

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

May 1, 2014

Larkspur City Council &
Neal Toft, Director of Planning and Building – City of Larkspur
400 Magnolia Ave.
Larkspur, CA 94939
lk_planning@cityoflarkspur.org

Re: Public Comment on the Draft City of Larkspur SMART
Station Area Plan and the Draft City of Larkspur SMART Station
Area Plan Draft Environmental Impact Report

I write on behalf of Sustainable TamAlmonte and myself to
comment on the Draft City of Larkspur SMART Station Area Plan
and the Draft City of Larkspur SMART Station Area Plan Draft
Environmental Impact Report (State Clearinghouse No.
2013012020).

Sustainable TamAlmonte is a group of Tam Valley and Almonte
residents who want to preserve and enhance the environmental
qualities of Marin's unique communities. The members of
Sustainable TamAlmonte support truly sustainable land use and
development and have grave concerns about the environmental,
health and safety impacts that result from poor land use planning,
including environmentally detrimental projects. Therefore,
Sustainable TamAlmonte has a strong interest in enforcing
environmental laws to protect Marin communities' valuable
environmental resources, and the health and safety of current and
future residents.

I. INTRODUCTION

CEQA has two basic purposes, neither of which the Draft Larkspur Station Area Plan's DEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹ The EIR is the "heart" of this requirement.² The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."³ Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.⁴ The Draft EIR fails to satisfy these purposes by improperly deferring the analysis of, and failing to disclose, all potentially significant environmental impacts of the Draft Larkspur Station Area Plan, and failing to provide adequate mitigation measures to avoid impacts. As a result, the Draft EIR fails as an informational document and falls short of CEQA's mandates.

II. The Draft EIR Fails To Disclose And Analyze The Likely Worst-Case Scenario

CEQA requires the City of Larkspur to exercise a good faith effort to disclose the Project's "potential" impacts. An EIR need not engage in speculation by adopting worst-case assumptions that are inconsistent with the very nature of the Project. However, reasonably likely worst-case scenarios that are consistent with

¹ *14 Cal. Code Regs. ("CEQA Guidelines") § 150029(a)(1).*

² *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

³ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁴ *CEQA Guidelines § 15002(a)(2) and (3) (See also Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.).

and supported by the evidence in the record must be evaluated. While CEQA may not require a "speculative" worst-case scenario analysis, CEQA does require that significant effects be discussed "with emphasis in proportion to their severity and probability of occurrence."⁵ The CEQA Guidelines also state, "an agency must use its best efforts to find out and disclose all that it reasonably can."⁶ The CEQA Guidelines further clarify the meaning of a significant effect on the environment as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project."⁷ Therefore, it is standard practice in CEQA analyses to use a "reasonable" or "realistic" worst-case analysis based on potentially expected worst-case conditions, as opposed to a theoretical or "speculative worst-case analysis," which uses the absolute worst-case assumptions conceivable.

Here, the Draft EIR fails to provide a realistic worst-case analysis of the Project's impacts. Specifically, the Draft EIR completely fails to disclose and analyze the likelihood that, pursuant to California's density bonus law, the Project's proposed housing developments would be developed at even greater densities – ***up to 35 percent or more*** -- than are analyzed in the Draft EIR.

California's density bonus law allows developers whose housing development proposals meet certain thresholds of affordability to receive density bonuses, incentives and development waivers from the local agency.⁸ The law was designed to implement "an important state policy to promote the construction of low-income housing and to remove impediments to the same."⁹ As recognized

⁵ CEQA Guidelines § 15143

⁶ *Id.*, §15144.

⁷ *Id.*, §15382.

⁸ Cal. Govt. Code § 65915.

