



2023-31 Housing Element

TOWN OF FAIRFAX

Final Environmental
Impact Report

SCH: 2022080624

November 30, 2023



2023-31 Housing Element

Final Environmental
Impact Report

November 30, 2023

Prepared for the Town of Fairfax

Prepared by

DYETT & BHATIA

Urban and Regional Planners

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1 Introduction

In accordance with the California Environmental Quality Act (CEQA), this document provides responses to comments received on the Draft Environmental Impact Report (Draft EIR) SCH No. 2022080624 for the proposed Fairfax General Plan Housing Element Update (Proposed Project) in the Town of Fairfax, California, and it includes revisions to the text in the Draft EIR made in response to comments. The Draft EIR identified significant impacts associated with the Proposed Project and examined alternatives and recommended mitigation measures that could avoid or reduce potential impacts.

This document will constitute the Final EIR if the Town Council certifies it as adequate and complete under CEQA.

Purpose

As described in Sections 15089 and 15132 of the State CEQA Guidelines, the lead agency must prepare a Final EIR before approving a project. The purpose of a Final EIR is to provide an opportunity for the lead agency to respond to comments made by the public and agencies. Pursuant to CEQA Guidelines Section 15132, a Final EIR must contain the following:

- The Draft EIR or a revision of the Draft;
- A list of persons, organizations, and public agencies commenting on the Draft EIR;
- Comments and recommendations received on the Draft EIR;
- The response of the Lead Agency to significant environmental points raised in the review process; and
- Any other information added by the Lead Agency.

The EIR is intended to disclose to the Town of Fairfax decision makers, responsible agencies, organizations, and the general public the potential impacts of implementing the Proposed Project using a program level of analysis. This Final EIR amends and incorporates by reference the Draft EIR, which is bound separately. As required under CEQA, this document includes comments and responses to comments on the Draft EIR, and minor corrections and clarifications to the Draft EIR.

The Final EIR and the Draft EIR are available for review at: <https://www.townoffairfax.org/housing-element-documents/>.

CEQA Process

The Town of Fairfax is the lead agency for this EIR. According to CEQA, lead agencies are required to consult with public agencies having jurisdiction over a Proposed Project, and to provide the general public with an opportunity to comment on the Draft EIR. The Draft EIR was made available for public review on September 26, 2023. The Draft EIR was distributed to local and State responsible and trustee agencies and the general public was advised of the availability of the Draft EIR through public notice published in the local newspaper and on the Town's website and the project website as required by law.

Copies of all written comments received on the Draft EIR are contained in this document. These comments and responses to these comments are included in Chapter 2 of this Final EIR.

Modifications to the Proposed Project

Consistent with State law, the Draft Housing Element was submitted to the California Department of Housing and Community Development (HCD) for review on May 12, 2023. Following completion of HCD review on August 6, 2023, the Town revised the Draft Housing Element to address HCD comments. These revisions, described below in greater detail, primarily involved the incorporation of additional supporting information and clarification regarding the sites inventory, capacity projections, constraints analysis, as well as the addition and modification of several housing programs. Additionally, one site that had been included in the Draft Housing Element was removed from the housing sites inventory, resulting in a net decrease of in the total projected buildout of the inventory through 2031.

Validity of the EIR Analysis for the Modified Project

The review process mandated by CEQA is iterative, including multiple opportunities for public comment and for project changes in response to those comments. It is not uncommon for a proposed project to evolve during the EIR process, so that the project presented at the time of the Draft EIR has been revised by the time of the Final EIR. CEQA Guidelines Section 15088.5 addresses this situation, explaining how to evaluate whether changes to the project/plan (and to the Draft EIR's analysis and conclusions) necessitate recirculation of the Draft EIR prior to preparation of a Final EIR.

Under CEQA, recirculation of a Draft EIR is required when there is significant new information about the project or its impacts. Significant new information means disclosure of either a new significant impact, a substantial increase in the severity of an impact (unless mitigation measures are adopted that reduce the impact to a level of insignificance), or a feasible alternative or mitigation measure considerably different from others already analyzed that would clearly lessen significant impacts of the project but that the project proponents decline to adopt. Recirculation is also required if a Draft EIR is so inadequate that meaningful public review and comment was precluded.

However, recirculation is not required where the new information added to the EIR merely clarifies, amplifies, or makes insignificant modifications to an adequate EIR.

In the current instance, the edits and additions to the Proposed Project in response to HCD comments do not constitute significant new information pursuant to Section 15088.5 of the CEQA Guidelines. Such revisions involve providing HCD additional evidence that the existing uses will not impede development as projected. The Housing Element incorporates more detailed descriptions of the existing uses on the sites for incorporation into the electronic inventory form in Appendix A and incorporates a narrative with photos for inclusion in Appendix G. Revisions with additional detail are also incorporated into Appendix G to help further demonstrate that other Marin County sites are appropriate as a basis for capacity projections given the existing environmental constraints in the area.

Since the Draft Housing Element was sent to HCD for review, the Wall Property has been purchased and the proponent of the proposed Marinda Heights project no longer owns the property so it has been removed from the inventory and map. The Draft Housing Element previously assumed 10 above moderate single-family homes on the Wall Property, consistent with the original Marinda Heights application. There is adequate buffer in the inventory for above moderate units even after removing the Wall property. As such, revisions to Appendix E are made to include an evaluation of whether buildout of the inventory would result in an equitable distribution of housing units by income category throughout the community. Revisions were also made to Table E-12 to ensure that it clearly identifies the meaningful actions the Town has committed to and that geographic targeting, metrics, and milestones for evaluating progress on programs is included.

In addition, current zoning is not adequate to accommodate all of the Town's RHNA, so rezoning of some properties will be required. Revisions in the form of a new zoning text amendment is to be added to the Workforce Housing Overlay to establish an appropriate minimum density for residential uses if they are proposed. Calculations are also added to Appendix G to demonstrate that Program 2-A will be updated to reflect the requirement that at least 50 percent of the floor area in a mixed use development be for residential uses.

The HCD comments also note that public comments on the Draft Housing Element indicated some sites are unlikely to develop during the planning period due to sloped terrain and lack of egress. These comments refer to large sites with single-family zoning identified to accommodate above moderate RHNA. Program 2-D was incorporated into the Draft Housing Element to help address the issue identified. This program involves the development of zoning standards that permit the option to develop low impact, small scale clustered housing on relatively flatter portions of these sites while requiring that large areas of open space be preserved onsite and scenic view sheds protected. Clarifications to this effect are added to the Draft Housing Element.

Several new housing programs were also added to the Housing Element to demonstrate compliance with State law, including a program committing the Town to sharing the adopted Housing Element with utility service providers; and a program amending the Zoning Code to treat employee housing for six or fewer employees as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Program 3-C regarding Low-Barrier Navigation Centers will be updated to ensure compliance with AB 139/Government Code section 65583,

subdivision (a)(4)(A). Three additional programs were also revised to make more specific commitments. Program 1-M calls for the Town to "consider" zoning amendments that offer incentives for ADU and JADU. To address the HCD comment, the word "consider" could be replaced with "adopt." Similarly, Program 3-E calls for the Town to explore the feasibility of adopting an inclusionary housing requirement and commercial linkage fee. In fact, the Town is currently conducting hearings for adoption of these items, so the text will be clarified to reflect that. Program 1-G calls for the town to "encourage" innovative and 'non-traditional' forms of housing. This program can be converted to a policy to reflect that it is something the Town will undertake on an ongoing basis through discussions with applicants at the planning counter, rather than a specific action to be done once and crossed off a list.

Along with changes to the Proposed Project, two mitigation measures in the Draft EIR were modified with additional requirements regarding special-status species. Mitigation Measure BIO-1, which required preconstruction surveys for special-status species, was modified to include additional survey guidelines for northern spotted owls and special-status bat species habitat assessments. Similarly, Mitigation Measures BIO-3, which required the identification of sensitive habitat onsite, was modified to incorporate additional requirements for the habitats of northern spotted owls and special-status bat species. In addition, Appendix G was also added to the EIR which includes a Project-Specific Analysis (PSA) checklist. The purpose of the PSA is to determine whether an individual development qualifies as within the scope of this EIR or requires additional environmental documentation or its own independent environmental review. With these revisions, the EIR includes all feasible mitigation measures available to avoid or substantially lessen the significant effects of the Proposed Project, pursuant to Section 21002 of the CEQA Guidelines.

Therefore, overall, the edits and additions to the Proposed Project described above, together with the revisions to the Draft EIR detailed in Chapter 3 of this document would not result in new significant or substantially more severe impacts, nor would they require new mitigation measures not already included in the Draft EIR. Consequently, recirculation of the Draft EIR is not required.

Organization

This document contains the following components:

- **Chapter 1 Introduction.** This chapter discusses the use and organization of the Final EIR.
- **Chapter 2 Public Comments and Responses.** Lists all of the agencies, organizations, and individuals that submitted written comments on the Draft EIR and reproduces all comments. Provides responses to comments on the Draft EIR as well as revisions to the Draft EIR where necessary to clarify or amplify in the order that responses appear. Where such revisions are warranted in response to comments on the Draft EIR, deletions are shown in ~~striketrough~~ and additions are shown underlined in red in the matrix of comments and responses.
- **Chapter 3 Revisions to the Draft EIR.** Provides errata with revisions to the Draft EIR where necessary to clarify or amplify. Revisions are organized by Draft EIR section and by page number. Where such revisions are warranted in response to comments on the Draft

EIR, deletions are shown in ~~striketrough~~ and additions are shown underlined in red in the matrix of comments and responses.

2 Public Comments and Responses

This chapter contains copies of the comment letters received on the Draft EIR during the public comment period, which began on September 26, 2023 and ended on November 13, 2023, as well as responses to comments that pertain to environmental issues and the merits of the analysis in the Draft EIR.

2.1 Comments Received

There were 14 comment letters received during the comment period. These contained 167 unique comments. Comment letters are organized into two categories and presented in alphabetical order within each category: Public Agency comments (section A) and Individual comments (section B).

Each letter or summary is identified by a designator (e.g. “Letter A1”). Specific comments within each letter or summary are identified by a designator in the page margin that reflects the sequence of the specific comment within the correspondence (e.g. “A1-1” for the first comment in Letter A1).

Comment letters received are listed in **Table 2-1**.

Table 2-1: Comments Received on the Draft EIR

Comment Letter	Date	Commenter
<i>Agencies (A)</i>		
A1	10/3/2023	California Department of Transportation (Caltrans)
A2	11/8/2023	California Department of Fish and Wildlife (CDFW)
<i>Individuals (B)</i>		
B1	10/11/2023 and 11/10/2023	Tony Gambardella and Judy Lococo
B2	11/1/2023, 11/7/2023, and 11/10/2023	David L. Codutu
B3	11/7/2023	Teliha Draheim
B4	11/9/2023	Marc Lubomirski

Comment Letter	Date	Commenter
B5	11/9/2023	Kristi Dommen
B6	11/8/2023	Michael Mackintosh
B7	11/10/2023	Frank Egger
B8	11/11/2023	Jack Judkin
B9	11/9/2023	Diana Perdue
B10	11/9/2023	Terry Balestrine
B11	11/7/2023	Katy Flores
B12	10/2/2023	Mary Alber

California Department of Transportation

DISTRICT 4
OFFICE OF REGIONAL AND COMMUNITY PLANNING
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October 19, 2023

SCH #: 2022080624
GTS #: 04-MRN-2022-00304
GTS ID: 27433
Co/Rt/Pm: MRN/101/13.648

Jeff Beiswenger, Planning and Building Services Director
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Re: Town of Fairfax 2023-2031 General Plan Housing Element Update – Draft Environmental Impact Report (DEIR)

Dear Jeff Beiswenger:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the General Plan Housing Element Update. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system.

The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities. The following comments are based on our review of the September 2023 DEIR.

Project Understanding

The proposed project evaluates the potential impacts of the proposed General Plan Housing Element Update in the Town of Fairfax. The Proposed Project is both a policy document and an implementation tool for implementing the Town's General Plan.

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).

A1-1

The project's Vehicle Mileage Traveled (VMT) analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the DEIR, this project is found to have a significant VMT impact.

Caltrans commends the Lead Agency in exploring the effectiveness and feasibility of varying measures to mitigate the VMT impact. Please consider the upcoming General Plan update as a potential opportunity to add Transportation Demand Management (TDM) requirements and TDM ordinance implementation in the General Plan for future new developments, which could reinforce the Town's legal authority to further reduce VMT.

A1-2

Mitigation Strategies

Location efficiency factors, including community design and regional accessibility, influence a project's impact on the environment. Using Caltrans' Smart Mobility Framework Guide 2020 ([link](#)), the proposed project site is identified as a Rural-Suburban Town where community design impacts effectiveness of the transportation network and regional accessibility helps to increase that effectiveness.

A1-3

The measures listed below have been quantified by California Air Pollution Control Officers Association (CAPCOA) and shown to have different efficiencies reducing regional VMT:

Plan-based community strategies:

- Participation/Formation in/of a Transportation Management Association (TMA) in partnership with other developments in the area
- VMT Banking and/or Exchange program

Suburban and Rural strategies:

A1-4

- Increased mixed-use development
- Increased transit accessibility
- Integration of affordable housing
- Orientation of Project towards non-auto corridor
- Location of project near bicycle network
- Pedestrian network improvements
- Provide local shuttles to increase transit outreach
- Partnership with Transit Agency (Marin Transit) to increase transit service frequency through the Town, provide discounted transit programs

Employment and/or Institution-based strategies:

- Employer-based vanpool
- School pool program
- Telecommuting programs and alternative work schedules

A1-5

Integrated Transportation and Land Use Planning

Transportation and housing are integrally connected. The Housing Element Update process provides a mechanism to reflect current transportation and land use policy and adopt efficient land-use strategies such as transit-oriented, infill and mixed-use developments that can potentially reduce vehicle miles traveled and address climate change.

A1-6

Please review and include the reference to the current California Transportation Plan (CTP) in the DEIR. CTP 2050 envisions that the majority of new housing located near existing housing, jobs, and transit, and in close proximity to one another will reduce vehicle travel and GHG emissions, and be accessible and affordable for all Californians, including disadvantaged and low-income communities. The location, density, and affordability of future housing will dictate much of our future travel patterns, and our ability to achieve the vision outlined in CTP 2050. Caltrans encourages the Town to consider and explore the potential of excess state-owned property for affordable housing development, per Executive Order N-06-19.

Caltrans supports collaboration with local agencies to work towards a safe, functional, interconnected, multi-modal transportation network integrated through efficient and equitable land use planning and policies. The Town should also continue to coordinate with Caltrans to identify and implement necessary network improvements and impact mitigation.

Lead Agency

As the Lead Agency, the Town of Fairfax is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

A1-7

Jeff Beiswenger, Planning and Building Services Director
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Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Fredrick Schermer, Associate Transportation Planner, via LDR-D4@dot.ca.gov. For future early coordination opportunities or project referrals, please contact LDR-D4@dot.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Luo Yunsheng'.

YUNSHENG LUO
Branch Chief, Local Development Review
Office of Regional and Community Planning

c: State Clearinghouse



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 8, 2023

Jeff Beiswenger, Planning and Building Services Director
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
JBeiswenger@townoffairfax.org

Subject: Town of Fairfax 6th Cycle Housing Element, General Plan Amendments, and Zoning Amendments, Program Environmental Impact Report, SCH No. 2022080624, Town of Fairfax, Marin County

Dear Mr. Beiswenger:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Program Environmental Impact Report (EIR) from the Town of Fairfax (Town) for the Town of Fairfax 6th Cycle Housing Element, General Plan Amendments, and Zoning Amendments (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the EIR to inform the Town, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. CDFW previously provided comments in response to the Notice of Preparation for the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION AND LOCATION

The Project will include updates to the Housing Element of the Town of Fairfax's General Plan. The Project will also update portions of the General Plan including the Land Use Element and Safety Element, as well as portions of the Municipal Code including the Zoning Ordinance, to maintain internal consistency. The updates to the

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Housing Element and related sections of the General Plan and Municipal Code will extend from 2023 to 2031.

The Project identifies 19 sites, totaling approximately 1,563.56 acres, which have been identified as housing opportunity areas. The Town anticipates that this will result in the addition of 531 new units of dwelling capacity.

The Project includes three types of zoning amendments. The first is to amend regulations for several existing zoning districts in Title 17, Zoning, of the Town of Fairfax Municipal Code to accommodate the proposed development types and capacities. The second is to rezone one housing opportunity site to allow multi-family development. The third is to amend the zoning map to reflect the zone change for that opportunity site.

Per legislative mandates, the Project also includes updates to the General Plan Safety Element to address climate change resiliency, reduce fire and flooding risks, and plan for emergency evacuations.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has potential to impact northern spotted owl (*Strix occidentalis caurina*), CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the

A2-2

A2-3

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natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **As described in the EIR (pages 3.3-20 and 3.3-22), future development under the Project may impact streams or riparian habitat. If such impacts occur, an LSA Notification pursuant to Fish and Game Code section 1602 would likely be required, as further described below.** CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Town in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments are also included below. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an EIR is appropriate for the Project.

A2-4

I. Program EIR Subsequent Project Review

Comment 1: Program EIR Subsequent Project Review

The EIR does not appear to include a checklist for subsequent Project review as outlined in CDFW's Notice of Preparation (NOP) response letter. While Program EIRs have a necessarily broad scope, CDFW recommends providing as much information related to anticipated future activities as possible. CDFW recognizes that, pursuant to CEQA Guidelines section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information may not be feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. The CEQA Guidelines section 15168, subdivision (c)(4) states, "Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the Program EIR." Based on CEQA Guidelines section 15183.3 and associated Appendix N Checklist, and consistent with other Program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent Project impacts on biological resources to

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determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis should include all special-status species and sensitive habitat including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the EIR conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities’ significant effects and indicate whether it incorporates all applicable mitigation measures from the EIR.

II. Environmental Setting and Related Impact Shortcoming

A2-5

MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Comment 2: Northern Spotted Owl, pages 2-9, 3.3-6, and 3.3-14.

Issue: The MND identifies that northern spotted owl “has potential to occur near the planning area” (page 3.3-6). The MND further includes northern spotted owl in a list of species which “have not been documented on or near the Proposed Project’s sites identified for housing development” (page 3.3-14). However, the Spotted Owl Observations Database shows approximately 195 observations of northern spotted owl, making up three separate spotted owl activity centers, within 0.25 miles of some sites available for housing (CDFW 2019), including sites near Scenic Road, between Ridge Road and Cypress Drive, and near Canyon Road (page 2-9).

Project implementation at these sites may result in take of northern spotted owl due to auditory or visual disturbance to active nest sites. Further, Project implementation at these sites may restrict the range of northern spotted owl through permanent habitat destruction.

Specific impacts, why they may occur, and evidence impacts would be potentially significant:

Auditory and Visual Impacts

Noise and visual disturbance from equipment, road use, or generators at Project sites identified for housing development may disrupt northern spotted owls nesting within

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0.25 miles by reducing hunting success of parents, which primarily use hearing to hunt, and increasing stress hormone levels, which was particularly evident in males when they were exclusively responsible for feeding their mates and nestlings (Hayward et al. 2011).

Habitat Loss

As a habitat specialist, northern spotted owls are primarily threatened by the loss, fragmentation, and degradation of their forest habitats, which is further complicated by their low reproductive rate and limited ability to disperse (Shuford and Gardali 2008). Destruction of foraging and nesting habitat would restrict the range of northern spotted owl.

Evidence of Significant Impacts

Northern spotted owl populations have declined significantly in California primarily as a result of destruction of forest habitat from logging, development, and wildfire (CDFW 2016). A more recent but also serious threat is invasion of their range by barred owls (*Strix varia*) which can out-compete and potentially kill northern spotted owls and hybridize with them (CDFW 2016).

Consistent with CEQA Guidelines, section 15380, the status of the northern spotted owl as a threatened species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 et seq., ESA) and under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. Based on the foregoing, if northern spotted owls are nesting within 0.25 mile of sites identified for housing development by the Project, auditory and visual impacts may substantially reduce the number of northern spotted owl. Habitat destruction potentially caused by the Project may substantially restrict the range of northern spotted owl. Reducing the number or restricting the range of northern spotted owl is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measures: For an adequate environmental setting, to comply with CESA, and to reduce impacts to northern spotted owl to less-than-significant, CDFW recommends including the below mitigation measures.

Northern Spotted Owl Habitat Assessment and Compensation. Prior to the Project activities that will remove forested areas, a northern spotted owl habitat assessment shall be conducted by a qualified biologist to determine the type and quality of northern spotted owl habitat present on-site. The habitat assessment shall identify potential habitat as described on page 31 through 34 of the *U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012 (see:

<https://www.fws.gov/sites/default/files/documents/survey-protocol-for-northern-spotted->

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[owl.pdf](#)). Results of the habitat assessment shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of the assessment prior to commencement of Project activities. If nesting or foraging habitat is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing.

Northern Spotted Owl Surveys. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW.

No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the above USFWS survey protocol for disturbance-only projects.

If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Comment 3: Bat Species of Special Concern, page 2-9.

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Issue: The Project is within the range of pallid bat (*Antrozous pallidus*), western red bat (*Lasiurus blossevillei*), and Townsend's big-eared bat (*Corynorhinus townsendii*) (page 2-9).² Townsend's big-eared bat has one occurrence mapped approximately 5 miles west of the Project (CDFW 2023). Pallid bat has four occurrences mapped in the California Natural Diversity Database (CNDDB), with the closest approximately 1.3 miles southeast of the Project (CDFW 2023). All three of these bat species are known to roost in tree bark, hollows, or foliage; pallid bat and Townsend's big-eared bat are also known to roost in structures including buildings (Johnston 2004). Buildings, especially buildings not currently in use, that may be modified as part of this Project may be occupied by bats. Trees that may be removed as part of this Project may also be occupied by bats.

Specific impacts, why they may occur, and evidence impacts would be potentially significant: The above bat species are California Species of Special Concern (SSC). CDFW designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Removing a roost tree or building during breeding or hibernating seasons could kill many bats as they roost together in a colony. Bats are unusual for small mammals because they are long-lived and have a low reproductive rate (Johnston 2004). Lifespans of 15 years are not uncommon, and most species have only one young per pair per year (Johnston 2004). Bats also aggregate in colonies, some of which contain all the bats of a species from a wide area (Johnston 2004). The combination of these three factors (long lifespan, few young per year, and aggregation into colonies) means that if the Project impacts bat roosts, the Project may cause a substantial adverse effect to the regional population of bat species, including special-status bat species.

Recommended Mitigation Measures: To reduce potential impacts to special-status bat species to less-than-significant, CDFW recommends including the below mitigation measure.

Roosting Bat Habitat Assessment and Surveys: Prior to Project activities that would remove trees or modify buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.

² CDFW maintains range maps for all terrestrial wildlife species in California, available at <https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range>.

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For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

For modification of buildings, the qualified biologist shall conduct a survey for roosting bats. If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.

III. Mitigation Measure and Related Impact Shortcoming

MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or endangered plant or animal?

COMMENT 4: Special-Status Plant Mitigation, pages 3.3-2, 3.3-3, 3.3-7, 3.3-14 and 3.3-17.

Issue: The EIR includes Mitigation Measure BIO-4, Avoid and Minimize Disturbance to Special-Status Plant Species (page 3.3-17). Mitigation Measure BIO-4 includes success criteria but does not include a contingency plan if the success criteria are not met (page 3.3-17). If plant relocation as described in Mitigation Measure BIO-4 fails, there would be loss of special-status plants without successful mitigation.

Specific impacts, why they may occur, and evidence impacts would be potentially significant: Mitigation Measure BIO-4 includes relocation of plants to a new site if avoidance is not feasible (page 3.3-17). Relocated plants would be subject to annual

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monitoring for three to five years, with the success criteria being “the establishment of new viable occurrences equal to or greater in number than the number of plants impacted” (page 3.3-17). As Mitigation Measure BIO-4 does not include a contingency plan if the success criteria are not met, mitigation for the plant occurrences potentially destroyed during construction would not be adequately mitigated.

The EIR indicates that many species of plants that have been documented within or near the Town “do not overlap with any proposed sites for housing development” (page 3.3-14), however the information collected to come to this conclusion appears to be limited to a CNDDDB search (pages 3.3-2, -3, and -7). The CNDDDB is a database containing positive records; the lack of records in any given area does not necessarily correspond to an absence of species.

The Project may result in the loss of bent-flowered fiddleneck (*Amsinckia lunaris*), congested-headed hayfield tarplant (*Hemizonia congesta* ssp. *congesta*), napa false indigo (*Amorpha californica* var. *napensis*), Mount Tamalpais lessingia (*Lessingia micradenia* var. *micradenia*), and other special-status plant species. The plants listed above all have a California Rare Plant Rank (CRPR) of 1B.2 (California Native Plant Society (CNPS) 2023). Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century (CNPS 2023). The additional threat rank of 0.2 indicates that 20 to 80 percent of their occurrences are threatened (CNPS 2023). Consistent with CEQA Guidelines, section 15380, the status of the above special-status plants as CRPR 1B species qualifies them as endangered, rare, or threatened species under CEQA. If special-status plants may be directly or indirectly impacted by the Project, the lack of adequate mitigation as described above may result in a mandatory finding of significance pursuant to CEQA Guidelines section 15065, subdivision (a), due to a substantial reduction in the numbers or restriction of the ranges of these species.

Recommended Mitigation Measure: To reduce the potential for the impacts to special-status plants described above to less-than-significant, CDFW recommends replacing Mitigation Measure BIO-4 with the below mitigation measure.

Avoid and Minimize Disturbance to Special-Status Plant Species. If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the Project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedings shall be

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monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.

IV. Project Description and Related Impact Shortcoming

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

AND

Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

COMMENT 5: LSA Notification and Resource Agency Permitting, pages 3.3-20 and 3.3-22.

Issue: The EIR identifies that future development under the Project may be subject to sections 401 and 404 of the Clean Water Act and to Fish and Game Code section 1600 et seq. (pages 3.3-20 and 3.3-22). However, the EIR does not clearly indicate if the Project would impact streams and riparian habitat, wetlands, or other waters. The EIR also does not provide certainty that such impacts would comply with Fish and Game Code section 1600 et seq., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, as the EIR does not include a mitigation measure requiring that development under the Project apply for CDFW, Regional Water Quality Control Board (RWQCB), or U.S. Army Corps of Engineers (USACE) Permits, nor does it contain a mitigation measure requiring compliance with the terms of these permits, if issued.

Specific impacts, why they may occur, and evidence impacts would be potentially significant: Streams, wetlands, and riparian zones, are of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. Development facilitated by the Project may result in impacts to streams and riparian habitats, as described in the EIR (pages 3.3-20 and 3.3-22). When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially

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adversely impacting aquatic and terrestrial species. More than 90 percent of California's historic wetlands have been lost to development and other human activity. Wetlands are a critical natural resource that protects and improves water quality and provide habitat for fish and wildlife. Absent the above permits which include measures to avoid and minimize impacts to streams, riparian habitat, wetlands, and associated species, impacts to these features may be significant.

Recommended Mitigation Measure: To reduce potential impacts to streams, wetlands, and other waters to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends including the mitigation measure below.

Stream and Wetland Mitigation and Resource Agency Permits: The Project shall be designed to minimize impacts jurisdictional waters. If impacts to any stream cannot be avoided, then prior to ground disturbance the Project applicant shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued for stream, wetlands, or other water impacts, the Project applicant shall obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.

V. Editorial Comments and/or Suggestions

Comment 6: Licensed Biologist, page 3.3-16

Mitigation Measure MM-BIO-1 refers to a "licensed biologist." While various certification programs for wildlife biologists through professional organizations exist, there is no state program that licenses wildlife biologists. CDFW suggests striking the word "licensed" and replacing it with "qualified."

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link:

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<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the EIR to assist the Town in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022080624)

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REFERENCES

- CDFW. 2016. A status review of the northern spotted owl (*Strix occidentalis caurina*) in California. Report to the Fish and Game Commission, California Department of Fish and Wildlife, Sacramento, CA, USA.
- CDFW. 2019. Spotted Owl Observations Database Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 26 October 2023].
- CDFW. 2023. California Natural Diversity Database (CNDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 26 October 2023].
- California Native Plant Society, Rare Plant Program. 2023. Rare Plant Inventory (online edition, v9.5). Website <https://www.rareplants.cnps.org> [accessed 30 October 2023].
- Hayward, L. S., A. E. Bowles, J. C. Ha, and S. K. Wasser. 2011. Impacts of acute and long-term vehicle exposure on physiology and reproductive success of the northern spotted owl. *Ecosphere* 2:65.
- Johnston, D, Tartarian, G, and Poerson, E. (2004). California Bat Mitigation Techniques, Solutions, and Effectiveness. Sacramento, CA.
- Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- USFWS. 2020. Revised Transmittal of Guidance: Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
N/A	<p>Create a procedure or checklist for evaluating subsequent Project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis should include all special-status species and sensitive habitat including but not limited to species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.</p> <p>When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the EIR conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities’ significant effects and indicate whether it incorporates all applicable mitigation measures from the EIR.</p>	Prior to EIR Certification	Lead Agency
MM-BIO-4	<p><i>Avoid and Minimize Disturbance to Special-Status Plant Species.</i> If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the Project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedlings shall be monitored annually for five</p>	Prior to Ground Disturbance and for Duration of Construction	Project Applicant

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	years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.		
MM-BIO-7	<i>Northern Spotted Owl Habitat Assessment and Compensation.</i> Prior to the Project activities that will remove forested areas, a northern spotted owl habitat assessment shall be conducted by qualified biologist to determine the type and quality of northern spotted owl habitat present on-site. The habitat assessment shall identify potential habitat as described on page 31 through 34 of the <i>U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i> , dated (revised) January 9, 2012 (see: https://www.fws.gov/sites/default/files/documents/survey-protocol-for-northern-spotted-owl.pdf). Results of the habitat assessment shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of the assessment prior to commencement of Project activities. If nesting or foraging habitat is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing.	Prior to Ground Disturbance	Project Applicant
MM-BIO-8	<i>Northern Spotted Owl Surveys.</i> If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal project prior to Project activities, unless otherwise approved in writing by CDFW.	Prior to Ground Disturbance and for Duration of Construction	Project Applicant

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	<p>No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the above USFWS survey protocol for disturbance-only projects.</p> <p>If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.</p>		
MM-BIO-9	<p><i>Roosting Bat Habitat Assessment and Surveys:</i> Prior to Project activities that would remove trees or modify buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.</p> <p>For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs</p>	Prior to Ground Disturbance	Project Applicant

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	<p>only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p> <p>For modification of buildings, the qualified biologist shall conduct a survey for roosting bats. If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.</p>		
MM-BIO-10	<p><i>Stream and Wetland Mitigation and Resource Agency Permits:</i> The Project shall be designed to minimize impacts jurisdictional waters. If impacts to any stream cannot be avoided, then prior to ground disturbance the Project applicant shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued for stream, wetlands, or other water impacts, the Project applicant shall obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.</p>	Prior to Ground Disturbance	Project Applicant



Clare Kucera <clare@dyettandbhatia.com>

Fwd: Response to EIR for The Town Of Fairfax Housing Element 2023

Andrew Hill <andrew@dyettandbhatia.com>
To: Clare Kucera <clare@dyettandbhatia.com>

Wed, Oct 11, 2023 at 4:43 PM

Comment on the FFX DEIR. Please file on the server. Thanks - Andrew

Begin forwarded message:

From: Heather Abrams <habrams@townoffairfax.org>
Subject: FW: Response to EIR for The Town Of Fairfax Housing Element 2023
Date: October 11, 2023 at 3:55:11 PM PDT
To: "andrew@dyettandbhatia.com" <andrew@dyettandbhatia.com>, Jeff Beiswenger <jbeiswenger@townoffairfax.org>

Regards,
Heather Abrams
Town of Fairfax | Town Manager
www.townoffairfax.org

From: Tony Gambardella <tonygambardella@gmail.com>
Sent: Wednesday, October 11, 2023 3:30 PM
To: Heather Abrams <habrams@townoffairfax.org>; Janet Coleson <Janet.Coleson@bbklaw.com>; Judy Lococo <jlococo754@sbcglobal.net>; Housing <Housing@townoffairfax.org>
Subject: Response to EIR for The Town Of Fairfax Housing Element 2023

We are writing to comment on the EIR for the Town of Fairfax's Housing element 2023.

First we want to make it clear that the inclusion of future development for 615 Oak Manor in the towns Housing element submittal to the state is a clear violation of the Agreement in Settlement of Fairfax Hills v. Town of Fairfax superior court order case no 140706. We want the town to remove 615 Oak Manor development from the Housing Element Submittal.

On May 16 2023 my wife and I wrote to Heather Adams and explained that the Estate lot of 615 Oak Manor was allowed two homes according to the Superior Court Order case no 140706.

Janet Coleson, Town Attorney responded to us August 1, 2023, she stated that the agreement ended in 1990 for Phases A-C and 1993 for Phase D.

First, We completely disagree with Janet Coleson's finding and this is why:

The Superior Court Order case no 140706 was signed by the Town Attorney on April 22, 1991 and the order was recorded May 29, 1991; therefore, how can the Town attorney say the agreement ended before it was signed and recorded. (see page 30 of the Agreement in Settlement for the signature pages. The front of the agreement is stamped with the date it was recorded.

B1-1

B1-2

Second: we have attached [Tony G. Deed-7.pdf \(2,601K\)](#) a portion of the Town's Staff report dated October 21, 1999 when we applied to reactivate the development permit and excavation permit for our house at [3 Snowden Lane](#) in Fairfax. Various places throughout the document the settlement is mentioned. In fact, on the findings page number 1 it states:

The proposed home conforms to the terms of the Agreement in Settlement of Fairfax Hills v. Town of Fairfax Superior Court Order Case No. 140706. On another page in the staff report under the heading: Construction of the home will require the approval of the following discretionary permits: It mentions that the proposed height and location of the home complies with the settlement agreement between Fairfax Hills and the Town of Fairfax recorded May 29, 1991.

The Town in 1999 was holding us to the settlement agreement; therefore, the Town recognizes that the agreement is in place and is enforcing it.

B1-3

Third, A Deed of Private Open Space Easement signed by The Town of Fairfax Administrator dated May 13, 1993 and recorded May 13, 1993. See attached [Tony G. Deed-7.pdf \(2,601K\)](#) and scroll down to Deed of Open Space.

Under the acceptance section it states:

"Pursuant to the terms of the agreement in Settlement of Fairfax Hills v. Town of Fairfax, Superior Court Order Case no. 140706, recorded May 29, 1991 as Recorders serial Number 91-32241, the Town of Fairfax does hereby accept said Deed of Private Open Space Easement, as Grantee, on this 13 day of May, 1993."

The Town again recognized that the Settlement Agreement is in place and they were enforcing it for [3 Snowden Lane, Fairfax](#) in 1999.

B1-4

Fourth, In a staff report for 6 Arrowood (see the link below) :

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjuylrz7NKBxW-kmoFHUTKBY4QFnoECBEQAQ&url=https%3A%2F%2Fstorage.googleapis.com%2Fproudcity%2Ffairfaxca%2Fuploads%2F2019%2F04%2F6-Arrowood-Lane.pdf&usg=AOvVaw0vO9n-NI2TNm95lq7qsZ7m&opi=89978449>

The Town again recognizes that the settlement agreement is in place and is enforcing it for 6 Arrowood, Fairfax in 2013.

These are the reasons that the town needs to remove the future development of 615 from the State Housing Element. The Settlement Agreement runs with the Land and it is in full force. The agreement only allows two homes for [615 Oak Manor](#) in Fairfax.

B1-5

To comment further on the EIR, since it is not site specific, ironically there are no mitigation measures for geology and soils. For example our home at 3 Snowden Lane was looked at by three geotech engineers and is designated in the Geological maps that show the hillside to lie within a designated slide area. The slope stability maps class this hillside as Zone 4. These classifications are based on a scale of 1 to 4 with 4 being the least stable. If there is earth moving equipment above our hill, constructing access roads on steep slopes for future development, we are very concerned about future earth movement and sliding. We are at the base of two drainage swells. No mitigation methods are shown in the Housing Element tables.

B1-6

We suggest that the Town add the Marin Town and Country Property to their housing element. The area is mostly flat and Town is less exposed to litigation due potential landslides due to earth movement from steep access roads and liquidation factors as well as violating Settlement Agreements. See figure 3.6-1 Soil types and slides in the

housing element. Again, why are there no mitigation measures when your table shows mostly landslides in the area of 615 Oak Manor Drive.

Under Volume 1.2 Areas of known Controversy, under the Geology and Soils section the report states: "The proposed project has identified several sites for development on steeply sloped hillsides. As such housing sites identified in the Proposed Project are in proximity to mapped landslides hazards and landslide impacts are potentially significant." This is another reason to add the Marin Town and Country to the Housing Element and take 615 Oak Manor out and other sites identified on steep slopes with landslide impacts. The Town and County Property will have to be rezoned but so will 615 Oak Manor drive. Additionally the town will not have to pay for the mitigation measures to build roads for access on steep slopes.

When we Built our home in 1999 we were assured from the Town, the Developer and the Settlement Agreement that the area of [615 Oak Manor](#) was the remaining parcel for Fairfax Hills and that only two houses were approved for that site until eternity and the rest was to remain Open Space.

If any of the links or attachments are not readable please let us know and we will provide hard copies. We look forward to your response.

Sincerely,

Tony Gambardella and Judy Lococo, Owners of [3 Snowden Lane](#) in Fairfax

B1-7



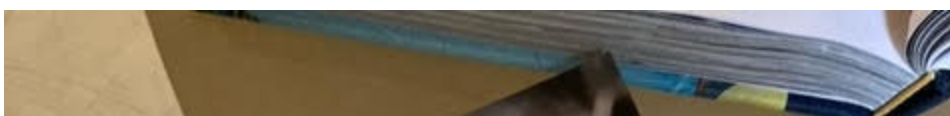
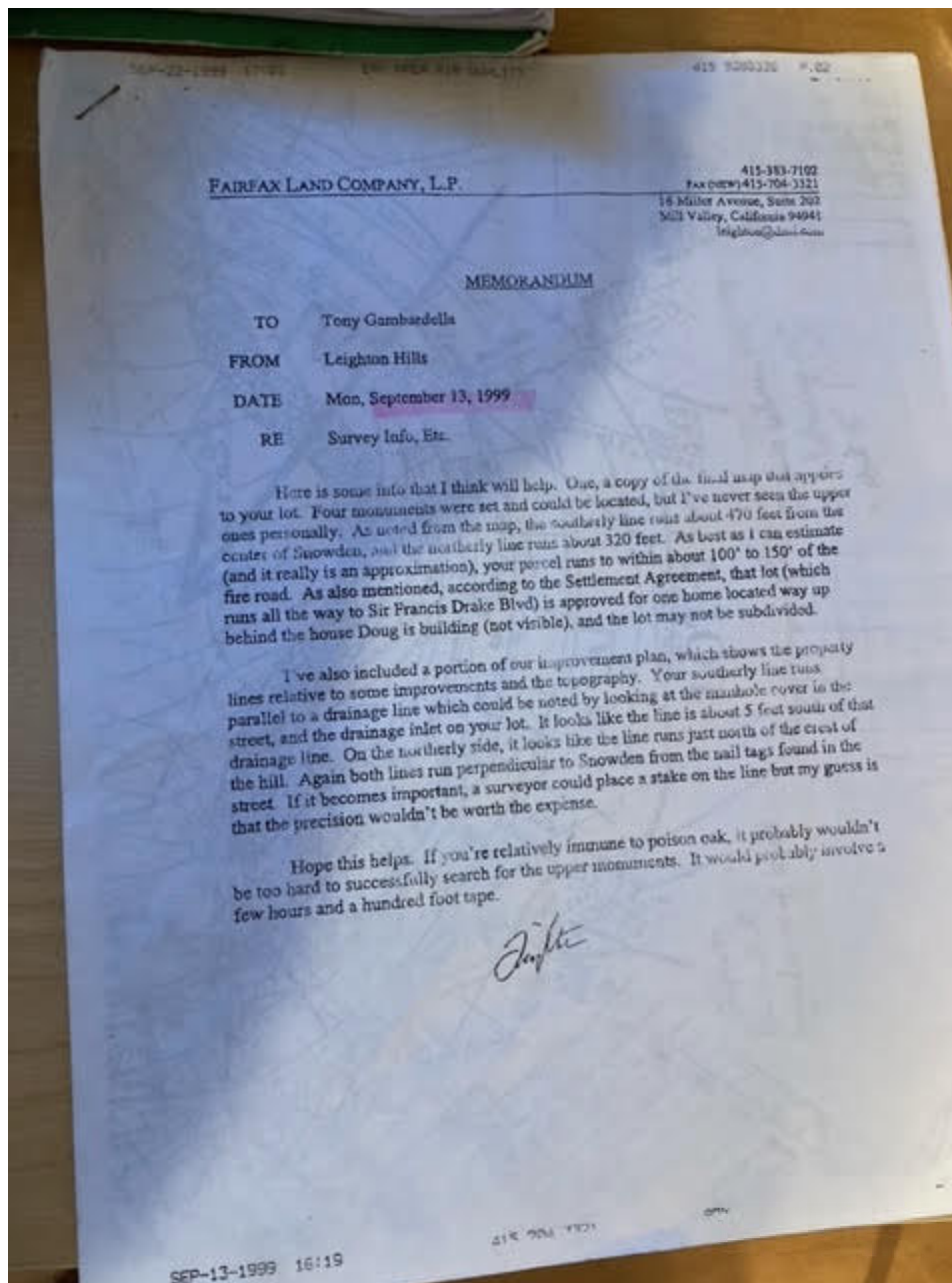
Tony G. Deed-7.pdf
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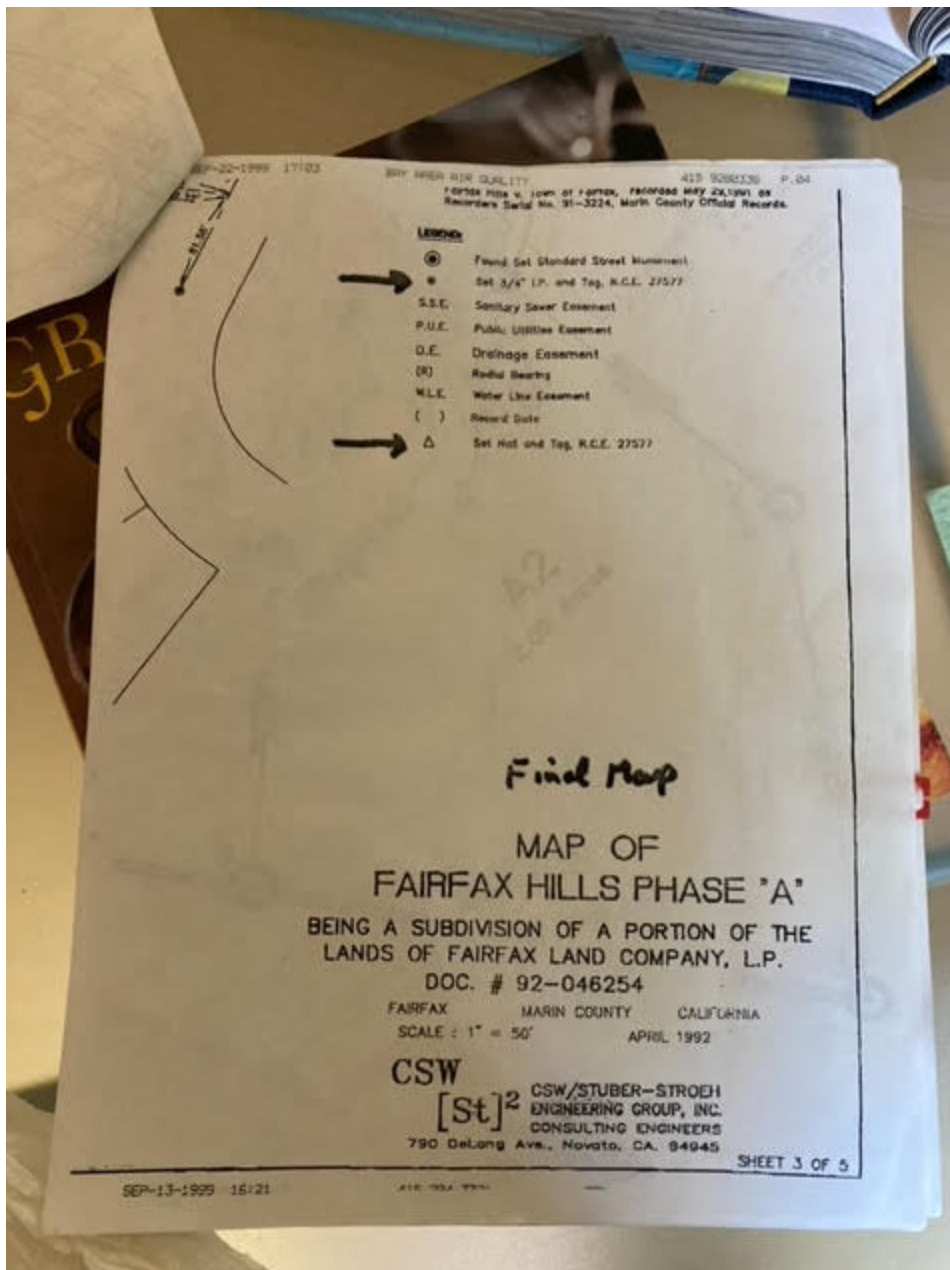
Subject: Addendum to our comments submitted November 5, 2023 for the



Tony Gambardella <tonygambardella@gmail.com>
to Housing

You are viewing an attached message. Dyett & Bhatia Mail can't verify the authenticity of attached messages.





B1-8

The attached above which is a memo from Leighton Hills, the previous owner of 615 OakManor, explained according to the settlement agreement, that lot (which runs all the way to Sir Francis Drake Blvd) is Mr. Hill in this memo is referring to 615 OakManor which is above Dave and Beth coduto's home.

This is more proof that the settlement agreements does not allow 615 OakManor to be subdivided; th

Tony Gambardella and Judy Lococo

Sent from my iPhone

TOWN OF FAIRFAX STAFF REPORT

TO: Fairfax Planning Commission
FROM: Planning Department, Linda Neal, Senior Planner
DATE: 10/21/99

PROJECT: A new single family home

ACTION: Reactivation of a previously approved Hill Area Residential Development permit and excavation permit; Application #'s 97-HRD-2 and 97-EX-1

APPLICANT: McCloud River Homes, Doug Elliott
OWNER: Fairfax Land Company
LOCATION: 3 Snowden Lane; Assessor's Parcel Number 174-200-02
GENERAL PLAN
DESIGNATION: 1 to 4 dwelling units per 10 acres
ZONING: Single Family Residential RS 6 Zone (7.3 dwelling units per acre)
CEQA STATUS: Categorically exempt per § 15303(a)
OTHER DEPT. REVIEW/ACTION: Building Department, Public Works Department, Ross Valley Fire Department, Sanitary District I, Marin Municipal Water District

PROJECT DESCRIPTION

Construction of a 3,760 square foot home including a 506 square foot garage on the lowest level, living room, dining room, family room, kitchen, half bathroom and dining nook on the second level and 4 bedrooms, 3 bathrooms and a laundry room on the third level.

BACKGROUND/DISCUSSION

The Planning Commission approved application #'s 97-HRD-2 and 97-EX-1 on April 16, 1998, however, pursuant to Town Code § 17.38.140 the permit expired one year following the date of its approval because a building permit had not been issued for the project.

The Fairfax Hills Subdivision, which includes 3 Snowden Lane, was approved by virtue of a court settlement between the Town of Fairfax and the property owner at the time on April 22, 1991. The settlement agreement set forth the siting of the various homes within the subdivision,

The allowable living space square footages, and various other design standards (copies of the settlement agreement available at the Fairfax Town Hall).

RECOMMENDATION


Staff recommends the Commission move to approve application # 98-HRD-2 and 97-EX-1 based on the following findings and subject to the conditions listed in the attached Exhibit "A".

ALTERNATIVE

1. Amend the agenda to move item as first public hearing item.
2. Review the staff report and conduct a public hearing.
3. Move to reactivate Hill Area Residential Development application # 97-HRD-1 based on the findings and pursuant to the conditions below.

FINDINGS

HILL AREA RESIDENTIAL DEVELOPMENT FINDINGS

1. The proposed home conforms to the terms of the 'Agreement and Settlement of Fairfax Hills v. Town of Fairfax Superior Court Case No. 140706'. 
2. The proposed development is consistent with the General Plan, other adopted codes and policies of the Town of Fairfax, and is consistent with the purpose and intent of the Hill Area Residential Development Overlay Zone Chapter 17.38 of the Fairfax Town Code.
3. The proposed development complies with General Plan policy number 4.1.3. All the oak trees on the site will be retained and the natural slope of the site will not be significantly altered and therefore, the site planning preserves identified natural features.
4. The project has been engineered to minimize the risk of hazards such as landslides to human life per General Plan policy numbers 5.1.2. and 5.1.7. Detailed geologic and hydrologic information has been reviewed by the Town Engineer and Public Works Director who have determined the site can be safely developed per policy numbers 5.2.1 and 5.2.2 of the Fairfax General Plan.
5. The natural slope of the site has been retained as required in General Plan policy number 5.3.2.

6. Based on the soils report findings set forth in the report by Geoengineering, Inc. dated November 26, 1996, the site can be developed without geologic, hydrologic or seismic hazards.
7. Vehicular access and parking complies with Fairfax Town Code Chapter 17.28, Off-street Parking and Loading Requirements, and therefore is adequate.
8. The Fairfax Design Review Board approved the project on November 12, 1997, and determined the proposed development harmonizes with the surrounding residential development, meets the design review criteria and does not result in the deterioration of significant view corridors.

EXCAVATION FINDINGS

1. The recommendations set forth in the geotechnical report by Geoengineering Inc., and reviewed and approved by the Town Engineer, ensure that the health, welfare and safety of the public will not be adversely affected.
2. The recommendations contained in the project soils engineer's geotechnical report and the conditions of approval contained the attached exhibit 'A' ensure the following:
 - The adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work.
 - That adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work.
3. The project site is steeply sloped up from Snowden Lane and therefore, the amount of excavation or fill proposed is not more than is required to allow the property owner to develop his property with a single family home and the required parking, which allows the owner substantial use of his property.
4. The Design Review Board made the determination at their November 12, 1997, meeting that the visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary.
5. Only two bay trees will be removed from this heavily wooded site during construction. Therefore, the natural vegetation or landscaping will not be removed by the project more than is necessary.

6. Per the project conditions set forth in the Exhibit 'A' construction may not occur between November 15, 1999 and March 15, 1999, and therefore, the time of year during which construction will take place is such that work will not result in excessive siltation from storm run-off nor prolonged exposure of unstable excavated slopes.

ATTACHMENTS

Applicant's drawings and project description
Report by Geoengineering dated 11/26/96
Marin County Arborists report dated 10/1/99
Story Pole Plan
Town engineer memorandums 2/6/98 and 4/1/98
Public Works Director memorandum 4/8/98
Ross Valley Fire Department report dated 1/26/98

EXHIBIT "A"

Conditions of Permit Approval

Application(s): 98-HRD-2

Project Address: 3 Snowden Lane

Approved by: Fairfax Planning Commission

Date of Approval: April 16, 1998

CHUCK THIS
IS WHAT YOU
WANTED
TJ

1. This approval is limited to the development illustrated on the plans prepared by Joseph P. Farrell, Architect, pages AO, 1 (March 1998 revision date) and A2 through A9, based on the survey by Cinquini and Passarino, Inc., and discussed in the following project engineering report(s): report dated November 26, 1996 by Geoengineering, Inc.

2. Prior to issuance of a building permit the applicant or his assigns shall:

BOND

a. Submit a cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Town Engineer. Upon approval of the contract costs, the applicant shall submit a cash deposit or letter of credit equaling 100% of the estimated construction costs.

b. The foundation and retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

c. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project engineer.

d. All retaining walls, if there are any, that are visible from the adjacent street and are constructed of concrete, shall be heavily textured in a manner approved by the planning staff prior to the issuance of the building permit. This condition is intended to mitigate the visual impact of the proposed walls and shall be approved prior to issuance of the building permit.

General Plan policies pertaining to this project are as follows:

Policy 4.1.3 - *All new developments shall be required to preserve some of the natural landscape.*

Policy 5.1.2 - *The basic goal of the Town of Fairfax in adopting the Environment Safety Element is to minimize the risk to human life from structure located in hazardous areas.*

Policy 5.1.7 - *The Town of Fairfax acknowledges the high degree of exposure it has to seismic and geologic hazards identified in this Environmental Safety Element, and it is the policy of the Town to minimize the risks, present and future, to life, limb and property in the event of a seismic or geologic occurrence.*

Policy 5.3.2 - *Natural slopes should be maintained and existing vegetation preserved especially in hillside areas. When change in natural grade or removal of existing vegetation is required, remedial measures are to be employed to restore or provide appropriate vegetative cover and to control storm water runoff. In specific application these policies will be tempered by the needs for fire safety.*

This 2.09 acre property slopes up from the southern side of Snowden Lane at an average rate of 21%. The building footprint lies at the base of 2 small drainage swales.

At the November 12, 1997, Fairfax Design Review Board meeting, the design of the home was approved with the following conditions:

1. Prior to issuance of a building permit the applicant shall provide verification to the Town that the landscaping and irrigation plan has been reviewed and approved by the Marin Municipal Water District.
2. Prior to issuance of the building permit for the project a deposit shall be submitted to the Town in an amount that will cover the cost of installation of the landscaping and irrigation and the landscaping and irrigation materials. This amount will be held for 18 months after installation of the landscaping and irrigation to ensure the plant material is established. The 18 months will begin once the Town staff inspects the landscaping and irrigation. This inspection will be arranged by the applicant.

Citrus

- e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority and Fairfax Public Works Director noting the developments conformance with their recommendations.
 - f. The applicant shall secure a tree cutting permit from the Town prior to removal of any on-site trees over 24 inches in circumference measured 24 inches from the ground.
 - g. Submit a record of survey subject to review by the Town Engineer prior to issuance of the building permit.
3. During the construction process the following shall be required:
- a. The geotechnical engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the grading has been completed as recommended prior to installation of foundation and retaining forms and piers.
 - b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The building official shall field check the concrete forms prior to the pour.
 - c. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waved by the building official on a case by case basis with prior notification from the project sponsor.
 - d. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
4. Prior to issuance of an occupancy permit the following shall be completed:
- a. The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.

Construction of the home will require the approval of the following discretionary permits:

1. A Hill Area Residential Development permit - This discretionary permit is required because the property exceeds 50 % in slope, excavation will exceed 50 cubic yards and the property is located within a landslide hazard zone as shown on exhibit 3, Open Space Element Map of the Fairfax General Plan (Town Code § 17.38.020(A)(4) and (B)).

2. An Excavation permit - 380 cubic yards of material will be excavated from the site during construction. This amount requires the approval of the Planning Commission per section 12.20.080 of the Fairfax Town Code which requires Commission approval of excavation amounts exceeding 100 cubic yards. Construction of a home and required parking on this up-sloped site would be impossible without some excavation.

Construction of the home will require the removal of two bay trees from the site (see the attached letter from the project arborist dated 10/1/99). There are no other significant natural features on the site, such a creeks or large rock outcroppings, to be negatively impacted by construction of the proposed home. The removal of two bay trees will not have a significant impact on this large wooded lot.

The proposed height and location of the home complies with the settlement agreement between Fairfax Hills and the Town of Fairfax recorded May 29, 1991 (available at the Fairfax Planning Department).

Originally the Town Engineer was originally concerned about the home lying in the path of potential debris flows from the two drainage swales above it and the method proposed by the project engineer to deflect debris. The plan was resubmitted stamped and approved by the project engineer as requested by the Town Engineer. The Town Engineer's comments are contained in the attached memorandums dated February 6, 1998 and April 1, 1998, and he is satisfied that the information presented by the applicant is sufficient to allow the Commission to take action upon the Hill Area Residential Development permit. He recommends approval of the project.

The Public Works Director has reviewed the project plans and found them complete. His comments and recommendations are contained in the attached memorandum dated April 8, 1998.

The Ross Valley Fire Marshall's review and requirements are contained in the 'Town of Fairfax Fire Department Plan Review' dated January 26, 1998 (attached to the staff report for 1 Snowden Lane).



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Planner Linda Neal
cc: Planning Director Patterson

Date: 2-6-98

From: Michael G. Watkins, P.E.
Town Engineer

Subject: Review of Development Plans
3 Snowden Lane
Fairfax, CA

I have visited the site and reviewed the information submitted by the applicant for the subject property. The information submitted consists of project plans drawn by Joseph P. Farrell titled New Residence #3 Snowden Lane Fairfax, CA Sheets A0 through A8 (dated 1/15/98), and a report titled Geotechnical Evaluation, Two Adjacent Residential Building Sites, Snowden Land, Lots 1 & 2, Fairfax, California prepared by Geoengineering, Inc. (dated November 26, 1996), a site plan prepared by Euphrat Engineering titled Lot A1 - Fairfax Hills Subdivision Site Plan Sheet 1 (dated Jan. 1998), and landscape plans prepared by Donald L. Blayney & Associates titled Landscape Master Plan 3 Snowden Lane 1 sheet (dated November 1997). I have the following comments regarding this submittal:

As the site work for this development is completed, it appears that the drainage considerations for the overall site have been addressed as part of a previous submittal. The specific site drainage appears to have been well integrated with the existing drainage improvements and appears to be satisfactory.

TOWN OF FAIRFAX
Department of Public Works
Memorandum

DATE: April 8, 1998

TO: Linda Neal, Senior Planner

FROM: Pat Echols, ^{PE}Director of Public Works

SUBJECT: Development Plan Review Comments - New Residence at 3 Snowden Lane

I have reviewed the site/architectural plans and geotechnical report for the proposed new residence at 3 Snowden Lane. Generally, the plans appear to be complete as submitted. My comments are summarized below:

1. The geotechnical report (Section 5.2.4) indicates that deflection walls will be required if the new structure is situated within the paths of the two drainage swales. The site plan clearly depicts that the house will be within the path of both swales, yet no deflection walls are provided. The plan should be revised to include the deflection walls or the geotechnical engineer must provide a letter indicating that the proposed site plan is adequate from a geotechnical standpoint.
2. In addition to a building permit, an excavation permit will be required.
3. Where possible, porous pavement surfaces (such as paver stones, soilcrete, etc.) should be considered to reduce off-site stormwater discharges..
4. In accordance with the Town's stormwater pollution prevention ordinance, erosion control shall be properly maintained at all times until permanent controls or final landscaping are established.
5. Any damages to Snowden Lane improvements (pavement, curb & gutter, etc.) resulting from construction activities shall be the responsibility of the property owner. It would be advisable for the owner or developer to videotape or otherwise document the existing condition of Snowden Lane improvements prior to construction.

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Fairfax Land Company, L.P.
16 Miller Avenue, Suite 202
Mill Valley, CA 94941

Attn: Leighton J. Hills

93-038317

Recorded
Official Records
County of
MARIN
JAMES DAL BON
Recorder
2:25pm 13-May-93

Rec Fee .00
Total .00

XX 3

Documentary Transfer Tax: \$ 0 per R+T 11922
Computed on the value of property conveyed.

DEED OF PRIVATE OPEN SPACE EASEMENT

This Deed of Private Open Space Easement (the "Deed") is made this 13th day of May, 1993, by Fairfax Land Company, L.P., a California Limited Partnership, with reference to the following facts:

A. Grantor is the owner of that certain real property located in the Town of Fairfax, County of Marin, State of California, more particularly described as **Lot A2** (the "Lot") as shown on that certain final subdivision map (the "Map") entitled Map of Fairfax Hills Phase "A," which was filed for record in the Office of the Marin County Recorder on the 12th day of May, 1993, in Book 21 of Maps, at Page 20; and

B. Grantee is the Town of Fairfax, County of Marin, State of California.

NOW, THEREFORE:

1. **Grant of Easement:** Grantor hereby grants to Grantee an easement in gross (the "Easement") on the terms and conditions described herein over the portion of the Lot (the "Easement Area") which lies outside the building envelope designated on the Map and as the dimensions of the building envelope may be altered from time to time, for the purpose of preserving for public enjoyment the natural character of the Easement Area.
2. **Restriction on Use:** Grantor hereby covenants that neither Grantor nor grantor's successors, heirs or assigns shall either construct or permit the construction of improvements on the Easement Area other than Permitted Improvements (as hereinafter defined). "Permitted Improvements" shall consist of paths, driveways to approved parking spaces or other approved improvements, fences, decks appurtenant to a single family home, landscaping, utilities and other uses ordinarily allowed in privately owned open space.
3. **Reservation of Rights:** Grantor, on behalf of itself and its heirs, personal successors and assigns, including all subsequent owners of the Lot, hereby expressly reserves (a) the right to use the Easement Area for the construction, maintenance, replacement, use and enjoyment of, and access to, the Permitted Improvements, and for all other purposes not inconsistent with the Easement; and (b) the right to grant easements and rights of use in, on, over, under or across the Easement Area or any portion thereof to third parties for any purpose permitted under all applicable legal restrictions and not inconsistent with the Easement. Utilities easements shall require that the utilities be constructed underground.
4. **No Restriction on Public Service Facilities:** Nothing in this Deed shall be construed to prohibit the construction of public service facilities installed for the benefit of the Lot or public service facilities installed pursuant to an authorization by the governing body of the Town, the County of Marin, or the Public Utilities Commission.

5. No Public Access: The granting of the Easement shall not be deemed to convey to the public or Grantee the right to enter the Lot for any purpose whatsoever.
6. No Further Subdivision: Grantor hereby covenants with Grantee that the Lot may not be further subdivided.
7. Covenant Running with the Land: This Deed shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, including all subsequent owners of the Lot and all persons and entities claiming under them.
8. Incorporation Into Map: This Easement shall be incorporated into the Map and deemed to be a part thereof for all purposes as fully as if set forth thereon.
9. No Duty on Grantee to Maintain: This Deed shall not be construed to impose any duty on the Grantee to maintain the Easement Area.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed by its duly authorized representative.

