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December 31, 2009

Paul McDougall  
Kenneth Holder  
Department of Housing and Community Development  
1800 Third Street  
Sacramento, CA 95811-6942

**RE: COUNTY OF MARIN NOVEMBER 2009 DRAFT HOUSING ELEMENT**

Dear Mr. McDougall and Mr. Holder:

Despite being one of the wealthiest counties in the nation, Marin County struggles to create sufficient affordable housing for its workforce, seniors, and homeless. In response, the Nonprofit Housing Association of Northern California is working in conjunction with the Marin Community Foundation, Greenbelt Alliance, Public Advocates, and a variety of local Marin organizations to increase the supply of affordable housing in all communities in Marin.

While the County has taken innovative steps in past years to support affordable housing, including the creation of dedicated revenue sources, the need for affordable housing in Marin continues to outpace planning and production.

During the past decade, Marin's housing market became much more expensive and exclusive, with home prices rising 5 times faster than income. Only 1 in 10 homes is now valued at less than \$500,000. As Marin's demographics have changed, its economy has changed. Marin has seen an upsurge in retail, health and service sector jobs that don't pay enough to cover the cost of renting or owning here.<sup>1</sup> As a consequence, Marin now relies on other counties to house more than a third of its workforce – generating high levels of local and regional congestion and greenhouse gas emissions. Those who are able to live in Marin are significantly overpaying for housing. On average, low-income households in Marin spend 56% of their income on housing payments.

Long waiting lists at existing affordable housing – and the 11,000 households who applied for section 8 vouchers over the course of one week in March 2009 – provide further documentation of the need for homes for the growing number of seniors, working poor, and Marin's thousands of homeless.<sup>2</sup>

In light of Marin's tremendous affordable housing need, it is disappointing to see that the County has presented a draft housing element with so few sites prepared to accommodate affordable housing.

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<sup>1</sup> Almost two-thirds of Marin workers do not earn enough to rent a market-rate one-bedroom apartment in Marin. Source: (U.S. Census Bureau. 2009. Work Area Profile Report for 2006, OnTheMap Version 3 using LED Origin-Destination Data Base.

<sup>2</sup> Marin County, *Draft Housing Element*, November 2009.

Given its limited supply of potential sites for affordable housing, one would expect the County to adequately zone the sites it has, and offer *meaningful* programs to overcome site impediments. Instead, the County presents a series of creative and innovative policies that – while allowing the County to avoid any changes to its General Plan or local zoning – fall short of enabling the County to accommodate its RHNA need within the planning period.

This letter serves as a companion to the recent letter from Public Advocates in documenting these shortfalls and offering suggested areas for improvement.

## **THE COUNTY DISALLOWS SUFFICIENT DENSITIES AT MOST OF ITS SITES**

*The densities of sites identified in the inventory must be sufficient to encourage and facilitate the development of housing affordable to lower-income households.*

*(Section 65583.2(c)(3)(A) &(B)*

While the County’s Housing Element features a number of creative policies, it falls short on the things that matter most for enabling affordable housing on actual sites – particularly the allowance for sufficient density.

The County maintains that affordable housing can be built at inventoried sites without any rezoning, and with densities capped by the current Countywide Plan (CWP) maximums. As shown in Table 1 below, and as explained in Public Advocates’ recent letter to HCD, **this expects that affordable housing can be built at densities of 7 or fewer units/acre at most of Marin’s inventoried sites.**

The County attempts to defend these low densities with a blanket statement: “Projects are successful at a range of densities when projects are allowed to employ CWP densities” (p.IV-11).<sup>3</sup> This claim is not supported by a coherent feasibility analysis, much less one that considers actual sites in its present inventory. Furthermore, the County’s statement is **directly contradicted by our interviews with leading affordable housing developers in Marin.**<sup>4</sup>

In December 2009 we spoke with a cross-section of affordable housing developers that have produced both small and medium-sized developments in Marin and who were collectively responsible for nearly 90 percent of the affordable housing built in the last planning period. These developers were unanimous in stating that *going forward*, densities of **at least 25-30 units/acre** are necessary to make affordable projects financially viable in Marin.

