

Community Venture Partners, Inc.

A Catalyst for Sustainable Solutions

May 29, 2014

Neal Toft, Planning and Building Director
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939

RE: Draft Environmental Impact Report for the Proposed Station Area Plan

Dear Mr. Toft:

I am writing to comment on the proposed Larkspur Station Area Plan (SAP) and its Draft Environmental Impact Report (DEIR). My comments are in addition to comments made by our legal counsel, Edward Yates, and expert consultants that we have retained, including Geoffrey Hornek (environmental air quality), Peter Bye (biology, habitat and environmental), Richard Grasseti of Grasseti Environmental, and Pang Ho of PHA Transportation Consultants. I would like to begin by emphasizing some of their overall conclusions.

The deficiencies of SAP and the DEIR are extensive. The Project Descriptions of both SAP and the DEIR are confusing, incomplete, contradictory and inconsistent. Provable evidence or facts, reasonable studies and/or specific analysis is consistently lacking throughout the documents. Plans are predicated on circular logic and ungrounded assumptions and in all areas baseline data is not adequately described, impact analyses are misleading, missing, incomplete and inaccurate, and almost all mitigation measures are improperly deferred to future study and plans or what might be characterized as “trust us” assurances. The Alternatives proposed, the analysis, if any, and the conclusions arrived at by SAP and the DEIR are not supported by information in the record or in any reasonable, unbiased, third party opinions. The Station Area Plan and the DEIR as a whole fail to adequately disclose to decisions makers, regulatory agencies and members of the community what the project actually is, on what basis it can be recommended, and/or what its true impacts will be.

For these and other reasons, SAP and the DEIR have arrived stillborn and must be rejected as inadequate and not approvable.

The SAP and DEIR Contradict the Goals and Principles of the Larkspur General Plan

The Larkspur General Plan is considered the “constitution” of the City. SAP ignores and contradicts all its basic principles and guidelines. Worse, it recommends that these principles and guidelines be abandoned by amendment in order to eliminate any contradictions. Equally, the scoping and planning process that produced SAP and the DEIR appears to have been primarily driven by the terms and conditions of a \$480,000 grant from the Metropolitan Transportation Commission (MTC). Not coincidentally, SAP’s outcomes and proposals are directly aligned with the grant maker’s clear demands to “urbanize” the Larkspur Station Plan Area and “intensify”

land use and development to justify the grant, even though these goals, outcomes and unmitigated impacts are in direct contradiction with and violation of the goals and values of the Larkspur General Plan and all other existing land use and planning guidelines for Larkspur.

For example, the General Plan is replete with references to preserving open space, views and natural habitats. In the *Larkspur General Plan, Chapter 6, Environmental Resources Element, Open Space Goals, Policies, and Programs*, among other things of relevance it states the following goals and policies (emphasis added), all of which are violated by SAP and the DEIR:

Goal 1: Preserve and enhance a variety of open space features including ridgelines, the wetlands along the Bay and the creeks, wildlife habitats, view corridors, and other amenities which contribute to a sense of openness in Larkspur.

Goal 2: Policy a: Work with local and regional open space agencies and interest groups to develop an open space preservation strategy.

Action Program [2]: Support the efforts of the Marin County Open Space District to acquire more open space in the Larkspur Sphere of Influence.

Action Program [3] Identify financing mechanisms to acquire privately held lands designated for future open space.

Policy c: Designate and preserve in Shoreline/Marsh Conservation area the wetlands along Corte Madera Creek and at Piper Park, Redwood High School, and the Larkspur Ferry Terminal, and the shoreline between East Sir Francis Drake Boulevard and the Bay waters.

Action Program [5]: Rezone publicly-owned or dedicated open space areas to appropriate zone districts that indicate that their potential for development has been eliminated.

Policy d: Allow[ONLY] low-intensity development on hillsides and near Corte Madera Creek only if the design preserves natural features, such as significant stands of trees, forested hillsides, riparian vegetation, marshlands, wildlife habitats, ridgelines, and buffer zones.

Where wetlands or other sensitive biologic resources are identified, studies should be prepared by a qualified biologist to assess the impacts of the project and to identify measures that will fully mitigate those impacts so that the habitat values are preserved.

Action Program [8]: Avoid development in areas which contain rare or endangered species of plants or animals.

Policy f: Increase visual access to the Bay and Corte Madera Creek.

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Action Program [9]: Provide public spaces with views onto the Bay and Corte Madera Creek.

These goals and principles are still in full force and effect. Further, there is nothing in the public record that indicates that the majority of voters and residents of the City of Larkspur are in favor of this level of development or abandonment of the principles and guidelines of the current General Plan. It is interesting to note that the terms “urban” and “urbanize” and “land use intensification” appear no less than 9 times in the MTC grant agreement, yet these terms are not found once in Larkspur General Plan.

Ironically, SAP doesn't solve the fundamental problem that generated this planning study process: getting people from SMART Station to the ferry terminal in a reasonable and efficient way. The SAP circulation plan proposes that commuters walk more than a measured third of a mile on multi-use pathways and public sidewalks, stand at traffic lights waiting to cross major streets like Sir Francis Drake, in all types of weather and unsheltered, in order to get from one location to another. To call this a “plan” seems fanciful at best.

The City's Rationale for SAP Is Erroneous

City officials (e.g., Vice Mayor, Larry Chu in his recent *Marin Voice*, *Larkspur Landing's Planning Challenge*, 05/16/14) have repeatedly stated or inferred that the City was required to plan for “urban” development and “intensification of land use” for the Larkspur Station Area in order to satisfy the requirements of the SMART train sales tax measure. Further, elected officials and staff have incorrectly professed that there is a legal nexus between the development of the SMART station and the development of high density, transportation oriented development (TOD), as prescribed under Plan Bay Area and SB375, and resulting from receiving grants funding from MTC: that the two are a legal obligation and result of the needs of the other.

In what might be characterized as “The Devil Made Me Do It” defense, the Draft SAP states, in the Primer, page 4, that *“In accepting the grant money that sponsored the Station Area planning process, the City committed to adopting a Plan.”*

None of these statements are true. And in fact if they were true then the City would be acting in violation with CEQA, which requires that the “no project” option be a real and viable choice that can be made *after* all the environmental impacts have been fully evaluated (and not before that).

