report (EIR) was required or completed. Rather, the environment impact of WinCup was included in Corte Madera’s General Plan EIR. A separate WinCup EIR would have placed WinCup

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14 See Glossary, p. 12.
in the public domain for a more comprehensive environmental analysis, a key process for citizen review and input. So, the WinCup owner saved money and avoided greater exposure and scrutiny by the public.

The Town Council exercised its discretion to override the significant but unavoidable environmental consequences identified in the General Plan EIR. Any town is permitted to exercise this discretion in order to achieve their housing goals. CEQA Guidelines as stated in the General Plan EIR: *The Town can approve a project with unavoidable adverse impacts if it prepares a “Statement of Overriding Considerations” setting forth the specific reasons for making such a judgment.*

The significant but unavoidable WinCup environment effects identified and overrode in the *Statement of Overriding Considerations* by the Town Council were:

- Jobs/Housing Imbalance
- Cumulative Traffic Impacts on Freeway Operations
- Potential Increase in Long-Term Atmospheric Greenhouse Gas Emissions
- Regional Air Plan Impacts
- Traffic Noise Increase Impacts
- Cumulative Traffic Noise Conflicts
- Increased Water Demand
- Cumulative Effects of Increased Water Demand

**Rezoning the WinCup Property and Approving the Housing Element**

Additional legal steps beyond the adoption of the General Plan were required before the development could go forward. Town Officials needed to create a Mixed Use Gateway District (MUGD) and rezone the WinCup property to include affordable housing. Consultants advised Town officials that rezoning, rather than municipal land-use-planning, was required to satisfy the Draft General Plan Update RHNA.

Accordingly, on March 8, 2011 and April 5, 2011 respectively, the Planning Commission and Town Council addressed rezoning for WinCup and adoption of the Housing Element. It is important to note that the rezoning of the WinCup property was agendized by the Planning Commission in the following manner:

“DRAFT HOUSING ELEMENT, ZONING ORDINANCE AMENDMENT TO ESTABLISH THE MIXED-USE GATEWAY OVERLAY DISTRICT (MUGD),

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15 Town of Corte Madera General Plan Draft EIR, Volume 1 April 2008 - Section 7.3 Long Term Implications of the Project.
16 Ibid page 7.0-4 through 7.0-5.
REZONE PARCELS APN 024-011-62 & 63 WITH THE MUGD DESIGNATION and ENVIROMENTAL ANALYSIS FOR THESE ACTIONS – Planning Commission to make recommendations to Town Council regarding these proposed actions.**17

Based on the agenda item (above), it was not clear that the WinCup approval process was continuing or even being discussed. While the agenda item was posted, it was certainly not announced in layperson’s terms. There was nominal turnout for this meeting.

On April 19, 2011, Ordinance 925, to create the Mixed Use Gateway District (MUGD), Ordinance 926, to rezone the WinCup property, and the updated Housing Element were approved by the Town Council. With the approval of these items, and including other developments, the Town surpassed the over-allocation of 244 dwellings erroneously levied upon them by ABAG. During interviews Town officials indicated to the Grand Jury that they believe the state ultimately certified the Housing Element because of the inclusion of the 180 dwelling units in WinCup.

The approval of Ordinance 925 by the Town Council created the MUGD, which, among other things, established the requirement of a 10% Affordable Housing component in WinCup. The Grand Jury learned from housing experts that this 10% is considerably less than the 25% standard. In fact, the original designation for the WinCup property called for 25% affordable dwelling units. The WinCup owner stated in a 2010 workshop that the 25% allocation made the development economically infeasible. After consulting with experts, the Town Council agreed to reduce the affordable housing component to 10%.

Ordinance 925 also increased the height limits to “38 ft. along all street frontages, 48 feet on inner portions of the lot”.18 The Grand Jury learned, through interviews, the WinCup owner stated he needed this increase in order to build 180 dwelling units on a 4.5-acre plot.

