

**SUSTAINABLE TAMALMONTE
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December 1, 2014

Marin County Board of Supervisors
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903
Re: 2015 to 2023 DRAFT Marin County Housing Element Policies and Programs

Dear Marin County Board of Supervisors,

Enclosed are two letters from the Sierra Club Marin Group to you:

- The first letter is dated November 25, 2014 and pertains to the 2015 to 2023 DRAFT Marin County Housing Element's policies and programs.
- The second letter is dated November 26, 2014 and pertains to the effects of the State Density Bonus law on the 2007 Marin Countywide Plan CAPs and the 2015 to 2023 DRAFT Marin County Housing Element sites and programs.

We fully endorse these letters and urge you to follow the Sierra Club Marin Group's recommendations.

In addition, we are opposed to the Housing Element Program "Affordable Housing Combining District" AKA the "AH Zone", which is not discussed in the Sierra Club letters. This program allows for clustering of housing units at 30 units per acre on every single land use designation in the County, except for those related to agricultural use. We are especially opposed to the use of the "AH Zone" in single-family neighborhoods. Such a dramatic increase in density is totally incompatible with the character of most Marin County neighborhoods and could adversely impact neighbor's views, sunlight, and privacy. Such increased density would also escalate the risk of environmental adverse impacts on the viability of nearby habitats, species living within the habitat, and corresponding transition zones.

Recommendation:
Eliminate the "Affordable Housing Combining District".

Thank you for your conscientious consideration.

Very truly yours,

/s/

Sharon Rushton
Chairperson

Sustainable TamAlmonte

Enclosures



Sierra Club Marin Group
P.O. Box 3058, San Rafael, CA 94912
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November 25, 2014

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

Re: 2015 to 2023 DRAFT Marin County Housing Element Policies and Programs

Dear Marin County Board of Supervisors,

We have the following comments and recommendations regarding the 2015 to 2023 DRAFT Marin County Housing Element Policies and Programs:

I. POLICIES AND PROGRAMS THAT PROMOTE STREAMLINED PERMIT REVIEW AND MINISTERIAL REVIEW

A number of the Housing Element policies and programs promote streamlined permit review and ministerial review. These include:

- **Policy 1.3 Promote Development Certainty and Minimize Discretionary Review for Affordable and Special Needs Housing Through Amendments to the Development Code;**
- **Program 1.e Study Ministerial Review for Affordable Housing;**
- **Program 1.j Simplify Review of Residential Development Projects in Planned Districts – “Consider amendments that would allow Master Plans to establish site specific criteria for ministerial review of subsequent development projects”; and**
- **Program 2.p. Expedite Permit Processing of Affordable and Special Needs Housing Projects.**

We support establishing specific criteria in order to minimize the level of code interpretation required by decision makers. We also support expediting the permit review process of a minor repair or minor remodel (E.g. Replacement of a door or deck). However, we are opposed to any streamlining or expediting of the permit review process or any ministerial review process when a major remodel, new additional square footage, or a new development is proposed. Streamlining permit review and ministerial review would hinder thorough and accurate review, constrain public input on planning decisions and reduce transparency.

Regarding ministerial review of development projects subject to a Master Plan, many factors may change in the years following the establishment of a Master Plan, such that site specific criteria set by a Master Plan may no longer be appropriate once a subsequent project applies for a permit. For instance, it is now known that sea level rise will come sooner and higher than previously known at the time that the Marin Countywide Plan was adopted. Therefore, development projects that are subsequent to

Master Plans should be thoroughly reviewed and publicly vetted and not allowed permits through ministerial review.

Careful and thorough review is necessary to ensure protection of Marin’s environment and public health & safety. For best planning decisions, ample input from the public should be encouraged, rather than denied.

RECOMMENDATIONS:

- Establish specific criteria of affordable housing, special needs housing projects, and residential development projects in planned districts in order to minimize the level of code interpretation required by decision makers.
- Eliminate Housing Element programs and provisions that allow streamlined permit processing or ministerial review for major remodels, new additional square footage, or new developments of affordable housing, special needs housing projects, and residential development projects in planned districts.

II. PROGRAM 1.k - ADJUST HEIGHT LIMITS FOR MULTI-FAMILY RESIDENTIAL BUILDINGS

“Consider amending the Development Code to increase the allowable height for multi-family residential development. Consider allowing increases to height limits depending on certain side yard setbacks.”