Contrary to statements made by city officials, there is no legislative or statutory nexus whatsoever between the development of a SMART station and the intensification of land use and development of TOD and affordable housing being proposed in SAP at Larkspur Landing. Nothing in the SMART sales tax legislation requires the development of TOD. Nothing in Plan Bay Area or SB375 requires the development of a train station or any other specific type of transportation improvement to justify its provisions. That these ideas are associated with each other because Plan Bay Area refers to them as goals or because they might be conditions of MTC making PDA (Planned Development Area) grants is not in any way the same as their being a

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legal requirement for the City of Larkspur to develop TOD as a result of the requirements to study the SMART station plan.

In fact the only legal nexus between SMART and TOD that could be found would be in the questionably enforceable grant agreement between the City of Larkspur and the MTC. However, to the best of my knowledge in California we do not have a legal process by which public policy decisions and changes to a General Plan can be driven by the terms of a study grant.

It truth what we have in this situation is an adhesive MTC Grant Agreement which attempts to coerce the City of Larkspur to abandon all the principles of its General Plan in exchange for a modest amount money to do a study that for all intents and purposes is required to have a predetermined outcome, which the City is then obligated to accept. Such “predetermination” is itself a direct violation of CEQA as well as other state statues guaranteeing the powers of elected bodies.

Furthermore, and again contrary to statements made by Larkspur City Officials, there is no requirement by the Association of Bay Area Governments (ABAG), the Department of Housing and Community Development (HCD), or the current Regional Housing Needs Assessment allocation quota (RHNA) to build any of the high density housing, and particularly the retail, commercial or hospitality development, contemplated in SAP. The housing quota for all types of housing, including an affordable component for the 2014-2022 Housing Element cycle for the City of Larkspur, is only 132 units. Based on the results and certifications received by other cities in Marin of similar size, it is without question that Larkspur can easily meet that number without any major zoning changes at Larkspur Landing, going forward.

MTC and TAM Grants Funds Were Used to Produce a Predetermined Outcome

The entire SAP process and its outcomes appear to be a consciously orchestrated sham to force a predetermined outcome on the public and its participants. This opinion was in fact voiced more than once during the public input sessions and by members of the SAP CAC, one of whom (Julie Leitzell) quit for this very reason. The scoping and creation of the SAP has made a mockery of democratic process and community engagement. That its outcomes in the end are so closely aligned with the goals of the grant maker, MTC, while being so contradictory to the City’s own General Plan, lends credibility to this assertion.

The Descriptions and Illustrations in SAP and the DEIR Are Misleading

The public has a reasonable expectation that all the information presented in the SAP and the DEIR be accurate and correct to the fullest extent possible. However, this is not the case. Renderings, charts and illustrations used to describe the Plan and its Alternatives, and their impacts are misleading and inaccurate.

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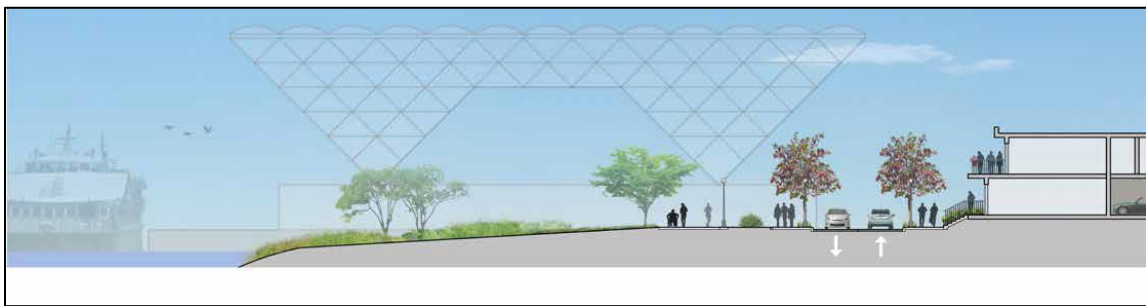
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For example, (Figure 6.5, on page 3 of the Draft Plan, *Urban Design Guidelines*) the diagram below supposedly depicts a cross section of some of the housing development on the ferry terminal parking lot area. However, this depiction is inaccurate because the scale of the housing units shown and the scale of the office building

structures on the adjacent properties are different. The rendering makes the height of the 4 stories of housing look smaller in comparison to the 4 stories of office building in order to downplay the effects of the actual visual impacts. In my 25 years of practicing architecture, it is inconceivable, in my opinion that such a discrepancy could be an unintentional error.



Similarly, in Figure 6.6, on page 4 of that same study, the rendering depicts a modest two story building next to the ferry terminal (which provides some relative scale). However, an analysis of the actual plan documents would indicate that in order to achieve the stated density (300 units plus retail plus parking) the structures will need to be 3 to 5 stories of housing development on top of structured parking. Therefore, a more accurate depiction of the actual visual impacts of the Plan would look like the revised rendering below.



Again, it is inconceivable in my experience that such an “error” was by accident and not done to intentionally mislead the public and attempt to diminish and hide the actual visual impacts of the new development.

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It should also be noted that consideration of visual and aesthetic impacts apply to the proposed development of SAP under CEQA, and a full and truthful depiction is therefore required.

Diagrams Depicting LOS at Critical Intersections are Misleading to Downplay Impacts

Similar to what is shown in renderings to describe visual impacts, diagrams that are included in SAP to describe the impacts of the proposed development on the Level of Service (LOS) at major intersections, Sir Francis Drake Boulevard and Highway 101, employ presentation methods that mislead the reader and downplay the impacts on traffic and congestion.

For example, the graphic legends that are used with the diagrams depicting LOS use a color scale from green to red (see graphic below). However, the legend indicates the color green for LOS E, which is already in the category of failing intersections. If the color coding in the legend accurately showed the full scale of LOS in accordance with National Standards LOS Gradients, LOS level E would be depicted as yellow (caution) rather than green (see below).

Diagrams shown in SAP.

