Community Venture Partners, Inc.
A Catalyst for Sustainable Solutions

December 4, 2014

Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

RE: Comments on the 2015-2023 Marin County Draft Housing Element

Dear Marin County Board of Supervisors:

I am writing to comment on the proposed 2015 - 2023 Marin County Draft Housing Element (Draft HE). My comments are in addition to comments made by our legal counsel, Edward Yates.

The Marin County 2015 - 2023 Draft Housing Element (Planning Commission Recommended Version) contains a number of provisions and recommendations that fail to serve the interests of the residents and taxpayers of Marin County.

The Draft HE generally fails to provide adequate analysis of the ramifications of its recommendations and proposals, and generally fails to provide sufficient facts or specific analysis in support of same. Proposals contained in the Draft HE are generally based on ungrounded assumptions and misinterpretations of the law, without sufficient baseline data, and what analysis is provided is often misleading, incomplete, inaccurate, and in many cases, simply incorrect. These omissions will cause significant unintended consequences that the Draft HE fails to properly analyze and consider.

For these and the other reasons described herein, the 2015 - 2023 Draft HE, as written, must be rejected as inadequate and not approvable until significantly revised.

COMMENT #1

The Draft Housing Element Site Inventory List "Buffer" That Provides For 234 Additional Units (185 RHNA + 234 = 419) Is Unnecessary

What Does Housing Law Intend and Require?

It is important to recognize that the Housing Element provisions of the State Housing Regulations are designed as a "report card" regarding only one aspect of a municipality's General Plan, or in this instance, Countywide Plan. It is not intended to drive or unduly shape the entire General Plan, which is the constitution of the municipality (see the specific protections afforded by Senate Bill 375, SEC. 4 of Section 65080 of the Government Code). It is *only* intended to ensure that local municipalities make a reasonable effort to plan for future growth and affordable housing alternatives. By having a certifiable Housing Element that satisfies the

State's Regional Housing Needs Assessment (RHNA) allocation obligation, a municipality has accepted its "fair share" and proven its compliance under RHNA.

By law, the requirements of the Housing Element are *not* to be interpreted in isolation, but rather, in the context of and in concert with the other six "elements" of the General Plan, which include Land Use, Circulation, Conservation, Open Space, Noise, and Safety (Government Code Section 65302, Chapter 3). Also, the Housing Element is *not* intended to be the repository of the zoning code or to replace the zoning code or other municipal planning regulations, nor is the satisfaction of its requirements intended to be the lead architect of those other codes and regulations. This is what the Marin Planning Staff appears to have completely backwards. The California Constitution grants land use powers to local governments, not the state. (California Constitution, Art. 11, §7; Brougher v. Bd. of Pub. Works, 205 Cal. 426, 440 (1928).)

In fact, a general plan housing element is much broader part of the general plan than simply the inventory and affordable housing site identification required by the government code. For instance, the Housing Element site inventory list, which is only one part of the Housing Element, is intentionally designed, legally, to provide a way for a municipality to demonstrate that it can *minimally* comply with its State mandated RHNA (de facto evidence of doing its "fair share"). It is *not* designed to provide the definitive list of development opportunities or to set a maximum limit of development opportunities.

It is equally important to recognize that any developer may submit a proposal to build affordable housing on any buildable parcel anywhere in the County at any time regardless of whether or not that parcel is listed on the Housing Element site inventory list.

There is no requirement that a site be in the Housing Element list in order for an affordable housing developer to submit a proposal. It is also not required for a site to be in the Housing Element list in order for the County Housing Authority to facilitate such a proposal.

Planning Staff Is Misinterpreting the Requirements of the Housing Element: Marin County Already Has Sufficient Housing Sites

The number of potentially available housing sites presently identified in the Countywide Plan vastly exceeds the RHHA allocation. Therefore, there is no realistic need for a large site inventory "buffer" in the Draft HE. Any arguments to the contrary are spurious.

The Planning Department and Planning Commission are misinterpreting both the letter and the spirit of the law and misconstruing the intention of having the site inventory list as a requirement in the Housing Regulations. As noted above, planning staff and the recommendations of the Planning Commission are presenting an incorrect interpretation of the purposes and requirements of the Housing Element, out of context with its proper place in the General Plan. Their report and recommendations therefore appear to only be concerned with the need for adequate affordable housing development sites. This narrow approach to amending the County's Countywide Plan results in a dramatic increase the number of buffer sites in the Draft HE, unnecessarily.

The HE Draft is essentially asking us to wear a number of "safety" helmets on top of each other as an unneeded and *legally unrequired* prophylactic against an imaginary need to designate more and more building sites on the site inventory list. Since the Countywide Plan clearly demonstrates that there is no shortage of development sites in unincorporated Marin and since the RHNA requirement is only for 185 units of all housing types, I would argue that the excessive HE Draft buffer sites (419 designated units) can only be the result of either the planning staff's gross ignorance of Housing Law and the Municipal Code or inappropriately emotional or philosophical beliefs that have no place in sound land use planning practice or good governance.