A. Current Height Limits in Unincorporated Marin

The height limits of Multi-family residential buildings, as stated in the Marin County Development Code, are currently limited to 25 feet in the Coastal Zone and 30 or 35 feet in the interior, except on protected ridgelines, where they are 18 feet. Some community plans restrict height limits further. For instance, the Tamalpais Area Community Plan limits height to 15 feet on the East Side of Shoreline Hwy. Unincorporated Marin’s Development Code may allow single-family residences to reach a height of 45 feet, when they meet minimum 15-foot side yard setbacks. However, this height is rare. Please see the below excerpt from the Housing Element.

Excerpt from the 2015 to 2023 Marin County Housing Element, Page III-15:

“Height Limits:

Conventional Zoning Districts: 25 feet in the Coastal Zone and 35 feet in the interior. Single-family residences may reach a height of 45 feet when they meet minimum 15 - foot side yard setbacks.

Planned Zoning Districts: 25 feet in the Coastal Zone and 30 feet in the interior, except on protected ridgelines, where they are 18 feet.”

B. Intent of Program 1.k - Adjust Height Limits for Multi-family Residential Buildings

Excerpts, quoted below, from the 2015 to 2023 Housing Element demonstrate the intent of **Program 1.k - Adjust Height Limits for Multi-family Residential Buildings.**

Excerpt from the 2015 to 2023 Marin County Housing Element Page III-16:

“To ensure that the County’s development standards do not have the prohibitive effects on the development potential or cost of affordable multi-family development, a number of programs in this housing element remove possible barriers: ...”

- “**1.k Adjust Height Limits for Multi-family Residential Buildings** would allow increased height limits for multi-family development.”

Excerpts from 2015 to 2023 Marin County Housing Element, Page III – 15:

“Height limits in conventional districts may be exceeded through variance approval (22.20.060.F.1) and height standards are flexible. The fact that multi-family residences cannot reach **45 feet** when they meet certain side yard setbacks constrains their design. Subsequent code amendments may allow multi-family development to reach similar height limits as single-family residences that meet 15-foot side yard setbacks. (See program **1.k Adjust Height limits for Multi-family Residential Buildings**). The County’s Multi-family Residential Design Guidelines adopted in 2013 provide further guidance for height and design of multi-family development.”

“The lower density permitted in many zoning districts may pose a constraint to multi-family housing. Programs in this element are intended to address this, (See programs *1.c Establish an Affordable Housing Combining District*, *1.j Simplify Review of Residential Development Projects in Planned Districts*, and **1.k Adjust Height Limits for Multi-family Residential Buildings**).”

Therefore, **Program 1.k Adjust Height Limits for Multi-family Residential Buildings** is intended to:

- 1) Allow Multi-family Residential Buildings to reach 45 feet; and
- 2) Allow an increase in density for Multi-family residential buildings.

C. Consequences of Program 1.k Adjust Height Limits for Multi-family Residential Buildings

Raising heights of Multi-family residential buildings by 10 to 20 feet (and 30 feet in some incidences) across hundreds of acres of Multi-family zoning and Commercial/Mixed-Use zoning, where Multi-family residential buildings are allowed, could lead to a drastic change in the architectural landscape of Marin County and other serious consequences. Smaller height increases of Multi-family residential buildings could also have significant adverse consequences.

Benefits of Height Restrictions

Existing height restrictions were created to protect neighbors’ views, sunlight, and privacy. Height limits help set and retain the character of a neighborhood. Height limits constrain the floor-area-ratio (FAR) and the density of a development and the corresponding population growth. Thereby, height limits help reduce a development’s potential adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (E.g. water supply) and public services. More specifically, height limits help to reduce the potential adverse impacts of development and human impacts on adjacent/nearby natural habitats and wildlife and corresponding transition zones.

Height Limits Constrain FAR, Density, and Subsequent Population Growth

Height limits constrain the effects of a development's floor-area ratio (FAR) and density. Without such height constraint, it is easier for a development to reach the maximum allowable FAR and density. Such maximums are made even greater with the below listed incentives for affordable housing projects.