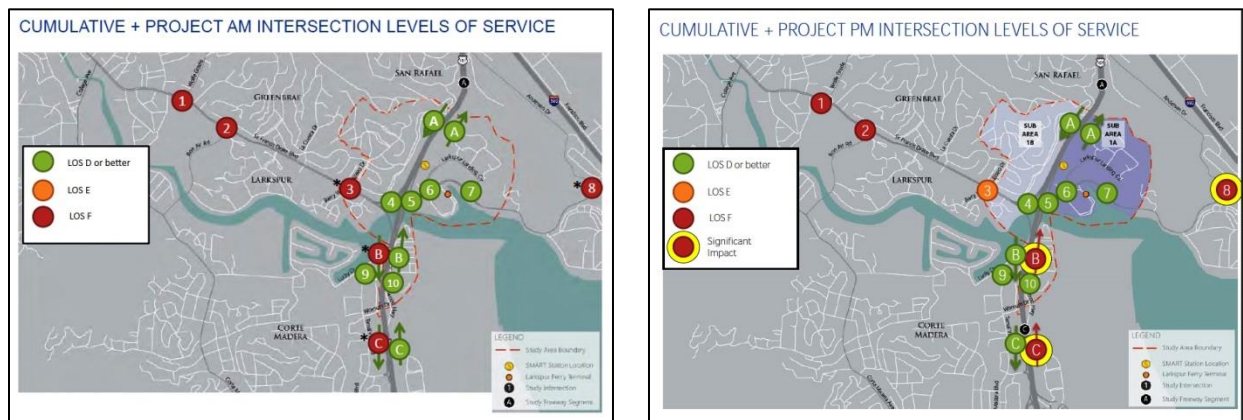
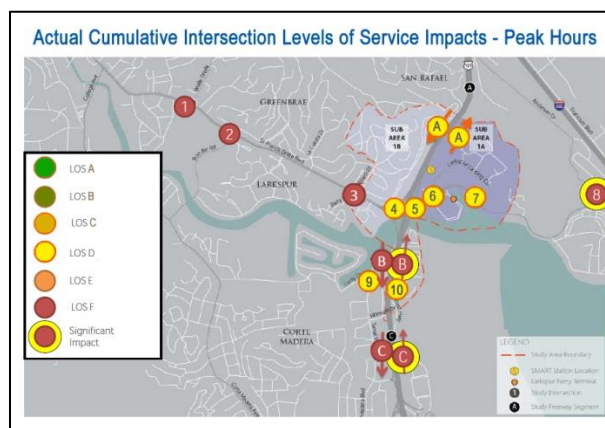


Diagram with corrected legend gradients and combining peak hour actual impacts.



As anyone can see, the incorrect legend of the illustrations downplays the impacts. In fact all of the intersections in the Larkspur Station Plan Area are failing or worse. Again, in my professional experience this kind of “error “cannot happen accidentally.

The Correlation between TOD and Reduced Traffic Is Conjecture

In the *Draft Station Area Plan, Executive Summary, TMA, VEHICLE TRIP CAP, AND TDM PROGRAM, Page 9*, it states,

“Mixed-use, transit-oriented development such as that proposed in the Draft Plan generates less traffic than traditional suburban development.”

This is stated as fact yet neither the SAP nor the DEIR provides any supportive analytic evidence to prove this. In fact this statement is just a reiteration of equally invalidated statements made in SB375 and Plan Bay Area, both of which make vague references to decades-old studies done only in urban areas and based on transportation data from the mid-1990s. None of this is applicable to the suburban location of the Larkspur Station Area. Actual data is required under CEQA, without which the efficacy of trip caps is conjecture.

In the *Draft Station Area Plan, Executive Summary, TMA, VEHICLE TRIP CAP, AND TDM PROGRAM, Page 9*, it goes on to say,

“The Draft Plan proposes the development of a transportation management association (TMA) to enable employers, developers, building owners, and government entities to work collectively to establish policies, programs, and services to assure that traffic generation complies with the vehicle trip cap, to promote travel by non-automobile modes, to address local transportation issues, and to foster economic development.”

Again, there are no specifics included on exactly how this TMA would accomplish any of this or that it would result in any kinds of mitigations or actually reduce traffic congestion. And as pointed out by others, under CEQA, this does not qualify as a mitigation measure. It is simply a statement of possible policy. But without any project specific data or analysis to support its contentions, it is meaningless “planner speak.”

Finally, it states that,

“The vehicle trip cap would apply to weekday morning and afternoon peak traffic periods, as well as overall daily trips to limit the future increase in vehicle trips from the station area to no more than 10 percent above the current traffic generated by the station area.”

“The combination of TDM measures and the mixed use, transit-oriented development land uses called for in the Draft Plan would result in fewer vehicle trips generated per dwelling unit or 1,000 square feet of commercial space in the future compared to the existing land uses, ensuring that vehicle trips resulting from future development would remain under the trip cap.”

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The circular and self-serving nature of these comments are so convoluted that they barely require any comment to discredit them. These quasi-policy proposals amount to conjecture built upon conjecture to justify a pre-determined conclusion that is without any evidence whatsoever.

Some of the many obvious questions that come to mind are, how would any trip cap actually be enforced against existing properties or qualifying development proposals (under the zoning regulations and design guidelines of the City of Larkspur), and by whom? How could a TMA enforce this trip cap during certain hours of the day, as the DEIR states? And in the event of a violation, who would penalize whom and how? Would private landowners be penalized or public agencies, and how? And most obviously, how can anyone assess whether a trip cap is working until it fails?

The Traffic Projections in the DEIR Are Incorrect and Nonsensical ¹

In discussing trip caps, the DEIR calculates current vehicle trips at 18,270 to and from the Larkspur Landing area, including transit trips. However, it states that the implementation of “trip caps” and TDM will limit future increases to a maximum of 10 percent. So a 10 percent increase would mean another 1,827 vehicle trips per day.

However, the DEIR doesn't project that the SAP as proposed will produce only 1,827 additional vehicle trips per day. Rather, it says the SAP will result in a total of 23,490 vehicle trips per day – or an additional 5,250 vehicle trips per day - an increase of 29 percent over the current condition -- even if all the Traffic Demand Management is in place and working as intended (a questionable assumption). So the DEIR appears to be endorsing a proposed traffic increase that is nearly 3 times higher than the supposed trip cap maximum.