Ordinance 926 rezoned the property from commercial to mixed use at the standards set forth in Ordinance 925. After the approval of Ordinances 925 and 926 in April 2011, the property was officially entitled. Entitlement granted the WinCup owner the right to develop at the specified density, with the 10% affordable housing dwelling units, the new specified height requirements, and a number of other details required for design. With the approval of these ordinances, the public comments were now limited only to design details (e.g. color, style, etc.).

Town Council and Planning Commission Approval of WinCup Project Design
On November 09, 2011 and December 13, 2011 the Planning Commission held agendized design review meetings about WinCup:

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17 Town of Corte Madera Planning Commission Agenda, March 8, 2011.
18 Town of Corte Madera Ordinance 925 – 04/1/2011.
“195-205 TAMAL VISTA BOULEVARD, DESIGN REVIEW APPLICATION NO. 11-031, ENVIRONMENTAL ASSESSMENT NO. 11-002, MACFARLANE DEVELOPMENT COMPANY, LLC (OWNERS), THOMAS P. COX (ARCHITECT)”.

The agenda this time was more specific by referring to the address of the development. However, the meeting was only a formality to clarify design details and approve the building of the project.

In response to a resident’s question regarding the WinCup property density, the Planning Commission meeting minutes state, “Planning Director Bell explained that there is a clause in MUGD that states no design review shall reduce the number of 180 units allowed in the district.” Thus, project density and other community concerns including traffic, parking, and concessions made by the Planning Commission to the owner were not negotiable at this point. (See Appendix A for details of community concerns.)

On December 13, 2011, the Planning Commission approved the WinCup project design. It should be noted that important matters regarding density, height, affordable housing, commercial mixed use, traffic, et al, were decided when Ordinances 925 and 926 were approved. The attorney for the WinCup owner spoke and the minutes indicate “… that the project, as presented by the applicant, is consistent with the entitlements of the property as well as the Town’s zoning, General Plan, and Housing Element. While not heavily attended, community workshops revealed prevailing concerns related to traffic impacts. He noted that those impacts were acknowledged and accepted with the adoption of the General Plan, Housing Element, and Zoning Ordinance amendments and that this is a Design Review matter only.” Citizen input was now limited only to design review items.

Only two-dimensional design renderings were displayed at the meeting, failing to represent how the buildings would ultimately look in relation to the surrounding neighborhood. In fact, it appears that the Planning Commission did not realize the aesthetic impact of the project until the end of 2011. At that time they directed the WinCup owner to increase the 4th story setbacks and thereby “reduce visual massing seen from the street.” The Grand Jury believes that a scale model or three-dimensional architectural rendering from the developer, although not required, would have facilitated assessing the proportions of the building. Further, there was no standing architectural review committee or independent panel in place to scrutinize the structure’s consistency and fit.

19 Town of Corte Madera Planning Commission Agenda Wednesday, November 9, 2011.
22 Town of Corte Madera Staff Report – 02/02/2012 Subject: Appeal of the WinCup site mixed use redevelopment project.
A common criticism shared by community members is best reflected by the following statement: “Increasingly projects are coming before city councils and the Board of Supervisors that are out of character with our community values. For example, the excessive number in the housing elements, ...the eyesore of Corte Madera’s apartment building on the old WinCup site.”

**FINDINGS**

F1. 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.

F2. 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.

F3. 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 was originally represented.

F4. 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.

F5. 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.

F6. 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.

**RECOMMENDATIONS**

R1. The Town of Corte Madera must seriously consider requiring project specific EIRs for all projects that may have a significant impact on the environment.

R2. The Town of Corte Madera must ensure that government procedures are performed in a fully transparent manner, specifically notify the public about projects in layperson’s terms and use social media to promote project awareness.

R3. 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.

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23 Marin IJ 5/24/2015, Marin Voice – “Communities need to stand up to make sure they are heard”.
R4. 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.

