

**SUSTAINABLE TAMALMONTE
215 JULIA AVENUE
MILL VALLEY, CA 94941**

September 16, 2013

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

Re: CEQA Exemptions and Streamlining & the Tam Junction Sites listed in the
Housing Element's Available Land Inventory

Dear Marin County Board of Supervisors,

We wish to share with you important information about California Environmental
Quality Act (CEQA) exemptions and streamlining.

Numerous State Government Code sections (listed below) allow CEQA
exemptions and streamlining that could apply to future development projects in
Tam Valley and Almonte. Due to this potential for limited to nil environmental
review, it is imperative that the Sites in Tam Junction, an area laden with
environmental constraints and hazards, be eliminated from the 2012 Draft Marin
County Housing Element's Available Land Inventory. To target a hazardous area
like Tam Junction with high-density housing, knowing that thorough
environmental review may not be carried out, is unsustainable, irresponsible and
unacceptable to our community.

Currently, CEQA exemptions and streamlining are allowed by two laws: 1) the
CEQA law itself and 2) Senate Bill 375. Soon additional exemptions and
streamlining will most likely be allowed by Senate Bill 743, which is sitting on
Governor Brown's desk to be signed into law.

**CEQA EXEMPTIONS AND STREAMLINING ALLOWED BY THE CEQA LAW
ITSELF:**

According to environmental attorney Rachael Koss, CEQA and CEQA Guidelines
sections associated with exemptions that could apply to future projects in Tam
Valley, depending on the project and the time when it is proposed, are:

- Pub. Resources Code section 21159.23 Low Income Housing Exemption
- Pub. Resources Code section 21159.24 Infill Housing Exemption
- Cal. Code Regs. section 15194 Affordable Housing Exemption
- Cal. Code Regs. section 15195 Residential Infill Exemption

Government Code section 65457 also allows exemption for residential developments consistent with a specific plan for which an Environmental Impact Report (EIR) has been certified.

Recent CEQA Case That Led To Permit Approval With Virtually NO Environmental Review:

A recent CEQA case, “Concerned Dublin Citizens v. City of Dublin”, found that an exemption determination qualified as environmental review. The developer simply proved that the proposed development met all the criteria for exemption and that was the entire environmental review.

The court’s finding of the “Concerned Dublin Citizens v. City of Dublin” case can be found at: <http://www.courts.ca.gov/opinions/documents/A135790.PDF>

The pertinent (and very disturbing) finding of the court:

"Likewise, the terms of the Environmental Impact Report (EIR) do not prescribe the necessary scope of environmental review for subsequent projects within the transit center. As noted above, the EIR acknowledges that — implementation of the transit center will require a number of follow-on actions and that — it is anticipated that additional environmental review would occur at each of these stages of the project. The EIR does not, however, require a specific level of environmental review. As the trial court noted, — The city's consideration of whether the Govt. Code 65457 exemption applies is itself an environmental review, so the city has been consistent with the letter of the law. By announcing that the city intended to rely on the Govt. Code 65457 exemption and permitting public comment on the use of that exemption, the city has been consistent with the spirit of the law."

SENATE BILL 375, TRANSIT PRIORITY PROJECT (TPP) CORRIDORS AND CEQA EXEMPTIONS AND STREAMLINING:

SB 375 allows CEQA streamlining and exemptions in Transit Priority Project (TPP) corridors.

Parameters of a Transit Priority Project (TPP) Corridor:

According to One Bay Area, to qualify as a TPP, a project must:

- “1) Contain at least 50% residential use, based on total building square footage, and if the project contains between 26% and 50% nonresidential uses, a floor area ratio of not less than 0.75;
- 2) provide a minimum net density of at least 20 dwelling units per acre; and
- 3) Be within 1/2 mile of a major transit stop or high-quality transit corridor included in a regional transportation plan

A **major transit stop** is defined as a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A **high-quality transit corridor** is defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours."

http://www.onebayarea.org/pdf/NOP_060812_final.pdf

Under SB 375, the Sustainable Communities Strategy's Environmental Impact Report (EIR) (AKA Plan Bay Area's EIR) is the program EIR that future projects would rely on for CEQA exemptions and streamlining. Full CEQA exemptions would occur in areas that meet full TPP criteria (Downtown San Rafael & the Canal neighborhood). CEQA streamlining or partial CEQA exemption would occur in areas that meet some but not all TPP criteria, which are along the main transit routes in Marin.

