

September 16, 2013

Judy Arnold, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903



By e-mail

SUBJECT: 2012 Draft Marin County Housing Element:
Certification of Final SEIR, and Merits of the Draft Housing Element

Dear Supervisors:

Marin Conservation League appreciates that the County is required to adopt a Housing Element for the 2007-2014 planning period. The 2012 Draft Housing Element is comprehensive, and the Site Inventory has identified more than sufficient potential housing sites to accommodate the County's share of the Regional Housing Needs Allocation (RHNA) requirements. Unfortunately, the Draft Housing Element continues to include sites that present problems, and the Final Supplemental EIR (SEIR) contains flaws that should be resolved before it is certified.

We previously commented on these topics during Planning Commission hearings (letter of June 8, 2013). The purpose of this letter is to repeat some of our comments on flaws in the Final SEIR before the Board acts to certify it; and to comment again on problematic sites and the proposed Affordable Housing Combining District (AH) recommended in Program 1.c of the 2012 Draft Housing Element.

Final Supplemental EIR

The 2012 Draft Housing Element calls for streamlined, expedited review of future projects. As a program document, the SEIR is intended to help streamline future environmental review of individual projects, and the County intends to rely on the SEIR as a key environmental document in future land use decisions. Although Staff defends the Final SEIR as legally adequate, MCL finds that it poses two major concerns:

- 1. The scope of the SEIR goes far beyond the immediate project, viz. the 2012 Draft Housing Element, to anticipate the 2014-2022 housing cycle. In so doing, it appears to "open the door" and offer programmatic CEQA coverage to potential land use decisions that may never be necessary.**

The "Project" described in the SEIR Project Description is the 2012 Draft Housing Element for the planning period 2007-2014 – that is, the Project consists of an Inventory of 16 sites that meet the RHNA requirement of 773 housing units, and 53 programs under Goals, Policies and Programs. It is the impacts of this Project that are compared throughout the SEIR with impacts of the Countywide Plan (CWP) EIR.

Pursuant to Program 1.c in the 2012 Draft Housing Element but without knowing what its RHNA obligations might be for the next planning cycle, the County elected to expand the scope of the SEIR

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to cover both the current 2007-2014 cycle and the 2014-2022 cycle. As a consequence, the SEIR analyzes the environmental impacts of a future “menu” of 32 potential housing sites for 2014-2022 and beyond, totaling 1,373 possible housing units, a number that far exceeds the RHNA obligation for the next cycle, which now calls for only 187 units. The analysis of this large number of additional sites/units at this time is premature and unnecessary, particularly in view of the high likelihood that circumstances will change before there is any real need to consider additional units.

Of the 32 potential sites for the 2014-2022 cycle, the SEIR identifies 14 sites (up to 747 housing units) for possible future rezoning under the AH Combining District. Many of these sites are either inappropriate due to environmental constraints (e.g., sea level rise, flooding and traffic in the vicinity of Tam Junction), or are unrealistic due to existing development and/or other impact considerations (e.g., sites along the Sir Francis Drake corridor, or along Los Ranchitos).

The “Project Description” in the SEIR does not include the 2014-2022 cycle. In certifying the FSEIR, the Board of Supervisors will, in effect, be approving program-level CEQA environmental review for an entire menu of sites for the next Housing Element, which Staff admits are not required nor may ever be proposed. Furthermore, actual implementation of any of the projects in this menu might be years down the road or never. The Board is also being asked to acknowledge that the 14 proposed rezoning of some of these sites and their implied Countywide Plan amendments could occur, although these actions have nothing to do with the currently proposed 2012 Draft Housing Element.

It is MCL’s recommendation that the 2014-2022 menu of sites be removed from the SEIR before it is certified, since they are not included in the Project Description, nor are they included in Section 3.1 – Summary of Conclusions.

2. The FSEIR is an unwieldy, cumbersome set of Program EIR documents that will make environmental review of future land use and project decisions difficult and implementation of mitigation measures unreliable.

If the SEIR is to be useful as a program document for review of subsequent individual projects, it should be easy and efficient to work with. This SEIR is not.

a. The SEIR cannot stand alone as a program document; it is reliant on the Countywide Plan (CWP) EIR, which covers a multitude of topics other than housing. The result will be that two program-level EIRs based on different sequences of topics must be consulted and compared in future project-level environmental reviews.

b. For the same reason, the Mitigation Monitoring and Reporting Plan will require consulting two MMRPs, one for the CWP, and the MMRP for the Housing Element. In fact, the MMRP for the Housing Element contains only five very limited, mitigation measures that were revised from earlier versions in the CWP EIR.