In addition, the "Implementation" proposals found in the Draft HE regarding increasing height, reducing parking requirements, implementing residential density equivalency conditions, and others, are equally unnecessary because the existing planned development (PD) review process and the State Density Bonus Law already provide for all of those possible variances and exclusions and many more (reduced setbacks, FAR, lot coverage, egress lanes, etc.). In the drafting of legal documents and regulations, duplication of definitions or measures is not advisable because it generally increases the opportunities for legal ambiguity that invite lawsuits and can make provisions unenforceable.

In summary, the Draft HE is unnecessarily redundant, overly specific and generally very poorly written.

"Don't Worry" Is Not A Legitimate Planning Principle

Ms. Leelee Thomas, Principal Planner of the Marin County Planning staff, and Supervisor Rice, in particular, continue to perpetuate falsehoods about the impacts and ramifications of designating a parcel of land by listing it on the Housing Element site inventory list.

As recently as on November 29, the *Marin Independent Journal*, in its article entitled "Online Petition Seeks to Slash Marin Housing Plan," Supervisor Rice is quoted as follows:

> *Rice cautioned that "folks need to remember that the sites included in the housing element site inventory reflect existing development potential. Inclusion in the housing element does not change a parcel's likelihood or potential for development."*

As with Susan Adams before her, Rice constantly perpetuates the "spin" that inclusion of a site in the HE site inventory list is essentially a meaningless exercise that has no implications as to whether or not that site will ultimately be developed. She has repeated this statement at public appearances this year and in her email updates to residents.

However, nothing could be further from the truth.

In his FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE in the matter of *MARIN COMMUNITY ALLIANCE, et al. vs. COUNTY OF MARIN*, Marin County Superior Court Case No. 1304393; on, page five, item two, beginning on paragraph 19, the petitioners' attorney, Michael Graf, explains some of the ramifications of placing a parcel on the Housing Element site inventory list.

He states the following[1]:

> *2. Limits on Agency's Ability to Reduce Density of Housing Element Projects.*
>
> *19. Once a parcel is presented as accommodating high density development as part of a Housing Element inventory under Government Code § 65583(a)(3), a local agency may not permit the reduction of such residential density below that which was utilized by HCD in determining compliance with housing element law, unless the agency makes written findings supported by substantial evidence that (1) the reduction is consistent with the adopted general plan, including the housing element; and (2) the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. Govt. Code §65863(b). If a court finds that an agency has violated this section, the court shall award to the plaintiff who proposed the housing development "reasonable attorney's fees and costs of suit." Govt. Code § 65863(e).*
>
> *20. The Government Code provides a limited exception to its restriction on a local government's police power authority to disapprove a housing development listed in the Housing Element inventory, but only if the local government makes written findings supported by substantial evidence on the record that A) The housing development project would have a specific, adverse impact upon the public health or safety; and B) there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the project or requirement that the project be developed at a lower density. See Gov. Code § 65583(g)(2). A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions. Id.*
>
> *21. The Government Code also provides that affordable housing projects utilized to meet the local agency's allocation of affordable housing under Government Code § 65884 shall be* ***"by right,"*** (Emphasis added.) *meaning that the agency's review of the project "may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project'" requiring any CEQA review. Govt. Code §65583.2(h)-(i).*
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> *22. These provisions are further strengthened by the Housing Accountability Act (Government Code section 65589.5), which prohibits an agency from disapproving a housing development project for very low, low, or moderate-income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low, low, or moderate-income households, including through the use of design review standards, unless it makes at least one of five specific written findings based on substantial evidence in the record. Further, a local government is prohibited from making a finding regarding zoning and general plan inconsistency to disapprove a development if the jurisdiction identified the site in its housing element as appropriate for residential use at the density proposed. Govt. Code § 65589.5(d)(5).*

In summary, what these regulations stipulate is that **once a parcel is designated on the Housing Element inventory list, it is almost impossible to remove it or deny a qualifying developer the "right" to develop it with high density housing to the maximum limits available.** Further, that developer is not subject to the local requirements of conditional use permitting or

[1] Note that this case is pending and as a result of a judgment in favor of the Petitioners will go to trial in 2015, the outcome of which could have significant adverse impacts on the County's 2015-2023 Housing Element.

"other discretionary local government review" under CEQA, including "the use of design review standards" for affordable housing projects.

In light of this Supervisor Rice's statements and unwavering assurances to not "worry" make a mockery of the intentions and authority of the Department of Housing and Community Development and our state housing laws by implying that the Housing Element sites inventory list is without legal or procedural consequence. The State Housing Regulations clearly convey certain "rights" to developers. That is in fact their intention and purpose. How Ms. Rice comes up with her novel legal theories is quite puzzling until we consider the repeated explanations and recommendations made by Mr. Crawford and Ms. Thomas and County planning staff.