GRANTOR:

FAIRFAX LAND COMPANY, L.P.,
a California Limited Partnership

By: HILLS MANAGEMENT CORPORATION,
a California Corporation, its General Partner

By: Leighton J. Hills
Leighton J. Hills, President

ACCEPTANCE:

Pursuant to the terms of Agreement in Settlement of Fairfax Hills v. Town of Fairfax, Superior Court Case No. 140706, recorded May 29, 1991 as Recorder's Serial Number 91-32241, the Town of Fairfax does hereby accept said Deed of Private Open Space Easement, as Grantee, on this 13th day of May, 1993.

TOWN OF FAIRFAX

By: A. Christman
Town Administrator

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

On May 13, 1993, before me, a Notary Public in and for said State and County, personally appeared LEIGHTON J. HILLS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



E. Okita-Kuhr
NOTARY PUBLIC

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

On May 13, 1993, before me, Judith Anderson, the duly elected Town Clerk of the Town of Fairfax, California, personally appeared LINDA CHRISTMAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Judith Anderson
TOWN CLERK, Judith Anderson

November 1, 2023

This letter responds to the Town of Fairfax Draft Environmental Impact Report for the Housing Element 2023-2031 (EIR) and addresses the significant controversy regarding development plans for the Access Road Area as referenced below.

My name is David L. Coduto and my wife's name is Beth A. Carmichael. We have been Fairfax residents for close to 4 decades, and our address is 7 Snowden Lane, Fairfax, California, 94930.

I premise this letter by stating that we believe that the Town, its Mayor, its Town Council and Town legal counsel, endeavor to be good stewards of the community and its interests. We genuinely appreciate its tireless efforts to help the Town and its citizens.

As you know from my appearances at Council meetings, we are residents of the Fairfax Hills Subdivision (Center Area), as defined by Superior Court of the State of California, in and for the County of Marin, in a legal action entitled Fairfax Hills and 20th Century Builders, Inc. v. Town of Fairfax and Town Council of the Town of Fairfax, (Agreement) all as set forth in Superior Court Case No. 140706 in the files of that court.

As documented, Fairfax Hills and 20th Century Builders, Inc. prevailed in the lawsuit against the Town of Fairfax and Town Council of the Town of Fairfax. This settlement agreement (Agreement) with the Town was recorded on May 29, 1991, at 11:00 am, as part of the Official Records of Marin County, California, by James J. Dalboni. The Agreement remains in effect and in place, and written correspondences executed by the Town on its own letterhead over the years, supports that position. In addition, paperwork associated with each developed lot mentioned and mapped in the Agreement, refers to the Agreement and is included with each owner's title. This includes the property known as the Access Road Area (also referred to as ARA and/or 615).

Effectively, all owners (and their "heirs and successors") of properties (20 parcels) identified in the Agreement, are parties to the Agreement, along with the Town of Fairfax and the Town Council of the Town of Fairfax. All said parcels are specifically identified as having the right to develop one house per parcel, for a maximum total of twenty houses. As you know, the rest of the land identified in the Agreement *is permanently dedicated to open space*. The terms and conditions of the Agreement were conditions of the sale of each property in the Agreement. In fact, Exhibit B to the Agreement is a Deed of Open Space Easement and is included with the title of all parcels mentioned in that Agreement. Of the twenty parcels mentioned in the Agreement, eighteen were approved and were compliant with the Agreement. The remaining two parcels, known as the ARA, are located within the confines of 615 Oak Manor Drive. One site of the ARA remains undeveloped (site D2) and the other (D1), was developed with two houses, despite the requirement by the Agreement of "one house per parcel."

There are several deficiencies with the EIR, especially the inclusion of portions of the ARA parcel as part of the Housing Element. The EIR fails to mention any aspect of the Agreement, especially under the heading "Areas of Known Controversy." The Town's newest urban planning consultant is an East Bay firm named Dyett & Bhatia, and this firm assisted the Town with the EIR and Housing Element.

Please recognize that there is material controversy within the Town, especially among the resident parties to the Agreement. There is opposition to the development plans associated with the ARA because the proposed development violates the terms and conditions of the Agreement. This opposition

B2-1

B2-2

is significant in the Town, especially among Fairfax residents immediately impacted by these proposed plans. Most opposition relates to residents running the full length of Oak Manor Drive and Snowden Lane. This divisive issue has been discussed with fervor at various meetings, including Town Council and Open Space.

Even though we recognize that The Town and Town Council endeavor to do the right thing, both are doing Fairfax citizens no favor with their incessant comments that the Agreement has expired. As a side note, by claiming this incorrect interpretation as fact, one could conclude that an important indemnification for the Town--for any damages associated with the development of the ARA—is no longer valid. Why would the Town eliminate an indemnification for damages caused by development of lands specifically identified as open space pursuant to the Agreement? This seems contrary to acting in the best interests of the citizens of Fairfax.

I can assure you that there are already damages associated with this incorrect interpretation of the Agreement, and there will be further damages. And wouldn't it be ironic that the owner of the ARA was misled by this incorrect legal opinion and incurred significant development costs as a result? Consequently, one would think that the owner of the ARA may also have valid claims for damages against the Town.

The Agreement must be interpreted its entirety. There are repeated comments throughout and the Agreement referring to “heirs and successors,” and “future owners,” and is replete with statements that the Agreement itself (its terms and conditions) “runs with the land.” I will identify a few of the Agreement’s provisions in this letter. This is a simple issue and is rooted in contract law.

B2-3

It is our understanding that The Term of Agreement relates specifically to the California Subdivision Act regarding a developer’s right to develop the property within a specific time frame. If the development is not started within that period, the development opportunity is lost. Fairfax Hills and 20th Century Builders, Inc. complied with that provision when it started the multi-phase site development and mass grading plans for the subdivision and houses within the time limit imposed by the Act for Phase A (Center Area--Snowden Lane properties). Most subsequent developments in the Fairfax Hills area, also complied with the terms and conditions of the Agreement.

As mentioned above, I am a current resident of Snowden Lane and an original owner of a property in Phase A. All Snowden Lane properties were developed and completed by the early 2000s and were identified in writing by the Town as being compliant with the Agreement. In addition, the open space easement as well as the Agreement itself, was included with the titles of those seven properties. The same was true for phase B (Lower Area--the six homes above 7-11) Those houses were largely completed by 2016. The same was effectively true for phase C (the Upper Area, Triangle), as those properties were purchased by the owner of a ranch in the Butterfield area and were permanently dedicated to Marin Open Space, in compliance with the Agreement’s open space provisions.

B2-4

Under Compliance Review, the Town was required “at regular intervals of not less than 1 year and not more than 18 months, to review the Agreement for the sole purpose of determining compliance with the terms of the parties hereto.” We are not certain, but we believe that the Town may have remained in compliance with that provision up to the proposed development plans of the ARA.

In one letter by Town Counsel, reference is made to the Agreement mentioning that applicability was tied to the “Map Act”. Counsel mentions that the Approvals and Permits clause in the Agreement

required the Town to approve a vesting tentative map, pursuant to the Map Act, with the approval date being “September 18, 1988”. She then concludes that “under the Map Act, the initial period for Phases A-C would have been 2 years until September 18, 1990, and 1993 for Phase D.”

If Counsel’s opinion (as expressed in her recent August 1, 2023, letter to my neighbors, Judy Lococo and Tony Gambardella) is accurate, the development for Phases A-C ended on September 18, 1990—and terminated *before* the Agreement was signed and recorded in May 1991. What sense does that make?

As mentioned previously, we know that all the houses in Phase A (The Center Area-Snowden) were completed over a decade later, while Phase B houses (the Lower Area-Arrowood) were completed 26 years later. According to the Town and its own correspondences, both Phases were in compliance with the Agreement.

Following that, what sense does it make to include a Compliance Review section in the Agreement, (i.e., where the Town was required “at regular intervals of not less than 1 year and not more than 18 months”, to measure compliance with the Agreement), if the Agreement had already expired before it was signed? Why would the settlement require regular and measured compliance over time, if the Agreement itself was not permanent and running “with the land”? What sense does it make to include a provision in the Agreement that could not be implemented? We do have concerns that the Town either forgot or ignored the Agreement and failed in its duties to measure compliance with the Agreement. There is evidence to support this concern.

B2-5

More troubling is that the Town somehow not only breached some terms and conditions of the Agreement over the years but appeared to do so largely and *exclusively* to the development plans of the owner the ARA (a large parcel of about fifty acres of land). We also know that the ARA owner communicated freely with at least one Town Council member and hired consultants that had formerly served on the Town’s Housing Committee and Planning Commission when it came to development of site D1 and large designated *open space areas* of the ARA. Development of those *open space areas* are included within the Town’s Draft EIR and Housing Element for the Town for 2023-2031. Again, it appears that a concerted effort by this group to develop *open space areas* of the ARA helped with the inclusion of the ARA property in the EIR/ Housing Element. *It is more than coincidental that 615’s development plans fit perfectly within the Town’s newest efforts from previously botched compliances with the Housing Element.* This reminds me of a story told by a famous author and Fairfax resident in which a priest warns her that we should always be skeptical when it seems that the Lord’s plans for a person align so perfectly with their heart’s deepest desires.

B2-6

One notation in the Agreement states, “Whereas, the parties desire to compromise and settle the action completely between themselves *and their successors, agents, heirs, and assigns* (emphasis added), to avoid the expense of further litigation.” It is quite clear that this provision relates to the future (after September 18, 1990), as it discusses successors, agents, and heirs. And as mentioned earlier, the Agreement clearly states that its provisions, terms, and conditions, “run with the land.” Land is permanent. Current owners are not permanent, but their heirs and successors and assigns, are.

Further terms and conditions support that the Agreement remains in effect, today.

As it relates to the Severability Clause; “If any material provision of this Agreement shall be found to be invalid, void or illegal, the remaining provisions shall remain in full force and effect.” Even if Town Counsel’s opinion was correct, this clause protects all other terms and conditions of the Agreement.

As it relates to the Conditions of Approval of the Tentative Subdivision Map, Final Subdivision Maps, and Other Approvals, Permits and Entitlements, and relating to the recordation of the final map for any phase, “by terms of the easement granted to the Town, neither Fairfax Hills nor its successors, heirs or assigns shall be entitled to further development of any lot herein created.”

Under the Recordation of Agreement, “this Agreement, its terms, conditions, and the rights and obligations created herein, shall run with the land.”

Under the Deed of Open Space Easement, “No Further Subdivision –Grantor hereby covenants with Grantee that the lot may not be further subdivided.” In addition, it says under “Covenant Running with the Land, This deed shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, including all subsequent owners of the Lot and all persons and entities claiming under them.”

Under the Approvals and Permits provision “no subsequent change in the general plan, zoning ordinance, or other ordinance, plan, policy or procedure, enacted subsequent to September 18, 1988, shall apply to prohibit or modify the terms of this Agreement, except as otherwise stated herein.”

We also know that if the Housing Element is approved with the ARA’s open space development plans, significant rezoning costs will be borne by the Town and the citizens of Fairfax, *instead* of by the owner of the ARA. We are concerned by this issue. Even one of our local periodicals (October 18, 2023, edition of the Ross Valley Reporter) recently ran a story that said, “The Fairfax Town Council, led by Barbara Coler and Town Attorney Janet Coleson, is supporting a developer who is trying to build 34 more units on the mandated Open Space parcels.” That developer is the owner of the ARA and Ms. Coler is a Town Council member and Ms. Coleson is an attorney and the Town’s legal counsel. This does not seem to fit well within the Town Council’s goal to work in the best interests of its citizens. I know that I do not want my tax dollars spent to support a plan that is in direct violation of the Agreement.

In fact, the Agreement states that development of the four areas mentioned above and below, shall be approved subject to and subject only to the terms and conditions stated in the Agreement. It further states that the specific siting of the houses shall not be subject to any further review as part of the development permit. It states that the land will remain privately owned and maintained. It also states that uses outside of the building envelope shall be restricted to paths, driveways to approved parking spaces or other approved improvements, fences, decks appurtenant to a single-family home, landscaping and areas allowed in private open space, and shall be subject to the design review process where ordinarily required.

It also states that by the express terms of the easement granted to the Town, neither Fairfax Hills nor its successors, heirs, or assigns “shall be entitled to further subdivision of any lot herein created.” It states that the “land area on each lot shall be used for construction of one single family home.” It identifies specific house size maximums for each site. As mentioned earlier, the Agreement provides an indemnity to the Town with respect to *any* damages arising from and caused by the siting or

construction of residential structures on lots D1 (developed) and D2 (undeveloped), located in the ARA. Finally, it states “this shall be a covenant running with the land as to lots D1 and D2 and shall be binding on all heirs, assigns, and successors in interest of Fairfax Hills as to those lots.” Absent any other indemnity that the Town has negotiated with the owner of the ARA, the Town’s Counsel’s legal opinion could relieve the ARA owner of the burden of that indemnification.

Need I continue?

As mentioned earlier, many Fairfax residents including myself and others have already been damaged by the Town’s proposed actions and inactions. Many of us have paid to hire consultants and attorneys to address this issue. Why should any Fairfax citizens be subjected to such an expensive dilemma? What is going on here? Other owners of properties near 615 are concerned that the Town may have failed in its duties to monitor compliance with the Agreement’s terms and conditions when related to the development of house site D1 of the ARA.

I have attended several Town Council and Open Space committee meetings and have been disappointed with some of those meetings. At one meeting, Town Counsel shook her head and rolled her eyes as my neighbor was struggling for words in a two-minute public commentary period. This was unprofessional and abnormal and did not go unnoticed or unaddressed by me and other attendees. This was not helpful.

As you know, the Town has wasted hundreds of thousands of dollars in taxpayer money and funds over the years by hiring and firing consultants associated with previous efforts to address Fairfax’s Housing Element.

The Town counsel’s legal opinion seems to defy common sense and logic, as well as facts and precedent expressed by the Town. As mentioned above, this flawed opinion has caused significant costs and damage to several Fairfax citizens, both opposing *and* supporting the development of land submitted as part of the Housing Element.

I may be wrong, but it appears to me that the Town has selectively failed to monitor compliance with the Agreement and has breached the terms and conditions of the Agreement to the favor of one private property owner while at the same time, appearing to rectify its previous failures to comply with the State’s Housing Element in a timely manner.

One might consider the recent decision in the Second Appellate District, Division Four, from the Superior Court of Los Angeles County, regarding the case called Snowball West Investments, L.P. vs. The City of Los Angeles (Superior Court Case Number 20STCP00771). This recent decision effectively upheld local zoning requirements and concluded that the California’s Housing Accountability Act would not apply. Like Fairfax, that decision had standing and related to a property located in a Very High Fire Hazard Severity zone.

As you know, the Agreement calls for a considerable amount of open space but allowed for the development of the Fairfax Hills Subdivision. This allowance was specific in many regards including the development of twenty parcels, each of which were to be developed with “one single family residence, per parcel.” There was an exception to this rule. The Access Road Area (ARA), allowed for two home sites, D1 and D2, but the total homes to be developed remained at 20. As mentioned previously, the parcels were to be distributed on areas of the property denominated as: (a) the Lower

B2-9

B2-10

Development Area (the “Lower Area”) of six homes, immediately above the 7-11 store on the corner of Sir Francis Drake Boulevard and Oak manor Drive (Arrowood); (b) the Center Development Area (the “Center Area”) of the seven Craftsman Style homes on Snowden Lane;(c) the Access road Development Area (the “Access Road Area”); and (d) Upper Development Area Triangle (the “Triangle). The parcels were to be distributed as follows:

Lower Area	6 homes
Center Area	7 homes
Access Road	2 homes
Upper Area (Triangle)	5 homes

Again, there was to be a phased development of the Fairfax Hills Subdivision. The Center Area was to be developed first. The Lower Area was to be developed second. This happened. The Center Area was completely developed by the early 2000s, and the Lower Area was completed around 2016. The Triangle was to be developed thirdly and the ARA was to be developed last. I believe that Site D1 was first developed roughly five years ago, about 2018.

As discussed above, the seven homes located in the Center Area are on Snowden Lane. These homes represent the first completed stage of the Fairfax Hills Subdivision.

The EIR includes provisions to develop the ARA’s open space mandated area of the ridgeline which is in a Very High Fire Hazard Severity Zone. This possible development also fails to comply with the terms and conditions the Agreement.

B2-11

One might think that the Town and Dyett & Bhatia would have exercised professional care to review all possible public documents including the Agreement when considering the possible development of the ARA.

I have been the CEO of a highly rated professional liability insurance company (insuring design professionals) for 35 years. I have been involved with thousands of claims comprising hundreds of millions of dollars in loss and expense payments. Many have involved geophysical/geotechnical claims. Given my firsthand experience with such design disciplines and claims, one must not underestimate geologic risks. Such underestimation can lead to significant liabilities and expensive problems.

B2-12

As mentioned previously, none of us on Snowden Lane knew of the development plans for the ARA, until very recently. That is unfortunate because the ARA abuts the Center Development Area—i.e., Snowden Lane. It also abuts the Lower Development Area and the Upper Triangle as well as other portions of land on Oak Manor Drive. It is hard to understand why the Town and its primary urban planning consultant failed to inform residents in these key areas of the development plans of the ARA. One would think that such proposed development plans would have been openly discussed circulated by the Town, its professional consultants, and the owner of ARA. What was the big secret?

B2-13

When we were building our house on Snowden beginning in 1999, we made an expensive mistake as it related to compliance with the Agreement. We had pre-wired a portion of the house--then distinct from the main house--as a separate unit. We never had any intention of renting that portion to a third party. My wife is a college professor. The unit was designed to be her writing studio. The Town correctly required us to consolidate the unit into the main house and remove such wiring in compliance with the

Agreement. The Town represented that it was ensuring the one-owner occupied unit per site pursuant to the Agreement. That action by the Town cost us thousands of dollars, but we understood the Town's actions and complied with the Town's correct demands.

This leads me to another comment and question. One of my neighbors told me that the Town, is "handing out ADU permits like candy." We know that the ARA recently completed building a modern home on building site D1, as well as a separate ADU. Please explain how that was allowed within the terms and conditions of the Agreement.

I was recently contacted by a local architect, asking if a prospective buyer of a house for sale on Oak Manor should be concerned about the development "over their fence line." In a normal situation, I would have said "no." But who knows today given the Town's recent position regarding development of settlement mandated, open space areas?

A claim anecdote that I am familiar with may be in order here. During the 1970s, a noted geologist employed by the California Department of Mines and Geology mapped landslides in and around Marin and other Bay Area communities, including Mt Burdell in Novato. In the late 1970s and 1980s, a subdivision was developed on open space on Mt. Burdell. The resulting houses were constructed in the 1980s with few problems. At some point during mass grading, a 20x40 foot "knob" (a small hill) was excavated to accommodate the construction of a few more houses. Several years after the completion of the subdivision, a hospital was built up-slope from the subdivision. As the hospital's construction continued, homeowners in the subdivision complained about the changed view associated with the hospital siting. A large landscape berm was created to obscure the view of the hospital, using the spoils from the foundation excavation. This berm was massive and worked like a charm, until Marin had a very rainy winter in the late 1990s.

As it turned out, the "knob" was the toe of an ancient landslide. When it was excavated, it removed the resisting force that kept this ancient landslide from moving again. This landslide was re-triggered by the combination of the excavation of the toe, the weight of the berm, and the "grease" --i.e., copious amounts of water from a rainy winter. Expensive litigation ensued, and houses and people's lives were ruined or compromised. The once sublime neighborhood was now a litigation and construction mess. The point here is that the catastrophic failure occurred many years after the completion of the subdivision. The impacts of each act--each seemingly unrelated and separated by several years--, eventually coalesced and resulted in a massive failure at great cost.

We must not be flippant about "mitigatable" geologic risks as mentioned in public records by the Town's professional planning consultant. One must consider both known (mapped) and unknown (unmapped) geologic risks. Also, when one considers the rapidity of serious climate events these days, the entire civil engineering profession must be revamped, because "100-year storms" no longer happen once every one hundred years. They happen all the time. In today's age of incredibly serious and rapidly expanding climate events, geophysical and construction risks will increase.

The same is true with fire hazards. The area characterized as the Fairfax Hills Subdivision (and its four phases), is located next/adjacent to a dense forest area and is in a Very High Fire Hazard Severity Zone. In some public commentary written by former Fairfax Mayor, Mr. Frank Egger, he mentions *liability concerns* for the Town, brought on by enhanced fire and geophysical risks associated with the development of Marin's Open Space. He states that the Town should be working on ways to get citizens out of the Town, instead of further development of designated open space determined by the

B2-14

B2-15

B2-16

Agreement. He points out with Fairfax, that there is only “one way in and one way out,” and our Town must not become another conflagration like the Paradise, Ca., disaster. He could not be more correct.

Another two claim anecdotes are relevant here and they relate to the property we bought (7 Snowden). When our house was being constructed, a contractor with an acetylene torch decided to bend conduit with it--instead of using a “hot box” (a fire protection device) --. This construction error started a multi-acre brush fire on our property and on the adjacent mandated open space, up to and over the ridgeline above Snowden Lane. Had the winds been blowing in a different direction that day, it could have destroyed the entire Snowden Lane community, plus significant portions of Fairfax. The point here is that construction errors happen frequently. Open space development has its hidden costs, and a catastrophic disaster is merely the sub total of many smaller mistakes along the way.

B2-17

After our house and pool were built, we noticed that the downward portion of the pool seemed deeper than the upward portion. To make a long story short, the developer of our house placed the pool in the direct path of an ancient landslide (on the landslide’s toe). Massive problems ensued and to protect neighbors and create stability for the hill and pool area, almost \$1 million dollars was spent to engineer and reconstruct the hill with geogrids and compacted soil, in eighteen-inch lifts.

The point here is that known and *unknown* geophysical risks are real. Climate change events are real. Construction and construction development errors and omissions are real. What we know or believe today may mean nothing if we are not careful with future development.

When we bought 7 Snowden, we knew that site D2 (and part of ARA), could someday be developed with a 4,900 sq ft house. We knew of that possibility and accepted it. We knew of the Agreement and complied with its terms and conditions. We continue to comply with the terms and conditions of the Agreement. It was a condition of the sale.

B2-18

In public record correspondence with the Town and its primary planning consultant, ARA’s owner creates an either/or fallacy and “poisons the well” by stating that the Town must find a middle ground between the “development of sprawl and a zero-development policy.” The correspondence goes on to state that such plans are, “characterized by political extremes.” One must conjecture that if we do not agree with the ARA owner’s premise, we are political extremists? Hardly. We are law and rule-abiding citizens complying with the Agreement.

I believe that the ARA owner is a relatively new Fairfax resident (the last 7-8 years), and we have had a good and cordial relationship. Most of us on Snowden have been here for decades and bought our houses based on the knowledge of mandated (designated) open space defined by the Agreement.

None of us wants any problems with the Town or our neighbor at 615. But also, we do not want our tax dollars to be used to address property development at the cost of mandated open space. We believe this plan would lead to the diminution of the value of our properties, and increase fire, geophysical and construction risks.

We love our Town. We respect its elected officials, and we are certain that the Housing Element requirements can easily be met by other large undeveloped properties in Fairfax (the Marin Town and Country site comes to mind), and that are not designated as open space by a duly recorded settlement agreement.

One final question relates to the EIR. Did the submission to the State take into consideration the negative impacts created by modern-day enhanced risk brought on by the rapidity and seriousness of climate change events? The failure to pay close attention to modern day environmental hazards can be catastrophic to the entire community. As stewards of that community, it is your responsibility to properly evaluate the potential and real hazards brought on improper land development and by climate change. The absence of such stewardship could result in horrific events and lead to the loss of life, destruction of personal property and the destruction of our community.

Please know that the Agreement contains an Attorneys' Fees clause, which states that the prevailing party in a litigation scenario, will "be entitled to recover reasonable expenses, attorney fees and costs." We hope to avoid a legal tussle with the Town. If that unfortunate event happens, we will prevail over the Town.

Due to the validity of the Agreement, The Town must remove the ARA parcel and any parcel or land documented in the Agreement, from the Fairfax Housing Element, 2023-2031.

We want to continue to live in peace on Snowden with our neighbors and our community. We want to keep Fairfax's designated open space, open.

Best Regards

David Coduto



Clare Kucera <clare@dyettandbhatia.com>

FW: Draft Environmental Impact Report for the Town of Fairfax for the Housing Element 2023-2031 and other

Jeff Beiswenger <jbeiswenger@townoffairfax.org>

Mon, Nov 13, 2023 at 9:03 AM

To: "andrew@dyettandbhatia.com" <andrew@dyettandbhatia.com>, Clare Kucera <clare@dyettandbhatia.com>

From: Dave Coduto <dcoduto@terrarg.com>**Sent:** Friday, November 10, 2023 8:14 PM**To:** Heather Abrams <habrams@townoffairfax.org>; Jeff Beiswenger <jbeiswenger@townoffairfax.org>; Housing <Housing@townoffairfax.org>**Cc:** tonyjgambardella@gmail.com; Tony & Judy Gambardella (jlococo754@sbcglobal.net) <jlococo754@sbcglobal.net>**Subject:** Re: Draft Environmental Impact Report for the Town of Fairfax for the Housing Element 2023-2031 and other

Dear Ms. Abrams

I hope that you are doing well.

B2-20

Please add this comment as part of my response (as an addendum) to the Draft EIR—previously submitted to you, the Town, and your team, by me.

In the section—Areas of Known Controversy of the EIR—this must be addressed and added.

“To the best of our knowledge, Robert Schwartz, the owner of the ARA, died a few days ago.

Until the Town knows the disposition of the owner’s estate, the Town must immediately remove the ARA, from the Draft EIR and associated Housing Element.

This creates a significant controversy, and again, the ARA property in its entirety, must be immediately removed from the Town’s housing and property inventory for the Housing Element.

We question whether the Town also knows, that on-going mass grading, earth moving and soil removal—has continued before and after the ARA owner’s death, and presumably without a licensed engineer’s observation of the work including compaction and earth moving and soil removal—

We question whether the work is being performed without the observation of the owner, the Town's consultants and building officials, and the deceased owner's civil and geotechnical engineers.

This not only violates the Settlement Agreement, but also the Town's building codes and permitting processes.

Presumably, such earth moving contractors are grading and moving soil on the ARA property, at the direction of a deceased owner.

This is now a known controversy and throws the inclusion of the ARA in the Housing Element into uncertainty.

Unless the owner of the ARA, sold the property prior to his death, the disposition of his estate adds greater controversy, especially when considered in conjunction with Town Counsel's erroneous and incorrect legal opinion about the validity of the Settlement Agreement.

Thank you. Have a nice evening.

Best regards

Dave Coduto
7 Snowden Lane
Fairfax, Ca 94930

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On Nov 1, 2023, at 2:45 PM, Dave Coduto <dcoduto@terrarrg.com> wrote:

Dear Ms. Abrams and Mr. Beiswenger,

The attached responds to the above. Thanks very much. Have a nice evening.

Dave

David Coduto

7 Snowden Lane

Fairfax, CA 94930

415 578-8705

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Please add this comment as part of my response (as an addendum) to the above, previously submitted to you, the town, and your team.

B2-21

In Areas of Known Controversy in the EIR, this must be addressed.

To our best knowledge, Robert Schwartz, the owner of the ARA, died a few days ago.

The Town has been allowing grading of his property after his death, at the direction, presumably of a deceased owner.

This is now a known controversy and throws the inclusion of the ARA into uncertainty and a clear path forward.

Unless the owner of the ARA, sold the property or gave the property to an heir, the subject of ARA inclusion in the EIR/Housing Element and the mass grading that continues after he is deceased, becomes a greater controversy, especially when the property is considered in conjunction with Town Council's erroneous and incorrect legal opinion about the previously mentioned Settlement Agreement.

Thank you. Have a nice evening.

Warmest regards, Dave Coduto

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Fairfax, CA 94930

415 578-8705

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Heather Abrams, Town Manager
Town of Fairfax, 142 Bolinas Rd., Fairfax, CA, 94930
habrams@townoffairfax.org

Public Comment for Fairfax Housing Element Draft Environmental Impact Report

I would like to express the following concerns as part of the Public Comment in response to the proposed Draft Environmental Impact Report for the Fairfax Housing Element Plan.

6 School St. Plaza

High density living provides more opportunity for fostering clusters of disease, heightened by increased air pollution and GHGs, which are much less present in suburban or rural environments with less dense populations.

High density developments, such as the one currently being proposed as part of the Fairfax Housing Element Plan for 6 School St. Plaza, will use tremendous amounts of concrete, steel, composite materials and other temperature variant materials in their construction. The proposed 175 units on 1.92 acres most likely equates to a 12-story building, without adequate parking, in the center of a residential district. This out-of-place, “aesthetic blight” was not mentioned in the DEIR.

Building operations consume 40% of the nation’s energy according to the US Department of Energy. Even with requirements like LEED certification, the materials which go into building construction do not justify the claim that high density, multi-family, transit-oriented development supports the environment.

CO2 embedded in the building materials produce greenhouse gas (GHG) emissions and have a negative effect on energy consumption. When an urban environment gets hot, it produces a “heat island” effect, which requires more metric tons of carbon dioxide equivalent (MTCO2e) to cool. When an urban environment gets cold it produces a “cold sink” effect, requiring more MTCO2e to heat. The effects of heating and cooling must be taken into consideration when evaluating environmental data.

From the Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update Summary:

“Operation of the land uses introduced by the Proposed Project would require energy consumption and generate long term emissions of CO2, CH4 and N2O. Future conditions under the proposed project would not meet the 100% GHG emissions reduction target for 2030 set by the Town Climate Action Plan. Even with Mitigation Measure GHG – 2, the associated impact would remain significant and unavoidable and cumulatively considerable. Implementation of the Proposed Project would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.”

In Marin County, denser populations demand more shipping, trucking and transportation to satisfy our consumption driven economy. According to the DEIR report, “Vehicle miles traveled (VMT) would increase. This plan does not meet CEQA guidelines related to VMT goals and indicates a significant cumulative transportation impact.” The DEIR report states:

“Vehicle trips resulting from implementation of the proposed project could result in the irreversible consumption of nonrenewable energy resources primarily in the form of fossil fuels, natural gas, and gasoline for non-electric automobiles and long-term degradation of air quality.”

B3-1

B3-2

B3-3

B3-4

I have concerns about the biological resource impacts. From your DEIR summary:

B3-5

“Given the extent of biological resources throughout the community, housing sites identified in the Proposed Project do occur along riparian areas near Bothin, San Anselmo, and Fairfax Creeks; the construction of which could potentially adversely affect severance special-status species.”

I am also concerned and object to “clustered housing” developments proposed for ridge lines, scenic corridors and upland residential zones which would require overturning existing zoning requirements which have been in place since 1973. Cluster developments have been previously challenged and denied on Marin's A-60 zoned properties.

B3-6

Some of the parcels shown on Dyett & Bhatia's map for new clustered market rate housing are multi-million-dollar estate houses, in violation of Fairfax's current zoning. Why is the proposed Fairfax Housing Element Plan supporting development of 34 more units on mandated Open Space parcels?

Implementation of the Proposed Project would cause a significant environmental impact due to a conflict with existing land-use plans, policy and regulations adopted for the purpose of avoiding or mitigating an environmental effect.

There is one road in and out of town. Implementation of the high density, Proposed Project plan would result in inadequate emergency access and impair an adopted Emergency Response Plan and Emergency Evacuation Plan.

B3-7

Why is the Fairfax Housing Element Plan continuing to propose a "tower" in the middle of a residential neighborhood consisting of one and two-story buildings when the Marin Town & Country Club's 35 acres of flat lands with existing infrastructure are available? Why is the MTCC property not included on the proposed Fairfax Housing Element Plan as an environmentally superior alternative option?

B3-8

The DEIR states, *“The MTCC site currently does not have zoning that permits residential development. In order to make the site available for housing, the Town of Fairfax would be required to develop a ballot initiative to rezone the site. As such, it is uncertain that the site could be rezoned and housing could be developed within the eight-year planning period. Therefore, the Mixed-Use Development Alternative is considered infeasible.”*

The MTCC site can easily be rezoned and housing developed within the eight-year planning period and, therefore, should be considered “feasible” as a Mixed-Use Development Alternative. You do not have the wisdom or authority to make assumptions about the voters of Fairfax. Given the alternative to a 12-story building in the center of town or clustered housing on our scenic ridge lines, I strongly believe our voters would be willing to change the zoning.

With the current Housing Element Plan, the overall negative environmental impacts of construction methods, materials, supply chains and waste management will contribute to the depletion of Fairfax's supply of open space, water and energy resources.

From your EIR summary:

“New development anticipated by the proposed project would result in increased energy use for the operation of new buildings and for transportation. This new development would therefore result in an overall increased use of both renewable and nonrenewable energy resources. To the extent that new development uses more nonrenewable energy sources, this would represent an irreversible environmental change.”

Unless these negative environmental effects are accounted for in our planning for population growth, we will continue to harm our fragile ecosystems, our infrastructure and the socio-economic systems which support us. As wise investors, we must be careful not to dip into the principal and deplete our reserves.

From the Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update Summary:

“Irreversible construction related environmental changes could also occur during the course of constructing development projects anticipated by the proposed project. New construction would result in the consumption of building materials (such as lumber, sand and gravel), natural gas, and electricity, water, and petroleum products to process, transport and build with these materials. Though it is possible for construction equipment to be fueled by renewable sources over the course of the Proposed Project build out, the timing and availability of these energy sources is unknown. Construction equipment running on fossil fuels would be needed for excavation and the shipping of building materials. Due to the nonrenewable or slowly renewable nature of these resources, this represents an irretrievable commitment of resources.”

Please consider these comments prior to adopting the DEIR and final Housing Element Plan for Fairfax. Residents do not support and will never forgive the irreversible environmental damage caused by the execution of the currently proposed Fairfax Housing Element Plan.

Thank you,

Teliha Draheim
Fairfax resident, 28 years

Public Comment to be added to the Draft EIR for the Fairfax Housing Element

Email Recipients: housing@townoffairfax.org, habrams@townoffairfax.org

November 9, 2023

Marc Lubomirski

530 Oak Manor Drive

Fairfax, CA 94930

Geology and Soils (3.6)

- Why are new homes even being considered for known slide areas? In the Comments section of the Fairfax 6th Housing Element there is a letter from Scott Hochstrasser, dated April 23, 2023. Hochstrasser is the Land Planning Development consultant for the building proposal on the 615 Oak Manor parcel which adds 4 homes and 4 ADUs on an area with 30-40% slope. It is situated on the northern third of a cluster of 3 mapped debris flow landslides with the rest of the area showing continuous to intermittent downward slope creep per the T.C. Smith, Salem Rice, R.G. Strand report (Geology of Upper Ross Valley and the Western Part of the San Rafael Area).

In previous years, and most recently during the first half of 2023, water was seen continuously seeping and pooling at the base of the hill where Hochstrasser/Schwartz proposed the 4 homes & ADUs. Water is the major contributing cause to landslides. These are highly deformed rock layers with overlying unconsolidated deposits in the slide areas along with soil creep (as evidenced on the slope) and water seepage suggests possible lubrication of potential future failure points. The great majority of slides occur on steep slopes exceeding 30 degrees and Franciscan Melange is notorious for slides in both Marin and Sonoma Counties. The geologically unstable slope where Hochstrasser is proposing development will continue to do what it's already doing (sliding) and undercutting stabilizing toes at the base or loading up above the slides will only exacerbate the situation.

Landslide runout can also affect neighboring homes, utilities and the street in their path, and it already did that several hundred feet to the south. The current 615 Oak Manor home was permitted in 2016 and construction is still ongoing 7 years later, it is adjacent to a still active slide that took out 2 homes in 1973, underpinned a third home and slightly dislodged a fourth home off its foundation. Additionally, 15 years earlier, in 1958, a slide along the same axis flowed onto the street and crossed the yellow line in front of my home.

B4-1

B4-2

With respect to the adjacent new planned development who would be on the hook for repairs and liability? Private homeowners? Will it be the Town of Fairfax, hence the taxpayers, for potentially approving a permit in a landslide area? Rest assured, the State will not be bearing any financial responsibility. Is there no risk governance associated with weighing these decisions? What happened in Oak Manor in 1973 resulted in multiple lawsuits against the County of Marin and the Town of Fairfax, homes were destroyed and utilities had to be moved. Again, why on earth would a new development in this area even be considered?

B4-3

- The old rock quarry area on Sir Francis Drake Blvd carries risk as quarries are known to slough off layers of rocks at inopportune times. There is a proposal for 20 units per Hochstrasser in his development proposal, the siting is to the east of the 120-150 ft rock wall but will still have a substantive steep slope behind the sites on the left end. It's a very narrow strip with no potential to flatten or reshape the slope above since that land already belongs to 1 Arrowood Lane. There is vegetation and trees on the exposed quarry slope which means the presence of water. Will the Arrowood property owner now have potential liability for anything built below his slope? Will the developer need to excavate the toe of the slope so they can fit the units in? Again, this is a very narrow strip of land; what is the setback from the slope? Will there be a substantial catch wall to prevent falling rocks from encroaching on the proposed units? It's also in a delineated flood plain & high/very high potential liquefaction zone which will add to the building expense.

B4-4

Wildfire (3.15)

- The major insurers have their own 3rd party fire risk indices they are assigning to the homes and are no longer issuing new homeowners policies in upper Oak Manor as well as other WUI areas. The EIR Fire Hazard Zone maps are entirely misleading in that they assign the same designation 'High Fire Hazard Severity Zone' to almost the entire Town of Fairfax including Oak Manor and the Wall property. There needs to be a much more granular map that shows the much higher level of fire risk in the WUI areas where you currently can't get new home insurance from the major insurers.

B4-5

- There was a fire break on the ridgeline running the entire length of the 615 Oak Manor/Remainder Parcel and is designated a fire road in the Marin County Open Space Fire District 2. That fire road has been used in the late 90s to fight the Snowden fire and is a last line of defense in Oak Manor for woodland or brush fires bearing down from the West. With the increasing danger of wildland fires, fire roads should be maintained so they are passable for fire equipment. RVFD equipment levels do not include a bulldozer so Marin County Fire Department

B4-6

would have to bring in bulldozers and grade the roads first so fire engines can get in. In this case, they might already be stretched at multiple fronts, valuable time is lost, which the residents can't afford, as they already will deal with a gridlock situation at the bottom of Oak Manor Drive and Sir Francis Drake Blvd.

The owner of 615 Oak Manor has allowed all fire roads on property to fall into disrepair and overgrow with gorse and scotch broom. When the Marin County Shade Break Project was de-limbing trees and clearing the fuel load to along the entire west side of Oak Manor Dr., the same owner was offered the opportunity to clear the broom and gorse off the fire road at no cost to owner....and the owner declined. That is not helpful to a community that is actively organized to mitigate fire fuel load potential.

Transportation (3.13)

- Additional vehicular traffic will be significant. We are already impacted with gridlock on SFD and Oak Manor Dr. when the schools start and end. Evacuation, if needed, is already a nightmare. Is adding another 500 to 1000 cars to potential gridlock viewed as just an immaterial consequence of forcing additional housing? Is there some chart that states gridlock plus 5% or 10% or more is insignificant and acceptable? Will we have to destroy the character of the Town by eventually removing (as San Anselmo did) the on-street parking on Sir Francis Drake Blvd and creating a 4 lane thoroughfare for reasons of safety and traffic flow? Every one of these proposed 'upper moderate' income homes with ADU and JADUs will bring a minimum of 4 to 6 vehicles or more.
- With respect to the current 615 Oak Manor home (zoned Single Residential RS-6) multiple times we have already seen 30 or more cars parking on both sides of the street with no sidewalks and forcing pedestrians onto the roadway. Coincidentally, the reason for 'no sidewalks' is the steepness of the slope and the hazard of undercutting the slope and potentially removing the toe buttressing the hillside.

Legal Restrictions and Issues ()

The Town's consultants Dyett & Bhattia applies their boilerplate text of identifying each vacant parcel with no regard and even worse, no insight, to potential parcel deed restrictions, underlying exceptions and easements. This wastes money for all involved, the residents and the Town itself. If Dyett and Bhatia did their research they would have discovered the Fairfax Hills and 20th Century Builders, Inc. v. Town of Fairfax Superior Court Case No. 147076 Order, signed May 25, 1991, thereafter designated the Fairfax Hills Settlement Agreement. All homes developed on the former Fairfax Hills land have deeds with this 1991 Settlement attached to them.

B4-7

B4-8

B4-9

The Town of Fairfax has acknowledged this by verifying that each new home in Snowden and Arrowood met the terms and conditions of this Settlement Agreement as a pre-condition before they approved the final building permit. The Agreement stipulated maximum 20 homes, 1 home per lot, in 4 different phases and areas. The Access Road Area had 2 buildable lots, D1 and D2, and the Settlement stipulates that the covenant runs with the land and shall be binding on all respective heirs and successors; including all subsequent owners of the lot. The following is a transcription of the Fairfax Planning Commission video on June 16, 2016 where they approved the building permit with stipulations for D1 and cements in place the enforcement and validity of the Settlement Agreement. The 1 min 54 sec exchange is between Planning Commissioner Laura Kehrlein, Planning Commissioner Phillip Green, Principal Planner Linda Neal and Planning Director Jim Moore.

Beginning of video snippet at time 1:56:46

Commissioner Laura Kehrlein asks: ok, any other questions of staff before we open it up to the applicant.

Commissioner Phillip Green asks: "Just one, is, is this property part of the agreement of settlement of Fairfax Hills versus Fairfax?"

Principal Planner Linda Neal responds: "Yes, it is."

Commissioner Phillip Green asks: "OK so in, in that agreement, is this in the lower area center area access road or upper area triangle?"

Principal Planner Linda Neal responds: "It's, it's upper, it's up towards the top"

Commissioner Phillip Green: "So it's in the upper area triangle."

Principal Planner Linda Neal responds: "No, it's, its where the judge approved a house pad, you know, originally this site the judge approved two parcels and two home sites and so this is, boy, I don't know what, the neighbors can probably, its maybe, I don't know how many feet down the hillside there's a little offshoot that leads to where Patrice Phillips that used to own the property kept a lot of animals but it's not up in the Ridgeline. It's down below"

Commissioner Phillip Green asks: "Ok, So this is one of the two allowed homes?"

Principal Planner Linda Neal responds: "Right, there's no longer two allowed homes because they had to file a map for two Parcels within a certain amount of time so he's just taking the one parcel the judge originally approved for two home sites and applying for one house and a second unit."

Commissioner Phillip Green: "Thanks for that clarification."

Planning Director Jim Moore adds: "In terms of the location it might help if you imagine going up Oak Manor, there's the homes on the left side as you are going up and at the very end of the last home is the driveway access that then moves around to the

southwest around the last couple of homes and it's, I believe, about behind the third home or so; and as Linda mentioned this exhausts development potential in all 50 acres."

End of video snippet at time 1:58:40

<https://www.townoffairfax.org/meetings/planning-commission-meeting-june-16-2016/#/tab-video>

Furthermore, when referring to building Lot D1 the Settlement Agreement said the total enclosed floor area of the home and any accessory buildings cannot exceed 3900 square feet. In exchange for giving up lot D2 as a building site, the owner was allowed to build the main residence (3765 square feet) plus the guest cottage (690 square feet) for a total of 4455 square feet.

The Settlement Agreement further states that as each phase is built and the final map recorded that the owner will grant a deed of Open Space Easement to The Town for the rest of the land outside the building envelope and that the building of any structure outside the building envelope is prohibited. In addition, the Settlement Agreement states that the Open Space Easement may not be further subdivided.

General ()

- The Town Officials must hold Open Space properties in perpetuity for future generations of Fairfax residents and not succumb to development pressures. Every vacant parcel should not be buildable and every geo and fire hazard is not mitigatable. If the Dyett & Bhattia Consultants, The Town of Fairfax and the State continue to push that narrative we should not be surprised by adverse consequences. The Town Council and Planning Dept. needs to hold the best interests of current Fairfax residents and future generations as a non-negotiable tenet when responding to the State's housing mandates.
- Heavy equipment needed to develop an additional 500 homes places an undue burden on the already poor road infrastructure, which is replete with potholes. We already have an aging water delivery system as well as inadequate water supply in drought years. Marin Sanitary is also dealing with the same aging infrastructure and replacement issue. Additional traffic adds to the nightmare gridlock evacuation scenario and compromises safety. There is only one way in and out, the Town is constrained by the landforms around us that define the start of the Upper Ross Valley drainage system. This is not an urban city with many forms of ingress and egress. Will the entirety of this additional burden be foisted on the taxpayer through bonds/taxes or should it be accounted for where it belongs, the developers and the State?
- The character of the Town is unique and special, we are very different from the other cities in Central Marin as well as Southern and Northern Marin. Fairfax is

B4-10

B4-11

B4-12

blessed with open space preservation and restrictions on ridgeline development that previous Town Councils have worked tirelessly to preserve. The current and future Town Councils must not subvert the efforts that shaped the history and beauty of the Town of Fairfax.

November 9, 2023

Public Comment to be added to the Draft EIR for the Fairfax Housing Element
Email Recipients: housing@townoffairfax.org, habrams@townoffairfax.org

Kristi Dommen
545 Oak Manor Drive
Fairfax, CA 94930

General:

The distinction between a town and a city hold some general characteristics that differentiate the two and demonstrate why the TOWN OF FAIRFAX is such a unique gem worth preserving, the following are concepts to hold in reference to the EIR:

B5-1

Size and Population:

- In many places, a city is generally larger and more populous than a town. Cities often have larger populations, more developed infrastructure, and a greater variety of services and amenities.

Government and Administration:

- The administrative and governmental structures can differ. Cities typically have a more complex and organized system of local government, often with a mayor-council or city manager-council form of governance. Towns may have simpler administrative structures.

Economic and Cultural Characteristics:

- Cities tend to be more economically and culturally diverse. They often have a broader range of industries, businesses, cultural institutions, and entertainment options. Towns may have a more limited economic base and cultural offerings.

Infrastructure and Services:

- Cities usually have more developed infrastructure, including better transportation systems, healthcare facilities, educational institutions,

and recreational facilities. Towns may have fewer and less sophisticated amenities.

Historical and Legal Factors:

- Fairfax is a TOWN, it does not and will not have the infrastructure to support the significant increase in population being put in place by this Housing Element.

We must also consider the unique location of our TOWN, at the foot of Mt. Tam and coastal range, flanked by hundreds of acres of intentionally preserved open spaces. Those open/wild spaces contribute to the complex and critical need for our Town to aggressively continue to take the Wildland-Urban Interface (WUI) where human development meets or intermingles with undeveloped wildland or vegetative fuels seriously. Though our Town is small, the WUI still poses risks if natural vegetation is in close proximity to the town. Wildfire management in the WUI is complex due to the need to balance protecting lives and property with preserving natural ecosystems. Effective land use planning and mitigation measures are crucial in the WUI to reduce the vulnerability of our communities to wildfires. This includes creating defensible space around structures, **immediately using fire-resistant building materials and progressive building code standards**, and implementing regulations to guide development in fire-prone areas.

B5-2

Public education plays a vital role in WUI areas. Residents need to be aware of wildfire risks, evacuation procedures, and measures to protect their homes. Community engagement and outreach programs aim to increase understanding and preparedness. Given the complex nature of wildfires in the WUI, effective and continued collaboration is essential among various agencies, including local fire departments, forestry agencies, emergency management, and community organizations and coordination will help ensure a unified response to wildfires.

B5-3

The concept of the Wildland-Urban Interface accentuates the importance of adopting comprehensive approaches to wildfire management that address both the natural environment and the human communities at risk. Paired with climate change and mandated urbanization (Town to City growth) continues, understanding and managing the WUI is critical for ensuring the Town of Fairfax's community commitment to maintaining and preserving open space, and wildfire safety.

3.3-4: Implementation of the Proposed Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

B5-4

Oak Manor Drive provides access to 1592 ft Loma Alta, one of the highest points in Marin and the associated Open Space. We enjoy the stunning Bay Area and unobstructed ridgeline views, especially at sunrise or sunset. The Smith Ranch Fire Road leads to the summit. An important link to the Bay Area Ridge Trail, Loma Alta continues north then drops off gradually to Big Rock trailhead at Lucas Valley. Many raptors are common, one Red Tail Hawk, takes up residence in the Live Oak tree near the top of Oak Manor Drive, directly next to the access road to Oak Manor Fire Road. Voles and gopher snakes are preferred meals to our raptors. These residents deserve to live as undisturbed as possible and we inhabit their world, not vice versa as we humans would love to think. Many deer, coyotes, skunks, possums, woodrats, occasional mountain lions, bobcats, foxes, and many unmentioned wildlife call these open spaces and the mature trees serve as wildlife nurseries and their homes.

3.6-3: Implementation of the Proposed Project would not locate structures on expansive soils or on a geologic unit or soil that is unstable , or would become unstable as a result of new development under the proposed Project, and potentially result in on- or off-site landslides.

Oak Manor Hills properties have a well documented history of landslides due to slope and water. The area below the 615 Access Road and the full length to where it intersects the Fire Trail (above Snowden Open Space) has large unstable landslide areas, with a landslide in 1973 which damaged 2 homes and impacted neighboring home, utilities and damaged the street. A significant part of upper 615 to the west of Oak Manor Drive, intersected by the Oak Manor Fire Road, on the ridge across from Manor View also has a history of landslides and during heavy rains water seeps and pools at the base of the hill where Hochstrasser/Schwartz have proposed 4 homes and ADU's + JADUs.

History is well documented with landslides, homes damaged, street and infrastructure damages on upper Oak Manor, yet this area is a pipeline project to add housing.

My property is included in the 1991 settlement: Fairfax Hills vs Town of Fairfax, there is specific language in the Superior Court order that addressed properties in the Oak Manor slide area between and including 535 and 575 Oak Manor. The Settlement also states to protect and maintain all existing drainage ways, interceptor swales, and storm drain facilities throughout the period of construction of the proposed development. Responsibility for continued maintenance of the same shall be assumed by its successors. Prior to recordation of the final map for the Access Road Area phase of the development, appropriate measures satisfactory to

B5-5

B5-6

the County of Marin and the Town Engineer shall be taken to improve drainage and slope stability to the area uphill of 535 and 575 Oak Manor Drive.

3.6-6: In combination with other past, present or reasonably foreseeable projects, the Proposed Project would not result in significant cumulative impacts related to ...soil erosion, or location of structures on unstable soils.

- Please refer to 3.6-3 comments.

3.8-6: Proposed Project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

B5-7

As a member of Oak Manor Ridge FireWise Committee, the Town of Fairfax has never implemented an evacuation drill, however, estimates state 4 plus hours to reach 101. Have any of you tried to drive Sir Francis Drake (SFD) within 30 minutes before or after school at White Hill, Manor, Ross Valley Charter or Butterfield with San Domenico, Hidden Valley, Brookside and Archie Williams? Frequently SFD is gridlocked, and that is just when a typical task of getting to or from school occurs, let alone in the panic event of a wildfire.

3.8-7: Implementation of the Proposed Project would not expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildfires.

B5-8

More density, more fuel, more people and cars WILL expose more people or structures to loss, injury or death. With an already impacted emergency response (and Ross Valley and Marin County Fire Departments are amazing!) due to narrow streets, traffic and mutual aid traveling from Woodacre, time is of the essence. If a fire were to break out on Oak Manor Hill, during school arrival or dismissal, rush hour or weekend traffic - our first responders will already be at a significant disadvantage and be powerless to protect people or properties.

3.8-7: Fairfax residents or structures would not be exposed directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.

B5-9

Are you aware how many Fairfax residents have lost their homeowners insurance and are forced to purchase CA FAIR plan policies? Over 10% of homeowners are foregoing homeowners insurance. Even when 9 of our neighborhoods (Cañon Village, Cascade Canyon, Deer Park, Forrest Ave Area , Manor Hill, Marinda Oaks, Meadowland of Marin, Oak Manor Ridge, and Willow Evac) have grown very active FireWise Communities focusing on prevention, preparation, fuel reduction and

education - still homeowners are losing insurance and our infrastructure is already maxed out.

If new homes are being mandated, all homes in WUI should be hardened and with best practices for fire resistance, metal roofs, fire suppression and shutter systems. Let's look at European homes built to last 3 plus generations. Has anyone considered using the financial resources for this Housing Element to harden (to increase fire resistance) to existing homes, and maybe we could preserve our Town as is?

3.8-1: Implementation of the Proposed Project would not create significant hazard to the public or environment through the routine transport, use or disposal of hazardous materials.

B5-10

How can it be said that the Proposed Project would not result in significant cumulative impacts related to transport of hazardous materials, accidental release of hazardous materials into the environment or near schools when all but 2 of the previously listed schools are located within .25 miles from SFD?

3.9-4: Alteration of the flow of surface runoff which would result in flooding on- or offsite, create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or impede or redirect flood waters.

B5-11

In January 2023, SFD was undermined by water running in the creek behind Manor School and blasting and undermining the retaining wall along Fairfax creek, closing the East bound SFD lane for over a week. The Stormwater Drainage System totally compromised SFD, and we were very lucky, and public works did an amazing job. What would have happened if we lost both lanes of SFD for an extended period of time? Bolinas Fairfax road was also damaged at the same time and continues to use alternating two-way traffic through the westbound lane. Bolinas Fairfax is one alternative route in or out of Fairfax.

Any additional building on 615 Oak Manor Drive would significantly increase the risk of flooding risk and or landslide in areas already indicated as "old slide areas." The Town has all of these maps.

3.10-1: would not physically divide an established community:

B5-12

Though the Town is not physically divided, there are elements which cause division, people rushing from point a to b, and distracted paired with i.e. unsafe crosswalks (any crossing SFD, Center, Bolinas) especially if mobility or vision is challenged, in poor lighting or rain. This Town is already too fast and is losing the Hometown feel of OUR TOWN and OUR COMMUNITY.

3.10-2: Project would not cause a significant environmental impact due to conflict with any land use plan, policy or regulation

B5-13

This is a TOWN being forced to become a CITY. Residents moved here for the old fashioned SMALL TOWN EXPERIENCE and people from all over visit for that experience and taste of the "old days" when people knew one another, took care of one another and supported one another. Fairfax has that foundation, however, it feels as if OUR TOWN is being FORCED to be like EVERY OTHER CITY. Undeveloped spaces are opportunities to create community gardens, pocket parks, etc., not to fill just for the sake of meeting a building mandate.

3.12-3: Proposed Project would not increase the use of existing neighborhood or regional parks... such that substantial physical deterioration of a facility would occur.

B5-14

Cluster housing and increased populations at or near ridgelines will absolutely negatively impact the DARK SKY PROJECT, which seeks to protect and preserve the Night Sky, which is quickly disappearing and impacting nocturnal mammals, birds, insects and PEOPLE. Many families hike up the Oak Manor Fire road to the area near the labyrinth to share a picnic dinner and observe astronomical events including: lunar eclipses, stars and constellations, the moon and sometimes meteor showers. Where else can one find access to Open Space, this close and accessible to the Town?

3.13-1: adding homes and cars will significantly adversely impact the roadways, bicycle and pedestrian facilities.

B5-15

More people, more means of transportation mean an impact on safe streets. Thank you for Safe Routes to School for trying to improve the infrastructure and awareness to encourage alternative means of transportation. We already do not have enough parking for the cars in Town, we are in desperate need of safe parking/storage for bicycles, and we need space to separate pedestrians and human powered modes of transportation. Let's look at the European model of multimodal streets and make it a priority.

We only have multimodal streets which are located in conjunction with a major thoroughfare (i.e., SFD, Center or Broadway). It is terrifying seeing youngsters riding bikes to and from school, often on the sidewalk to avoid conflicts with cars and yet creating more conflicts with pedestrians. We have a culture of distraction and hurrying everywhere we go! Many are in such a hurry that they fail to stop for red flashing lights on school buses, yet more homes will add more people to our inadequate safe access.

3.13-4: Implementation of Proposed Project would not result in inadequate emergency access:

Increased use of SFD and surface streets will increase user conflicts, especially for emergency access. Have any of you been on SFD or surface streets between 7:30 - 8:45 am, or 2:30 - 3:30pm? Glen Drive and Oak Manor overflowing onto SFD are totally gridlocked during those times, it is really scary, there is no way First Responders can efficiently reach the necessary location past Manor School or Glen Drive before or past White Hill School.

Let's consider that SFD is the only thoroughfare from Fairfax to Olema and onward to West Marin. Commute traffic, recreational/vacation/tourist travelers (especially if 101 Southbound is impacted during morning commute, or if 101 is closed in both directions, SFD is the only option to reach Pt. Reyes, Petaluma road) has a huge impact on morning, evening and weekend travel. How can the Town increase residents, moving farther from the transportation spine (SFD), adversely impacting the environment and creating the potential for chronic big city stand still traffic? Is it time to widen SFD to handle all of this growth, maybe we should build a super highway, 3 lanes in each direction and designated turn lanes to move people more efficiently, at the expense of the character and charm of Small Town Fairfax?

3.14-2: Proposed Project would have sufficient water supplies available to serve the Planning Area and reasonably foreseeable future development during normal, dry and multiple dry years.

We now have tiered water use profiles with according fees, higher tier equals more water use and a larger water bill. This is to maintain and replace a system where deferred maintenance is reaching a tipping point. Rate payers are now footing the bill for a fiscally poorly managed utility (which now must play catch up for repairs and maintenance system wide) which we and future water users will pay for, and this all began during drought conditions. We can no longer count on a once in 100 year drought, it does mean that we have a 1% chance of that 100 year drought

B5-16

B5-17

every year and with changing environmental conditions, it is hard to understand that a small town in a WUI setting is being forced to add homes and people.

3.15-1: Proposed Project would not substantially impair an adopted emergency response plan or emergency evacuation plan.

B5-18

More homes, more people, more fuel, more fire with no place to evacuate to. As recommended by our mutual aid responders: Ross Valley Fire and Marin County Fire, it is recommended that we only evacuate via our cars, driving the familiar route we would normally use to get to the grocery store, and hope for the best to reach a safe place other than gridlocked SFD (as Sleepy Hollow and San Anselmo residents will also use SFD). The "adopted emergency response plan" or "emergency evacuation plans" are well thought out and look adequate on paper, however, they have not been trialed in a controlled predictable/planned Town Wide evacuation drill, let alone in an actual chaotic event. There is no way Fairfax Town residents will be able to evacuate our Town. One way in, one way out - period.

Unfortunately, during PPO's, many people lose all aspects of emergency communication, cell phones, landlines, radio, etc., which makes them vulnerable to being able to evacuate sooner than later and to receive emergency communication.

"Development will be dispersed throughout Fairfax's 9 zones, each with designated routes that lead to SFD, the Town's primary evacuation route. Further, there are numerous robust strategies in place from regional local planning efforts to facilitate emergency response and evacuation plans." One way in - one way out = SFD. As previously stated, this road is heavily impacted day to day, let alone in a stressful emergency evacuation situation, every person counts, however adding more people = more stress and impact on our overwhelmed system.

3.15-3: installation or maintenance of associated infrastructure (roads, fire breaks, emergency water sources, power lines or other utilities).

B5-19

Builders build more and are not accountable for the associated and necessary infrastructure upgrades? Who is really benefiting from additional housing? Builders appear to have a favorable situation being proposed at the expense of individuals currently paying for the aging and poorly maintained infrastructure.

3.15-4: the proposed project would not expose people or structures to significant risks... including landslides , post-fire slope instability or drainage changes?

B5-20

When the majority of Fairfax has geological makeup paired with steepness that predisposes the area of landslides and slope instability paired with drainage issues. Are we ignoring geological history to fill in previously dedicated open space?

"Steeply sloped hillside areas and areas of landslide risk in the hills. Figure 2-2 Environmental Constraints display the entire upper NorthWestern Section as Mostly or Many Landslides paired with High Fire Hazard Severity Zone (LRA). The Town limit and Unincorporated Marin County area of Oak Manor is classified as a High Fire Hazard Zone given the risk of wildfire in the region."

In 1999, I witnessed a fire started from an errant spark in the Snowden neighborhood, engulfing the area to the south and west of my home in less than 15 minutes on a hot September afternoon. Luck was on our side, as the FireFighters were able to grade the fire road and air tankers dropped slurry to extinguish the fire. This is a High Fire Hazard Zone with many Town residents losing or experiencing significant premiums for their homeowners insurance due the WUI interface and or having difficulties selling their home as insurance carriers are no longer writing policies for High Fire Hazard Zone areas. Is Fair Housing going to pay our insurance premiums?

Planned Power Outages, frequent loss of power due to wind or failures in an aging system have immediate as well as longer term impacts. Immediate is loss of cell coverage and inability to make 911 calls. (i.e., House fire in Sleepy Hollow where poster outage prevented cell calls to 911, ultimately an individual died in their home.) Extended power outages mean a loss of water being delivered to the water towers, necessitating the use of auxiliary gas powered generators. If there is no generator, and thus, no pump, the water towers are not refilled and not only do homes lose water, but so do the hydrants.

General

Open Space must be preserved now and in the future. It is not an option to rezone to bring in more development. Once gone, it is lost forever.

Fairfax is a unique TOWN: Its legacy has been protected and nurtured by previous Town Councils who have worked relentlessly to preserve open space and to assure ridgeline development is restricted. Pipeline agendas and bowing before mandates which will forever alter the Town of Fairfax cannot be tolerated or supported. Fairfax is a true gem to be defended for future generations to carry on its stewardship.

Per our Town of Fairfax website: "The current town center creates a lively mixture of businesses and residences. The Art Deco movie theater is the centerpiece of a

B5-21

B5-22

B5-23

vibrant nightlife with top-notch restaurants and well-known clubs with venues for jazz and other popular music. The Town's village like character, reflected in the small businesses, quaint neighborhoods and busy sidewalks contribute to the sense of uniqueness about Fairfax. Framing and dominating the town is its natural setting – a visible open space of oak-studded hills to the north and west, and the forested shoulders of the Coastal Range to the south. Fairfax is a special place, loved by residents as well as visitors."

MARIN TOWN & COUNTRY CLUB

P.O. BOX 150870

SAN RAFAEL, CA 94915

mtcc@classactionlocator.com

November 8, 2023

Heather Abrams
Town Manager for the Town of Fairfax
142 Bolinas Ave
Fairfax, CA 94930

RE: Housing Element
(EIR) (Draft EIR) (NOP EIR) Comments
Responses requested by November 11, 2023
(Please see all 5 attachments)

Dear Heather:

Enclosed please find comments to be included along with other public comments pertaining to the current Fairfax Housing Element (2023 – 2031), EIR, Draft EIR, and/or NOP EIR.