The incentives for affordable housing listed in Chapter 22.24 of the Marin County Development Code include:

- Allowing the density of affordable housing projects to be established by the maximum Marin Countywide Plan density range, which in the Residential, Multiple Planned (RMP) district is 45 units per acre, subject to limitations in the Countywide Plan;
- Density Bonuses, which can increase density up to 35%; and
- Allowing commercial/mixed-use land use designations to exceed the floor-area ratio (FAR) for income-restricted units that are affordable to very low, low, or moderate-income persons, subject to limitations in the Countywide Plan.

Greater height limits coupled with incentives that increase density and FAR is a recipe for much bulkier buildings. The development standards of 45 feet high (potential new height limit) and 45 units per acre (maximum density of the RMP district) are similar to the highly criticized development standards of the Tamal Vista Apartments at the prior WinCup site, which is 48 feet high with a density of 45 units per acre.

Increased density and FAR and the subsequent rise in population would increase the risk of adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (E.g. water supply) and public services. Moreover, greater height and building size are incompatible with the suburban, semi-rural and rural character of Marin County neighborhoods.

Height Limits Help Reduce the Impact of Development and Human Impacts on Adjacent/Nearby Natural Habitats and Wildlife and Corresponding Transition Zones

Multi-family residential buildings located next to/nearby natural habitats and the subsequent human activity affecting the natural habitat are often detrimental to the size of the habitat, the species living within the habitat, and the corresponding transition zones. The greater the height and size of the multi-family residential building and the greater the number of people residing in the building – the greater the potential adverse impacts on the adjacent/nearby habitat and species and corresponding transition zones.

Examples of development and human adverse impacts include:

- Introduction of invasives / exotics;
- Reduced biodiversity due to changed shadow patterns and loss of habitat;
- Increased avian mortality due to reflective and solid materials being at a higher elevation in their flight path, resulting in a potential “take”, as defined by the Endangered Species Act, of listed species (**Please see below for more detail.);
- Hindered migratory bird flight paths;
- Higher severity and frequency of fires;
- Companion animals (pets) acting as predators and competitors;

- Trails;
- Reduced permeable surfaces and increased run off;
- Loss of ground water infiltration;
- Loss of year round stream flows for listed sensitive species;
- Loss of watershed/hydrologic integrity, including loss of sediment deposition, geomorphic evolution, and buffers to sea level rise;
- Increased flooding;
- Pollution (light, air, and water pollution) - The likelihood of a “take”, as defined by the Endangered Species Act, of listed species from light pollution, resulting from increased building heights, would be a certainty. (**Please see below for more detail.);
- Erosion; and
- Loss of foraging habitats.

****More Detailed Discussion of Adverse Environmental Impacts on Habitat, Species, and Transition Zones from Development and Human Activity:**

Increased Avian Mortality

According to the Golden Gate Audubon Society, “Approximately 100 million to 1 billion birds die in North America as a result of collisions each year. (American Bird Conservancy, 2010)”... “It appears that windows are the biggest source of avian mortality resulting from collisions. Birds collide with window glass because they often cannot detect the glass either because the glass is too transparent or reflective of the sky and clouds. Birds are often also attracted to light sources and plants inside buildings and collide with windows as they approach the attractants.”¹

“When combined with other impacts, such as habitat loss, unnaturally high predation from feral cats and other predators, collision risks contribute to the overall decline of many bird populations in North America.”² (US Fish & Wildlife Service, 2005)

“The killing of migratory birds is a violation of the Migratory Bird Treaty Act and constitutes a significant and ongoing threat to night-migrating bird species.”³ (US Fish & Wildlife, 2002)

Environmental Light Pollution

“Ecologists have long studied the critical role of natural light in regulating species interactions, but, with limited exceptions, have not investigated the consequences of artificial night lighting. In the past century, the extent and intensity of artificial night lighting has increased such that it has substantial effects on the biology and ecology of species in the wild. We distinguish “astronomical light pollution”, which obscures the view

¹ Golden Gate Audubon Society. *Birds and Collisions*. Retrieved September 19, 2014 from <http://goldengateaudubon.org/conservation/make-the-city-safe-for-wildlife/birds-and-collisions/>

² Golden Gate Audubon Society. *Birds and Collisions*. Retrieved September 19, 2014 from <http://goldengateaudubon.org/conservation/make-the-city-safe-for-wildlife/birds-and-collisions/>

