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*By e-mail: envplanning@marincounty.org*

Subject: 2012 Draft Marin County Housing Element – Comments on Draft SEIR

Dear Ms. Warner:

Marin Conservation League wishes to submit comments on the adequacy of the Draft SEIR for the 2012 Draft Marin County Housing Element. We have several general comments on the adequacy of the Draft SEIR in fulfilling its purposes, and comments on specific topics in the Environmental Checklist. We conclude with a comment on recent public process in which the Planning Commission acted informally on merits of the Draft Housing Element without the benefit of a full environmental record, i.e., without a Final EIR in hand.

1. Functions of the SEIR.

In our view, the SEIR should serve two basic functions in relation to the 2012 Draft Housing Element (in addition to an EIR's basic purposes, as outlined in CEQA Guidelines). First, it should function as a programmatic update of the 2007 Countywide Plan (CWP) EIR focusing, however, on potential housing development rather than on full build-out. On the assumption that the amount of housing represented by RHNA allocations for 2007-2014 and 2014-2022 cycles falls below the housing build-out assumptions of the CWP, the Draft SEIR compares significant impacts identified in the CWP EIR and determines whether any new or substantially more severe impacts would occur as a consequence of the 2012 Draft Housing Element. The Draft SEIR pays special attention to the 42 significant unavoidable cumulative impacts that were identified in the CWP EIR and concludes that only one new significant unavoidable impact could occur (SMART train vibration impacts), and, due to changed conditions, four formerly significant unavoidable traffic impacts are no longer significant. With new information that was not available when the CWP EIR was written, the Draft SEIR also adds several new mitigation measures. In a sense, then, the Draft SEIR is a book-keeping exercise that compares the two EIRs prepared five years apart and provides an updated forecast of cumulative impacts if all of the housing represented in RHNA allocations in the 2012 Draft Housing Element were to be built. It also updates mitigation measures intended to partially mitigate those impacts.

The second function of the SEIR is as the Program document that will be used to "tier-off," and thereby facilitate, subsequent environmental review of housing development proposals as they come forward. Unfortunately, the book-keeping function interferes with practi-

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cal use of the Draft SEIR as a stand-alone Program document. Too much of the analysis is spent on comparing the two documents rather than on shaping the Draft SEIR to be a useful first-order program EIR. Future reviewers will have to consult two program EIRS (the CWP EIR and the Housing Element SEIR) in conducting site-specific environmental review. Furthermore, just as some information in the CWP EIR is already out of date after five years so will information in the program SEIR on the Housing Element become dated. The end of the 2014-2022 RHNA cycle marks a period during which Marin County's capacity to accommodate housing at all income levels must be demonstrated, but it does not mark the end-date for actual development, which might occur years if not decades later. At that time the SEIR would no longer suffice as a current program EIR for purposes of "tiering" subsequent environmental reviews of individual development proposals. For example, predictions of sea level rise, population trends, or technologies associated with greenhouse gas emissions and climate will change, rendering the cumulative context no longer accurate.

**The Final SEIR should describe the means by which the SEIR will be reviewed periodically to determine whether it is current, and updated as necessary, to ensure that it can serve as an accurate Program EIR and cumulative context for environmental review of new housing development proposals five or ten years from now.**

In fulfilling the second function, that is, as a first-order Program document for subsequent project-specific environmental review, the Draft SEIR falls short in several ways:

- a. Under each topic in the Environmental Checklist, the Draft SEIR provides exhaustive lists of policies and implementation programs in the CWP that would mitigate significant impacts to levels of insignificance. In a few instances, it identifies implementation programs in the CWP that have not been implemented, but, we suspect this list is far from complete, given the extensive catalogues of implementation programs under each major policy in the CWP and limited staff resources. (See Aesthetics, below for an example.)

**To ensure that mitigation measures based on policies and programs in the CWP will be valid for review of specific development proposals in the 2012 Draft Housing Element, the Final SEIR must indicate that all programs in the CWP that are referenced as mitigation for significant impacts have been, or will be, implemented in the near future.**

- b. In our scoping letter of August 13, 2012, MCL requested that the SEIR provide clear and useful descriptions of each site listed in the Site Inventories. The consultant responded that descriptions are provided in Draft SEIR Chapter 2.0, tables in Exhibits 2.0-4 and 2.0-15, accompanied by maps of the housing sites in Exhibits 2.0-5 through 2.0-12. The maps are useful, but the tables give only the name of each site, number of acres, Countywide Plan Land Use, zoning, and "realistic" housing capacities. To get a comprehensive environmental and land use "view" of each site, one must turn to the Site Inventory in the 2012 Draft Housing Element itself, then to ten different sets of topical tables in the Draft SEIR, to assemble an environmental profile of each site. In addition, under a number of topics like Biological Resources or Hydrology, Water Quality and Flooding, the Draft SEIR lists by number (in paragraph form) all the sites that demonstrate a particular environmental character-

istics. As a useful guide for decision-makers either to compare sites or to gain a preliminary view of any one site, the Draft SEIR is impossibly cumbersome.