The Plan therefore fails its own trip cap criteria out of the gate. Based on the EIR's own data, the only alternative that might NOT violate the vehicle trip cap is the "No Project" alternative.

The Parking Management Plan Is Equally Flawed

In the *Draft Station Area Plan, Executive Summary, PARKING MANAGEMENT PLAN, Page 10*, it discusses a broad range of parking management techniques that could be summarized by the thesis that reduction of parking availability, either by eliminating parking spaces or increasing the costs of parking, can force an increase in the use of public transportation. Since this thesis is not backed up by any actual analysis, studies or facts, common sense thinking can only conclude that this theory is ludicrous.

Most ferry users presently come to the ferry terminal by car and need to park there (mostly because there is no other way for them to travel there from the myriad of geographically diverse towns and villages in Marin). There is no reason to believe that this will not continue. In fact with the construction of a new SMART station, this traffic is likely to increase due to commuters

¹ Contributed by Joseph Keene, Attorney specializing in land use

coming to the station to take the SMART train north. All of this suggests that parking availability will have to increase to accommodate this demand, not decrease.

Any decrease in parking availability or increase in parking cost will then force commuters to make a choice between convenience and cost. Based on outcomes in cities across the country, this will typically result in more use of automobiles not less, simply because commuters will always choose the fastest and most convenient way to get from one place to another.

In other words in this case if the time cost or monetary cost of parking becomes too high in the Larkspur Station Area, commuters may well decide to drive to their destination, instead. Note that this would add to the DEIR's conclusion that the SAP will increase greenhouse gases and impact global warming.

Mass Transit in Suburban Settings Has Not Reduced Automobile Use

SAP and the DEIR incorporate unproven assumptions about the positive impacts of mass transit on the reduction of automobile usage. Case studies of the effects of public transportation and ridership upon auto usage in Portland and Los Angeles (two cities that have undertaken major public transportation projects in recent decades) indicate that this outcome is not assured. In fact, in both cities, in the areas affected by new public transit systems transit ridership has continued to drop while auto usage has continued to rise. Thus, the relationship predicted by SAP has been proven wrong. And in fact, to the best of my knowledge, there are no examples that exist, particularly in suburban areas that would confirm SAP's thesis.

The public has continued to demonstrate, beyond a doubt, that they cannot be "punished" into better transit usage and continue to gravitate toward the fastest, least expensive method to get from one place to another. It is also interesting to note that the only statistically significant trend that is proving to decrease auto usage related to employment is the dramatic increase in telecommuting and working from home.

The Validation for TDM and Trip Caps Are Only Justified by Handbooks and Documents Created By the Grantor

The SAP and DEIR rely heavily on the efficacy of the implementation of a Transportation Demand Management system (TDM) and the imposition of "Trip Caps" by a to-be created Transportation Management Association (TMA). However, neither the SAP nor the DEIR provide any studies, analysis or other evidence that these methods will alleviate or improve traffic congestion or parking problems in the Larkspur Station Area.

In fact the only tangential references to anything remotely substantive are to two documents, both of which were produced in 2007 by MTC: *The Station Area Plan Handbook* and the *MTC TDM Toolbox*. Both of these documents state (as 'fact') that the implementation of TDM and trip caps can reduce traffic and parking congestion. However, neither of these documents, which would be more accurately characterized as policy documents, provides any analysis, studies or other data to support those assertions, and in particular provide nothing to indicate that such

methods would be effective in a suburban setting such as Larkspur. In fact almost all of the information noted in those two publications is related to dense, urban environments.

The “Transit Neighborhood” Designation is Incorrect and Based on the Goals of the Grant rather Than the Reality at Larkspur Landing

SAP and the DEIR contend that the Larkspur Station Area qualify as a “Transit Neighborhood,” a term that is derived from the *Station Area Plan Handbook*, published by MTC in 2007. This designation is not only incorrect but it is used in a way that is completely circular to force a predetermined outcome, in violation of CEQA.

Based on the qualifications noted in the Handbook created by the grantor, MTC, and the Plan indicates that the Larkspur Station Area does not presently qualify as a “Transit Neighborhood.” However, qualifying as a Transit Neighborhood is a prerequisite of obtaining the PDA grant (under Plan Bay Area’s OBAG grants program) that funded SAP and the DEIR. Therefore, the logic is that if Larkspur takes the grant funding, and agrees to create a plan that “urbanizes” the Larkspur Station Area and “intensifies” land use there, then it would achieve a level of density that would qualify it for the Transit Neighborhood designation, which would therefore qualify it for the grant.

This circular, chicken and egg logic is completely nonsensical to the point of being fraudulent. It not only forces the City of Larkspur to abandon all the goals and principles of its General Plan but it presupposes (by making the grant) that Larkspur will decide in advance the outcome of the study that will then urbanize and intensify land use.

The Larkspur Station Area is not and will Not Be a Transit Neighborhood

The Transit Neighborhood designation logic is even more flawed than described above. In the *MTC Station Area Handbook* and the *TDM Toolbox*, examples are provided of places that qualify as a Transit Neighborhoods. Those include Concord, Dublin and Pleasanton, all of which are served by BART. These are situations where larger suburban cities are directly linked to major employment centers like Oakland, San Francisco, and soon San Jose. No reasonable person would suggest that Larkspur Landing, which is a minor suburban shopping hub, bears any similarity to any of those cities noted.

SMART Is Not BART

Contrary to the assertion made by calling the Larkspur Station Area a Transit Neighborhood, the SMART train is not at all like BART. SMART travels from one suburban shopping hub to another. And the ferry service only drops people at a pier on the waterfront in San Francisco, from where they have to take other forms of transportation to their workplace. The ferry service is presently operating at its legal maximum and is unlikely to be able to increase that capacity at any time in the foreseeable future. None of this can be compared to the service provided by BART in moving commuters to important employment centers. So the Transit Neighborhood

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73 Surrey Avenue, Mill Valley, CA 94941

415.381.3887 – communityventurepartners@comcast.net

designation is incorrect and in fact suggests that the Station Area Study never did and never will qualify for the MTC grant that funded it.