REQUEST FOR RESPONSES
Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:
From the following governing body:

- Town Council, Town of Corte Madera: All Findings and Recommendations

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

The Grand Jury invites a response from the following individual:

- David Bracken, Town Manager/Town Engineer, Town of Corte Madera: All Findings and Recommendations

GLOSSARY OF KEY REPORT ACRONYMS AND TERMS

Association of Bay Area Governments (ABAG)
ABAG was created by local governments to meet their planning and research needs related to land use, environmental and water resource protection, disaster resilience, energy efficiency and hazardous waste mitigation, and to provide risk management, financial services and staff training to local counties, cities and towns.

ABAG is one of more than 500 regional planning agencies helping cities plan for land use, housing, environmental quality and economic development. In ABAG’s region, there are 100 cities and the nine counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma. More than 6 million people live in the 7,000 square mile area. Through its role as an association of cities and counties, ABAG has been designated by the state and federal government as the official comprehensive planning agency for the Bay Area. A community is not obligated to actually provide housing to all in need.24

California Environmental Quality Act (CEQA)
The California Environmental Quality Act (CEQA) is a California statute passed in 1970, shortly after the United States federal government passed the National Environmental Policy Act (NEPA), to institute a statewide policy of environmental protection. CEQA does not directly regulate land uses, but instead requires state and local agencies within California to follow a protocol of analysis and public disclosure of environmental impacts of proposed projects and adopt all feasible measures to mitigate those impacts. CEQA

24 http://www.abag.ca.gov/about_abag/
makes environmental protection a mandatory part of every California state and local agency's decision making process. It has also become the basis for numerous lawsuits concerning public and private projects.25

**Environmental Impact Report (EIR)**

The overarching purpose in preparing an Environmental Impact Report is to provide the public and the decision-makers with detailed information about a project’s environmental effects, ways to minimize the project’s significant environmental effects, and reasonable alternatives to the project.

Under the California Environmental Quality Act (CEQA), an EIR must be prepared whenever there is substantial evidence, in light of the whole record, that a project may have a significant effect on the environment. If the department is presented with a fair argument that a project may have a significant effect on the environment, it shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.

If a project is subject to CEQA and does not qualify for an exemption, the next step in the CEQA process is to determine whether the project may result in a significant effect on the environment. If it is unclear whether the project may have such an effect, then an initial study is conducted to determine the nature and extent of the project’s effects and if the results of an initial study reveal that the project may have a significant effect on the environment, then preparation of an EIR is appropriate.

If it is clear that a project will result in a significant effect on the environment and an EIR will be required, the initial study process can be skipped and work can proceed directly on the EIR. In this case, the EIR must still focus on the significant effects of the project and indicate briefly the reasons for determining that other effects would not be significant or potentially significant.26

**General Plan**

A General Plan is a compendium of city or county policies regarding its long-term development, in the form of maps and accompanying text and is a legal document required of each local agency by the State of California Government Code Section 65301. It must be adopted by the appropriate City Council or Board of Supervisors. In California, the General Plan has seven mandatory elements (Circulation, Conservation, Housing, Land Use, Noise, Open Space, Safety and Seismic Safety) and may include any number of optional elements (such as Air Quality, Economic Development, Hazardous Waste, and Parks and Recreation). The General Plan may also be called a City Plan, Comprehensive Plan, or Master Plan.27

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26 [CA.gov Department of Transportation](http://www.dot.ca.gov/ser/vol1/sec5/ch36eir/chap36.htm#def)
Housing Element
By law, every city and county in California must adopt a Housing Element as part of its General Plan. The purpose of the Housing Element is to ensure that local governments adequately plan to meet the housing needs of all people within the community, regardless of their income. The underlying premise of Housing Element law is for the private market to address adequately housing needs and demand. Local governments must adopt land use plans and regulatory systems, which provide opportunities for, and do not unduly constrain, housing development.28