Quote From An Article By Housing California:

"Changes to the California Environmental Quality Act (CEQA):

SB 375 made two changes to ease the environmental review of developments that help reduce the growth of greenhouse gas emissions:

- 1) If a residential or mixed use development is consistent with the Sustainable Communities Strategy (SCS/APS) and incorporates any mitigation measures required by a prior Environmental Impact Report (EIR), then the environmental review does not have to consider any of the following:
 - a. Growth inducing impacts
 - b. Specific or cumulative impacts from cars on global warming or the regional transportation network, and
 - c. Substituting a lower-density development for the proposed development.
- 2) A narrowly-defined group of "transit priority projects" will be exempt from CEQA review, while a broader group of them will have reduced CEQA analysis requirements."

http://www.housingca.org/site/DocServer/billsum_SB_375.pdf?docID=231

Quotes from BOS November 13th Public Hearing re CWP Amendment:

Attached is a copy (**Attachment 1**) of an excerpt of the transcript of the Marin County Board of Supervisor's November 13th Public Hearing. At this hearing, CDA Director Brian Crawford stated that SB 375 would allow CEQA streamlining in Tam Valley and Almonte (although he concluded that the law would not allow full CEQA exemption due the area's flooding).

Please note that CEQA exemption and streamlining allowed by CEQA is totally different than that allowed by SB 375. Therefore, Brian's finding regarding SB 375 is not relevant to streamlining and exemption allowed by the CEQA law itself.

NEW CEQA EXEMPTION AND STREAMLINING BILLS ARE ON THE HORIZON

The California State Assembly and Senate are regularly proposing new bills that would further exempt and/or streamline CEQA. For instance, the State Senate and State Assembly recently passed Senate President pro Tempore Darrell Steinberg’s measure, SB 743, for additional exemption/streamlining of the California Environmental Quality Act (CEQA) (see Attachment 2). SB 743 is now sitting on Governor Brown’s desk waiting to be signed into law and may apply to Tam Junction and Manzanita. It is only a matter of time until another new proposed CEQA exemption and/or streamlining measure, which applies to the Tam Junction sites, becomes law.

CONCLUSION:

Once again, we urge you to remove the Tam Junction Sites from the 2012 Draft Marin County Housing Element. It would be irresponsible for you to ignore consistent historic and current opposition by well-informed residents to such development in our highly constrained semi-rural area. Moreover, as demonstrated above, development may be allowed at the Tam Junction Sites with limited, little or absolutely NO environmental review. In such a hazardous area, this would surely lead to environmental harm and/ or residents’ peril.

Very truly yours,
/s/

Sharon Rushton
Chairperson
Sustainable TamAlmonte
Enclosures

ATTACHMENT 1

Transcript of the November 13, 2012 Marin County Board of Supervisor Meeting

Regarding SB 375's CEQA Exemptions & Streamlining:

Brian Crawford said; "SB 375 has within it a number of CEQA streamlining measures built into it. One offers a complete CEQA exemption, meaning no requirement for an EIR. However, it is our understanding, that those projects would be subject to criteria which define them as Transit Priority Project Areas and they would have to meet a number of tests in order to qualify as such. One of which is that properties would need to be located outside of a flood plain area and much of the Tam Valley area, as you know, is identified by our County Public Works staff as a high flood hazard area. I don't think we use the term "flood pelliance?" (pleasance?) per say but the designation we do have in Tam I think are really the equivalent of what is intended by SB 375. So, my take on that is that complete CEQA exemption, which is a concern of some residents in Tam Junction, would not be applicable in the Tam Junction area.

There are other lesser CEQA streamlining measures in SB 375. Those eliminate the need for environmental reviews to conduct cumulative Green House Gas emission analysis as well as in some cases the requirement to conduct off-site alternatives analysis. And I believe the rationale, under those incidences, under the State law is that if a project is designed and located within an infill area that is located in close proximity to public transit, where people can move about their daily lives without having to rely upon their automobile so much that that really eliminates the need to do these broader green house gas emissions impacts because the projects themselves are somewhat self-mitigating."

Supervisor Sears then said; "But the language proposed with the development complying with CEQA, the expectation is that it would be a full CEQA review, not a streamlined review."

Brian Crawford then continued; "That would be a function with the possible exception of whether a project could qualify for one of the lesser streamlining measures which could eliminate the need to conduct a cumulative Green House Gas Emission Analysis and/or to conduct an Off-Site Alternatives Analysis."