Finally, the MTC documents provide for another type of suburban category called a “Small Towns,” which is a more accurate description of Larkspur Landing. Examples provided of places that are designated as “Small Towns” include Danville, Morgan Hill, Sausalito, and Fairfield, which are more similar to the Larkspur Landing area.

The Fallacy of Protections under the Planned Development (PD) Process

In the *Draft Station Area Plan, Executive Summary, page 8, Zoning*, it states,

“Development projects for sites zoned PD are required to go through a rigorous, two-tiered planning process subject to final approval adopted by ordinance of the City Council. The Draft Plan recommends retaining the existing PD zoning and associated project approval process.”

In the *DEIR, page 53, Planned Development Districts*, it states:

The key development opportunity sites identified in the Station Area Plan are located within the Planned Development (PD) zoning district. Continuation of the PD zoning will allow appropriate scrutiny and control of any development proposals in the Plan area and will require the following steps:

It then goes on to provide a long list of “steps” of the PD process (public hearings, development review, etc.) to offer assurances with regard to the “scrutiny” and “control” alluded to above.

However, contrary to the assurances offered in both these instances, the realities of the PD planning process are in my professional experience quite different. And the terms “*rigorous*” and “*scrutiny*” would not accurately describe what typically occurs when a private developer brings a PD proposal before the City.

PD planning essentially removes all local planning and zoning protections for any particular parcel for which a proposal is submitted. Setbacks, height, lot coverage, massing, floor area ratios, parking requirements and other such restrictions are subject to adjustment and variance. Developers typically work with planning staff to craft acceptable “tradeoffs” to justify why the proposal should be recommended, and Planning Commissions and City Councils are typically extremely swayed by staff recommendations. And in a PD process, the community is left with very broad arguments against any proposal, based on vague provisions of the General Plan or their Design Review Guidelines. But these are typically not sufficient to mitigate the larger impacts of a project, overall.

This PD reality is exacerbated by the overriding of local control by state and regional agencies and regulations (Plan Bay Area, TTP zones, TPAs, etc.) that allow increased density and CEQA streamlining for qualifying projects, regardless of local regulations. Other laws, such as the State Density Bonus Law, also override any local control of density by allowing uncontestable increases of up to 35 percent of a project's overall size if certain minimal affordable housing requirements are met.

Nothing in SAP would protect the Larkspur Station Area from the pressures to increase density even beyond the level contemplated in the Plan that would result from these outside agencies and regulations. In my hometown of Mill Valley and across Marin County the PD process has resulted in the construction of inappropriate and overly impactful projects, with Win Cup in Corte Madera and the Millworks in Novato being glaring examples. It would be unwise to expect that SAP would produce anything different if increased land use density were to be allowed.

Economic and Financial Impacts of SAP Are Unanalyzed

The Station Area Plan and the DEIR only offer un-vetted lists or make only passing references to how the proposed level of development would be financed. They offer no analysis or consideration of the impacts of the possible financial burdens of intensive development. The DEIR offers an encyclopedic list of possible funding and financing methods and mechanisms but provides no details, no formulas, no pro forma scenarios or other analysis whatsoever as to how or if these methods and mechanisms will be adequate for the Plan to succeed, or the potential for unintended consequences and impacts that could cause the Plan to fail.

Among the many methods noted (*Station Area Plan, Executive Summary, pages 14-15*), the SAP proposes to employ Infrastructure Financing Districts (bond debt and property taxes), Special Assessment Districts (bond debt and property taxes), Business Improvement Districts (debt and business taxes), Parking Fees (costs passed onto consumers, businesses, people using transit, etc.), Development Fees (costs charged to developers which increase costs and raise housing prices), and other forms of debt such as Revenue and General Obligation Bonds (regressive tax burdens on Larkspur residents) and Infrastructure State Revolving Loan Fund monies (more public debt)

Raising the costs of living and doing business in Larkspur will undoubtedly have certain unintended consequences that SAP fails to discuss or consider. Since most of the proposed funding methods will burden the taxpayers of Larkspur and have a direct impact on the business owners and their employees (the costs of doing business and working in the Station Area), and the shoppers and visitors who come to the Station Area, such analysis would seem imperative.

Future Grants Funding Is Questionable

The SAP also provides a long list of potential future grants funders. However, this list is virtually a who's who of grants funding that offers no specifics or assessment of the real potential to actually receive any grants from these sources (particularly important in what is now an

increasingly competitive market for assistance), or in what amounts, or if those amounts are anticipated to even be a significant portion of the overall financing needs of the Plan.

“Fair Share” Funding Is Questionable

The DEIR states the *“applicants for individual projects shall pay their fair share towards the addition of a third westbound through lane”* and explains that such payments will combine with other future funding. But the term “fair share” has little meaning and therefore, this funding is uncertain and the ratio is not identified. The DEIR does not explain what “fair share” is and thus, the developers’ share may well be so minimal due to legal limitations that the City and thus the taxpayer in Larkspur will bear the brunt of this impact.

The developer fee ratio could be calculated using the number of residences to be constructed at Larkspur Landing, as applied to City of Larkspur fees under the Mitigation Fee Act requirements, but isn’t. The DEIR does not include analysis regarding the foreseeable – and probable - scenario that the developer fees will not cover the cost of the transportation and that federal or state funds will not be obtained or be sufficient. Thus, a foreseeable scenario is that the City itself must mitigate the impact and thus, a foreseeable secondary impact of increased traffic and congestion is a financial impact to the City and therefore, the taxpayers. This impact is not identified or analyzed. This financial impact is connected to a significant physical impact and thus, must be analyzed. ²

The Unintended Economic Consequences of SAP and the Principle of “Substitution” In Suburban Settings

The principle of substitution is a real estate appraisal and market analysis principle which holds that *“a buyer will not pay more for a property than the cost of an equally desirable alternative property.”*³

This principle also holds true for what business owners who operate retail stores or those who lease commercial office space will pay if comparable alternatives readily exist nearby. And it also holds true for the choices that consumers will make when choosing where to shop, eat, and seek entertainment.