It remains a mystery why planning staff never mentions the legal framework or any of the pertinent facts enumerated above. It's a question that the Supervisors and the public should be asking. However, when well-known and stringent legal requirements are ignored or downplayed, one can only wonder if a policy agenda is being pushed with the hope that average citizens remain uninformed.

The Planning Department Is Not a Development Agency

What is very odd about the way Marin County conducts business regarding development is that in other parts of the State and the Country, the role of working with developers to produce needed affordable housing is the province of the County Housing Authority, not the County Planning Department. (Cal. Health and Safety Code § 34242.) It is the Housing Authority that typically interacts directly with housing developers, nonprofits, and public trusts, and deals with the minutia of specific sites and development proposals and financial feasibility. But in Marin, for reasons that are not explained, the Planning Department has usurped almost all of these activities while the Housing Authority sits off on its own, a hollowed-out and near bankrupt agency. What is equally odd is that you, the Marin Board of Supervisors, must be well aware of this since you are also members of the Board of the Marin Housing Authority.

It is worth noting that this situation results in a number of problems, many of which are in evidence in the Draft HE. In an attempt to act as a development agency, the Planning Department is distorting the use of its limited tools and trying to micro-manage specific development projects using blunt and unintended instruments such as the Housing Element and Zoning Code, instruments which were never conceived for that purpose. Without a functioning and funded Housing Authority Marin, will never achieve its affordable housing goals by the methods it is pursuing. This may offer some insight into why the Marin planning process is so dysfunctional and controversial.

RECOMMENDATION:

- **Reduce the buffer sites to accommodate no more than 20% above the RHNA requirement (185 units) for a total of 222 units.**

- If the buffer sites were considered in the context of how many sites are already indicated in the Countywide Plan, apart from the other provisions of the Draft HE that also impact

unit counts (See Comments below), one might reasonably argue that no buffer of housing sites should be required at all for unincorporated Marin County. However, if a buffer is now unavoidable (due to the predictable pressure that will now come from HCD), an additional 20 percent *might* be reasonable, based on a cursory review of what other municipalities have historically used for calculating a housing site inventory buffer.

- Using that figure would reduce the total number of units designated by the 2015 - 2023 Housing Element from 419 to 222 units (RHNA requirement of 185 plus 20 percent = 222 units).

- In this scenario, it would also seem reasonable if this reduction of 197 units comes from the developments proposed at Marinwood (reduce to 40 units), Strawberry (reduce to 20 units), and the proposed allocation for the St. Vincent's Drive site (reduce to 81 units). The remaining three unit reduction should come from the elimination of the Manzanita site. This parcel is unsuitable for housing development and is so completely devoid of even the most basic public amenities (it doesn't even have sidewalks to get to it) that it should be eliminated. It is physically isolated, in the shadow of a major freeway overpass, and in one of the worst flooding areas in all of Southern Marin, making its egress street frequently impassible just from high tides. In addition, it is not financially viable for an independent developer to build and manage only three units in this location. Manzanita site is clearly a commercial site and even more inappropriate than locating housing at the Fireside.

- Further, by locating affordable housing so close to a freeway the County is failing in its duties to address the health concerns of low income residents. The BAAQMD CEQA Guidelines Risk and Hazard Screening Analysis discourage such low income housing locations because of air quality and pulmonary health risks to at risk populations. The

- These decisions should be made in concert with the wishes and concerns of those communities.

COMMENT #2

The Draft HE Does Not Properly Account For The Impacts Of The State Density Bonus Law

Does the State Density Bonus Matter?

In the 2015 - 2023 Draft Housing Element, Section V: Goals, Policies, and Programs, page V-4, paragraph 1.l *Clarify applicability of State Density Bonus***,** it states that the County should *"evaluate the impacts of the State Density Bonus Law."*

The State Density Bonus Law provides for up to a *minimum of 35* percent additional units for a qualifying project. A qualifying project is defined as a project that provides at least 20 percent "affordable" units or a senior housing project (and some other specific situations). This bonus is commonly invoked automatically, and will often override local planning, parking, height,

setback and other zoning regulations, and typically cannot be denied except under very specific and extraordinary circumstances. It is the ultimate *loss of local control* and it was intentionally designed to be that way.

Statements by Ms. Thomas and Supervisor Katie Rice, in her newsletter, denying the mandatory nature of affordable housing units adopted under the Housing Element are misleading. In fact, the Draft HE Staff Report cites from the Development Code and contradicts both Ms. Thomas and Supervisor Rice. The Staff Report states, *"Additionally, affordable multi-family development will most likely qualify for* ***density bonus concessions*** *to development standards, as outlined in Section 22.24.030 of the Development Code."* (Emphasis added.) (P. III-15.)