⁹ *Building Industry Association v. City of Oceanside* (1994) 27 Cal.App.4th 744, 770; Cal. Govt. Code § 65582.1(f).

by the courts, the density bonus rewards developers who build “a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations.”¹⁰

The density bonus law provides that requests for a density bonus and incentives **must** be granted “when an applicant for a housing development seeks and agrees to construct a housing development” that meets one or more of the statute’s thresholds.¹¹ Although an agency may eventually deny a request for an incentive if certain limited findings are made, **the law does not identify any findings that would allow an agency to deny a density bonus request.**

The density bonus law states that a density bonus of 35 percent may be awarded to affordable housing developers.¹² Courts have allowed density bonuses above 35 percent. In *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, the **court allowed a 40 percent density bonus.** The plaintiffs objected to the density bonus, stating that the density bonus law provided a cap on density bonuses of 35 percent. The court disagreed. The court found that the 35 percent density increase was meant to ensure that local governments provided *at least* that amount when a developer chose to provide a certain number of affordable housing units. The court also found that the statute clearly did not place any caps on the allowable density bonus.¹³ The court held that the 35 percent density increase reflected “the maximum density increase that would be statutorily imposed upon

¹⁰ *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 824 (quoting *Shea Homes Ltd. Partnership v. County of Alameda* 92003) 110 Cal.App.4th 1246, 1263).

¹¹ Cal. Govt. Code § 65915(b)(1).

¹² Cal. Govt. Code § 65915(g); *see also* Marin County Development Code § 22.24.030.

¹³ Cal. Govt. Code § 65915(n) states that “[nothing] in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described . . .”

municipalities,” not the maximum permissible.

Here, it is unquestionable that affordable housing developers would seek density bonuses from the City when density bonuses are mandated upon request (if certain thresholds are met). It is also clear that density bonuses may be granted up to 35 percent, or more, above the densities disclosed and analyzed in the Draft EIR. Increased densities would undoubtedly result in a number of potentially significant effects on traffic, air quality, visual quality and public services, among other significant effects. It is unfathomable that the City has failed to disclose and analyze the likelihood that, pursuant to California’s density bonus law, the Project’s identified housing developments would be developed at even greater densities – up to 35 percent or more -- than are analyzed in the Draft EIR. Increased densities above those identified in the Draft EIR is a realistic worst-case scenario that must be analyzed in a revised EIR and circulated for public review and comment.

III. The Draft Station Area Plan DEIR Fails To Adequately Disclose, Analyze And Mitigate Potentially Significant Impacts Associated With Air Quality Because Mitigation Measures Fail To Protect Sensitive Receptors Outdoors.

The Draft Station Area Plan DEIR sites **Impact AIR-5**; “Implementation of the Station Area Plan could result in exposure of sensitive receptors to substantial pollutant concentrations. (S)”¹⁴

There is a clear association between respiratory and other health effects (including cancer) and the proximity of sensitive populations to high-traffic roadways where cars and trucks emit Toxic Air Contaminants (TACs) in large quantities over long periods of time.^{15 16 17 18}

¹⁴ *Larkspur Station Area Plan DEIR, Impact AIR-5*, 189.

¹⁵ *Brunekreef, B. et al. Air pollution from truck traffic and lung function in children living near motorways. Epidemiology. 1997; 8:298-303*

There are other sources of TACs, including mobile and stationary sources, such as dry cleaners. New, scientific information since 2007 has become available that shows new adverse health effects from TAC exposure. For example, recent studies show a link between TAC exposure and low birth weight, cardiovascular mortality, chronic obstructive pulmonary disease, suicide, schizophrenia, pediatric asthma, among other health effects.^{19 20 21 22 23 24 25 26 27 28}

¹⁶ Lin, S. et al. *Childhood asthma hospitalization and residential exposure to state route traffic*. Environ Res. 2002;88:73-81

¹⁷ Venn et al. *Living near a main road and the risk of wheezing illness in children*. American Journal of Respiratory and Critical Care Medicine. 2001; Vol.164, pp. 2177-2180

¹⁸ Kim, J. et al. *Traffic-related air pollution and respiratory health: East Bay Children's Respiratory Health Study*. American Journal of Respiratory and Critical Care Medicine 2004; Vol. 170. pp. 520-526

¹⁹ Patel, MM et al. *Traffic-related air pollutants and exhaled markers of airway inflammation and oxidative stress in New York City adolescents*. Environ Res. 2012 Nov 22

²⁰ Dadvand, P et al. *Maternal Exposure to Particulate Air Pollution and Term Birth Weight: A Multi-Country Evaluation of Effect and Heterogeneity*. Environ Health Perspect. 2012 Feb 6.