In the Bay Area currently, local governments must complete revisions to their Housing Elements by January 31, 2015.29

Regional Housing Needs Allocation (RHNA)
RHNA is the state-mandated identification of the total number of housing units (by affordability level) that each jurisdiction must accommodate in its Housing Element. As part of this process, the California Department of Housing and Community Development (HCD) identifies the total housing need for the San Francisco Bay Area for a seven-year period (in this cycle, from 2015 to 2022). ABAG and Metropolitan Transportation Commission (MTC) must develop a method to allocate the housing need to local governments in a manner that is consistent with the development pattern included in the Sustainable Communities Strategy (SCS). Once a local government has received its final RHNA, it must revise its Housing Element to show how it plans to accommodate its portion of the region's housing need.30

RHNA is a distribution of housing development capacity and is integral to the development of a Sustainable Community Development Strategy (SCS). Standards set by RHNA include 20 units per acre for communities under a population of 25,000 while cities with a population of over 25,000 have a standard of 30 dwelling units per acre for their "fair share". The formula, which provided Corte Madera’s erroneous 244 dwelling units allocation, consists of the following elements:31

- SCS input
- Fair share factors and scoring
- Past RHNA Performance
- Employment
- Transit
- Scoring summary adjustments based on fair share factors

28 ABAG Website: http://www.abag.ca.gov/planning/housing/elements.html
29 ibid
30 ABAG Website: http://www.abag.ca.gov/planning/housingneeds/
31 ibid
RHNA model, including sustainability model
- Income distribution: income allocation by district
- Draft Summary
- Draft RHNA
- Final RHNA: the final numbers by jurisdiction

**Town of Corte Madera Town Council Responsibilities**
The Town Council acts as the governing body of the town, with all the regulatory and corporate powers of a municipal corporation provided under California state law. In general, it directs the operation of the town government by establishing town policies and programs.32

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32 Town of Corte Madera Website: http://www.ci.corte-madera.ca.us/140/Town-Council
APPENDIX A

COMMUNITY CONCERNS

Traffic
Traffic issues are a concern once the Tam Ridge Residences complex is completed and occupied. At certain times there is congestion near the complex coinciding with nearby schools’ start and discharging times. The Town examined potential traffic issues via two traffic studies. These traffic studies concluded that the complex’s occupancy and related traffic will generate no significant increased traffic congestion. Further, the developer, upon completion of the project, is to provide $250,000 to the Town of Corte Madera to be applied to traffic mitigation issue(s) as the Town sees appropriate.33

Many people, one municipality, and the Grand Jury question the conclusion that 180 units at that location will not significantly increase traffic congestion, notwithstanding the two traffic studies.

Parking
Residential and commercial neighbors have voiced concerns that the development has insufficient parking. Nearby parking will be adversely affected by tenants and visitors using all street and private lot parking. After reviewing the developer’s plans, the Grand Jury learned that the developer planned to charge for parking spaces within the complex, above and beyond the rent/lease rates. Several Town officials stated to the Grand Jury that such charges would not happen and that no permit to occupy would be approved by the Town Council if the spaces are not provided to occupants as part of their rental/lease agreements. There are 295 individual parking spaces planned for the complex.

Concessions
Throughout the application process, the Town of Corte Madera granted concessions to the developer without receiving any known in-kind compensation. Specific concessions were made regarding project density, building height, number of Affordable Housing units, and reduced retail space.

The original plans called for 25 percent of the units to be “affordable” units. The WinCup owner stated in a 2010 workshop that the 25 percent allocation made the project economically unfeasible. Concessions were granted to reduce that amount to 10 percent. The Grand Jury wonders to what degree this project will truly address the workforce housing needs of the community.

Further, the original plan called for 10,000 square feet of commercial space in the “mixed-use” complex, which has since been reduced to 3,000 square feet. The Grand Jury questions why this change occurred and whether this development is now truly a Mixed Use Gateway Development.