Please be advised that the Town of Fairfax subjectively fails to include all public comments. After forwarding some of our comments to the DOJ, we see that the Town has made a better effort to include more of our comments. All salient comments received within the designated time must be included for the public packet. Late comments must be included as a later addendum.

Our comments are cumulative. This process requires including and reviewing some prior comments that were obfuscated by the Town to facilitate Fairfax's continued excluding of the Marin Town & Country Club (MT&CC) from the housing element. The MT&CC is the only viable Housing Opportunity Site available for Fairfax and the surrounding Ross Valley.

Why Housing should "continue" at the Marin Town & Country Club:

Please recall the MT&CC is an underutilized 25-acre flat parcel with rental units, located above the 500-year flood plain, with fire/safety complying egress from two separate streets (Pacheco and Pastori). Pacheco is 24' curb to curb, while Pastori (currently paved at 18') is actually surveyed and recorded at 30' curb to curb. With infrastructure of water, gas, and electricity in place, and a 14" RVSD Sewer Trunk (designed for 8,000-unit capacity) that bifurcates MT&CC's two parcels, this is the golden opportunity to provide mixed use housing and affordable housing where it is most needed.

There is no other location or combination thereof that can or will allow for fire safety egress and vehicle traffic units not interfering with the current congested traffic found in Fairfax. Placement of the required 490 homes elsewhere in Fairfax will impede all traffic on our small hillside single lane roads.

To incorporate the currently required 490 RHNA's elsewhere in Fairfax will create additional financial hardships on our community through taxes, bonds, and reassessments. Fairfax continues to struggle to keep people with our lack of adequate affordable housing.

B6-1

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If the 490 units are spread throughout the Town of Fairfax, Fairfax will be required to address their aging and inadequate infrastructure immediately. Rebuilding our streets and utilities minimally to accommodate all this housing could exceed \$100m. \$100m before finance will quickly jump to \$200m with finance, amortized over 30 years. Please recall this expense will be allocated to about 3100 parcels. All this work will take time and put our current community at real risk of no access for fire or ambulance service vehicles during this construction period. All this expense to bring in an estimated 1,171 people as stated in the draft EIR.

Such an undertaking on our small restricted streets will further the cancelation of fire insurance to our community. How many Fairfax citizens will lose their homes if their fire insurance is canceled? Another unintended consequence we cannot afford.

This is yet another way that Fairfax makes the housing so infeasible that it is never built? Certainly, something to be reviewed with financial feasibility reports.

Again, this can all be avoided by placing the required RHNA housing at the MT&CC.

Opposition from Fairfax to include the MT&CC in the Housing Element:

One of our attached earlier emails illustrates how the Town of Fairfax tried to hoodwink the HCD by recycling 27 parcels that Fairfax had already included on prior Housing Elements. (The HCD is in receipt of this email.) On your current draft EIR, you address my prior observations. These recycled parcels had proven to be infeasible to build on. Possibly some could be built if the Town of Fairfax lowers the barriers, that continue to block housing.

We question how any overseeing agency could possibly accept in good faith the current Housing Element and/or Housing Opportunity Site List from Fairfax with all the attached and enclosed information without requiring a full EIR (Environmental Impact Report), a full CEQA (California Environmental Quality Act) Report, and a Financial Feasibility Report comparing the cost of developing the offered sites as opposed to including the MT&CC site with all the utilities in place. Fairfax's Housing opportunity Sites list, continues to promote sites with slopes of 49.5%, 50.2%, and 63%, all of these have no utilities. Fairfax citizens should be concerned with CEQA: 65864 Policy.

The MT&CC zoning is "Commercial Recreation" (CR); by Initiative. The Town tried to take the property in 1944 where it was already zoned for residential housing, against the then stakeholder's want. The Town lost that suit because they could not pay the owners their purchase price of \$175k. The Town later opposed a request by the owner to place housing at the MT&CC in 1971. The Town then inversely condemned the property through an Initiative process in 1972, to thwart housing and create the current zoning of "Commercial Recreation". (see attached)

B6-3

B6-4

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The Town of Fairfax continues to exclude the MT&CC from the Housing Element, by hiding behind the CR zoning by Initiative. The Town is in receipt of the letter from HCD to San Diego, dated June 10, 2022; addressing this same issue. Author Shannan West, Housing Accountability Unit Chief of the HCD sent a letter to San Diego explaining with supporting case law, that local voter initiatives cannot supersede state law. (see attached).

For the current housing cycle, Fairfax's first Housing Element Consultant, EMC (Andy Flower) and Town Planner Ben Berto asked the MT&CC to accept 350 to 450 housing units. The Town Council stopped this and wanted the Town to weigh in through the "Fairfax Speaks" website. "Fairfax Speaks" had over 6,000 inputs from local Town people where they collectively allocated 161 housing units to the MTCC. Again, Council member Coler opposed this. Conveniently Town planner Berto was fired. EMC, ELS, and Grace Kim (first Housing consultants for this 6th cycle) presented information why they supported housing at the MT&CC. Later EMC and fellow consultants were terminated "Without Prejudice". Dyett & Bhatia also supported housing at the MT&CC site as illustrated in their engagement letter. For such a small-town spending in excess of \$1.4m on our failed Housing Element is misfeasance. Was most of this money spent looking for ways to exclude the MT&CC? Is there a justified reason to exclude the MT&CC outside of the want by Council to take the property and develop it for their own profit?

Housing by Right:

Currently the only use on the property is a small group of multi-family housing, zoned as "legal non-conforming". This property has provided uninterrupted housing since 1839 and continues to this day. Housing should continue and be added to.

Interesting how each time the Town had the Housing Consultants provide images of their imagined housing at the MT&CC, (without stakeholder input) to comply with the Housing Element, none of MT&CC's tenants' housing was spared. Where are the no net loss provisions illustrated?

Our only request throughout this process was to exclude HUD money and overlay the property with a BID (Business Improvement Development) so as to ensure our tenants remained housed.

Prior to 1944 the Town of Fairfax zoned this property for housing. In 2004 the Town of Fairfax tried to include the MT&CC in their Housing Element. It has been suggested that both of these prior events should include the MT&CC as a housing opportunity site, by right.

May 13, 2022, (Council meeting) Town of Fairfax Staff reports illustrate how the Town conspired, without stakeholder knowledge, to rezone the MT&CC by allocating \$152k for an Initiative by and for Fairfax. Later on, June 15, 2022 (Council meeting); presentation and Staff reports illustrated how the Town had planned to proceed with a taking, through inverse condemnation, to re-zone the MT&CC for very dense housing.

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The housing Fairfax tried to foist upon the MT&CC was to restrict the housing to "only" "Co-housing" and tiny "Eco-Villages". Conversations with Fairfax Police Department discussed, should such a density occur, a police/fire sub-station was needed.

The MT&CC questions, if property is currently zoned "Commercial" and the property was zoned for residential zoning; can housing by right exclude this viable site, MT&CC, from being incorporated into the out of compliance Housing Element?

The DEIR states: (page 11, E-6; page 408, 4-16)

"The MTCC site currently does not have zoning that permits residential development. In order to make the site available for housing, the Town of Fairfax would be required to develop a ballot initiative to rezone the site. As such, it is uncertain that the site could be rezoned and housing could be developed within the eight-year planning period. Therefore, the Mixed-Use Development Alternative is considered infeasible."

Zoning by Initiative precludes certain CEQA restrictions/impediments as it is assumed the local voting block has already taken in to account some of these impeding mitigatable factors. Therefore, an Initiative with comprehensive language and design illustrations is actually the fastest and best way to ensure the fruition of any project.

Cal Gov Election Code #9217

If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.

Therefore, the Initiative zoning on MT&CC with a new vote by the people could be permit ready as soon as signatures are collected and voted upon, plus 30 days to adopt. Theoretically; this could be done within 6 months. (Very Optimistic.)

MIXED USE DEVELOPMENT ALTERNATIVE: (Vol 1 ES-5)(page 395 4-3) (additional: page:402)

To reduce significant impacts related to VMT and GHG emissions, this alternative seeks to foster an integrated mixed-use development on the Marin Town and Country Club (MTCC) site. According to data from the US Census, over 3,100 residents of Fairfax commute to jobs in other communities each day, while only 1,200 residents of other communities commute to jobs in Fairfax and only 239 both live and work in Fairfax.

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(Cont)

Therefore, intent of this alternative is to create new jobs and housing within easy walking distance of Downtown Fairfax and the main transit route through the community along Sir Francis Drake Boulevard in order to rebalance commute patterns and increase opportunities for people to live and work in Fairfax and to travel within the community without the need for a vehicle.

This alternative would involve the development of a master plan for the MTCC site in coordination with the property owner to integrate up to 200 additional new housing units and 50,000 square feet of office and studio space for local businesses, artists, and craftsmen. It is assumed that at least 20 percent of the new homes would be affordable to moderate income households, consistent with the Town's draft inclusionary ordinance.

Chapter 4-4 Alternative Analysis: (page 395)

IDENTIFICATION OF ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The CEQA Guidelines Section 15126.6 requires the identification of an environmentally superior alternative among the alternatives analyzed in an EIR. If the No Project Alternative is identified as the environmentally superior alternative, the guidelines require another environmentally superior alternative to be identified.

For the Proposed Project, three impacts were expected to be significant and unavoidable, seven impacts were expected to be less than significant with mitigation, and 53 impacts were expected to be less than significant.

For the No Project Alternative, two impacts were expected to be significant and unavoidable, eight impacts were expected to be less than significant with mitigation, and 53 impacts were expected to be less than significant. In addition, impacts would be nominally reduced for aesthetics, air quality, biological resources, energy, geology and soils, GHG emissions, hydrology and water quality, noise, public services, and recreation, utilities and service systems, and wildfire.

For the Mixed Use Development Alternative, similar to the Proposed Project, three impacts were expected to be significant and unavoidable, seven impacts were expected to be less than significant with mitigation, and 53 impacts were expected to be less than significant. In addition, impacts would be nominally reduced for GHG emissions and VMT as compared to the Proposed Project. However, impacts would be nominally increased for air quality, energy, noise, utilities and service systems, and wildfire risk and evacuation.

The fact that the MT&CC is a flat piece of land, below the surrounding hills of Fairfax, the MT&CC is the bastion of hope where the Town's people need to congregate for a safe haven from Fire.

Studies have shown that promoting more compact housing development in mixed land use areas is more strongly correlated to increases in non-vehicular modes of travel and reduction of VMT. As such, this alternative would address the significant impacts of the Proposed Project related to VMT and GHG emissions. This alternative would implement the project objectives and further increase housing density in the Town Center. As such, there would be an additional 200 housing units developed under this Alternative compared to the Proposed Project, for a total of 808 units.

Development at the MT&CC is the only viable placement for the RHNA requirement.

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Vol 1, ES-3: states 1,171 new residents. Yet Vol 2, page 246:

The Draft EIR illustrates that the restricted SFD segment between Willow and Butterfield will increase from 19,400 traffic units current and will only see a 600 traffic increase with the new 1,171 residents occupying almost 600 new units. Absent this count, Center Blvd, is a major traffic throughfare additionally hosting our bicycle traffic. It appears Center Blvd is excluded from this nexus. Did we include all the support VMT with medical service support?? According to Marin County statistics (pre-Covid) the average Marin household generates approx. 11.7 car trips per day.

There is no way that 1,171 new residents will only generate 600 new daily car/bicycle trips.

Vol 1, ES-4 Controversies,

Geology and Soils does not site any issues of Liquefaction.

DEIR Volume 2: Page: 9;

Environmental Constraints Map: incorrectly illustrates that the MTCC lies in a "High Very High Liquefaction" zone.

Soil borings support that the MT&CC has Hard Rock at 35-55' (West to East). The entirety of the site is "Colluvial" as opposed to "Alluvial". The soil throughout the Town is very stable in comparison to the entirety of the Ross Valley and beyond where the colluvial material transitions to alluvial which is more prone to liquefaction.

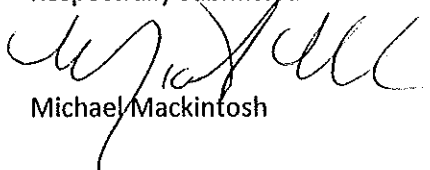
Colluvial defined as the material sluffed and eroded from an elevated site.

Alluvial defined as the deposition of material from a body of water generally containing a higher concentration organic material and fines.

One last question, how will Fairfax justify all these General Plan alterations, with regards to Cal Gov Core: 66300(b)(1)(a); when you are out of compliance?

Thank you in advance for submitting this summation with supporting documentation to the Public Record of the Draft EIR for the Public to review.

Respectfully submitted


Michael Mackintosh

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2/14/22

MT&CC LLC

History: It is said that the Marin Town & Country Club might have been the first piece of property to sell outside of a Spanish Land Grant in the State of California. It was purchased and/or granted when the entire State of California was for sale.

It is also written that Domingo Sais, for service in the Mexican army, was granted 6,658 acres, known as Canada de Herrera encompassing Fairfax and part of San Anselmo in 1839. (1836) This area was later referred to as the Ross Valley.

Domingo Sais kept the property until the early 1850s when the center and the best 32 acres were purchased by, or gifted to, Alfred Taliaferro (Marin County's first traveling physician). With early family fractional ownership, gifted, sold, and owned was not always clear.

Alfred Taliaferro came to California seeking his fortune during the California Gold Rush. He arrived via the Golden Gate on the good ship Glenmore on October 6, 1849. In 1855, Alfred Taliaferro sold (or gifted some part of as a wedding gift) the property to Charles Snowden & Ada, Fairfax.

In 1861 the last legal Duel in California was fought on this property. Two California Assemblymen, Charles Percy and Daniel Showalter came to the Fairfax's home and walked to the meadow. The Fairfax book cites a recollection that the Duel was fought across the creek. Shoes of the period would be very slippery climbing across the creek and up the banks, thus placing doubt that the Duel left the meadow.

Ada Fairfax may have sold the property (Bird's Nest Glen) to Mary Owens in 1870. Later in the 1880s the Marin County Tax Collector cited the property as being own by a Mrs. Woodward. Tax records illustrate approx. 32 acres.

Sometime in the early 1890s the property was leased as grazing land to Charles and Adel Pastori. The Pastoris went on to purchase the land in 1905 and renamed the property "Pastori's Hotel & Resort". The original hunting lodge and home became their home with accommodations for guests and lavish entertaining. Pastori's was known for fine dining.

Pastori's had a large tree where they hoisted a grand piano up to a deck. Irving Berlin would serenade guests while playing from this platform.

The original home/building burned down in 1911. Its replacement was designed by Zanolini and rebuilt in 1912. The current exterior configuration still represents Zanolini's design.

The rebuilt "Pastori's Hotel & Resort" was sold in 1925 to the owner of the Emporium Capwell Estate, for \$250,000.00. This represented one of the largest real estate transactions in Marin County at the time. This new owner renamed the property the "Marin Country Club" and ephemera illustrates "The Emporium Country Club". They rebuilt the bridge in 1927, to cross the Fairfax San Anselmo Creek.

In that same year, 1927. they built the Olympic sized pool and planted the grove of Lebanese Cypress trees at the center of the two dormitories.

The "Marin Country Club" successfully operated until 1937. In 1937 it was closed and leased to a private boy's school.

By November 1943, Max Friedman purchased the property for \$175,000.00. Max changed the name to the "Marin Town & Country Club". When Max purchased the property the Town of Fairfax wanted to close the Club and build housing.

Max wanted to restore the Club. The Town initiated litigation, possibly an early effort through Eminent Domain or Inverse Condemnation. The Town lost and Max was allowed to keep the club as a club.

Precipitating from that settlement Max was allowed to build the Fair Anselm shopping center, cantilevering buildings over the creek, and he donated Center Blvd to the Town. Prior to this, Center Blvd was an abandoned North Pacific Rail Road easement.

The Club continued to prosper and operate until 1972. Before it closed, on a busy day the Club had 3,000 people and 7,000 people on a busy weekend. Searching the internet illustrates how much love is associated to the club. Many men smile and tell you about the field of love. Many women will tell you this is where they fell in love.

Looking at all the smiles in the captured images, one could build an incredible collage of all the period bathing suits, hair styles, and accoutrements. They are all smiling. As advertised the club was always "Sun-Day".

In 1972 Max Friedman sold the property to an entity named Kaiser-Etna, for \$3,300,000.00 plus a stipend for each house built. It is said the property was subdivided into 301 small lots with homes and roads.

In that same year a group of citizens brought forth an Initiative, qualified it and placed it on the ballot for registered voters of the Town of Fairfax. The Ordinance entitled: "An Ordinance Relating to CR Commercial Recreation Zone"; directed that the property should be zoned Commercial Recreation.

So here after almost 30 years the citizens of Fairfax reversed their thinking and wanted no more housing, they wanted to save their beloved club. The field of Love.

Searching the internet, you will find over 50,000 references supporting the love people have for the "Marin Town & Country Club".

It appears that the only people trying to harm the Marin Town & Country Club is the Fairfax Town Council.

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Zoning: Current Housing Options

Reviewing SB #35, SB #8, SB #9, & SB #10

With the passage of this legislation, all communities have been up-zoned. Towns are required to submit Housing Elements in their General Plans that reasonably can accommodate more housing. ABAG and the MTC, through the State of California are passing edicts of required housing. Fairfax is currently 492 housing units short of their required RHNA. The State Attorney General has hired 10 land use attorneys to force compliance. The State can now levy fines against a Town that does not provide buildable housing opportunities up to \$100,000.00/month.

In addition, the current Housing cycle is for 2023 – 2031. After 2031 we start all over with our new RHNA allotment. Any and all Housing identified in the current Housing cycle that is not built or from prior Housing cycles; is allowed to be built by-right with only a ministerial review. Yes all this housing will be built.

Government Code 66300(b)(1)(a) states that if a City has not produced its RHNA; they shall not change, "the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018."

For purposes of this subparagraph, "'less intensive use' includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing."

So, because downzoning is illegal, it cannot be done by referendum or initiative. As a general matter, acts that would be illegal if taken by the legislative body, are also beyond the power of the people to adopt by initiative or referendum. For example, a proposed initiative measure which, if approved, would result in altering the terms of private parties cannot be adopted by initiative. (See e.g., *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805.) Other examples of illegal acts arise in the context of development approvals, i.e., that a measure would result in a "taking" or would create a land use scheme that is inconsistent with the general plan or state land use laws. Two cases illustrating this are *deBottari v. City Council* (1985) 171 Cal.App.3d 1204 and *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

Government Code 66300 (b)(1)(a) states that even by referendum property cannot be down zoned from the zoning in place on January 1, 2018. Our property was down zoned by Initiative in 1972. Case law, prior to the passage of SB 9, but applies, says that an initiative or referendum cannot do something that a city is not allowed to do, (*past, present or future*) in this case that would be down zoning to thwart housing. (*RH)

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This could qualify with the already pre-existing utilities for $(23.5)(40/\text{acre})=940$ units plus an additional affordable density bonus. (SB 35)

Any initiative that would or has effectively downzone our property would be illegal.

Zoning:

Commercial Recreation (Current)

By Initiative

CEQA exempt if Zoning by Initiative is kept in place

In the past what was a little understood type of zoning, (Zoning by Initiative) has become the greatest asset and the most predictable.

Zoning by Initiative precludes the laborious and expensive failed attempts to develop a property where the greatest fear is attrition of a voice on a committee, which allows a disruption to start the process all over again. Initiative zoning gives everyone in the town the same vote as the individuals on the Planning Board or Town Council. The Council would have 5 votes within the Town's approximate 5,400 votes.

There are no limits as to how many times one can go to the Town and place an Initiative on the ballot to illustrate a specific design with needed entitlements. If the majority of Fairfax voters voted to place a huge purple horse on the property, the property would be so entitled.

To place your design and needed entitlements on the ballot, you need 10% (sometimes less) of the registered voters of Fairfax to sign a petition supporting your language. So approximately 600+ Fairfax registered voters could place a new initiative on the ballot to redesign and build a Hotel, Resort, Park, housing and/or any other idea.

The exemption from CEQA comes when one provides most of the fine details that the community votes on. Voted on is approved.

One could offer more than one choice to direct the conversation.

Most people will vote with their pocket book. In our current environment, voters are averse to taxing themselves more or placing large parcel taxes on "their" homes. Many people living on fixed income would lose their homes if additional taxes were levied on their homes.

An initiative for a park would burden all property owners to compensate the taking from the MTCC.

If the Town wanted to take the property through Eminent Domain or severely limit building opportunities by Inverse Condemnation through restrictive zoning, the action would require paying for best use. Since the property will qualify for over 400 and up to 900 units, this payout would exceed \$75,000,000.00.

Should the Town want to file their own Referendum to take/buy the property as open space, park, or school, the buyout would exceed \$75,000,000.00 which is beyond the Town's ability to pay.

Between 1985 and 2019 with "*Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*", should a taking be exercised, we were precluded from direct access to our Constitutional protections of the 5th and 14th Amendments.

(The 5th Amendment guarantees just compensation for takings. The 14th Amendment guarantees Due Process and access to a fair trial) Over these last 34 years many suits worked their way to the SCOTUS chipping away at the restrictive language. "*Knick vs Township of Scott*", set aside "*Williamson County*" so we again have immediate access to our Constitutional protections. So, any contemplation of Eminent Domain is a financial windfall for the Stake Holder.

If Fairfax has in excess of 2400 residential and 100 commercial parcels (possibly 3100 parcels in total) and each parcel was assessed a prorated share of the bonding to pay for the property; each property owner might have to pay: \$60,322.58 on their property tax statement over the next 30 years. Or approximately \$2,010.75/year. (If no parcels were exempt. Otherwise, an increase per parcel)

$(75,000,000) @ (5\%) \text{ over } (30\text{years}) = \text{Total approximate payment } \$187,500,000.00.$

$\text{Total/parcels} = (187,500,000.00)/(3100) = \$ 60,322.58/\text{parcel}$, plus financing and bonding costs, all attached to their annual property tax statement over the next 30 years.

This might increase another 15% with maintenance and insurance.

People do not want and cannot afford to tax themselves this much for the next 30 years. If the property was taken, this initial cost might be eclipsed by the ongoing litigation and maintenance requirements.

So possibly each parcel in town could be assessed an even greater amount over the next 30 years. During this time additional taxes would have to be raised to offset the loss of the current property taxes of over \$142,000.00 paid per year.

Yes, grants and other options might come in after the fact that could be used to help pay down the bonds, don't hold your breath. Sadly, today Grants would require housing, thus defeating the Town's want to hold this as open space.

Even if the above is found to be excessive and we shave a little off, these are big numbers.

Fairfax has a history of bait and switch. Look at Victory Village. Promised as local affordable senior housing with the promise to donate the adjacent 18 acres as open space... The adjacent land was subdivided for development. By accepting Federal and State housing money, we have lost our ability to offer this housing for our own seniors.

So we will increase our population, raise our taxes to pay for this, and further displace our needy seniors.

Foreign Buyers:

Many places in the World are not as safe as they used to be. If people know you have money and family, extra considerations are required and there is always that risk. The United States with its Constitution is the overall greatest and safest democracy in the world with the strongest individual and property rights.

Today the World is in turmoil. If you had two young children and \$10m in cash and you lived in most places in the World, your family could be a target and your assets would be at risk depending on the next political upheaval. If you had the resources to move anywhere in the World, where would you go? Europe is burning. Great Britain, we will wait and see. The last two safe democracies with strong individual and property rights might be Canada and the United States of America.

Within the United States and Canada, when you start cutting off places without cultural socio-economic diversity and especially those places lacking close proximity to major transportation, Hospitals, and education, you lose most rural areas. You are looking for a metropolitan area. Cut off those locations with extreme weather events; hurricanes, blizzards, floods, snow, tornadoes, etc. most of the East, North & South are gone. Now cut off old industrial basins where aquifers are contaminated with industrial byproducts and heavy metals, southern California is eliminated.

Continue and cut off places that do not have their own safe rechargeable water resources and clean air; you have Seattle, Portland, and the San Francisco Bay Area.

Again, looking at weather, financial opportunities, cultural socio-economic diversity, medical facilities, major transportation hub; you have the San Francisco Bay Area.

Within the Bay Area the most overall desirable place with the least density, is Marin County. Marin County is located on the north side of the Golden Gate Bridge. It is said Marin is approximately 85% public open space.

Within Marin County the most desirable area is the Ross Valley. The "Marin Town & Country Club" is at the center and affectionately known as the Jewel of the Ross Valley. A blue diamond in the rough.

Property in the Ross Valley will continue to appreciate. People from around the world with family and assets will continue to move to the SF Bay Area to protect their family and assets.

The San Francisco Bay Area is currently home to 75 Billionaires. Many of these people made their fortunes here. The San Francisco Bay Area is a land of opportunity. It is a place where if you work hard you can succeed.

Page: 9 Whether to park capital in a safe place or to raise a family and live a good life, Marin County and specifically the Ross Valley is the place.

Long Term Investors:

California, Marin County, and Fairfax, specifically; are and will continue to be appreciating assets. Our housing prices are buoyed by how many people from around the world want to move here, if they can afford to. Fairfax is the Hamlet of our dreams.

Today Marin County might be the most desirable place in the World to live and raise a family. Between socio – economic diversity as well as close proximity to transportation, cultural resources, medical resources, and weather; Marin is a paradise. Today the “Marin Town & Country Club” could be one of the best pieces of property in the world.

Hospitality: Hotels are along the 101 corridor

Fairfax Inn, 13 rooms

San Anselmo Inn, 13 rooms

Destination Spa “Marin Town & Country Club”, tbd

Current zoning allows for a hotel. The town wants a hotel.

A recent National Parks Administration study supports that approximately 14,500,000 people visit West Marin, spending approx. \$562,000,000 throughout the County on an annual basis. Of these 14.5m people approx. 2-4m people live in excess of 120 miles away. Thus, requiring overnight accommodations.

West Marin does not have the capacity to accommodate this many people over night.

The majority of the people travel to West Marin via two roads through Fairfax. A hotel in Fairfax would have a captive audience. It would also reduce the carbon footprint by reducing the number of car trips, traffic, by reducing all the back-and-forth trips to the 101 corridor for overnight accommodations.

Fairfax is the gate way to West Marin, the Golden Gate National Park.

County: Open space approximately 85 %

Schools: Elementary and Secondary, Private and Public, some of the best highest-ranking schools in the State. Close to the University of California Berkeley & Davis as well as Stanford.

Entitlements/Improvements:

- Size: 23.5 Acres
Topography Flat
APN: 002-131-10
APN: 002-131-11
APN: 002-123-36
(APN:002-123-36, is a separate building lot across the creek at the end of Pacheco ave. Years ago this lot facilitated a second bridge providing additional egress to the property.)
- Sewer: 14" trunk line originating on the west end (in the back) of the property.
Five 6" Laterals
Three Laterals owned by MTCC
Serviced by Ross Valley Sanitation District
- Water: 4" Water line (2" meter).
One water meter
Serviced by Marin Municipal Water District
- Electricity: Two drops.
One meter
Serviced by Pacific Gas & Electric
- Gas: One (2 ½)" line
Two meters
Serviced by Pacific Gas & Electric
- FEMA: As supported by LIDAR, the property is above the 500-year flood plain rendering the property exempt from Flood Insurance
- Wind shear: 27 feet
- Water table: 17.5 feet
- Wells: 7' inner diameter, 30' depth

(This well has senior water rights being placed before 1912, (1870s))
- Thermal Probe:

The property is located in an incised valley of many millenniums of colluvium material lending itself to a Thermal Probe which could run heating and cooling needs. Adding Fuel Cells, this could be the greenest Leeds (Leading Energy Environmental Design) Platinum project. The MT&CC could be off the grid.

Water runoff captured from the hill in a cistern could exceed needed annual water supply. (A MMWD Director once suggested that we could be our own water district)

Features: Surrounded by a year-round flowing creek
Water on north side of property, Flows West to East.
Sun rises on easterly end of the meadow
Abundant wildlife
Specimen mature trees
Specimen mature English Dwarf Boxwood hedges

Improvements: 40 Rental units
Approximate 14,000 sq' club house
Recorded owner of Bridge and Fish Ladder ("recorded" to the MT&CC LLC)
Property includes land on both sides of the creek allowing for expansion of the bridges
Out buildings
Seven Pools

Fairfax:	Population	7,598 (2016)
	Registered Voters	5,460 (5/2018)
	Median House Value	\$681,000 (2010-2014)
	Median House Value	\$1,300,000 (10/2021)
	Town Budget	\$9,939,456.00 (2017)
	Town Budget	\$18,200,000.00 (2021)
	Elevation:	115 '

Fairfax Special Affordable Senior Housing Zoning Overlay: Should affordable senior housing be offered, this zoning allows for no setbacks, higher density, variance for height, and other accommodations.

The "Marin Town & Country Club" is located within the Municipality of the Town of Fairfax. From the "Marin Town & Country Club" you can walk on flat ground, over the creek via your own bridge one block to a first-class organic store or two blocks to restaurants, theatre, bars, museum, etc.

This is the once in a life time opportunity. There are no equals, there are no others. This is the "nonpareil".

A project of this magnitude would also accommodate its own BID (Business Improvement Development). If the resulting improved property has a value in excess of \$250,000,000.00; the incremental property tax difference will exceed \$3,125,000.00 annually. This alone could accommodate the affordable housing requirements, excluding Federal or State money, so we could offer it to our local seniors first. If you take Federal or State housing money, you are on a state wide lottery system.

Page: 12

Taking Federal or State housing money also burdens everyone else. The "affordable" housing can be granted a 55-year property tax waiver. These additional impacts still need to be paid for resulting in raising everyone else's property tax.

Controlling our own BID, we can include affordable housing for our new hire cadets for the Fairfax Police Department and the Ross Valley Fire Department. What better way to integrate a new hire to the community and keep them here? It could also double as a repository in case of emergencies.

This property is special. Whatever is its future, it must always be special. Some financial consideration could be given for the right mindful project.

Wanted: (Some of the projects this property can uniquely accommodate)

Mindful partner to provide the finances to refine entitlements to a specific end

Or Mindful partner to build a 4/5 star Hotel destination spot.

Or Mindful partner who will build ambulatory Senior retirement housing

Or Mindful leaser who will lease the property for a long term (25 years plus) lease.

Or Mindful partner who will incorporate a working farm accompanied with housing.

Or The best Family compound in the middle of the Ross Valley with a mindful footprint

Or Housing that protects our long-term tenants and local seniors.

Or (Your idea here)

Current ownership is available as Fee Simple, Partner/consultant or (your idea) to help procure all entitlements and see project through new development that incorporates the needs of the community and exemplifies how special this land is.

When you cross the pink bridge, you will feel a sense of calm. You will be content and feel at home.

"The Marin Town & Country Club" is Jewel of the Ross Valley, it truly is the nonpareil.

Thank you

Del

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



June 10, 2022

Elyse Lowe, Director
Development Services Department
City of San Diego
1222 First Avenue
San Diego, CA 92101

Dear Elyse Lowe:

RE: 2662 Garnet Avenue – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of San Diego (City) regarding a proposed 100-percent affordable residential infill project to be located at 2662 Garnet Avenue (Project). The Project applicant submitted a request for technical assistance to the California Department of Housing and Community Development (HCD) on March 3, 2022, and the City subsequently asked for clarification on the relationship between State Density Bonus Law (SDBL) and the City's Coastal Height Limit Overlay Zone (CHLOZ) which was created via voter initiative. Specifically, the applicant wanted to know if the SDBL might permit a qualifying housing development to exceed the 30-foot building height limit established by the CHLOZ, given that the Project site is located outside of the State Coastal Zone (and is therefore not subject to the requirements of the Coastal Act or the City's Local Coastal Program).

Background

HCD understands the Project would create 60 deed-restricted units that would be affordable to low- and very low-income households. The Project would serve transitional aged youth, veterans experiencing homelessness, and low-income individuals. The ground floor would contain supportive services. HCD understands that the Project meets the criteria of Government Code section 65915, subdivision (b)(1)(G), and is located within one-half mile of a major transit stop. Therefore, pursuant to Government Code section 65915, subdivision (d)(2)(D), the project "shall . . . receive a height increase of up to three additional stories, or 33 feet."

The critical issue relates to the potential significance of the fact that the 30-foot height limit was established via voter initiative and not by City Council action (as local development standards are typically established). The City appears to believe that because its height restriction was created by a voter initiative, a state law like the SDBL cannot require the City to grant the height increase. Therefore, the question presented

is: Is a development standard created by voter initiative immune from the requirements of the State Density Bonus Law?

Brief Answer

No. The State Legislature can and does preempt local initiatives. "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897, 16 Cal.Rptr.2d 215, 217. It makes no difference that the local law was created by voter initiative. Courts have repeatedly held that the Legislature can preempt local initiatives that conflict with state law. See, for example, Building Industry Association v. City of Oceanside, (1994) 27 Cal.App.4th 744, 771-72, 33 Cal.Rptr.2d 137, 154-55 (local growth control initiative invalid because of facial conflict with state housing policy).

Analysis

Under the California Constitution, a city or county may make and enforce ordinances and regulations "not in conflict with general laws." (Cal. Const., art. XI, section 7). Conversely, a city may not make or enforce a regulation that conflicts with state law. As noted above, "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." See, Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897, 16 Cal.Rptr.2d 215, 217. The City of San Diego apparently interprets the development standard at issue here as disallowing the height increase guaranteed by SDBL. Accordingly, the development standard conflicts with SDBL and is void.

For purposes of preemption analysis, it makes no difference that the preempted local regulation was enacted by local voter initiative. California courts have repeatedly held that the Legislature can preempt local initiatives that conflict with state law. For example, in City of Watsonville v. State Department of Health Services (2005) 133 Cal.App.4th 875, 881, 35 Cal.Rptr.3d 216, 218, the court invalidated a local initiative prohibiting fluoridation of the water supply because the initiative conflicted with state law. Similarly, and especially relevant here, in Building Industry Association v. City of Oceanside, (1994) 27 Cal.App.4th 744, 771-72, 33 Cal.Rptr.2d 137, 154-55, the court struck down a local growth control initiative because it conflicted with state housing policy.¹

¹ The fact that San Diego is a charter city does not change this analysis. California courts have repeatedly held that housing is a matter of statewide concern and that state housing laws preempt conflicting local law. See, for example, Ruegg & Ellsworth v. City of Berkeley (2021) 63 Cal.App.5th 277, 277 Cal.Rptr.3d 649 (SB 35, codified as Government Code section 65913.4, preempts conflicting charter city ordinance) and Anderson v. City of San Jose (2019) 42 Cal.App.5th 683, 709-710, 255 Cal.Rptr.3d 654 (Surplus Land Act preempts conflicting charter city ordinance). See also, Buena Vista Gardens Apartments Association v. City of San Diego (1985) 175 Cal.App.3d 289, 306, 220 Cal.Rptr. 732, 742 (Housing Element Law applies in the charter city of San Diego. "[I]f a matter is of statewide concern, then charter cities must yield to the applicable general state laws regardless of the provisions of its charter.").

The ability of state law to preempt conflicting local initiatives is necessary for the state to regulate areas of statewide concern. As the court stated in Mission Springs Water Dist. v. Verjil (2013) 218 Cal.App.4th 892, 920, 160 Cal.Rptr.3d 524, 545, "[i]f the state Legislature has restricted the legislative power of a local governing body, that restriction applies equally to the local electorate's power of initiative. . . . If the rule were otherwise, the voters of a city, county, or special district could essentially exempt themselves from statewide statutes."

Conclusion

HCD respects the challenges inherent in infill development and applauds the City's commitment to the production of affordable housing. Based on maps provided to HCD by City staff, it appears that a substantial amount of land shares the same particular characteristics as the subject site (i.e., located outside of the Coastal Zone but inside the 30-foot height limit area of the CHLOZ). It is HCD's hope that the determinations made in this letter might serve to further facilitate the production of affordable housing in these areas, especially insofar as the 30-foot height limit may have been a barrier to SDBL-enabled applications in the past. If you have questions or need additional information, please contact Brian Heaton, of our staff, at brian.heaton@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief

RESOLUTION NO. 955

CANVASS OF ELECTION RETURNS, GENERAL MUNICIPAL
ELECTION AND DECLARATION OF RESULTS THEREOF

WHEREAS, a General Municipal Election in and for the Town of Fairfax, County of Marin, State of California, was held on Tuesday, the 11th day of April, 1972, for the purpose of electing officers for said Town of Fairfax, to-wit:

Two (2) members of the City Council of said Town, each to serve for the full term of four (4) years, one (1) City Clerk of said Town and one (1) City Treasurer of said Town, each to serve for the full term of four (4) years:

AND, voting on the following measure:

Shall The Ordinance Entitled "An Ordinance Relating to CR COMMERCIAL RECREATION Zone" providing for principal permitted uses of real property and structures thereon; conditional uses of real property and structures thereon; accessory uses of real property and structures thereon; and including within the CR Commercial Recreation Zone certain real property described as Parcels 10 and 11, Block 131, Book 2, as shown upon Assessor's Book on file in the office of the County Assessor, County of Marin, State of California, on August 1, 1969 Be Adopted?

AND, WHEREAS, the County Clerk, George H. Gness, at this time having submitted to this City Council his certificate of the canvass of all votes cast at said General Municipal Election;

NOW, THEREFORE, BE IT RESOLVED BY SAID COUNCIL that the statement of votes resulting from said canvass be entered into the minutes of the City Council as follows:

The total number of votes cast at said General Municipal Election was 2,068 and the total number of absentee votes was 60. The number of votes cast in each of the voting precincts for the purpose of said election was as follows, to-wit:

In Voting Precinct 2010	477
In Voting Precinct 2011	514
In Voting Precinct 2012	581
In Voting Precinct 2013	496
Absentee Votes	<u>60</u>

2128 TOTAL NUMBER OF VOTES CAST

RESOLUTION NO. 952

BE IT RESOLVED by the City Council of the Town of Fairfax as follows:

1. That pursuant to law, A GENERAL MUNICIPAL ELECTION will be held and conducted in the Town of Fairfax on Tuesday, April 11, 1972, at which election there shall be elected the following officers, to-wit:

- One (1) City Clerk for the term of four (4) years
- Two (2) City Councilmen for the term of four (4) years
- One (1) City Treasurer for the term of four (4) years.

2. That the following proposition has been submitted to the voters and will be voted upon at the aforementioned General Municipal Election, to-wit:

PROPOSITION NO. A

SHALL THE ORDINANCE ENTITLED

"An Ordinance Relating to CR Commercial Recreation Zone," providing for principal permitted uses of real property and structures thereon; conditional uses of real property and structures thereon; accessory uses of real property and structures thereon; and including within the CR Commercial Recreation Zone certain real property described as Parcels 10 and 11, Block 131, Book 2, as shown upon Assessor's Book on file in the office of the County Assessor, County of Marin, State of California, on August 1, 1969

BE ADOPTED?

YES ☐

NO ☒

3. Ballots shall be prepared in all respects as required by law and the provisions of Section 4014 of the Elections Code, and mailed to voters as required by Section 4020 of the Elections Code.

4. There being no newspaper of general circulation published and circulated in the Town of Fairfax, the City Clerk of the Town of Fairfax shall cause to be posted copies

of an appropriate Notice of Election as prescribed by Section 22831 of the Elections Code of the State of California, and any and all other notices required to be given by the Elections Code in relation to a general municipal election, by posting copies of each of said notices in the following three public places, to-wit:

- (a) Bulletin Board, Fairfax City Hall;
- (b) Bulletin Board, Fairfax Post Office; and
- (c) Bulletin Board, Fairfax Women's Club Building,

which said places are designated for that purpose.

5. There shall be four (4) voting precincts for the purpose of holding said election, and the said Town of Fairfax is hereby divided into four (4) voting precincts consisting in some cases of a consolidation of the regular election precincts, and in some cases the regular election precincts established for holding State and County elections, all as hereinafter stated, to-wit:

(a) Precinct 2010 consisting of regular election precincts 2300 and 2307, with the polling place therefor located at Fairfax Fire Department, 140 Bolinas Road, Fairfax, California; and

(b) Precinct 2011 consisting of regular election precincts 2301 and 2302, with the polling place therefor located at Deer Park School, Porteous Avenue, Fairfax, California; and

(c) Precinct 2012 consisting of consolidated regular election precincts 2303 and 2304, with the polling place therefor located at Fairfax Central School, Broadway and School Streets, Fairfax, California; and

(d) Precinct 2013 consisting of regular election precincts 2305 and 2306, with the polling place therefor located at Fairfax Community Church, 2398 Sir Francis Drake Boulevard, Fairfax, California.

6. That the polls shall be open between the hours of 7:00 o'clock A.M. and 7:00 o'clock P.M.

7. That for the purpose of holding said election in and for each precinct, there shall be in charge a Board of Election consisting of one (1) Inspector, one (1) Judge, and two (2) Clerks, to be appointed by the County Clerk of the County of Marin.

8. Said election shall be held and conducted, and candidates thereat nominated and notice thereof given, and notice of the proposition to be voted upon given, and all things appertaining thereto had and done, in the manner and form required by law.

9. That the compensation of each election officer at said election shall be and is hereby fixed at \$25.00 for Inspectors, \$22.00 for Judges and \$20.00 for Clerks, per day, and that the compensation to be paid to the respective owners of polling places as rental is hereby fixed at \$20.00 per premises.

The foregoing resolution was duly passed and adopted at a regular meeting of the City Council of the Town of Fairfax held on the 14th day of February, 1972, by the following vote, to-wit:

AYES:	COUNCILMEN	SEGER, NELEER, O'CONNELL, SOUZA and van VLIET
NOES:	COUNCILMEN	NONE
ABSENT:	COUNCILMEN	NONE

ATTEST:



City Clerk



Mayor

CERTIFICATION

I, Eileen L. Foster, City Clerk of the Town of Fairfax, do hereby certify and declare that the foregoing copy of Resolution No. 952 is a true and correct copy of the original thereof duly passed and adopted by the City Council of the Town of Fairfax on the 14th day of February, 1972, the original of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Town of Fairfax, this 15th day of February, 1972.


City Clerk

RESOLUTION NO. 951

SUBMITTING TO THE VOTERS OF THE TOWN OF
FAIRFAX PROPOSITION NO. A, A PROPOSED
ORDINANCE RELATING TO ZONING

WHEREAS, heretofore, pursuant to Section 4000 of the Elections Code, et seq., an initiative petition for the adoption of an ordinance relating to zoning has been submitted to the City Clerk of the Town of Fairfax, and

WHEREAS, the signatures on said petition have been certified by the County Clerk of the County of Marin, State of California, as containing at least 15% of the voters of the Town of Fairfax according to the City Clerk's last official report of registration to the Secretary of State, and

WHEREAS, said petition contains a request that the ordinance therein set forth be submitted immediately to a vote of the people at a special election pursuant to the provisions of the Elections Code of the State of California, or that in lieu of a special election, the City Council enact said proposed ordinance, and

WHEREAS, said initiative petition for adoption of said ordinance has been presented this 3rd day of February, 1972 to the City Council of the Town of Fairfax at its regularly adjourned meeting, and a copy of said ordinance proposed by said initiative petition is attached hereto marked Exhibit A and made a part hereof as though fully set forth herein in particular,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the Town of Fairfax as follows:

1. That the ordinance presented by said aforementioned initiative petition be, and said ordinance is hereby, submitted to the voters of the Town of Fairfax at the next regular municipal

election to be held April 11, 1972, as Proposition No. A.

2. That said Proposition No. A shall be presented to the voters of the Town of Fairfax on the ballots to be used at said election, as follows:

PROPOSITION NO. A

SHALL THE ORDINANCE ENTITLED

"An Ordinance Relating to CR Commercial
Recreation Zone"

providing for principal permitted uses of real
property and structures thereon;

conditional uses of real property and struc-
tures thereon;

accessory uses of real property and structures
thereon;

and including within the CR Commercial Recreation
Zone certain real property described as parcels
10 and 11, Block 131, Book 2, as shown upon
Assessor's Book on file in the office of the
County Assessor, County of Marin, State of California,
on August 1, 1969

BE ADOPTED?

YES ☐

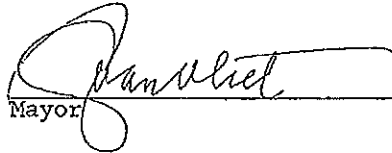
NO ☐

3. Said ballots shall be prepared in all respects
as required by law and the provisions of Section 4014 of the
Elections Code. Copies of the ordinance referred to in said
Proposition No. A shall be mailed to each voter in the Town of
Fairfax at least ten (10) days prior to the election as required
by Section 4020 of the Elections Code.

- - - -

The foregoing resolution was duly introduced and passed at a regular meeting of the City Council of the Town of Fairfax held in said Town on the 3rd day of February, 1972, by the following vote, to-wit:

AYES: COUNCILMEN : EGGER, NELDER, SOUZA
NOES: COUNCILMEN : O'CONNELL and van VLIET
ABSENT: COUNCILMEN : NONE


Mayor

ATTEST:


City Clerk

CERTIFICATION

I, Eileen L. Foster, City Clerk of the Town of Fairfax, do hereby certify and declare that the foregoing copy of Resolution No. 951 is a true and correct copy of the original thereof duly passed and adopted by the City Council of the Town of Fairfax on the 3rd day of February, 1972, the original of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Town of Fairfax, this 4th day of February, 1972.


City Clerk

EXHIBIT "A"

ORDINANCE NO. _____

AN ORDINANCE RELATING TO
CR COMMERCIAL RECREATION ZONE

THE PEOPLE OF THE TOWN OF FAIRFAX DO ORDAIN AS

FOLLOWS:

Sec. 1 Purpose

The CR Commercial Recreation Zone provides a location for private, as opposed to publicly owned or operated, recreation facilities. Such facilities may be a single purpose and occupy large land areas as in the case of a golf course or country club; they may also consist of a complex of associated activities such as an amusement arcade or carnival or a resort hotel. The uses in the zone tend toward physical activity in the open, and consequently adequate land area, careful design of improvements, and control of the type and location of activities are necessary to protect surrounding properties.

Sec. 2 General

No premises in the CR, Commercial Recreation Zone may be used for any purpose or in any manner except as set forth in this Article.

All structures, physical improvements, and exterior physical modifications of buildings are subject to design review unless specifically exempted in each instance by the Design Review Board.

Principle Permitted Uses and Structures

When conducted on a building site of not less than 10 acres:

- (1) Private recreation clubs including boat, swim, fishing, golf, tennis, riding and country clubs.
- (2) Other uses determined by the Planning Commission to be of a similar nature to those listed in paragraph (1) of this section, and which comply with the objectives, purposes, policies, and standards of the Fairfax area General Plan.
- (3) All other commercial recreational uses and structures specifically approved by the Planning Commission as part of a development plan or master plan approved by the commission.
- (4) Public recreation facilities and structures approved by the City Council after referral of such proposals to the City Planning Commission and the City Parks and Recreation Commission.

Sec. 3 Conditional Uses and Structures

Such uses may not be established, expanded, substantially modified, or changed to another conditional use unless and until a Use Permit is obtained:

- (1) Any principle permitted use or structure on a building site of less than 10 acres.
- (2) Any commercial or residential use or structure which is determined by the Planning Commission to be accessory and incidental to an allowed principal recreational use, including but not limited to quarters for custodians, watchmen, and other service employees employed or engaged in serving said principal recreational use, and commercial establishments, including but not limited to restaurants, bars, retail establishments, and service establishments, which are operated in connection with, serve the same patrons as, and are accessory and incidental to an allowed principal recreational use; provided further that no such accessory use or structure allowed by the provisions of this paragraph shall under any circumstances become a principal recreational use unless so allowed by other provisions of this article.
- (3) In no case shall accessory structures requiring a Use Permit be permitted to cover more than 10% of the area.
- (4) Signs not specifically allowed or provided for by the Signs Ordinance.
- (5) Signs which are not visible beyond the boundary line or property line of the use or activity so advertised but which would ordinarily be prohibited by the Signs Ordinance provided that any sign allowed under the provisions of this paragraph must be first approved by the Design Review Board.

Sec. 4 Accessory Uses and Structures

Activities which are characteristic of, and usually found in connection with, a principal use on the same premises, and which are subordinate to, dependent on, and economically and operationally integrated into said principal use.

No detached accessory structure, whether permanent or temporary, fixed or moveable, and regardless of the materials contained therein, are allowed except by Use Permit.

Sec. 5 Development Procedures and Standards

Every commercial recreation use, facility or development, and every addition, modification, or change thereof, shall be subject to Design Review unless specifically exempted by the Design Review Board.

For every commercial recreation use, facility, or development requiring a Use Permit and Design Review approval secured in connection therewith shall not be effective and final until said Use Permit is effective and final.

The Planning Commission in considering a Use Permit under provisions of this article, may require information, maps, reports, drawings, and other submissions in addition to those required for Design Review.

Except as otherwise provided or required by Use Permit each commercial recreation use, facility, or development shall comply with all other relevant standards of the Ordinance including off street parking, design review, and sign regulations.

Sec. 6 CR Commercial Recreation Zone

There is hereby included within this zone the following real property shown and designated upon the Assessors Books on file in the office of the County Assessor, County of Marin, State of California, on August 1, 1969, and more specifically designated as follows:

Book
2 (two)

Block
131

Parcels
10,11

Michael, I thought you would like this. *[Signature]*

Some old news from the Gazette about Fairfax's most historic land -

FAIRFAX GAZETTE

19 April 1944

Pastori Property Not For Sale Owner Says

The Pastori property, recently purchased by Max Friedman, San Francisco business man, is not for sale at this time.

Friedman made his statement in the Butler Publications during a conversation regarding his part of the proposal that the Board of Supervisors either buy or lease the famous acreage, lying outside the town of Fairfax, for a county recreation park.

"When I bought the grounds I did not realize the need for recreational facilities in Marin County was so critical," Friedman continued.

"As the facts began to unfold and nothing specific or logical was offered by potential buyers of leases, I decided to prepare the acreage for public use."

Everything will be in readiness for the opening on April 23.

The large swimming pool has been cleaned and disinfected, the tennis courts made ready, the barbecue pits repaired and stocked with free wood.

Friedman has potential plans that will interest golfers, too, he says.

July 19, 1944

Status Of Marin Town And Country Club Jeopardized By Fairfax Council Decree

Members of the Fairfax City Council threw a bombshell not only in the midst of their own community, but to recreation minded persons generally, when at the end of their regular session, Friday night, they revoked the license of Max Friedman to operate the old Pastori holdings as a public park and club.

Permission was withdrawn because the Council claims the area is zoned for residential purposes, rather than business, according to the basis of the license withdrawal.

The acreage was purchased by Friedman several months ago from officials representing

the Emporium department store in San Francisco, who owned the property. The swimming pool was prepared to meet sanitary conditions, barbecue pits were furnished with wood and volley ball courts arranged, and a number of other recreational facilities were established.

He sponsors the Fairfax Boys Club and furnishes uniforms and transportation for them as members of the Marin County Baseball League.

Refreshment stands were set up.

By popular request of the young people, Friedman says, a juke box was placed in the main building for afternoon dancing.

During the first 60 days of operation, more than 30,000 persons took advantage of the place, records show. *[That's 500 per day average]*

Originally adapted for public use by Madame Pastori and her husband, the place is the oldest and most historic in Marin County.

Friedman continues to operate upon the advice of his attorney, Lawrence A. Cowen of San Rafael.

July 26, 1944

PICNICS ARE BONE OF CONTENTION IN COUNCIL-FRIEDMAN CONTROVERSY

Organized picnics are the main bone of contention between members of the Fairfax City Council and Max Friedman, operator of the Marin Town and Country Club, at Pastori Station, outside of Fairfax. Several years ago *[nearly 70 years ago, in 1875]* picnics attended by mass numbers caused a great deal of trouble in the community by individuals "getting out of line," C. P. Remy, Fairfax mayor states, and the town's governing body has no intention of permitting the same situation to occur again. They have forbidden such gatherings in the town park, and Friedman's license, revoked two weeks ago, did not include picnics, it seems.

No indication has been given that the council intends to stop operation of the Country Club, at this point it was revealed today.

"Unfortunate circumstances during picnic affairs gave Fairfax a bad reputation, in the past. We want to build up prestige and property values here, by eliminating the possibility of such things happening again," Remy explains.

POSTWAR FAIRFAX PROGRESS -

San Rafael Independent Wed, Apr 3, 1946

New Shopping Center Development At Fairfax

Market, Homes To Be Built

Preliminary work on the development of a new market district in Fairfax was well under way today with grading operations started yesterday on the three acre tract owned by Max Friedman at the southwest corner of Sir Francis Drake and Pastori Avenue.

When M. Raisch's heavy grading equipment moved in yesterday morning the area was a gentle rolling tract where up to a year ago a nursery occupied the corner lot and through which tract passed the abandoned Northwestern Pacific railroad grade. By tomorrow night the three acres should be ready for the start of building operations and establishing of a spacious parking lot.

Friedman today said he planned to build as quickly as materials are obtained, a complete shopping center, including a large food market and numerous specialty shops, surrounded by the largest parking area in the county. Along the crest of the ridge on the south line of the tract, there is sufficient area for 13 homes which Friedman said he contemplates building at a future date.

Development of this tract for commercial use will result in the long contemplated conversion of the old railroad grade into a new traffic arterial or bridle path through San Rafael, San Anselmo and Fairfax, being halted at Pastori Avenue instead of carrying through to Manor.

In the same area, extensive alterations and improvements are being made to the Friedman-owned Marin Town and Country Club facilities, chiefly in the additions of a large open-air dance pavilion, built around a number of shade tree and large enough to accommodate many hundred dancers.

UNTIL THE NEXT DAY - THE COUNTY STEPPED IN - -

San Rafael Independent Thurs, Apr 4, 1946

County Holds Up Fairfax Project

First condemnation proceeding by the county on the abandoned Northwestern Pacific right of way was started yesterday when a complaint was filed in Superior Court against Max Friedman and the City of Fairfax.

According to the complaint "public convenience and necessity" demands acquisition by the county of Friedman's property on the right of way for "construction and maintenance of a public roadway and parkway."

Grading operations were started Tuesday by Al Raisch for Friedman on a new market district in Fairfax but such an operation will have to be halted as a result of the lis pendens. [typo?].

The complaint covers only the strip of Friedman property which is included in the old right of way. Technically, Friedman can go ahead with work on the right of way, but he stands a chance of losing such investment when the proceedings are completed because the law does not allow consideration for more than the market value of the property determined at the time of the filing of the complaint.

For several years the county has contemplated taking over the strip of land which runs through San Rafael, Fairfax and San Anselmo and other communities but due to "clouding" of titles as reported by the title company employed by the county, definite action was again held up in January.

At the time the supervisors instructed County Engineer Carl Clow to draw up a series of charts showing all claims to the property in order that a more complete report could be formulated.

The simplest things can get complicated but they were eventually resolved and we now enjoy Center Blvd the Post Office, Good Earth and the Fair-Ansel Shopping Center, thus 70 years of progress.

Some recent history of possible interest -

Independent Journal December 29, 1956

County Gives Up White's Hill Tunnel

A resolution abandoning a county right of way and easement along the roadbed of White's Hill tunnel west of Fairfax was unanimously adopted yesterday by the board of supervisors.

At the same time, the board instructed Marin Fire Chief Charles Reilley to seal off both entrances to the tunnel, which was abandoned 25 years ago [1931] by the Northwestern Pacific Railroad.

Yesterday's action was recommended to supervisors in a letter from the district attorney's office.

Last fall, a gigantic cave-in occurred in the tunnel, forcing county fire trucks at Woodacre to make a two-mile detour resulting in a four-minute delay on runs eastward along Sir Francis Drake boulevard.

The tunnel was last re-timbered in 1925. Since then the interior has been shorn up and timbers maintained but no major work has been done.

Is this another tunnel to be considered for reopening for pedestrians and bicyclists? It would be a great short cut to Woodacre, save the climb over White Hill. Cost? Tremendous!

SOME LOCALS IN THE NEWS -

and we don't know when -

Marin Independent Journal

?

Marin Hunters Bag 8 Deer In One Hour

Eight Marin hunters set what must have been some kind of record when they bagged eight deer in the space of one hour on the opening day of deer season. Each member of the party had nailed himself a big buck by the time the clock had gone around once.

And we almost didn't get a "Center Boulevard"

Independent Journal December 6, 1957

Fairfax May Have To Drop Road Extension

Fairfax may have to abandon the idea of extending Center Boulevard through the Max Friedman property to Broadway, unless some other less costly route is worked out, Fairfax City Atty. Wallace S. Myers said last night.

Yesterday, Marin Superior Court Judge Jordan L. Martinelli ruled that a 55 foot strip which the city wants through Friedman's land is worth \$41,170. Lawrence A Cowen, attorney for Friedman, described the verdict as "a fair price." He said his client is satisfied.

Myers indicated the city could not pay that amount. "But Mr. Friedman has indicated he will negotiate with the city on an alternate route. We shall try to compromise by amicable agreement," said Myers. "Otherwise," Myers declared, "the city will have to abandon the idea."

The extension of Center boulevard to tie into Broadway would provide a second major route from San Anselmo to Fairfax, supplementing Sir Francis Drake boulevard.

The 55-foot strip which the city wants comprises slightly more than one acre.

Apparently a compromise was worked out for we now enjoy the extension of Broadway to San Anselmo via Center Boulevard.

Ambition is a great thing but it sure can get you into a lot of hard work.

The happy hunters were Ed Jory, Vic Vacarro, Lou Vaccaro, John Hicks, Adolf Bowman, Bob Bruce, Joe Bruce and Stan Camiccia.

Vic Vacarro, spokesman for the group, wouldn't reveal exactly where the hunters bagged their deer, calling the lucky location a "secret spot." He did say that it was in Modoc County and somewhere near Lookout.

MT&CC LLC

Marin Town and Country Club

Tue 10/12/2021 4:34 PM

To: Ben Berto <bberto@townoffairfax.org>; Ande Flower <flower@emcplanning.com>;

Dear Ben & Ande:

Thank you for the time on October 6th. we appreciate the candor of the conversations as well as the acknowledgement that something in front of the impending housing mandates is better for all of us. The next rounds will only increase our allotments of the RHNAs.

As discussed in our meeting, we are no fan of high rises in Fairfax. However, we would gladly take 100 units stacked on top of one another instead of laying them all down side by side and covering all the land. Ande's suggestion was 5 story buildings. This would allow the land to remain open and save our trees. We agree.

In my conversation with Ben yesterday' Ben suggested that the Town of Fairfax would like the MT&CC to house 350-450 units in up to 5 story configurations. I cut it in the middle at 400 units. My question is if we are really going to do this before the next allocation of RHNAs, how soon could Ande articulate design criteria to satisfy the state mandates so RFPs could be sent out?

Please recall our property has a 4" water line, origination of a 14" sewer trunk line with 5 laterals, gas and electricity. 23.5 acres flat with egress on the north and west.

Although we had never wanted to sell or put housing on our land, with Prop 19, SB 35, SB 8, SB 9, and SB 10; we realize we need to accommodate the state's house edict.

If the state's housing numbers need to be inflicted on all of us, it is in our best interest to move this along as quickly as possible before they realize we could accommodate so much more.

Michael Mackintosh

From: Marin Town and Country Club
Sent: Monday, October 4, 2021 4:13 PM
To: Ben Berto; Ande Flower
Subject: Re: mtg

Confirmed

From: Ben Berto <bberto@townoffairfax.org>
Sent: Monday, October 4, 2021 3:26 PM
To: Marin Town and Country Club; Ande Flower

Subject: mtg

When: Wednesday, October 6, 2021 9:00 AM-10:00 AM.

Where: Fairfax Childrens' Center

Michael

Confirming our conversation - this schedules you in person at the Children's Center at 9 am Wednesday. I also understand your family situation may require you to cancel.

Ben

Ben Berto

Director of Planning and Building Services Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

Ph. 415-458-2346

Email: bberto@townoffairfax.org

Fairfax Seniors

Marin Town and Country Club

Wed 10/13/2021 11:02 AM

To: Ben Berto <bberto@townoffairfax.org>; Ande Flower <flower@emcplanning.com>;

Dear Ben:

Although I am not a developer, I think this project could accommodate one of my wants with the right developer.

The incremental property tax difference between now and after 400 units are built is substantial. Possibly as large as a \$2,350,000.00 annual difference. This would allow for the Town of Fairfax to form a BID on just this property to subsidize some affordable senior housing for my tenants and local long term Fairfax residents. This is a way to protect our seniors in our community. All this can be achieved with a BID from the incremental property tax from this property.

Please share your thoughts.

Michael Mackintosh

MT&CC

Marin Town and Country Club

Fri 3/11/2022 7:16 PM

Sent Items

To: bcoler@townoffairfax.org <bcoler@townoffairfax.org>;

0 1 attachments (97 KB)

MTCCHousing.220311.pdf;

Dear Barbara:

I have been a pretty good sport over these last 18 years, considering all the difficulties thrown at me from the Town. The prior owner, Max Friedman, had to endure harassment from Fairfax for 59 years. I thought a new name, a new face, would change things.

Sometimes my presentation has reflected my anger or disappointment in the actions of the Town. To date I have not sued this town. My FOIAs have provided additional insight. In the past I solicited the FBI, State Attorney General, and Homeland Security when the Bomb was placed on my property. It was after the FBI contacted the Town, that a better relationship availed itself. I am grateful for the protection offered me and my tenants by our Police and Fire departments. Most of Town staff is great. There is no reason that the Town Council should want to hurt this property.

Please consider the opportunities presented in the attached letter. If the Town wants to buy my property, then come out and make an offer. Otherwise stop diminishing my property.

I hope upon reflection of the attached letter, you will reconsider your motion regarding my property.

Thank you

Michael Mackintosh

E-6

MARIN TOWN & COUNTRY CLUB

P.O. BOX 150870
SAN RAFAEL, CA 94915

mtcc@classactionlocator.com

February 14, 2022

Barbara Coler
Town Council member
Town of Fairfax
142 Bollnas Ave
Fairfax, CA 94930

RE: Taking of Entitlements

Dear Barbara:

I cite you personally due to your comment at the January 19th, Fairfax Town Council meeting where you directed Fairfax Town staff and your consultant Ande Flower of EMC Planning Group; to reduce the housing units the general public allotted to the Marin Town & Country Club, during this public process.