Moderate density (25-30 units/acre) is important to Marin’s nonprofits for familiar reasons. Affordable housing here faces very expensive, fixed costs that small projects can’t cover. This includes the especially high cost of land in Marin, the considerable expense of navigating Marin’s entitlement processes, the staff time and consultants involved in linking up numerous financing sources, and the costs of mitigating difficult site issues typical of Marin’s infill opportunities.

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<sup>3</sup> In Marin County, the CWP (“Countywide Plan”) caps densities as a range. Presently, deed-restricted affordable housing developments may be built on a discretionary basis at the high end of the density range, contingent on a use permit. Under proposed Policy 1.d of the County’s Draft Housing Element, this use permit requirement would be waived. Nonetheless, the maximum density set by the CWP would remain in effect and this allowance would remain discretionary.

<sup>4</sup> Interviews were conducted with project managers at EAH, Eden Housing, Petaluma Ecumenical Project (PEP Housing), and Citizens Housing in December, 2009.

**Table 1: Current Zoning and General Plan Standards at Inventoried Sites**

Site #	Site Name	Zoning		General Plan			Parcel Size in Acres	Lower-Inc. Units Per Inventory	Expected Gross Density per Inventory (du/ac)
		Zone	Max. Density (du/ac)	Land Use Design.	FAR	Density Range (du/ac)			
1	Marinwood Plaza	CP	N/A	GC, HOD*	10-40%	30 (minimum)	4.75	49	**
2	St. Vincent's Silveira	A2	0.5	PD: Ag. & Env. Resource	N/A	0.03 to 0.1	1,110	100	0.09
4	McPhail School	PF RSP-4.36	4.36	PF-SF-6	1-30%	4 to 7	9.52	40	4.20
7	Roosevelt	RA-B1	7.26	SF-6	1-30%	4 to 7	0.18	1	5.56
9	Oak Manor	C-1 H	N/A	GC, HOD*	5-15%	30 (minimum)	1.58	5	**
12	Golden Gate Seminary	RMP-2.47	2.47	MF-2	1-30%	1 to 4	73.57	20	***
16	Armstrong Nursery	RMPC-6	6	NC	5-40%	1 to 20	1.77	35	19.8
17	Old Chevron Station	CP	N/A	GC	5-30%	N/A	0.79	10	12.7
18	Oak Hill School	RMP-4.2	4.2	MF-2	1-30%	1 to 4	3.87	15	3.9
21	Olema Campground	C-RCR	N/A	C-RC	5-15%	N/A	9.94	10	1.0
23	Pt. Reyes North	C-RA-B3 C-RMPC	2.2 N/A	C-SF-4 C-NC	1-15% 30-50%	1 to 2 1 to 20	16.89	15	0.9
24	Red/Green Barn	C-VCR-B2	4.4	C-NC	30-50%	1 to 20	1.53	10	6.5
27	Grandi Bldg.	C-VCR-B2	4.4	C-NC	30-50%	1 to 20	2.64	2	0.8
28	Castro Street	CP VCR	N/A 21.8	GC NC	5-35% 20-50%	N/A 1 to 20	0.54	2	3.7

\* Housing Overlay District (HOD)

\*\* These sites will require a minimum of 30 units/acre – once the HOD is codified. But it is not clear how this would happen unless the sites were to subdivide or densities were to be calculated based on the net residential space of each site.

\*\*\* Expected density is unclear. Development projected to happen on an unspecified portion of the site.

Marin nonprofits have found that these fixed costs are as high for smaller projects as they are for larger developments. But with smaller and less-dense projects, there are fewer units to shoulder these costs and generate offsetting revenue, since developer fee compensation is often tied to the number of units built. The County explains this problem very well in its constraints analysis (p. III-2).