Neither the SAP nor the DEIR contemplate, discuss or analyze the potentially significant negative, unintended financial consequences of raising the costs of doing business in the Larkspur Station Area and the loss of revenues to the City that could result. SAP simply assumes best case scenario outcomes but does not analyze the very real possibility of financial failure, and the costs burdens that would then accrue to the taxpayers and business owners of Larkspur.

Based on my 45 year career in architecture, planning, real estate development and investment, I can say with certainty that substitution, particularly in a suburban setting such as the Larkspur

² Provided by Michael Arnold, Ph.D., Economist at Alco Partners

³ The Real Estate Encyclopedia

Station Area (as opposed to inner city, urban settings), is one of the most powerful predictors of success to consider for any business or real estate development undertaking.

In a location such as this, where highly competitive alternatives exist within minutes away (shopping, dining, and business services in Bon Air, Corte Madera, San Rafael, etc.), and in a retail and commercial real estate environment that remains overbuilt in Marin and is likely to continue to be under great competitive pressure from long term trends of Internet-enabled competition “compressing” profit margins and “deconstructing” business models of physical enterprises, the potential for economic failure is quite high. In my opinion, as an expert in my field, the level of development contemplated in SAP is as likely to fail and become uncompetitive in relation to nearby rivals, as it is of having any chance of success.

If the SAP development should fail, what will happen to the tax burdens and other costs that will fall squarely on the residents and property owners of the City of Larkspur? Prudent business practices would require that this worst case scenario also be analyzed and studied.

Finally, the principle of substitution also holds for how commuters behave and the make choices about which method of transit to use when a variety of alternative methods exist or certain methods preferred in the Plan become uncompetitive in cost or the time required.

Impacts on Anticipated Tax Revenues

Unstated in the Plan but an assumption of any kind of development proposal is the potential for an increase in tax revenues from permitting, sales taxes and other forms of development and land use intensification. However, these assumptions should be analyzed and any purely arithmetic type of analysis should be challenged.

Adding significant retail and commercial space in a location such as the Larkspur Station Area, where there exist two major shopping centers nearby, and a major central shopping district nearby (The City of San Rafael), raises concerns that any net sales tax revenues the City may be anticipating could be overstated. And in an increasingly competitive business environment, how much of the revenues would arise from reducing sales tax revenues in other areas, and other Larkspur neighborhood retail establishments, needs to be carefully analyzed.

For example, The City of Novato greatly over-estimated the sales tax revenue contributions associated with the Vintage Oaks Shopping Center when it underestimated the substitution effects on downtown Novato from Novato residents shopping in Vintage Oaks stores instead of those formerly located in the downtown. The Novato downtown has been struggling economically ever since as some customers substituted shopping at Vintage Oaks for downtown Novato. While Vintage Oaks raised net additional sales tax revenues for the city, it was far less than what had been projected, because of underestimation of this substitution effect, and because it had the unintended consequence of robbing Peter to pay Paul and decimating many small businesses in its downtown.⁴

⁴ Provided by Michael Arnold, Ph.D., Economist at Alco Partners

Calculating sales tax revenues is not trivial, particularly how it is effected by and how it affects other retail areas in the County. How much tax revenue does building a retail center at this location “steal” from other nearby areas is not known but it must be factored into any kind of reasonable fiscal analysis.

Parking Availability and the Principle of Substitution

The Plan acknowledges that one of the ways it intends to achieve one of its primary goals (increasing the use of public transportation) is to reduce, raise the price of, and restrict the amount of parking available to shoppers, office workers and transit users in the Larkspur Station Area. For example, concepts it employs, like “unbundling of parking,” mean that office workers who now enjoy free parking will have to pay for daily parking in the future. The stated belief is that this practice will force people to use alternative methods of transportation including walking, bicycling and using SMART and the Ferry. However, the SAP and DEIR provide no studies, analysis or other location specific facts whatsoever to support this assertion.

This is another instance where a proper analysis and incorporating the principle of substitution would provide a more reasoned view of potential outcomes of these proposed policies on existing and future businesses in the Larkspur Station Area.

For example, will commercial businesses leasing space be attracted to LL by the proposed “unbundling” of parking for new office space? The Plan and DEIR fail to analyze the potential negative effect that could have of leasing rates for commercial and retail space, and overall competitiveness and business viability at Larkspur Landing, when businesses, and to a lesser extent employees, can choose to relocate in other space that is readily available and of equal quality that provides free parking, nearby. In addition, how will the reduction of and the increase in cost of available parking effect commuter behavior?

Parking studies conducted by real estate industry organizations repeatedly emphasize the negative impacts of inadequate parking in suburban settings, on business success and leasing rates. As noted in the recent study, Loss in Value Due To Inadequate Parking by Tom J. Keith, MAI, *“The value of retail and office buildings is greatly affected by the available land area to accommodate adequate parking for the customers and patrons doing business with the occupants of an office or retail building. If there is inadequate parking, the occupants of the building may not be able to compete with other office and retail buildings in the market area which have adequate parking.”* Similarly, as noted in the TDM Encyclopedia, 2012 edition, *“...consumers ultimately bear parking facility costs through increased prices and taxes, and reduced employee benefits.”*

The Principle of Substitution, Parking and Use of Public Transportation

The majority of ferry commuters presently travel to the ferry by car and park in the available parking lots. If the availability of parking is reduced or the costs become a financial burden and make ferry parking financially uncompetitive, then it is reasonable to assume that commuters

Community Venture Partners, Inc.

73 Surrey Avenue, Mill Valley, CA 94941

415.381.3887 – communityventurepartners@comcast.net

will look for more favorable alternatives, again based on the principle of substitution. But SAP and the DEIR provide no analysis or consideration at all for this possibility.

It is as if the drafters of the Plan believe that a commuter who is unable to find adequate parking near the ferry terminal, will drive to San Rafael, park there, get on SMART to get to the Station Area, and then walk a third of a mile on foot to get on the ferry. Or that an elderly or disabled person, or someone carrying heavy work related items will begin riding a bike to the ferry terminal or the SMART Station (to go north), rain or shine. And SAP assumes that they will do all this rather than simply decide that it is faster and no more expensive to simply drive to San Francisco or their final destination and park there.