Prior to this in October, I asked how could the Town of Fairfax subjectively exclude my property from the Housing Element, when we are 492 RHNA units short in this cycle? I was invited to come in to discuss this issue with Town planner Ben Berto and Mr. Flower where they asked if I would allow 350 to 450 units. (400 units would be less than 20 units/acre) I agreed and requested to place my property into a BID so we could offer units to our local seniors and workers.

Recently, I spoke to our Chief of Police, Rico Tabaranza and our Fire Chief Jason Weber. I asked them if they would like a couple of units each of deed restricted affordable housing for their new cadet hires. This will allow their new hires to integrate into the community they will serve. Thus providing and holding on to our needed first responders.

Additional MT&CC entitlements include:

We have 23.5 acres of flat land above the 500-year flood plain, supported by FEMA Lidar

We are within 500 feet of a major traffic corridor, Sir Francis Drake Blvd (Please review SB 35)

We have a 14" RVSD sewer line originating on our property designed for 8,000 housing units

We have a 4" MMWD Water main

We have egress available at both ends of the property.

Please recall the Town of Fairfax paid Ande Flower and the EMC Planning Group to create a public interface through a website, public workshops, and public discourse on agenda items during the Fairfax Town Council meetings. All of this was in an attempt to solicit public input where to put our required 492 RHNA units. The Town represented that over 6,000 people weighed in on the website, Fairfax speaks, where to place the required housing. It was cited that 84% of the solicited input suggested 166 units at the Marin Town & Country Club. This is even more remarkable when you take into account the information the Town placed in your "Site 14:" analysis.

The removal of these housing allotments/entitlements, allocated by the community to this property, provides recourse available to this stakeholder due to your direction. These entitlements are what encourage builders of housing to work with us. Each housing entitlement taken away from this flat sunny parcel in the middle of down town Fairfax is worth in excess of \$1,500,000.00.

We are providing this information so that you can do the right thing and change course. Insurance companies indemnify negligence, not intentional acts. In today's environment it is very common for an insurance company to file a Declaratory Relief action to separate the insured from the indemnification, otherwise available. Insurance companies do not want to pay for claims they do not have to. We are also inviting our Attorney General to review this latest action.

As the largest underperforming asset in our town, you would think the Town Council would want to work with the stakeholders. History illustrates that the very opposite has happened with the Town Council squelching every proposal. The Town Council's actions towards this property are a good example of why the State has brought forth SB 8, SB 9, and SB 10.

The Fairfax Town Council has diminished this property since 1943. You can continue this unmerited attack, but ask yourself; to what end? Instead of being part of the problem, we invite you to be part of the solution. Please show us your creative thinking and build a positive aura so others can see how beautiful Fairfax is. I was married in Fairfax 43 years ago. I love this property.

With all of us working together, with the best piece of property in the world, we can create a remarkable sustaining asset benefiting the entire community.

Thank you

A handwritten signature in black ink, appearing to read 'Michael Mackintosh', with a long horizontal flourish extending to the right.

Michael Mackintosh

CC:

Meeting

Marin Town and Country Club

Thu 8/11/2022 2:35 PM

To: Heather Abrams <habrams@townoffairfax.org>;

Dear Heather:

As the town Manager and the largest underperforming asset in the community and/or town; it would greatly benefit the Town, our community, if we could find a path to work together. Since 1943 the Town of Fairfax has been at odds with this property. Hatfield // McCoy, after so many generations there is no reason or explanation for the continuance of unnecessary hostilities.

A collaborative effort could truly build something great, the nonpareil. Something that we don't just drive by and say I built that, but something that invites us to stop and image the future that future generations can effectuate because we got something done.

I invite you to the place and time of your choosing. We can share a meal, where we can talk and listen.

The fact that SB 9, invalidated the housing restrictions on my property, when it was down zoned by referendum; coupled with a sewer line designed for almost 8,000 units laying close to dormant that bifurcates my meadow; a 4" waterline in place; FEMA LIDAR supported above the 500-year flood plain; and a willing stakeholder; Fairfax cannot continue to ignore this site.

The table is set, the silver is polished, the crystal is cleaned, the menu is opened, the wine is poured, our accord is the dessert.

I look forward to the company.

Michael Mackintosh

Re: Meeting

Marin Town and Country Club

Tue 8/23/2022 12:08 PM

To: Heather Abrams <habrams@townoffairfax.org>;

Dear Heather:

I hope your trip was enjoyable. Is there a time convenient with your schedule to go out to lunch or dinner?

I improperly cited just SB 9, where it should have been SB 8 & SB 9; where reducing certain housing opportunities is prohibitive. I believe that I provided this to Barbara Coler some time ago. If not, please enjoy.

Government Code 66300(b)(1)(a) states that if a City has not produced its RHNA; they shall not change, "the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018."

For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing."

So, because downzoning is illegal, it cannot be done by referendum or initiative. As a general matter, acts that would be illegal if taken by the legislative body, are also beyond the power of the people to adopt by initiative or referendum. For example, a proposed initiative measure which, if approved, would result in altering the terms of private parties cannot be adopted by initiative. (See e.g., *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805.) Other examples of illegal acts arise in the context of development approvals, i.e., that a measure would result in a "taking" or would create a land use scheme that is inconsistent with the general plan or state land use laws. Two cases illustrating this are *deBottari v. City Council* (1985) 171 Cal.App.3d 1204 and *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

Government Code 66300 (b)(1)(a) states that even by referendum property cannot be down zoned from the zoning in place on January 1, 2018. Our property was down zoned by Initiative in 1972. Case law, prior to the passage of SB 8 & SB 9, but applies, says that an initiative or referendum cannot do something that a city is not allowed to do, (*past, present or future*) in this case that would be down zoning to thwart housing. (*RH)

Interesting times coupled with moving mandates and ephemeral entitlements, should be inviting to collaborative efforts.

Thank you for your considerations

Michael Mackintosh

From: Heather Abrams <habrams@townoffairfax.org>
Sent: Thursday, August 18, 2022 7:06 AM
To: Marin Town and Country Club
Subject: RE: Meeting

Hi Michael,

I'm out of town, but happy to meet via Zoom. Please be aware, I don't know of any nexus with SB9 and the previous voter's initiative regarding zoning on your property. A vote of the people is required to change the zoning on your property, it is not up to the Town Manager or the Town Council. If you have a legal opinion stating otherwise, the Town Attorney would be happy to consider it.

Regards,

Heather Abrams

Town of Fairfax | Town Manager

www.townoffairfax.org

From: Marin Town and Country Club <mtcc@classactionlocator.com>
Sent: Thursday, August 11, 2022 2:35 PM
To: Heather Abrams <habrams@townoffairfax.org>
Subject: Meeting

Dear Heather:

As the town Manager and the largest underperforming asset in the community and/or town; it would greatly benefit the Town, our community, if we could find a path to work together. Since 1943 the Town of Fairfax has been at odds with this property. Hatfield // McCoy, after so many generations there is no reason or explanation for the continuance of unnecessary hostilities.

A collaborative effort could truly build something great, the nonpareil. Something that we don't just drive by and say I built that, but something that invites us to stop and image the future that future generations can effectuate because we got something done.

I invite you to the place and time of your choosing. We can share a meal, where we can talk and listen.

The fact that SB 9, invalidated the housing restrictions on my property, when it was down zoned by referendum; coupled with a sewer line designed for almost 8,000 units laying close to dormant that bifurcates my meadow; a 4" waterline in place; FEMA LIDAR supported above the 500-year flood plain; and a willing stakeholder; Fairfax cannot continue to ignore this site.

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I look forward to the company.


Michael Mackintosh

Fairfax NOP Housing

Marin Town and Country Club

Fri 9/23/2022 5:55 PM

To: Heather Abrams <habrams@townoffairfax.org>;

 1 attachments (102 KB)

MTCCHousingNOP.220923.pdf;

Dear Heather:

I have been reaching out to you in earnest for some time. Please set aside some time where I can answer any and all questions about my property and its eligibility to be included in the current Housing Element.

Please accept my offer to tour the property.

Michael Mackintosh

MARIN TOWN & COUNTRY CLUB

P.O. BOX 150870
SAN RAFAEL, CA 94915

mtcc@classactionlocator.com

Heather Abrams
Town Manager
Town of Fairfax
142 Bollnas Rd.
Fairfax, California 94930

September 22, 2022

RE: Notice of Preparation (NOP)
Programmatic EIR
EIR / CEQA

Dear Heather:

At the last meeting discussing the Housing Element, possibly August 31, there was an open discussion inviting Public comment. Specifically, it addressed the NOP for the EIR regarding the overall impact of the collective sites chosen to be included in the upcoming Housing Element. Please recall these sites listed on the tentative Inventory Site List illustrate the distribution of the required housing allotments, RHNA's.

In that meeting I expressed concerns that the known anticipated financial impacts to the community, regarding specific sites, should be included in the EIR. The gentleman from EMC said that he was "only" looking for biodiversity issues. I believe this intentional act to exclude relevant information is misfeasance. It certainly supports the arbitrary and subjective approach the Town employs towards the allocation of housing opportunities that otherwise should be available to the general community.

The reason we should employ a more objective standard, it better addresses the inequity different stakeholders have endured from this Town over the last 79 years. An objective standard would include financial feasibility comparisons between the different sites. This approach would also ensure the contemplated sites actually get built.

When any State, County, Agency, or Town, knowingly withholds readily available facts that a reasonable person would rely on before foisting their decision, it provides legal standing for all disenfranchised individuals. The entire Town has standing due to the future financial impacts withheld by your process.

To determine which agencies, need to be consulted, CEQA asks; *What resources are affected by the (a) Project?* Utilities are resources, they need to be included.

A site comparison financial feasibility report should be presented within the Fairfax Housing Element.

If one site is flat and two of your sites have an incline exceeding 49% , what is the public exposure to the costs to be incurred to provide roads, utilities, Fire Safety Egress and Fire Water suppression to the incline? Please recall the recent decision by MMWD not to provide water to the Martha Company due to access and elevation.

If one site has all the required sewage and water capacity and another site does not; will the public be advised that a future Bond of maybe \$25m will be foisted upon the public to pay for this unnecessary expense, because of choosing one site without utilities over another with utilities?

CEQA 65864 Policy

c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

If costs of a project exceed the anticipated return on investment, no building will occur. In the past these additional costs would render a project infeasible. It was a way Towns could provide sites, knowing nothing will ever be built there. The HCD has financial ramifications to address such avoidance.

A Financial Feasibility report is required and a quantitative determination comparing different sites containing different utilities; is a resource that must be provided in the Housing Element when known. If these real costs are not provided, how could the public make an informed decision?

Please accept the above as informational, to encourage compliance within the Housing Element. An objective process benefits all parties. Arbitrary and subjective approaches only serve to expose our Town to legal claims and continue the inequity objectivity tries to tamper down.

Thank you


Michael Mackintosh

Some Interested parties that should have input for compliance:

California:

Environmental Protection Agency	Air Resources Board
Regional Water Quality Control Board	State Transportation Agency
Highway Patrol	Department of Fish and Wildlife
Department of Parks and Recreation	

U.S:

Army Corps of Engineers

Marin:

Flood District 9	Transportation Authority of Marin
MMWD	RVSD
PG&E	Golden Gate Bridge Highway & Transportation District

Fw: site inventory list

Marin Town and Country Club

Wed 9/28/2022 3:44 PM

To: Heather Abrams <habrams@townoffairfax.org>;

27 attachments (17 MB)

1_fairfax_zoning_Map.pdf; 2_Fairfax_Site_Inventory_list.pdf; 3_topo, 10 olema rd.pdf; 4_Parcel Detail, 10 olema rd.pdf; 5_Topo, school street.pdf; 6_Parcel Detail, 6 school street.pdf.pdf; 7_topo, deer park villa.pdf; 8_Parcel Detail, Deer Park Villa.pdf; 9_topo, eastside commercial (12 Parcels).pdf; 10_topo, eastside commercial over view.pdf; 11_Parcel Detail, 1573 sir francis drake.pdf; 12_Parcel Detail, 1599 sir francis drake.pdf; 13_topo, 711 center.pdf; 14_Parcel Detail, 711 center.pdf; 15_topo, 137 mono ave.pdf; 16_Parcel Detail, 137 mono ave.pdf; 17_topo, 141 bolinas.pdf; 18_Parcel Detail, 141 bolinas.pdf; 19_topo, 615 oak manor.pdf; 20_Parcel Detail, 615 oak manor.pdf; 21_topo, marinda heights .pdf; 22_Parcel Detail, marinda part 1.pdf; 23_Parcel Detail, marinda part 2.pdf; 24_Parcel Detail, marinda part 3.pdf; 25_Topo, MT&CC.pdf; 26_Parcel Detail, mtcc pt 1.pdf; 27_Parcel Detail, mtcc pt 2.pdf;

Dear Heather:

As pointed out in my letter of September 22, under separate cover would follow this attached information.

At the last planning meeting I patiently waited to raise my hand to comment (add the following information), something happened, and the Zoom meeting was closed. The next Day Rob Jansen from the Planning Commission called to apologize. Somehow, they saw my hand raised, an apology was offered. So please include these in your comments.

After you read the following, maybe the Town should reconsider their arbitrary position excluding the only large, utility in place, buildable site, in the Town of Fairfax: The Marin Town & Country Club (MT&CC LLC).

As the Town Manager you have a requirement to endorse the information in the Fairfax Housing Element provided to the HCD.

I continue and again here enclosed is an invitation to meet, to open a dialog between you, the Town Council, and the Planning Commission. The lack of dialog has required contacting the HCD.

Please reconsider your position. Respond with some sort of dialog and include the MT&CC in the current Housing Element. Without the MT&CC included, your Housing Element is deficient.

Thank you for your considerations.

Michael Mackintosh

Town of Fairfax Site Inventory List Information:

- 1- Town of Fairfax Zoning Map
- 2- Site Inventory List For Fairfax
 - ~total of 498 homes planned on 163.36 acres
 - Please review your tallies. Our version's numbers do not add up.
- 3- 10 Olema Rd Topo Map
 - The entirety of this site is in the Floodplain, with Flood Insurance required. Average Slope 17.93%.
 - Rendering this property not a priority site.
- 4- 10 Olema Rd Parcel Information (31 homes planned)
- 5- 6 School Street Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 13.59%.
 - At 1.8 acres, your proposal with no setback, is approx. 80units/acre. Buildable site.
- 6- 6 School Street Parcel Information (160 homes planned)
- 7- Deer Park Villa Topo Map
 - Outside the Floodplain. Average Slope 4.69. Buildable site.
- 8- Deer Park Villa Parcel Information (27 homes planned)
- 9- East Side Commercial site Topo Map (12 Parcels, and 23 homes total planned)
 - This area contains 12 parcels. Slope approx. 3-6%
 - This area has commercial buildings. Do your plans contemplate demolishing all preexisting structures?
- 10- East Side Commercial Site overview Topo
- 11- East Side Commercial, Parcel Information for 1573 Sir Francis Drake (3 homes planned)
- 12- East Side Commercial, Parcel Information for 1599 Sir Francis Drake (2 homes planned)
- 13- 711 Center Blvd (FairAnselm Site) Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 17.97%.
 - The buildings abruptly border the creek and are cantilevered over the lands of the MT&CC, APN:002-131-11.
 - Any new building will not be allowed to cantilever over the creek. The "temporary maintenance easement" extended by the MT&CC will not be extended.
- 14- 711 Center Blvd (FairAnselm Site) Parcel Information (27 homes planned)
- 15- 137 Mono Ave (FairAnselm Site) Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 8.84%.
- 16- 137 Mono Ave (FairAnselm Site) Parcel Information (3 homes planned)
- 17- 141 Bolinas Ave (Central Commercial Site) Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 6.36%.
- 18- 141 Bolinas Ave (Central Commercial Site) Parcel Information (2 homes planned)
- 19- 615 Oak Manor Dr. (50 acre Site) Topo Map
 - According to County Topo maps, part is listed in the Floodplain, with Flood Insurance required. This should be contested.
 - Large site average slope 49.12%. Please see prior comments "Letter to Heather Abrams, 9/22/2022".
 - Unbuildable.
- 20- 615 Oak Manor Dr. (50 acre Site) Parcel Information (40 homes planned)
- 21- Marinda Heights Site (currently no address) Topo map
 - Large site average slope 50.04%. Please see prior comments "Letter to Heather Abrams, 9/22/2022".
 - Unbuildable.
- 22- Marinda Heights Site; 001- 251- 31 Parcel Information (0 homes planned)
- 23- Marinda Heights Site; 001- 150- 12 Parcel Information (25 homes planned)
- 24- Marinda Heights Site; 001- 160- 09- Parcel Information (0 homes planned)
- 25- MT&CC Topo map
 - According to County Topo maps, part is incorrectly listed in the Floodplain, with Flood Insurance required.
 - Please see FEMA verified, these parcels are at the 500-year Floodplain requiring no Flood Insurance.
 - Large site average slope 9.15%. Please see prior comments "Letter to Heather Abrams, 9/22/2022".
 - Buildable 23.5 flat acres.
- 26- MT&CC; 002- 131- 11 Parcel Information (0 homes planned)
- 27- MT&CC; 002- 131- 12 Parcel Information (0 homes planned)

MARIN TOWN & COUNTRY CLUB

P.O. BOX 150870

SAN RAFAEL, CA 94915

mtcc@classactionlocator.com

January 21, 2023

Michele Gardner
Town of Fairfax town Clerk
142 Bolinas Rd
Fairfax, CA 94930

RE: FOIA (#6)
California Sunshine request (CGC 6250-6270)
"Fairfax Speaks" (including any and all derivations of this name and website)
Dates of Inquires (1/1/2020 – 1/31/2023)
Marin Town & Country Club, aka Country Club, MT&CC, etc

Dear Ms. Gardner:

Thank you again for all your continued assistance.

Attached please find our FOIA and California Sunshine request pertaining to Town of Fairfax public outreach and data collection through the website Fairfax Speaks (including any and all derivations to this name and website), Fairfax Housing Element, BMC, Ande Flower, etc..

Please recall during Council meetings including but not limited to January 19, 2022; the Town of Fairfax represented that Fairfax Speaks had over 6,000 unique inquiries. The input from these inquiries garnered from the public suggested and determined the allocation and location of the required 490 RHNA, units. Further these inquiries allocated specific housing units to different sites. These sites included the Marin Town & Country Club.

Pursuant to the Freedom of information Act, (FOIA) and California Sunshine (Code 6250-6270); We hereby request full all-inclusive disclosure of the described herein, above, and below, documents/information for inspection and copying: Any and all, but not limit to, supporting: documents, drafts, maps, utility maps, fire maps, water/flood maps, emails (to and from in & out boxes official as well as personal email accounts), notes, studies (including Feasibility, Circulation etc..), memo(s), reports (Staff, Consultant, department, etc.), EIR, NOP EIR, EIR exemptions, CEQA and CEQA exemptions, spreadsheets, public input, correspondence, files, etc. This is a very broad request, so it should be interpreted as being all inclusive, including but not limited to anything related or discussed by individual Council Member(s) and/or Council member(s) and/or the Town of Fairfax and/or Michele Gardner and/or Town clerk and/or departments and/or Council and/or consultants and/or individuals, etc.. Please include all Staff, Consultants, Groups, individuals, etc..

Requested dates of FOIA/Sunshine: (1/1/2020 – 1/31/2023))

Please include, but not limited to:

- 1) All individuals/consultants/entities/town staff/Council members/etc. who worked on Fairfax Speaks
- 2) All individuals/consultants/entities/town staff/Council members/etc. who worked on Fairfax Speaks' creation
- 3) All individuals/consultants/entities/town staff/Council members/etc. who maintained the website for Fairfax speaks

FOIA Fairfax Speaks

Page : two

- 4) All individuals/consultants/entities/town staff/Council members/etc. who compiled data for Fairfax Speaks
- 5) All individuals/consultants/entities/town staff/Council members/etc. who had access to the(se) database/spreadsheet/files etc.. containing information identifying the inquiries and/or input to Fairfax Speaks
- 6) All individuals/consultants/entities/town staff/Council members/etc. who made copies of the(se) database/spreadsheet/files etc.. containing information identifying the inquiries and/or input to Fairfax Speaks
- 7) All individuals/consultants/entities/town staff/Council members/etc. who received and/or requested copies of the(se) database/spreadsheet/files etc.. containing information identifying the inquiries and/or input to Fairfax Speaks
- 8) Please provide copy of all these database/spreadsheet/files etc.
- 9) Was this information propagated or used to create additional lists/database/spreadsheets/etc..?
- 10) If this information was propagated or used to create additional list/database/spreadsheets/etc. please provide copy.
- 11) Was any of this information provided to HCD?
- 12) Please identify any and all information regarding Fairfax Speaks shared, provided, and/or discussed with HCD
- 13) Please provide copy of any and all information regarding Fairfax Speaks shared, provided, and/or discussed with HCD
- 14) How is the Fairfax Speaks information stored and/or compiled?
- 15) Where is the Fairfax Speaks information stored?
- 16) Where was this information stored and/or compiled?
- 17) Was there data entry involved with this information?
- 18) Who did the data entry?
- 19) Why was Fairfax Speaks shut down?
- 20) Was any effort made to reach out to these people who made inquires/input to Fairfax Speaks?
- 21) Please provide copy of any and all information and/or correspondence regarding this effort to reach out to these people
- 22) Please provide all information and/or correspondence received from this effort
- 23) What did Fairfax pay to create Fairfax Speaks?
- 24) What did Fairfax pay to maintain Fairfax Speaks?
- 25) What did Fairfax pay to cloister and/or close down Fairfax Speaks?
- 26) What is the total Fairfax paid towards Fairfax Speaks?
- 27) How many inquires/inputs supported placing housing at the Marin Town & Country Club and/or any other derivation of MT&CC's name?
- 28) What was the total number of housing units allocated to the Marin Town & Country Club and/or any other derivation of MT&CC's name?
- 29) What was the largest collective number of housing units allocated to the Marin Town & Country Club and/or any other derivation of MT&CC's name?
- 30) Was a feasibility report considered or created regarding the housing allocation identified on Fairfax Speaks?
- 31) Please provide copy and all related information as identified above in #30.
- 32) Was an EIR or partial or Draft EIR or Notice of Preparation (NOP) or Programmatic EIR, report considered or created regarding the housing allocation identified on Fairfax Speaks?
- 33) Please provide copy and all related information as identified above in #32.

- 34) Was a CEQA or partial or Draft CEQA report considered or created regarding the housing allocation identified on Fairfax Speaks?
- 35) Please provide copy and all related information as identified above in #34.
- 36) Incorporating (#27, #28, #29, #30, #32, #33) Was HCD, RVSD, RVFD, FFPD, LAFCO, MMWD, PG&E, Flood District #9, TAM, and/or MTA, consulted as to impacts?
- 37) Incorporating (#36) Please provide all inquires and information sent and received as identified in our introduction.

If an attorney work product is alleged, (for opinions from your counsel and/or others) please recall the expense of public funds were used to create these opinions. Therefore, they must still be identified by subject, author, and date. Only the specific language may be withheld. This will allow us to file an administrative appeal if we so choose.

As the FOIA requires, please release any and all reasonably segregable non-exempt portions of documents as they are compiled to permit us to reach an intelligent and informed decision whether or not to file an administrative appeal for any denied material. Please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

Please notify us in advance of incurring \$200.00 in photocopying costs.

To expedite the release of the requested documents (information), please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed.

If you have any questions regarding the identity of the records, their location, the scope of the request, format of this request, or any other matters, please email us or call us at (415) 925-1518. We look forward to receiving your response within the twenty-day statutory time period.

Hopefully these public documents are readily available.

Please be advised that this is a formal request that further decisions will rely on.

Therefore, any and all material not forthcoming and/or not provided with this request shall be barred from an affirmative defense that the Town of Fairfax may try to employ. In case there is any question about the enforcement of this request, please review your own similar language on items to be heard on Town of Fairfax Agendized Items.

Thank you for your prompt attention to this matter,



Michael Mackintosh

MARIN TOWN & COUNTRY CLUB

P.O. BOX 150870

SAN RAFAEL, CA 94915

mtcc@classactionlocator.com

January 23, 2023

Michele Gardner
Town of Fairfax town Clerk
142 Bolinas Rd
Fairfax, CA 94930

RE: FOIA (#7)
California Sunshine request (CGC 6250-6270)
Department of Housing and Community Development (HCD)
Association of Bay Area Governments (ABAG)
Dates of Inquires (1/1/2015 – 1/31/2023)
Marin Town & Country Club, aka Country Club, MT&CC, etc

Dear Ms. Gardner:

Thank you again for all your continued assistance. We appreciate your attention to detail.

Attached please find our FOIA and California Sunshine request pertaining to the Marin Town & Country Club, Town of Fairfax, Fairfax Housing Element, ABAG, and HCD.

Recently it has come to our attention that the Town of Fairfax and their consultants and interim Planning director have reached out and communicated with the HCD. More specifically it was learned that the Marin Town & Country Club along with our zoning was subject of this conversation.

Pursuant to the Freedom of Information Act, (FOIA) and California Sunshine (Code 6250-6270); We hereby request full all-inclusive disclosure of the described herein, above, and below, documents/information, for inspection and copying: Any and all, but not limit to, supporting: documents, drafts, maps, utility maps, fire maps, water/flood maps, emails (to and from in & out boxes official as well as personal email accounts), notes, conversations, studies (including Feasibility, Circulation etc.), memo(s), reports (Staff, Consultant, department, etc.), EIR, NOP EIR, EIR exemptions, CEQA and CEQA exemptions, spreadsheets, public input, correspondence, files, etc. This is a very broad request, so it should be interpreted as being all inclusive, including but not limited to anything related or discussed by individual Council Member(s) and/or Council member(s) and/or the Town of Fairfax and/or Michele Gardner and/or Town clerk and/or departments and/or Council and/or consultants and/or individuals, etc.. Please include all Staff, Consultants, Groups, individuals, etc..

Requested dates of FOIA/Sunshine: (1/1/2015 – 1/31/2023))

Please include, but not limited to:

- 1) Any and all communications with HCD, discussing zoning by Initiative
- 2) Any and all communications with HCD, discussing zoning by Referendum
- 3) Any and all communications with HCD, regarding zoning by/with public input
- 4) Any and all information Fairfax has compiled regarding zoning by Initiative
- 5) Any and all information Fairfax has compiled regarding zoning by Referendum
- 6) Any and all information Fairfax has compiled regarding zoning by/with public input

- 7) Any and all communications with ABAG, discussing zoning by Initiative
- 8) Any and all communications with ABAG, discussing zoning by Referendum
- 9) Any and all communications with ABAG, regarding zoning by/with public input
- 10) Please provide copy of any and all Housing Element Sites Inventory form(s), submitted.
- 11) Please provide copy of any and all Housing Element Sites Inventory form(s), accepted.
- 12) Any and all communications with HCD, pertaining to the 6th cycle, regarding the Marin Town & country Club
- 13) Any and all communications with ABAG, pertaining to the 6th cycle, regarding the Marin Town & Country Club

HCD requires Fairfax to provide permitting for 490 units in our current Housing Element.

- 14) Please provide your financial feasibility report on providing Sewage to your identified and/or considered housing sites.
- 15) Please provide your financial feasibility report on providing Gas to your identified and/or considered housing sites.
- 16) Please provide your financial feasibility report on providing Water to your identified and/or considered housing sites.
- 17) Please provide your financial feasibility report on providing Electricity to your identified and/or considered housing sites.
- 18) Please provide your financial feasibility report and/or financial impact on excluding housing at the Marin Town & Country Club; including but not limited to utilities.
- 19) Please provide your financial feasibility report and/or financial impact on excluding housing at the Marin Town & Country Club; including but not limited to roads and infrastructure upgrades.
- 20) The Marin Town & Country Club currently has a 14" sewer trunk line, electricity coming in from two locations, a 4' water line (150' from 8" water line); please provide estimated additional expenses to bring utilities to and through the different neighborhoods if the Marin Town & Country Club is excluded from the current Housing Element.
- 21) Please identify and provide copy of any and all criteria the Town of Fairfax used to exclude the Marin Town & Country Club from the Housing element.
- 22) What is the additional traffic impact to the individual neighborhoods excluding housing at the Marin Town & Country Club?
- 23) Adding 490 housing units to the different neighborhoods of Fairfax will increase congestion. Their streets are small and, in many places, cannot accommodate two-way traffic. Please provide your safety plans including fire egress.
- 24) Adding 490 housing units to the different neighborhoods of Fairfax will increase congestion. Their streets are small and, in many places, cannot accommodate two-way traffic. Please provide your studies illustrating increased fire evacuation times from neighborhoods if housing is not put at the Marin Town & Country Club.

If an attorney work product is alleged, (for opinions from your counsel and/or others) please recall the expense of public funds were used to create these opinions. Therefore, they must still be identified by subject, author, and date. Only the specific language may be withheld. This will allow us to file an administrative appeal if we so choose.

As the FOIA requires, please release any and all reasonably segregable non-exempt portions of documents as they are compiled to permit us to reach an intelligent and informed decision whether or not to file an administrative appeal for any denied material. Please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

Please notify us in advance of incurring \$200.00 in photocopying costs.

To expedite the release of the requested documents (information), please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed.

If you have any questions regarding the identity of the records, their location, the scope of the request, format of this request, or any other matters, please email us or call us at (415) 925-1518. We look forward to receiving your response within the twenty-day statutory time period.

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Please be advised that this is a formal request that further decisions will rely on.

Therefore, any and all material not forthcoming and/or not provided with this request shall be barred from an affirmative defense that the Town of Fairfax may try to employ. In case there is any question about the enforcement of this request, please review your own similar language on items to be heard on Town of Fairfax Agendized Items.

Thank you for your prompt attention to this matter,



Michael Mackintosh

February 1, Council Meeting , Consent Calendar containing False narrative

Marin Town and Country Club

Wed 2/1/2023 3:51 PM

To: mgardner@townoffairfax.org <mgardner@townoffairfax.org>; habrams@townoffairfax.org <habrams@townoffairfax.org>;
cc: bcoler@townoffairfax.org <bcoler@townoffairfax.org>; ccutrano@townoffairfax.org <ccutrano@townoffairfax.org>;
shellman@townoffairfax.org <shellman@townoffairfax.org>; rgoddard@townoffairfax.org <rgoddard@townoffairfax.org>;
backerman@townoffairfax.org <backerman@townoffairfax.org>; lblash@townoffairfax.org <lblash@townoffairfax.org>;
dwoltering@townoffairfax.org <dwoltering@townoffairfax.org>; janet.coleson@bbklaw.com <janet.coleson@bbklaw.com>;

Dear Michele:

Enclosed is tonight's Consent Calendar. It contains 25 items. Many are major issues that financially and culturally impact our town. I think it wrong that the Town is not confident enough to share with the general public how they are spending the public's money.

Most offensive to us (Item #17), is the false narrative of the conversation Fairfax and their consultants had with HCD. I am prepared to provide testimony as to the false narrative provided within the Staff Report. Please recall the Town has had 8 years to submit a draft report to HCD. Over \$1.2m was spent. It is wrong to try to sweep this under the rug. It is an intentional act, if knowingly (and you and the Town are hereby advised) the Town continues to push a materially false narrative.

The Town Council can pull anything they so choose from the Consent Agenda Calendar. Precluding public input from an 8 year failed \$1.2 million project when testimony is offered to refute the furthering of a false narrative; hosts many violations.

Thank you

Michael Mackintosh

CONSENT CALENDAR (10 minutes approximately)

The Council may approve the entire consent calendar with one action (vote). In the alternative, items on the Consent Calendar may be removed by any Town Council or staff member for separate discussion and vote. The opportunity for public comment on consent calendar items will occur prior to the Town Council's vote on the Consent Calendar.

2. Receive Financial Statement and Disbursement Reports for November/December 2022 –
Finance Director Michael Vivrette

Please pull this from the Consent Calendar.

Please provide reasoning to not allow public review of how you are spending the public money.

3. Receive Treasurer's Report for Quarter ending December 31, 2022 – Town Treasurer Janet Garvin

4. Approve minutes for Town Council meetings – Town Clerk Michele Gardner

5. Receive written report on Councilmembers' assignments, committees, and activities in December and January – Town Clerk Michele Gardner

Please pull this from the Consent Calendar.

Please explain why additional meetings with HCD are not included here, in contradiction with the Housing Update also on Consent?.

6. Receive report on Town Pavement Condition Index (PCI) Report, known as PTAP-23 – Public Works Director Loren Umbertis

7. Receive Climate Action update – Climate Action Coordinator Sean Youra

8. Receive Recreation and Community Services Department Quarterly Financial Report for October to December 2022– Recreation Manager Anne Mannes

9. Receive update on Parklets and live music – Town Manager Heather Abrams and Interim Planning and Building Services Director David Woltering

10. Adopt a Resolution Terminating the Local Emergency Declared March 30, 2022 at or near 195 Pine Drive, making a Supplemental Budget Appropriation, Accepting the Work as Complete and Directing the Issuance of a Notice of Completion for the Repairs Made – Public Works Director Loren Umbertis

Please pull this from the Consent Calendar.

Please provide opportunity for the general public to understand why permits should be granted and how will Fairfax be reimbursed for almost \$500k paid to stabilize this private project?.

11. Adopt Resolution to Retitle and Amend the Classification and Corresponding Specification and Pay Range of Deputy Town Clerk to Deputy Town Clerk / Administrative Analyst – Town Manager Heather Abrams

Please pull this from the Consent Calendar.

Please provide reasoning to not allow public review of how you are spending the public money.

12. Approve adjustment to the Climate Action Coordinator pay range – Town Manager Heather Abrams

13. Adopt Resolution Amending Annual Salary Schedule for Fiscal Year 2022-23 to reflect Salary Range Adjustments for the Climate Action Coordinator and Deputy Town Clerk/Administrative Analyst positions – Town Manager Heather Abrams

14. Adopt a resolution to change the regular monthly Planning Commission meeting date from the 4th Thursday of each month to the 3rd Thursday of each month – Interim Planning and Building Services Director David Woltering, Principal Planner Linda Neal

15. Reappoint Cindy Swift to another term on the Planning Commission – Town Clerk Michele Gardner

16. Reappoint PJ Feffer to another term on the Planning Commission – Town Clerk Michele Gardner

17. Receive informational update regarding the Sixth Cycle Housing Element Update Project – Interim Planning and Building Services Director David Woltering

Please pull this from the Consent Calendar.

This is the largest fiscal and cultural impact to the town in decades. In addition I will provide testimony to the false information included in the staff report regarding the conversations with HCD.

18. Adopt Resolution Authorizing the Town Manager to Execute an Amended and Restated Agreement with 4Leaf Inc. for Contract Planner Services – Town Manager Heather Abrams

Please pull this from the Consent Calendar.

The public needs to know why Fairfax is hiring the third housing consultant firm(s). Fairfax has now wasted over \$1.2million where \$500k could have provided a completed Housing Element.

19. Adopt Resolution confirming and continuing the existence of a local emergency declared on January 5, 2023 – Town Manager Heather Abrams

20. Receive Information Related to Remote Participation in Public Meetings After February 28, 2023 – Town Manager Heather Abrams

21. Authorize the Town Manager to enter into an agreement with the Town of Ross to provide and receive occasional and intermittent police services during the period February 1, 2023 through June 30, 2023 – Town Manager Heather Abrams, Police Chief Rico Tabaranza

22. Adopt Proclamation Celebrating Black History Month – Mayor Cutrano

23. Adopt Proclamation of Gratitude for Public Works Crew during winter storms – Mayor Cutrano

24. Adopt Resolution Authorizing the Temporary Closure of Certain Streets and Portions thereof, to Allow a Little League Opening Day Parade on March 11, 2023, and approve sponsorship – Town Clerk

25. Adopt a resolution authorizing a supplemental appropriation of \$15,803 to cover unanticipated costs associated with 378 Scenic and 78 Wreden Road Repair and Rehabilitation Projects – Public Works Director Loren Umbertis

Fw: site inventory list

Marin Town and Country Club

Wed 4/26/2023 7:01 PM

To: habrams@townoffairfax.org <habrams@townoffairfax.org>;

📎 29 attachments (17 MB)

1_fairfax_zoning_Map.pdf; 2_Fairfax_Site_Inventory_list.pdf; 3_topo, 10 olema rd.pdf; 4_Parcel Detail, 10 olema rd.pdf; 5_Topo, school street.pdf; 6_Parcel Detail, 6 school street.pdf.pdf; 7_topo, deer park villa.pdf; 8_Parcel Detail, Deer Park Villa.pdf; 9_topo, eastside commercial (12 Parcels).pdf; 10_topo, eastside commercial over view.pdf; 11_Parcel Detail, 1573 sir francis drake.pdf; 12_Parcel Detail, 1599 sir francis drake.pdf; 13_topo, 711 center.pdf; 14_Parcel Detail, 711 center.pdf; 15_topo, 137 mono ave.pdf; 16_Parcel Detail, 137 mono ave.pdf; 17_topo, 141 bolinas.pdf; 18_Parcel Detail, 141 bolinas.pdf; 19_topo, 615 oak manor.pdf; 20_Parcel Detail, 615 oak manor.pdf; 21_topo, marinda heights .pdf; 22_Parcel Detail, marinda part 1.pdf; 23_Parcel Detail, marinda part 2.pdf; 24_Parcel Detail, marinda part 3.pdf; 25_Topo, MT&CC.pdf; 26_Parcel Detail, mtcc pt 1.pdf; 27_Parcel Detail, mtcc pt 2.pdf; MTCCHousingNOP2.220922.docx; MTCCHCDZoning.230124.pdf;

From: Marin Town and Country Club

Sent: Wednesday, April 26, 2023 6:55 PM

To: heather@townoffairfax.org

Cc: bcoler@townoffairfax.org; backerman@townoffairfax.org; shellman@townoffairfax.org; ccutrano@townoffairfax.org; lblash@townoffairfax.org; housing@townoffairfax.org; info@dyettandbhatia.com; dhorterrt@4leafinc.com; housing@doj.ca.gov

Subject: Fw: site inventory list

Dear Heather:

I did not see the attached emails and letter included in your comments for your last NOP. Please include this in your comments section for both the past and current NOP.

I will forward an updated "Comments" for your current NOP and General Housing Element. It would be misfeasance to exclude these. I also call out the changing format which precludes a reasonable person from readily observing the differences between presentations.

I especially bring to your attention our attached Housing NOP (220922) letter's comment on CEQA:

CEQA 65864 Policy

c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

If costs of a project exceed the anticipated return on investment, no building will occur. In the past these additional costs would render a project infeasible. It was a way Towns could provide sites, knowing nothing will ever be built there. The HCD has financial ramifications to address such avoidance.

A Financial Feasibility report is required and a quantitative determination comparing different sites containing different utilities; is a resource that must be provided in the Housing Element when known. If these real costs are not provided, how could the public make an informed decision?

Please recall the lands of the MT&CC are flat, they are above the 500-year flood plain, currently have with room to expand a 4" water line, and a 14" sewer trunk line that originates on our property. We believe our 14" sewer trunk line was built in 1922 for approximately 8,000 homes.

As for the continued false assumptions that the lands of the MT&CC cannot be included in your housing element, I call to your attention the attached letter from HCD to San Diego, dated June 10, 2022. Please recall that I have cited this letter at Council meetings as well as I and others have forwarded it to you. Again, the HCD has clearly stated that local Voter Zoning cannot Trump State Law. HCD included case law for your review.

Additionally, under separate cover, I provided case law that a General or Common Law Town cannot have contradictory laws.

When the Town first came to me, Fairfax suggested 350 - 450 homes on my property. Then a Town website was put up where 6,000 community comments allocated the MT&CC 161 housing units.

Please review and confirm that this time the comments are included and readily available for the general public and HCD's review.

Thank you

Michael Mackintosh

From: Marin Town and Country Club
Sent: Wednesday, September 28, 2022 3:44 PM
To: Heather Abrams
Subject: Fw: site inventory list

Dear Heather:

As pointed out in my letter of September 22, under separate cover would follow this attached information.

At the last planning meeting I patiently waited to raise my hand to comment (add the following information), something happened, and the Zoom meeting was closed. The next Day Rob Jansen from the Planning Commission called to apologize. Somehow, they saw my hand raised, an apology was offered. So please include these in your comments.

After you read the following, maybe the Town should reconsider their arbitrary position excluding the only large, utility in place, buildable site, in the Town of Fairfax: The Marin Town & Country Club (MT&CC LLC).

As the Town Manager you have a requirement to endorse the information in the Fairfax Housing Element provided to the HCD.

I continue and again here enclosed is an invitation to meet, to open a dialog between you, the Town Council, and the Planning Commission. The lack of dialog has required contacting the HCD.

Please reconsider your position. Respond with some sort of dialog and include the MT&CC in the current Housing Element. Without the MT&CC included, your Housing Element is deficient.

Thank you for your considerations.

Michael Mackintosh

Town of Fairfax Site Inventory List Information:

- 1- Town of Fairfax Zoning Map
- 2- Site Inventory List For Fairfax
 - ~total of 498 homes planned on 163.36 acres
 - Please review your tallies. Our version's numbers do not add up.
- 3- 10 Olema Rd Topo Map
 - The entirety of this site is in the Floodplain, with Flood Insurance required. Average Slope 17.93%.
 - Rendering this property not a priority site.
- 4- 10 Olema Rd Parcel Information (31 homes planned)
- 5- 6 School Street Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 13.59%.
 - At 1.8 acres, your proposal with no setback, is approx. 80units/acre. Buildable site.
- 6- 6 School Street Parcel Information (160 homes planned)
- 7- Deer Park Villa Topo Map
 - Outside the Floodplain. Average Slope 4.69. Buildable site.
- 8- Deer Park Villa Parcel Information (27 homes planned)
- 9- East Side Commercial site Topo Map (12 Parcels, and 23 homes total planned)
 - This area contains 12 parcels. Slope approx. 3-6%
 - This area has commercial buildings. Do your plans contemplate demolishing all preexisting structures?
- 10- East Side Commercial Site overview Topo
- 11- East Side Commercial, Parcel Information for 1573 Sir Francis Drake (3 homes planned)
- 12- East Side Commercial, Parcel Information for 1599 Sir Francis Drake (2 homes planned)
- 13- 711 Center Blvd (FairAnselm Site) Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 17.97%.
 - The buildings abruptly border the creek and are cantilevered over the lands of the MT&CC, APN:002-131-11.
 - Any new building will not be allowed to cantilever over the creek. The "temporary maintenance easement" extended by the MT&CC will not be extended.
- 14- 711 Center Blvd (FairAnselm Site) Parcel Information (27 homes planned)
- 15- 137 Mono Ave (FairAnselm Site) Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 8.84%.
- 16- 137 Mono Ave (FairAnselm Site) Parcel Information (3 homes planned)
- 17- 141 Bolinas Ave (Central Commercial Site) Topo Map
 - Part of this site is in the Floodplain, with Flood Insurance required. Average slope 6.36%.
- 18- 141 Bolinas Ave (Central Commercial Site) Parcel Information (2 homes planned)
- 19- 615 Oak Manor Dr. (50 acre Site) Topo Map
 - According to County Topo maps, part is listed in the Floodplain, with Flood Insurance required. This should be contested.
 - Large site average slope 49.12%. Please see prior comments "Letter to Heather Abrams, 9/22/2022".
 - Unbuildable.
- 20- 615 Oak Manor Dr. (50 acre Site) Parcel Information (40 homes planned)
- 21- Marinda Heights Site (currently no address) Topo map

Large site average slope 50.04%. Please see prior comments "Letter to Heather Abrams, 9/22/2022".
Unbuildable.

22- Marinda Heights Site; 001- 251- 31 Parcel Information (0 homes planned)

23- Marinda Heights Site; 001- 150- 12 Parcel Information (25 homes planned)

24- Marinda Heights Site; 001- 160- 09- Parcel Information (0 homes planned)

25- MT&CC Topo map

According to County Topo maps, part is incorrectly listed in the Floodplain, with Flood Insurance required.

Please see FEMA verified, these parcels are at the 500-year Floodplain requiring no Flood Insurance.

Large site average slope 9.15%. Please see prior comments "Letter to Heather Abrams, 9/22/2022".

Buildable 23.5 flat acres.

26- MT&CC; 002- 131- 11 Parcel Information (0 homes planned)

27- MT&CC; 002- 131- 12 Parcel Information (0 homes planned)

Comments for the NOP // Housing Element

Marin Town and Country Club

Fri 4/28/2023 4:15 PM

To: habrams@townoffairfax.org <habrams@townoffairfax.org>;

Cc: bcoler@townoffairfax.org <bcoler@townoffairfax.org>; backerman@townoffairfax.org <backerman@townoffairfax.org>; shellman@townoffairfax.org <shellman@townoffairfax.org>; lblash@townoffairfax.org <lblash@townoffairfax.org>; ccutrano@townoffairfax.org <ccutrano@townoffairfax.org>; info@dyettandbhatia.com <info@dyettandbhatia.com>; dhortert@4leafinc.com <dhortert@4leafinc.com>; mlockaby@townoffairfax.org <mlockaby@townoffairfax.org>; lneal@townoffairfax.org <lneal@townoffairfax.org>;

📎 1 attachments (76 KB)

site comparrison.xls;

Dear Heather:

Attached please find a spreadsheet (Entitled: Site Comparison) supporting that the Town of Fairfax is recycling parcels that were listed in prior Housing Elements and again they are being included in our current Housing Element. We call this to your attention as it illustrates the continued misfeasance and nonfeasance of the Town of Fairfax's Town Council as it relates to the Housing Element and public disclosure.

The attached spreadsheet illustrates 29 parcels that are included in our current Housing Element Public Review Draft, that were included in prior Housing Elements. These are highlighted in yellow for your convenience.

Undeveloped parcels included in prior Housing Elements have proven to be infeasible to develop due to the costs related to access, slope, and lack of utilities. On our current Housing Opportunity Site list, we have brought to your attention that Miranda Heights is a collective 50.2% and the Manor parcel is a collective 49.5%. HCD has already shared their reservations about including such steep parcels, contrary to what your consultant Andrew Hill publicly shared at our April 19th Housing Element NOP meeting.

In your new list the Town has out done itself by including APN #002-123-17 and APN #002-144-01. These slopes are 57.61% and 63.28% respectively. We ask, which illustrates your subjective approach, why was APN # 002-191-13, also Town owned property not included?

Please recall these three parcels are downhill from an unreinforced single lane road. The cost to develop would exceed any reasonable expectations. Therefore, the Town must have included these to fluff your RHNA with no real expectations that they will ever or could ever be developed.

These parcels, as well as 2600 Sir Francis Drake, Miranda Heights and Manor property, do not have infrastructure for any development.

I also feel it in bad form to re-zone our publicly paid for open space property which we have reserved for safety access to the Lands of MT&CC. Please recall APN #002-123-17, #002-144-01, and #002-191-13, are all adjacent to the MT&CC's 25 acres of flat land, located above the 500-year floodplain.

Furthermore, we call to your attention that the newly presented Housing Opportunity site list uses "Family Sur Names" in place of some street addresses and street addresses in other. This obfuscates the information so as to confuse and restrict peoples ability to comment. Even further you have no rhyme or reason to your sorting of APNs. They are not consecutive nor are they next to each other to illustrate adjacent parcels.

The Town continues to diminish the only viability for meaningful development, the MT&CC. We have a 14" sewer trunk line bifurcating the meadow and 4" of water.

Please include this in your comments and make certain the general public has access to this information this time.

Michael Mackintosh

Parcel #:	Acreage:	Capacity:	Address:	Year:		2015 Capac	2023 Capac	Previous Cycle:	Net Capacity:	
174-290-06	2.15	1		2007-2014		1				
174-290-05	2.21	1		2007-2014		1				
174-290-03	1.69	1		2007-2014		1				
174-290-01	2.11	1		2007-2014		1				
174-070-50	6.22	29		2023-2031			29			29
174-070-017	20	40	Cal Lutheran	2007-2014		40				
002-213-27	0.24	1	Eastside Com	2007-2014		1				
002-213-26	0.24	1	Eastside Com	2007-2014		1				
002-213-25	0.27	1	Eastside Com	2007-2014	*	1		1		
002-213-25	0.25	6		2023-2031			6		5	5
002-213-10	0.19	1	Eastside Com	2007-2014	*	1		1		
002-213-10	0.2	6		2023-2031			6		5	5
002-213-07	0.08	1	Eastside Com	2007-2014	*	1		1		1
002-213-07	0.08	2		2023-2031			2		1	
002-213-06	0.11	1	Eastside Com	2007-2014	*	1		1	2	2
002-213-06	0.1	3		2023-2031			3			
002-213-05	0.06	1	Eastside Com	2007-2014	*	1		1	1	1
002-213-05	0.05	2		2023-2031			2			
002-213-04	0.09	1	Eastside Com	2007-2014	*	1		1	1	1
002-213-04	0.09	2		2023-2031			2			
002-211-21	0.26	1	Eastside Com	2007-2014	*	1		1	3	3
002-211-21	0.26	4		2023-2031			4			
002-211-20	0.22	1	Eastside Com	2007-2014	*	1		1	4	4
002-211-20	0.23	5		2023-2031			5			
002-211-05	0.11	1	Eastside Com	2007-2014	*	1		1	2	2
002-211-05	0.11	3		2023-2031			3			
002-211-04	0.09	1	Eastside Com	2007-2014		1				
002-211-03	0.05	1	Eastside Com	2007-2014		1				
002-211-02	0.06	1	Eastside Com	2007-2014		1				
002-181-22	0.74	1		2007-2014		1				
002-181-21	11	1		2007-2014		1				
002-181-20	6.79	1		2007-2014		1				
002-181-12	11.21	1		2007-2014		1				
002-181-04	4.78	1		2007-2014		1				
002-181-03	4.78	1		2007-2014		1				
002-144-01	both forrest parcels	5		2023-2031			5			5
002-131-15	0.59	3	FairAnselm Pl	2007-2014		3				
002-131-14	2.69	6	FairAnselm Pl	2007-2014	*	6		1		1
002-131-14				2006						
002-131-14				2006						
002-131-13				2006						
002-131-12	2.12	6	FairAnselm Pl	2007-2014	*	6		1		1
002-131-12	2.12			2006						
002-131-12				2006						
002-131-09	0.01	1	FairAnselm Pl	2007-2014	*	1		1		
002-131-09				2006						
002-131-07	0.02	1	FairAnselm Pl	2007-2014	*	1		1		
002-131-07				2006						
002-127-02				2006						
002-127-01	0.28	2	FairAnselm Pl	2007-2014	*	2		1		
002-127-01	0.35	2	FairAnselm Pl	2007-2014		2				
002-127-01				2006						
002-123-17	0.5	5		2023-2031			5			5
002-122-47	0.51	7		2023-2031			7			7

002-116-07	0.14	1	West Comme	2007-2014	*	1		1		
002-116-07				2006						
002-116-06	0.17	1	West Comme	2007-2014	*	1		1		
002-116-06				2006						
002-116-04	0.17	1	West Comme	2007-2014	*	1		1		
002-116-04				2006						
002-113-08	0.35	10		2023-2031			10			10
002-112-13	1.8	9	School Street	2007-2014	*	9		1	164	164
002-112-13	1.92	175		2023-2031			175			
002-112-13	1.8			2006						
002-101-13				2006						
002-071-01	0.04	1		2007-2014		1				
001-251-31	11.5	1		2007-2014		1				
001-236-56				2006						
001-236-55				2006						
001-236-54				2006						
001-236-53				2006						
001-235-11				2006						
001-235-10				2006						
001-235-08				2006						
001-226-53	0.33	5		2023-2031			5			5
001-221-12	0.5	2	West Comme	2007-2014	*	2		1		
001-221-12				2006						
001-183-20	0.19	6		2023-2031	*		6	1		6
001-183-20	0.19	6		2023-2031			6			6
001-183-17	0.42	2	West Comme	2007-2014	*	2		1	12	12
001-183-17	0.51	14		2023-2031			14			14
001-183-17				2006						
001-183-17				2006						
001-183-16	0.17	1	West Comme	2007-2014	*	1		1		
001-183-16				2006						
001-183-16				2006						
001-183-15	0.17	1	West Comme	2007-2014	*	1		1		
001-183-15	0.17			2006						
001-183-14	0.17	1	West Comme	2007-2014		1				
001-183-13	0.16	1	West Comme	2007-2014	*	1		1		
001-183-13	0.15			2006						
001-183-12	0.17	1	West Comme	2007-2014	*	1		1	4	4
001-183-12	0.17	5		2023-2031			5			
001-183-12	0.17			2006						
001-183-10	0.41	12		2023-2031	*		12	1		12
001-183-10	0.36			2006						
001-183-10	0.36			2006						
001-183-08	0.17	1	West Comme	2007-2014	*	1		1		
001-183-08	0.17			2006						
001-183-04	0.92	2	West Comme	2007-2014	*	1		1		
001-183-04	0.95			2006						
001-183-04				2006						
001-183-014	0.17			2006						
001-181-01				2006						
001-160-09	18.45	2		2007-2014		2				
001-150-12	68.05	6		2007-2014		6				
001-104-012	1.24	22	10 Olema Rd	2007-2014	*	22		1	9	
001-104-012	1.21	31	10 Olema Rd	2023-2031			31			31
001-018-01	0.16	1	West Comme	2007-2014		1				
						141	343	29	213	336
							Total:			

Housing sites on the Housing opportunity list

Marin Town and Country Club

Fri 4/28/2023 4:55 PM

To: habrams@townoffairfax.org <habrams@townoffairfax.org>;

Cc: ccutrano@townoffairfax.org <ccutrano@townoffairfax.org>; bcoler@townoffairfax.org <bcoler@townoffairfax.org>;
backerman@townoffairfax.org <backerman@townoffairfax.org>; shellman@townoffairfax.org <shellman@townoffairfax.org>;
lplash@townoffairfax.org <lplash@townoffairfax.org>; lneal@townoffairfax.org <lneal@townoffairfax.org>;
mlockaby@townoffairfax.org <mlockaby@townoffairfax.org>; dhortert@4leafinc.com <dhortert@4leafinc.com>;
info@dyettandbhatia.com <info@dyettandbhatia.com>; housing@townoffairfax.org <housing@townoffairfax.org>;
housing@doj.ca.gov <housing@doj.ca.gov>;

2 attachments (87 KB)

Parcel info Sheet1 (2), Table A.pdf; Parcel info sheet Sheet1, Table B.pdf;

Dear Heather:

Attached please find two spreadsheets representing the parcels cited on your Housing Opportunity Site list. We have numbered your identified sites so as to help you better understand the information provided.

The attached parcel sheets will illustrate slopes, fire overlays, and flood zoning requiring a more exhaustive CEQA review. For the safety of our community please ensure this legal requirement.

We again call out that your nonfeasance and misfeasance will become malfeasance when properties are developed that will require new roads, new water lines, new gas lines, new electric lines, and new sewer lines; if the associated feasibility reports are not undertaken. Has the Town initiated a feasibility study summing all related expenses of this new construction when the majority of those expenses could be mitigated by placing the housing burden on the lands of the MT&CC?

Additionally, we call to your attention that a CEQA report covering circulation and safety egress/access must be addressed. Placing all this housing density on small hillside streets places an unsafe burden on the occupants should a fire or other safety issue present itself, without rebuilding and upgrading the roads. Some communities have no choice where to place the required housing. In Fairfax you have the MT&CC, 25 acres of flat land above the 500-year floodplain.

Further attempting conversations with 76 stakeholders, instead of inviting the MT&CC to the table for a single stakeholder is curious. The additional town and staff time might be overwhelming.

Please recall the MT&CC LLC has a willing stakeholder asking to be included in the Housing Element.

Fw: Additional comments for the NOP

Marin Town and Country Club

Wed 5/3/2023 6:33 PM

To: habrams@townoffairfax.org <habrams@townoffairfax.org>;

From: Marin Town and Country Club

Sent: Wednesday, May 3, 2023 6:32 PM

To: heather@townoffairfax.org

Cc: bcoler@townoffairfax.org; backerman@townoffairfax.org; ccutrano@townoffairfax.org; lblash@townoffairfax.org; shellman@townoffairfax.org; shellman@gmail.com; housing@doj.ca.gov; info@dyettandbhatia.com; dhortert@4leafinc.com; mgardner@townoffairfax.org

Subject: Additional comments for the NOP

Dear Council:

I have provided prior comment to this NOP process as well as the Housing Element and opportunity site's list. Please add these additional comments.

With the 6th Housing cycle, our Housing Element and implementation of the required RHNA numbers, the Town of Fairfax will transform dramatically. It is an inevitable change that we need to embrace. Such a major change should be well thought out and inclusive of all parties. All discussions should be public and transparent. Otherwise you get what you have created; distrust, aversion, and division.

I called into question, resource allocation, safety egress, and unrealistic building sites that have been recycled from prior Housing Elements. They were not built then because of constraints requiring greater expense. They were infeasible to build then, they are infeasible to build today. Who will build 10 apartments on a 1/2 acre lot with no utilities, on a 63% slope, under an unreinforced road? Noone.

At your meeting of April 19th (the NOP meeting), the Council reserved comments. You allowed some of us to express our frustration in the process you have excluded us from. That meeting was nothing more than checking the box; "yep we took care of that requirement".

As the largest underperforming stakeholder in Fairfax, as the only large piece of land with the utilities in place, as the only large flat piece of land above the 500 year flood plain; we are continually amazed at your refusal to meet with us and to bring us into the conversation of where to put some of the housing. In 2021 Fairfax and your fired consultant asked us to accept 350-450 housing units. My only request was to provide a BID so we could offer some of the housing to my tenants who would be displaced.

We have noted that your housing consultants, town Counsel, four of your current & prior Council members, have all supported putting some housing here. Somehow, we are excluded again.

This a formal request to bring in the Attorney General and HCD. I further request that the Council supports a full EIR.

The public is disengaged and confused on this process. If you spent a small amount of quality time educating and engaging the public, you would have the support of your community. The community is distrustful of your actions.

We need the HCD to step in and remove you from this process. The community needs for its wellbeing and safety, a full EIR. The Town of Fairfax cannot afford the liability of not providing a full EIR.

Please educate me if there a reason to not have a full EIR that addresses safety egress and future cost to the community.

Sincerely

Michael Mackintosh

Re: Housing sites on the Housing opportunity list

Marin Town and Country Club

Wed 5/3/2023 4:25 PM

To: Heather Abrams <habrams@townoffairfax.org>;

Dear Heather:

Thank you for acknowledging receipt. I think this is the first time you have done so.

I have tried in earnest to reach out to you many times to no avail.

A town manager must bridge all differences for the betterment of the Town while ameliorating the relationship between Council, Counsel, staff, and most of all the constituents.

Michael Mackintosh

From: Heather Abrams <habrams@townoffairfax.org>

Sent: Wednesday, May 3, 2023 1:30 PM

To: Marin Town and Country Club

Subject: RE: Housing sites on the Housing opportunity list

Michael,

Your email has ben forwarded to the consultants, thank you.

Regards,

Heather Abrams

Town of Fairfax | Town Manager

www.townoffairfax.org

From: Marin Town and Country Club <mtcc@classactionlocator.com>

Sent: Friday, April 28, 2023 4:56 PM

To: Heather Abrams <habrams@townoffairfax.org>

Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; Lisel Blash <LBlash@townoffairfax.org>; Linda Neal <lneal@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>; dhortert@4leafinc.com; info@dyettandbhatia.com; Housing <Housing@townoffairfax.org>; housing@doj.ca.gov

Subject: Housing sites on the Housing opportunity list

Dear Heather:

Attached please find two spreadsheets representing the parcels cited on your Housing Opportunity Site list. We have numbered your identified sites so as to help you better understand the information provided.

The attached parcel sheets will illustrate slopes, fire overlays, and flood zoning requiring a more exhaustive CEQA review. For the safety of our community please ensure this legal requirement.

E. 47

We again call out that your nonfeasance and misfeasance will become malfeasance when properties are developed that will require new roads, new water lines, new gas lines, new electric lines, and new sewer lines; if the associated feasibility reports are not undertaken. Has the Town initiated a feasibility study summing all related expenses of this new construction when the majority of those expenses could be mitigated by placing the housing burden on the lands of the MT&CC?

Additionally, we call to your attention that a CEQA report covering circulation and safety egress/access must be addressed. Placing all this housing density on small hillside streets places an unsafe burden on the occupants should a fire or other safety issue present itself, without rebuilding and upgrading the roads. Some communities have no choice where to place the required housing. In Fairfax you have the MT&CC, 25 acres of flat land above the 500-year floodplain.

Further attempting conversations with 76 stakeholders, instead of inviting the MT&CC to the table for a single stakeholder is curious. The additional town and staff time might be overwhelming.

Please recall the MT&CC LLC has a willing stakeholder asking to be included in the Housing Element.

Michael Mackintosh

Re: Housing sites on the Housing opportunity list

Marin Town and Country Club

Thu 5/4/2023 10:23 PM

To: Heather Abrams <habrams@townoffairfax.org>;

Cc: ccutrano@townoffairfax.org <ccutrano@townoffairfax.org>; bcoler@townoffairfax.org <bcoler@townoffairfax.org>; backerman@townoffairfax.org <backerman@townoffairfax.org>; shellman@townoffairfax.org <shellman@townoffairfax.org>; shellman@gmail.com <shellman@gmail.com>; lblash@townoffairfax.org <lblash@townoffairfax.org>; lneal@townoffairfax.org <lneal@townoffairfax.org>; mlockaby@townoffairfax.org <mlockaby@townoffairfax.org>; dhortert@4leafinc.com <dhortert@4leafinc.com>; info@dyettandbhatia.com <info@dyettandbhatia.com>; housing@doj.ca.gov <housing@doj.ca.gov>; mgardner@townoffairfax.org <mgardner@townoffairfax.org>;

Dear Heather:

I looked and could not find my comments in the public folder containing "public comments" for last night's Council meeting. My comments were submitted to you before 5:00pm on Friday the 28th. Their due date was 4/30/23. I also noted the absence of Frank Egger's comments. There might have been six other comments in the folder.

We have procedures in place to ensure compliance as well as to illustrate transparency. Omitting comments you do not like to hear merits review of the entire process. This process is supposed to invite all voices not just your curated responses.

Please illustrate that my comments were included in Andrew Hill's comments about the public outreach. Statistics of comments when some comments are arbitrarily excluded does not properly represent a real outreach.

Please ensure my comments are included on the website as well as in the packet to be submitted to HCD.