³ Golden Gate Audubon Society. *Birds and Collisions*. Retrieved September 19, 2014 from <http://goldengateaudubon.org/conservation/make-the-city-safe-for-wildlife/birds-and-collisions/>

of the night sky, from “ecological light pollution”, which alters natural light regimes in terrestrial and aquatic ecosystems. Some of the catastrophic consequences of light for certain taxonomic groups are well known, such as the deaths of migratory birds around tall lighted structures, and those of hatchling sea turtles disoriented by lights on their natal beaches,” and excessive predation of endangered salmonids and other aquatic, avian and terrestrial species from nighttime exposure. “The more subtle influences of artificial night lighting on the behavior and community ecology of species are less well recognized, and constitute a new focus for research in ecology and a pressing conservation challenge.”⁴

Environmental light pollution includes chronic or periodically increased illumination, unexpected changes in illumination, and direct glare. Animals can experience increased orientation or disorientation from additional illumination and are attracted to or repulsed by glare, which affects foraging, reproduction, communication, and other critical behaviors, making them more vulnerable to predation. Moreover, artificial light disrupts interspecific interactions evolved in natural patterns of light and dark, with serious implications for community ecology.

Conclusion

Therefore, increasing height limits of multi-family residential buildings could adversely impact views, sunlight, privacy, and neighborhood character.

Moreover, increasing height limits could augment a development’s potential FAR and density and subsequent population growth, and thereby increase the risk of adverse impacts on the environment, public health and safety, traffic congestion, infrastructure, utilities (E.g. water supply) and public services.

Lastly, increasing height limits of multi-family residential buildings would increase the risk of environmental adverse impacts on the size of nearby habitats, species living within the habitat, and corresponding transition zones.

Rather than adjusting and increasing height limits, the existing height limits for multi-family residential buildings should be maintained and enforced.

RECOMMENDATION:

- Eliminate Program 1.k and do NOT adjust height limits for multi-family residential buildings; and
- Do NOT amend the Development Code to increase the allowable height for multi-family residential buildings.

⁴ Longcore, Travis and Rich, Catherine. (2004). Ecological Light Pollution. *The Ecological Society of America*. Retrieved on September 19, 2014 from <http://www.urbanwildlands.org/Resources/LongcoreRich2004.pdf>

III. NEW PROGRAM 1.c – STUDY RESIDENTIAL DENSITY EQUIVALENTS

“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.”

Calculating studios and one-bedroom units as fractions of units would essentially up-zone parcels zoned for multifamily units by allowing more units per acre than currently allowed. This would increase the potential intensity of development and population growth. Increased development intensity and population would increase the risk of adverse impacts on the **environment, public health and safety, traffic congestion, infrastructure, utilities (water supply) and public services. Greater densification and intensity of development would also not be congruous with the character of Marin County’s suburban, semi-rural, and rural neighborhoods.

**For more details regarding the potential adverse impacts of increased development and population on the environment, please review the list of “Examples of development and human adverse impacts” on Page 4 of this document.

Moreover, multigenerational living is a trend that is increasing. It has historically provided the social safety net and cultural survival model of low-income families, including senior support systems. Therefore, future housing for families should not focus on creating small units but rather should give precedence to larger units that allow multigenerational living to thrive.

RECOMMENDATION:

Eliminate the **Program 1.c “Study Residential Density Equivalents”** from the Housing Element programs.

IV. POLICIES AND PROGRAMS THAT REDUCE PARKING REQUIREMENTS

A number of Housing Element programs reduce parking requirements. These include:

- **Program 1.f Undertake Adjustments to Second Unit Development Standards - c. Development standards to allow flexibility of second unit parking requirements;**
- **Program 1.g Review and Update Parking Standards - “Analyze the parking needs of infill, transit- oriented, mixed-use, special needs, group homes, convalescent homes, multi-family, 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; and
- Establishment of parking standards for mixed-use developments such as shared parking”;
- **1.h Codify Affordable Housing Incentives Identified in the Community Development Element – b. Adjust parking requirements for senior and affordable housing using criteria established in the URBEMIS model to encourage transit-oriented development.**

Rather than reduce parking standards, parking standards should be maintained and enforced.