The Density Bonus Law's requirements to waive local control are typically **mandatory**. A developer who meets the law's requirements for affordable or senior units is arguably entitled to the density bonus and other assistance as of right, regardless of what the locality wants, subject to limited health and safety exceptions. (Ibid.) Government Code Section 65915(e) states that ***"[i]n no case*** *may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section."* (Emphasis added.) Again, what this means is that such proposals are ***not*** required to conform to all local municipal codes or general plan guidelines.

In addition, Housing Element Law provides "builders' remedies" that prohibit County regulation of development. Government Code Section 65583(g)(1), adopted in SB 375, provides a builder's remedy whereby a County that does not comply with rezoning is potentially subject to liability and attorney's fees.

Will Developers Use the State Density Bonus Provisions?

Ms. Thomas is fond of pointing out that historically very few developers have employed the density bonus provisions. However, what has happened historically will have little bearing on what developers are likely to do going forward.

What she is omitting is that historically, we were not operating under SB 375 or SB628 (which now allows infrastructure financing district bond proceeds to go toward high density affordable housing – Transit Priority Projects), or SB 743 (which removes a variety of CEQA requirements for high density development) or Plan Bay Area with its emphasis on high density development. Nor have we historically had such an extreme public policy emphasis on creating affordable housing units or the County's commitment to require all new developments to comply with the 20 percent inclusionary rules (a minimum of 20 percent of the units must be affordable units).

Therefore, going forward, it's essentially guaranteed that every new multi-family project proposal will automatically qualify for the density bonus provisions. Additionally, Ms. Thomas is failing to consider that because land prices have recently risen dramatically, one of the surest ways for a developer to increase profits is to reduce the "land cost per unit." Being able to build more units per acre achieves that and increases profits proportionately.

This considered, the State Density Bonus Law provisions will likely have a dramatic impact on the number of units eventually developed on designated HE housing sites. **This could easily turn the 419 units on the Draft HE housing inventory site list into 566 units on those same sites (419 units + 35 percent = 566).** It's very important then for us to have a thorough understanding of what regulatory relief the State Density Bonus Law provides for developers and the implications that has for how we craft the Housing Element.

What Does the State Density Bonus Law Allow?

Attached is an analysis by the law firm of Kronick, Moskovitz, Tiedemann & Girard, entitled *Maximizing Density through Affordability: A Developer's Guide to the California Density Bonus Law*, by Jon E. Goetz and Tom Sakai. I recently shared this study with executives at ABAG, who were equally surprised at the information it contained.

This analysis describes the potential extent to which the State Density Bonus Law can be applied and to what effect. Its findings firmly contradict the homilies and calm assurances that have been offered by County planners, and Ms. Thomas and Supervisor Rice, in particular, at public hearings, in emails to constituent, and in the staff reports offered throughout the Draft HE process.

Consider the following comments found in this analysis:

> *"Savvy housing developers are taking advantage of California's Density Bonus Law, a mechanism which allows them to obtain more favorable local development requirements in exchange for offering to build affordable or senior units."*
>
> *"The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible… Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits."*
>
> *"This ability to force the locality to modify its normal development standards* (Emphasis added.) *is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus."*
>
> *"The density bonus provides one method for developers to improve the economics of their project while still complying with the inclusionary housing requirements."*

Most instructive is a section entitled, *How the Density Bonus Law Can Help in a Hostile Jurisdiction*, wherein it states the following:

> *"It is important to know that the density bonus is a state law requirement which is mandatory on cities and counties, even charter cities which are free from many other state requirements. A developer who meets the law's requirements for affordable or senior units is entitled to the density bonus and other assistance as of right, regardless of what the locality wants (subject to limited health and safety exceptions)* (Emphasis added.). *The density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items. Examples might include a reduction in parking standards if those standards are deemed excessive by the developer,*

> (emphasis added) *or other reductions in development standards if needed to achieve the total density permitted by the density bonus."*

It is important to note that under the Density Bonus Law, the concessions and reduction or elimination of local government codes and regulations **are often at the discretion of the developer, not the municipality**. Again quoting Goetz and Sakai:

> *"The density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items. Examples might include a reduction in parking standards if those standards are deemed excessive by the developer,* (Emphasis added.) *or other reductions in development standards if needed to achieve the total density permitted by the density bonus."*

Finally, comments already submitted to the Marin Planning Commission by the Sierra Club of Marin Group are worth repeating. They make it clear that the State Density Bonus Law typically prescribes a "minimum" requirement not a maximum. In their letter to the Marin County Planning Commission of October 22, 2014, by Michele Barni, the Sierra Club Marin Group, page one, paragraph A, they state:

> *"According to attorney Rachel Koss:"…."The density bonus law states that a density bonus of 35 percent may be awarded to affordable housing developers. Courts have allowed density bonuses above 35 percent. In Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal.App.4th 807, the court allowed a 40 percent density bonus. The plaintiffs objected to the density bonus, stating that the density bonus law provided a cap on density bonuses of 35 percent. The court disagreed. The court found that the 35 percent density increase was meant to ensure that local governments provided at least that amount when a developer chose to provide a certain number of affordable housing units. The court also found that the statute clearly did not place any caps on the allowable density bonus. The court held that the 35 percent density increase reflected 'the maximum density increase that would be statutorily imposed upon municipalities,' not the maximum permissible."*

Reducing local control and providing streamlined review for developers are the only real incentives established in California's housing element and density bonus law. This explains why the State Density Bonus, going forward, must be considered and planned for. However, at present the Draft HE fails to consider this impact.