**The Final SEIR should include a summary “environmental and land use profile” for each site, which compiles basic information about the site from each topic covered in the Draft SEIR.**

2. Section V of the 2012 Draft Housing Element – Goals, Policies, and Programs.

The 2012 Draft Housing Element contains a detailed set of Goals, Policies, and 52 Implementing Programs with many sub-parts. A number of these programs under Goal 1 (Use Land Efficiently) and Goal 2 (Meet Housing Needs Through a Variety of Housing Choices) are aimed at streamlining review of development proposal. These include among others: 1.d (Streamline the Review of Affordable Housing . . .by amending the Development Code); 1. E (Study Ministerial Review for Affordable Housing); 1.f (Develop Multi-Family Design Guidelines . . .e.g., design criteria and standards to facilitate some ministerial permit review. . .); 1.g (Undertake Adjustments to Second Unit Development Standards – e.g., flexibility of parking requirements, adjustments in septic standards for second units. . .); 1.m (Codify Affordable Housing Incentives, e.g., by adjusting parking requirements, or exceeding the FAR on mixed-use sites); and 2.q (Consider CEQA Expedited Review, . . .such as an area-wide Environmental Assessment Program EIR assessing area-wide infrastructure and other potential off-site impacts . . .). The Draft SEIR outlines these goals and programs as part of the Project Description, cites them in Appendix C, and describes them as “. . . necessary to address current and future housing needs.” Although these goals and programs are part of the Project Description and are proposed as amendments to the Development Code, the Draft SEIR makes no attempt to evaluate their possible impacts on the environment.

Although many of these implementing programs will be useful in helping the County to meet affordable housing needs, the repeated theme of streamlining and other means for expediting permit review raises a number of concerns.

**First, as stated above, the Final SEIR must provide that any individual project will be reviewed based on current programmatic information in the SEIR and will receive site-specific environmental review and transparent public review, even where design guidelines or other code provisions also may be applicable. Second, the Final SEIR should identify how the mandates of affordability (e.g., adjusting standards such as height over garages, parking, and septic systems for second units, etc.) might conflict with CWP policies intended to maintain essential qualities of the landscape and environment. Finally, the Final SEIR should evaluate whether standards might be eroded and public process compromised through excessive streamlining of permit review.**

3. Selected Topics in the Environmental Checklist.

a. Aesthetics and Scenic Resources The Draft SEIR states on Page 59s: “The discussion for Impact 4.12-1 addresses development on the St. Vincent’s / Silveira properties, where the

*Countywide Plan* allows development of 69.8-acres. The *Countywide Plan* would preserve 975-acres as open space. Under the *2012 Draft Housing Element* 3.5-acres would be developed with residential uses, significantly less than the *Countywide Plan*.” This error is repeated on Page 66 and again on 67, under the topic of Agricultural and Forest Resources: “Adoption and subsequent implementation of the *2012 Draft Housing Element* would lead to 3.5 acres of urban development of the St. Vincent’s / Silveira properties, where implementation of the *Countywide Plan Policy SV-2.4* (Cluster Development) would allow up to 54 acres of urban development. . . “with the. . . implementation of *Program 1.c*, which would rezone 3.5 acres of the St.Vincent’s / Silveira property for affordable housing development . . .”

**The Final SEIR should correct this misconception of development that could be permitted under AH Combined District Zoning. The CWP designates five percent of each of the two parcels for new development, for a total of 55 acres (not including existing development). The proposed AH Combined District Zone shows 3.5 acres as supporting 105 units at a density of 30/acre, and the remaining 51.5 acres as supporting 116 units at a density of .42/acre.**

The Aesthetics section of the Draft SEIR also provides just one of many examples in which a mitigation measure is based on a program in the CWP whose implementation is uncertain. Page 61 in the Draft SEIR states: “Although properties proposed to be included in the AH Combined District and other properties identified in the *2012 Draft Housing Element* could be developed at higher densities than were analyzed in the *2007 Countywide Plan EIR*, policies and programs are in place to ensure that future development would not result in impacts to scenic resources and community character. Previously adopted Mitigation Measure 4.12-2 would continue to apply and would reduce impacts to community character to a less-than-significant level.” On further reading, one finds that Mitigation Measure 4.12-2 depends on implementing program DES-1.a (Add Design Components to Community Plans), which has only medium priority for implementation and apparently would not apply in areas of the County which lack a current community plan or any plan at all.

b. Hydrology, Water Quality, and Flooding Hazard. Much new information concerning flooding and projected sea level rise has become available since the 2007 CWP EIR was prepared: new FEMA FIRM maps are available, and BCDC maps for the entire Bay Area clearly show sea levels by mid century. Flood Hazard was acknowledged as a significant unavoidable impact in the CWP EIR, and it is affirmed in the Draft SEIR with new data, new analysis, and five new Mitigation Measures, Flooding Hazard-1 through 5. Impacts involving exposure of people or structures to flood hazards, tsunamis and seiches would remain significant unavoidable impacts. The sites in Tamalpais Valley/Almonte area that lie entirely or partially within FEMA 100-year flood zones will continue to be susceptible to flooding from future sea level rise.