c. To obtain a comprehensive environmental profile of each site in the 2012 Draft Housing Element SEIR, one must consult a “Checklist” of more than a dozen different resource topics, each of which discusses impacts of the Project (2012 Draft Housing Element) and then lists sites from 2007-2014 and 2014-2022 cycles in relation to key characteristics relevant to that topic (e.g., air quality, geologic, or biological and wetland features, land use, utilities and services, etc.). This makes an extremely cumbersome process for viewing a complete profile for each site, and for comparing sites. This observation is dismissed in the FSEIR: *“The Draft SEIR contains adequate information in support of environmental and land use profiles for the identified housing sites. The request for information to be organized a certain way is noted.”*

MCL recommends that information for each site in the Final SEIR be compiled to enable efficient environmental review and comparison of sites.

d. Many Mitigation Measures in the Housing Element SEIR consist of CWP policies and implementing programs. These will have to be cross-checked in the future as to their current status of implementation. For example, both policies and implementing programs under CWP BIO-4 (Stream Conservation Areas) are under current review by the Board of Supervisors, with the possibility of revision. The consultant dismisses this as not a valid concern, stating that any relevant policies or programs will be addressed as mitigations at the time applications for specific projects are submitted.

e. The CWP EIR will become dated in other ways. Actual land use decisions (rezoning, CWP Amendments) or project development anticipated in the SEIR might occur years, if not decades, after the end of the 2014-22 RHNA cycle. At that time the SEIR will no longer represent current conditions for purposes of “tiering” subsequent environmental reviews of individual applications.

The FSEIR responds that the SEIR need not be updated to maintain compliance with CEQA, but rather the individual review of each housing site will require using up-to-date data that is pertinent to the subject of review. As with many responses in the FSEIR, the response is generic.

To resolve these problems, MCL again recommends removing the 2014-2022 sites from the Final SEIR before it is certified.

Merits of the 2012 Draft Housing Element

MCL wishes to make clear that we do not have fundamental disagreement with basic premises of the 2012 Draft Housing Element. The need for affordable housing is comprehensively addressed. The majority of opportunity sites are located in the City-centered Corridor, consistent with the Countywide Plan policies and/or HOD designations. The County can offer numerous examples of attractive, livable housing developments that range in densities between 30 and 40 units/per acre.

Site Inventory

MCL continues to have reservations about specific sites in the Inventory that are environmentally

constrained and as such inappropriate for development of affordable housing. These include sites in and around Tam Junction: the old service station site, Armstrong Nursery, around Manzanita, and Tam Junction Retail, have been repeatedly discussed. The combination of existing flooding and anticipated flooding from sea level rise and severe traffic congestion make these sites unsuitable for further development. For very different reasons, Grady Ranch is an unsuitable site for affordable housing, given its topography and other environmental constraints, lack of basic water and wastewater infrastructure, and distance from public transit.

Goals, Policies & Programs

We agree with many of the Policies and Programs listed in this section of the Housing Element. One of the central ideas presented in the introduction for facilitating development of housing affordable to lower income households in Marin, however, is to minimize discretionary review and streamline the permitting process. This idea is reinforced in a number of programs in this section of the Draft Housing Element that call for easing standards, such as for parking and traffic level of service. We have particular concerns with the following:

1.e – Study Ministerial Review of Affordable Housing, for example, by employing multi-family design guidelines. MCL followed the Planning Commission review of multi-family design guidelines and found them to provide some useful ideas. However, it was unanimously agreed by the Planning Commission and public that their purpose was not to be regulatory but rather advisory. We agree with that conclusion.

1.o – Simplify Review of Residential Development Projects in Planned Districts – Consider amending the Development Code to establish criteria for ministerial review of residential development projects in planned zoning districts. Again, we are concerned that removing discretionary review from multi-family developments will eliminate the public's right to participate in the approval process.

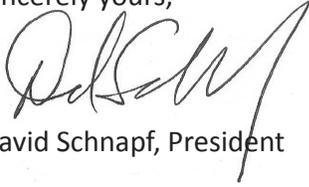
2.q – Consider CEQA Expedited Review – Consider an area-wide Environmental Assessment or Program EIR assessing area-wide infrastructure and other potential off-site impacts to expedite the processing of subsequent affordable housing development proposals. MCL believes that this would simply add another programmatic layer to an already cumbersome tiering of the SEIR and the Countywide Plan EIR as programmatic EIRs. In effect, it would burden, rather than expedite, CEQA review, in MCL's view.

MCL recommends that references to ministerial review be stricken from relevant Programs, and that Program 2.q be removed entirely as a redundant layer of environmental review.

In conclusion, against a backdrop of continued pressure for CEQA streamlining and efficient permit review, MCL is particularly concerned that individual housing sites will not receive adequate environmental review or opportunity for public engagement in future years. Encumbered by a program SEIR that cannot stand alone without the support of the CWP EIR, which is already six years old, future environmental review will have to look to other, more current sources to address conditions or public needs and views as they change over time. While we acknowledge the need for affordable housing and greater housing choices in Marin, it should not be at the expense of

very real environmental constraints or loss of transparency and public involvement in governmental decisions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. Schnapf', written over a faint circular stamp.

David Schnapf, President