Although North and South commuter bus routes that lead to and from the San Francisco financial district are frequently utilized, Marin County’s public transit, in general, is severely lacking and inconvenient. As a result, most residents need the use of cars on a daily basis and the use of easy access parking spaces. A reduction in parking spaces does not stop residents from using cars. It simply forces residents to park on crowded streets or in parking areas that are meant for other purposes.

Many streets throughout Marin are narrow with little or no room for off-street parking. In times of emergency ingress and egress, this is a safety issue. There have been instances when emergency vehicles have not had room to pass by parked cars on narrow streets.

There is often a shortage of parking spaces at Marin County park and ride locations. Retail stores need ample parking to ensure patronage. Public parking is needed for the public and should not be relied on for regular private usage.

RECOMMENDATION:

- Do not reduce but rather maintain on-site vehicular ratios for multi-family housing.
- Do not allow off site parking, such as on-street parking and the use of public parking, to satisfy the parking needs for new housing units.

Eliminate **Program 1.f – c.** and **Program 1.g** and **Program 1.h – b.**

Sincerely,

/s/ Michele Barni

Michele Barni, Chair
Sierra Club Marin Group



Sierra Club Marin Group
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November 26, 2014

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

Re: 2015 to 2023 DRAFT Marin County Housing Element, CWP CAPs, and the State Density Bonus Law

Dear Marin County Board of Supervisors,

We have the following comments and recommendations regarding the 2015 to 2023 DRAFT Marin County Housing Element:

I. THE EFFECT OF THE STATE DENSITY BONUS LAW ON THE 2007 MARIN COUNTYWIDE PLAN CAPS AND HOUSING ELEMENT SITES & PROGRAMS

The State Density Bonus law in relationship to the Marin Countywide Plan's CAPs and Housing Element Sites and Programs has strong implications for the following sites, which have CAPs and are also included in the Housing Element Site Inventory and/or are impacted by Program 1.1 – "Clarify Applicability of State Density Bonus":

- St. Vincent's/ Silveira (CAP)
- Marinwood Plaza – 100 Marinwood Ave. (Housing Overlay Designation CAP)
- California Park – Woodland Ave. at Auburn St. (HOD CAP)
- Oak Manor – 2400 Sir Francis Drake Blvd. (HOD CAP)

The following information will demonstrate:

- A. How powerful the State Density Bonus Law is in superseding County laws and in significantly increasing housing density;
- B. How easy it is for a developer to qualify for a State Density Bonus;
- C. The importance of the Marin Countywide Plan CAPs;
- D. The Marin Countywide Plan CAPs are inconsistent with the State Density Bonus Law; and
- E. The best solutions for maintaining the integrity of the Marin Countywide Plan CAPs.

A. How Powerful the State Density Bonus Law is in Superseding County laws and in Significantly Increasing Housing Density:

According to Attorney Rachael Koss; "California's density bonus law allows developers whose housing development proposals meet certain thresholds of affordability to receive density bonuses, incentives and development waivers from the local agency... The density bonus law provides that requests for a density bonus and incentives must be granted 'when an applicant for a housing development seeks and agrees to construct a

housing development' that meets one or more of the statute's thresholds. Although an agency may eventually deny a request for an incentive if certain limited findings are made, **the law does not identify any findings that would allow an agency to deny a density bonus request.**

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.

Here, it is unquestionable that affordable housing developers would seek density bonuses from the County when density bonuses are mandated upon request (if certain thresholds are met).⁵

B. How Easy It Is For A Developer To Qualify For A Density Bonus:

According to the law firm Hanson Bridgett, in the recent case of *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (2013), the Court of Appeals overturned a portion of Napa's local density bonus ordinance. The ruling held that cities and counties must count *"Inclusionary Housing Units"* towards satisfying density bonus standards set forth in State law.⁶ County Planner Leelee Thomas described this lawsuit at the August 25th Planning Commission public hearing.

"Inclusionary Housing Units", under state law, are a percentage of units in market rate rentals or condos that are required to be "affordable," as defined by cities and counties.

Marin County's Inclusionary Regulation requires 20% of the total number of dwelling units to be developed as affordable housing. As illustrated by Table 3-5a (below), counting Inclusionary Units towards Density Bonus standards makes it very simple for a development proposal to qualify for a Density Bonus.