As a practical measure, we question the practicality of Mitigation Measure Haz-2: “On housing sites for which refined inundation mapping verifies that the site’s location is within

a 2050 tidal inundation zone, building pads shall be raised to a level that results in finished floor elevations one foot higher than a combination of the projected inundation elevation plus an estimate of wave runup given the particular weather (wind patterns and velocities) and hydraulic conditions at each site.” This design measure does not take flooded access into account, nor existing infrastructure that may also be subject to flooding.

**The Final SEIR should provide alternative measures to mitigate this hazard, including avoiding development investments altogether in areas subject to future sea level rise. The Final SEIR also should include projections for end-of-century sea levels, and how projections might be adjusted over time for purposes of environmental review, as projections are refined. Housing sites identified in the 2014-2022 time frame might not be developed until decades later, when more precise information is known. Further, the Final SEIR should consider the likely public costs associated with future flood management and emergency response if these areas are developed as proposed.**

c. Utilities and Services . “The 2007 Countywide Plan EIR identified significant unavoidable water supply and demand impacts (both project and cumulative). These impacts are Impact 4.9-1 (*Adequacy of Water Supply During Normal Year*), Impact 4.9-2 (*Adequacy of Water Supply During a Drought and Multi-Drought Years*) Impact 4.9-4 (*Impact to Groundwater Supply*), Impact 4.9-5 (*Interference with or Degradation of Water Supply*), and Impact 4.9-6 (*Secondary Impacts*).” The Draft SEIR affirms that these impacts are indeed significant and unavoidable. However, the Draft SEIR also states: “Because there continues to be adequate wastewater, stormwater drainage and solid waste capacities, plus water supply facilities [emphasis added], as evaluated in the 2007 Countywide Plan EIR, and addressed by Countywide Plan policies and programs, impacts related to these utility systems would remain less-than-significant.” In regard to Impact 4.9-3 [*Require New or Expanded Water Supply Facilities*], the Draft SEIR states: “This impact was determined to be less-than-significant because although construction of new or expanded water supply facilities could result in adverse effects to the environment, the Countywide Plan includes policies that would reduce construction related impacts to a less-than-significant level.” This facile response does not explain what expanded water supply facilities are even under consideration (such as desalination) or the extensive impacts involved in any new water supply source.

Marin’s water districts all face capacity concerns given current supplies. Given the strong opposition by some sectors of the public to the environmental impacts and high cost of possible desalination, it cannot be assumed that this is a realistic alternative. Nor are increased supplies viable from Sonoma County Water Agency, a major supplier for North Marin Water District and lesser supplier for MMWD.

**The Final SEIR should reconcile these apparent inconsistencies. Although a number of listed mitigations drawn from CWP policies will reduce demand (conservation, efficiencies, net-zero-water demand in new construction), these will not reduce the significant cumulative impact of limited water supply( under both normal and drought conditions) for future housing development to less-than-significant levels.**

4. Recent Public Process on Merits of the 2012 Draft Housing Element.

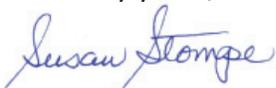
In developing the 2012 Draft Housing Element, County staff has provided numerous opportunities for public input, including local community meetings, Planning Commission workshops, and a Housing Element Task Force evaluation of sites. In recent months the process has become problematic, as follows:

The Draft SEIR was released for public review in December 2012, and the period for public comment closes February 19. The next step in the CEQA process will be response to comments and release of the Final SEIR at a future date to be determined. In the meantime, the Planning Commission held a hearing on the merits of the Draft Housing Element on February 11 and took informal action on the merits of the Element *before* the conclusion of the comment period on the Draft SEIR and before receipt of the Final SEIR. The Commission heard public testimony, and in the afternoon, with most of the public gone, the Commission completed its review and on a four-to-three straw vote, recommended forwarding the 2012 Draft Housing Element to the Board of Supervisors. Only minor questions remained to be answered by staff at a meeting scheduled for March 11 (which, incidentally, the Commission Chair came close to cancelling, until reminded by staff that it was a scheduled public meeting). The Commission's action, while not binding, was taken in spite of extensive public testimony and Commissioner comments citing major environmental issues on several sites in the 2007-2014 cycle, plus Commissioners' comments citing substantial obstacles to viability of housing development on numerous sites on the 2014-2022 cycle.

A basic purpose of CEQA (Guidelines 15002) is to inform governmental decision makers and the public about the potential significant environmental effects of proposed activities. Another is to disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved. We understand that the Board of Supervisors will continue hearings on the 2012 Draft Housing Element, Certify the Final SEIR, and take the final action to approve the Housing Element. In our view, the Planning Commission acted on the basis of an incomplete SEIR process and did not support their recommendations with available information even in the Draft SEIR.

5. In conclusion, against a backdrop of political pressure for increased CEQA streamlining and efficient permit review, MCL is particularly concerned that individual housing sites will not receive adequate environmental review or opportunities for public engagement in future years. At the programmatic level of this Draft SEIR, environmental review may not be able 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 at all income levels in Marin, it should not be at the expense of environmental quality or loss of transparency and public involvement in governmental decisions.

Sincerely yours,



Susan Stompe, President