²¹ Brunekreef, B et al. *Effects of long-term exposure to traffic-related air pollution on respiratory and cardiovascular mortality in the Netherlands: the NLCS-AIR study*. Res Rep Health Eff Inst. 2009 Mar.

²² Padula, AM et al, *Exposure to traffic-related air pollution during pregnancy and term low birth weight: estimation of causal associations in a semiparametric model*. Am J Epidemiol. 2012 Nov.

²³ Gan, WQ et al. *Associations of Ambient Air Pollution with Chronic Obstructive Pulmonary Disease Hospitalization and Mortality*. Am J Respir Crit Care Med. 2013 Feb 7.

²⁴ Yackerson, NS et al. *The influence of air-suspended particulate concentration on the incidence of suicide attempts and exacerbation of schizophrenia*. Int J Biometeorol. 2013 Jan 16.

²⁵ Faustini, A et al. *Air pollution and multiple acute respiratory outcomes*. Eur Respir J. 2013 Jan 11.

²⁶ Zora, JE et al. *Associations between urban air pollution and pediatric asthma control in El Paso, Texas*. Sci Total Environ. 2013 Jan 8.

²⁷ Willers, SM et al. *Fine and coarse particulate air pollution in relation to respiratory health in Sweden*. Eur Respir J. 2013 Jan 11.

²⁸ Lewis, TC et al. *Air pollution and respiratory symptoms among children with asthma: Vulnerability by corticosteroid use and residence area*. Sci Total Environ. 2012 Dec 26.

In order to mitigate Impact AIR-5, the DEIR proposes **Mitigation Measure AIR-5**: “The following language shall be included as a Condition of Approval for new projects associated with implementation of the Station Area Plan:

- As shown in Figure IV.C-2, residential units proposed within 500 feet of Highway 101, Sir Francis Drake Boulevard and/or any of the stationary sources identified in Table IV.C-7 shall be evaluated for potential health risk exposure. The applicant for a residential project within the Plan area shall prepare a report using the latest BAAQMD permit data and roadway risk estimates to determine impacts to future residents. The report shall outline any measures that would be incorporated into the project necessary to reduce carcinogenic health risk of to less than 10 in 1 million, reduce the non-cancer risk of to less than 1.0 on the hazard index (chronic or acute), and ensure the annual average ambient PM_{2.5} increase is less than 0.3 µg/m³. Measures to reduce impacts could include upgrading air filtration systems of fresh air supply, tiered plantings of trees, and site design to increase distance from source to the receptor. (LTS)”²⁹

The Draft Station Area Plan DEIR fails to adequately disclose and analyze Impact AIR-5 because it suggests inadequate mitigations to protect sensitive receptors spending time outdoors. Air filtration systems would do nothing to protect children playing outside, residents gardening or residents opening their windows on sites located within the zone of influence of Toxic Air Contaminant emission sources. Planting trees and/or vegetation between sensitive receptors and the pollution source provides little or no protection to the sensitive receptors spending time outdoors and cannot be carried out when there is little or no room for such trees and/or vegetation.

The only potential viable mitigation to protect sensitive receptors spending time outdoors is to increase the distance from the source

²⁹ *Larkspur Station Area Plan DEIR, Impact AIR-5, 190*

to the receptor. However, if this distance were greater than the size of the proposed development sites, then identification of alternative sites would need to be identified and evaluated prior to consideration of the Station Area Plan.

Furthermore, Mitigation Measure AIR-5 is not adequate to mitigate Impact AIR-5 because it postpones environmental review. To require future analysis and future planning to select or create future mitigation measures is not a mitigation that can be evaluated now as to whether or not it can mitigate the impact. Rather, these requirements defer adequate analysis, disclosure, and mitigation of the impact to a future date.