⁵ Koss, Rachael. (February 2013). *Comment Letter re: the 2007 to 2014 DRAFT Marin County Housing Element's DRAFT Supplemental EIR*.

⁶ Gladston, Brett. (September 11, 2013). *Recent Court of Appeals Case May Give San Francisco Developers More Apartment Units Per Lot If Otherwise A Development is Not Feasible*. Retrieved September 19, 2014, from <http://www.hansonbridgett.com/Publications/articles/2013-09-land-use-more-envelope-per-lot.aspx>

**TABLE 3-5a
DENSITY BONUS CALCULATION**

Income Category	% Affordable Units*	Bonus Granted	Additional Bonus for Each 1% Increase in Affordable Units*	% Affordable Units Required for Maximum 35% Bonus*
Very low income	5%	20%	2.5%	11%
Low income	10%	20%	1.5%	20%
Moderate income (for-sale common interest development only)	10%	5%	1%	40%
Senior citizen housing development	--	20%	--	--

C. The Importance of the 2007 Marin Countywide Plan CAPs:

A very important control in the 2007 Marin Countywide Plan (CWP) on buildout, and corresponding adverse environmental impacts, is dwelling unit CAPs in particular areas. According to the CWP, these CAPs are inclusive of any applicable density bonus units.

The Countywide Plan CAP in the Tamalpais Area Community Plan area demonstrates how important the CWP CAPs are. Due to multiple environmental constraints and hazards in the area (E.g. Traffic Congestion – LOS “F”; frequent flooding (100 year floodplain); sea level rise; high seismic activity; high liquefaction, subsidence & mud displacement; unsafe toxic air contaminants, etc.), the CWP restricts the development of dwelling units in Commercial/Mixed Use Land Use Designations of the Tamalpais Area Community Plan area to no more than 100 additional dwelling units over the number of dwelling units existing in 2007. Without this CAP, the number of dwelling units in these Commercial/Mixed Use Designations could rise up to approximately 1200 more units. The reduction of the potential buildout by approximately 1100 less dwelling units significantly lowered the risk of adverse impacts resulting from development.

The St. Vincent’s / Silveira Site has a CAP of no more than 221 units, including Density Bonus Units. In addition, all the parcels included in the Housing Overlay Designation (HOD) have an overall CAP of 658 units, including Density Bonus Units. Moreover, clusters of sites within the same Traffic Impact Area of the HOD have individual CAPs (see Figure 3-3 on page 4), each including Density Bonus Units. (Although the NEW 2015 to 2023 Housing Element Program 1.I –“Clarify Applicability of State Density Bonus” could change this.)

D. The Marin Countywide Plan CAPs are Inconsistent with the State Density Bonus Law:

Brian Crawford has mentioned a number of times that the Marin Countywide Plan CAPs are not consistent with the State Density Bonus law and that, if a developer sued the County for State Density Bonus units that exceed a CAP, then the developer would probably prevail. Moreover, at the August 25th Planning Commission hearing, Brian

stated that HCD expects State Density Bonus units to be allowed over and above the number of units designated to a site in the Housing Element Site Inventory.

E. Best Solutions For Maintaining the Integrity of the Marin Countywide Plan CAPs:

Figure 3-3 HOD Unit Allocations by Traffic Impact Areas

Traffic Impact Areas as Determined by Screenlines and HOD Site Criteria (See Map 3-2c)	HOD Unit Potential for Traffic Impact Areas (Including Density Bonus Units)	Suggested Qualifying Sites Within Traffic Impact Areas
Screenline 7:	Up to 110	<ul style="list-style-type: none"> ◆ Marinwood Shopping Center (50 to 100 units) ◆ Idylberry School (up to 10 units) ◆ Other qualifying sites
Screenline 8:	Up to 25	<ul style="list-style-type: none"> ◆ Gallinas Elementary School ◆ Other qualifying sites
Screenline 23:	Up to 88	<ul style="list-style-type: none"> ◆ College of Marin (up to 25 units – limited to student or workforce employees of the College) ◆ Marin General Hospital (up to 50 total units if associated with reconstruction or reuse, of which up to 25 units must be designated senior housing and up to 25 units designated for affordable, workforce employees, or special needs housing) ◆ Toussin (up to 13 units) ◆ Other qualifying sites
Screenline 22:	Up to 10	<ul style="list-style-type: none"> ◆ Oak Manor ◆ Other qualifying sites
Screenline 13:	Up to 50	<ul style="list-style-type: none"> ◆ California Park (San Rafael) ◆ Other qualifying sites
Screenline 17:	Up to 100	<ul style="list-style-type: none"> ◆ Strawberry Shopping Center ◆ Other qualifying sites
Screenline 19:	Up to 50	<ul style="list-style-type: none"> ◆ Fireside Motel
Screenline 21:	Up to 150	<ul style="list-style-type: none"> ◆ Marin City Shopping Center ◆ Other qualifying sites
	Up to 583	Units on named HOD sites
	Total: Up to 658	Total Potential HOD Units including Density Bonus Units