Calculating the Impact of the State Density Bonus Law in the Draft HE

In their deliberations, the Planning Commissioners, with the exception of the Chairman, Don Dickerson, seemed unable to grasp the significance of the density bonus and were unable to plan for it. However, such pre-planning is not only a good idea, but it has been endorsed by ABAG as a prudent and reasonable thing to do.

As noted above, the proper calculation when applying the State Density Bonus to the 419 designated units results in a total of 566 units (+ 35 percent). Ms. Thomas's approach to dealing with, or I should say lack of dealing with the density bonus impacts, is clearly a bad idea. Her "historic" justification for not being concerned and her future prognostications are equally faulty.

The proper planning question before the Board of Supervisors is not whether to trust a planning staff member's guess about whether or not future developers will take advantage of the provisions of the State Density Bonus Law, but since the provisions exist, and given that 419 units have been designated in the Draft HE, how will the County legally deny the State Density Bonus to future developers if they choose to implement?

RECOMMENDATION:

- Examine the impacts of the State Density Bonus Law and provide a proper analysis of those potential impacts of increased unit counts/densities on the sites included in the Draft HE site inventory list, as well as the impacts on the environment, public health and safety, public services, schools, roads, parking, traffic, infrastructure, water resources, utilities, and neighborhood character.

COMMENT #3

Redefining "Units" As Partial Units Would Have Significant Unexamined Density Impacts And May Create Vertical And Horizontal Consistency Issues With Other Laws, Regulations And Practices.

In the 2015 - 2023 Draft Housing Element, Section V: Goals, Policies, and Programs, under "Implementing Programs," page V-2, paragraph 1.c, *Study Residential Density Equivalents***,** it directs the County to:

> *Evaluate options for calculating density through adjusted density equivalents based on bedrooms count or square footage rather than total number of units. Such an amendment to the Development Code would encourage development of smaller units, which corresponds to the demographic trend of increasing numbers of small households.*
>
> ***a.** Conduct an analysis to determine the feasibility of a density equivalent program. Identify appropriate density equivalent strategies for implementation and determine the fiscal impacts.*
>
> ***b.** Analyze how such a program might interact with inclusionary requirements, parking standards, and density bonuses.*

This proposes that a living "unit" no longer be defined as it is commonly used in all other legal documents, forms, taxation methods or other regulations. It presumes that a certain number of bedrooms or a certain amount of square footage would constitute a living unit for planning and zoning purposes.

However, while it might be possible to define a unit by bedroom count, it's patently absurd to suggest that a certain amount of square footage would make any sense to define a living unit. This may be the reason for the references in the record considering studio units as "half units" and one bedroom units as "2/3 units" (comments and discussion made in the July 28th Planning Staff Report - Item No. 5, Pages 9 and 10).

Calculating Impacts of Density Equivalents

For the sake of discussion, let's assume that the residential density equivalency method noted above was applied to the Draft Housing Element. First, such a change would require an examination of the legal implications with regard to other laws, codes, and regulations that also use the term "dwelling unit" or "living unit," but define it differently. Changing the definition in the Draft HE might cause significant horizontal and vertical inconsistencies that might be un-resolvable for administrators at other government agencies.

For example, if a studio becomes a "half" unit in the HE, how is this "unit" then consistent in a practical sense with the implementation of the Countywide Plan, the California Building Code, health and safety codes, fire codes, or County permitting regulations and fees, property taxes, tap fees, special assessment fees, and other such legal requirements that are dependent upon the definition of a living unit as being one residence? Would a studio pay half of these required fees? Could residents successfully argue for tax relief under such provisions? At a minimum the County needs to examine potential unintended consequences, carefully.

The second and more important consideration involves the implied impacts of such a change. Considering just the eight properties identified on the Draft HE site inventory list, without regard for the cumulative impacts that would result from this change in concert with the other proposed changes in the Draft HE (increased height limits, reduced parking requirements, etc.), there is no question that this change would represent an "up-zoning" of those parcels and dramatically increase the allowable density of housing developed there.

This potential increased density and its impacts must be analyzed in the Draft HE, but are not. Even without considering the requirements to do so under CEQA, as a matter of good public policy, the Board should set aside Planning Staff's recommendations until a proper study is conducted.