The Draft Station Area Plan DEIR approach violates CEQA. The Draft EIR must include mitigations that can be evaluated now as to whether or not they have merit; the City of Larkspur cannot wait until after Project approval. This information is necessary for decision makers to determine if areas identified for housing development are suitable for residential use, besides other determinations. The Draft EIR's approach undermines the entire point of the CEQA process -- to offer the public and the decision makers the opportunity to weigh-in on a project's potentially significant impacts and an agency's proposed measures to mitigate those impacts. It is well-established that CEQA is not meant to be a *post hoc* rationalization of decisions that have already been made. "If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken."³⁰

IV. The Draft Station Area Plan DEIR Fails To Adequately Disclose, Analyze And Mitigate Potentially Significant Impacts Associated With Adequate Water Supply.

The Station Area Plan DEIR relates that full implementation of the Station Area Plan, which would occur over 20 years, would be

³⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.

more than the City of Larkspur growth anticipated in the current MMWD Urban Water Management Plan (UWMP) and therefore sites **Impact UTIL-1**: “Existing water supply available to the City of Larkspur may not be adequate to accommodate full implementation of the Station Area Plan. (S)”³¹

In order to mitigate Impact UTIL-1, the Draft DEIR proposes **Mitigation Measure UTIL-1** and concludes that the measure would reduce impacts associated with adequate water supply to a less-than-significant level.

“Mitigation Measure UTIL-1: The following language shall be included as a Condition of Approval for new projects associated with implementation of the Station Area Plan:

- Until the Marin Municipal Water District (MMWD) updates their Urban Water Management Plan (UWMP) to account for water demands associated with the implementation of the Station Area Plan, and as a condition of approval, the City shall require all new development within the Plan area to confirm with the MMWD that adequate water to serve the project is available within current water allocations. This written confirmation of available water supply shall be provided prior to approval of any proposed development project. (LTS)”³²

Mitigation Measure UTIL-1 requires waiting until MMWD updates their Urban Water Management Plan to be able to determine whether or not adequate water is available within current water allocations to serve the water demands associated with the implementation of the Station Area Plan. This is not a mitigation that can be evaluated now as to whether or not it can mitigate the impact. Rather, this requirement defers adequate analysis, disclosure, and mitigation of the impact to a future date.

³¹ *Station Area Plan DEIR, Impact UTIL-1, 387*

³² *Station Area Plan DEIR, Impact UTIL-1, 387*

The City's approach violates CEQA. The City must determine now whether the water supply is adequate to accommodate full implementation of the Station Area Plan; the City cannot wait until after Project approval. The City's approach undermines the entire point of the CEQA process -- to offer the public and the decision makers the opportunity to weigh-in on a project's potentially significant impacts and an agency's proposed measures to mitigate those impacts. It is well-established that CEQA is not meant to be a *post hoc* rationalization of decisions that have already been made. "If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken."³³

V. The Draft Station Area Plan DEIR Fails To Adequately Disclose, Analyze And Mitigate Potentially Significant Impacts Associated With Ground Shaking.

The Station Area Plan DEIR states; "**Impact GEO-1:** Implementation of the Station Area Plan could result in substantial risk related to geologic or seismic hazards. (S)"³⁴

The Station Area Plan DEIR further states; "**b. Impacts Analysis.** Implementation of the Station Area Plan would therefore result in additional people and structures being exposed to geohazards, including seismic risks, liquefaction, slope instability, soil settlement or compaction, and adverse soil conditions (e.g., expansive soils, corrosive soils). Some of these geohazards, **particularly those related to seismic shaking**, could result in injuries and/or fatalities; all of the geohazards discussed could result in damage to structures and property."³⁵

³³ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.