To understand the implications, it is helpful to consider the case study of Eden Housing's current development in North Novato – one of the only affordable housing projects currently under development in Marin. Eden's development is being built at a density of 26 units to the acre, for a total of 60 units. At our request, Eden Housing performed a sensitivity analysis to determine what the effect would have been if the project were required to be built at a lower density. Eden found that reducing the density to 20 units/acre would have produced a funding gap of \$400,000. Further dropping the density to 15 units/acre would have created a gap of \$1.2 million.<sup>5</sup> For Eden, therefore, being allowed to build at 26 units to the acre is crucial to its project being financially feasible.

Density's relationship to project size is particularly important in the management and operation of affordable developments. Developments under 40 units are generally too small to be managed and operated in a cost effective manner. Smaller developments are also difficult to provide needed services to cost efficiently.

**As a result of each of these factors, most nonprofits operate at a loss when building and managing low-density, small affordable developments in Marin.** Marin's higher-capacity nonprofits tell us they are no longer willing or able to do so. Three of the four affordable developers we interviewed said that – going forward – they will only consider development opportunities with a minimum of 45-50 units. Just one of the developers was willing to go as low as 25 units per project, while maintaining a preference for 40-50 units. Moderate densities are crucial to generating unit totals in this range, or at least over 25 units per project.

The exception to this rule are small, community-based or highly specialized nonprofits that tend to rely heavily on volunteers or serve a narrowly defined special-needs population. By virtue of these traits, they have proven capable of producing a handful of quality, smaller-unit developments in Marin, particularly in western, rural Marin. **But these same traits also limit their capacity.** It is therefore misleading to suggest Marin's smaller nonprofits could address a significant portion of Marin's RHNA within the coming planning period – as hardworking, determined and creative as they are.

For point of reference, small projects (of less than 25 units) yielded a combined total of 32 lower-income units in Marin's previous planning cycle (10 percent of this period's RHNA). Furthermore, 13 of these units are Toussin Senior Housing. Its developer – PEP Housing – has since decided not to do projects this small again, given the high unsupported staff costs involved in the project.<sup>6</sup>

Current and future development reality, therefore, does not support the County's contention that existing "CWP maximum densities" at inventoried sites (and the corresponding achievable unit totals) will accommodate future affordable housing. For most of these sites, unit capacity and maximum densities are too low to support affordable housing – even assuming the adoption of proposed policies like 1.d. We therefore agree with the analysis by Public Advocates that the County is both subject to Statute §65583.2 (h), and fails to comply with it.

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<sup>5</sup> Interview with Faye Blackman, project manager, Eden Housing, 12/21/09.

<sup>6</sup> The County incorrectly implies on p. IV-11 that PEP Housing (and EAH) would do otherwise in the future.

## THE IMPORTANCE OF *BY-RIGHT* PERMISSION TO BUILD AT MODERATE DENSITIES

Programmatic actions required by Statute §65583.2 (h) will go a long way toward enabling affordable housing in Marin within the upcoming planning period. It will be particularly helpful for the County to *rezone sites*, and to allow sufficient densities *by-right*. Sufficient densities need to be supported by design standards (such as height limits and parking requirements) that make the densities actually achievable on a limited parcel.

The County wrongly contends that use permits have been an effective way of enabling affordable housing in Marin in the past. Extended discretionary review processes and burdensome conditional approvals have a long history of driving up the cost of affordable housing in Marin. Until affordable housing developers are given greater certainty about what will be asked of them, and what densities can actually be achieved after design review and community process, they are unlikely to build the affordable housing that Marin needs.

**Case Study 1:** Consider the case of Point Reyes Family Homes completed by EAH in 2006. During a lengthy entitlement process, the County reduced the site's allowable density *multiple* times, until only 34 units were approved for a 19-acre site. In addition to a \$600,000 EIR, the County required EAH to deed two portions of the site to the County: one a potential commercial lot that EAH had planned to sell to underwrite planned homeownership units, and the other for public restrooms. In total, the development process took more than five years – four years of which was pre-construction (including a one-year community input process). The experience has made nonprofits like EAH understandably reluctant to pursue similar projects in the future without greater certainty that they can financially sustain the process they are getting into.