However, what is more troubling about this "density equivalency" concept is that it appears to be a cynical and disingenuous re-writing of language in an attempt to increase unit densities and increase developer profit incentives by circumventing the zoning code's parking requirements for multi-family developments. As noted in Comment #2, the County parking regulations are generally acknowledged to be one of the primary protections that communities have against unsustainable growth and unmitigated traffic and parking impacts.

This kind of regulatory sleight of hand is unacceptable. As Kevin Haroff, Larkspur City Council Member, former Larkspur Planning Commissioner, and CEQA attorney, recently noted at the Citizen Marin Forum in San Rafael, the County should not resort to legal "trickery" to address its planning responsibilities.

RECOMMENDATION:

- Eliminate any consideration of redefining living "units" or studying residential density equivalents.

COMMENT #4

The Proposals to Finance the Draft HE Programs Are Burdensome and Circumvent the Public's Right To Vote on Tax Increases

In Section V: Goals, Policies, and Programs, as recommended by the Planning Commission November 17, 2014 Page V-11, 3.m *Raise Funds from a Variety of Sources*, it states:

> *Maintain and monitor existing and seek additional streams of financing to add to or match Housing Trust funds. Work with community and elected leaders to identify potential revenue sources, considering the following:*
>
> *In-lieu fee payments under inclusionary requirements (residential and non-residential developments).*
> - *Transient Occupancy Tax increase.*
> - *Affordable Housing Impact Fee on single-family homes.*
> - *Document Transfer Fee.*
> - *Transfer Tax increase.*

These recommendations have not been adequately discussed at Draft HE hearings, but they are of great importance to your constituents. People are generally becoming tired of local government agencies endlessly increasing fees and adding new fees for every conceivable reason, while government expenditures for essential services are becoming an increasingly smaller proportion of overall expenses. This kind of "a la carte" government finance is beginning to look more and more like tax increases in disguise.

The worst of the Draft HE's financing proposals is to charge single family homeowners "affordable housing impact fees." Considering that there is nothing a single family homeowner can do to mitigate the need for affordable housing (i.e., existing zoning prohibits that), the County needs to explain to the public how this "fee" is not a tax and this proposal is not just a "legal" way to undermine resident's right to vote on tax increases.

RECOMMENDATION:

- Direct Planning Staff to question the need for these proposed fees, examine the full extent of their impacts, and reconsider their fundamental fairness.

COMMENT #5

The Proposed Revisions To The County Parking Standards Are Unrealistic And Based On Prejudicial Beliefs About Low Income Residents

Section 1.g, *Review and Consider Updating Parking Standards*, directs County staff to:

> *Analyze the parking needs of infill, transit-oriented, mixed-use, special needs, group homes, convalescent homes, multifamily, senior, and affordable housing developments. In order to facilitate*

these housing types and to reduce vehicle dependence, amend Marin County Code Title 24 to reduce parking standards wherever appropriate. Possible amendments could include but are not limited to:

- *Reduction of onsite vehicular ratios for multi-family housing;*
- *Allowance of tandem parking and other flexible solutions, such as parking lifts;*
- *Allowance of off-site parking, such as on-street parking and use of public parking, to satisfy a portion of the parking needs for new housing units, particularly affordable units;*
- *Establishment of parking standards for mixed-use developments such as shared parking.*

Although there may be some rationale for allowing fewer permanent parking spaces at convalescent homes and assisted living facilities, there is no evidence whatsoever that any of the other types of housing noted would warrant this accommodation. The entire premise that people who reside in "transit oriented, mixed use, multifamily affordable housing" are somehow less dependent upon owning cars or light trucks, in Marin, is unsupported by any facts or credible studies. This "belief" on the part of planners and housing advocates is an example of wishful thinking trumping provable data. Even a cursory examination of vehicular use would come to the opposite conclusion. Worse, it is based on a highly prejudicial view of low income people as a "class," while ignoring their needs as individuals with the same hopes, dreams and ambitions as anyone else.

If you go to a low income, multi-family area in Marin, such as the Canal District, what you find are streets that are overflowing with cars and light trucks parked everywhere: along the curbs, in alleys, and blocking driveways. The reason for this is that although low income families may be somewhat less dependent on personal autos simply because they can't afford to own them, they are much more dependent on light trucks and work vehicles. Most low income individuals are trying to work their way up the economic ladder by running small service businesses, which require work vehicles. This is true for most of the entry level, sole proprietor business opportunities available to them, such as carpentry, gardening, masonry, roofing, trash hauling, house cleaning, and other types of small contractor and service jobs. Their work vehicles are their lifeline to economic survival.