1. Housing Element Program 1.I - Clarify Applicability of State Density Bonus - “Evaluate policies in the Countywide Plan and Development code for housing opportunity sites to ensure consistency with Government Code 65915-65918 (the State Density Bonus law). Amend the Countywide Plan and Development Code as appropriate.”

According to the Staff Report prepared for the July 28th Planning Commission hearing, during the review of the 2007-2014 Marin County Housing Element, the State Department of Housing and Community Development (HCD) Staff questioned whether Countywide Plan (CWP) and Development Code Policies related to State Density Bonus Law and housing opportunity sites are consistent with Government Code 65915-65918.

Housing Element Program 1.I was added to the 2007 to 2014 Housing Element to address this concern and is scheduled for implementation with the adoption of the 2015 to 2023 Housing Element.

Background:

As originally written in 2007, the Marin Countywide Plan restricts the total number of units allowed on all the Housing Overlay Designation (HOD) sites via a total CAP of 658 units and restricts the number of units allowed in each Traffic Impact Area within the HOD designation with other smaller CAPs. Both the total HOD CAP and each of the Traffic Impact Area CAPs are inclusive of any Density Bonus units. (Please see Figure 3-3 on page 4.)

Potential Approach to Program 1.I “Clarify Applicability of State Density Bonus”:

When Program 1.I – “Clarify Applicability of State Density Bonus” was first introduced during the Planning Commission hearings, it was limited to one solution that would have changed the 2007 CWP CAPs so that the number of dwelling units at HOD sites and in specific Traffic Impact Areas could exceed the CAPs with Density Bonus units, provided the total HOD CAP of 658 units would not be exceeded. The program specifically stated; “Specific sites could allow more units than the number of units recommended in the Countywide Plan if a density bonus is applied. However, once the cap of 658 units is reached the HOD would no longer be applicable.”

The program now allows for other solutions to be considered to clarify applicability of the State Density Bonus. However, the original version of the program, described above, is still going to be considered as a potential remedy.

Consequences of the Original Approach to Program 1.I:

The original approach to Program 1.I allows greater density at most of the HOD sites. Beside other potential adverse environmental impacts, this would potentially increase traffic congestion in the Traffic Impact Areas that receive the excess Density Bonus Units. No Environmental Impact Report has evaluated the potential additional environmental impacts that could occur due to implementation of this program.

RECOMMENDATION:

Change Program 1.I “Clarify Applicability of State Density Bonus” to reflect the following approach:

In order to maintain the integrity of the Housing Overlay Designation (HOD) CAPs and still allow application of the State Density Bonus, the number of units allowed at each of the sites and traffic impact areas with HOD CAPs should be lowered so that, even with the addition of State Density Bonus units, the original 2007 CWP CAPs would not be exceeded. The 2007 Marin Countywide CAPs should not be exceeded under any circumstances.

2. St Vincent's / Silveira

During the 2007 Countywide Plan public hearings the environmental community was very concerned about development at St. Vincent's / Silveira and advocated for protection and preservation of the site. This stance is reflected in the "Community Marin 2013" Report, written by Marin County's major environmental organizations.

The "Community Marin 2013" Report consists of policy recommendations from Marin Audubon Society, Marin Baylands Advocates, Marin Conservation League, Sierra Club-Marin Group, Salmon Protection and Watershed Network, and San Geronimo Valley Planning Group. The purpose of the report is to provide an environmentally responsible foundation for land use planning.

