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October 20, 2014

Marin County Planning Commission  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903

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

Dear Marin County Planning Commission,

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.o 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.”<sup>1</sup>

“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.”<sup>2</sup> (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.”<sup>3</sup> (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

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<sup>1</sup> 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/>

<sup>2</sup> 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/>

<sup>3</sup> 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.”<sup>4</sup>

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 development.

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<sup>4</sup> 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 the street or in a nearby parking area that is 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

cc: Marin County Board of Supervisors (BOS@marincounty.org)