ATTACHMENT 2

**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Jerry Hill, Chair
2013-2014 Regular Session**

BILL NO: SB 743

AUTHOR: Steinberg

AMENDED: September 12, 2013

FISCAL: Yes Hearing Date September 12, 2013

URGENCY: No

Hearing Date: September 12, 2013

Consultant: Joanne Roy

**SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA): KINGS
ARENA**

SUMMARY:

Existing law:

- 1) Under the California Environmental Quality Act (CEQA):
 - a) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code §21000 et seq.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1)).
 - b) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA.
 - c) Requires courts to give CEQA-related actions or proceedings preference over all other civil actions so that the action or proceeding is quickly heard and determined. (PublicResourcesCode§21167.1).
- 2) Under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900 (Padilla), Chapter 354, Statutes of 2011) (AB 900), which is part of CEQA, establishes CEQA administrative and judicial review procedures for. Among the provisions of AB 900:

- a) Sets procedures that apply to any judicial action or proceeding alleging that a public agency has approved or is undertaking an ELDP certified by the Governor in violation of CEQA (§21185), which among other things: i) require the action or proceeding to be filed in the Court of Appeal with geographic jurisdiction over the project; ii) require the Court to issue its decision in the case within 175 days of filing of the petition.
- b) Sunsets provisions of AB 900 January 1, 2015.

This bill, as approved by the Senate, revised the California Public Utilities California Alternatives Rates for Energy program.

Assembly amendments (September 12, 2013 version of the bill) and the basis for referral back to the Committee on Environmental Quality pursuant to Senate Rule 29.10, delete the provisions related to electricity rates, and instead do the following:

- 1) Establish findings related to the arena project.
- 2) Establish definitions for purposes of the bill, including:
 - a) "Downtown arena" means an arena that will be certified Leadership in Energy and Environmental Design (LEED) Gold within one year of the first National Basketball Association (NBA) season and will minimize traffic and air quality impacts through project design or mitigation measures that will do all of the following:
 - i. Reduce to at least zero the net greenhouse gas (GHG) emissions from private automobile trips to the arena as compared to the baseline (existing arena), as verified by the Sacramento Metropolitan Air Quality Management District.
 - ii. Achieve per attendee reduction in GHG emissions from automobiles and light trucks, compared to existing arena during 2012-13 NBA season, that will exceed the GHG emission reduction targets for 2020 and 2035 adopted for the Sacramento region pursuant to SB 375.
 - iii. Achieve and maintain vehicle-miles traveled per attendee for NBA events that is no more than 85% of the baseline (i.e., 15% less than existing arena).
 - b) "Entertainment and sports center project" means a project that substantially conforms to the project description set forth in the City's notice of preparation (NOP). (According to the City's NOP, the proposed project would be located on the Downtown Plaza property and on other property that may transferred to applicant and would include demolition of portions of the existing buildings, the construction and operation of an approximately 18,500 seat arena, and up to 1,500,000 square feet of office, retail, housing and hotel uses at the project site. The arena would serve as the home for the Sacramento Kings, as well as a venue for other sports, entertainment, civic and cultural events.)

3) Authorize the City to prosecute an eminent domain action associated with the downtown arena prior to completing CEQA review for the project. Limits the application of the eminent domain provision to 545 and 600 K Street and surrounding publicly accessible areas and rights-of-way within 200 feet of 600 K Street (i.e., Men's Macy's property), and provides that the provision shall not apply to any other eminent domain actions prosecuted by the City of Sacramento or to eminent domain actions based on a finding of blight.

4) Establish special procedures applicable to an action or proceeding brought to attack, review, set aside, void, or annul the certification of the EIR for the project or the granting of any project approvals, including requiring Judicial Council to adopt a rule of court, by July 1, 2014, requiring lawsuits and any appeals to be resolved, to the extent feasible, within 270 days of certification of the record of proceedings (which must occur within five days of the lead agency filing the notice of determination on the project).

5) Establish special procedures for public participation in CEQA review of the project:

- a) Require the project EIR to include a specified notice that the EIR is subject to the provisions of the section added by this bill.
- b) Require the lead agency to conduct an informational workshop within 10 days of release of the Draft EIR and hold a public hearing within 10 days before close of the public comment period.
- c) Require the lead agency and applicant to participate in nonbinding mediation with any party who submitted comments on the Draft EIR and requested mediation within five days of the close of the public comment period, with the cost to be paid by the applicant. Requires mediation to end within 35 days of the close of the public comment period.
- d) Require the lead agency to adopt any measures agreed upon in mediation. Prohibits a commenter from raising an issue addressed by that measure in a lawsuit.
- e) Permit the lead agency to ignore written comments submitted after the close of the public comment period, with specified exceptions for materials addressing new information released after the close of the public comment period.
- f) Require the lead agency to provide all EIR documents and comments in an electronic format (with the exception of certain copyright-protected documents), certify the record within five days of filing the notice of determination, provide the record to a party upon written request, and provide the record to the superior court within 10 days of the filing of a petition for review.