³⁴ *Station Area Plan DEIR, Impact GEO-1*, 299

³⁵ *Station Area Plan DEIR, Impact GEO-1*, 299

and “**(1) Seismic Hazards.** Major regional faults located in the Plan vicinity are capable of producing very strong to violent ground shaking in the Plan area, and a major seismic event is likely during the operational lifetime of development and redevelopment projects implemented under the Station Area Plan. Strong to violent seismic shaking could cause serious structural damage to buildings not engineered and constructed to comply with the current CBC, and could cause extensive non-structural damage to buildings in the Plan area.”³⁶

The Station Area Plan DEIR then asserts that implementation of Mitigation Measure GEO-1 would ensure that impacts related to geologic and seismic impacts from new development would be **less than significant (LTS)**.

Based on information from the Marin Countywide Plan and the Marin Countywide Plan EIR, the Station Area Plan DEIR overestimated the ability of measures to mitigate impacts associated with severe ground shaking and came to an incorrect conclusion.

According to the 2007 Marin Countywide Plan Hazard Map 2-9 “Seismic Shaking Amplification Hazards”, part of the land that is targeted for more development by the Station Area Plan, is identified as Soil Type E (including water-saturated mud and artificial fill) and is expected to sustain the strongest amplification of shaking.

Unincorporated Marin areas targeted for development in the 2007 Marin Countywide Plan have the same soil type and conditions as Larkspur areas targeted for development in the Draft Larkspur Station Area Plan. The Marin Countywide Plan EIR also gives information about the City Center Corridor, which is applicable to Larkspur Landing. As such, findings in the 2007 Marin Countywide Plan EIR are relevant to environmental evaluation of the Larkspur Station Area Plan.

³⁶ *Station Area Plan DEIR, Impact GEO-1, 299*

Excerpts from the 2007 Marin Countywide Plan's (CWP) Environmental Impact Report (EIR) 4.7 GEOLOGY:

Pg. 4.7-4, 2007 Marin CWP's EIR, **Seismic Ground Shaking:** "Ground shaking is the most potentially devastating geologic hazard in Marin County due to the damage it would be capable of causing."... "In Marin County, the most significant area of potential shaking amplification is the City-Centered Corridor" The Larkspur Station Area Plan proposes new development in the City-Centered Corridor.

Pg. 4.7-13, 2007 Marin CWP's EIR, **City-Centered Corridor Housing Sites:** "In general, these sites could experience strong seismic ground shaking and many of the designated areas would likely be subject to hazards related to unstable ground: expansive soils, soil erosion, subsidence and settlement, and seismic-related ground failure." The Larkspur Station Area Plan proposes new development at locations within the City-Centered Corridor, which would experience the same hazards.

Pg. 4.7-20, 2007 Marin CWP's EIR, **Impact 4.7-2 Seismic Ground Shaking:** "Land uses and development consistent with the Draft 2005 CWP Update (AKA 2007 CWP) would expose people, new development and redevelopment to substantial adverse seismic effects, including the risk of loss, injury, or death involving strong seismic ground shaking. This would be a significant impact."

Pg. 4.7-20, 2007 Marin CWP's EIR, Discussion of **Impact 4.7-2 Seismic Ground Shaking:** "The probability of at least one earthquake with a moment magnitude greater than 6.7 before 2032 is 62 percent."... "In Marin County, buildings located near the San Andreas Fault zone and **buildings underlain by water-saturated mud and artificial fill** could experience the strongest seismic ground shaking. The deposits that will experience the strongest shaking amplification underlie a significant portion of

the City-Centered Corridor (Map 2-9 [Seismic Shaking Amplification Hazards) in 2007 Countywide Plan.” – As already mentioned, part of the land that is targeted for more development by the Station Area Plan, is identified as Soil Type E (**water-saturated mud and artificial fill**) in the CWP Hazards Map – 2.9 “Seismic Shaking Amplification Hazards”.

Pg. 4.7 – 20, 2007 Marin CWP’s EIR, Discussion of **Impact 4.7-2 Seismic Ground Shaking**: “The Marin County Code includes ordinances that would reduce hazards associated with seismic ground shaking. Section 19.04.010, Codes Adopted, states that the County has adopted the 2001 edition of the California Building Code (CBC). Adoption of this Code would ensure that new construction would be based on the seismic design requirements in the CBC.”