Please forward receipt illustrating the placement of my comments.

Michael Mackintosh

From: Heather Abrams <habrams@townoffairfax.org>
Sent: Wednesday, May 3, 2023 1:30 PM
To: Marin Town and Country Club
Subject: RE: Housing sites on the Housing opportunity list

Michael,
Your email has been forwarded to the consultants, thank you.
Regards,
Heather Abrams
Town of Fairfax | Town Manager

E-49

From: Marin Town and Country Club <mtcc@classactionlocator.com>

Sent: Friday, April 28, 2023 4:56 PM

To: Heather Abrams <habrams@townoffairfax.org>

Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; Lisel Blash <LBlash@townoffairfax.org>; Linda Neal <lneal@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>; dhortert@4leafinc.com; info@dyettandbhatia.com; Housing <Housing@townoffairfax.org>; housing@doj.ca.gov

Subject: Housing sites on the Housing opportunity list

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Further attempting conversations with 76 stakeholders, instead of inviting the MT&CC to the table for a single stakeholder is curious. The additional town and staff time might be overwhelming.

Please recall the MT&CC LLC has a willing stakeholder asking to be included in the Housing Element.

Michael Mackintosh

Re: Housing sites on the Housing opportunity list

Marin Town and Country Club

Mon 5/15/2023 9:56 PM

To: Heather Abrams <habrams@townoffairfax.org>;

Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; shellman@gmail.com <shellman@gmail.com>; Lisel Blash <LBlash@townoffairfax.org>; Linda Neal <lneal@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>; dhortert@4leafinc.com <dhortert@4leafinc.com>; info@dyettandbhatia.com <info@dyettandbhatia.com>; housing@doj.ca.gov <housing@doj.ca.gov>; Michele Gardner <mgardner@townoffairfax.org>;

Dear Heather:

"To summarize: Emailed Public Comments for the Town Council Meetings are printed and placed in a folder near the door of the Women's Club, they are there during the meeting time."

Please see the above quote taken out of your response below.

In your public comments folder were possibly six comments. They did not include my comments or Frank Egger's comments. It would appear that a subjective approach was taken to include some and not others who identified deficiencies in your process and subject.

Speaking to Michele Gardner, she advised me the consultant was supposed to be collecting them and including them. Again they were not included when they are supposed to be provided to the public.

Possibly you can provide the criteria you or Andrew Hill used to chose which comments you would copy and provide to the public in your comments envelope for public prevue before the meeting.

I look forward to the clarification.

Michael Mackintosh

From: Heather Abrams <habrams@townoffairfax.org>

Sent: Monday, May 15, 2023 10:33 AM

To: Marin Town and Country Club

Cc: Chance Cutrano; Barbara Coler; Bruce Ackerman; Stephanie Hellman; shellman@gmail.com; Lisel Blash; Linda Neal; Mark Lockaby; dhortert@4leafinc.com; info@dyettandbhatia.com; housing@doj.ca.gov; Michele Gardner

Subject: RE: Housing sites on the Housing opportunity list

Hi Michael,

It sounds like you're a little confused about the different types of public comments and how they are displayed. This was explained at the public Council Meeting this week that you attended. I am attaching a link to the meeting, the video is posted here: <https://www.townoffairfax.org/meetings/town-council-meeting-may-3-2023/>. To summarize: Emailed Public Comments for the Town Council Meetings are printed and placed in a folder near the door of the Women's Club, they are there during the meeting time. For the Housing Element, we are required to provide a *summary* of comments received and how they are reflected in the draft that HCD will be reviewing. We are not required to submit the actual comment letters, but we did include them in an appendix. We're not required to post the comments to the website, but we posted them here: <https://www.townoffairfax.org/documents/public-review-draft-sixth-cycle-housing-element-public-comments/>. The comments for the NOP/CEQA process are another item, and we're following the requirements there.

Regards,

Heather Abrams

Town of Fairfax | Town Manager

www.townoffairfax.org

From: Marin Town and Country Club <mtcc@classactionlocator.com>

Sent: Thursday, May 4, 2023 10:24 PM

To: Heather Abrams <habrams@townoffairfax.org>

Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; shellman@gmail.com; Lisel Blash <LBlash@townoffairfax.org>; Linda Neal <lneal@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>; dhortert@4leafinc.com; info@dyettandbhatia.com; housing@doj.ca.gov; Michele Gardner <mgardner@townoffairfax.org>

Subject: Re: Housing sites on the Housing opportunity list

Dear Heather:

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Please ensure my comments are included on the website as well as in the packet to be submitted to HCD.

Please forward receipt illustrating the placement of my comments.

Michael Mackintosh

From: Heather Abrams <habrams@townoffairfax.org>

Sent: Wednesday, May 3, 2023 1:30 PM

To: Marin Town and Country Club

Subject: RE: Housing sites on the Housing opportunity list

Michael,
Your email has ben forwarded to the consultants, thank you.
Regards,
Heather Abrams
Town of Fairfax | Town Manager
www.townoffairfax.org

From: Marin Town and Country Club <mtcc@classactionlocator.com>
Sent: Friday, April 28, 2023 4:56 PM
To: Heather Abrams <habrams@townoffairfax.org>
Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; Lisel Blash <LBlash@townoffairfax.org>; Linda Neal <lneal@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>; dhortert@4leafinc.com; info@dyettandbhatia.com; Housing <Housing@townoffairfax.org>; housing@doj.ca.gov
Subject: Housing sites on the Housing opportunity list

Dear Heather:

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Additionally, we call to your attention that a CEQA report covering circulation and safety egress/access must be addressed. Placing all this housing density on small hillside streets places an unsafe burden on the occupants should a fire or other safety issue present itself, without rebuilding and upgrading the roads. Some communities have no choice where to place the required housing. In Fairfax you have the MT&CC, 25 acres of flat land above the 500-year floodplain.

Further attempting conversations with 76 stakeholders, instead of inviting the MT&CC to the table for a single stakeholder is curious. The additional town and staff time might be overwhelming.

Please recall the MT&CC LLC has a willing stakeholder asking to be included in the Housing Element.

Michael Mackintosh

Fw: Court case in re time limits ---one more link

Marin Town and Country Club

Mon 10/16/2023 5:19 PM

To: cfoster@townoffairfax.org <cfoster@townoffairfax.org>;

Dear Christine:

I apologize for not including you.

When we opine together, we may collectively find a better medium.

Michael Mackintosh

From: Marin Town and Country Club

Sent: Monday, October 16, 2023 5:17 PM

To: Lisel Blash

Cc: ccutrano@townoffairfax.org; backerman@townoffairfax.org; bcoler@townoffairfax.org; shellman@townoffairfax.org; Michele Gardner; Heather Abrams

Subject: Re: Court case in re time limits ---one more link

Dear Lisel:

I agree the Council, (*trying to avoid the inevitable of adding my property to the Housing Allocation Site list*), has failed to do their duty of representing their constituents and the laws. The list of Concessions with the settlement of the YIMBY suit further illustrates this. Another unnecessary expense of time and Town Attorney time. How much was spent? Over \$100K?

I am glad you are reading all your constituents' emails. If the Council is in receipt of all these emails about certain subjects regarding items on the Consent Calendar as well as the regular agenda, Why are they not included with the staff reports, as the law requires????? I have certainly noticed my emails along with Frank Eggar's emails excluded or not included with the staff reports. It would appear when an opinion differs from the Town's narrative, it is not always included.

Your comments also invalidate my FOIAs responses, where no outside correspondence from constituents is provided. Please review and provide comment.

I do not want to thwart your responses to me. I appreciate your efforts to ameliorate the different fronts with the Town. The Town needs to follow the laws. Maybe you will be the one to make a difference.

Laws are made to represent the voice of the majority, while protecting the voice of the minority. Ideologs arrogantly think they know best. But in reality, ideologs create bigger problems without the foresight to solve the manageable problems at home.

Thank you for your considerations that respond to my questions. Somewhere in between our opinions is a better opinion.

Michael Mackintosh

From: Lisel Blash <LBlash@townoffairfax.org>
Sent: Monday, October 16, 2023 9:26 AM
To: Marin Town and Country Club
Subject: RE: Court case in re time limits ---one more link

Hello Michael,

I appreciate your attention to these items. If you or others want to provide more depth to your comments, I encourage you to write us emails and submit them before the day of the meeting so we have time to read them. We take them as seriously as public comment. I have done my best to address your concerns and direct you to the laws and customs that govern these issues.

My top priority is serving all constituents of Fairfax. We need to conduct the people's business in an orderly and efficient manner. There are around 5,800 voters or app. 7500 people in Fairfax. Very few of them come to public meetings, but in general they let us know about their concerns via letters, conversations, and their votes. We have a lot to cover in meetings, including completing our housing element, advancing our 5-year plan for streets and roads repair, and many other issues of concern.

We do listen to everyone and read every letter that comes through.

Best,

Lisel Blash
Fairfax Town Council

The opinions expressed in this email are those of this individual Council Member and are not representative of the entire Council or Town of Fairfax unless otherwise stated.

From: Marin Town and Country Club <mtcc@classactionlocator.com>
Sent: Friday, October 6, 2023 5:50 PM
To: Lisel Blash <LBlash@townoffairfax.org>; Lisa Hillstrom <LHillstrom@townoffairfax.org>
Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; Michele Gardner <mgardner@townoffairfax.org>
Subject: Re: Court case in re time limits ---one more link

Dear Lisel:

There are circumstances that restricting time to speak would be allowed and acceptable. When there is no one to speak on an issue and/or very few, like the consent calendar, these arguments do not hold water.

Please allow your constituents, who take the time to come out to speak, speak their full 3 minutes on each item.

Absent this response is the not allowing the community to pull items from consent. I have provided ample information if an item is not routine or if an item has opposition, it should be pulled.

Michael Mackintosh

From: Lisel Blash <LBlash@townoffairfax.org>
Sent: Friday, October 6, 2023 12:43 PM
To: Marin Town and Country Club; Lisa Hillstrom
Subject: RE: Court case in re time limits ---one more link

Hi Michael,

Thanks, I actually sent you a link to that article by BBK in my email.

The title says it all: "Public entities can place reasonable time restrictions on public comment at their meetings as long as the time restrictions do not violate state or federal law, a California appellate court said in a fairly sweeping decision."

The article notes that the courts found that public entities can place time limits on public comment. As you might have noticed from the listing of other California Town's meeting descriptions, many specify time limits of 2 minutes, sometimes less if there are a lot of speakers. My understanding is that it is up to the discretion of the public entity.

The courts basically found that " speech at government meetings is not unlimited and public entities can limit speech at meetings based on time and even some types of content — i.e. requiring a speaker to address only the topic or agenda item at issue."

Best,
Lisel Blash
Fairfax Town Council

The opinions expressed in this email are those of this individual Council Member and are not representative of the entire Council or Town of Fairfax unless otherwise stated.

From: Marin Town and Country Club <mtcc@classactionlocator.com>
Sent: Friday, October 6, 2023 12:09 PM
To: Lisel Blash <LBlash@townoffairfax.org>
Cc: Chance Cutrano <ccutrano@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>; Michele Gardner <mgardner@townoffairfax.org>
Subject: Court case in re time limits ---one more link

Dear Lisel:

Attached please find information recently forwarded to me. I believe the Council asked for a case name on the subject of limiting public input.

Possibly adding this to the prior information sent, the Council will follow the laws and rules and ignore the bad counsel from town Counsel.

Most surprising is that the rest of the Council seems so disinterested in knowing correct laws and procedures. I am surprised that a litigant has not seized upon this and sued the Council for east money. With pre-existing knowledge, the Town is not indemnified by it's insurance. Remember, insurance only indemnifies negligence, not intentional acts.

A simple Declaratory Relief action would sever insurance from even paying the legal defense bill, after they serve the Town a "Notice of Reservation of Rights"

Michael Mackintosh

Subject: Court case in re time limits ---one more link

***<https://firstamendmentcoalition.org/2020/08/aa-can-a-california-city-council-cut-public-commenter-time-with-no-notice-before-meeting/>

Tell Ms Blash :

Ribakoff vs Long Beach and

Gov. Code, § 54954.3.

and, from Colson's own law firm:

<https://bbklaw.com/resources/public-entities-can-limit-public-comment-speaking-time-at-meetings>



Frank Egger <fjegger@gmail.com>

Fwd: Comments on the Draft EIR Fairfax's Housing and Safety Elements

Frank Egger <fjegger@gmail.com>
To: Frank Egger <fjegger@gmail.com>

Fri, Nov 10, 2023 at 1:36 PM

----- Forwarded message -----

From: **Frank Egger** <fjegger@gmail.com>
Date: Fri, Nov 10, 2023 at 1:30 PM
Subject: Comments on the Draft EIR Fairfax's Housing and Safety Elements
To: <housing@townoffairfax.org>, Heather Abrams <habrams@townoffairfax.org>
Cc: Chance Cutrano <ccutrano@townoffairfax.org>

DATE: November 10, 2023**TO: Housing@TownofFairfax.org, Town Manager Heather Abrams****RE: Comments, Insufficiency of Fairfax's Housing & Safety Elements, a.k.a. The Project, prepared by Dyett & Bhatia. Called both a program EIR and a Draft EIR, Volume 1 is 432 pages****FROM: Frank Egger and Save Fairfax**

Dyett & Bhatia has prepared Fairfax's Housing & Safety Elements, it is clear they have no institutional knowledge of Fairfax, neither the historical background as to why Fairfax remains the last of the old small towns in Marin nor the legal battles fought out in local & appellate courts to preserve, protect & restore Fairfax. Dyett & Bhatia prepared the 2nd reiteration of Fairfax's Housing & Safety Elements after the initial process had been started by the EMC Planning Group and then after the firing of EMC. **The DEIR is riddled with misinformation and inaccuracies.**

B7-1

The proposed program Draft Environmental Impact Report does not provide sufficient data for the public and decision makers to make an informed decision. It advises the public and decision makers that the result of the Project as proposed would result in a total of 598 Units, RHNA's required 490 Units and a 108 Unit Buffer but it does not advise either the public or decision makers of what the results would actually be, visually and environmentally. The use of the wording "less than significant impact" throughout the DEIR incorrectly implies the addition of 490 to 598 units in both Wildland Urban Interface (WUI) and flood zones is not a problem.

The methodology of the Dyett & Bhatia project was flawed from the start. Their proposed Fairfax Housing Element has identified almost every vacant parcel of land in Fairfax and Dyett & Bhatia has set a density on these vacant and some underutilized parcels Town in direct violation of existing Town Codes knowing neither the history of Fairfax nor the Court decisions impacting any future development nor the applicable Town Code sections that apply to these parcels, including building site requirements and slope impacts on lot size, i.e.:

B7-2

§ 17.076.050 BUILDING SITE REQUIREMENTS.

Except as otherwise provided in §§ 17.044.030 through 17.044.050 of this title, a use permit or hill area residential development permit (HRD) must be first secured in the RS-7.5 zone for any use, occupancy or physical improvement of or on a building site failing to meet the following minimum requirements:

(A) Minimum area of 7,500 square feet and minimum width of 75 feet with a slope of ten percent or less;

(B) The minimum building site area shall be increased by 300 square feet for each one percent increase in slope over ten percent to and including 15 percent ; and the minimum width shall be increased three feet for each 500 square feet of additional area required, so that a building site having a slope of 15 percent shall have a minimum area of 10,000 square feet and a minimum width of 100 feet;

(C) Building sites having a slope of more than 15 percent shall increase in area above 10,000 square feet and in minimum width above 100 feet, at the rate of 1,200 square feet of area and three feet of width for each one percent increase in slope; and

(D) Fractions shall be disregarded and dropped in all computations made under this section.

(Prior Code, § 17.40.050) (Ord. 352, passed - -1973; Am. Ord. 605, passed - -1991)

Fairfax's Town Attorney is rushing through zoning amendments to overturn historic zoning codes that Fairfax adopted in 1973 to protect scenic ridgeline scenic corridors, steep hillside parcels and both private and public open space. Fairfax's 1973 Zoning Ordinance was prepared by the Marin County Planning Department under a contract between Fairfax and the County of Marin.

Fairfax's large lot zoning ordinance, Upland Residential, UR-7 and UR-10, was modeled after Marin County's Agricultural zones like A-60. It purposely prohibits clustering. As the Town Councilmember most responsible for adopting Ordinance # 352, anyone can read the official Town Council minutes that describes the process, purpose and intent. Those bounded minute books are in the Walk-in Safe at Town Hall.

Marin's A-60 zoning was put to the test many times and I, as a California Coastal Commissioner, was directly involved in upholding the purpose and intent of Marin's large lot zoning in the 1970's. The subdivision of a large ranch property in West Marin came before the Coastal Commission with units clustered but meeting the 60 acre minimum by having the 60 acre lots fan out like spokes on a wheel to make the 60 acre requirement. The subdivision almost slipped by the Commission but I caught the mistake and the subdivision application was rejected. We were threatened with litigation but that never materialized.

Volume 1, Figure 2.2: Environmental constraints correctly show almost all of Fairfax is located in High Hazard areas, High and Very High Liquefaction, Mostly or Many Landslides, both 100 and 500 year Floodplains and the most threatening, what neighborhoods are not in a Floodplain, are in the High Fire Hazard Severity Zone.

B7-3

B7-4

B7-5

One of the recommendations is to allow cluster development on hillside parcels in both private and public open space parcels, some are listed.

Figure 2-3: Sites available for housing, page 61. Many of these sites are not available for housing if Fairfax's current zoning ordinances are held up. Why does the Draft EIR refuse to accept that fact?

B7-6

Dyett & Bhatia has designated the **10.53 acre ridgetop open space parcel (174-060-21) for six units.** It was the private Open Space for the 52 unit Meadowland subdivision that Fairfax annexed and re-approved in the later 1960's and zoned it as a Planned District Development (PDD). The County of Marin had initially approved the 52 unit subdivision conditioned on the 10.53 acre parcel being set aside as Private Open Space. That parcel is landlocked. The 10.53 acre open space parcel was sold about 4 years ago and the new owner still has no frontage on an improved Fairfax public street as required by Fairfax Town Code. The only way a vehicle can access the 10.53 acre Meadowland ridgetop parcel is by leaving Fairfax Town Limits and driving through unincorporated Fairfax up a very steep side ridge portion of the Marin County Open Space District's land which is prohibited by a Fairfax Ordinance adopted in 2001. The Private Open Space Parcel is above the Canon Tennis & Swim Club and has no access from Canon Village either.

B7-7

Fairfax has many zoning ordinances on the books that I authored. One says a Fairfax development must be accessed through a Fairfax roadway and a developer cannot access their property in Fairfax through another jurisdiction like either Marin County or San Anselmo. The purpose there is to give direct access for emergency response from Fairfax Police and not require FPD to travel through another jurisdiction thereby extending response times to get to a Fairfax property for emergencies. Then Councilmembers Niccolo Caldararo and Lew Tremaine voted with me on the adoption of that ordinance in 2001. It seems to have magically disappeared from the current Town Code.

B7-8

Another ordinance says any housing development in Fairfax must have frontage on a Fairfax public street. Each unit must have frontage on an improved public street, The 10.53 acre parcel has no Fairfax street frontage.

B7-9

Another parcel is a large parcel that was dedicated as Open Space through a Marin County Superior Court Order, the mandatory settlement requirement when the owner of the proposed **Fairfax Hills subdivision**, Leyton Hills sued Fairfax in the 1980's over our restrictions on the project. Dyett & Bhatia has designated a portion of that Private Open Space, **Parcel #174-070-71** with an address of 615 Oak Manor Drive, for 34 units, 7 estate houses with 7 Accessory Dwelling Units (ADUs) on the steep hillside Open Space Parcel at 615 Oak Manor Drive and another 20 units on Sir Francis Drake frontage of that same parcel. The bottom portion of that court ordered Open Space Parcel is a massive landslide where the Fairfax Public Works Department used to get shale debris for road projects when Fairfax had a grader. The Fairfax right of way along

B7-10

Drake Blvd. at that location goes so far back that with setback requirements, there is insufficient land to build on.

That parcel is the Remainder Parcel, originally the 50 or so acre parcel that was all Private Open Space as required by Marin County Superior Court Judge William H. Stephens' Order and signed by the Hill Family and the Town of Fairfax. The Fairfax Town Attorney, Ms. Janet Coleson, has incorrectly opined that the original Court Mandated Settlement Agreement is null and void. Ms. Coleson has no knowledge of what transpired over the Fairfax Hills subdivision application, public hearings, approvals, the subsequent lawsuit and the various closed sessions leading up to the Court Ordered Settlement. Research by Dyett & Bhatia into the property files and official Town Council meeting minute books in the Town Safe is necessary information that should be included in the Draft EIR. The presiding Marin County Superior Court judge at the time was Judge William Stephens and he passed away on May 17th, 2023. To my knowledge, only former Councilmember Wendy Baker and myself are the remaining Fairfax participants in that process.

The DEIR is insufficient as it must address the conflict with Town Attorney Ms. Coleson's opinion on developing the Private Open Space at the Fairfax Hills Subdivision where she says the Marin County Superior Court Ordered Settlement is null and void and the Planning Commission meeting where the **last two living units allowed by the Marin County Superior Court Ordered Settlement were approved:**

The missing video of the June 16, 2016 Planning Commission Meeting where the building permit application (16-24) for 615 Oak Manor Dr. was approved has been found. There was an exchange discussion of the 2 home sites (D1 and D2) somehow converting to 2 homes on 1 lot (D1). Here is the following exchange between Linda Neal, Commissioner Green and Jim Moore, whose comment is quite definitive: 1:56:50 in video

Phillip Green asks: is this property part of the agreement of settlement of Fairfax Hills versus Fairfax ? Linda Neal responds: yes, it is. Phillip Green: asking where is it?

Linda Neal responds: it's where the judge approved a house pad, you know originally this site the judge approved two parcels and two home sitesPhillip Green asks: Is this one of the two allowed homes? Linda Neal: there's no longer two allowed homes because they had to file a map for two Parcels within a certain amount of time so he's just taking the one parcel the judge originally approved for two home sites and applying for one house and a second unit..

Jim Moore adds:... and as Linda mentioned, this exhausts development potential in all 50 acres. end 1:58:40 in video

Another 2 parcels that Fairfax purchased for Open Space in the early 1970's, **Parcels 002-123-17 & 002-144-01**, are on the down side of Forrest Avenue, adjacent to the Marin Town & Country Club (MT&CC). These two parcels are very steep, pretty much unbuildable, and the previous owners did not pay taxes for a number of years resulting in a Tax Default Sale. As mayor, whenever these tax default parcels came up, I made it a point to inspect the properties to determine viability as open space. I agendized the purchase of these two of these parcels by Fairfax at a Town Council meeting for Public Open Space. The advantage to Fairfax was twofold, removing two very steep parcels in a known landslide area from future development and having potential pedestrian access to the MT&CC should it ever become a resort inn or a recreational project. Dyett & Bhatia proposes putting 10 units on them.

B7-11

There are 2 landlocked parcels close to our easterly border with San Anselmo, **Parcels 002-181-04 and 002-181-05** (same owner) are designated for six units, roughly 10 acres combined and zoned Upland Residential 10 acre minimum, UR-10. It is impossible to extend Hillside Drive to these two parcels and access from Scenic Avenue in San Anselmo and either Francis Avenue or Crest Road in Fairfax will not work either. The Marin Open Space District will not allow access through Sky Ranch. The DEIR must include how Dyett & Bhatia intend to provide access to those parcels and how they will resolve the conflict with current zoning.

B7-12

There are a number of other parcels shown on Dyett & Bhatia's (D&B) new parcel map to allow for cluster zoning for market rate housing developments, a.k.a. multi-million dollar estate houses, in violation of Fairfax's current zoning requirements:

B7-13

The one acre parcel between Meadow Way and Bolinas Road is shown for cluster development. Because of the steepness of that parcel, the current zoning allows only one house on that property. That parcel cannot be subdivided, access and landslide issues.

The Ben Ross property, parcels 003-171-02, 05 and 08 at the top of the north side of Toyon is shown with four units. The parcels are known as Northern Spotted Owl habitat and they sit in the middle of the Town's WUI Zone. A public roadway would have to be built and accepted by the Town for maintenance to provide vehicle access to 3 of the 4 units. The property off of Toyon Drive is above Hickory Road and Lower Cypress Drive may not be able to be subdivided because of slope and without a new public road serving the property. The DEIR is silent as to how that property would be accessed and the adverse impact the development would have on local Northern Spotted Owl habitat.

B7-14

The new D&B map shows cluster development at the top of the hill at the **end of Fawn Drive, a highly visible ridge top parcel above Deer Park Villa.**

B7-15

Should the Wall Property not be purchased for Open Space, both the parcel to the West of the upper side of the Wall Property and the Wall Property itself, the DEIR will allow for cluster development on those parcels in violation of Fairfax's UR-7 and UR-10 Zoning.

The D&B cluster development map also shows parcels to be developed at the end of Pine Drive and the top of Scenic Drive and Redwood Road.

10 Olema Road: Parcel 001-104-12 is zoned CL Limited Commercial, it has the same zoning constraints as School Street Plaza. It backs onto Fairfax Creek with a required creek setback of at least 20 feet from the top of the bank. The Creek Setback Law requires development to be setback from the top of the bank twice the depth of the creek bank or 20 feet whichever is greater. D&B must measure the depth of the creek bank at 10 Olema to determine the legally required creek setback. The whole property flooded in 1982 and 2005. Dyett & Bhatia designated it for 31 units. Most of the property is located in the 100 year flood plain. In addition, the property is the location of one of

B7-16

the first built homes in Fairfax, a Victorian built in the late 1800's. The DEIR must address the historical structure on the property and how it will be incorporated into the proposed 31 unit development.

Redevelopment of School Street Plaza: It has been designated for 175 units in the D&B Housing Element with a seven story building on 1.92 acres. A large portion of the property is in the 100 year floodplain and backs onto Fairfax Creek. The back of the property flooded in 1982 and 2005. The property is in a known hot-spot for buried Native American artifacts, Miwok Cultural Resources. The adjacent parcel is Fairfax Park property when Native American artifacts have been uncovered. The parcel is zoned CL, a LIMITED COMMERCIAL ZONE: § 17.092.040 PRINCIPAL PERMITTED USES AND STRUCTURES are commercial but CL is not zoned for retail. School Street Plaza is a place for small businesses to locate, a spot for incubator businesses. The Fairfax zoning ordinance does not allow residential as a principal permitted use in the CL Limited Commercial Zone. Residences may be allowed by Use Permit if appropriate findings can be made by the Planning Commission & ultimately the Town Council. The height limit is 28.5 feet and may not contain more than two stories.

B7-17

The DEIR must show how the proposed seven story building and its onsite parking will work, height wise. Since the site is one of the few locations where a licensed cannabis dispensary can be sited in Fairfax, the DEIR must find an alternative for the historic cannabis business.

Wall Property: There is a 99.5 acre parcel that a developer wanted to subdivide into 10 estate lots with ADUs that is in a mapped Wildland Urban Interface Zone (WUI), a known high landslide prone area with mansions built on the Ridgeline Scenic Corridors, it was called Marinda Heights. 250 trees would have to be cut down and some years ago the then Town Council said an EIR was necessary for CEQA compliance but the developer refused to pay for an EIR. So, no EIR was ever done and now Dyett & Bhatia wants to designate it for a 10 estate lot subdivision with 10 acres for each lot with the possibility of both an ADU and JADU on each parcel, perhaps 30 units and at the same time Fairfax is trying to put together a proposal to purchase the three parcels that we zoned UR-10 in the 1980's.

B7-18

Fairfax's 1974 Open Space Element included two pertinent maps for the Wall property prepared by Wallace McHarg Roberts & Todd, WMRT, based on State geologist Ted Smith's field notes of his landslide mapping prepared by him for the State Division of Mines and Geology. **The first is the Landslide Abundance Map and the second is the Wildland Fire map.**

B7-19

Landslide mapping: Fairfax has been plagued by landslides for years, homes had been sliding down Fairfax hillsides and the State finally reacted. In late 1972, the State Division of Mines & Geology rented a house in Fairfax for one year and sent one of their top geologists, Ted Smith, to live in Fairfax and map every street and parcel in Town. Fairfax's Open Space Element with the mapping of the whole Town prepared by WMRT

was a town-wide reconnaissance and considered one of the foremost Open Space Elements for any California City/Town.

Homes slide on Canyon Road, Cascade Drive, Meadow Way, Pine Drive, Woodland Road, Spring Lane, Crest Road, Hillside Drive, Cypress, Toyon, Forrest Avenue, Scenic, Berry Trail, Tamalpais, Iron Springs, Bay Road, Willow, Live Oak, San Gabriel Drive and Court to name a few.

Fairfax banned septic tanks in 1974 and that ordinance has never been repealed. Canyon Road residents taxed themselves to install Ross Valley Sanitary District's sewer system for both existing homes and for new development. Fairfax now allows new development on Cascade Drive on a septic tank in violation of Fairfax's ordinance. There are a number of Fairfax properties still using septic tanks for waste water disposal. **The Dyett & Bhatia project does not recognize Fairfax's ban on new septic tanks for wastewater disposal.**

B7-20

During the early 1980's Fairfax merged over 1,000 parcels because they did not meet development, slope and zoning requirements and standards. The Dyett & Bhatia proposal lists a number of vacant parcels to be developed. There is an Assessor's Parcel Book, probably 1984, in the Town Safe with all of the merged parcels marked. Fairfax recorded the merged parcels at the Marin County Recorder's Office. Dyett & Bhatia listed vacant parcels to be developed and D&B needs to determine if any of them have been merged.

B7-21

Two parcels at the east end of SF Drake, the historic "Old Timer Club", now a beer pub, and one of the oldest homes in Fairfax next door adjacent to the Town Limits of San Anselmo. Dyett & Bhatia has designated them for at least 6 units with no way to preserve the existing historic structures. Dyett & Bhatia's Redevelopment proposals will turn the SF Drake Boulevard corridor from small commercial shops into a medium-rise zone.

B7-22

Page 2-3 Sites reused from prior inventories: 6 School Street Plaza is not zoned Retail/General Commercial, it is zoned CL, Limited Commercial. That error needs to be corrected.

B7-23

3.1-3 Creation of open space: encourage cluster development on parcels in inventory zoned UR-7 and UR-10 and located on scenic ridgeline corridors. **These parcels are already protected open space, that is why they have not been developed over the past 50 years**, the prohibition of cluster development in certain zones and Fairfax's slope ordinance requiring larger lot sizes because of the percentage of slope.

B7-24

3.1-8 Impact analysis for the purpose of this EIR. The words program EIR and EIR are used. Is this proposed EIR a Programmatic EIR?

B7-25

3.1-10 Program 2-D. Standards for low impact clustered residential development on large sites. Objective landuse regulations and standards for clustered housing

B7-26

development that expands opportunities for market rate housing. **This proposal will open up these large parcels that allow one unit under current zoning requirements for multi-unit developments. 50 years of protecting Fairfax's hillside parcels from over-development will be discarded.**

Page 3-15, 2nd paragraph states Fairfax will undertake a focused geologic study to identify a range of measures that developers could incorporate to save costs. What Dyett & Bhatia do not know is that Fairfax already has town-wide geological mapping. State Geologist Ted Smith had mapped the whole Town and each landslide area was marked on the map with a number. A 4 being the most susceptible for a landslide. Now Dyett & Bhatia wants Fairfax to spend hundreds of thousands of dollars to remap all of the known landslides. That General Plan Open Space Map was in the Town Safe when I left the Town Council in 2005.

B7-27

Fairfax is in the worst shape for disasters, fires and floods, than any other of Marin's towns/cities. Most of Fairfax is in the Wildland Urban Interface Zone (WUI) and what is not in the WUI Zone, is in the Flood Zone. In 1982 we had 18 inches of rainwater flowing through downtown Fairfax businesses. The Sunnyside Detention Basin constructed by the Ross Valley Flood Zone 9 will reduce flooding in downtown Fairfax by 4 inches so instead of 18 inches of flood water flowing through downtown businesses, only 14 inches of flood-water will flow through them.

B7-28

The Storm Drainage Study for the Fairfax Area, a Special Report of the General Plan prepared for the City of Fairfax and the Marin County Planning Department by the Marin County Flood Control and Water Conservation District. One of the key recommendations to reduce downtown Fairfax flooding was to daylight the concrete culvert under Bolinas Road and increase its size from 10' X 6' to 14' X 7'. The Study was presented to the Fairfax City Council by Paul C. Zucker, Marin County Planning Director.

The 1980 preliminary general plan city of fairfax, california was prepared by wilsey & ham engineers and planners april, 1958 (note all lower case lettering was used on the cover). The population of incorporated Fairfax in 1958 was 4,628. The plan addressed the flooding of downtown Fairfax and recommended enlarging the 500 foot culvert from Bolinas Road to San Anselmo Creek under Sherman Avenue to end the regular flooding.

3.3-2 Special Status Animal species to occur in the planning area, **less than significant impact.** Coho Salmon and steelhead Central CA Coast. We have photos from March 2nd, 2020 of Chinook Salmon in San Anselmo Creek between Bolinas Road and the Elliott Nature Preserve.

B7-29

Sensitive Habitats: No Critical habitat as designated by the USFWS within the planning area. That statement is false. We have photos of Northern Spotted Owl nests and Northern Spotted Owls here in the Cascade Canyon. We have recent photos and videos of Chinook Salmon spawning in San Anselmo Creek. There are recent photos

B7-30

and videos of steelhead being rescued from San Anselmo Creek on the net. At the time Fairfax prepared the Mitigated Negative Declaration in 2020 for replacement of the Meadow Way Bridge, their environmental consultant included in their report that in the few years they studied San Anselmo Creek in and around the Meadow Way Bridge, they never saw any steelhead but they had heard there were steelhead in the creek in the past. That very same year, dozens of steelhead fry were rescued from numerous pools before they dried up between the Meadow Way and Canyon Road bridges. In recent years, hundreds of salmonids have been rescued from locations in San Anselmo Creek and relocated downstream. There are photos and videos on the net.

The Meadow Way neighborhood had heard earlier in October that Fairfax contractors would be doing work in and around the large pool of water in San Anselmo Creek under the Meadow Way Bridge repairing the cavity under the bulkhead. There were at Federally listed salmonids in the pool under the bridge and four steelhead, 7 to 9 inches long, were rescued and moved downstream a few days before Fairfax contractors dewatered the portion of San Anselmo Creek under the bridge on October 24th. Fairfax's contractors worked on the bulkheads under the Meadow Way Bridge on October 24th and 25th, 2023. First they dewatered the pool of water and the next day they poured probably 14 yards of concrete filling up the hole where the previous standing pool of water was located. I observed the work and asked Fairfax's bridge contractor if he had secured a "take permit" from the CDFW for any steelhead that would have been killed in that pool under the bridge. He responded no, that this was an emergency. I told him he could have secured an emergency "take permit" from the CDFW.

The Safety Element must address Fairfax's plan for preserving what's left of the fisheries in Fairfax, San Anselmo and Carey Camp Creeks and a Coho Salmon restoration plan.

B7-31

Impact: 3.3-2 Bothin Creek, Fairfax Creek and San Anselmo Creek. Not listed in Fairfax Town Limits are Carey Camp Creek and Deer Park Creek.

B7-32

3.4 Cultural and Tribal Cultural Resources. Appendix C.

B7-33

3.4-1 Implementation of the project will not cause substantial adverse impacts. This is the common theme throughout

3.4-3 Implementation of the proposed project would not have potential to disturb human remains including those interned outside of funeral cemeteries. **Miwok people Summered in and around the original confluence of San Anselmo Creek and Fairfax Creek behind the Fairfax Post Office and in areas of Fairfax Park and Pavilion Hill. Evidence of Tribal life in the area was found when excavations took place for the rebuilding of the old Lucky Market, site of today's Good Earth Store and the Midden on Pavilion Hill when Fairfax dug up the Hill for a new sewer line going down the hill to Bolinas Road. Discussions with old timers fifty years ago included stories of the Coho and Chinook Salmon they caught in San Anselmo**

and Corte Madera Creek. The stories also included the digging around Town and finding full skeletal remains of Native Americans.

3.6 Geology and soils: The State Office of Mines & Geology completed a block by block, lot by lot environmental reconnaissance on the stability of Fairfax's hillsides. B7-34

3.6-5 Proposed Project would not have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for disposal of wastewater. In 1974, because of leach lines leaking into San Anselmo Creek, and the adverse impact on salmonids, the Fairfax Town Council on a 4 to 1 vote, passed an ordinance prohibiting new septic tanks for use in wastewater disposal systems in Fairfax. That ordinance has never been withdrawn or amended.

3.7-23 School Street Plaza is a 1.92 acre site. A Tower with 175 units is proposed with 35 affordable units and 140 market Rate units. A single person can make \$104,000 a year and meet the affordability criteria for the 35 affordable units. How does that happen since not many local workers in Fairfax make \$104,000 a year? B7-35

Fairfax's consultant determines Fairfax's benchmark for affordability by averaging the incomes of residents of all Marin County cities and towns including Sausalito, Mill Valley, Tiburon, Belvedere, Larkspur, Ross and San Anselmo with Fairfax residents. This puts Fairfax residents at a disadvantage when competing for an affordable Fairfax rental unit, up to \$104,000 a year but a male in Fairfax actually earns \$51,457 per year and a female earns \$40,815 per year. Fairfax's consultants, Dyett & Bhatia, must be directed to use only Fairfax resident's annual income to determine affordability in Fairfax, not the Marin County average income.

3.9-1 Waterways and flood zones in the planning area. The floods of 1982 and 2005 are well documented. Two feet of water flowed through the Fairfax Town Hall extension over Fairfax Creek in the Flood of 1982. Town Council meeting records from the 1970's will show that when Fairfax proposed building the Town Hall addition over the Creek, I objected saying it would flood. At that meeting Fairfax Town Engineer Ben Albritton said "Frank, you and I will not see this extension flood in our lifetime". Ben has passed but I have already seen the Town Hall extension flood twice, 1982 and 2005. The Safety Element should recommend that the extension of Town Hall over Fairfax Creek should be removed. B7-36

3.10-1 Existing landuse. Shown in red-a Retail General Commercial Zone (in reference to School Street Plaza). Fairfax does not have a Retail General Commercial Zone in its zoning ordinances. B7-37

4.1 Alternatives Analyzed in This EIR NO PROJECT ALTERNATIVE:
State CEQA Guidelines Section 15126.6(e) requires an EIR to analyze the specific B7-38

alternative of "No Project". The purpose of describing and analyzing the No Project alternative is to allow decision makers to compare the impacts of approving a proposed project with the impact of not approving the proposed project. The No Project Alternative shall discuss the existing conditions at the time the EIR notice of preparation is published, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. Additionally, State CEQA Guidelines Section 15126.6(e)(3)(a) states that when the project is therevision of an existing land use or regulatory plan, the "No Project" alternative will be the continuation of the existing plan. Typically, this is a situation where new projects would be proposed under the existing plan. Thus, the impacts of the proposed project would be compared to the impacts that would occur under the existing plan. Under the No Project Alternative, the Town would not update the existing 2015 to 2023 Housing Element. The existing Housing Element would continue to direct the Town's decisions related to housing development and the RHNA assignment of 61 units in the current Housing Element would remain the Town's goal for new housing units. In addition, the Town is responsible for addressing the remaining RHNA from the previous planning period (2007–2014) totaling 80 units. The 2015 to 2023 Housing Element goals, policies, and implementing programs would continue to guide Town decisions regarding housing within the Planning Area. Under these conditions it would be reasonable to assume that applications for new housing developments consistent with the 2015 to 2023 Housing Element would continue to be submitted and approved. Although the No Project Alternative does not meet any of the Housing Elements Update project objectives and is not considered a feasible project alternative, it is presented below as required by the State CEQA Guidelines.

MIXED USE DEVELOPMENT ALTERNATIVE

To reduce significant impacts related to VMT and GHG emissions, **this alternative seeks to foster an integrated mixed-use development on the Marin Town and Country Club (MTCC) site.**

According to data from the US Census, over 3,100 residents of Fairfax commute to jobs in other communities each day, while only 1,200 residents of other communities commute to jobs in Fairfax and only 239 both live and work in Fairfax. Therefore, intent of this alternative is to create new jobs and housing within easy walking distance of Downtown Fairfax and the main transit route through the community along Sir Francis Drake Boulevard in order to rebalance commute patterns and increase opportunities for people to live and work in Fairfax and to travel within the community without the need for a vehicle. **This alternative would involve the development of a master plan for the MTCC site in coordination with the property owner to**

B7-39

integrate up to 200 additional new housing units and 50,000 square feet of office and studio space for local businesses, artists, and craftsmen. It is assumed that at least 20 percent of the new homes would be affordable to moderate-income households, consistent with the Town's draft inclusionary ordinance.

Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update

B7-40

Chapter 4: Alternatives Analysis

4-4

Studies have shown that promoting more compact housing development in mixed land use areas is more strongly correlated to increases in non-vehicular modes of travel and reduction of VMT.

As such, this alternative would address the significant impacts of the Proposed Project related to VMT and GHG emissions. **This alternative would implement the project objectives and further**

increase housing density in the Town Center. As such, there would be an additional 200 housing units developed under this Alternative compared to the Proposed Project, for a total of 808 units.

The discussion of the **MIXED USE DEVELOPMENT ALTERNATIVE** does not include the need for a second access to the MT&CC on Pacheco Avenue and the construction of a new bridge at the end of Pacheco. MT&CC is not zoned for this proposed alternative. The DEIR does not address how the MT&CC would be rezoned for the proposed alternative. The map showing all Retail General Commercial uses in Town incorrectly identifies the front half of the MT&CC adjacent to San Anselmo Creek as Retail General Commercial. It is currently developed with the former cabins and apartments that were seasonal rentals for the former resort and holds forty affordable living units.

3.15-1 WUI areas in Marin County:

B7-41

Page 375. Historical wildfires are listed but the 1944/45 wildland fire that came off of Mount Tamalpais towards Fairfax is not listed. Marin County was preparing to evacuate all of Fairfax when the wind shifted and took the fire west to Camp Taylor. My father drove us out to Lagunitas after the wind shifted and we continued to the second bridge, the next bridge after the Inkwells. It was dark and we stopped there as the fire had burned right down to the SF Drake Blvd and Lagunitas Creek, it was still burning and there was not a fire engine in sight. We were familiar with the area as we often held family picnics at Camp Taylor before it became a State Park.

Fires repeat themselves and the biggest threat to Fairfax is from future wildland fires coming off the Mountain or from the Elliott Nature Preserve area burning towards Bolinas Road and Town. Evacuation is a huge issue and drawback as Fairfax has one road in and one road out of most neighborhoods. One accident on SF Drake

B7-42

Blvd. can put the Upper Ross Valley in total gridlock for hours. A tree falling on Laurel or Cascade Drive can block evacuations. Many of these evacuations take place in the middle of the night and it's easy to get disoriented when trying to evaluate in a smoke filled canyon.

The DEIR says fire evacuations routes are shown on local websites. Who will run to their computer to check evacuation routes first if they have to evacuate? The DEIR should include recommendations to assist with evacuations like voice over commands on Fairfax's emergency sirens, posted evacuation route signs with solar attachments to light up at night. Enforcing Fairfax's minimum vehicle clearance ordinances and keeping up to 20 feet of public right of ways clear where possible for incoming engines and evacuating vehicles.

B7-43

Fairfax needs to learn from recent fires, the 2017 Tubbs Fire in Santa Rosa was moving a mile a minute, many did not get out. My God-daughter woke up early on Monday morning after the Tubbs fire started. She looked up on the ridge above Santa Rosa and saw flames and smoke. She lived in Coffee Park about six miles from the fire on the ridge. She drove out to Guerneville Road to check on her Dad. She returned home an hour later and her home was gone, the Tubbs fire had crossed Highway 101's 7 lanes and 4 lanes of frontage roads, burned through commercial buildings on the West side of 101 and burned out 500 homes in Coffee Park. The fire blew through the urban subdivision, house to house. Burning embers 20 inches square were flying through the air. This is what we have to look forward to. **A wildland fire will burn from the Elliott Nature Preserve to Cascade and Bolinas Road in a matter of minutes if the winds are blowing north-east.**

B7-44

2017 North Coast Fires: A Mendocino County family trying to evacuate their Redwood Valley home lost their two children, 14 and 17, who were mortally burned in the wildland fire that burned from Potter Valley over the ridge to Redwood Valley.

The 2018 Camp Fire burned through 18,000 homes and businesses in Paradise and 85 people died, some in their cars trying to evacuate. Five years later, one third of Paradise's homes have been rebuilt.

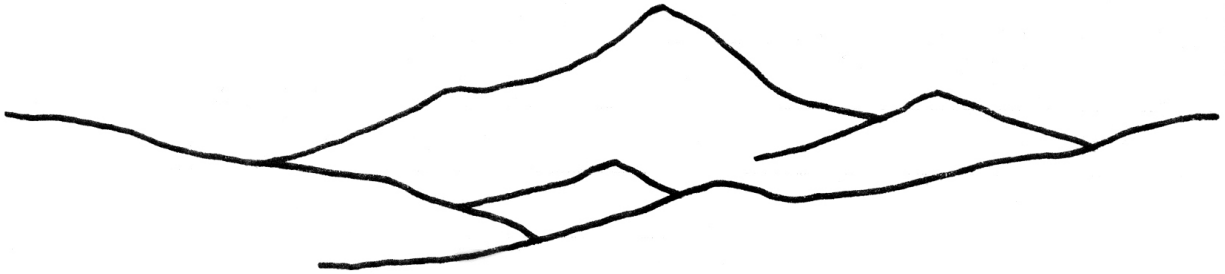
Wildland fires continue. This year the 2023 Maui Fire burned through Lahaina in a short period of time. Many died trying to evacuate.

Fairfax must have a real Evacuation Plan to get 7,500 people out of here. The mapping we have today is useless in a major conflagration. Fairfax will end up being another "Paradise" if this Redevelopment Plan proposed by Dyett & Bhatia is approved as written. Who will accept liability for death and destruction when the conflagration hits Fairfax, the Town Council? The State of California? The State Legislators who forced these housing laws on us?

B7-45

Fairfax and San Anselmo passed joint resolutions years ago. We each said we would notify the other Town if there was a "project" in their Town that could adversely impact the other Town. Has Fairfax notified San Anselmo that the Fairfax "project" will adversely impact San Anselmo?

Thank you,
/s/ Frank Egger, also for Save Fairfax
13 Meadow Way, Fairfax, CA 94930



**TOWN OF FAIRFAX
FAIRFAX OPEN SPACE COMMITTEE**

MEMORANDUM

To: Town Councilmembers, Town Manager, Town Planning Director
From: Fairfax Open Space Committee
Jack Judkins, Vice Chair
Date: November 11, 2028
Re: FOSC Comments on Updated Housing Element Draft EIR

Introduction: Role of the OS Committee

The Fairfax Open Space Committee (FOSC) was established by Resolution of the Town (Resolution No. 2334, as subsequently amended) in 2004. Under that resolution the purposes of the Committee include advising the Town on matters affecting open space lands which are environmentally sensitive and which have aesthetic qualities. In addition, the Committee was given the responsibility to participate as an advisory body and to “review planning and development matters in order to formulate policies that it may deem appropriate to advocate”.

Overview of Commentary

FOSC has previously submitted comments on various iterations and aspects of the Updated Housing Elements. Rather than repeat in full those comments here, they are collected and incorporated into Attachment 1, which accompanies this memo. One overriding theme of those comments is that certain undeveloped parcels have been given special status as priority open space areas that ought to be protected and preserved because they contain exceptional recreational, biological and visual resources, provide important wildlife habitat and corridors and preserve an existing greenbelt which frames the developed portions of the town. This special

B8-1

B8-2

status has been given to these properties by the existing General Plan and its Open Space and Conservation Elements (also see Appendix OS-A: Inventory of Priority Open Space Lands, Attachment 2) and by subsequent resolution of the Town Council identifying these and additional areas as Priority Conservation Areas entitled to special protection and conservation. The special status has been confirmed by the later adoption by ABAG of these areas on application of the Town as regionally significant PCA's under the "One Bay Area" process.

For some reason, the drafters of the Draft EIR and the Housing Element give short shrift to this special status. Their maps do not show it, they don't mention it as an important limitation on development, nor do they identify it as a regulatory constraint in the Draft EIR, Project Description, Regulatory Setting section. They have argued in the past that ABAG never created a map showing the Fairfax PCA's, so it should not be applied to specific parcels. That simply ignores the fact that 3 detailed parcel-based maps were submitted to and used as the basis for ABAG's approval of the 3 PCA areas. It also ignores the fact that the Town specifically adopted these 3 maps and authorized the submission of them to ABAG and that they were included in the application to ABAG, which ABAG approved. Finally, it ignores that all of the supporting data submitted to ABAG demonstrating that the mapped properties collectively met the PCA criteria were also submitted to ABAG in connection with the application and were also in map form.

These undeveloped priority open space properties are predominantly located on the upland portions of the Town, and are typically steeply sloped, subject to landslide, and contain relatively undisturbed woodlands and grasslands. Virtually every upland property that is identified in the Updated Housing Element is contained within one of these PCA areas. So, generally speaking, it would seem inconstant to rely on these as sites for much of the required RNHA-required housing

B8-3

The special status conferred on these properties does not preclude all development. Instead the General Plan and the identification of these properties as PCAs discourages development undertaken in a way that impacts the very resources that resulted in these properties being recognized as special status properties. The Town Planning Staff in its recent draft changes to the Chapter 17.060: Ridgeline Development and to Chapter 17.072: Hill Area Residential Development Overlay Zone adding the "low impact clustered development option" have made a good start in confirming and developing objective criteria which would serve to encourage housing development that would be consistent with current General and Town policies related to open space. However, neither of these has yet to be adopted. FOSC has submitted a number of comments to the Planning staff on the proposed amendments which it believes would improve consistency with the open space policies at the same time as encouraging housing development.

B8-4

As a general proposition, since the proposed planning code changes are not yet adopted, indeed not even beyond draft form, the draft EIR should not rely on them as means of avoiding or offsetting potential impacts. Instead the Draft EIR should require those changes as specific

B8-5

avoidance or mitigation measures that will reduce the potential impact. Specific examples are detailed below.

Another general theme is that there must be consistency between the Updated Housing Element and other elements of the General Plan and other local policies. HCD has said:

B8-6

The goals, policies, and objectives of an updated housing element should be reviewed in the context of the land-use, circulation, open-space elements, zoning, and/or redevelopment and capital improvement plans, especially if these plans or elements have not recently been updated. The general plan is required to be “internally consistent” meaning any and all conflicts between general plan elements should be acknowledged and resolved.

Jurisdictions must ensure programs and policies in other elements do not conflict with those of the housing element. See <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/analysis-consistency-general-plan-and-coastal-zone-requirements>. Also see 5/19/23 email sent to Housing Element

Subcommittee members and consultant through FOSC Liaison, Chance Cutrano, Appendix 1.

A final general theme is that the potential housing development site at 615 Oak Manor Drive, identified as a site for future housing and as a “pipeline project”, is subject to a great deal of uncertainty about whether it can be further developed at all. A 1991 recorded Settlement Agreement between the Town and the then-owner of the site would appear to limit development of that site to 2 units. The Town apparently has been advised recently that the Settlement Agreement has not been in effect for decades under its Term of Agreement section. However, at the June 16, 2016 Planning Commission Meeting, at which the building permit application (16-24) for the residential development of 615 Oak Manor Dr. was approved, the following exchange between Linda Neal, Planning Staff, Commissioner Green and Jim Moore, Planning Director, took place:

B8-7

start 1:56:50 in video

Phillip Green asks: Is this property part of the agreement of settlement of Fairfax Hills versus Fairfax ?

Linda Neal responds: Yes, it is

Phillip Green asks: Where is it?

Linda Neal responds: ...it's where the judge approved a house pad, you know originally this site the judge approved two parcels and two home sites

Phillip Green asks: Is this one of the two allowed homes?

Linda Neal: There's no longer two allowed homes because they had to file a map for two parcels within a certain amount of time so he's just taking the one parcel the judge originally approved for two home sites and applying for one house and a second unit.

Jim Moore adds:... and as Linda mentioned, this exhausts development potential in all 50 acres.

end 1:58:40 in video

Later in the Planning Commission hearing, in response to a question by Commissioner Newton, the Planning Director reiterates the notion that the Settlement Agreement prevented any further subdivision of the property under the Agreement because a final map had not been submitted within the time limit set by the Term of Agreement Section of the Settlement Agreement:

start 2:38:10 in video

Jim Moore says: This is an interesting case because of how the entitlements through the Court were identified and then because it [the 615 Manor property] wasn't bifurcated into 2 parcels that entitlement was lost.

end 2:38:26 in video

In other words, it appears that the Planning staff interpreted the Term of Agreement section to mean not that the Agreement itself was invalidated after the term expired but that any right to further subdivide the property would be lost if a final subdivision map was not submitted prior to the expiration of the term. That approach is consistent with the Subdivision Map Act in the sense that a Tentative Map does not finalize a subdivision unless and until a Final Map is submitted and approved. While a Tentative map was approved under the Settlement Agreement, it was up to the land owner to file a Final Map. Under this analysis, the right to further subdivide as allowed under the Agreement was lost. This view is consistent with those of past Town Council members who viewed the settlement as an agreement which would prevent any future further subdivision and development beyond that allowed under the Agreement. There needs to be an adequate independent assessment of these two apparently conflicting views of the applicability of the Settlement Agreement

Visual Impacts

Although, as acknowledged by the Draft EIR there are a number of proposed building sites that include portions of the properties that involve the potential for substantial impact to the visual resources (ridgelines, ridgeline scenic corridors and significant view corridors), the draft EIR finds no potential for significant impact, because of the existing local zoning and related regulations, including those that have as yet only been proposed. There should not be reliance Relying on avoidance or mitigation measures embedded in codes that have not yet been adopted. Instead those principles ought to be made clear through the identification of specific avoidance or mitigation measures. One example is the pipeline project at 615 Oak Manor Drive. The upper portion of that "pipeline" project appears to propose development that would quite clearly restrict views from neighboring properties and roadways and impinge on the ridgeline

B8-8

scenic corridors and significant view corridors. There should be specific identified criteria that would prevent that.

Biological Resources

Northern spotted owls, endangered bats and yellow legged-frogs have been observed in areas proposed for development. The EIR assessment of impacts on these special status species depends on future mitigation. This is an improper deferral and delegation of mitigation. The program effects need to be considered and appropriate mitigation identified in this draft EIR.

B8-9

Soils and Geology

Much of the upslope properties identified for additional housing contain very steep slopes, exceed 40% , have contain areas subject to historic slumping and landslides and are adjacent to other developed areas with existing issues. The Town of Fairfax was cognizant of that and indeed relied on that fact in appealing the ABAG RHNA assessment in 2021. See Attachment 3.

B8-10

Public Safety

Likewise, the Town also recognized in its RNHA appeal (Attachment 3) the severe impact to public safety imposed by developing upslope vegetated properties with inadequate means of egress along the constrained Ross Valley street system relying limited means of escaping wildfire.

B8-11

ATTACHMENT 1 – PRIOR FOSC COMMENTS ON UPDATED HOUSING ELEMENT

Hi Jack,

I will pass these along to the Housing Element Subcommittee, staff, and consultants.

Thanks for collecting these resources!

Chance Cutrano (he/him/his)

Cell: 312.403.3702

ccutrano@gmail.com

On Fri, May 19, 2023 at 9:21 PM Jack Judkins <junkthrd@gmail.com> wrote:

Hi Chance

Here is a description of a lawsuit that I mentioned that challenges the County Housing Element on the basis that it is inconsistent with other elements of the County General Plan.

https://www.marinij.com/2023/05/04/lawsuit-challenges-marin-countys-housing-element/?utm_email=95E00431D55304E3B401443C04&q2i_eui=6WN3oYq4VDQo5ETahwi7H67EJSzXygZ16eHKpB8MKrc%3d&q2i_source=newsletter&utm_source=listrak&utm_medium=email&utm_term=https%3a%2f%2fwww.marinij.com%2f2023%2f05%2f04%2flawsuit-challenges-marin-countys-housing-element%2f&utm_campaign=bang-marin-nl-dont-miss-nl&utm_content=alert

As you probably know, the HCD website includes what it calls "Building Blocks: A Comprehensive Housing-Element Guide to assist jurisdictions in creating comprehensive housing elements".

See <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>

One of these "Building Blocks" detailed by HCD is the principle that in the development of the Housing Element the local entity must undertake an "analysis of the consistency" of the Housing Element with the General Plan. See: <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/analysis-consistency-general-plan-and-coastal-zone-requirements>

In that "Building Block" section HCD points out that:

Government Code Section 65300.5 states: "In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency". Government Code Section 65583 (c)(7) requires the identification of "means by which consistency will be achieved with other general plan elements and community goals."

HCD also details the required "Analysis of Consistency with General Plan" as follows:

The housing element affects a locality's policies for growth and residential land uses. Among other things, the housing element establishes the locality's housing goals, policies, and objectives; identifies sites for new construction; and addresses governmental constraints. The goals, policies, and objectives of an updated housing element should be reviewed in the context of the land-use, circulation, open-space elements, zoning, and/or redevelopment and capital improvement plans, especially if these plans or elements have not recently been updated.

The general plan is required to be "internally consistent" meaning any and all conflicts between general plan elements should be acknowledged and resolved. Jurisdictions must ensure programs and policies in other elements do not conflict with those of the housing element; in particular the land-use, circulation, or conservation elements. For example, the circulation element levels of service (LOS) standards may need to be updated to reflect potential build out capacities proposed in the housing element. Also, realistic development capacity could be impacted by the conservation element policies that require new residential projects to provide large, open-space corridors or buffer areas.

When conflicts exist, the housing element must describe how consistency will be achieved and how the goals of the housing element will be addressed.

Many communities attempt to address and resolve conflicts by amending the zoning ordinance and all relevant elements of the general plan concurrent with amendment of the housing element. For example, if densities of particular sites must be increased to identify adequate sites, the attendant amendments to the general plan and zoning ordinance could be proposed and adopted at the same public hearing as the housing element.

In addition to resolving inconsistencies among various elements and/or ordinances at the time of updating the housing element, any subsequent amendment to the housing element or other general plan elements, should trigger a review of the entire general plan, especially land-use provisions, to ensure internal consistency is maintained.

In the written comments that I submitted on behalf of FOSC, I pointed out the various ways in which the identification of various properties as available for development without qualification was in direct conflict with the Open Space Element and other General Plan policies that encompassed many of these properties that had been identified as priority open space conservation areas (PCAs) by the Town in its General Plan Inventory. It also was in direct conflict with the Town approval and acknowledgement of these areas as within PCA zones which were subsequently adopted by ABAG under its regional policy as PCAs. This inconsistency was never directly acknowledged or addressed by the consultant or by the Town in its adoption of the draft Housing Element and contrary to HCD direction, the draft Housing Element does not, in light of these conflicts, "describe how consistency will be achieved and how the goals of the housing element will be addressed".

Please pass on these concerns to the consultant and Town.

Jack Judkins

JunkThird@gmail.com

On Fri, May 19, 2023 at 9:25 PM Jack Judkins <junkthird@gmail.com> wrote:

Hi Chance

As we discussed, here is the Settlement Agreement between the Town of Fairfax and the predecessor developer of the land which includes 615 Manor and which appears to constrain development on that property. This Settlement Agreement was mentioned many times verbally and in writing in the public commentary on the proposed Housing Element, but never, that I am aware of, by the Council. Amongst other restrictions and requirements, the Agreement would appear to limit the development of 615 Manor to 2 single family homes and also would compel the property owner, after development of these two homes (which has already occurred), to record a restriction on the remainder of the property so that it is not developed and is maintained as private open space.

As I explained, the attached is a copy of the recorded version of the Settlement Agreement, but it contains a one page, hard-to-read Exhibit A map. However the actual digital version of the recorded map consists of 14 pages of segments of that map which, when re-assembled into one map, matches the much larger map that was presumably recorded. I retrieved those 14 pages that comprise the Exhibit A map from the County Recorder's Office, re-assembled them into a complete (but not perfectly aligned) reproduction of the larger recorded map and took a picture of it. The 14 pages of the segments of the Exhibit A map is attached, as is the picture of the re-assembled map.

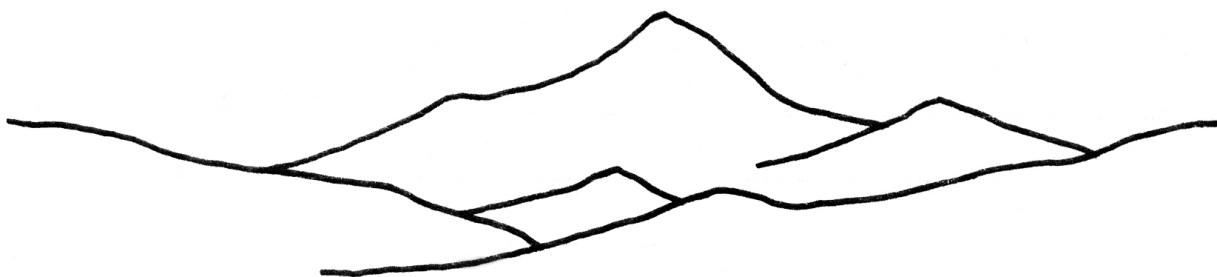
The Settlement Agreement identifies areas of the property by four different names: "Lower Area", the "Center Area", the "Access Road" and the "Upper Area (Triangle)". Those names are not shown anywhere on the map which is Exhibit A. However, the Settlement Agreement assigns a limit to the number of parcels, each with one home, to each of these 4 areas: 6 to the Lower Area, 7 to the Center Area, 2 to the Access Road and 5 to the Upper Area (Triangle). The precise language of the Settlement Agreement when it references the Exhibit A map is that these 20 "parcels shall be located and configured as shown in the attached map (Appendix A), which map shall be the approved tentative map". Consistent with this language, the Exhibit A map does show 4 areas, with collectively 20 parcels. These areas are labeled A through D with each parcel within a given area identified with the letter corresponding to area and with the assigned number of that parcel. On the Exhibit A map there are 6 parcels in the B area which corresponds to the number of parcels assigned to the Lower Area and the B area is the lowest in elevation on the property. In the same fashion: there are 7 parcels in the A area which corresponds to the number of parcels assigned to the Center Area, which is located in the center of the property; and 5 parcels are assigned to the C area which corresponds to the number assigned to the Upper Area (Triangle) which is both the highest in elevation and is predominantly triangle-shaped. That leaves the D area with 2 parcels, which is the same number assigned to the Access Road area, although I'm not sure why it is called the Access Road area. So, it would seem to me that the 615 Manor property encompasses only the D area (the Access Road) area and thus, it may only be developed with 2 homes, which have already been developed on it. The remainder is to be preserved as private open space.