**Case Study 2:** The Fireside (Citizens Housing) further illustrates the problems with Marin's discretionary permit process. While the Fireside encountered construction problems that significantly increased costs, the conditions that the County placed on the Fireside through the use permit process were key factors in making the Fireside the most expensive affordable housing development in the state (\$480,000 per unit). Use permit requirements lengthened the Fireside's development timeline extensively, including requirements to:

- redesign the site with a new architect of the County's choosing;
- work with Caltrans to reconfigure access, **adding 2.5 years to construction** and resulting in a road configuration that has made many seniors afraid to live there and units difficult to lease;
- conform to historical preservation standards that the County took an extended time to decide; and
- change the unit affordability mix to one that has now proven less tenatable.<sup>7</sup>

Citizens Housing – an established, affordable housing developer with an extensive regional portfolio – was forced to close its doors in 2009. According to its staff, this was due in large part to the enormous costs of the Fireside. A large portion of the Fireside's costs were added as a result of the County's discretionary process. The risk of repeating Citizens Housing's experience is not lost on other Bay Area affordable housing developers who have choices in where they build.

In October of 2009, it looked as if the County might be willing to reduce some of this risk by making meaningful changes to its permitting process. But by November's Draft Housing Element, these policies

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<sup>7</sup> Interview with Jake Wegmann, former project manager, Citizens Housing, 12/19/2009.

were watered down. The following implementing programs represent a move in the right direction, but are too weak to remove the process constraints that will confront affordable housing during this cycle:

- **Program 1.d** would enable deed-restricted developments to access the maximum end of the CWP density range without a conditional use permit, but this access remains discretionary. (Also this maximum is frequently 7 or fewer units/acre). Access to densities of 25-30 units should be made “by-right.”
- **Program 1.e** merely promises, by 2014, to “study ministerial review for affordable housing.” This program should study and *establish* ministerial review, in 2010.
- **Program 1.g** would develop multifamily design guidelines by 2012. While a useful step toward making expedited design review possible, Program 1.g would be stronger if it promised to take parking out of the design review process, and were moved up to 2010. Program 1.g. also would “allow duplexes through ministerial review within R2 and multi-family zones by applying streamlining thresholds, and apply similar design review triggers as single-family homes.” This expedited design review process should be extended to deed-restricted multi-family housing – not just to make affordable housing more financially feasible but as a matter of fairness.

## SIGNIFICANT CONSTRAINTS REMAIN AT KEY SITES

In addition to insufficient zoning and process constraints, many of the sites identified in the County’s affordable housing inventory face considerable site constraints that are inadequately addressed in the Draft Housing Element. These problems make it all the more important to rezone and amend the General Plan to allow sufficient density and unit totals at these sites. These constraints also make it crucial that the County identify programmatic actions that can overcome the barriers. We focus on four sites in particular:

- **Marinwood.** Housing at this site is conditioned on concurrent construction of a grocery store. This guideline was made explicit in the *Marinwood Village Conceptual Master Plan*, which grew out of an extensive community planning process and was submitted to the County Supervisors in 2006 (see Attachment A, and p.2 of Attachment B). Market studies, however, have found that there is no market for a grocery store. Interviews with a local grocery store broker confirm that – absent tremendous growth in the local population, or greatly reduced lease rates and other financial incentives – it will be very difficult to attract a grocery store in the foreseeable future.<sup>8</sup> Thus, even if it were built, affordable housing at Marinwood would have to indirectly shoulder the cost of subsidizing a grocery store.

The County needs to indicate how it will overcome this constraint. One way might be to help offset the cost of a new grocery store with financial support for such things as tenant improvements and capital expenses. In exchange, the County should increase the permissible affordable unit count at Marinwood to a higher number of units, so that more of the total allowed units (100) are affordable rather than market-rate. This could also help offset the capacity shortages of other sites, such as McPhail School.