To mitigate Impact 4.7-2 Seismic Ground Shaking, in addition to compliance with the California Building Code, the CWP’s EIR incorporates Mitigation Measure 4.7-2, which calls for revision of numerous policies and programs related to seismic safety, retrofit, and location of emergency service facilities and creation of a new program to systematically assess damaged and collapsed buildings after a damaging earthquake.

The Station Area Plan DEIR relies on Federal, State and Larkspur City General Plan existing programs and policies and, in addition, incorporates Mitigation Measure GEO-1 to mitigate Impact GEO-1 and address significant impacts related to seismic hazards within the Plan area, including seismic ground shaking. These mitigation measures are similar to those required by the 2007 CWP EIR.

Yet, on Pg. 4.7-24, the 2007 Countywide Plan’s EIR concludes; “Mitigation Measure 4.7-2 would ensure a reduced level of risk compared to existing conditions and reduce adverse effects of mild to moderate seismic ground shaking to a less-than-significant level. Nevertheless, for severe seismic ground shaking this would remain a **significant unavoidable project and cumulative**

impact. (SU)” This CWP EIR finding is in direct conflict with the Station Area Plan conclusion that that implementation of Mitigation Measure GEO-1 would ensure that impacts related to geologic and seismic impacts, including seismic ground shaking, from new development would be **less than significant (LTS)**.

Summary

Per the CWP Hazard Map 2.9 “Seismic Shaking Amplification Hazards”, some Unincorporated Marin areas targeted for development in the 2007 Marin Countywide Plan consist of Soil Type E (including water-saturated mud and artificial fill) and are expected to sustain the strongest amplification of shaking. Similarly, portions of the Larkspur Landing areas targeted for development in the Station Area Plan also consist of Soil Type E and are expected to sustain the strongest amplification of shaking.

Both the CWP’s EIR and the Draft Station Area Plan’s DEIR find that such seismic ground shaking would result in a significant adverse impact. The CWP’s EIR and the Station Area Plan’s EIR incorporate similar mitigation measures. Yet, the Draft Station Area Plan’s DEIR concludes that its mitigation measure for Seismic Hazards, including Seismic Ground Shaking, would result in a less-than-significant impact, whereas the 2007 Countywide Plan’s EIR concludes that its mitigation measures for Seismic Ground Shaking would result in significant unavoidable project and cumulative impacts for severe seismic ground shaking.

Moreover, on Pg. 115, the 2012 Marin County Housing Element’s SEIR, which also directs development in areas within the City-Centered Corridor and in areas with Soil Type E, confirms the CWP’s EIR findings: “Mitigation Measure 4.7-2 would reduce impact, but still found significant unavoidable. No change from CWP EIR.”

Conclusion

In conclusion, the findings, related to the impact of seismic ground shaking impact, found in the 2007 Marin Countywide Plan’s EIR and the 2012 Marin County Housing Element’s SEIR conflict with

those of the Draft Station Area Plan’s DEIR and prove that the impact after mitigation would remain a significant unavoidable project and cumulative impact. Moreover, there can be no benefit that would result from implementation of the Station Area Plan that would override the impact of severe injury or loss of life from building on ground known to experience severe seismic ground shaking. The only sensible recourse is to revise the Draft Station Area Plan and remove new development from land that is subject to severe seismic ground shaking.

VI. The Draft Station Area Plan DEIR Fails To Adequately Disclose, Analyze And Mitigate Potentially Significant Impacts From Flooding As A Result Of Predicted Sea Level Rise

The Draft EIR recognizes Impact HYDRO-1: “Implementation of the Station Area Plan could result in substantial risk related to exacerbated flooding hazards as a result of predicted sea level rise.”³⁷ and identifies the impact as significant.