The drafters of SAP and the DEIR seem to forget that the most enduring principle of public transportation use is that people will always choose transportation methods that are the fastest and cheapest and convenient method of getting from one place to another. That is why everyone in New York City uses the subway and no one in Los Angeles is using their multi-billion dollar subway to nowhere.

Other Financial Comments Related To SAP and the DEIR⁵

While CEQA may not require detailed economic analysis of the impacts of project alternatives, the economic and fiscal effects of these developments extend far beyond the jurisdiction of the City of Larkspur and far beyond what is incorporated in the document⁶. However, they do not extend beyond the pocketbooks of the taxpayers in Larkspur. As a consequence, any prudent government analysis requires that SAP analyze the effects on other jurisdictions: at a minimum those that impact the taxpayers of Larkspur.

Impacts on Schools⁷

The DEIR provides descriptions of some of impacts on schools, but the level analysis is too high and general to fully understand the effects. To the best of my knowledge, school impact fees are not presently set high enough to compensate Marin schools for capacity impacts that would be generated by SAP or any of the Alternatives. Therefore, SAP's conclusions, pertaining to schools is particularly disconcerting, where it concludes (p. 374):

"The payment of associated development fees, compliance with applicable State and local regulations, implementation of the Station Area Plan would have a less-than-significant impact on school facilities."

⁵ Provided by Michael Arnold, Ph.D., Economist at Alco Partners

⁶ See information in the draft EIR, beginning with Section K, page 355.

⁷ Provided by Michael Arnold, Ph.D., Economist at Alco Partners

Technical Comments

T1: The above conclusion is not supported by the provided information. Fiscal analysis by school district requires far greater detail and simulations than the draft currently provides.

T2: The draft refers to school impact fees, (p. 374) and concludes:

“Payment of school facility mitigation fees has been deemed by the State legislature (per Government Code Section 65995(h)) to constitute full and complete mitigation of impacts of a development project on the provision of adequate school facilities, even though, as a practical matter, additional funding ..”

While this conclusion may be sufficient for legal reasons, it is merely an assumption. The Larkspur City Council has the responsibility to its own taxpayers to test the validity of the conclusion.

T3: As noted in the draft, fiscal impacts are likely to vary by school district, depending on the expected number of school age residents of the proposed developments and the specific financial structures of each district.

T4: A critical component of school district impacts is to consider the capacity of the schools to absorb the additional school aged residents. The document identifies current capacity utilization of schools, using some general ratios. However, it does not identify nor project future capacity utilization and how the timing of the proposed project build out may impact this key factor in assessing fiscal impacts. Additional costs to existing taxpayers can vary materially dependent on whether there will be capacity in existing infrastructure when new students arrive.

T5: Fiscal impacts can vary dependent on whether these districts can maintain their “basic aid” status. Large developments, depending on the number of school-aged children they generate, can impact this calculation. I can find no references in the DEIR analyzing this fiscal impact.

T6: To the extent either fiscal stress or benefits are identified in these analyses, the consequences on existing programs should be specified and disclosed so that taxpayers and parents have a full understanding of the consequences of the alternative developments on school quality.

The DEIR and the SMART Train⁸

The DEIR states (p. 123-124)

“Sonoma Marin Area Rail Transit (SMART). SMART is a passenger train and multiuse pathway project that is planned to run along 70 miles of the historic Northwestern Pacific Railroad alignment. The rail line will serve 14 stations from Cloverdale in Sonoma County to the San Francisco-bound Ferry Terminal in Larkspur.” and “The SMART rail parallels U.S. 101 and will provide an alternative to this already-congested corridor. The rail project is projected to take more than 1.4 million car trips off U.S. 101 annually and reduce greenhouse gases by at least 124,000 pounds per day. SMART’s environmental studies project 5,000 to 6,000 passenger trips per day will be made on the train and 7,000 to 10,000 daily trips will be made on the bicycle/pedestrian pathway.”

Comments.

1. This out-of-date description and is based on SMART’s EIR (2006) that was tied to a 70-mile rail line. As is well-known, SMART’s project has been significantly downsized due to financial constraints. The description related to SMART needs to conform to current SMART project descriptions.
2. The stated “7,000 -10,000 daily bicycle/pedestrian trips” was based on flawed methodology by extrapolating usage from the Tiburon bay trail to the entire 70 mile rail line. While not challenged in court, it was part of the ongoing public debates preceding the 2008 sales tax election. It has since been revealed that in fact this quoted number was completely “made-up” by then SMART General Manager Lillian Hames.
3. References to SMART’s 2006 EIR were based on the assumption that SMART would successfully operate a 70 mile rail line that would terminate in Larkspur. As of today, SMART does not have the funds to construct the track south of downtown San Rafael. The DEIR needs to be consistent with current project descriptions.
4. SMART has applied for federal (“Small Starts”) funds to complete construction to the Larkspur. Applications for these funds far exceed the funds available. As a result, the probability of the SMART application receiving approval is considered small. Since the SMART application may not be approved, the EIR needs to incorporate a realistic description of when the funds will become available.⁹
5. Ridership projections completed for the 2006 EIR were based on population projections for the Marin and Sonoma counties that are now out-of-date and exceeded either the current State Dept. of Finance population projections for the two counties or ABAG

⁸ Provided by Michael Arnold, Ph.D., Economist at Alco Partners

⁹ This may not occur until (and if) the sales tax supporting rail operations is renewed in 2028.

projections for the two counties. Rail ridership is highly sensitive to the population projections for the corridor.

- The above cited ridership figures are over-stated. Current Board members and the General Manager have stated publicly that SMART expects to get about half the ridership that was projected in the EIR, if that.
- SMART was recently criticized by the Marin County Grand Jury for not updating its ridership projections in several years.¹⁰ The Draft exposes the City council to relying on projections that are not current.
- The draft refers to 400 weekday riders using the Larkspur station. As tables for ridership projections in the EIR are readily available from SMART, this figure overstates morning and evening peak ridership by 44 riders or about 10%.