Unless there is something I am not aware of, it seems that allowing for any further development on the remaining lands of the Access Road area would be in direct conflict with this recorded Settlement

Agreement which was the product of hard fought litigation and negotiation between the Town and the original developer.

Despite the constraints on development in the Settlement Agreement, these were never addressed by the Town Council at any time that I am aware of and especially when it agreed at the very last minute of the Council meeting which started on May 3 but actually ended in the early morning hours of May 4, 2023 to include in the draft Housing Element not only 6 single family homes, but an additional 20 multi-family residences, on the 615 Manor property as a “pipeline project”. I know that the Council noted that this draft Housing Element was a work in progress and changes can still be made to it. Thus, I am hopeful that the Council will consider these constraints and re-consider in a public setting the proposed “pipeline project” at 615 Manor.

Please share this documentation with the Town Council, staff and its Housing Element consultant.



**TOWN OF FAIRFAX
FAIRFAX OPEN SPACE COMMITTEE**

MEMORANDUM

To: Town Councilmembers, Town Manager, Town Planning Director
From: Fairfax Open Space Committee
Jack Judkins, Vice Chair
Date: April 28, 2023
Re: FOSC Comments on Updated Housing Element: Priority Open Space lands

Introduction: Role of the OS Committee and the Public Process

The Fairfax Open Space Committee (FOSC or the Committee) was established by Resolution of the Town (Resolution No. 2334, as subsequently amended) in 2004. Under that resolution the purposes of the Committee include advising the Town on

matters affecting open space lands which are environmentally sensitive and which have aesthetic qualities. In addition, the Committee was given the specific responsibility to participate as an advisory body and to **“review planning and development matters in order to formulate policies that it may deem appropriate to advocate”**.

Consistent with these purposes, the Open Space Element of the Town General Plan, adopted in 2012, specifically identifies the Committee as having the responsibility to “create an inventory of undeveloped and underdeveloped lands within the Fairfax Planning Area”. See General Plan Objective OS-1.2. Appendix OS-A to the Open Space Element provides “a preliminary inventory of approximately 30 known parcels within the Fairfax Planning Area that are undeveloped or underdeveloped”.

The “Miranda Heights Property”, the “Ross Property” and the undeveloped 18 acres of the “RFC Property”, as now identified in the Housing Element Update as sites available for housing, were included on the General Plan open space “inventory” as high priority open space parcels since the adoption of the current General Plan in 2012.

Under the General Plan, FOSC was also charged with the responsibility to: “create an inventory of undeveloped and underdeveloped land parcels within the Fairfax Planning Area, and make the inventory publicly accessible”. This inventory shall take the form of a map and a list”. See Open Space Element, Program OS-1.2.1.1.

Consistent with that directive, in 2015 FOSC submitted to the Town Council and the Town Council approved additional properties that were identified as high priority open space lands to be conserved. At the same time, The Town Council approved the submission of an application by the Town to the Association of Bay Area Governments (ABAG), through the “One Bay Area” process, for ABAG acknowledgment and designation of these properties as “Priority Conservation Areas” (PCAs). Under this process, in 2015, ABAG approved and designated 3 new areas in the Fairfax planning area as PCAs, adding to the earlier approved (2008) designation of the “Central Marin Ridge Lands” PCA. ABAG made these PCA designations in large part on the conclusion that these properties were deemed to be located within an area that had significant and exceptional open space values, including recreational opportunities, visual qualities, and plant and animal ecosystems. A copy of the map submitted to and approved by ABAG, showing the 2015 designated “Fairfax Open Space PCAs (PCAs 1-3)”, as well as depicting the earlier 2008 approved Central Marin Ridge Lands PCA, is attached as Exhibit 1. Also attached, as Exhibit 2, is a 2016 MTC memo referencing the approval by ABAG of these PCAs.

A comparison of the PCA maps with the “vacant single-family lots” identified in the Housing Element Update as sites available for housing reveals that many of these sites that are “available for housing” are also specifically designated as priority conservation lands by ABAG, by the General Plan and by the General Plan inventory.

Because of their inclusion under the inventory and designation under the PCA process as high priority open space properties, the Open Space Element affords these properties special status and protection. The following objectives, policies and programs of the Open Space Element require that:

- Objective OS-1.4: Protect undeveloped and underdeveloped lands according to the [inventory] list and priorities established by Objective OS-1.2 and OS-1.3 by converting them to Designated Open Space.
- Policy OS-1.4.3:: Acquire parcels in this inventory if they become available for purchase if possible.
- Program OS-1.4.3.1: If high-priority parcels on the inventory list come up for sale or auction, the Town Council shall consider allocation of funds from any available sources to acquire the property and create additional Designated Open Space (see Appendix OS-B).
- Policy OS-1.4.4: Acquire and encourage the acquisition of appropriate [open space] easements on parcels in this inventory, if possible.
- Program OS-1.4.4.1: Conservation and open space easements acquire development rights for the public, for all or part of a property, while ownership is retained by the property owner. If purchase is not feasible, the Town of Fairfax shall approach the owners of these properties to investigate the possibility of creating Designated Open Space through acquisition of an appropriate easement.
- Policy OS-1.4.5: Dedicate all or part of privately owned parcels in the inventory for use as open space, whenever possible.
- Program OS-1.4.5.1: Property owners shall be encouraged to set aside land dedicated to open space as a condition to development of parcels in the inventory. While access to these open space lands may be restricted, the preservation of open space land in its natural state is valuable.

- Program OS-1.4.5.2: Identify opportunities early in the planning process for transferring development rights between parcels to create dedicated open space.

Other language in the Open Space Element and elsewhere in the General Plan also recognize the critical importance of these priority open space lands and the visual, recreational, and natural resources found on them:

- General Plan Introduction, pp. 16-17: Today, Fairfax is a small town located at the western edge of Marin County's city centered corridor that parallels U.S. Highway 101, with the agriculturally rich rural portion of the county just beyond to the west. The town's natural setting encompasses a series of valleys, canyons, and forested hills with largely undeveloped ridgelines. Scenic and natural resources are key aspects of the community's sense of place and contribute to the overall quality of life in Fairfax. In addition to the form of the land, mature trees and the extensive areas of protected open space in and around the Town help define the Town's identity as a community that values nature and environmental preservation.
- Open Space Element, OS-1 to OS-2: In 2004, the Town Council created a standing Open Space Committee to further long-term goals to acquire and maintain open space lands in the Fairfax Planning Area. The Open Space Element of the General Plan plays a major role in maintaining what residents cherish about living in Fairfax, and shaping the future of the town. Open space tends to vanish over time unless it is protected. This document outlines ways for the Town of Fairfax and its residents to consider existing open space areas, protect them from development, and expand protections for open space in the future. This Open Space Element establishes a series of programs in support of these goals.
- Open Space Element, OS-2: The Fairfax Planning Area (see Figure LU-4 in the Land Use Element) is visually and geographically defined by prominent ridgelines that separate it from adjacent communities in Marin County.
- Open Space Element, Objective OS-3.2: Preserve the visual appeal of the natural landscape in the Fairfax Planning Area.
- Open Space Element, Policy OS-3.2.2: Discourage development of any man-made structure on the ridgelines and within the ridge zones within the Fairfax Planning Area.

- Open Space Element, Policy OS-3.2.3: Prevent development from blocking or impairing existing views of Visually Significant Areas identified in Figure OS-1.
- Open Space Element, Program OS-3.2.3.1: Review development applications to ensure that views of Visually Significant Areas are not negatively impacted.
- Open Space Element, Objective OS-3.3: Constrain anthropogenic sound levels in and around open space areas so that natural sounds of flora and fauna are audible.
- Open Space Element, Policy OS-3.3.1: Constrain noise levels in Fairfax-Designated Open Space.
- Open Space Element, Objective OS-4.1: Create and preserve Designated Open Space to mitigate the threat of natural hazards.
- Open Space Element, Policy OS-4.1.1: Areas that are prone to landslides must remain as open space, or be developed with adequate engineering to mitigate the hazard.
- Open Space Element, Policy OS-4.1.2: Designated Open Space along creek channels and in flood-prone areas should be created whenever possible to mitigate flood hazards.
- Open Space Element, Policy OS-4.1.3: Mitigate extreme wildfire hazard in open space areas by reducing fire risk and removing invasive non-native species.
- Open Space Element, Program OS-4.2.1.1: Require that the design, location and construction of utilities, in existing open space or parcels in the inventory established by OS-1.2.1, minimize harm to the area's environmental and visual qualities.
- Land Use Element, Policy LU-1.1.1: New development shall be limited and of a scale that preserves the significant scenic and natural resources and rural character of the areas adjacent to the Town.
- Land Use Element Objective, LU-1.2: Limit development on hillside and ridgeline parcels to preserve and enhance the scenic qualities of the Town.

- Land Use Element, Policy LU-1.2.4: No roads or streets shall be permitted to traverse a ridge, except as deemed necessary specifically for emergency access and egress.
- Open Space Element, Objective OS-3.1: Provide and maintain a system of recreational trails that will create access amongst and between downtown Fairfax, neighborhoods of Fairfax, and open space in the Fairfax Planning Area.
- Land Use, Policy LU-1.1.3: Existing public easements will be utilized to develop a system of pathways as a potential recreational, circulation, and public safety resource.
- Land Use, Policy LU-7.1.6: New and renewed residential development outside of the Town Center Area should be compatible with, and subordinate to, the topography, wildlife corridors and habitat, natural vegetation pattern, hydrology, and geotechnical characteristics of the area.
- Conservation Element, Objective CON-6.1: Protect special-status species, resident and migrant wildlife and their associated habitats.

Despite the obvious disconnect between the strong protections under the General Plan, required for these special status properties and the resource values associated with them, the draft updated Housing Element continues to show these properties as ones which could be developed to meet the new housing requirements imposed by ABAG. Equally inconsistent is that this same regional agency, ABAG, through a parallel process (One Bay Area), has identified these very properties as PCA's, indicating that they should not be developed but, instead, to the extent possible, preserved and protected as open space.

By including these properties on the list of properties on which housing could be built to meet the ABAG housing requirements, not only is the Town acting inconsistently with the existing General Plan and PCA designations, but, worse, such inclusion might be used to argue against any opportunity to acquire or otherwise protect all or a part of these properties as open space, should that opportunity present itself. It seems unlikely that the community or Town Council would desire this outcome.

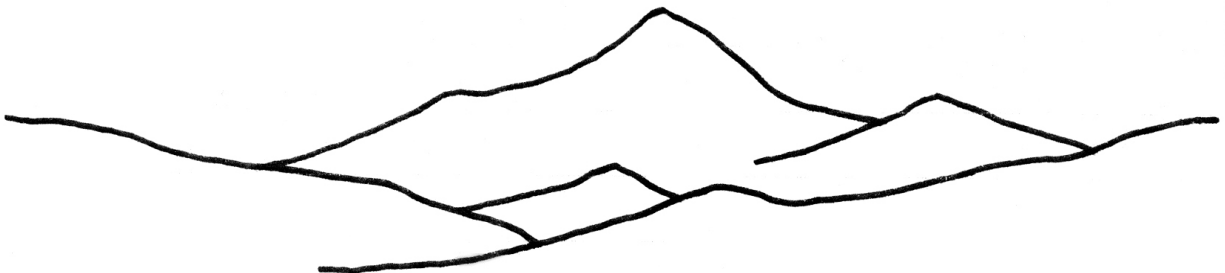
For these reasons, FOSC voted unanimously that we strongly recommend to the Town that it reconsider the designation of these properties as suitable to meet the housing needs under the Updated Housing Element. We urge you and your Housing Element contractor to involve the Committee in the update process and to consider these issues

and to look for other opportunities, especially ones involving infill, for meeting housing needs.

At a minimum, the update to the Housing Element should seek to minimize the impact on these priority open space properties by imposing constraints on any development the would:

1. Require significant clustering.
2. Limit development to a minimum size.
3. Preserve ridgelines corridors.
4. Avoid impact on visual resources, water resources, and native flora and fauna
5. Respect and preserve wildlife corridors.
6. Identify those properties with special status species and preclude development that would affect those species.
7. Avoid impact on recreational uses which exist and have existed on many of these properties for well over a half-century and which may well be public access easements created by implication.

In addition, the bulk of housing development should be encouraged only in already developed areas, where infill opportunities exist and infrastructure is already present or can be readily provided.



**TOWN OF FAIRFAX
FAIRFAX OPEN SPACE COMMITTEE**

MEMORANDUM

To: Town Councilmembers, Town Manager, Town Planning Director
From: Fairfax Open Space Committee
Susan Pascal Beran, Chair
Date: February 22, 2023
Re: Updated Housing Element: Objection to Inclusion of Wall and Victory Village undeveloped lands on the list of sites for meeting housing requirements

Introduction: Role of the OS Committee and the Public Process

The Fairfax Open Space Committee (FOSC or the Committee) was established by Resolution of the Town (Resolution No. 2334, as subsequently amended) in 2004. Under that resolution the purposes of the Committee include advising the Town on matters affecting open space lands which are environmentally sensitive and which have aesthetic qualities. In addition, the Committee was given the responsibility to participate as an advisory body and to “review planning and development matters in order to formulate policies that it may deem appropriate to advocate”.

Consistent with these purposes, the Open Space Element of the Town General Plan, adopted in 2012, specifically identifies the Committee as having the responsibility to review each application for development of any undeveloped and underdeveloped properties that have been identified in the General Plan open space “inventory”, as important open space within the Town. See General Plan Policy OS-1.4.1, Program OS-1.4.1.2. The former Wall Property and the rear, undeveloped 18 acres of the Victory Village Property (collectively “the Properties”) have been included on the General Plan open space “inventory” as high priority open space parcels since the adoption of the current General Plan in 2012. Moreover, in 2015 the Properties were identified and acknowledged as Priority Conservation Areas (PCAs) by the Town and by the Association of Bay Area Governments, through the “One Bay Area” process. In particular, under the PCA designation process the Properties were deemed to be located within an area that had significant and exceptional open space values, including recreational opportunities, visual qualities, and plant and animal ecosystems.

Because of their inclusion under the inventory as high priority open space properties, the Open Space Element affords the Properties special status and protection. The following objectives, policies and programs of the Open Space Element require that:

- Objective OS-1.4: Protect undeveloped and underdeveloped lands according to the [inventory] list and priorities established by Objective OS-1.2 and OS-1.3 by converting them to Designated Open Space.
- Policy OS-1.4.3:: Acquire parcels in this inventory if they become available for purchase if possible.
- Program OS-1.4.3.1: If high-priority parcels on the inventory list come up for sale or auction, the Town Council shall consider allocation of funds from any available sources to acquire the property and create additional Designated Open Space (see Appendix OS-B).
- Policy OS-1.4.4: Acquire and encourage the acquisition of appropriate [open space] easements on parcels in this inventory, if possible.
- Program OS-1.4.4.1: Conservation and open space easements acquire development rights for the public, for all or part of a property, while ownership is retained by the property owner. If purchase is not feasible, the Town of Fairfax shall approach the owners of these properties to investigate the possibility of creating Designated Open Space through acquisition of an appropriate easement.
- Policy OS-1.4.5: Dedicate all or part of privately owned parcels in the inventory for use as open space, whenever possible.
- Program OS-1.4.5.1: Property owners shall be encouraged to set aside land dedicated to open space as a condition to development of parcels in the inventory. While access to these open space lands may be restricted, the preservation of open space land in its natural state is valuable.
- Program OS-1.4.5.2: Identify opportunities early in the planning process for transferring development rights between parcels to create dedicated open space.

Despite the obvious disconnect between the strong protections required for these special status properties under the Open Space Element of the General Plan, the draft updated Housing Element continues to show the Properties as ones which should be developed to meet the new housing requirements imposed by ABAG. Equally inconsistent is that this same regional agency, ABAG, through a parallel process (One Bay Area), has identified these very properties as PCA's, indicating that they should not

be developed but, instead, to the extent possible, preserved and protected as open space.

By including these properties on the list of properties on which housing could be built to meet the ABAG requirements, not only is the Town acting inconsistently with the existing General Plan and PCA designation, but, worse, such designation might be used to argue against any opportunity to acquire or otherwise protect all or a part of these properties as open space, should that opportunity present itself. It seems unlikely that the community or Town Council would desire this outcome.

For these reasons, FOSC voted unanimously that we strongly recommend to the Town that it reconsider the designation of the Properties as suitable to meet the housing needs under the Updated Housing Element. We urge you and your Housing Element contractor to involve the Committee in the update process and to consider these issues and to look for other opportunities, especially ones involving infill, for meeting housing needs.

Attachment 2

APPENDIX OS-A: PARCEL INVENTORY FOR GENERAL PLAN OBJECTIVES

- Loma Alta Open Space
- Circle V Ranch
- Redwood Park
- Peri Park
- Bald Mountain
- Sky Ranch/Sky Oaks
- Grass-covered ridge portions of Wall Property
- Wall Property behind Fairfax Market
- Buon Gusto Tract (Library)
- Upper Space behind Canyon Village
- Ridge between Canyon Village and Glen Drive
- Ben Ross Property – end of Toyon
- Lots by upper Ridgeway, next to Fairfax Park, adjacent to Hawthorn Canyon open space belonging to San Anselmo
- Willow Avenue, upper part on right side, adjacent to Hawthorn Canyon
- 130 Ridgeway, near Wall Property
- Baywood Canyon
- Bothin Park
- West side of Oak Manor (farm at top of hill)
- South side of Iron Springs Road, next to Bothin Park (next to Boy Scout Camp)
- Marin Town and Country Club
- Crest Road southeast corner of town, east side
- Deer Park
- Williams Property, adjacent to San Anselmo
- Stafford Property, next to Sky Ranch adjacent to San Anselmo
- Raker Property, adjacent to Egger Preserve
- Evelyn David Parcel, contiguous to Ben Ross

REGIONAL HOUSING NEEDS ALLOCATION



Association of Bay Area Governments

2023-2031 Regional Housing Needs Assessment (RHNA) Appeal Request

Submit appeal requests and supporting documentation via DocuSign by 5:00 pm PST on July 9, 2021.

Late submissions will not be accepted. Send questions to rhna@bayareametro.gov

Jurisdiction Whose Allocation is Being Appealed: Town of Fairfax

Filing Party: ☐ HCD ☒ Jurisdiction: Town of Fairfax

Contact Name: Ben Berto Title: Planning and Building Services Director

Phone: 415 458-2346 Email: bberto@townoffairfax.org

APPEAL AUTHORIZED BY:

Name: Garrett Toy

Signature: 

Date: 7/9/2021

PLEASE SELECT BELOW:

- ☐ Mayor
- ☐ Chair, County Board of Supervisors
- ☐ City Manager
- ☐ Chief Administrative Officer
- ☒ Other: Town of Fairfax Town Council

IDENTIFY ONE OR MORE BASES FOR APPEAL [Government Code Section 65584.5(b)]

- ☐ ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey regarding RHNA Factors (Government Code Section 65584.04(e)) and Affirmatively Furthering Fair Housing (See Government Code Section 65584.04(b)(2) and 65584(d)(5)):
- ☐ Existing and projected jobs and housing relationship.
 - ☐ Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
 - ☐ Availability of land suitable for urban development or for conversion to residential use.
 - ☐ Lands protected from urban development under existing federal or state programs.
 - ☐ County policies to preserve prime agricultural land.
 - ☐ Distribution of household growth assumed for Plan Bay Area 2050.
 - ☐ County-city agreements to direct growth toward incorporated areas of county.
 - ☐ Loss of units contained in assisted housing developments.
 - ☐ Households paying more than 30% or 50% of their income in rent.
 - ☐ The rate of overcrowding.
 - ☐ Housing needs of farmworkers.
 - ☐ Housing needs generated by the presence of a university campus within a jurisdiction.
 - ☐ Housing needs of individuals and families experiencing homelessness.
 - ☐ Loss of units during a declared state of emergency from January 31, 2015 to February 5, 2020.
 - ☐ The region's greenhouse gas emissions targets to be met by Plan Bay Area 2050.
 - ☐ Affirmatively furthering fair housing.
- ☒ ABAG failed to determine the jurisdiction's Draft RHNA Allocation in accordance with the Final RHNA Methodology and in a manner that furthers, and does not undermine the RHNA Objectives (see Government Code Section 65584(d) for the RHNA Objectives).
- ☒ A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted in the Local Jurisdiction Survey (*appeals based on change of circumstance can only be made by the jurisdiction or jurisdictions where the change occurred*).

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d). An appeal shall be consistent with, and not to the detriment of, [the development pattern in the sustainable communities strategy \(Plan Bay Area 2050 Final Blueprint\)](#). (Click [here](#))

Number of units requested to be reduced or added to jurisdiction's Draft RHNA Allocation:

☒ Decrease Number of Units: 120 ☐ Increase Number of Units: _____

Brief description of appeal request and statement on why this revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d) and how the revision is consistent with, and not to the detriment, of the development pattern in Plan Bay Area 2050. Please include supporting documentation for evidence as needed, and attach additional pages if you need more room.

The Town of Fairfax appreciates and supports efforts to address State and regional housing needs, particularly those relating to the shortage of affordable housing in our region. Our Town has in fact exceeded the current (5th cycle) RHNA housing numbers by over 50%, including fulfilling more than double our low-income housing allocation. Fairfax has and will continue to provide housing, including for our most vulnerable populations and to affirmatively further fair housing opportunities.

We believe that there are three criteria for doing so that are consistent with the RHNA appeals procedures listed by ABAG, as follows:

- 1) The Housing Element Site Selection (HESS) tool used by BayArea Metro as part of the RHNA process to identify available, potential, and constrained sites in Fairfax contains erroneous data that, once corrected, reassigns all areas of the Town that the HESS tool currently identifies as 'potential' (for housing sites) to 'constrained'.
- 2) The Draft RHNA fails to adequately consider the Town's jobs-housing relationship. The jobs-housing relationship has been presented as a primary justification for requiring significantly more housing to resolve the jobs-housing imbalance; however, this rationale does not bear up to scrutiny.
- 3) Lack of water supply is a major emerging issue. Marin Water, the utility district that provides all of Fairfax's water, is considering a moratorium on new water service connections, and is mandating water rationing. Marin obtains almost all of its water from its local watershed reservoirs, and the extreme 2-year drought the County (along with most of the State) is experiencing has severely limited water supplies to serve local users. While future events cannot be forecasted, given the current severe water shortfall situation it is not prudent to mandate as much growth in housing numbers as the Town has had in the last half century.

List of supporting documentation, by title and number of pages

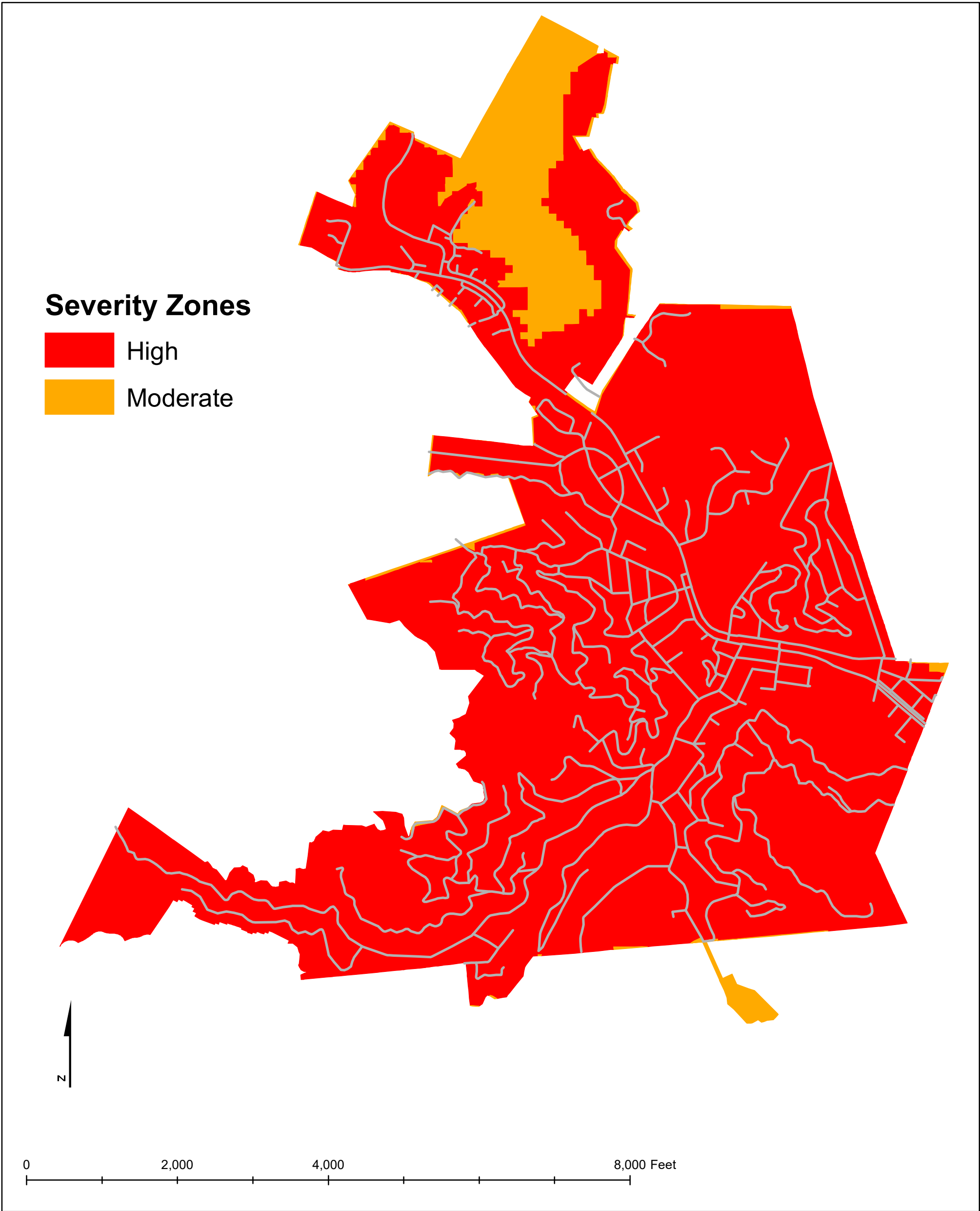
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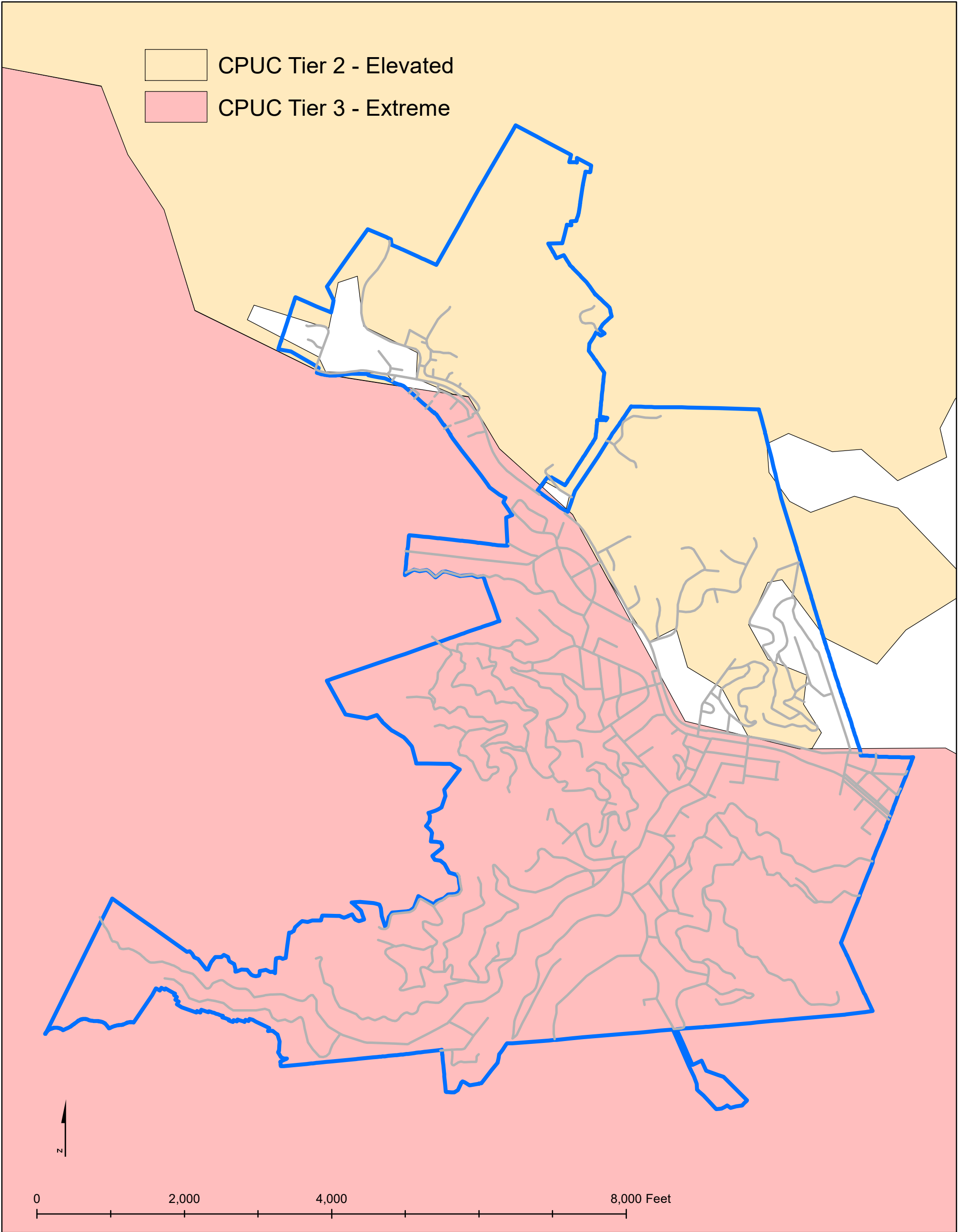
The maximum file size is 25MB. To submit larger files, please contact rhna@bayareametro.gov.

Click here to
attach files

B. CalFire Fire Hazard Severity Zones Diagram






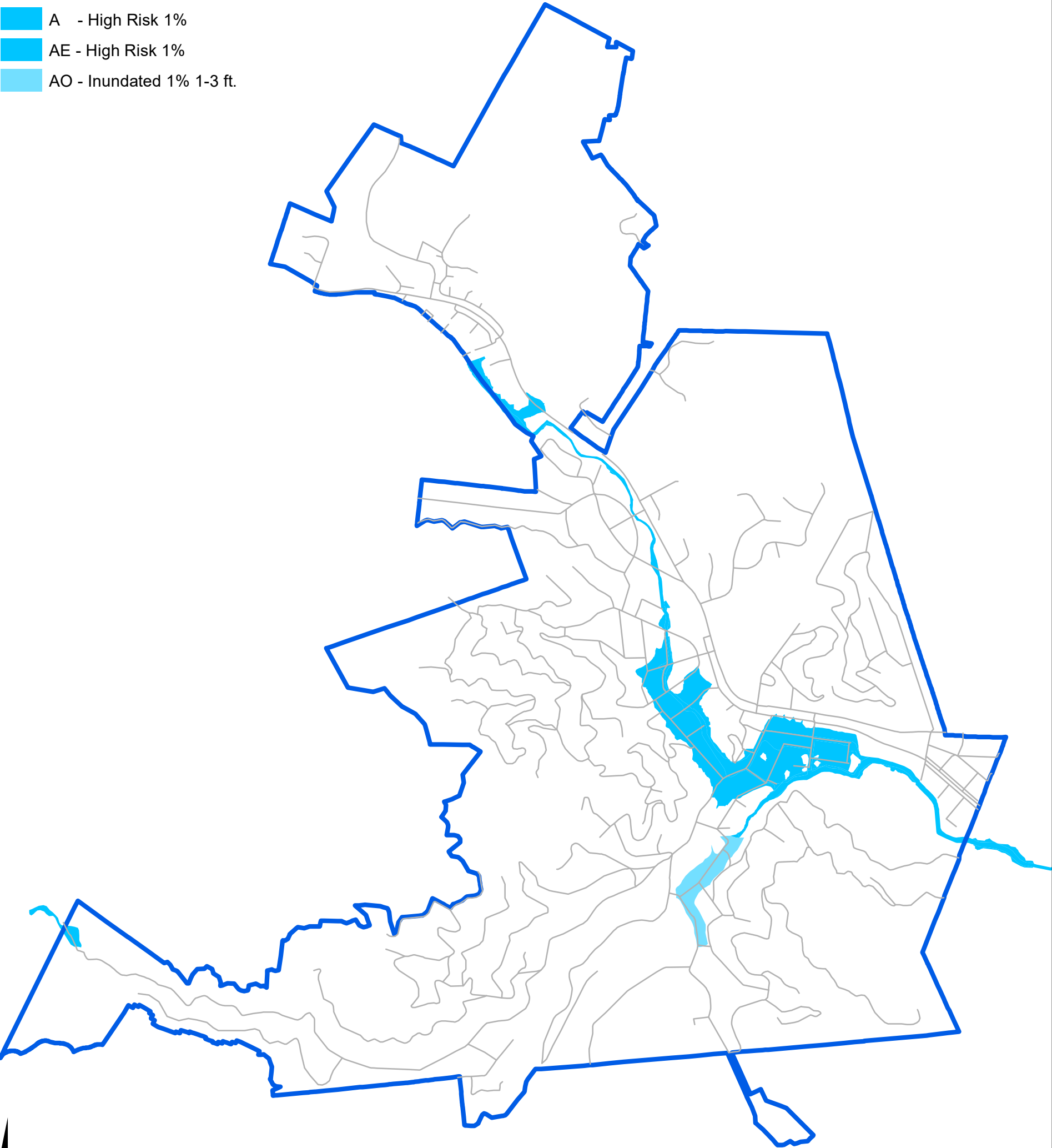
D. California Public Utilities Commission (CPUC) Fire Risk Diagram



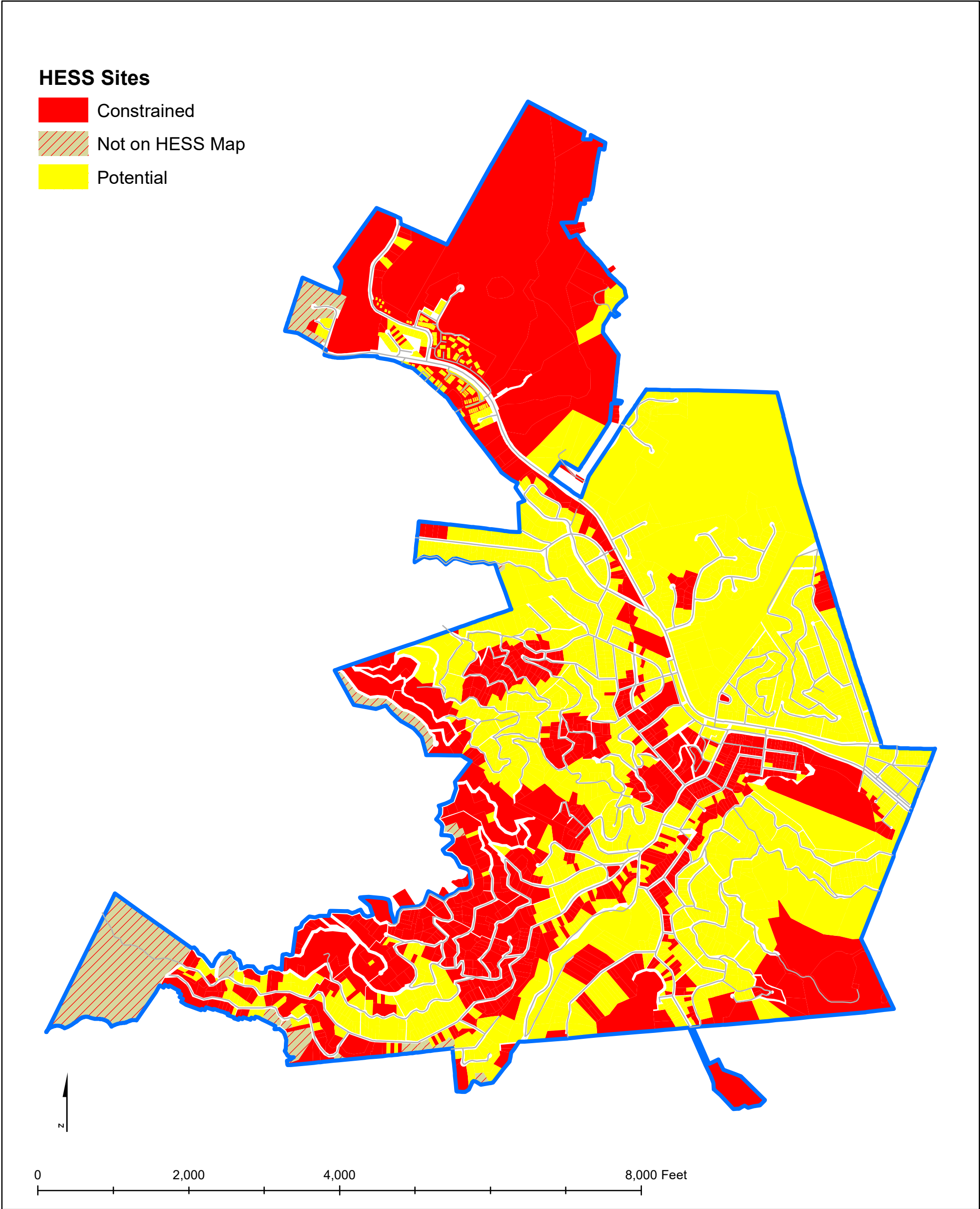
E. FEMA Flood Hazard Zones Diagram

Flood Hazard Zones

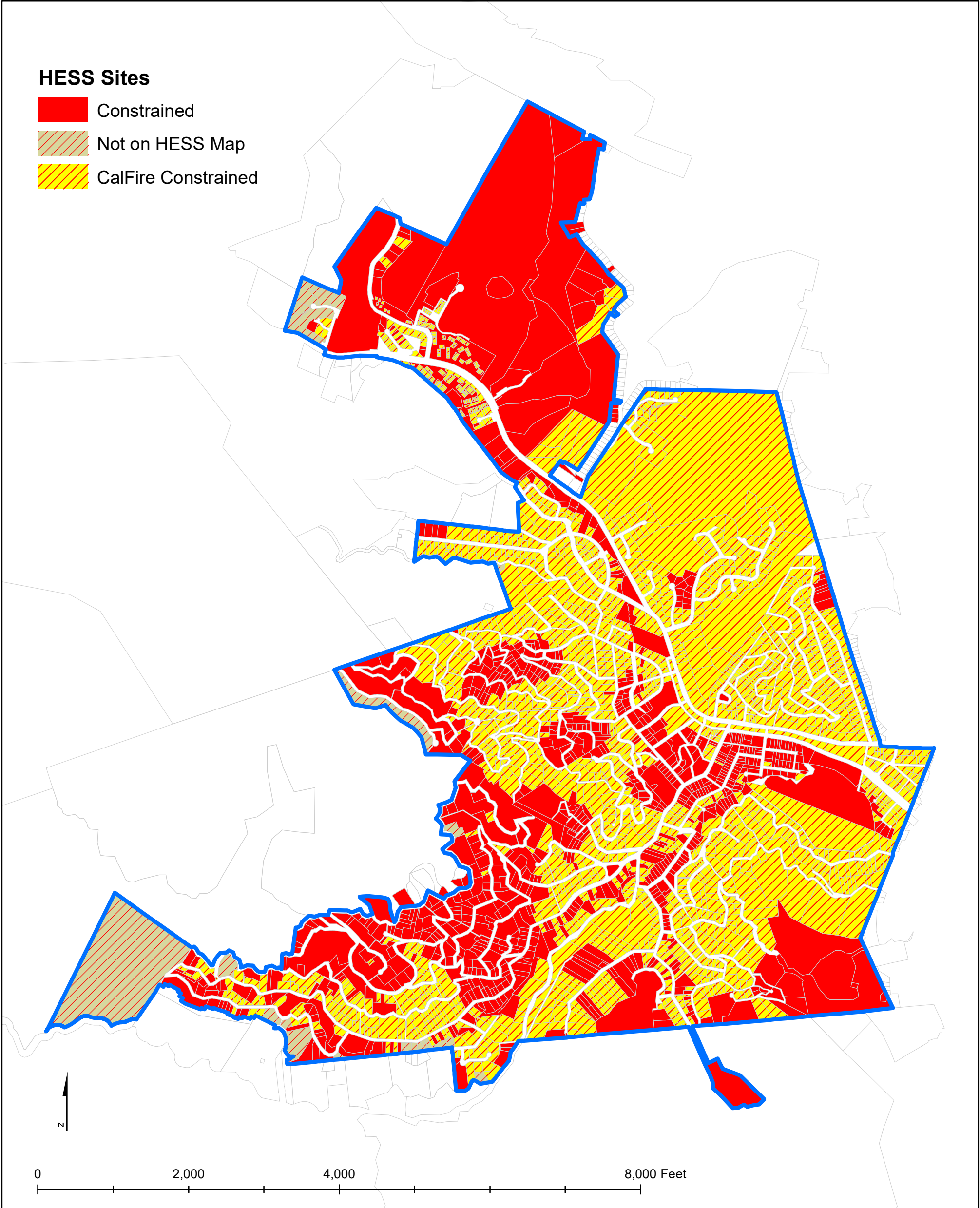
-  A - High Risk 1%
-  AE - High Risk 1%
-  AO - Inundated 1% 1-3 ft.



A. Housing Element Site Selection (HESS) Diagram



C. HESS Constrained Sites (per CalFire High Fire Hazard Overlay) diagram





TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453 - 1584 / FAX (415) 453 - 1618

July 7, 2021

Association of Bay Area Governments/Bay Area Metro

On behalf of the Town Council of Fairfax, I am registering an appeal of the 490 housing units assigned to Fairfax in the draft Regional Housing Needs Allocation (RHNA).

The Town of Fairfax appreciates and supports efforts to address State and regional housing needs, particularly those relating to the shortage of affordable housing in our region. Our Town has in fact exceeded the current (5th cycle) RHNA housing numbers by over 50%, including fulfilling more than double our low-income housing allocation. Fairfax has and will continue to provide housing, including for our most vulnerable populations and to affirmatively further fair housing opportunities.

As noted in the Town's previous (October 13, 2020) letter to ABAG Board President Jessie Arreguin about the early preliminary RHNA housing numbers, the Town of Fairfax looks forward to creatively planning for a reasonable number of housing units that address the need for housing (particularly affordable) and is responsive to community concerns. However, the 6th cycle draft RHNA allocation exceeds what is reasonable and realistic. The Town will cite three criteria for appealing this allocation consistent with the criteria set forth in the 2023-2031 RHNA Cycle Appeals Procedures

As has been noted in prior discussions on housing in this area, communities such as Fairfax with high property values and stable populations for an extended period of time tend to have already achieved a 'natural' limit to growth. Furthermore, Fairfax's population is aging, which naturally would result in a lower population. Vacant parcels, where present, tend to have severe, inherent land use limitations on development such as steep, unstable slopes. Here in Fairfax, whether it is such slopes, endangered species, historic register listing, or a general lack of vacant land, the reality is that readily developable land has already long been spoken for. The draft 6th cycle RHNA housing numbers and State regulations demand that Fairfax plan for as much housing in the next eight years as has occurred in the last half century. This is not reasonable or realistic.

The Town of Fairfax is aware of the limited criteria on which appeals to the draft 6th cycle RHNA methodology can be based. We believe that there are three criteria for doing so that are consistent with the RHNA appeals procedures listed by ABAG, as follows:

1) The Housing Element Site Selection (HESS) tool used by BayArea Metro as part of the RHNA process to identify available, potential, and constrained sites in Fairfax contains erroneous data that, once corrected, reassigns all areas of the Town that the HESS tool currently identifies as 'potential' (for housing sites) to 'constrained'.

As can be seen from the three attached diagrams (Attachments A-C), the HESS diagram (Attachment A) currently identifies the majority of the Town's area as falling into the 'potential' category for housing. However, the underlying HESS tool criteria for determining whether sites should be considered 'constrained' lists areas which fall into a high fire hazard severity zone, and therefore are not suitable for higher-density, multifamily development.

Attachment B is the State CalFire map which shows that virtually all of Fairfax is located in the high fire hazard severity zone classification. Attachment C combines the HESS map and the CalFire map to show that all of the sites which the HESS map mistakenly shows as "potential" housing sites are actually 'constrained.'

Furthermore, the Marin Wildfire Prevention Authority is currently conducting an evacuation study for every Marin jurisdiction and the results are expected to show that Fairfax is among the most adversely affected jurisdictions with respect to having many areas with only *one* path of egress, a significant hazard in the event of a wildland fire.

The State of California has previously allowed extensive housing development in areas with high fire hazard and constrained evacuation, with the unfortunate but foreseeable loss by wildfire of hundreds of lives and thousands of homes. Last year alone, close to 5 million acres burned in this state, with accompanying devastating loss of lives, livelihoods, and housing. Climate change and the current unprecedented drought not only result in water shortages (see no. 3 below) but the specter of even more damaging fires.

Another State fire hazard assessment tool, the California Public Utilities Commission (CPUC) Fire Risk firemap (see Attachment D), shows that 69% of the Town is in its highest (extreme) fire risk tier, and 30% is in its elevated fire risk tier.

The State appears to be trying to avoid repeating these tragic housing development mistakes. Requiring a Safety Element update to accompany the Housing Element update is an example of planning to avoid putting development in harm's way. It therefore doesn't make sense for the State to mandate the planning and development of hundreds of new homes in Fairfax - an eight-fold increase over the current RHNA housing numbers - in a high fire risk, constrained evacuation jurisdiction. The Town's hope is the numbers are at least partially based on erroneous HESS data. With the HESS correction the Town notes, the number of new homes

mandated for Fairfax in the draft 6th cycle RHNA should be substantially reduced, preferably to the number of units which the Town in its commitment to housing is already achieving in the current RHNA cycle.

Flooding is another major hazard impacting a significant portion of the Town's flatland area, including its multi-family zoned district, where higher-density housing is or would theoretically be located. The Town is learning from mistakes of the past and has worked cooperatively with the San Anselmo Flood Risk Reduction (SAFRR) project, including installation of a flood detention basin in Town, to reduce flood hazards in Fairfax and the Ross Valley. Developed improvements to date have not provided protection from 100-year floods, much of which is floodway that can result in especially hazardous urban swiftwater flooding and rescue. The attached map documents the extent to which the Town is constrained by flooding hazards.

2) The Draft RHNA fails to adequately consider the Town's jobs-housing relationship. The jobs-housing relationship has been presented as a primary justification for requiring significantly more housing to resolve the jobs-housing imbalance; however, this rationale does not bear up to scrutiny.

The diagram below is taken from the Housing Needs Data Report for Fairfax prepared by ABAG/MTC, and illustrates Fairfax's unique circumstances with respect to jobs versus housing.

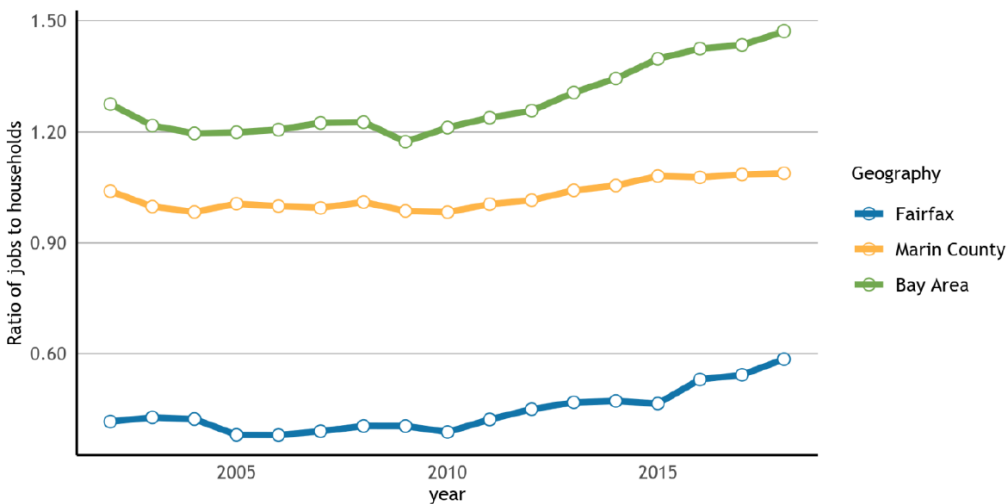


Figure 8: Jobs-Household Ratio

As can be seen from Figure 8, the Fairfax ratio of jobs to housing is far lower than either Marin County or the Bay Area overall. Fairfax's latest local jobs versus household ratio is only approximately one-half that of Marin County overall, and one-third of the greater Bay Area. Fairfax continues to have far lower local jobs-housing ratio than either Marin or the Bay Area throughout the entire survey period. The latest statistics show Fairfax as having 0.6 jobs per housing unit. In contrast, Marin County has 1.15 jobs per housing unit, and the overall Bay Area has 1.5 jobs per housing unit.

Plan Bay Area 2050 projects that while the Central Marin “superdistrict” (of which Fairfax is a part) is proposed to be required to increase households by 22,000, or 50%, it will also lose 14,000 jobs, a 23% decrease (see Attachment E). Thus, while Fairfax already has the lowest jobs to housing ratio in Marin and is far below the Bay Area’s ratio, the decrease in jobs in our area shows that ratio will become even more imbalanced. More RHNA-mandated housing in Fairfax will only exacerbate this imbalance.

The takeaway is while the Bay Area overall needs more housing to address the jobs-housing imbalance, Fairfax doesn’t need more housing, it needs more local jobs. Many of the people living in new Fairfax housing will be forced to commute to the surplus jobs relative to housing elsewhere in the region. The jobs-housing ratio doesn’t address the shortage of affordable housing. However, it demonstrates that more housing in Fairfax will exacerbate traffic rather than relieve it, running directly counter to RHNA goal of reducing Vehicle Miles Traveled (VMT).

As noted previously, Fairfax has and will continue to plan for and provide affordable housing as a priority. However, the large number of housing units assigned to Fairfax in the proposed draft 6th cycle RHNA will worsen, not improve, the jobs-housing imbalance.

3) Lack of water supply is a major emerging issue. Marin Water, the utility district that provides all of Fairfax’s water, is considering a moratorium on new water service connections, and is mandating water rationing. Marin obtains almost all of its water from its local watershed reservoirs, and the extreme 2-year drought the County (along with most of the State) is experiencing has severely limited water supplies to serve local users. While future events cannot be forecasted, given the current severe water shortfall situation it is not prudent to mandate as much growth in housing numbers as the Town has had in the last half century.

The Town of Fairfax recognizes the challenges faced in developing appropriate allocation numbers. However, we continue to believe the proposed 6th cycle RHNA housing numbers far exceed what is realistic and reasonable. Fairfax remains committed to equity for very low and low income households, and looks forward to constructively planning for future housing. Thank you for your time and consideration.

Sincerely,

Garrett Toy

GARRETT TOY
Town Manager

Subject: Fairfax Housing Element Plan EIR 2023



Diana Perdue <dperdue199@gmail.com>
to Housing

Thu, Nov 9, 1:14 PM (7 days)

You are viewing an attached message. Dyett & Bhatia Mail can't verify the authenticity of attached messages.

B9-1

This plan is long and hard to digest and I believe it does not come to the correct conclusions. It gives a huge pass to developers by reducing the seriousness of its impact. The town would need to rezone our current requirements to allow this plan and that alteration should go to the vote. We have never had cluster housing and most do not want it. Our ridgelines have been protected and they need to stay protected. We need to have parking for every unit, not some pie in the sky formula used because there is a bus stop in town.

B9-2

We do not have adequate water for a huge influx in population. Our roads are already at maximum capacity. We need no further vehicle trips to spoil our air quality. PG&E is not a reliable source of electricity as has been proven in the past 5 years. We have had more blackout days than ever before. The grid cannot handle hundreds of new houses.

B9-3

The environmental effect on our flora and fauna is critical. Your report says that it will be protected but I only see the careless disregard given by Fire Safe Marin and PG&E as they annihilate entire hillsides in gross disregard to see that only expanding under this plan.

This is a takeover of our town that I wish had played out with the staff and elected council pushing back. The entire sentiment only devalues our town. My conclusion is if you want to avoid adverse impacts then you need to scrap this entire premise.

Diana
Perdue
199
Scenic Road
Fairfax

Subject: Housing Element



terry balestriere <fairfaxbuddy@gmail.com>
to Housing

Thu, Nov 9, 11:37 AM (7 d

You are viewing an attached message. Dyett & Bhatia Mail can't verify the authenticity of attached messages.

B10-1

I'm sorry, but I'm not on board with any plans to development the Town of Fairfax. In fact, the whole State of Calif overpopulated as it is. Everyone talks about climate change but yet continue to insist on more housing. We don't housing problem, we have a population problem. We have water shortages, food shortages, now housing shortag There is a point where we can no longer sustain any more population. And I think we are at that point. Not the cor you want but this is how I feel.



Kathy <k-flores@comcast.net>
to Housing

Tue, Nov 7, 9:57 AM (9 days

You are viewing an attached message. Dyett & Bhatia Mail can't verify the authenticity of attached messages.

Hello,

B11-1

I am very concerned about the safety of our residents when a fire rushes through Fairfax, as it will someday. As it is today, when there is fender bender on Sir Francis Drake Blvd the traffic is back up for miles! Do you want to be stuck in your car when the fire rages overhead?

This draft EIR plan claims it would not impact the Emergency Evacuation Response in Fairfax!

How is this so? Please explain how implementing high density housing will not increase traffic on the one road in and out of Fairfax?

B11-2

Is there a plan in place for adequate emergency access? (If so please tell us NOW since traffic is already terrible when parents are dropping off/picking up their children from school or Drake/Archie kids are driving to/from school).

Before this plan is adopted please review how an Emergency Response Vehicle will get through to help save lives.

Before this plan is adopted please review how Fairfax residents will get out safely when there is a fire.

Before this plan is adopted please have an Evacuation Plan written out with routes to maneuver cars to safety.

Please Stop and Think,

Kathy Flores

Subject: 615 Oak MAnor drive



mary alber <marychristinealber@gmail.com>
to Housing

Mon, Oct 2,

You are viewing an attached message. Dyett & Bhatia Mail can't verify the authenticity of attached messages.

To whom this may concern,

B12-1

I am writing in to discourage you not to add 615 Oak Manor Drive to the Housing Element. I live at 510 Oak MAno on the opposite side the 615 Oak Manor property.

These are the facts.

The homeowner does no fire protection for his property. As I write the , the fire road in the middle of the property is grown(fire road goes down the middle of the property all the way to Seven Eleven, the road way going up Oak M/ has not been cleared and the property Sir Francis Drake . I would hope you would be alarmed by this and I would address it immediately.

B12-2

There are two facts to the neighbor that should prevent this development.

1. We have a history of landslides and open spaces has nature springs through out the neighbor hood. When the i come , the water comes off the hills. I have three pumps under my house along with french drains and rock river b my yard.

B12-3

2. Numerous neighbors have a settlement attached to the deal of their property preventing any new housing. This legal document that should not be ignored or think it has expired. If you think it's not applicable then you need to c those homeowner deeds and make it right with those properties.

The zoning is for two dwelling not all the affording housing that is proposed. Plus, Oak Manor neighbors are count 615 Oak Manor is Fairfax. We as tax payers should not be paying for this development on our road way and the m element to start a development . (water, sewage, power lines, etc.)

I simple don't understand why the town would challenge such history of our neighborhood. The neighborhood is n meant for Affording Housing and it is a thoroughfare to outdoor recreation.

The town needs to relook at the locations near town and come up with a new plan for the Housing Element. I woul more than willing to volunteer if you have a sub committee to design a smart plan for our town.

Thank You
Fondly, MArY Alber

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2.2 Master Responses

Numerous comments raised common concerns or questions that are most appropriately answered or clarified in one comprehensive or “master” response. For this Final EIR, the issues listed in Table 2-2 are addressed in Master Responses, lettered MR-1 to MR-3. The intent of the Master Responses is to give a single, comprehensive response to the recurring comments to improve readability of the document by avoiding repetition and multiple cross-references. Many of the individual responses refer back to these Master Responses.

Table 2-2: Master Response List

Master Response	Title
MR-1	Regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706
MR-2	Regarding Open Space Preservation
MR-3	Regarding Housing at the Marin Town & Country Club (MTCC) Site

Master Response 1: Regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706

Several comments have asked whether there is a potential for development of the site at the top of Oak Manor Drive given the May 1991 Agreement in Settlement of Marin County Superior Court Case No. 140706, Fairfax Hills and 20th Century Builders v. Town of Fairfax (“Agreement”). The Agreement is between the Town of Fairfax and Fairfax Hills / 20th Century Builders, Inc. (“Plaintiffs”), in settlement of a lawsuit brought against the Town by the Plaintiffs and contains no provision for any benefits to third parties, such as adjacent property owners.

Based on the Town’s detailed review of the Agreement and of any Town actions regarding the site since May of 1991, there are no tentative map(s), pursuant to the Settlement Agreement, or otherwise, in effect as to this site. The Term of the Settlement Agreement is as provided in the California Subdivision Map Act. This means the Settlement Agreement is no longer valid or in effect and thus has no impact on the potential for future development of the site.

Master Response 2: Regarding Open Space Preservation

Several comments have stated that development as identified under the proposed Housing Element would not be consistent with the General Plan requirements and that developing in open space areas would result in significant impacts. In addition, commenters have asserted that several of the open space parcels identified for development are classified by the Association of Bay Area Governments (ABAG) as Priority Conservation Areas (PCAs) and are entitled to special protection and conservation.

The General Plan identifies open space conservation as an important community priority and outlines ways for the Town and its residents to consider existing open space areas, protect them

from development, and expand protections for open space in the future. In 2004, the Town Council created a standing Open Space Committee to further long-term goals to acquire and maintain open space lands in the Fairfax Planning Area. The Committee is tasked with evaluating and prioritizing parcels in the inventory of undeveloped and underdeveloped lands based on established criteria and becoming involved in the formal review of any development projects concerning these parcels (OS-1.1, OS-1.2, OS-1.3, OS- 1.4). All project applicants for parcels on the inventory list are required to meet with the Committee. Additionally, General Plan Policy OS-1.4.2 requires that if development plans are presented to the Planning Commission for parcels on the inventory list, the Commission should encourage clustered development on a small segment of the parcel, with provision of an easement on the undeveloped portion to create Designated Open Space.

As detailed on page 3.6-23 of the EIR, most parcels within the Planning Area are developed; almost all the remaining vacant land is located in steeply sloped hillside areas, much of which currently has General Plan land use designations and zoning which permit residential development. The Housing Element identifies several of these sites with current zoning that permits low density residential housing as candidates to help meet the Town's above moderate income RHNA allocation. The Housing Element does not propose any change to land use designations or increase in permitted density on these sites. The capacity projections for these sites are consistent with what is permitted under current zoning. However, Program 2-D in the Housing Element proposes to amend zoning regulations to permit low impact clustered residential development on large residentially zoned sites. These amendments would not increase the density permitted in the base zoning, rather they would allow for clustering of the housing on relatively flatter portions of the sites while preserving the majority of the site area as open space. Clustered development would focus roadway and utility infrastructure within smaller areas of the sites, minimizing potential environmental impacts, reducing development costs, and facilitating production of market rate housing as needed to meet the Town's RHNA obligations. These proposed standards would require that at least 75 percent of the site remain in its natural state and be preserved as permanent open space with a conservation easement or other development restriction; and also require the submittal of a site plan showing compliance with this standard. The amendments would also involve standards to protect viewsheds and ridgelines, require water-efficient landscaping, and require building techniques and materials to mitigate the risk of loss and damage due to wildfire. Therefore, implementation of the Proposed Project would not conflict with General Plan requirements.

Regarding Priority Conservation Areas (PCAs), Plan Bay Area 2050 describes the general location of PCAs in the vicinity of Fairfax but does not define their precise boundaries of PCAs. There are no housing opportunity sites identified in the Housing Element located in the immediate vicinity of PCA described in Plan Bay Area. Further, PCA designations are intended to guide and elevate priorities for conservation based on local consensus. PCA designation does not result in any formal changes to land use and land use authority and decisions in these areas remain with the local jurisdictions.¹ As noted above, in implementing the Proposed Project the Town would develop and adopt standards to permit clustering of housing on the sites without increasing the base density. The standards, now in draft form, would also require preservation of 75 percent of the site as open

¹ Ben Botkin, Priority Conservation Area Grant Manager, San Francisco Estuary Partnership, personal communication with Town of Fairfax, November 30, 2023.

space. As such, there are no PCA-related regulations or easements in place that would preclude residential development on sites identified for development under the Housing Element.

Master Response 3: Regarding Housing at the Marin Town & Country Club (MTCC) Site

Several comments have advocated for housing at the Marin Town & Country Club (MTCC) site. Any comments regarding the location of the housing sites or the Town's Regional Housing Needs Allocation (RHNA) obligation pertain to the content of the Housing Element and are not related to the environmental impacts of the Housing Element or the adequacy of the DEIR; thus, no further response is required.

However, other comments have asserted that housing at the MTCC site under the Mixed Use Development should be identified as the environmentally superior alternative for the Proposed Project. As detailed on page 4-16 of the DEIR, the Mixed Use Development Alternative would nominally reduce the Proposed Project's significant impacts for GHG emissions and VMT. Since the CEQA guidelines require another environmentally superior alternative other than the No Project Alternative to be identified, the Mixed Use Development Alternative would be the environmentally superior alternative.

However, the MTCC site is not currently zoned to permit residential development. In order to permit the development of housing on the site, a ballot initiative would need to be adopted by a vote of the people to rezone the site. As such, it is uncertain that the site could be rezoned, and housing could be developed within the eight-year planning period. As it is speculative to conclude that development at the MTCC site would result within a reasonable time frame after adoption of the Housing Element, the Mixed Use Development Alternative is considered infeasible.