Village Property
Village Property, included in Alternative Four in both the General Plan and the General Plan EIR states: “The combined Alternative Four would consist of 185,000 square feet of retail and 300 dwelling units at the Village at Corte Madera (for a total of 832,353 square feet) and along with 10,000 square feet of retail and 180 dwelling units at the Gateway Village. This would result in a total of 195,000 square feet of new retail and 480 new dwelling units.” Subject matter experts indicated that the Village Property expansion would most likely never come to fruition.

34 Town of Corte Madera General Plan EIR – Section 2 Executive Summary
## APPENDIX B

### CHRONOLOGY

<table>
<thead>
<tr>
<th>Key Dates</th>
<th>Key Events</th>
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<tbody>
<tr>
<td>1998</td>
<td>Corte Madera loses lawsuit to Legal Aid and Public Advocates, Inc.</td>
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<tr>
<td>2001</td>
<td>General Plan Steering Committee formed.</td>
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<td>2004</td>
<td>WinCup property sold to Corte Madera, LLC.</td>
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<td>2005</td>
<td>Planning Commission holds public hearings to &quot;scope&quot; project.</td>
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<td>Draft General Plan was produced. Planning Commission recommended to Town Council for adoption.</td>
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<td>2006</td>
<td>WinCup Holdings Inc. filed Aug. 21 for Chapter 11 protection.</td>
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<td>Property owner approaches Town Council and requests his property be placed in General Plan.</td>
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<td>2008</td>
<td>Planning Commission holds 15 public meetings on General Plan.</td>
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<td>Draft Program EIR circulated to proper recipients.</td>
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<td>San Clemente Affordable Housing project building permits allowed by RHNA.</td>
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<td>2009</td>
<td>Citizen Advisory Committee formed to draft and recommend Housing Element.</td>
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<td>Opportunity to inform Town Council that 25-40 units meant 40 and was non-negotiable.</td>
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<td>2010</td>
<td>HCD letter to Corte Madera stating certification would not happen with draft submittals.</td>
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<td>2011</td>
<td>Town Council passes Resolution 925 changing zoning to MUGD, 10% affordable housing, 38' height limits on building fronts.</td>
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<td>Town Council passes Resolution 926 to rezone.</td>
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<td>Town Council passes Housing Element.</td>
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<td>MacFarlane Partners purchase WinCup property.</td>
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<td>Design review process was colors only, no conversation on density.</td>
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<td>Planning Commission approved project design.</td>
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<td>MacFarlane Partners purchased WinCup property for $18 Million.</td>
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<td>Planning Commission realized aesthetic impact, changed setbacks.</td>
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<td>WinCup Factory closes.</td>
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<td>MacFarlane Partners proposes development with designs, submits design review application.</td>
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<td>Housing Element updated and certified by HCD.</td>
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<td>Staff supports 10% for affordable housing.</td>
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<td>2012</td>
<td>180 units approved by Town Council.</td>
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<td></td>
<td>Town of Corte Madera quits ABAG.</td>
</tr>
</tbody>
</table>
Transportation Authority of Marin (TAM) files appeal on design, rescinds after meetings with Macfarlane Partners.

2013  MacFarlane hires AECOM to perform traffic study.
2014  Original completion date is set for Spring, 2014.


California Department of Housing and Community Development. www.hcd.ca.gov.


Corte Madera Planning Commission Staff Report, Item 4A, November 14, 2008; Subject: Public Hearing on the Draft Updated General Plan and the Draft Final EIR.


Corte Madera Planning Commission Staff Report, Item No. 5A, June 5, 2008; Subject: Draft Environmental Impact Report for the Updated General Plan.
Corte Madera Planning Commission Staff Report, January 24, 2010; Subject: Workshop on the Draft Housing Element.


http://www.northbaybiz.com/General_Articles/General_Articles/Its_a_Go.php.