Excerpt from the Community Marin 2013 Report: St. Vincent's / Silveira

"Protection and preservation of the 1,110-acre St. Vincent's / Silveira site has been and continues to be a high priority for the environmental community. The 2007 Countywide Plan included the area in the Baylands Corridor, as recommended by Community Marin. The purpose of this designation is to protect the scenic, historical, agricultural, and natural resource values and to minimize public safety problems such as flooding, seismic hazards, and traffic generation."... "The desired outcome for St. Vincent's / Silveira continues to be acquisition for resource protection, restoration of Miller Creek, protection of wildlife habitat, agricultural preservation, and protection of public health and safety, rather than development."⁷

Accordingly, the Sierra Club – Marin Group strongly opposes development at the St. Vincent's / Silveira property. These vital lands, especially near the city and suburbs are crucial to ensuring that all have the opportunity to explore and enjoy the great outdoors and our natural resources.⁸ The St. Vincents / Silveira bay coastal property (Baylands Corridor) must be a priority for restoration to its historic ecosystem functions and as a place for connecting with nature. We cannot support the development of this property given the potential damage to the ecosystem and threats to public health and safety, including losses of open space and impacts to bird habitat and migrations that could result. Protecting and maintaining a tidal marsh and an upland transition zone is necessary in the face of sea level rise. We must retain the potential for tidal marsh restoration that is recommended as a primary defense against sea level rise throughout the San Francisco Bay by scientists, planners and engineers.

The significant, cumulative, immitigable and unavoidable impacts to listed species and other wildlife, from further impacting urban development at this location, will likely result in "take" under the Endangered Species Act. Those significant immitigable impacts may include: all manner of construction, special status species and wildlife displacement; habitat loss; erosion; polluted storm water runoff; and noise air, light and vehicle pollution; as well as geologic catastrophes such as subsidence, earthquakes, floods and tidal waves. Full environmental review would reveal these issues. All of the above

⁷ Marin Audubon Society, Marin Baylands Advocates, Marin Conservation League, Marin Group-Sierra Club, Salmon Protection & Watershed Network, & Environmental Action Committee. (2013). *Community Marin 2013*. 39.

⁸ from <http://content.sierraclub.org/ourwildamerica/nearby-nature>

issues must be considered as potentially detrimental to long term public health and safety and contributory to ecosystem degradation.

Given the current science, we cannot support the use of the St. Vincents / Silveira for any purpose of redevelopment and request that it be restored as a tidal marsh with an upland transition zone in perpetuity.

Hence, protection and preservation of the St. Vincent's / Silveira Site has been and continues to be a high priority for the Sierra Club Marin Group and the environmental community as a whole. However, if housing is permitted at the site, then it should not exceed the CWP's 221 unit CAP.

Unfortunately, it is likely that a State Density Bonus would be applied to the St. Vincent's / Silveira Site and the CWP's CAP of 221 units would be exceeded. If a 35% Density Bonus were granted, then the number of allowable dwelling units at the site could rise up to 298 units. This is unacceptable.

RECOMMENDATIONS:

1. **Preferred Recommendation:** In order to avoid the restrictions placed on the St. Vincent's/Silveira Site by being identified in the Housing Element's Site Inventory, which includes locking in the density at 221 units plus applicable density bonus units (a potential of 298 units), we recommend eliminating the St. Vincent's/Silveira Site from the Housing Element's Inventory. Due to an excess of sites identified in the Housing Element's Site Inventory, the County would still accommodate its Regional Housing Needs Allocation of 185 units with a suitable buffer. In addition, the County would still have authority to consider project proposals at the site, yet, beneficially, would have more flexibility in planning decisions regarding those proposed projects; or
2. In order to maintain the integrity of the St. Vincent's/Silveira CAP and still allow application of the State Density Bonus, the CAP should be lowered so that, even with the addition of State Density Bonus units, the original CAP would not be exceeded. For example, if the St. Vincent's / Silveira CAP were lowered to 164 units, then, even with a 35% Density Bonus (57 dwelling units), the total allowable units at the site would not exceed 221 dwelling units (equal to the original CAP).

Sincerely,
/s/ Michele Barni

Michele Barni, Chair
Sierra Club Marin Group