The DEIR claims SMART will provide shuttles for the Larkspur area (p. 124)

“Shuttle System. SMART proposes a local shuttle system, using small 12-25 passenger vehicles, to distribute SMART passengers at the work-end of their trip. The shuttles would be free, and would operate during the same hours as trains, in the morning and afternoon peak commute periods. There are nine proposed shuttle routes, each designed to complete a one-way loop in less than 30 minutes or the headway of the train. The shuttle route for Larkspur Ferry Station will serve four major activity centers—Larkspur Landing Circle, San Quentin Prison/Marin Country Mart and nearby offices, Marin General Hospital, and the College of Marin.”

Comment. There is no assurance that SMART will provide this transportation assistance at any time in the foreseeable future. The DEIR should incorporate this fact in its circulation plan.

What If the SMART Station Is Never Built?

A glaring question that the SAP and DEIR fail to consider is that the extension of the SMART train to the Larkspur Landing area and the construction of the SMART station are not a given. In fact, considering the amount of funding that is presently and predicted to be lacking, it is questionable if the extension/station will ever be built. And if it is built, it might be ten to fifteen years in the future before it's completed and operating.

If this were the case, what would the impacts of all the zoning changes, General Plan amendments and increased allowable development density be on the Larkspur Landing Area during that time? How could any increases in development be justified at all without SMART? Why doesn't the DEIR provide analysis of the significant unmitigated impacts of this possible outcome?

¹⁰ “SMART – Down the Track” Marin County Grand Jury (April 2014).

Next Steps

Members of the Larkspur City Council have recently been socializing the idea that they can pick what they like from the SAP and the DEIR. They have mentioned keeping the “circulation” improvements (paths, sidewalks, bike lanes, etc.) and removing the land use changes from the SAP and DEIR, and moving forward with a certification of the EIR, without rewriting it or recirculating it for public comment. It is CVP’s position that this would constitute “impermissible piece-mealing” of the DEIR under CEQA, and is therefore not an option that the City Council can choose. We base our position on the following:

- (1) The SAP and DEIR are fundamentally flawed under the requirements of CEQA to clearly describe what it is and what it is proposing (i.e., is it a "program" EIR, a "project" EIR, a "visioning" study EIR?).
- (2) The DEIR is inadequate because it does not adequately describe, analyze or provide sufficient evidence for its assumptions and conclusions about the efficacy of circulation proposals, trip caps, TDM, parking proposals.
- (3) The DEIR is inadequate because it fails to provide sufficient evidence to conclude that a variety of significant environmental impacts and cumulative impacts on air quality, water resources, habitat and species protection, transportation and other issues, will be or can be mitigated as described.
- (4) The DEIR cannot separate out certain circulation elements from the rest of the plan, because as written, it is presented and analyzed as one Plan, i.e., the impacts on environmental, air quality, biological, traffic and parking and the circulation analysis and studies, etc., are inseparably intertwined with each other.
- (5) As well stated by Edward Yates, attorney at law, in his letter to Mr. Toft, of May 28, 2014, on behalf of Community Venture Partners, Inc. (referenced above), *“While project components may be approved if they have been the subject of CEQA analysis, transportation infrastructure improvements related to the LSAP, such as highway or street realignments would not qualify for such an approval. The LSAP and DEIR do not describe any actual infrastructure improvements in sufficient detail for CEQA analysis and the DEIR does not assess or mitigate the impacts of such proposals.”*

For these reasons the SAP and the DEIR should not and cannot be certified and would, at a minimum, have to be rewritten, corrected, include all the data and evidence and new analysis required, and then recirculated again for public comment, essentially starting the process over.

Closing

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. Our goals are to

Community Venture Partners, Inc.

73 Surrey Avenue, Mill Valley, CA 94941

415.381.3887 – communityventurepartners@comcast.net

effect immediate, positive social change through innovative approaches to community engagement and local planning challenges. It is toward those ends that we are compelled to submit our comments.

We ask that the City of Larkspur 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 grants funders, not by the fashions of politically correct, social engineering advocates, and not by ideologies, no matter how seductive they may be. As is our charge, we are asking the City of Larkspur to respect those laws and regulatory procedures to their utmost ability and above all else. And we believe if they will do that, they will conclude that our position and comments, and those of our legal counsel and experts, on LSAP and the DEIR are both reasonable and equitable for all concerned.

The LSAP and its DEIR were, at best, an educational exercise and a wakeup call to the community to get more involved. But we do not believe it is the direction that the majority of Larkspur residents or Southern Marin residents want to go in. We therefore recommend that the LSAP and the DEIR be set aside. After doing that if the City has an interest in addressing pedestrian and traffic deficiencies in the Larkspur Station Plan area, we would advise that they proceed to examine that under a normal General Plan update process, complete with a new EIR, if required. What was learned from LSAP can inform that process to be more productive and to better address the actual, specific challenges that exist.

This would not only better conform with the requirements of CEQA and state law, but it would be the fastest, least expensive and most efficient way for the City to move forward quickly to address those specific challenges that are of shared concern and that are actually directly related to the proposed SMART Station Area.

Respectfully submitted,



Bob Silvestri
President
Community Venture Partners, Inc.

Community Venture Partners, Inc.

73 Surrey Avenue, Mill Valley, CA 94941

415.381.3887 – communityventurepartners@comcast.net

**COMMUNITY VENTURE PARTNERS
COMMENT LETTER ON THE LSAP AND DEIR**

LIST OF ATTACHMENTS (A through E)

- A. Letter by Edward E. Yates, attorney at law, to Neal Toft, Planning and Building Director, City of Larkspur, dated May 28, 2014, representing Community Venture Partners, Inc.
- B. Letter from Pang Ho, PHA Analytics, dated May 27, 2014 and addressed to Bob Silvestri, Community Venture Partners, Inc.
- C. Letter from Geoff Hornek, Ph.D., dated May 28, 2014 and addressed to Bob Silvestri, Community Venture Partners, Inc.
- D. Letter from Peter Baye, Ph.D., Coastal Ecologist and Botanist, dated May 22, 2014 and addressed to Bob Silvestri, Community Venture Partners, Inc.
- E. Excerpts from: Bay Conservation and Development Commission, *Bay Plan Amendment*, 1-08, by Resolution 11-08, 2014, Climate Change Findings, Pages 10-17.

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