2.3 Responses to Comments

As described above, this chapter includes responses to comments on environmental issues raised in the comment letters. Responses to written comments received during the public review are summarized in **Table 2-3** below. The reference number and text of the comments are presented alongside the response for ease of reference. Where the same comment has been made more than once, a response may direct the reader to another numbered comment and response.

Responses focus on comments that raise important environmental issues or pertain to the adequacy of analysis in the Draft EIR or to other aspects pertinent to the potential effects of the Proposed Project on the environment pursuant to CEQA. Comments that address policy issues, opinions, or other topics beyond the purview of the Draft EIR or CEQA are noted as such for the public record. Where comments are on the merits of the Proposed Project rather than on the Draft EIR, these are also noted in the responses.

Where appropriate, the information and/or revisions suggested in the comment letters have been incorporated into the Final EIR. Where such revisions are warranted in response to comments on the Draft EIR, deletions are shown in ~~striketrough~~ and additions are shown underlined in red in the matrix of comments and responses.

Table 2-3: Responses to Comments Received on the Draft EIR

Letter	Commenter	Date	Comment	Response
A1-1	Caltrans	10/19/23	<p>Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the General Plan Housing Element Update. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities. The following comments are based on our review of the September 2023 DEIR.</p> <p>Project Understanding The proposed project evaluates the potential impacts of the proposed General Plan Housing Element Update in the Town of Fairfax. The Proposed Project is both a policy document and an implementation tool for implementing the Town's General Plan.</p> <p>Travel Demand Analysis With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide (link).</p> <p>The project's Vehicle Mileage Traveled (VMT) analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the DEIR, this project is found to have a significant VMT impact.</p>	<p>Thank you for your letter. The comment is noted. The comment presents background information related to the Project and is not related to the adequacy of the DEIR; thus, no further response is required.</p>
A1-2	Caltrans	10/19/23	<p>Caltrans commends the Lead Agency in exploring the effectiveness and feasibility of varying measures to mitigate the VMT impact. Please consider the upcoming</p>	<p>The comment is noted. As outlined on page 3.13-17, the DEIR did consider employer-based transportation</p>

Letter	Commenter	Date	Comment	Response
			General Plan update as a potential opportunity to add Transportation Demand Management (TDM) requirements and TDM ordinance implementation in the General Plan for future new developments, which could reinforce the Town's legal authority to further reduce VMT.	demand (TDM) strategies. However, since employers are predominantly located outside of Fairfax, the Town does not have the authority to require employer-based TDM programs. California Government Code Section 65089 requires that Congestion Management Agencies, such as the Transportation Authority of Marin, include a TDM Policy in their regional (county) Congestion Management Plans. As such, local governments would not have the authority or legal requirement to implement regional TDM measures. Further, given that it is reasonable to expect that employee residents of Fairfax commute to many different communities for work, the Town has concluded that the effectiveness of many of the employer-based TDM strategies described above would be limited. Therefore, the Town concluded that employer-based TDM strategies do not represent either a feasible or effective mitigation option.
A1-3	Caltrans	10/19/23	Mitigation Strategies Location efficiency factors, including community design and regional accessibility, influence a project's impact on the environment. Using Caltrans' Smart Mobility Framework Guide 2020 (link), the proposed project site is identified as a Rural-Suburban Town where community design impacts effectiveness of the transportation network and regional accessibility helps to increase that effectiveness.	The comment is noted. CAPCOA mitigation measures to reduce VMT have been considered in the DEIR as detailed starting on page 3.13-16. See response to comment A1-2 as to why employer-based and plan-based TDM strategies would be ineffective and infeasible for the Project.

Letter	Commenter	Date	Comment	Response
			<p>The measures listed below have been quantified by California Air Pollution Control Officers Association (CAPCOA) and shown to have different efficiencies reducing regional VMT:</p> <p>Plan-based community strategies:</p> <ul style="list-style-type: none"> - Participation/Formation in/of a Transportation Management Association (TMA) in partnership with other developments in the area - VMT Banking and/or Exchange program 	
A1-4	Caltrans	10/19/23	<p>Suburban and Rural strategies:</p> <ul style="list-style-type: none"> - Increased mixed-use development - Increased transit accessibility - Integration of affordable housing - Orientation of Project towards non-auto corridor - Location of project near bicycle network - Pedestrian network improvements - Provide local shuttles to increase transit outreach - Partnership with Transit Agency (Marin Transit) to increase transit service frequency through the Town, provide discounted transit programs 	<p>The comment is noted. As outlined on page 3.13-17, the DEIR did consider suburban and rural strategies that involve infill intensification strategies, non-motorized transportation incentives, and transit service enhancements. The Project incorporates infill intensification strategies, which have been accounted for in VMT forecasts. (EIR p. 3.13-17)</p> <p>Parking demand strategies and transportation network improvements are typically most effective in dense, urban areas with a range of multi-modal transportation options that offer viable alternatives to vehicle trips. Under State law (§ 21002; Guidelines, § 15021, subd. (a)(2).), a lead agency's duty to "condition project approval on incorporation of feasible mitigation measures only exists when such measures would 'substantially</p>

Letter	Commenter	Date	Comment	Response
				<p>lessen' a significant environmental effect. Overall, the Town's lack of frequent transit service to major regional destinations dictates that current and future residents will need to rely on vehicles for a large portion of trips to and from Fairfax. Therefore, VMT reduction strategies involving physical improvements to the transportation network, such as improving street connectivity or enhancing the pedestrian network would also not substantially reduce per capita VMT in Fairfax for the same reason.</p> <p>Therefore, parking demand management strategies and infrastructure construction do not represent feasible mitigation options.</p> <p>In addition, Marin Transit provides transit services to Fairfax and Marin County. As such, the Town does not have the legal authority to implement strategies that involve transit service enhancements.</p>
A1-5	Caltrans	10/19/23	<p>Employment and/or Institution-based strategies:</p> <ul style="list-style-type: none"> - Employer-based vanpool - School pool program - Telecommuting programs and alternative work schedules 	<p>The comment is noted. CAPCOA mitigation measures to reduce VMT have been considered in the DEIR as detailed starting on page 3.13-16. See response to comment A1-2 for a discussions as to why employer-based and plan-based TDM</p>

Letter	Commenter	Date	Comment	Response
				strategies would be ineffective and infeasible for the Project.
A1-6	Caltrans	10/19/23	<p>Integrated Transportation and Land Use Planning</p> <p>Transportation and housing are integrally connected. The Housing Element Update process provides a mechanism to reflect current transportation and land use policy and adopt efficient land-use strategies such as transit-oriented, infill and mixed-use developments that can potentially reduce vehicle miles traveled and address climate change. Please review and include the reference to the current California Transportation Plan (CTP) in the DEIR. CTP 2050 envisions that the majority of new housing located near existing housing, jobs, and transit, and in close proximity to one another will reduce vehicle travel and GHG emissions, and be accessible and affordable for all Californians, including disadvantaged and low-income communities. The location, density, and affordability of future housing will dictate much of our future travel patterns, and our ability to achieve the vision outlined in CTP 2050. Caltrans encourages the Town to consider and explore the potential of excess state-owned property for affordable housing development, per Executive Order N-06-19.</p> <p>Caltrans supports collaboration with local agencies to work towards a safe, functional, interconnected, multi-modal transportation network integrated through efficient and equitable land use planning and policies. The Town should also continue to coordinate with Caltrans to identify and implement necessary network improvements and impact mitigation.</p>	<p>The comment is noted. See response to comments A1-2 through A1-5 as to why mitigation measures to reduce VMT would be ineffective and infeasible for the Project.</p> <p>In reference to the California Transportation Plan (CTP), the following edits have been made:</p> <p>DEIR p. 3.13-6: <u>"California Transportation Plan (CTP) 2050</u> <u>The CTP is California's long-range transportation plan, which is updated every five years pursuant to state and Federal law, offering an opportunity to identify new and innovative solutions to the state's most pressing transportation challenges. Although the CTP is statutorily required to be fiscally unconstrained, the plan provides a unifying and foundation policy framework that is designed to close the gap between what our RTPs propose and what is needed to meet 2050 targets. The CTP strategies and policies demonstrate the level of ambitious action required to make transparent and transformational transportation decisions in California.</u></p>

Letter	Commenter	Date	Comment	Response
				<p><u>While the plan recognizes a mix of proposed strategies that may require legislative change or do not yet identify a funding source, it is intended to guide transportation decision makers at all levels of government, while emphasizing the importance of shared responsibility in meeting transportation needs. It identifies a vision for the future transportation system, establishes new statewide priorities, and serves as a roadmap to guide Caltrans and partner agencies in implementing these recommendations. The CTP 2050 vision is: California's safe, resilient, and universally accessible transportation system supports vibrant communities, advances racial and economic justice, and improves public and environmental health. The Plan's goals revolve around safety, climate, equity, accessibility, quality of life and public health, economy, environment and infrastructure."</u></p> <p>DEIR p. 3.13-14: "Development under the Proposed Project would be consistent with <u>the goals of the current California Transportation Plan (CTP) and local</u> such policies and regulations by increasing housing opportunities in already urbanized areas which is an integral part of VMT</p>

Letter	Commenter	Date	Comment	Response
				reduction and encouraging transportation alternatives, such as walking and biking."
A1-7	Caltrans	10/19/23	<p>Lead Agency</p> <p>As the Lead Agency, the Town of Fairfax is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.</p> <p>Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Fredrick Schermer, Associate Transportation Planner, via LDR-D4@dot.ca.gov. For future early coordination opportunities or project referrals, please contact LDR-D4@dot.ca.gov.</p>	<p>The comment is noted. The comment is not related to the adequacy of the DEIR; thus, no further response is required.</p>
A2-1	CDFW	11/8/23	<p>Dear Mr. Beiswenger:</p> <p>The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Program Environmental Impact Report (EIR) from the Town of Fairfax (Town) for the Town of Fairfax 6th Cycle Housing Element, General Plan Amendments, and Zoning Amendments (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹</p> <p>CDFW is submitting comments on the EIR to inform the Town, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. CDFW previously provided comments in response to the Notice of Preparation for the Project.</p> <p>CDFW ROLE</p> <p>CDFW is a Trustee Agency with responsibility under</p>	<p>Thank you for your letter. The comment is noted. The comment presents background information related to the Project and is not related to the adequacy of the DEIR; thus, no further response is required.</p>

Letter	Commenter	Date	Comment	Response
			<p>CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.</p> <p>PROJECT DESCRIPTION AND LOCATION</p> <p>The Project will include updates to the Housing Element of the Town of Fairfax's General Plan. The Project will also update portions of the General Plan including the Land Use Element and Safety Element, as well as portions of the Municipal Code including the Zoning Ordinance, to maintain internal consistency. The updates to the Housing Element and related sections of the General Plan and Municipal Code will extend from 2023 to 2031.</p> <p>The Project identifies 19 sites, totaling approximately 1,563.56 acres, which have been identified as housing opportunity areas. The Town anticipates that this will result in the addition of 531 new units of dwelling capacity.</p> <p>The Project includes three types of zoning amendments. The first is to amend regulations for several existing zoning districts in Title 17, Zoning, of the Town of Fairfax Municipal Code to accommodate the proposed development types and capacities. The second is to rezone one housing opportunity site to allow multi-family development. The third is to amend the zoning map to reflect the zone change for that opportunity site.</p> <p>Per legislative mandates, the Project also includes updates to the General Plan Safety Element to address</p>	

Letter	Commenter	Date	Comment	Response
			climate change resiliency, reduce fire and flooding risks, and plan for emergency evacuations.	
A2-2	CDFW	11/8/23	<p>REGULATORY REQUIREMENTS</p> <p>California Endangered Species Act</p> <p>Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA either during construction or over the life of the Project. The Project has potential to impact northern spotted owl (<i>Strix occidentalis caurina</i>), CESA listed as threatened species, as further described below. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.</p> <p>CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.</p>	The comment is noted. The comment presents background information related to the Project and is not related to the adequacy of the DEIR; thus, no further response is required.
A2-3	CDFW	11/8/23	<p>Lake and Streambed Alteration</p> <p>An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may</p>	The comment is noted. The comment presents background information related to the Project and is not related to the adequacy of the DEIR; thus, no further response is required.

Letter	Commenter	Date	Comment	Response
			substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. As described in the EIR (pages 3.3-20 and 3.3-22), future development under the Project may impact streams or riparian habitat. If such impacts occur, an LSA Notification pursuant to Fish and Game Code section 1602 would likely be required, as further described below. CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.	
A2-4	CDFW	11/8/23	<p>COMMENTS AND RECOMMENDATIONS</p> <p>CDFW offers the comments and recommendations below to assist the Town in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments are also included below. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in Attachment 1, CDFW concludes that an EIR is appropriate for the Project.</p> <p>I. Program EIR Subsequent Project Review</p> <p>Comment 1: Program EIR Subsequent Project Review</p> <p>The EIR does not appear to include a checklist for subsequent Project review as outlined in CDFW's Notice of Preparation (NOP) response letter. While Program EIRs have a necessarily broad scope, CDFW recommends providing as much information related to anticipated future</p>	<p>The comment is noted. The Project-Level Analysis checklist has been added as Appendix G of the DEIR. The addition of this Checklist does not constitute significant new information requiring recirculation pursuant to CEQA Guidelines section 15088.5.</p> <p>In reference to Appendix G, the following edits have been made:</p> <p>DEIR p. 3.3-16: <u>"In addition, individual developments pursuant to the Proposed Project are required to complete a Project-Specific Analysis (PSA) checklist, located in Appendix G of the DEIR, to determine whether the development</u></p>

Letter	Commenter	Date	Comment	Response
			<p>activities as possible. CDFW recognizes that, pursuant to CEQA Guidelines section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information may not be feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. The CEQA Guidelines section 15168, subdivision (c)(4) states, "Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the Program EIR." Based on CEQA Guidelines section 15183.3 and associated Appendix N Checklist, and consistent with other Program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent Project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis should include all special-status species and sensitive habitat including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.</p> <p>When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a "within the scope" of the EIR conclusion. For subsequent Project activities that</p>	<p><u>qualifies as within the scope of this DEIR or requires additional environmental documentation or its own independent environmental review. Such evaluations will ascertain whether the development project's effects on the environment were covered in the DEIR."</u></p>

Letter	Commenter	Date	Comment	Response
			may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects and indicate whether it incorporates all applicable mitigation measures from the EIR.	
A2-5	CDFW	11/8/23	<p>II. Environmental Setting and Related Impact Shortcoming MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or endangered plant or animal?</p> <p>Comment 2: Northern Spotted Owl, pages 2-9, 3.3-6, and 3.3-14.</p> <p>Issue: The MND identifies that northern spotted owl "has potential to occur near the planning area" (page 3.3-6). The MND further includes northern spotted owl in a list of species which "have not been documented on or near the Proposed Project's sites identified for housing development" (page 3.3-14). However, the Spotted Owl Observations Database shows approximately 195 observations of northern spotted owl, making up three separate spotted owl activity centers, within 0.25 miles of some sites available for housing (CDFW 2019), including sites near Scenic Road, between Ridge Road and Cypress Drive, and near Canyon Road (page 2-9). Project implementation at these sites may result in take of northern spotted owl due to auditory or visual disturbance to active nest sites. Further, Project implementation at these sites may restrict the range of northern spotted owl through permanent habitat destruction.</p> <p>Specific impacts, why they may occur, and evidence</p>	<p>The comment is noted.</p> <p>The following minor additions/revisions have been made to mitigation measures BIO-1 and BIO-3:</p> <p>DEIR p. 3.3-15: Prior to ground-disturbing activities and during the appropriate identification periods for special-status plants and wildlife listed in Tables 3.3-1 and 3.3-2, project applicants proposing development on sites with the potential for special-status species to occur shall engage a licensed biologist with prior experience conducting surveys for subject species in Marin County to conduct field surveys within work areas and the immediately adjacent areas to determine the presence of habitat for special-status plant and wildlife species. The field surveys are to be conducted when special-status species that could occur in the area</p>

Letter	Commenter	Date	Comment	Response
			<p>impacts would be potentially significant:</p> <p>Auditory and Visual Impacts</p> <p>Noise and visual disturbance from equipment, road use, or generators at Project sites identified for housing development may disrupt northern spotted owls nesting within 0.25 miles by reducing hunting success of parents, which primarily use hearing to hunt, and increasing stress hormone levels, which was particularly evident in males when they were exclusively responsible for feeding their mates and nestlings (Hayward et al. 2011).</p> <p>Habitat Loss</p> <p>As a habitat specialist, northern spotted owls are primarily threatened by the loss, fragmentation, and degradation of their forest habitats, which is further complicated by their low reproductive rate and limited ability to disperse (Shuford and Gardali 2008). Destruction of foraging and nesting habitat would restrict the range of northern spotted owl.</p> <p>Evidence of Significant Impacts</p> <p>Northern spotted owl populations have declined significantly in California primarily as a result of destruction of forest habitat from logging, development, and wildfire (CDFW 2016). A more recent but also serious threat is invasion of their range by barred owls (<i>Strix varia</i>) which can out-compete and potentially kill northern spotted owls and hybridize with them (CDFW 2016).</p> <p>Consistent with CEQA Guidelines, section 15380, the status of the northern spotted owl as a threatened species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 et seq., ESA) and under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. Based on the foregoing, if northern spotted owls are nesting within 0.25 mile of sites identified for housing development by the</p>	<p>are evident and identifiable, generally during the blooming or breeding period. One or more surveys shall be conducted as needed to account for different special-status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur.</p> <p><u>qualified biologist with adequate prior experience (ex: at least 2 years for pallid bat) conducting surveys and using relevant survey equipment for subject species in Marin County to conduct field surveys within work areas and the immediately adjacent areas to determine the presence of habitat for special-status plant and wildlife species. Surveys for northern spotted owl habitat shall identify the type and quality of potential habitat as</u></p>

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			<p>Project, auditory and visual impacts may substantially reduce the number of northern spotted owl. Habitat destruction potentially caused by the Project may substantially restrict the range of northern spotted owl. Reducing the number or restricting the range of northern spotted owl is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).</p> <p>Recommended Mitigation Measures: For an adequate environmental setting, to comply with CESA, and to reduce impacts to northern spotted owl to less-than-significant, CDFW recommends including the below mitigation measures.</p> <p>Northern Spotted Owl Habitat Assessment and Compensation. Prior to the Project activities that will remove forested areas, a northern spotted owl habitat assessment shall be conducted by a qualified biologist to determine the type and quality of northern spotted owl habitat present on-site. The habitat assessment shall identify potential habitat as described on page 31 through 34 of the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012 (see: https://www.fws.gov/sites/default/files/documents/survey-protocol-for-northern-spotted-owl.pdf). Results of the habitat assessment shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of the assessment prior to commencement of Project activities. If nesting or foraging habitat is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least</p>	<p><u>described in the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. The field surveys are to be conducted when special-status species that could occur in the area are evident and identifiable, generally during the blooming or breeding period. Roosting Bat habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities. One or more surveys shall be conducted as needed to account for different special-status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat-specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report shall be submitted to CDFW for review and will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur. Project applicants shall obtain</u></p>

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			<p>3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing.</p> <p>Northern Spotted Owl Surveys. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW.</p> <p>No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the above USFWS survey protocol for disturbance-only projects.</p> <p>If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and</p>	<p><u>CDFW's written approval of the assessment prior to commencement of Project activities.</u></p> <p>DEIR p. 3.3-17: <u>Additional requirements for northern spotted owl: No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the USFWS survey protocol listed in MM BIO-1 for disturbance-only projects. If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year. If nesting or foraging habitat for northern spotted owls is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project</u></p>

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			obtain an ITP, and also consult with USFWS pursuant to the federal ESA.	<u>activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW. If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.</u>

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				This revision to a mitigation measure already recommended in the EIR does not constitute significant new information requiring recirculation pursuant to CEQA Guidelines section 15088.5.
A2-6	CDFW	11/8/23	<p>Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?</p> <p>Comment 3: Bat Species of Special Concern, page 2-9. Issue: The Project is within the range of pallid bat (<i>Antrozous pallidus</i>), western red bat (<i>Lasiurus blossevillei</i>), and Townsend's big-eared bat (<i>Corynorhinus townsendii</i>) (page 2-9).² Townsend's big-eared bat has one occurrence mapped approximately 5 miles west of the Project (CDFW 2023). Pallid bat has four occurrences mapped in the California Natural Diversity Database (CNDDDB), with the closest approximately 1.3 miles southeast of the Project (CDFW 2023). All three of these bat species are known to roost in tree bark, hollows, or foliage; pallid bat and Townsend's big-eared bat are also known to roost in structures including buildings (Johnston 2004). Buildings, especially buildings not currently in use, that may be modified as part of this Project may be occupied by bats. Trees that may be removed as part of this Project may also be occupied by bats.</p> <p>Specific impacts, why they may occur, and evidence impacts would be potentially significant: The above bat species are California Species of Special Concern (SSC). CDFW designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to</p>	<p>The comment is noted. See response to comment A2-5 regarding edits to Mitigation Measure BIO-1.</p> <p>The following minor addition/revision has been to Mitigation Measure BIO-3:</p> <p>DEIR p. 3.3-17: <u>Additional requirements for roosting bats: If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using</u></p>

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			<p>extinction or extirpation in California. Removing a roost tree or building during breeding or hibernating seasons could kill many bats as they roost together in a colony. Bats are unusual for small mammals because they are long-lived and have a low reproductive rate (Johnston 2004). Lifespans of 15 years are not uncommon, and most species have only one young per pair per year (Johnston 2004). Bats also aggregate in colonies, some of which contain all the bats of a species from a wide area (Johnston 2004). The combination of these three factors (long lifespan, few young per year, and aggregation into colonies) means that if the Project impacts bat roosts, the Project may cause a substantial adverse effect to the regional population of bat species, including special-status bat species.</p> <p>Recommended Mitigation Measures: To reduce potential impacts to special-status bat species to less-than-significant, CDFW recommends including the below mitigation measure.</p> <p>Roosting Bat Habitat Assessment and Surveys: Prior to Project activities that would remove trees or modify buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.</p> <p>For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting</p>	<p><u>the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</u></p> <p>This revision to a mitigation measure already recommended in the EIR does not constitute significant new information requiring recirculation pursuant to CEQA Guidelines section 15088.5.</p>

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			<p>species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p> <p>For modification of buildings, the qualified biologist shall conduct a survey for roosting bats. If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.</p>	
A2-7	CDFW	11/8/23	<p>III. Mitigation Measure and Related Impact Shortcoming</p> <p>MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number</p>	<p>The comment is noted.</p> <p>The following minor edits have been to Mitigation Measure BIO-4:</p>

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			<p>or restrict the range of a rare or endangered plant or animal?</p> <p>COMMENT 4: Special-Status Plant Mitigation, pages 3.3-2, 3.3-3, 3.3-7, 3.3-14 and 3.3-17.</p> <p>Issue: The EIR includes Mitigation Measure BIO-4, Avoid and Minimize Disturbance to Special-Status Plant Species (page 3.3-17). Mitigation Measure BIO-4 includes success criteria but does not include a contingency plan if the success criteria are not met (page 3.3-17). If plant relocation as described in Mitigation Measure BIO-4 fails, there would be loss of special-status plants without successful mitigation.</p> <p>Specific impacts, why they may occur, and evidence impacts would be potentially significant: Mitigation Measure BIO-4 includes relocation of plants to a new site if avoidance is not feasible (page 3.3-17). Relocated plants would be subject to annual monitoring for three to five years, with the success criteria being “the establishment of new viable occurrences equal to or greater in number than the number of plants impacted” (page 3.3-17). As Mitigation Measure BIO-4 does not include a contingency plan if the success criteria are not met, mitigation for the plant occurrences potentially destroyed during construction would not be adequately mitigated.</p> <p>The EIR indicates that many species of plants that have been documented within or near the Town “do not overlap with any proposed sites for housing development” (page 3.3-14), however the information collected to come to this conclusion appears to be limited to a CNDDDB search (pages 3.3-2, -3, and -7). The CNDDDB is a database containing positive records; the lack of records in any given area does not necessarily correspond to an absence of species.</p> <p>The Project may result in the loss of bent-flowered</p>	<p>DEIR p. 3.3-17:</p> <p>Avoid and Minimize Disturbance to Special-Status Plant Species. If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated onsite, at least 20 feet away from construction directly relating to the project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town of Fairfax with experience working on restoration projects and within the habitats present onsite. Following the relocation, the plantings/seedlings shall be monitored annually for three to five years by a licensed biologist paid for and hired by the applicant to determine the success of the relocation. For individual plants, the success criteria would be the establishment of new viable occurrences equal to or greater in number than the number of plants impacted. On-site maintenance of the</p>

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			<p>fiddleneck (<i>Amsinckia lunaris</i>), congested-headed hayfield tarplant (<i>Hemizonia congesta</i> ssp. <i>congesta</i>), napa false indigo (<i>Amorpha californica</i> var. <i>napensis</i>), Mount Tamalpais lessingia (<i>Lessingia micradenia</i> var. <i>micradenia</i>), and other special-status plant species. The plants listed above all have a California Rare Plant Rank (CRPR) of 1B.2 (California Native Plant Society (CNPS) 2023). Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century (CNPS 2023). The additional threat rank of 0.2 indicates that 20 to 80 percent of their occurrences are threatened (CNPS 2023). Consistent with CEQA Guidelines, section 15380, the status of the above special-status plants as CRPR 1B species qualifies them as endangered, rare, or threatened species under CEQA. If special-status plants may be directly or indirectly impacted by the Project, the lack of adequate mitigation as described above may result in a mandatory finding of significance pursuant to CEQA Guidelines section 15065, subdivision (a), due to a substantial reduction in the numbers or restriction of the ranges of these species.</p> <p>Recommended Mitigation Measure: To reduce the potential for the impacts to special-status plants described above to less-than-significant, CDFW recommends replacing Mitigation Measure BIO-4 with the below mitigation measure.</p> <p>Avoid and Minimize Disturbance to Special-Status Plant Species. If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a</p>	<p>relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the applicant. An annual report by a licensed biologist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. <u>Following the relocation, the plantings/seedings shall be monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and</u></p>

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			<p>minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the Project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedlings shall be monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.</p>	<p><u>reporting shall continue until success criteria are met.</u></p> <p>This revision to a mitigation measure already recommended in the EIR does not constitute significant new information requiring recirculation pursuant to CEQA Guidelines section 15088.5.</p>
A2-8	CDFW	11/8/23	<p>IV. Project Description and Related Impact Shortcoming</p> <p>Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?</p> <p>AND</p> <p>Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</p> <p>COMMENT 5: LSA Notification and Resource Agency</p>	<p>The comment is noted. As noted on page 3.3-20 of the DEIR, future development projected by the Housing Element would be subject to applicable regulations, including the requirements of Clean Water Act and CDFW Lake and Streambed Alteration Program. With adherence to these regulations, impacts of future development projected under the Housing Element would be less than</p>

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			<p>Permitting, pages 3.3-20 and 3.3-22.</p> <p>Issue: The EIR identifies that future development under the Project may be subject to sections 401 and 404 of the Clean Water Act and to Fish and Game Code section 1600 et seq. (pages 3.3-20 and 3.3-22). However, the EIR does not clearly indicate if the Project would impact streams and riparian habitat, wetlands, or other waters. The EIR also does not provide certainty that such impacts would comply with Fish and Game Code section 1600 et seq., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, as the EIR does not include a mitigation measure requiring that development under the Project apply for CDFW, Regional Water Quality Control Board (RWQCB), or U.S. Army Corps of Engineers (USACE) Permits, nor does it contain a mitigation measure requiring compliance with the terms of these permits, if issued.</p> <p>Specific impacts, why they may occur, and evidence impacts would be potentially significant: Streams, wetlands, and riparian zones, are of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. Development facilitated by the Project may result in impacts to streams and riparian habitats, as described in the EIR (pages 3.3-20 and 3.3-22). When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. More than 90 percent of California's historic wetlands have been lost to development and other human activity. Wetlands are a critical natural resource that protects and improves water quality and provide habitat for fish and wildlife. Absent the above permits which include measures to avoid and minimize impacts to streams, riparian habitat, wetlands, and associated species, impacts to these</p>	<p>significant in regard to direct removal, filling, hydrological interruption, or other means of degradation of wetland habitat.</p> <p>To further clarify regulatory requires, the following edits have been made:</p> <p>DEIR p. 3.3-20: <u>"If impacts to any stream cannot be avoided, then prior to ground disturbance a project applicant must submit a Lake and Streambed Alteration (LSA) notification to CDFW and comply with the LSA Agreement. If issued for stream, wetlands, or other water impacts, a project applicant must obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This</u></p>

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			<p>features may be significant.</p> <p>Recommended Mitigation Measure: To reduce potential impacts to streams, wetlands, and other waters to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends including the mitigation measure below.</p> <p>Stream and Wetland Mitigation and Resource Agency Permits: The Project shall be designed to minimize impacts jurisdictional waters. If impacts to any stream cannot be avoided, then prior to ground disturbance the Project applicant shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued for stream, wetlands, or other water impacts, the Project applicant shall obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.</p>	<p><u>plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.</u>"</p> <p>This clarification does not constitute significant new information requiring recirculation pursuant to CEQA Guidelines section 15088.5.</p>
A2-9	CDFW	11/8/23	<p>V. Editorial Comments and/or Suggestions</p> <p>Comment 6: Licensed Biologist, page 3.3-16</p> <p>Mitigation Measure MM-BIO-1 refers to a "licensed biologist." While various certification programs for wildlife biologists through professional organizations exist, there is no state program that licenses wildlife biologists. CDFW</p>	<p>The comment is noted.</p> <p>The following edits have been made:</p> <p>DEIR p. 3.3-16: "The Program shall be developed and conducted by a licensed <u>qualified</u></p>

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			suggests striking the word “licensed” and replacing it with “qualified.”	<p>biologist with experience in Marin County.</p> <p>DEIR p. 3.3-17: "If required pursuant to Mitigation Measure BIO-1, a licensed <u>qualified</u> biologist with prior experience..." "...a licensed <u>qualified</u> entomologist paid..." "...they shall be protected in place until they are no longer active as determined by a licensed <u>qualified</u> entomologist."</p> <p>DEIR p. 3.3-18: "...retained a licensed <u>qualified</u> biologist with experience with FYLF..." "...unless a survey is conducted by a licensed <u>qualified</u> biologist..."</p> <p>This revision to a mitigation measure already recommended in the EIR does not constitute significant new information requiring recirculation pursuant to CEQA Guidelines section 15088.5.</p>
A2-10	CDFW	11/8/23	ENVIRONMENTAL DATA CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species	The comment is noted. The comment presents background regulatory information and is not related to the adequacy of the DEIR; thus, no further response is required.

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			<p>and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data. The types of information reported to CNDDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals.</p> <p>ENVIRONMENTAL DOCUMENT FILING FEES The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).</p> <p>CONCLUSION CDFW appreciates the opportunity to comment on the EIR to assist the Town in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.</p>	
B1-1	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	<p>We are writing to comment on the EIR for the Town of Fairfax's Housing element 2023.</p> <p>First we want to make it clear that the inclusion of future development for 615 Oak Manor in the towns Housing</p>	<p>Thank you for your letter. The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.</p>

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			<p>element submittal to the state is a clear violation of the Agreement in Settlement of Fairfax Hills v. Town of Fairfax superior court order case no 140706. We want the town to remove 615 Oak Manor development from the Housing Element Submittal.</p> <p>On May 16 2023 my wife and I wrote to Heather Adams and explained that the Estate lot of 615 Oak Manor was allowed two homes according to the Superior Court Order case no 140706.</p> <p>Janet Coleson, Town Attorney responded to us August 1, 2023, she stated that the agreement ended in 1990 for Phases A-C and 1993 for Phase D.</p> <p>First, We completely disagree with Janet Coleson's finding and this is why:</p> <p>The Superior Court Order case no 140706 was signed by the Town Attorney on April 22, 1991 and the order was recorded May 29, 1991; therefore, how can the Town attorney say the agreement ended before it was signed and recorded. (see page 30 of the Agreement in Settlement for the signature pages. The front of the agreement is stamped with the date it was recorded.</p>	
B1-2	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	<p>Second: we have attached Tony G. Deed-7.pdf (2,601K)a portion of the Town's Staff report dated October 21, 1999 when we applied to reactivate the development permit and excavation permit for our house at 3 Snowden Lane in Fairfax. Various places throughout the document the settlement is mentioned. In fact, on the findings page number 1 it states:</p> <p>The proposed home conforms to the terms of the Agreement in Settlement of Fairfax Hills v. Town of Fairfax Superior Court Order Case No. 140706. On another page in the staff report under the heading: Construction of the home will require the approval of the following discretionary permits: It mentions that the proposed height</p>	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			and location of the home complies with the settlement agreement between Fairfax Hills and the Town of Fairfax recorded May 29, 1991. The Town in 1999 was holding us to the settlement agreement; therefore, the Town recognizes that the agreement is in place and is enforcing it.	
B1-3	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	Third, A Deed of Private Open Space Easement signed by The Town of Fairfax Administrator dated May 13, 1993 and recorded May 13, 1993. See attached Tony G. Deed-7.pdf (2,601K) and scroll down to Deed of Open Space. Under the acceptance section it states: "Pursuant to the terms of the agreement in Settlement of Fairfax Hills v. Town of Fairfax, Superior Court Order Case no. 140706, recorded May 29, 1991 as Records serial Number 91-32241, the Town of Fairfax does hereby accept said Deed of Private Open Space Easement, as Grantee, on this 13 day of May, 1993." The Town again recognized that the Settlement Agreement is in place and they were enforcing it for 3 Snowden Lane, Fairfax in 1999.	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.
B1-4	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	Fourth, In a staff report for 6 Arrowood (see the link below) : https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjuylrz7NKBAxW-kmoFHUTKBY4QFnoECBEQAQ&url=https%3A%2F%2Fstorage.googleapis.com%2Fproudcity%2Ffairfaxca%2Fuploads%2F2019%2F04%2F6-Arrowood-Lane.pdf&usg=AOvVaw0vO9n-NI2TNm95lq7qsZ7m&opi=89978449 The Town again recognizes that the settlement agreement is in place and is enforcing it for 6 Arrowood, Fairfax in	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			2013. These are the reasons that the town needs to remove the future development of 615 from the State Housing Element. The Settlement Agreement runs with the Land and it is in full force. The agreement only allows two homes for 615 Oak Manor in Fairfax.	
B1-5	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	To comment further on the EIR, since it is not site specific, ironically there are no mitigation measures for geology and soils. For example our home at 3 Snowden Lane was looked at by three geotech engineers and is designated in the Geological maps that show the hillside to lie within a designated slide area. The slope stability maps class this hillside as Zone 4. These classifications are based on a scale of 1 to 4 with 4 being the least stable. If there is earth moving equipment above our hill, constructing access roads on steep slopes for future development, we are very concerned about future earth movement and sliding. We are at the base of two drainage swells. No mitigation methods are shown in the Housing Element tables.	The comment is noted. As detailed on page 3.6-23 of the DEIR, seismically induced landslides and precipitation-induced landslides can occur on much of the steep terrain in much of Fairfax, particularly in wet weather months. Given that almost all remaining vacant land is located in steeply sloped hillsides areas in the town, the Proposed Project has identified several sites for development on steeply sloped hillsides. However, should development be proposed on areas identified in the Housing Element, compliance with the National Pollutant Discharge Elimination System (NPDES) permit requirements and local Town Code and General Plan regulations would reduce impacts related to landslides. The impact would be less than significant without mitigation measures.
B1-6	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	We suggest that the Town add the Marin Town and Country Property to their housing element. The area is mostly flat and Town is less exposed to litigation due to potential landslides due to earth movement from steep	The comment is noted. Please see response to comment B1-5 regarding landslides. In addition, see Master Response 3 regarding housing at the

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			access roads and liquidation factors as well as violating Settlement Agreements. See figure 3.6-1 Soil types and slides in the housing element. Again, why are there no mitigation measures when your table shows mostly landslides in the area of 615 Oak Manor Drive.	Marin Town & Country Club (MTCC) site.
B1-7	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	<p>Under Volume 1.2 Areas of known Controversy, under the Geology and Soils section the report states: "The proposed project has identified several sites for development on steeply sloped hillsides. As such housing sites identified in the Proposed Project are in proximity to mapped landslides hazards and landslide impacts are potentially significant." This is another reason to add the Marin Town and Country to the Housing Element and take 615 Oak Manor out and other sites identified on steep slopes with landslide impacts. The Town and County Property will have to be rezoned but so will 615 Oak Manor drive. Additionally the town will not have to pay for the mitigation measures to build roads for access on steep slopes.</p> <p>When we Built our home in 1999 we were assured from the Town, the Developer and the Settlement Agreement that the area of 615 Oak Manor was the remaining parcel for Fairfax Hills and that only two houses were approved for that site until eternity and the rest was to remain Open Space.</p> <p>If any of the links or attachments are not readable please let us know and we will provide hard copies. We look forward to your response.</p>	The comment is noted. Please see Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site.
B1-8	Tony Gambardella and Judy Lococo	10/11/2023 and 11/10/2023	The attached above which is a memo from Leighton Hills, the previous owner of 615 Oak Manor, explaining the property lines for out property at 3 Snowden. Note at the end of the first paragraph he states "as also mentioned according to the settlement agreement, that lot (which	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			<p>runs all the way to Sir Francis Drake Blvd) is approved for one home located way up behind the house that Doug is building (not visible) and the lot may not be subdivided.” Mr. Hill in this memo is referring to 615 OakManor which is above Dave and Beth Coduto’s home.</p> <p>This is more proof that the settlement agreements does not allow 615 OakManor to be subdivided; therefore, 615 Oak manor should be removed from the housing element.</p>	
B2-1	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2023	<p>This letter responds to the Town of Fairfax Draft Environmental Impact Report for the Housing Element 2023-2031 (EIR) and addresses the significant controversy regarding development plans for the Access Road Area as referenced below.</p> <p>My name is David L. Coduto and my wife’s name is Beth A. Carmichael. We have been Fairfax residents for close to 4 decades, and our address is 7 Snowden Lane, Fairfax, California, 94930.</p> <p>I premise this letter by stating that we believe that the Town, its Mayor, its Town Council and Town legal counsel, endeavor to be good stewards of the community and its interests. We genuinely appreciate its tireless efforts to help the Town and its citizens.</p> <p>As you know from my appearances at Council meetings, we are residents of the Fairfax Hills Subdivision (Center Area), as defined by Superior Court of the State of California, in and for the County of Marin, in a legal action entitled Fairfax Hills and 20th Century Builders, Inc. v. Town of Fairfax and Town Council of the Town of Fairfax, (Agreement) all as set forth in Superior Court Case No. 140706 in the files of that court.</p> <p>As documented, Fairfax Hills and 20th Century Builders, Inc. prevailed in the lawsuit against the Town of Fairfax and Town Council of the Town of Fairfax. This settlement agreement (Agreement) with the Town was recorded on</p>	<p>Thank you for your letter. The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.</p>

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			<p>May 29, 1991, at 11:00 am, as part of the Official Records of Marin County, California, by James J. Dalboni. The Agreement remains in effect and in place, and written correspondences executed by the Town on its own letterhead over the years, supports that position. In addition, paperwork associated with each developed lot mentioned and mapped in the Agreement, refers to the Agreement and is included with each owner's title. This includes the property known as the Access Road Area (also referred to as ARA and/or 615). Effectively, all owners (and their "heirs and successors") of properties (20 parcels) identified in the Agreement, are parties to the Agreement, along with the Town of Fairfax and the Town Council of the Town of Fairfax. All said parcels are specifically identified as having the right to develop one house per parcel, for a maximum total of twenty houses. As you know, the rest of the land identified in the Agreement is permanently dedicated to open space. The terms and conditions of the Agreement were conditions of the sale of each property in the Agreement. In fact, Exhibit B to the Agreement is a Deed of Open Space Easement and is included with the title of all parcels mentioned in that Agreement. Of the twenty parcels mentioned in the Agreement, eighteen were approved and were compliant with the Agreement. The remaining two parcels, known as the ARA, are located within the confines of 615 Oak Manor Drive. One site of the ARA remains undeveloped (site D2) and the other (D1), was developed with two houses, despite the requirement by the Agreement of "one house per parcel."</p>	
B2-2	David L. Codutu	11/1/2023, 11/7/2023, and	There are several deficiencies with the EIR, especially the inclusion of portions of the ARA parcel as part of the Housing Element. The EIR fails to mention any aspect of the Agreement, especially under the heading "Areas of	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al.,

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		11/10/2024	<p>Known Controversy.” The Town’s newest urban planning consultant is an East Bay firm named Dyett & Bhatia, and this firm assisted the Town with the EIR and Housing Element.</p> <p>Please recognize that there is material controversy within the Town, especially among the resident parties to the Agreement. There is opposition to the development plans associated with the ARA because the proposed development violates the terms and conditions of the Agreement. This opposition is significant in the Town, especially among Fairfax residents immediately impacted by these proposed plans. Most opposition relates to residents running the full length of Oak Manor Drive and Snowden Lane. This divisive issue has been discussed with fervor at various meetings, including Town Council and Open Space.</p> <p>Even though we recognize that The Town and Town Council endeavor to do the right thing, both are doing Fairfax citizens no favor with their incessant comments that the Agreement has expired. As a side note, by claiming this incorrect interpretation as fact, one could conclude that an important indemnification for the Town--for any damages associated with the development of the ARA—is no longer valid. Why would the Town eliminate an indemnification for damages caused by development of lands specifically identified as open space pursuant to the Agreement? This seems contrary to acting in the best interests of the citizens of Fairfax.</p> <p>I can assure you that there are already damages associated with this incorrect interpretation of the Agreement, and there will be further damages. And wouldn’t it be ironic that the owner of the ARA was misled by this incorrect legal opinion and incurred significant development costs as a result? Consequently, one would</p>	Marin Superior Court No. CIV 140706.

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			think that the owner of the ARA may also have valid claims for damages against the Town.	
B2-3	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2025	<p>The Agreement must be interpreted its entirety. There are repeated comments throughout and the Agreement referring to “heirs and successors,” and “future owners,” and is replete with statements that the Agreement itself (its terms and conditions) “runs with the land.” I will identify a few of the Agreement’s provisions in this letter. This is a simple issue and is rooted in contract law.</p> <p>It is our understanding that The Term of Agreement relates specifically to the California Subdivision Act regarding a developer’s right to develop the property within a specific time frame. If the development is not started within that period, the development opportunity is lost. Fairfax Hills and 20th Century Builders, Inc. complied with that provision when it started the multi-phase site development and mass grading plans for the subdivision and houses within the time limit imposed by the Act for Phase A (Center Area--Snowden Lane properties). Most subsequent developments in the Fairfax Hills area, also complied with the terms and conditions of the Agreement.</p>	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.
B2-4	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2026	<p>As mentioned above, I am a current resident of Snowden Lane and an original owner of a property in Phase A. All Snowden Lane properties were developed and completed by the early 2000s and were identified in writing by the Town as being compliant with the Agreement. In addition, the open space easement as well as the Agreement itself, was included with the titles of those seven properties. The same was true for phase B (Lower Area--the six homes above 7-11) Those houses were largely completed by 2016. The same was effectively true for phase C (the Upper Area, Triangle), as those properties were purchased by the owner of a ranch in the Butterfield area</p>	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			<p>and were permanently dedicated to Marin Open Space, in compliance with the Agreement's open space provisions. Under Compliance Review, the Town was required "at regular intervals of not less than 1 year and not more than 18 months, to review the Agreement for the sole purpose of determining compliance with the terms of the parties hereto." We are not certain, but we believe that the Town may have remained in compliance with that provision up to the proposed development plans of the ARA. In one letter by Town Counsel, reference is made to the Agreement mentioning that applicability was tied to the "Map Act". Counsel mentions that the Approvals and Permits clause in the Agreement required the Town to approve a vesting tentative map, pursuant to the Map Act, with the approval date being "September 18, 1988". She then concludes that "under the Map Act, the initial period for Phases A-C would have been 2 years until September 18, 1990, and 1993 for Phase D."</p> <p>If Counsel's opinion (as expressed in her recent August 1, 2023, letter to my neighbors, Judy Lococo and Tony Gambardella) is accurate, the development for Phases A-C ended on September 18, 1990— and terminated before the Agreement was signed and recorded in May 1991. What sense does that make?</p> <p>As mentioned previously, we know that all the houses in Phase A (The Center Area-Snowden) were completed over a decade later, while Phase B houses (the Lower Area-Arrowood) were completed 26 years later. According to the Town and its own correspondences, both Phases were in compliance with the Agreement.</p>	
B2-5	David L. Codutu	11/1/2023, 11/7/2023, and	Following that, what sense does it make to include a Compliance Review section in the Agreement, (i.e., where the Town was required "at regular intervals of not less than	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al.,

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		11/10/2022 7	1 year and not more than 18 months”, to measure compliance with the Agreement), if the Agreement had already expired before it was signed? Why would the settlement require regular and measured compliance over time, if the Agreement itself was not permanent and running “with the land”? What sense does it make to include a provision in the Agreement that could not be implemented? We do have concerns that the Town either forgot or ignored the Agreement and failed in its duties to measure compliance with the Agreement. There is evidence to support this concern.	Marin Superior Court No. CIV 140706.
B2-6	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2022 8	More troubling is that the Town somehow not only breached some terms and conditions of the Agreement over the years but appeared to do so largely and exclusively to the development plans of the owner the ARA (a large parcel of about fifty acres of land). We also know that the ARA owner communicated freely with at least one Town Council member and hired consultants that had formerly served on the Town’s Housing Committee and Planning Commission when it came to development of site D1 and large designated open space areas of the ARA. Development of those open space areas are included within the Town’s Draft EIR and Housing Element for the Town for 2023-2031. Again, it appears that a concerted effort by this group to develop open space areas of the ARA helped with the inclusion of the ARA property in the EIR/ Housing Element. It is more than coincidental that 615’s development plans fit perfectly within the Town’s newest efforts from previously botched compliances with the Housing Element. This reminds me of a story told by a famous author and Fairfax resident in which a priest warns her that we should always be skeptical when it seems that the Lord’s plans for a person align so perfectly with their heart’s deepest desires.	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			<p>One notation in the Agreement states, “Whereas, the parties desire to compromise and settle the action completely between themselves and their successors, agents, heirs, and assigns (emphasis added), to avoid the expense of further litigation.” It is quite clear that this provision relates to the future (after September 18, 1990), as it discusses successors, agents, and heirs. And as mentioned earlier, the Agreement clearly states that its provisions, terms, and conditions, “run with the land.” Land is permanent. Current owners are not permanent, but their heirs and successors and assigns, are.</p> <p>Further terms and conditions support that the Agreement remains in effect, today.</p>	
B2-7	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2029	<p>As it relates to the Severability Clause; “If any material provision of this Agreement shall be found to be invalid, void or illegal, the remaining provisions shall remain in full force and effect.” Even if Town Counsel’s opinion was correct, this clause protects all other terms and conditions of the Agreement.</p> <p>As it relates to the Conditions of Approval of the Tentative Subdivision Map, Final Subdivision Maps, and Other Approvals, Permits and Entitlements, and relating to the recordation of the final map for any phase, “by terms of the easement granted to the Town, neither Fairfax Hills nor its successors, heirs or assigns shall be entitled to further development of any lot herein created.”</p> <p>Under the Recordation of Agreement, “this Agreement, its terms, conditions, and the rights and obligations created herein, shall run with the land.”</p> <p>Under the Deed of Open Space Easement, “No Further Subdivision –Grantor hereby covenants with Grantee that the lot may not be further subdivided.” In addition, it says under “Covenant Running with the Land, This deed shall constitute a covenant running with the land and shall be</p>	<p>The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.</p>

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			binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, including all subsequent owners of the Lot and all persons and entities claiming under them.”	
B2-8	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/203 0	We also know that if the Housing Element is approved with the ARA’s open space development plans, significant rezoning costs will be borne by the Town and the citizens of Fairfax, instead of by the owner of the ARA. We are concerned by this issue. Even one of our local periodicals (October 18, 2023, edition of the Ross Valley Reporter) recently ran a story that said, “The Fairfax Town Council, led by Barbara Coler and Town Attorney Janet Coleson, is supporting a developer who is trying to build 34 more units on the mandated Open Space parcels.” That developer is the owner of the ARA and Ms. Coler is a Town Council member and Ms. Coleson is an attorney and the Town’s legal counsel. This does not seem to fit well within the Town Council’s goal to work in the best interests of its citizens. I know that I do not want my tax dollars spent to support a plan that is in direct violation of the Agreement. In fact, the Agreement states that development of the four areas mentioned above and below, shall be approved subject to and subject only to the terms and conditions stated in the Agreement. It further states that the specific siting of the houses shall not be subject to any further review as part of the development permit. It states that the land will remain privately owned and maintained. It also states that uses outside of the building envelope shall be restricted to paths, driveways to approved parking spaces or other approved improvements, fences, decks appurtenant to a single-family home, landscaping and areas allowed in private open space, and shall be subject to the design review process where ordinarily required.	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			<p>It also states that by the express terms of the easement granted to the Town, neither Fairfax Hills nor its successors, heirs, or assigns “shall be entitled to further subdivision of any lot herein created.” It states that the “land area on each lot shall be used for construction of one single family home.” It identifies specific house size maximums for each site. As mentioned earlier, the Agreement provides an indemnity to the Town with respect to any damages arising from and caused by the siting or construction of residential structures on lots D1 (developed) and D2 (undeveloped), located in the ARA. Finally, it states “this shall be a covenant running with the land as to lots D1 and D2 and shall be binding on all heirs, assigns, and successors in interest of Fairfax Hills as to those lots.” Absent any other indemnity that the Town has negotiated with the owner of the ARA, the Town’s Counsel’s legal opinion could relieve the ARA owner of the burden of that indemnification.</p> <p>Need I continue?</p>	
B2-9	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/203 1	<p>As mentioned earlier, many Fairfax residents including myself and others have already been damaged by the Town’s proposed actions and inactions. Many of us have paid to hire consultants and attorneys to address this issue. Why should any Fairfax citizens be subjected to such an expensive dilemma? What is going on here? Other owners of properties near 615 are concerned that the Town may have failed in its duties to monitor compliance with the Agreement’s terms and conditions when related to the development of house site D1 of the ARA.</p> <p>I have attended several Town Council and Open Space committee meetings and have been disappointed with some of those meetings. At one meeting, Town Counsel shook her head and rolled her eyes as my neighbor was</p>	<p>The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706. The remainder of the comment pertains to the Housing Element and is not related to the adequacy of the DEIR; thus, no further response is required.</p>

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			<p>struggling for words in a two-minute public commentary period. This was unprofessional and abnormal and did not go unnoticed or unaddressed by me and other attendees. This was not helpful.</p> <p>As you know, the Town has wasted hundreds of thousands of dollars in taxpayer money and funds over the years by hiring and firing consultants associated with previous efforts to address Fairfax’s Housing Element. The Town counsel’s legal opinion seems to defy common sense and logic, as well as facts and precedent expressed by the Town. As mentioned above, this flawed opinion has caused significant costs and damage to several Fairfax citizens, both opposing and supporting the development of land submitted as part of the Housing Element.</p> <p>I may be wrong, but it appears to me that the Town has selectively failed to monitor compliance with the Agreement and has breached the terms and conditions of the Agreement to the favor of one private property owner while at the same time, appearing to rectify its previous failures to comply with the State’s Housing Element in a timely manner.</p> <p>One might consider the recent decision in the Second Appellate District, Division Four, from the Superior Court of Los Angeles County, regarding the case called Snowball West Investments, L.P. vs. The City of Los Angeles (Superior Court Case Number 20STCP00771). This recent decision effectively upheld local zoning requirements and concluded that the California’s Housing Accountability Act would not apply. Like Fairfax, that decision had standing and related to a property located in a Very High Fire Hazard Severity zone.</p>	
B2-10	David L. Codutu	11/1/2023, 11/7/2023, and	As you know, the Agreement calls for a considerable amount of open space but allowed for the development of the Fairfax Hills Subdivision. This allowance was specific	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al.,

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		11/10/203 2	<p>in many regards including the development of twenty parcels, each of which were to be developed with “one single family residence, per parcel.” There was an exception to this rule. The Access Road Area (ARA), allowed for two home sites, D1 and D2, but the total homes to be developed remained at 20. As mentioned previously, the parcels were to be distributed on areas of the property denominated as: (a) the Lower Development Area (the “Lower Area”) of six homes, immediately above the 7-11 store on the corner of Sir Francis Drake Boulevard and Oak manor Drive (Arrowood); (b) the Center Development Area (the “Center Area”) of the seven Craftsman Style homes on Snowden Lane;(c) the Access road Development Area (the “Access Road Area”); and (d) Upper Development Area Triangle (the “Triangle”). The parcels were to be distributed as follows: Lower Area 6 homes Center Area 7 homes Access Road 2 homes Upper Area (Triangle) 5 homes Again, there was to be a phased development of the Fairfax Hills Subdivision. The Center Area was to be developed first. The Lower Area was to be developed second. This happened. The Center Area was completely developed by the early 2000s, and the Lower Area was completed around 2016. The Triangle was to be developed thirdly and the ARA was to be developed last. I believe that Site D1 was first developed roughly five years ago, about 2018. As discussed above, the seven homes located in the Center Area are on Snowden Lane. These homes represent the first completed stage of the Fairfax Hills Subdivision.</p>	Marin Superior Court No. CIV 140706.
B2-11	David L. Codutu	11/1/2023, 11/7/2023,	The EIR includes provisions to develop the ARA’s open space mandated area of the ridgeline which is in a Very	The comment is noted. Please see Master Response 1 regarding Fairfax

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		and 11/10/203 3	High Fire Hazard Severity Zone. This possible development also fails to comply with the terms and conditions the Agreement. One might think that the Town and Dyett & Bhatia would have exercised professional care to review all possible public documents including the Agreement when considering the possible development of the ARA.	Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.
B2-12	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/203 4	I have been the CEO of a highly rated professional liability insurance company (insuring design professionals) for 35 years. I have been involved with thousands of claims comprising hundreds of millions of dollars in loss and expense payments. Many have involved geophysical/geotechnical claims. Given my firsthand experience with such design disciplines and claims, one must not underestimate geologic risks. Such underestimation can lead to significant liabilities and expensive problems.	The comment is noted. Geologic risks are analyzed in Chapter 3.6 of the DEIR.
B2-13	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/203 5	As mentioned previously, none of us on Snowden Lane knew of the development plans for the ARA, until very recently. That is unfortunate because the ARA abuts the Center Development Area—i.e., Snowden Lane. It also abuts the Lower Development Area and the Upper Triangle as well as other portions of land on Oak Manor Drive. It is hard to understand why the Town and its primary urban planning consultant failed to inform residents in these key areas of the development plans of the ARA. One would think that such proposed development plans would have been openly discussed circulated by the Town, its professional consultants, and the owner of ARA. What was the big secret? When we were building our house on Snowden beginning in 1999, we made an expensive mistake as it related to compliance with the Agreement. We had pre-wired a	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			portion of the house--then distinct from the main house--as a separate unit. We never had any intention of renting that portion to a third party. My wife is a college professor. The unit was designed to be her writing studio. The Town correctly required us to consolidate the unit into the main house and remove such wiring in compliance with the Agreement. The Town represented that it was ensuring the one-owner occupied unit per site pursuant to the Agreement. That action by the Town cost us thousands of dollars, but we understood the Town's actions and complied with the Town's correct demands.	
B2-14	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2023 6	<p>This leads me to another comment and question. One of my neighbors told me that the Town, is "handing out ADU permits like candy." We know that the ARA recently completed building a modern home on building site D1, as well as a separate ADU. Please explain how that was allowed within the terms and conditions of the Agreement. I was recently contacted by a local architect, asking if a prospective buyer of a house for sale on Oak Manor should be concerned about the development "over their fence line." In a normal situation, I would have said "no." But who knows today given the Town's recent position regarding development of settlement mandated, open space areas?</p> <p>A claim anecdote that I am familiar with may be in order here. During the 1970s, a noted geologist employed by the California Department of Mines and Geology mapped landslides in and around Marin and other Bay Area communities, including Mt Burdell in Novato. In the late 1970s and 1980s, a subdivision was developed on open space on Mt. Burdell. The resulting houses were constructed in the 1980s with few problems. At some point during mass grading, a 20x40 foot "knob" (a small hill) was excavated to accommodate the construction of a few more</p>	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706. In addition, geologic risks are analyzed in Chapter 3.6 of the DEIR. See response to comment B1-5 regarding landslide risks.

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			houses. Several years after the completion of the subdivision, a hospital was built up-slope from the subdivision. As the hospital's construction continued, homeowners in the subdivision complained about the changed view associated with the hospital siting. A large landscape berm was created to obscure the view of the hospital, using the spoils from the foundation excavation. This berm was massive and worked like a charm, until Marin had a very rainy winter in the late 1990s. As it turned out, the "knob" was the toe of an ancient landslide. When it was excavated, it removed the resisting force that kept this ancient landslide from moving again. This landslide was re-triggered by the combination of the excavation of the toe, the weight of the berm, and the "grease" –i.e., copious amounts of water from a rainy winter. Expensive litigation ensued, and houses and people's lives were ruined or compromised. The once sublime neighborhood was now a litigation and construction mess. The point here is that the catastrophic failure occurred many years after the completion of the subdivision. The impacts of each act--each seemingly unrelated and separated by several years--, eventually coalesced and resulted in a massive failure at great cost.	
B2-15	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/203 7	We must not be flippant about "mitigatable" geologic risks as mentioned in public records by the Town's professional planning consultant. One must consider both known (mapped) and unknown (unmapped) geologic risks. Also, when one considers the rapidity of serious climate events these days, the entire civil engineering profession must be revamped, because "100-year storms" no longer happen once every one hundred years. They happen all the time. In today's age of incredibly serious and rapidly expanding climate events, geophysical and construction risks will increase.	The comment is noted. Please see response to comment B1-5 regarding geologic risks.

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B2-16	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/2038	The same is true with fire hazards. The area characterized as the Fairfax Hills Subdivision (and its four phases), is located next/adjacent to a dense forest area and is in a Very High Fire Hazard Severity Zone. In some public commentary written by former Fairfax Mayor, Mr. Frank Egger, he mentions liability concerns for the Town, brought on by enhanced fire and geophysical risks associated with the development of Marin's Open Space. He states that the Town should be working on ways to get citizens out of the Town, instead of further development of designated open space determined by the Agreement. He points out with Fairfax, that there is only "one way in and one way out," and our Town must not become another conflagration like the Paradise, Ca., disaster. He could not be more correct.	The comment is noted. As detailed on Page 3.15-14 of the DEIR, increased development projected under the Housing Element would increase traffic on Sir Francis Drake; however, there is a robust framework of emergency preparedness and evacuation actions in place to facilitate evacuation. These numerous robust strategies in place range from regional to local planning efforts to facilitate emergency response and evacuation plans. As detailed in the EIR, Housing development projected under the Housing Element would not impede the implementation of these emergency response strategies and evacuation plans and this impact would be less than significant. In addition, as detailed on page 3.5-19, risk of landslides and flooding would be reduced to the maximum extent practicable with compliance with existing regulations related to hillside construction, stormwater management, and flood and erosion control. Accordingly, impacts related to post-fire hazards would be less than significant. Please see also response to comment B2-14 regarding geologic risks.

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B2-17	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/203 9	<p>Another two claim anecdotes are relevant here and they relate to the property we bought (7 Snowden). When our house was being constructed, a contractor with an acetylene torch decided to bend conduit with it--instead of using a "hot box" (a fire protection device) --. This construction error started a multiacre brush fire on our property and on the adjacent mandated open space, up to and over the ridgeline above Snowden Lane. Had the winds been blowing in a different direction that day, it could have destroyed the entire Snowden Lane community, plus significant portions of Fairfax. The point here is that construction errors happen frequently. Open space development has its hidden costs, and a catastrophic disaster is merely the sub total of many smaller mistakes along the way.</p> <p>After our house and pool were built, we noticed that the downward portion of the pool seemed deeper than the upward portion. To make a long story short, the developer of our house placed the pool in the direct path of an ancient landslide (on the landslide's toe). Massive problems ensued and to protect neighbors and create stability for the hill and pool area, almost \$1 million dollars was spent to engineer and reconstruct the hill with geogrids and compacted soil, in eighteen-inch lifts.</p>	The comment is noted. Please see response to comment B1-5 regarding geologic risks.
B2-18	David L. Codutu	11/1/2023, 11/7/2023, and 11/10/204 0	<p>The point here is that known and unknown geophysical risks are real. Climate change events are real. Construction and construction development errors and omissions are real. What we know or believe today may mean nothing if we are not careful with future development.</p> <p>When we bought 7 Snowden, we knew that site D2 (and part of ARA), could someday be developed with a 4,900 sq ft house. We knew of that possibility and accepted it. We knew of the Agreement and complied with its terms</p>	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706. In addition, geologic and wildfire risks are analyzed in chapters 3.6 and 3.15 of the DEIR.