- **St. Vincent’s/Silveira.** The County Board of Supervisors has created a special Planned Designation for St. Vincent’s/Silveira that would allow clustered development of 221 residential

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<sup>8</sup> Interview with Julie Taylor, senior vice president, Cornish and Carey Commercial, November, 2009.

units on 5% of the total acreage. This includes 121 market units and 100 lower income units. Several of Marin's environmental organizations have successfully blocked any development at St. Vincent's for two decades. With many in the environmental community still watching closely, it is reasonable to expect there will be substantial process costs for any new development. A Master Plan will be required since "CWP requirements for a master plan for this site... would supersede any affordable housing master plan waiver" offered by Policy 1.d. (p. IV-14). Given the likely expense of such a process, the owner or developer will not likely pursue the affordable housing segment separate from the market-rate portion. This may slow overall development considerably.

If the County is serious about accommodating affordable housing at St. Vincent's/Silveira within this housing element cycle, it should at very least help cover the process costs, for instance through EIR assistance, or create by-right permission to build the affordable housing.

- **Armstrong Nursery.** Like St. Vincents/Silveira, Armstrong Nursery has a history of significant political opposition. Community resistance to development at Armstrong a few years ago prompted the site to be dropped from the list of HOD sites, and prompted an interested affordable housing developer to abandon plans. The local Supervisor has indicated that he would not support affordable housing at Armstrong due to major weekend traffic congestion on nearby Highway 1 and other unresolved infrastructure constraints.

Yet the County's sites inventory anticipates the same scale development that lost political support just a few years ago. In light of this history, the County needs to outline how it will address existing infrastructure constraints – *and* create greater certainty that affordable housing can actually be built, through by-right zoning. The local Supervisor has reportedly increased shuttle service to Muir Woods, which has helped ease some of the congestion near this site. Similar transportation demand management (TDM) efforts need to be stepped up. Car delay is not a valid reason to give up on the development of needed affordable housing in otherwise ideal infill locations served by transit – especially when the County has so few development opportunities in such locations.

Additionally, prospective developers will need more assurance that development will be permitted before being enticed back to Armstrong (and the nearby Chevron Station site). In-lieu of by-right density allowances, coupled with adjustments to the FAR that presently make densities over 17 units/acre impossible, the County could cover the costs of predevelopment up through entitlement, so that extended delays would not be borne by the developer but by the County.

- **McPhail School.** The County correctly identifies the major environmental constraints affecting McPhail (see Appendix F, page 4). As the County notes, these include wetlands/flooding that will reduce the buildable area of the lot, archaeological sensitivity, and significant traffic constraints. Neighbors had planned for a wildcare center at McPhail. They came out to show strong opposition to housing development at the County's Planning Commission hearing on 10/12/09. The Draft Housing Element should specify how these constraints would be overcome to allow such potential uses as artist housing to be developed. Otherwise, it should reassign this capacity at other sites.

## CONCLUSION

The County's Draft Housing Element features many laudable and forward-thinking programs not discussed in this letter. **Program 1.a** would help protect sites identified for affordable housing by establishing minimum unit floors at these sites. **Program 1.h** would study the use of residential density equivalents. **Program 1.L** would help the County move toward appropriate parking standards for affordable housing. Programs 1.b, 1.c., 1.i, 1.j, 1.n, 2.q, 2.r., 2.s, 3.a, and 3.k are further examples of responsive policy that should be implemented.

But on the fundamental obligation of preparing suitable sites to accommodate affordable housing, the County's Draft Housing Element falls disappointingly short.

With Marin's affordable housing needs projected to only grow in the future, especially as large segments of the County move into retirement, Marin can ill afford to continue postponing the inconvenient actions needed to enable well designed affordable housing in non-environmentally sensitive zones.

We have outlined some ways to do this above, starting with by-right permissions to reach sufficient densities (of 25-30 units per acre) and sufficient unit totals (of more than 25 units). The County's argument that rezoning would prohibit affordable housing by increasing land costs doesn't hold up. There's nothing to prohibit the County from rezoning to allow higher density for just deed-restricted affordable housing at sites in its inventory, as Corte Madera has. Nor is it valid to argue that needed CWP amendments are counter-productive because they will trigger an EIR and delay Housing Element certification. It would seem much better (and more efficient) for the County to perform this EIR all at once, rather than for individual developers to have to shoulder this cost down the road.

We look forward to working with the County of Marin to help implement these needed changes.

Truly,

Robert Hickey  
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