Academic planners, and apparently the Marin County Community Development Agency, have a parochial view of "poor people" and the "workforce" that envisions all of them working at McDonalds or as lowly office workers who are content to commute from small cubicle apartments with no storage spaces and no parking spaces (i.e., they don't own any tools or store any supplies), to small cubicle desk jobs in faceless corporations. It's just nonsense and it's not what people want, how our economy works, or how jobs are created.

Finally, as noted above, parking requirement variances are already well covered by the PD zoning approval process and the State Density Bonus Law. And as noted in COMMENT #1**, the Housing Element is *not* intended to be the place to micro-manage every single aspect of development for specific parcels of land.**

RECOMMENDATION:

- Eliminate any consideration of revising the County parking standards.

COMMENT #6

The Draft HE Proposal to Streamline Permit Review and Ministerial "Over-the-Counter" Review Is Bad Public Policy

The Draft HE promotes streamlined permit review and ministerial project review. Such streamlined and "over-the-counter" review greatly hinders thorough and accurate review of project impacts, significantly constrains public input on planning decisions, and reduces government transparency. Sound planning decisions require enhanced public input, not less.

Lack of transparency has been one of the major causes of a number of planning disasters and scandals in Marin in recent years. Evidence gathered from a Public Records Act request about the Win Cup development approval process clearly shows that elected officials relied too heavily on the unquestioned and unsupervised recommendations of planning staff and developer representatives, without adequate public review. In the City of Mill Valley, there is currently a public scandal that caused the resignation of the City's Planning Director, resulting in construction of homes and business development without proper permits or approvals, all resulting from the same kind of ministerial review proposed in the Draft HE.

RECOMMENDATION:

- Eliminate any consideration of ministerial review of housing development projects.

COMMENT #7

The Draft HE And The Amendment To The SEIR Fail To Consider The Cumulative Impacts Of The Housing Element Provisions

It is indisputable that legislation and government policies impact property values and how profit motivated developers respond to those regulations and policies. All professional real estate investment relies on this fact. The relationship between markets and government regulations and zoning, or the lack thereof, is also inseparable and fundamental to all regulatory incentive programs. However, historically, the unintended consequences of government actions often out number the intended outcomes.

As noted above, we are now operating under the regulations and goals of SB 375, SB 628, SB 743, Plan Bay Area, and other complimentary legislation and financial incentives. The outcomes of the policies and proposals found in the Draft HE will not be immune to this.

The Draft HE Staff Report, the Draft HE, and the Amendment to the SEIR fail to acknowledge or fully consider the cumulative impacts of all the proposals contained in the Draft HE.

To summarize:

- The State Density Bonus Law allows a *minimum* 35 percent increase in unit density for any qualifying project;

- The Draft HE requires that a minimum of 20 percent of the units be affordable so *every* new project will arguably qualify for the Density Bonus;
- The stated purpose of the residential density equivalent policy is to *"encourage development of smaller units, which corresponds to the demographic trend of increasing numbers of small households."*
- The increase in the height limits to 45 feet and the reduction of parking requirements for affordable, multi family units are both intended to encourage developers to build more units at greater densities by making those projects more financially feasible.

It is only reasonable then to assume that markets and the development proposals that come forth in the future will respond to these policies. To demonstrate what the proposals of the Draft HE could legally produce, which are not analyzed in the HE or the SEIR Amendment, consider the following calculations.

Calculating the Impacts of the Draft HE Proposals on Allowable Unit Counts

As it stands, the Housing Element site inventory list designates parcels for 419 units. If we add to that the consequences of the State Density Bonus Law, it increases that number to 566 units (419 + 35 percent = 566) allowed. Any astute developer purchasing property will be aware of this.

If the definition of a studio equals a "half unit" and a one bedroom a 2/3 unit (as proposed), then the market will produce those units to earn the financial benefits. This is because land is a fixed cost (and one of the very high, often prohibitive costs in Marin), which is divided into the number of allowed units. So the more units you can build per acre, the lower the "land cost per unit" for the developer. A reduced "per unit land cost" goes right to the bottom line, assuming sale's price per square foot, and construction per square foot and permit costs are fixed (which they are not because economies of scale make it cheaper per unit the more units you build). Add to that the proposed increases in height limits and the proposed reduction of parking requirements and development becomes that much more feasible and profitable.

For example, if half of the units in a proposed development are studios (20 normal studio units = 40 studios as half units) and half of them are one bedrooms (10 normal one bedroom units = 15 2/3rds units), then the developer can build a total of 55 units on a 30 unit per acre site, instead of just 30. That represents an 83 percent increase in density (+25 units = 83 percent more units than 30). If the land cost is $4 million, the land cost per unit just went from $133,333 per unit to $72,272 per unit. That's a difference of $3,358,355 in extra profit compared to how developers can buy land and build today, without this new regulatory relief provision. That is all profit (this analysis assumes the inclusionary units count toward the Density Bonus calculation, an issue that is presently under legal review, but which we are advised will likely be the case in the future).