6) Require the lead agency, as a condition of approval of the project, to require the applicant to implement mitigation measures required by CEQA by the end of the first NBA season during which an NBA team has played at the arena.

7) Require the lead agency to consider, and implement if feasible and necessary to achieve the GHG and traffic reduction objectives specified in the bill, the following mitigation measures as a condition of project approval:

a) Temporarily expanding the capacity of a public transit line, as needed, to serve downtown arena events.

b) Providing private charter buses or other similar services, as needed, to serve downtown arena events.

c) Paying its fair share of the cost of measures that expand the capacity of a public fixed or light rail station that is used by spectators attending downtown arena events.

8) Require the lead agency to place highest priority on feasible emission reduction measures on the arena site and downtown area. Require use of offset credits only after feasible local measures have been implemented, and require that the applicant place the highest priority on the purchase of offset credits that produce emission reductions within the city or the boundaries of the Sacramento Metropolitan Air Quality Management District.

9) Prohibit, generally, a court, in granting relief, from staying or enjoining the construction or operation of the arena and provides that a court may only enjoin those specific activities associated with the arena that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

10) Provide that the provisions of the bill related to the arena (Section 2) are severable, and do not apply if the applicant fails to notify the lead agency prior to release of the Draft EIR that the applicant is electing to proceed pursuant to the provisions of the bill.

11) Revise AB 900 (Buchanan and Gordon), which establishes procedures for expedited judicial review by the Court of Appeal for "environmental leadership" projects certified by the Governor and meeting specified conditions, including LEED silver-certified infill site projects, clean renewable energy projects, and clean energy manufacturing projects, as follows:

- a) Repeal provision that gives original jurisdiction to the Court of Appeal and requires the court to issue its decision within 175 days.
- b) Instead require Judicial Council to adopt a rule of court, by July 1, 2014, mandating lawsuits and any appeals to be resolved within 270 days.
- c) Define "prevailing wages" for purposes of AB 900's requirement that environmental leadership projects pay prevailing wages.
- d) Extend the deadline for certification of projects under AB 900 from June 1, 2014, to January 1, 2016.
- e) Extend AB 900's sunset from January 1, 2015, to January 1, 2017.

12) Amend the Congestion Management Act (Government Code Section 65088, et seq.) to expand the definition of "infill opportunity zone" to include areas within one-half mile of an existing or planned major transit stop (to be consistent with the definition of "transit priority area" in this bill), and authorizes a city or county to designate an infill opportunity zone (currently subject to a December 31, 2009, sunset and other limiting conditions), for the purpose of obtaining an exemption from the application of "level of

service standards" (LOS, a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan). The effect of these provisions is to reinstate prior law allowing local governments to opt out of LOS requirements in infill areas.

13) Require OPR to propose revisions to the CEQA Guidelines to establish new, non-LOS criteria for determining the significance of transportation impacts of projects within "transit priority areas."

- a) Define "transit priority area" as an area within one-half mile of a major transit stop (i.e., rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes) that is either existing or planned, if the planned stop is scheduled to be completed within the planning horizon of a specified federal transportation plan.
- b) Define "employment center project" as a project located on property zoned for commercial uses, with a floor area ratio of no less than 0.75, located within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan.
- c) Require the criteria to promote the reduction of GHG emissions, the development of multi-modal transportation networks, and a diversity of land uses.
- d) Require OPR to recommend potential metrics to measure transportation impacts, including vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated.
- e) Authorize OPR to establish criteria for models used to analyze transportation impacts to ensure the models are accurate, reliable, and consistent with the intent of this section.
- f) Provide that automobile delay, as described solely by LOS or similar measures of capacity or congestion, shall not support a finding of significance pursuant to CEQA, except in locations specifically identified in the guidelines, if any, once these guidelines are certified by the Secretary of the Natural Resources Agency.
- g) Provide that aesthetic and parking impacts of residential, mixed-use, and employment center projects on infill sites shall not be considered significant impacts on the environment for purposes of CEQA, while also stating that the authority of a lead agency to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers is not affected.

14) Authorize OPR to adopt CEQA Guidelines establishing metrics for analysis of transportation impacts that are alternatives to LOS to be used outside transit priority areas.

15) Establish a new CEQA exemption for a residential, mixed-use, and employment center project, including any subdivision or zoning change, that meets the following conditions:

- a) The project is located within a transit priority area.
- b) The project is undertaken to implement and is consistent with a specific plan for which an EIR has been certified.
- c) The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or alternative planning strategy adopted pursuant to SB 375.
- d) Requires further environmental review only if any of the following events have occurred:
 - i. Substantial changes are proposed in the project which will require major revisions of the EIR.
 - ii. Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR.
 - iii. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available.