To address this impact, the Draft EIR incorporates Mitigation Measure HYDRO-1. The measure states; “Development projects within a mapped flood hazard zone shall incorporate measures to protect future residents and users from exacerbation of flood hazards due to sea level rise. This shall include certification by a professional engineer or architect that floor elevations and other building requirements for construction in a flood hazard zone shall remain protective of persons and property in the event of a 55-inch sea level rise.”³⁸ The Draft EIR then concludes that implementation of the measure would ensure that impacts related to new development flooding hazards related to sea level rise would be less than significant (LTS).

³⁷ *Station Area Plan DEIR, Impact HYDRO-1, 317*

³⁸ *Larkspur Station Area Plan, Impact HYDRO-1, 317*

The above mitigation measure is not adequate to mitigate Impact HYDRO-1. To require future analysis and future planning to select or create future mitigation measures is not a mitigation that can be evaluated now as to whether or not it can mitigate the impact. Rather, these requirements defer adequate analysis, disclosure, and mitigation of the impact to a future date.

The City's approach violates CEQA. The City must determine now whether the areas identified for development are suitable for residential and/or commercial use; the City cannot wait until after Project approval. The City's approach undermines the entire point of the CEQA process -- to offer the public and the decision makers the opportunity to weigh-in on a project's potentially significant impacts and an agency's proposed measures to mitigate those impacts. It is well-established that CEQA is not meant to be a *post hoc* rationalization of decisions that have already been made. "If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken."³⁹

VII. No Benefit Could Result From Implementation Of the Station Area Plan That Would Override Five (5) Significant Unavoidable Adverse Impacts, Resulting In Severe Environmental Harm And Serious Damage, Illness, Injury And Potential Loss of Life.

The Draft Station Area Plan's DEIR demonstrates that implementation of the Station Area Plan would cause five (5) significant unavoidable adverse environmental impacts, resulting in severe environmental harm and serious illness, injury, and potential loss of life. They include:

- Implementation of the Station Area Plan would result in the addition of project traffic that would increase the average delay during the AM and PM peak hours by more than 5

³⁹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.

seconds at Intersection #8 Sir Francis Drake Boulevard /Andersen Drive, which would operate at unacceptable LOS under Existing Plus Project Conditions and Cumulative Plus Project Conditions.

- Implementation of the Station Area Plan would add traffic greater than 1 percent of the freeway segment capacity on the two segments of northbound U.S. 101 between Tamalpais Drive and Industrial Way, resulting in a significant project contribution under Cumulative Conditions.
- Implementation of the Station Area Plan could generate air pollutant emissions that would exceed the BAAQMD criteria and could substantially contribute to a violation of air quality standards.
- Implementation of the Station Area Plan could result in a significant cumulative net increase in criteria pollutant emissions.
- Implementation of the Station Area Plan could result in GHG emissions that would have a significant impact and cumulatively contribute to global climate change.

There could be no benefit from implementation of the Station Area Plan that would override the harm, suffering and loss of these five significant unavoidable adverse environmental impacts.

VIII. CONCLUSION

The Draft Larkspur Station Area Plan's DEIR cannot be relied on to approve the Larkspur Station Area Plan. The City of Larkspur must prepare a revised EIR that adequately analyzes the Larkspur Station Area Plan's potentially significant impacts. As it stands, the Draft EIR is a woefully inadequate CEQA document. The Draft EIR's conclusions are not supported by substantial evidence. The Draft EIR Fails to disclose and analyze the likely

worst-case scenario. The Draft EIR fails to adequately disclose, analyze, and mitigate the Draft Larkspur Station Area Plan's potentially significant impacts with respect to air quality, seismic activity, water supply and sea level rise, among others. The City of Larkspur cannot approve the Larkspur Station Area Plan until an adequate EIR is prepared and circulated for public review and comment. Moreover, there could be no benefit from implementation of the Larkspur Station Area Plan that would override five significant unavoidable adverse environmental impacts, resulting in severe environmental harm and serious damage, illness, injury and potential loss of life.

Very truly yours,

/s/

Sharon Rushton

Chairperson

Sustainable TamAlmonte