Development Responds to Government Regulations

It's undeniable that developers will build what is most profitable. And studios and one bedrooms are demographically (old and young people) in very high demand. Given the argument that studios and one bedrooms are de facto the most "affordable" kind of housing, whether rental or for sale, and that the stated purpose of the density equivalency provisions in the Draft HE is to

"*encourage development of smaller units, which corresponds to the demographic trend of increasing numbers of small households,"* it is highly likely that **the cumulative impacts of all the provisions recommended by County staff, in the Draft HE could result in the development of a total of 1,038 units of high density, multi-family housing (566 units + 83 percent = 1,038 units).**

From the perspective of responsible government and prudent planning practice, the issue before the Board of Supervisors is not whether one *believes* that developers will do this, it is that if the Draft HE proposals are approved, there will be *few ways to legally stop* a qualifying developer from demanding the ability to do this.

It's puzzling why Planning Staff has not informed the Planning Commission or the Board of Supervisors of the full implications of the Draft HE proposals. It is inconceivable that such educated and highly compensated County employees could be ignorant of the legal and practical implications noted in this letter. Why then are the calculations of potential impacts presented in this letter not noted in the Draft HE and not evaluated in the Amendment to the SEIR?

RECOMMENDATION:

- Adopting the Housing Element, a component of the General Plan, is legislation. That responsibility is not to be taken lightly or based on casual observations of County planning staff. The Board of Supervisors should instruct County planners to properly evaluate the cumulative impacts of the proposals in the Draft HE, and their nonconformance with the Countywide Plan, and revise the Draft HE accordingly. For the reasons noted here and other legal requirements under CEQA, the Draft HE in its current form is not certifiable and therefore requires that the County withdraw the Draft HE and the Amendment to the SEIR and instruct the County planners to rewrite the Draft HE and develop a new Supplemental EIR for public circulation and comment.

COMMENT #8

Public Process

In reviewing the comment letters that have been submitted by the general public since July of this year, it is important to note that the vast majority of them are against the proposals contained in the Draft HE. In addition, the letters of support are predominately from individuals or organizations that stand to gain financially or politically from its approval. Yet in the face of this, County planning staff and the Board of Supervisors continue to frame the discussion in terms of a false equivalency, saying that there are opinions on both sides of the issues.

It is beyond question that every reputable community group in Marin is opposed to the provisions of the Draft HE in its present form. In light of this, one would think that if the County were seriously concerned about a transparent representative process, they would have made sure to allow constituents to have their say in a public hearing with their elected representatives.

In our letter of August 12, 2014, we recommended that the Draft HE not be sent to the State Department of Housing and Community Development (HCD) until the Board of Supervisors had a chance to review it, hear public testimony, and comment on it in an open public hearing. This was recommended because the staff at HCD has a history of intimidating local officials, pushing the limits of their authority, and not allowing significant changes to the submitted draft after they've reviewed it and commented on it.

Our recommendation was ignored.

Because of this, the Board of Supervisors now finds themselves in the unenviable position of having to argue with HCD in order to reduce the total number of designated housing sites to a more reasonable number. It is also predictable that County planning staff will now use this as an excuse for not being able to change the Draft HE significantly.

That argument by planning staff is simply false. The rush to submit the initial draft to HCD was unwarranted. There was ample time for the Board of Supervisors to meet, listen to community comments, and make changes. Instead, we now find ourselves dealing with a poorly written Draft HE that was created by staff and unelected commissioners without any significant input from our elected representatives.

RECOMMENDATION:

- For the reasons noted above, the Draft HE should not and cannot be adopted by the Board of Supervisors and would, at a minimum need to be rewritten, corrected, and include the additional data, evidence, and analysis required.

CLOSING COMMENT

Community Venture Partners, Inc. is committed to addressing the need for a robust "bottom up" process that incorporates underserved community voices into planning, development and affordable housing decision making by local, regional, and state governments. It is toward that end that we are compelled to submit our comments.

We ask that the Board of Supervisors please keep in mind that we live in a country governed by the rule of law, not by the wishes of unelected regional bureaucracies or the fashions of social engineering ideologies, no matter how seductive they may be.

As is our charge, we are asking the Board of Supervisors and Marin County to respect those laws and regulatory procedures to their utmost ability and above all else. And we believe if you do that, you will conclude that our position and comments, and those of our legal counsel, Edward Yates, are both reasonable and equitable for all concerned.

Based on the record of public comment, we do not believe that the Draft He is indicative of the direction that the majority of Marin County residents wish to go. The County would be in full legal compliance if it designated 185 sites without any of the extra provisions now proposed. **We**

therefore ask that the Draft HE be revised and the Amendment to the SEIR be set aside and replaced by a new Supplemental EIR, as is required under CEQA.

Respectfully submitted,

Bob Silvestri
President
Community Venture Partners, Inc.