Planning Consultant, Corte Madera Town Council Staff Report, March 29, 2011; Subject: Public Hearing on the Draft Housing Element and Rezoning of the 4.5-acre WinCup Property at 195 Tamal Vista Boulevard (APN 024-011-62 & 63) to MUGD, Mixed-Use Gateway Overlay District.

Planning Director / Assistant Town Manager; Corte Madera Town Council Staff Report, June 19, 2006; Subject: Amendment to Contract with Pacific Municipal Consultants for the General Plan EIR.

Planning Director / Assistant Town Manager; Corte Madera Town Council Staff Report, November 17, 2006; Subject: Discussion of ABAG's Regional Housing Needs Allocation Formula.

Planning Director / Assistant Town Manager. Corte Madera Town Council Staff Report, May 5, 2005; Subject: General Plan Workshop.

Planning Director / Assistant Town Manager; Town of Corte Madera Planning and Building Department Memorandum, May 15, 2008; Subject: Update Housing Element.

Planning Director, Assistant Town Manager, Town of Corte Madera Planning and Building Department, May 14, 2008; Subject: General Plan EIR.

Planning Director, Corte Madera Town Council Staff Report, February 2, 2012; Subject: Appeal of the WinCup Site Mixed-use Redevelopment Project - a Public Hearing to Consider an Appeal by the Transportation Authority of Marin of the Planning Commission's Action to Conditionally Approve Design Review No. 11-031 and
Environmental Evaluation No. 11-002, Thereby Allowing Construction of 180-unit Apartment Complex with 3,000 Sq.ft. of Commercial Space by MacFarlane Partners.

http://www.abag.ca.gov/planning/housingneeds/.


Schwartz, Dan, City Manager, City of Larkspur Staff Report, March 5, 2014, AGENDA ITEM 8.4; SUBJECT: CORTE MADERA'S "WINCUP" PROJECT: GENERAL REVIEW AND APPOINTMENT OF AD-HOC COMMITTEE TO DISCUSS CIRCULATION IMPACTS.

Town of Corte Madera, Corte Madera Planning Commission Staff Report, March 3, 2011; Subject: Public Hearing on the Draft Housing Element and Rezoning of the 4.5-acre WinCup Property at 195 Tamal Vista Boulevard (APN 024-011-62 & 63) to MUGD, Mixed-Use Gateway Overlay District.


"Town of Corte Madera Planning Commission Staff Report January 9, 2015."

Town of Corte Madera, RESOLUTION NO. 11-005; A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF CORTE MADERA RECOMMENDING ADOPTION OF THE TOWN OF CORTE MADERA 2011 HOUSING ELEMENT.

Town of Corte Madera, RESOLUTION NO. 3497; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA TO SIGN AN AMENDMENT TO THE CONTRACT TO PREPARE AN UPDATED GENERAL PLAN AND EIR.

Town of Corte Madera, RESOLUTION NO. 3684; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA FINDING THAT THE APPROVAL PRELIMINARY PLAN AMENDMENT 11-001, PRECISE PLAN AMENDMENT NO. 11-001 AND DESIGN REVIEW APPLICATION NO. 11-024 ARE WITHIN THE SCOPE OF THE PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE 2009 GENERAL PLAN.

Town of Corte Madera, RESOLUTION NO. 3685; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA AMENDING TOWN COUNCIL


Town of Corte Madera, RESOLUTION NO. 3690; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA DENYING THE APPELLANT'S APPEAL OF THE PLANNING COMMISSION'S DECISION AND APPROVING DESIGN REVIEW NO. 11-031, THEREBY ALLOWING CONSTRUCTION OF 180 APARTMENT UNITS AND 3,000 SQ.FT. OF LOCAL SERVING COMMERCIAL AT 195-205 TAMAL VISTA BOULEVARD.

Tuesday, March 8 2011. TOWN OF CORTE MADERA PLANNING COMMISSION AGENDA.