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			<p>and conditions. We continue to comply with the terms and conditions of the Agreement. It was a condition of the sale. In public record correspondence with the Town and its primary planning consultant, ARA's owner creates an either/or fallacy and "poisons the well" by stating that the Town must find a middle ground between the "development of sprawl and a zero-development policy." The correspondence goes on to state that such plans are, "characterized by political extremes." One must conjecture that if we do not agree with the ARA owner's premise, we are political extremists? Hardly. We are law and rule-abiding citizens complying with the Agreement. I believe that the ARA owner is a relatively new Fairfax resident (the last 7-8 years), and we have had a good and cordial relationship. Most of us on Snowden have been here for decades and bought our houses based on the knowledge of mandated (designated) open space defined by the Agreement. None of us wants any problems with the Town or our neighbor at 615. But also, we do not want our tax dollars to be used to address property development at the cost of mandated open space. We believe this plan would lead to the diminution of the value of our properties, and increase fire, geophysical and construction risks. We love our Town. We respect its elected officials, and we are certain that the Housing Element requirements can easily be met by other large undeveloped properties in Fairfax (the Marin Town and Country site comes to mind), and that are not designated as open space by a duly recorded settlement agreement.</p>	
B2-19	David L. Codutu	11/1/2023, 11/7/2023, and	One final question relates to the EIR. Did the submission to the State take into consideration the negative impacts created by modern-day enhanced risk brought on by the	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al.,

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		11/10/204 1	<p>rapidity and seriousness of climate change events? The failure to pay close attention to modern day environmental hazards can be catastrophic to the entire community. As stewards of that community, it is your responsibility to properly evaluate the potential and real hazards brought on improper land development and by climate change. The absence of such stewardship could result in horrific events and lead to the loss of life, destruction of personal property and the destruction of our community.</p> <p>Please know that the Agreement contains an Attorneys' Fees clause, which states that the prevailing party in a litigation scenario, will "be entitled to recover reasonable expenses, attorney fees and costs." We hope to avoid a legal tussle with the Town. If that unfortunate event happens, we will prevail over the Town.</p> <p>Due to the validity of the Agreement, The Town must remove the ARA parcel and any parcel or land documented in the Agreement, from the Fairfax Housing Element, 2023-2031. We want to continue to live in peace on Snowden with our neighbors and our community. We want to keep Fairfax's designated open space, open.</p>	<p>Marin Superior Court No. CIV 140706. In addition, potential climate change impacts are noted throughout the DEIR, including in Chapter 3.7 and on pages 3.14-18 and 3.15-2.</p>
B3-1	Telhia Draheim	11/7/23	<p>I would like to express the following concerns as part of the Public Comment in response to the proposed Draft Environmental Impact Report for the Fairfax Housing Element Plan.</p> <p>6 School St. Plaza</p> <p>High density living provides more opportunity for fostering clusters of disease, heightened by increased air pollution and GHGs, which are much less present in suburban or rural environments with less dense populations.</p>	<p>Thank you for your letter. The comment is noted. As noted on page 3.2-35 of the DEIR, the Proposed Housing Element would support the primary goals of the 2017 Clean Air Plan to reduce emissions and decrease concentrations of harmful pollutants through the implementation of transportation control measures, building control measures, and waste and water control measures.</p>

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B3-2	Telhia Draheim	11/7/23	High density developments, such as the one currently being proposed as part of the Fairfax Housing Element Plan for 6 School St. Plaza, will use tremendous amounts of concrete, steel, composite materials and other temperature variant materials in their construction. The proposed 175 units on 1.92 acres most likely equates to a 12-story building, without adequate parking, in the center of a residential district. This out-of-place, “aesthetic blight” was not mentioned in the DEIR.	The comment is noted. Chapter 3.1 of the DEIR does evaluate potential impacts to aesthetics that could arise from the development projected in the Proposed Housing Element. As noted on page 3.1-13, while changes to the visual aesthetic of the downtown would occur, these changes would not represent a degradation of visual aesthetic given the objective design and development standards for higher density development that Program 2-A will establish. As such, any development projected under the Housing Element would be pursuant to applicable zoning and other regulations governing scenic quality. Compliance with existing regulations and Housing Element programs would help ensure the compatibility of new development and impacts would be less than significant.
B3-3	Telhia Draheim	11/7/23	Building operations consume 40% of the nation’s energy according to the US Department of Energy. Even with requirements like LEED certification, the materials which go into building construction do not justify the claim that high density, multi-family, transit-oriented development supports the environment. CO2 embedded in the building materials produce greenhouse gas (GHG) emissions and have a negative effect on energy consumption. When an urban environment gets hot, it produces a “heat island” effect, which requires more metric tons of carbon dioxide equivalent (MTCO2e) to cool. When an urban environment	The comment is noted. Chapters 3.5 and 3.7 of the DEIR account for energy use needed for heating and cooling development as well as in the quantification of emissions located in Appendix D of the DEIR. As noted on page 3.5-10 of the DEIR, operation of development associated with implementation of the Housing Element would increase the consumption of electricity, natural gas, and transportation fuels.

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			gets cold it produces a “cold sink” effect, requiring more MTCO ₂ e to heat. The effects of heating and cooling must be taken into consideration when evaluating environmental data.	However, by placing services and amenities close to where people live and work, the land use scenario envisioned by the Housing Element would reduce the need to drive and reduce per capita energy consumption and greenhouse gases. Additionally, while development under the Housing Element would increase energy consumption in the Planning Area, this more concentrated level of development is consistent with the goals of Plan Bay Area’s goals of encouraging higher-density and infill developments where appropriate.
B3-4	Telhia Draheim	11/7/23	<p>From the Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update Summary: “Operation of the land uses introduced by the Proposed Project would require energy consumption and generate long term emissions of CO₂, CH₄ and N₂O. Future conditions under the proposed project would not meet the 100% GHG emissions reduction target for 2030 set by the Town Climate Action Plan. Even with Mitigation Measure GHG – 2, the associated impact would remain significant and unavoidable and cumulatively considerable. Implementation of the Proposed Project would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.”</p> <p>In Marin County, denser populations demand more shipping, trucking and transportation to satisfy our consumption driven economy. According to the DEIR report, “Vehicle miles traveled (VMT) would increase. This plan does not meet CEQA guidelines related to VMT goals and indicates a significant cumulative transportation</p>	<p>The comment is noted. Impacts 3.7-2 and 3.13-2 are disclosed in the EIR as significant and unavoidable.</p> <p>In accordance with CEQA Guidelines section 15093, if the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" with a statement of overriding considerations.</p>

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			impact.” The DEIR report states: “Vehicle trips resulting from implementation of the proposed project could result in the irreversible consumption of nonrenewable energy resources primarily in the form of fossil fuels, natural gas, and gasoline for non-electric automobiles and long-term degradation of air quality.”	The Town Council will consider whether to adopt a statement of overriding considerations.
B3-5	Telhia Draheim	11/7/23	I have concerns about the biological resource impacts. From your DEIR summary: “Given the extent of biological resources throughout the community, housing sites identified in the Proposed Project do occur along riparian areas near Bothin, San Anselmo, and Fairfax Creeks; the construction of which could potentially adversely affect severance special-status species.”	The comment is noted. As explained on page 3.3-15 of the DEIR, by implementing Mitigation Measures BIO-1 through BIO-6 and adhering to existing policies and local regulations, development project under the Housing Element would not significantly impact special-status species. All construction activities of such development would be required to conduct preconstruction surveys for special-status species and implement a worker environmental awareness training program, along with a suite of other species protection measures.
B3-6	Telhia Draheim	11/7/23	I am also concerned and object to “clustered housing” developments proposed for ridge lines, scenic corridors and upland residential zones which would require overturning existing zoning requirements which have been in place since 1973. Cluster developments have been previously challenged and denied on Marin's A-60 zoned properties. Some of the parcels shown on Dyett & Bhatia's map for new clustered market rate housing are multi-million-dollar estate houses, in violation of Fairfax's current zoning. Why is the proposed Fairfax Housing Element Plan supporting	The comment is noted. Please see Master Response 2 regarding open space preservation. As detailed on page 3.10-17 of the DEIR, to minimize impacts of already permitted levels of development and support achievement of the RHNA allocation, Zoning Code amendments will be prepared as appropriate to allow for low impact clustered residential development and to establish

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			development of 34 more units on mandated Open Space parcels? Implementation of the Proposed Project would cause a significant environmental impact due to a conflict with existing land-use plans, policy and regulations adopted for the purpose of avoiding or mitigating an environmental effect.	development standards and design review criteria. As such, no conflicts would result. All future residential development occurring within the Town would continue to be required to be evaluated in accordance with local regulations, including the General Plan and Town Code. Therefore, implementation of the Housing Element would have no impact in regard to conflicts with a land use plan, policy, or regulation adopted to avoid an environmental effect.
B3-7	Telhia Draheim	11/7/23	There is one road in and out of town. Implementation of the high density, Proposed Project plan would result in inadequate emergency access and impair an adopted Emergency Response Plan and Emergency Evacuation Plan.	The comment is noted. As detailed on Page 3.15-14 of the DEIR, increased development under the Housing Element would increase traffic on Sir Francis Drake; however, there is a robust framework of emergency preparedness and evacuation actions in place to facilitate evacuation. These numerous robust strategies in place range from regional to local planning efforts to facilitate emergency response and evacuation plans. Accordingly, as analyzed in the EIR, housing development associated with the Housing Element would not impede the implementation of these emergency response strategies and evacuation plans and this impact would be less than significant.

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B3-8	Telhia Draheim	11/7/23	<p>Why is the Fairfax Housing Element Plan continuing to propose a "tower" in the middle of a residential neighborhood consisting of one and two-story buildings when the Marin Town & Country Club's 35 acres of flat lands with existing infrastructure are available? Why is the MTCC property not included on the proposed Fairfax Housing Element Plan as an environmentally superior alternative option?</p> <p>The DEIR states, "The MTCC site currently does not have zoning that permits residential development. In order to make the site available for housing, the Town of Fairfax would be required to develop a ballot initiative to rezone the site. As such, it is uncertain that the site could be rezoned and housing could be developed within the eight-year planning period. Therefore, the Mixed-Use Development Alternative is considered infeasible."</p> <p>The MTCC site can easily be rezoned and housing developed within the eight-year planning period and, therefore, should be considered "feasible" as a Mixed-Use Development Alternative. You do not have the wisdom or authority to make assumptions about the voters of Fairfax. Given the alternative to a 12-story building in the center of town or clustered housing on our scenic ridge lines, I strongly believe our voters would be willing to change the zoning.</p> <p>With the current Housing Element Plan, the overall negative environmental impacts of construction methods, materials, supply chains and waste management will contribute to the depletion of Fairfax's supply of open space, water and energy resources.</p>	<p>The comment is noted. Please see Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site and Master Response 2 regarding open space preservation. In addition, impacts on water supply and energy resources are detailed in chapters 3.14 and 3.5 of the DEIR.</p>
B3-9	Telhia Draheim	11/7/23	<p>From your EIR summary: "New development anticipated by the proposed project would result in increased energy use for the operation of new buildings and for transportation. This new</p>	<p>The comment is noted. In accordance with CEQA Guidelines Section 15093, if the specific economic, legal, social, technological, or other benefits,</p>

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			<p>development would therefore result in an overall increased use of both renewable and nonrenewable energy resources. To the extent that new development uses more nonrenewable energy sources, this would represent an irreversible environmental change.”</p> <p>Unless these negative environmental effects are accounted for in our planning for population growth, we will continue to harm our fragile ecosystems, our infrastructure and the socio-economic systems which support us. As wise investors, we must be careful not to dip into the principal and deplete our reserves.</p> <p>From the Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update Summary: “Irreversible construction related environmental changes could also occur during the course of constructing development projects anticipated by the proposed project. New construction would result in the consumption of building materials (such as lumber, sand and gravel), natural gas, and electricity, water, and petroleum products to process, transport and build with these materials. Though it is possible for construction equipment to be fueled by renewable sources over the course of the Proposed Project build out, the timing and availability of these energy sources is unknown. Construction equipment running on fossil fuels would be needed for excavation and the shipping of building materials. Due to the nonrenewable or slowly renewable nature of these resources, this represents an irretrievable commitment of resources.”</p> <p>Please consider these comments prior to adopting the DEIR and final Housing Element Plan for Fairfax.</p> <p>Residents do not support and will never forgive the irreversible environmental damage caused by the</p>	<p>including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" with a statement of overriding considerations.</p> <p>The Town Council will consider whether to adopted a statement of overriding considerations.</p>

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			execution of the currently proposed Fairfax Housing Element Plan.	
B4-1	Marc Lubomirski	11/9/23	<p>Geology and Soils (3.6)</p> <p>Why are new homes even being considered for known slide areas? In the Comments section of the Fairfax 6th Housing Element there is a letter from Scott Hochstrasser, dated April 23, 2023. Hochstrasser is the Land Planning/Development consultant for the building proposal on the 615 Oak Manor parcel which adds 4 homes and 4 ADUs on an area with 30-40% slope. It is situated on the northern third of a cluster of 3 mapped debris flow landslides with the rest of the area showing continuous to intermittent downward slope creep per the T.C. Smith, Salem Rice, R.G. Strand report (Geology of Upper Ross Valley and the Western Part of the San Rafael Area). In previous years, and most recently during the first half of 2023, water was seen continuously seeping and pooling at the base of the hill where Hochstrasser/Schwartz proposed the 4 homes & ADUs. Water is the major contributing cause to landslides. These are highly deformed rock layers with overlying unconsolidated deposits in the slide areas along with soil creep (as evidenced on the slope) and water seepage suggests possible lubrication of potential future failure points. The great majority of slides occur on steep slopes exceeding 30 degrees and Franciscan Melange is notorious for slides in both Marin and Sonoma Counties. The geologically unstable slope where Hochstrasser is proposing development will continue to do what it's already doing (sliding) and undercutting stabilizing toes at the base or loading up above the slides will only exacerbate the situation.</p>	Thank you for your letter. The comment is noted. See response to comment B1-5 regarding landslide impacts.

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B4-2	Marc Lubomirski	11/9/23	Landslide runout can also affect neighboring homes, utilities and the street in their path, and it already did that several hundred feet to the south. The current 615 Oak Manor home was permitted in 2016 and construction is still ongoing 7 years later, it is adjacent to a still active slide that took out 2 homes in 1973, underpinned a third home and slightly dislodged a fourth home off its foundation. Additionally, 15 years earlier, in 1958, a slide along the same axis flowed onto the street and crossed the yellow line in front of my home.	The comment is noted. See response to comment B1-5 regarding landslide impacts.
B4-3	Marc Lubomirski	11/9/23	With respect to the adjacent new planned development who would be on the hook for repairs and liability? Private homeowners? Will it be the Town of Fairfax, hence the taxpayers, for potentially approving a permit in a landslide area? Rest assured, the State will not be bearing any financial responsibility. Is there no risk governance associated with weighing these decisions? What happened in Oak Manor in 1973 resulted in multiple lawsuits against the County of Marin and the Town of Fairfax, homes were destroyed and utilities had to be moved. Again, why on earth would a new development in this area even be considered?	The comment is noted. Regulatory compliance and liability regarding geophysical impacts is not related to the adequacy of the DEIR; thus, no further response is required.
B4-4	Marc Lubomirski	11/9/23	The old rock quarry area on Sir Francis Drake Blvd carries risk as quarries are known to slough off layers or rocks at inopportune times. There is a proposal for 20 units per Hochstrasser in his development proposal, the siting is to the east of the 120-150 ft rock wall but will still have a substantive steep slope behind the sites on the left end. It's a very narrow strip with no potential to flatten or reshape the slope above since that land already belongs to 1 Arrowood Lane. There is vegetation and trees on the exposed quarry slope which means the presence of water. Will the Arrowood property owner now have potential	The comment is noted. See response to comment B1-5 regarding landslide impacts. As noted on page ES-1 of the DEIR, this EIR is a programmatic document and does not assess project-specific impacts that may result from development projected in the Housing Element. . To the extent that any future development project anticipated by the Housing Element may have individual, site-specific

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			liability for anything built below his slope? Will the developer need to excavate the toe of the slope so they can fit the units in? Again, this is a very narrow strip of land; what is the setback from the slope? Will there be a substantial catch wall to prevent falling rocks from encroaching on the proposed units? It's also in a delineated floodplain & high/very high potential liquefaction zone which will add to the building expense.	impacts not addressed in this program EIR, such projects would be subject to project-level environmental review, as required by State law. Regulatory compliance and liability regarding geophysical impacts is not related to the adequacy of the DEIR; thus, no further response is required.
B4-5	Marc Lubomirski	11/9/23	Wildfire (3.15) The major insurers have their own 3rd party fire risk indices they are assigning to the homes and are no longer issuing new homeowners policies in upper Oak Manor as well as other WUI areas. The EIR Fire Hazard Zone maps are entirely misleading in that they assign the same designation 'High Fire Hazard Severity Zone' to almost the entire Town of Fairfax including Oak Manor and the Wall property. There needs to be a much more granular map that shows the much higher level of fire risk in the WUI areas where you currently can't get new home insurance from the major insurers.	The comment is noted. As noted on page 3.15-5, Government Code Sections 51175-89 advise CAL FIRE, to identify areas, or zones, of very high fire hazard severity potential under the Fire and Resources Assessment Program (FRAP). These zones are mapped and identified based on expected burn probabilities, potential fuels over a 30-to-50- year time period, and their correlated expected fire behavior, to better predict the possible vegetation fire exposure to buildings and developments. Under the most recent FRAP data, CAL FIRE categorizes much of the Planning Area as a High Fire Hazard Severity Zone (Figure 3.15-2). Figure 3.15-1 shows WUI areas in Marin County.
B4-6	Marc Lubomirski	11/9/23	There was a fire break on the ridgeline running the entire length of the 615 Oak Manor/Remainder Parcel and is designated a fire road in the Marin County OpenSpace Fire District 2. That fire road has been used in the late 90s to fight the Snowden fire and is a last line of defense in	The comment is noted. As detailed on Page 3.13-20, any development pursuant to the Housing Element would be required to maintain access improvements that comply with

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			<p>Oak Manor for woodland or brushfires bearing down from the West. With the increasing danger of wildland fires, fire roads should be maintained so they are passable for fire equipment. RVFDequipment levels do not include a bulldozer so Marin County Fire Department would have to bring in bulldozers and grade the roads first so fire engines can get in. In this case, they might already be stretched at multiple fronts, valuable time is lost, which the residents can't afford, as they already will deal with a gridlock situation at the bottom of Oak Manor Drive and Sir Francis Drake Blvd.</p> <p>The owner of 615 Oak Manor has allowed all fire roads on property to fall into disrepair and overgrow with gorse and scotch broom. When the Marin County Shade Break Project was de-limbing trees and clearing the fuel load to along the entire west side of Oak Manor Dr., the same owner was offered the opportunity to clear the broom and gorse off the fire road at no cost to owner....and the owner declined. That is not helpful to a community that is actively organized to mitigate fire fuel load potential.</p>	<p>applicable provisions of the General Plan, Town Code, and the Ross Valley Fire Department (RVFD) Fire Prevention Standards. Town staff will review all development applications to ensure that applicable requirements are met, including provisions for adequate access for emergency responders and response vehicles, consistent with the Fire Code. Further, Section 17.040.070 for the Town Code also requires all fire protection plans for development to be approved by the Fire Department Chief. As detailed on page 3.15-17, a Fire Protection Plan would be required for construction and development in areas designated as Wildland-Urban Interface (WUI), and/or Moderate, High, or Very High Fire Hazard Severity Zone per the Town Code's Fire Code (Chapter 8.04). Such plans describe ways to minimize and mitigate potential for loss from wildfire exposure. Construction would also be required to meet CBC requirements, including CCR Title 24, Part 2, which includes specific requirements related to exterior wildfire exposure. The Board of Forestry, via CCR Title 14, sets forth the minimum development standards for emergency access, fuel modification, setback, signage, and</p>

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				water supply, which help prevent loss of structures or life by reducing wildfire hazards.
B4-7	Marc Lubomirski	11/9/23	Additional vehicular traffic will be significant. We are already impacted with gridlock on SFD and Oak Manor Dr. when the schools start and end. Evacuation, if needed, is already a nightmare. Is adding another 500 to 1000 cars to potential gridlock viewed as just an immaterial consequence of forcing additional housing? Is there some chart that states gridlock plus 5% or 10% or more is insignificant and acceptable? Will we have to destroy the character of the Town by eventually removing (as San Anselmo did) the on-street parking on Sir Francis Drake Blvd and creating a 4 lane thoroughfare for reasons of safety and traffic flow? Everyone of these proposed 'upper moderate' income homes with ADU and JADUs will bring a minimum of 4 to 6 vehicles or more.	<p>The comment is noted. An assessment of impacts on traffic congestion is no longer required under CEQA and thus, not incorporated into the DEIR. With the passage of SB 743 (September 27, 2013) and the subsequent adoption of revised CEQA Guidelines in 2019, level of service (LOS) can no longer be used as a criterion for identifying significant transportation impacts for most projects under CEQA. LOS measures the average amount of delay experienced by vehicle drivers at an intersection during the most congested time of day, while the new CEQA metric (vehicle miles traveled, or VMT) measures the total number of daily miles traveled by vehicles on the roadway network and the impacts on the environment from those miles traveled.</p> <p>As detailed on Page 3.15-14 of the DEIR, increased development projected under the Housing Element would increase traffic on Sir Francis Drake; however, there is a robust framework of emergency preparedness and evacuation actions in place to facilitate evacuation.</p>

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				These numerous robust strategies in place range from regional to local planning efforts to facilitate emergency response and evacuation plans. Accordingly, as detailed in the EIR, housing development associated with the Housing Element would not impede the implementation of these emergency response strategies and evacuation plans and this impact would be less than significant.
B4-8	Marc Lubomirski	11/9/23	With respect to the current 615 Oak Manor home (zoned Single Residential RS-6) multiple times we have already seen 30 or more cars parking on both sides of the street with no sidewalks and forcing pedestrians onto the roadway. Coincidentally, the reason for 'no sidewalks' is the steepness of the slope and the hazard of undercutting the slope and potentially removing the toe buttressing the hillside.	The comment is noted. As detailed on page 3.13-19, through the design and engineering review process, Town staff and staff from other relevant agencies will evaluate development proposals for any development projected in the Housing Element as well as modifications to the existing transportation facilities and new proposed facilities to ensure public health and safety. Requirements include adequate and safe sidewalks or crosswalks, dedicated and protected bicycle facilities, realigning sharp curves, prohibiting certain movements, signaling intersections, and improving sight distance, among other measures. As such, the Housing Element would not substantially increase hazards due to design features and it would be compatible with existing uses in the area.

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B4-9	Marc Lubomirski	11/9/23	<p>The Town's consultants Dyett & Bhattia applies their boilerplate text of identifying each vacant parcel with no regard and even worse, no insight, to potential parcel deed restrictions, underlying exceptions and easements. This wastes money for all involved, the residents and the Town itself. If Dyett and Bhatia did their research they would have discovered the Fairfax Hills and 20th Century Builders, Inc. v. Town of Fairfax Superior Court Case No. 147076 Order, signed May 25, 1991, thereafter designated the Fairfax Hills Settlement Agreement. All homes developed on the former Fairfax Hills land have deeds with this 1991 Settlement attached to them.</p> <p>The Town of Fairfax has acknowledged this by verifying that each new home in Snowden and Arrowood met the terms and conditions of this Settlement Agreement as a pre-condition before they approved the final building permit. The Agreement stipulated maximum 20 homes, 1 home per lot, in 4 different phases and areas. The Access Road Area had 2 buildable lots, D1 and D2, and the Settlement stipulates that the covenant runs with the land and shall be binding on all respective heirs and successors; including all subsequent owners of the lot.</p> <p>The following is a transcription of the Fairfax Planning Commission video on June 16, 2016 where they approved the building permit with stipulations for D1 and cements in place the enforcement and validity of the Settlement Agreement. The 1 min 54 sec exchange is between Planning Commissioner Laura Kehrlein, Planning Commissioner Phillip Green, Principal Planner Linda Neal and Planning Director Jim Moore. Beginning of video snippet at time 1:56:46 Commissioner Laura Kehrlein asks: ok, any other questions of staff before we open it up to the applicant. Commissioner Phillip Green asks: "Just one, is, is this property part of the agreement of settlement</p>	<p>The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.</p>

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			<p>of Fairfax Hills versus Fairfax?” Principal Planner Linda Neal responds: “Yes, it is.” Commissioner Phillip Green asks: “OK so in, in that agreement, is this in the lower area center area access road or upper area triangle?” Principal Planner Linda Neal responds: “It’s, it’s upper, it’s up towards the top” Commissioner Phillip Green: “So it’s in the upper area triangle.” Principal Planner Linda Neal responds: “No, it’s, its where the judge approved a house pad, you know, originally this site the judge approved two parcels and two home sites and so this is, boy, I don’t know what, the neighbors can probably, its maybe, I don’t know how many feet down the hillside there’s a little offshoot that leads to where Patrice Phillips that used to own the property kept a lot of animals but it’s not up in the Ridgeline. It’s down below” Commissioner Phillip Green asks: “Ok, So this is one of the two allowed homes?” Principal Planner Linda Neal responds: “Right, there’s no longer two allowed homes because they had to file a map for two Parcels within a certain amount of time so he’s just taking the one parcel the judge originally approved for two home sites and applying for one house and a second unit.” Commissioner Phillip Green: “Thanks for that clarification.” Planning Director Jim Moore adds: “In terms of the location it might help if you imagine going up Oak Manor, there’s the homes on the left side as you are going up and at the very end of the last home is the driveway access that then moves around to the southwest around the last couple of homes and it’s, I believe, about behind the third home or so; and as Linda mentioned this exhausts development potential in all 50 acres.” End of video snippet at time 1:58:40 https://www.townoffairfax.org/meetings/planning-commission-meeting-june-16-2016/#/tab-video Furthermore, when referring to building Lot D1 the</p>	

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			<p>Settlement Agreement said the total enclosed floor area of the home and any accessory buildings cannot exceed 3900 square feet. In exchange for giving up lot D2 as a building site, the owner was allowed to build the main residence (3765 square feet) plus the guest cottage (690 square feet) for a total of 4455 square feet.</p> <p>The Settlement Agreement further states that as each phase is built and the final map recorded that the owner will grant a deed of Open Space Easement to The Town for the rest of the land outside the building envelope and that the building of any structure outside the building envelope is prohibited. In addition, the Settlement Agreement states that the Open Space Easement may not be further subdivided.</p>	
B4-10	Marc Lubomirski	11/9/23	<p>General ()</p> <p>The Town Officials must hold Open Space properties in perpetuity for future generations of Fairfax residents and not succumb to development pressures. Every vacant parcel should not be buildable and every geo and fire hazard is not mitigatable. If the Dyett & Bhattia Consultants, The Town of Fairfax and the State continue to push that narrative we should not be surprised by adverse consequences. The Town Council and Planning Dept. needs to hold the best interests of current Fairfax residents and future generations as a non-negotiable tenet when responding to the State's housing mandates.</p>	<p>The comment is noted. Please see Master Response 2 regarding open space preservation. See also chapters 3.6 and 3.15 regarding geology and soils and wildfire impact analyses. The remainder of the comment pertains to the Housing Element and is not related to the adequacy of the DEIR; thus, no further response is required.</p>
B4-11	Marc Lubomirski	11/9/23	<p>Heavy equipment needed to develop an additional 500 homes places an undue burden on the already poor road infrastructure, which is replete with potholes. We already have an aging water delivery system as well as inadequate water supply in drought years. Marin Sanitary is also dealing with the same aging infrastructure and replacement issue. Additional traffic adds to the</p>	<p>The comment is noted. Regarding infrastructure, page 3.13-20 of the DEIR states that Projects in the Town Center, including School Street Plaza and workforce housing sites, may require site access improvements. Any such improvements would be</p>

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			nightmare gridlock evacuation scenario and compromises safety. There is only one way in and out, the Town is constrained by the landforms around us that define the start of the Upper Ross Valley drainage system. This is not an urban city with many forms of ingress and egress. Will the entirety of this additional burden be foisted on the taxpayer through bonds/taxes or should it be accounted for where it belongs, the developers and the State?	required to comply with the provisions set forth in the Town Code, and the Fire Department as set forth in the Fire Code. Provisions include sidewalk standards in Chapter 12.08 of the Town Code as well as the Town's Objective Design and Development Standards. Such standards require streets to be applied to create walkable and safe neighborhoods with redundant routes for vehicular, bicycle, and pedestrian circulation. Page 3.14-18 of the DEIR outlines how development under the Housing Element would have sufficient water supplies available to serve all Fairfax residents. According to Marin Municipal Water District's Strategic Water Supply Assessment, water management actions available to Marin Water provide sufficient capability to address historical and projected future droughts. As such, the impact is less than significant. Please see also response to comment B3-7 regarding evacuation.
B4-12	Marc Lubomirski	11/9/23	The character of the Town is unique and special, we are very different from the other cities in Central Marin as well as Southern and Northern Marin. Fairfax is blessed with open space preservation and restrictions on ridgeline development that previous Town Councils have worked tirelessly to preserve. The current and future Town Councils must not subvert the efforts that shaped the history and beauty of the Town of Fairfax.	The comment is noted. Please see Master Response 2 regarding open space preservation. See also Impact 3.1-3; implementation of the Housing Element would be pursuant to applicable zoning and other regulations governing scenic quality. Compliance with existing regulations

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				and Housing Element programs would help ensure the compatibility of new development and impacts on the existing visual aesthetic of the town would be less than significant.
B5-1	Kristi Dommen	11/9/23	<p>The distinction between a town and a city hold some general characteristics that differentiate the two and demonstrate why the TOWN OF FAIRFAX is such a unique gem worth preserving, the following are concepts to hold in reference to the EIR:</p> <p>Size and Population: In many places, a city is generally larger and more populous than a town. Cities often have larger populations, more developed infrastructure, and a greater variety of services and amenities.</p> <p>Government and Administration: The administrative and governmental structures can differ. Cities typically have a more complex and organized system of local government, often with a mayor-council or city manager-council form of governance. Towns may have simpler administrative structures.</p> <p>Economic and Cultural Characteristics: Cities tend to be more economically and culturally diverse. They often have a broader range of industries, businesses, cultural institutions, and entertainment options. Towns may have a more limited economic base and cultural offerings.</p> <p>Infrastructure and Services: Cities usually have more developed infrastructure, including better transportation systems, healthcare facilities, educational institution and recreational facilities. Towns may have fewer and less sophisticated amenities.</p> <p>Historical and Legal Factors: Fairfax is a TOWN, it does not and will not have the infrastructure to support the significant increase in</p>	<p>Thank you for your letter. The comment is noted. See response to comment B4-11 regarding infrastructure. In addition, as noted on page 3.10-18 of the DEIR, the Proposed Project's direct and indirect projected population growth is commensurate with regional growth projections. Therefore, the Housing Element would not induce substantial unplanned population growth in the Planning Area and the impact would be less than significant.</p>

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			population being put in place by this Housing Element.	
B5-2	Kristi Dommen	11/9/23	We must also consider the unique location of our TOWN, at the foot of Mt. Tam and coastal range, flanked by hundreds of acres of intentionally preserved open spaces. Those open/wild spaces contribute to the complex and critical need for our Town to aggressively continue to take the Wildland-Urban Interface (WUI) where human development meets or intermingles with undeveloped wildland or vegetative fuels seriously. Though our Town is small, the WUI still poses risks if natural vegetation is in close proximity to the town. Wildfire management in the WUI is complex due to the need to balance protecting lives and property with preserving natural ecosystems. Effective land use planning and mitigation measures are crucial in the WUI to reduce the vulnerability of our communities to wildfires. This includes creating defensible space around structures, immediately using fire-resistant building materials and progressive building code standards, and implementing regulations to guide development in fire-prone areas.	The comment is noted. Page 3.15-17 of the DEIR details existing State and local codes, plans, and regulations that would reduce wildfire impacts to the maximum extent practicable and, therefore, impacts related to exacerbated wildfire risks, increased exposure to pollutant concentrations from a wildfire, and uncontrolled spread of wildfire resulting from implementation of the Housing Element would be less than significant. Such regulations for construction and development plans include the California Fire Code, the Town Code, the California Building Code, and the California Code of Regulations.
B5-3	Kristi Dommen	11/9/23	Public education plays a vital role in WUI areas. Residents need to be aware of wildfire risks, evacuation procedures, and measures to protect their homes. Community engagement and outreach programs aim to increase understanding and preparedness. Given the complex nature of wildfires in the WUI, effective and continued collaboration is essential among various agencies, including local fire departments, forestry agencies, emergency management, and community organizations and coordination will help ensure a unified response to wildfires. The concept of the Wildland-Urban Interface accentuates	The comment is noted. Page 3.15-15 of the DEIR also details the robust framework of emergency preparedness and evacuation actions in place to educate and facilitate the evacuation of residents. RVFD has published detailed emergency evacuation maps and routes in order to inform residents about evacuation procedures. Marin County has also developed AlertMarin which is the county's system used for notification

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			the importance of adopting comprehensive approaches to wildfire management that address both the natural environment and the human communities at risk. Paired with climate change and mandated urbanization (Town to City growth) continues, understanding and managing the WUI is critical for ensuring the Town of Fairfax's community commitment to maintaining and preserving open space, and wildfire safety.	when there is some sort of imminent threat (wildfire, flooding, criminal activity) and residents need to take some sort of protective action (evacuate, shelter in place).
B5-4	Kristi Dommen	11/9/23	3.3-4: Implementation of the Proposed Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. Oak Manor Drive provides access to 1592 ft Loma Alta, one of the highest points in Marin and the associated Open Space. We enjoy the stunning Bay Area and unobstructed ridgeline views, especially at sunrise or sunset. The Smith Ranch Fire Road leads to the summit. An important link to the Bay Area Ridge Trail, Loma Alta continues north then drops off gradually to Big Rock trailhead at Lucas Valley. Many raptors are common, one Red Tail Hawk, takes up residence in the Live Oak tree near the top of Oak Manor Drive, directly next to the access road to Oak Manor Fire Road. Voles and gopher snakes are preferred meals to our raptors. These residents deserve to live as undisturbed as possible and we inhabit their world, not vice versa as we humans would love to think. Many deer, coyotes, skunks, possums, woodrats, occasional mountain lions, bobcats, foxes, and many unmentioned wildlife call these open spaces and the mature trees serve as wildlife nurseries and their homes.	The comment is noted. As explained on page 3.3-15 of the DEIR, by implementing Mitigation Measures BIO-1 through BIO-6 and adhering to existing policies and local regulations, development projected under the Housing Element would not significantly impact special-status species. All construction activities would be required to conduct preconstruction surveys for special-status species and implement a worker environmental awareness training program, along with a suite of other species protection measures.
B5-5	Kristi Dommen	11/9/23	3.6-3: Implementation of the Proposed Project would not locate structures on expansive soils or on a geologic unit	The comment is noted. See response to comment B1-5 regarding landslide

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			<p>or soil that is unstable , or would become unstable as a result of new development under the proposed Project, and potentially result in on- or off-site landslides.</p> <p>Oak Manor Hills properties have a well documented history of landslides due to slope and water. The area below the 615 Access Road and the full length to where it intersects the Fire Trail (above Snowden Open Space) has large unstable landslide areas, with a landslide in 1973 which damaged 2 homes and impacted neighboring home, utilities and damaged the street. A significant part of upper 615 to the west of Oak Manor Drive, intersected by the Oak Manor Fire Road, on the ridge across from Manor View also has a history of landslides and during heavy rains water seeps and pools at the base of the hill where Hochstrasser/Schwartz have proposed 4 homes and ADU's + JADUs.</p> <p>History is well documented with landslides, homes damaged, street and infrastructure damages on upper Oak Manor, yet this area is a pipeline project to add housing.</p>	<p>impacts. As noted on page ES-1 of the DEIR, this EIR is a programmatic document and does not assess project-specific impacts that may result from development projected in the Housing Element. To the extent that any future development project projected by the Housing Element may have individual, site specific impacts not addressed in this program EIR, such projects would be subject to project-level environmental review, as required by State law.</p>
B5-6	Kristi Dommen	11/9/23	<p>My property is included in the 1991 settlement: Fairfax Hills vs Town of Fairfax, there is specific language in the Superior Court order that addressed properties in the Oak Manor slide area between and including 535 and 575 Oak Manor. The Settlement also states to protect and maintain all existing drainage ways, interceptor swales, and storm drain facilities throughout the period of construction of the proposed development. Responsibility for continued maintenance of the same shall be assumed by its successors. Prior to recordation of the final map for the Access Road Area phase of the development, appropriate measures satisfactory to the County of Marin and the Town Engineer shall be taken to improve drainage and slope stability to the area uphill of 535 and 575 Oak Manor</p>	<p>The comment is noted. See response to comment B5-5 regarding geologic impacts. Please see also Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.</p>

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			<p>Drive.</p> <p>3.6-6: In combination with other past, present or reasonably foreseeable projects, the Proposed Project would not result in significant cumulative impacts related to ...soil erosion, or location of structures on unstable soils.</p> <p>Please refer to 3.6-3 comments.</p>	
B5-7	Kristi Dommen	11/9/23	<p>3.8-6 : Proposed Project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.</p> <p>As a member of Oak Manor Ridge FireWise Committee, the Town of Fairfax has never implemented an evacuation drill, however, estimates state 4 plus hours to reach 101. Have any of you tried to drive Sir Francis Drake (SFD) within 30 minutes before or after school at White Hill, Manor, Ross Valley Charter or Butterfield with San Domenico, Hidden Valley, Brookside and Archie Williams? Frequently SFD is gridlocked, and that is just when a typical task of getting to or from school occurs, let alone in the panic event of a wildfire.</p>	<p>The comment is noted. As detailed on Page 3.15-14 of the DEIR, increased development under the Housing Element would increase traffic on Sir Francis Drake; however, there is a robust framework of emergency preparedness and evacuation actions in place to facilitate evacuation. These numerous robust strategies in place range from regional to local planning efforts to facilitate emergency response and evacuation plans. Accordingly, as detailed in the EIR, Housing development associated with the Housing Element would not impede the implementation of these emergency response strategies and evacuation plans and this impact would be less than significant.</p>
B5-8	Kristi Dommen	11/9/23	<p>3.8-7: Implementation of the Proposed Project would not expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildfires. More density, more fuel, more people and cars WILL expose more people or structures to loss, injury or death. With an already impacted emergency response (and Ross</p>	<p>The comment is noted. See response to comment B5-7. As detailed on Page 3.13-20, any development pursuant to the Housing Element would be required to maintain access improvements that comply with</p>

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			Valley and Marin County Fire Departments are amazing!) due to narrow streets, traffic and mutual aid traveling from Woodacre, time is of the essence. If a fire were to break out on Oak Manor Hill, during school arrival or dismissal, rush hour or weekend traffic - our first responders will already be at a significant disadvantage and be powerless to protect people or properties.	applicable provisions of the General Plan, Town Code, and the Ross Valley Fire Department (RVFD) Fire Prevention Standards. Town staff will review all development applications to ensure that applicable requirements are met, including provisions for adequate access for emergency responders and response vehicles, consistent with the Fire Code. Further, Section 17.040.070 for the Town Code also requires all fire protection plans for development to be approved by the Fire Department Chief.
B5-9	Kristi Dommen	11/9/23	<p>3.8-7 : Fairfax residents or structures would not be exposed directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.</p> <p>Are you aware how many Fairfax residents have lost their homeowners insurance and are forced to purchase CA FAIR plan policies? Over 10% of homeowners are foregoing homeowners insurance. Even when 9 of our neighborhoods (Cañon Village, Cascade Canyon, Deer Park, Forrest Ave Area , Manor Hill, Marinda Oaks, Meadowland of Marin, Oak Manor Ridge, and Willow Evac) have grown very active FireWise Communities focusing on prevention, preparation, fuel reduction and education - still homeowners are losing insurance and our infrastructure is already maxed out.</p> <p>If new homes are being mandated, all homes in WUI should be hardened and with best practices for fire resistance, metal roofs, fire suppression and shutter systems. Let's look at European homes built to last 3 plus generations. Has anyone considered using the financial</p>	The comment is noted. See response to comment B5-2.

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			resources for this Housing Element to harden (to increase fire resistance) to existing homes, and maybe we could preserve our Town as is?	
B5-10	Kristi Dommen	11/9/23	<p>3.8-1: Implementation of the Proposed Project would not create significant hazard to the public or environment through the routine transport, use or disposal of hazardous materials.</p> <p>How can it be said that the Proposed Project would not result in significant cumulative impacts related to transport of hazardous materials, accidental release of hazardous materials into the environment or near schools when all but 2 of the previously listed schools are located within .25 miles from SFD?</p>	<p>The comment is noted. As noted on page 3.8-17 of the DEIR, even though there are three schools in Fairfax located within one-quarter mile of development sites projected under the Housing Element, projects, such as housing, would require little ground disturbance (lessening the potential risk of exposure) during construction and any hazardous materials use would still be subject to applicable requirements as mentioned under Impact 3.8-1. Adherence to the requirements of existing regulatory programs would reduce potential impacts associated with handling hazardous materials near a school to a less-than-significant level.</p>
B5-11	Kristi Dommen	11/9/23	<p>3.9-4: Alteration of the flow of surface runoff which would result in flooding on- or offsite, create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or impede or redirect flood waters.</p> <p>In January 2023, SFD was undermined by water running in the creek behind Manor School and blasting and undermining the retaining wall along Fairfax creek, closing the East bound SFD lane for over a week. The Stormwater Drainage System totally compromised SFD, and we were very lucky, and public works did an amazing job. What</p>	<p>The comment is noted. As detailed on page 3.9-15, buildout of the projected development under the Housing Element could increase runoff and alter existing drainage patterns resulting in erosion, siltation, and flooding. However, compliance with RWQCB, MCSTOPPP, and Town regulations and implementation of erosion and sediment control BMPs would ensure that impacts associated with substantial alteration of the</p>

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			would have happened if we lost both lanes of SFD for an extended period of time? Bolinas Fairfax road was also damaged at the same time and continues to use alternating two-way traffic through the westbound lane. Bolinas Fairfax is one alternative route in or out of Fairfax. Any additional building on 615 Oak Manor Drive would significantly increase the risk of flooding risk and or landslide in areas already indicated as “old slide areas.” The Town has all of these maps.	existing drainage pattern of the Planning Area would be reduced. Therefore, at the program level, development projected under the Housing Element would not result in substantial erosion, siltation, or flooding on- or off-site and impacts would be less than significant.
B5-12	Kristi Dommen	11/9/23	3.10-1: would not physically divide an established community: Though the Town is not physically divided, there are elements which cause division, people rushing from point a to b, and distracted paired with i.e. unsafe crosswalks (any crossing SFD, Center, Bolinas) especially if mobility or vision is challenged, in poor lighting or rain. This Town is already too fast and is losing the Hometown feel of OUR TOWN and OUR COMMUNITY.	The comment is noted. As detailed on page 3.10-13 of the DEIR, the Housing Element does not involve the construction of a linear feature or other barrier as described above and would not remove any means of access or impact mobility. There would be no impact with respect to physically dividing an existing community.
B5-13	Kristi Dommen	11/9/23	3.10-2: Project would not cause a significant environmental impact due to conflict with any land use plan, policy or regulation This is a TOWN being forced to become a CITY. Residents moved here for the old fashioned SMALL TOWN EXPERIENCE and people from all over visit for that experience and taste of the “old days” when people knew one another, took care of one another and supported one another. Fairfax has that foundation, however, it feels as if OUR TOWN is being FORCED to be like EVERY OTHER CITY. Undeveloped spaces are opportunities to create community gardens, pocket parks, etc., not to fill just for the sake of meeting a building mandate.	The comment is noted. As detailed on page 3.10-17 of the DEIR, future residential projects consistent with the Housing Element will be required to comply with the policies in the General Plan regarding land use and Town Code requirements associated with zoning districts, allowable uses, and development standards. All future residential development occurring within the Town would be required to be evaluated in accordance with local regulations, including the General Plan and Town Code. Therefore,

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				<p>implementation of the Housing Element would have no impact in regard to conflicts with a land use plan, policy, or regulation adopted to avoid an environmental effect.</p> <p>The remainder of the comment pertains to suggested land uses and is not related to the adequacy of the DEIR; thus, no further response is required.</p>
B5-14	Kristi Dommen	11/9/23	<p>3.12-3: Proposed Project would not increase the use of existing neighborhood or regional parks... such that substantial physical deterioration of a facility would occur. Cluster housing and increased populations at or near ridgelines will absolutely negatively impact the DARK SKY PROJECT, which seeks to protect and preserve the Night Sky, which is quickly disappearing and impacting nocturnal mammals, birds, insects and PEOPLE. Many families hike up the Oak Manor Fire road to the area near the labyrinth to share a picnic dinner and observe astronomical events including: lunar eclipses, stars and constellations, the moon and sometimes meteor showers. Where else can one find access to Open Space, this close and accessible to the Town?</p>	<p>The comment is noted. As noted on page 3.12-13 of the DEIR, there are three parks within Fairfax, totaling approximately 4.79 acres, that are managed by the Town's Department of Public Works (DPW) Park Maintenance Division, as well as additional recreational facilities such as regional parks, trails, and school athletic fields that are not managed by the Town's Park Maintenance Division. Adherence to General Plan goals and Town Code regulations detailed under the impact analysis would help ensure that population growth associated with development projected in the Housing Element would not result in substantial physical deterioration of existing parks and recreation facilities. Further, page 3.1-14 of the DEIR explains that all new development would be required to comply with Town regulations, including the</p>

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				Town's Objective Design and Development Standards. Site improvements, including lighting, are required to be consistent with the selected Architectural Style for the primary building. Further, development projected under the Housing Element would be required to comply with Section 17.049.010 of the Town Code. The section has provisions for two-unit projects to have all exterior lighting directed downward, shielded to prevent direct offsite illumination, the minimum number of fixtures necessary to provide pathway, stair/step, and entry illumination, and a maximum of two-foot candles lighting intensity. No landscape lighting is allowed. As such, new sources would not increase the amount of nighttime lighting or glare in such a way that would be incompatible with the suburban nature of the town.
B5-15	Kristi Dommen	11/9/23	3.13-1: adding homes and cars will significantly adversely impact the roadways, bicycle and pedestrian facilities. More people, more means of transportation mean an impact on safe streets. Thank you for Safe Routes to School for trying to improve the infrastructure and awareness to encourage alternative means of transportation. We already do not have enough parking for the cars in Town, we are in desperate need of safe parking/storage for bicycles, and we need space to separate pedestrians and human powered modes of	The comment is noted. As detailed on page 3.13-14 of the DEIR, buildout of development project under Housing Element would increase the number and proportion of housing units in the more walkable areas of Fairfax. Development projected under the Housing Element would be consistent with transportation-related General Plan policies and regulations by

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			<p>transportation. Let's look at the European model of multimodal streets and make it a priority.</p> <p>We only have multimodal streets which are located in conjunction with a major thoroughfare (i.e., SFD, Center or Broadway). It is terrifying seeing youngsters riding bikes to and from school, often on the sidewalk to avoid conflicts with cars and yet creating more conflicts with pedestrians. We have a culture of distraction and hurrying everywhere we go! Many are in such a hurry that they fail to stop for red flashing lights on school buses, yet more homes will add more people to our inadequate safe access.</p>	<p>increasing housing opportunities in already urbanized areas which is an integral part of encouraging transportation alternatives, such as walking and biking. Please see also response to comment B4-8 regarding transportation improvements to ensure public safety.</p>
B5-16	Kristi Dommen	11/9/23	<p>3.13-4: Implementation of Proposed Project would not result in inadequate emergency access:</p> <p>Increased use of SFD and surface streets will increase user conflicts, especially for emergency access. Have any of you been on SFD or surface streets between 7:30 - 8:45 am, or 2:30 - 3:30pm? Glen Drive and Oak Manor overflowing onto SFD are totally gridlocked during those times, it is really scary, there is no way First Responders can efficiently reach the necessary location past Manor School or Glen Drive before or past White Hill School. Let's consider that SFD is the only thoroughfare from Fairfax to Olema and onward to West Marin. Commute traffic, recreational/vacation/tourist travelers (especially if 101 Southbound is impacted during morning commute, or if 101 is closed in both directions, SFD is the only option to reach Pt. Reyes, Petaluma road) has a huge impact on morning, evening and weekend travel. How can the Town increase residents, moving farther from the transportation spine (SFD), adversely impacting the environment and creating the potential for chronic big city stand still traffic? Is it time to widen SFD to handle all of this growth, maybe we should build a super highway, 3 lanes in each direction</p>	<p>The comment is noted. Please see response to comment B3-7 regarding impacts on evacuation.</p>

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			and designated turn lanes to move people more efficiently, at the expense of the character and charm of Small Town Fairfax?	
B5-17	Kristi Dommen	11/9/23	<p>3.14-2: Proposed Project would have sufficient water supplies available to serve the Planning Area and reasonably foreseeable future development during normal, dry and multiple dry years.</p> <p>We now have tiered water use profiles with according fees, higher tier equals more water use and a larger water bill. This is to maintain and replace a system where deferred maintenance is reaching a tipping point. Rate payers are now footing the bill for a fiscally poorly managed utility (which now must play catch up for repairs and maintenance system wide) which we and future water users will pay for, and this all began during drought conditions. We can no longer count on a once in 100 year drought, it does mean that we have a 1% chance of that 100 year drought every year and with changing environmental conditions, it is hard to understand that a small town in a WUI setting is being forced to add homes and people.</p>	<p>The comment is noted. Page 3.14-18 of the DEIR outlines how development projected under the Housing Element would have sufficient water supplies available to serve all Fairfax residents. According to Marin Municipal Water District's Strategic Water Supply Assessment, water management actions available to Marin Water provide sufficient capability to address historical and projected future droughts. As such, the impact is less than significant.</p>
B5-18	Kristi Dommen	11/9/23	<p>3.15-1: Proposed Project would not substantially impair an adopted emergency response plan or emergency evacuation plan.</p> <p>More homes, more people, more fuel, more fire with no place to evacuate to. As recommended by our mutual aid responders: Ross Valley Fire and Marin County Fire, it is recommended that we only evacuate via our cars, driving the familiar route we would normally use to get to the grocery store, and hope for the best to reach a safe place other than gridlocked SFD (as Sleepy Hollow and San Anselmo residents will also use SFD). The "adopted emergency response plan" or "emergency evacuation</p>	<p>The comment is noted. Please see response to comment B3-7 regarding impacts on evacuation.</p>

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			<p>plans' are well thought out and look adequate on paper, however, they have not been trialed in a controlled predictable/planned Town Wide evacuation drill, let alone in an actual chaotic event. There is no way Fairfax Town residents will be able to evacuate our Town. One way in, one way out - period.</p> <p>Unfortunately, during PPO's, many people lose all aspects of emergency communication, cell phones, landlines, radio, etc., which makes them vulnerable to being able to evacuate sooner than later and to receive emergency communication. "Development will be dispersed throughout Fairfax's 9 zones, each with designated routes that lead to SFD, the Town's primary evacuation route. Further, there are numerous robust strategies in place from regional local planning efforts to facilitate emergency response and evacuation plans." One way in - one way out = SFD. As previously stated, this road is heavily impacted day to day, let alone in a stressful emergency evacuation situation, every person counts, however adding more people = more stress and impact on our overwhelmed system.</p>	
B5-19	Kristi Dommen	11/9/23	<p>3.15-3: installation or maintenance of associated infrastructure (roads, fire breaks, emergency water sources, power lines or other utilities).</p> <p>Builders build more and are not accountable for the associated and necessary infrastructure upgrades? Who is really benefiting from additional housing? Builders appear to have a favorable situation being proposed at the expense of individuals currently paying for the aging and poorly maintained infrastructure.</p>	<p>The comment is noted. As explained on page 3.15-18, any development projected under the Housing Element would be required to comply with existing State and local codes and regulations which would reduce impacts to a less-than-significant level related wildfire risks from associated infrastructure. The remainder of the comment is not related to the adequacy of the DEIR; thus, no further response is required.</p>

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B5-20	Kristi Dommen	11/9/23	<p>3.15-4: the proposed project would not expose people or structures to significant risks... including landslides , post-fire slope instability or drainage changes?</p> <p>When the majority of Fairfax has geological makeup paired with steepness that predisposes the area of landslides and slope instability paired with drainage issues. Are we ignoring geological history to fill in previously dedicated open space? "Steeply sloped hillside areas and areas of landslide risk in the hills. Figure 2-2 Environmental Constraints display the entire upper NorthWestern Section as Mostly or Many Landslides paired with High Fire Hazard Severity Zone (LRA). The Town limit and Unincorporated Marin County area of Oak Manor is classified as a High Fire Hazard Zone given the risk of wildfire in the region."</p>	<p>The comment is noted. As described on page 3.15-19 and in Chapter 3.6 of the DEIR, any development projected under the Housing Element would be required to comply with applicable regulations, including the Town Code, General Plan, and NPDES stormwater requirements for erosion control. Therefore, the risk of landslides and flooding would be reduced to the maximum extent practicable with compliance with existing regulations related to hillside construction, stormwater management, and flood and erosion control. Accordingly, impacts related to post-fire hazards would be less than significant.</p>
B5-21	Kristi Dommen	11/9/23	<p>In 1999, I witnessed a fire started from an errant spark in the Snowden neighborhood, engulfing the area to the south and west of my home in less than 15 minutes on a hot September afternoon. Luck was on our side, as the FireFighters were able to grade the fire road and air tankers dropped slurry to extinguish the fire. This is a High Fire Hazard Zone with many Town residents losing or experiencing significant premiums for their homeowners insurance due the WUI interface and or having difficulties selling their home as insurance carriers are no longer writing policies for High Fire Hazard Zone areas. Is Fair Housing going to pay our insurance premiums? Planned Power Outages, frequent loss of power due to wind or failures in an aging system have immediate as well as longer term impacts. Immediate is loss of cell coverage and inability to make 911 calls. (i.e., House fire in Sleepy</p>	<p>The comment is noted. Page 3.15-17 of the DEIR details that developments project under the Housing Element would be required to install new water mains within the street network to serve fire and domestic water needs. In addition, Section 16.24.130 of the Town Code requires the subdivider to provide a water connection for each lot and fire hydrants at such intervals as may be required by the Town and the Ross Valley Fire District. See also Section 3.14: Utilities and Service Systems for more information regarding water supply and infrastructure improvements. As such,</p>

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			Hollow where power outage prevented cell calls to 911, ultimately an individual died in their home.) Extended power outages mean a loss of water being delivered to the water towers, necessitating the use of auxiliary gas powered generators. If there is no generator, and thus, no pump, the water towers are not refilled and not only do homes lose water, but so do the hydrants.	development pursuant to the Housing Element will maintain adequate water capacity and pressures to help with firefighting. The remainder of the comment is not related to the adequacy of the DEIR; thus, no further response is required.
B5-22	Kristi Dommen	11/9/23	General Open Space must be preserved now and in the future. It is not an option to rezone to bring in more development. Once gone, it is lost forever. Fairfax is a unique TOWN: Its legacy has been protected and nurtured by previous Town Councils who have worked relentlessly to preserve open space and to assure ridgeline development is restricted. Pipeline agendas and bowing before mandates which will forever alter the Town of Fairfax cannot be tolerated or supported. Fairfax is a true gem to be defended for future generations to carry on its stewardship.	The comment is noted. Please see Master Response 2 regarding open space preservation.
B5-23	Kristi Dommen	11/9/23	Per our Town of Fairfax website: “ The current town center creates a lively mixture of businesses and residences. The Art Deco movie theater is the centerpiece of a vibrant nightlife with top-notch restaurants and well-known clubs with venues for jazz and other popular music. The Town’s village like character, reflected in the small businesses, quaint neighborhoods and busy sidewalks contribute to the sense of uniqueness about Fairfax. Framing and dominating the town is its natural setting – a visible open space of oak-studded hills to the north and west, and the forested shoulders of the Coastal Range to the south. Fairfax is a special place, loved by residents as well as visitors.”	The comment is noted. The comment is not related to the adequacy of the DEIR; thus, no further response is required.

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B6-1	Michael Mackintosh	11/8/23	<p>Dear Heather:</p> <p>Enclosed please find comments to be included along with other public comments pertaining to the current Fairfax Housing Element (2023 - 2031), EIR, Draft EIR, and/or NOP EIR.</p> <p>Please be advised that the Town of Fairfax subjectively fails to include all public comments. After forwarding some of our comments to the DOJ, we see that the Town has made a better effort to include more of our comments. All salient comments recieved within the designated time must be included for the pubic packet. Late comments must be included as a later addendum.</p> <p>Our comments are cumulative. This process requires including and reviewing some prior comments that were obfuscated by the Town to facilitate Fairfax's continued excluding of the Marin Town & Country Club (MT&CC) from the housing element. The MT&CC is the only viable Housing Opportunity Site available for Fairfax and the surrounding Ross Valley.</p>	<p>Thank you for your letter. The comment is noted. Please see Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site. The remainder of the comment is not related to the adequacy of the DEIR; thus, no further response is required.</p>
B6-2	Michael Mackintosh	11/8/23	<p>Why Housing should "continue" at the Marin Town & Country Club:</p> <p>Please recall the MT&CC is an underutilized 25-acre flat parcel with rental units, located above the 500- year flood plain, with fire/safety complying egress from two separate streets {Pacheco and Pastori}. Pacheco is 24' curb to curb, while Pastori {currently paved at 18'} is actually surveyed and recorded at 30' curb to curb. With infrastructure of water, gas, and electricity in place, and a 14" RVSD Sewer Trunk {designed for 8,000-unit capacity} that bifurcates MT&CC's two parcels, this is the golden opportunity to provide mixed use housing and affordable housing where it is most needed.</p> <p>There is no other location or combination thereof that can or will allow for fire safety egress and vehicle traffic units</p>	<p>The comment is noted. Please see Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site. See also response to comment B3-7 regarding evacuation and response to comment B4-7 regarding traffic congestion. The remainder of the comment is not related to the adequacy of the DEIR; thus, no further response is required.</p>

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			<p>not interfering with the current congested traffic found in Fairfax. Placement of the required 490 homes elsewhere in Fairfax will impede all traffic on our small hillside single lane roads.</p> <p>To incorporate the currently required 490 RHNA's elsewhere in Fairfax will create additional financial hardships on our community through taxes, bonds, and reassessments. Fairfax continues to struggle to keep people with our lack of adequate affordable housing.</p>	
B6-3	Michael Mackintosh	11/8/23	<p>If the 490 units are spread throughout the Town of Fairfax, Fairfax will be required to address their aging and inadequate infrastructure immediately. Rebuilding our streets and utilities minimally to accommodate all this housing could exceed \$100m. \$100m before finance will quickly jump to \$200m with finance, amortized over 30 years. Please recall this expense will be allocated to about 3100 parcels. All this work will take time and put our current community at real risk of no access for fire or ambulance service vehicles during this construction period. All this expense to bring in an estimated 1,171 people as stated in the draft EIR.</p> <p>Such an undertaking on our small restricted streets will further the cancelation of fire insurance to our community. How many Fairfax citizens will lose their homes if their fire insurance is canceled? Another unintended consequence we cannot afford. This is yet another way that Fairfax makes the housing so infeasible that it is never built? Certainly, something to be reviewed with financial feasibility reports. Again, this can all be avoided by placing the required RHNA housing at the MT&CC.</p>	The comment is noted. Please see response to comments B4-6 and B4-11 regarding emergency access and infrastructure. The remainder of the comment pertaining to financing and fire insurance is not related to the adequacy of the DEIR; thus, no further response is required.
B6-4	Michael Mackintosh	11/8/23	<p>Opposition from Fairfax to include the MT&CC in the Housing Element: One of our attached earlier emails illustrates how the Town of Fairfax tried to hoodwink the</p>	The comment is noted. As noted on page ES-1 of the DEIR, this EIR is a programmatic document and does not

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			<p>HCD by recycling 27 parcels that Fairfax had already included on prior Housing Elements. (The HCD is in receipt of this email.) On your current draft EIR, you address my prior observations. These recycled parcels had proven to be infeasible to build on. Possibly some could be built if the Town of Fairfax lowers the barriers, that continue to block housing.</p> <p>We question how any overseeing agency could possibly accept in good faith the current Housing Element and/or Housing Opportunity Site List from Fairfax with all the attached and enclosed information without requiring a full EIR (Environmental Impact Report), a full CEQA (California Environmental Quality Act) Report, and a Financial Feasibility Report comparing the cost of developing the offered sites as opposed to including the MT&CC site with all the utilities in place. Fairfax's Housing opportunity Sites list, continues to promote sites with slopes of 49.5%, 50.2%, and 63%, all of these have no utilities. Fairfax citizens should be concerned with CEQA: 65864 Policy.</p> <p>The MT&CC zoning is "Commercial Recreation" (CR); by Initiative. The Town tried to take the property in 1944 where it was already zoned for residential housing, against the then stakeholder's want. The Town lost that suit because they could not pay the owners their purchase price of \$175k. The Town later opposed a request by the owner to place housing at the MT&CC in 1971. The Town then inversely condemned the property through an Initiative process in 1972, to thwart housing and create the current zoning of "Commercial Recreation". (see attached)</p> <p>The Town of Fairfax continues to exclude the MT&CC from the Housing Element, by hiding behind the CR zoning by Initiative. The Town is in receipt of the letter from HCD to San Diego, dated June 10, 2022; addressing this same</p>	<p>assess project-specific impacts that may result from developments pursuant to the Proposed Project. To the extent that any future development project projected under the Housing Element may have individual, site specific impacts not addressed in this program EIR, such projects would be subject to project-level environmental review, as required by State law. See also Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site. The remainder of the comment pertaining to housing sites is not related to the adequacy of the DEIR; thus, no further response is required.</p>

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			<p>issue. Author Shannan West, Housing Accountability Unit Chief of the HCD sent a letter to San Diego explaining with supporting case law, that local voter initiatives cannot supersede state law. (see attached).</p> <p>For the current housing cycle, Fairfax's first Housing Element Consultant, EMC (Andy Flower) and Town Planner Ben Berto asked the MT&CC to accept 350 to 450 housing units. The Town Council stopped this and wanted the Town to weigh in through the "Fairfax Speaks" website. "Fairfax Speaks" had over 6,000 inputs from local Town people where they collectively allocated 161 housing units to the MTCC. Again, Council member Coler opposed this. Conveniently Town planner Berto was fired. EMC, ELS, and Grace Kim (first Housing consultants for this 6th cycle) presented information why they supported housing at the MT&CC. Later EMC and fellow consultants were terminated "Without Prejudice". Dyett & Bhatia also supported housing at the MT&CC site as illustrated in their engagement letter. For such a smalltown spending in excess of \$1.4m on our failed Housing Element is misfeasance. Was most of this money spent looking for ways to exclude the MT&CC? Is there a justified reason to exclude the MT&CC outside of the want by Council to take the property and develop it for their own profit?</p>	
B6-5	Michael Mackintosh	11/8/23	<p>Currently the only use on the property is a small group of multi-family housing, zoned as "legal nonconforming". This property has provided uninterrupted housing since 1839 and continues to this day. Housing should continue and be added to.</p> <p>Interesting how each time the Town had the Housing Consultants provide images of their imagined housing at the MT&CC, (without stakeholder input) to comply with the Housing Element, none of MT&CC's tenants' housing was spared. Where are the no net loss provisions illustrated?</p>	<p>The comment is noted. See Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site. The remainder of the comment pertaining to the housing sites inventory is not related to the adequacy of the DEIR; thus, no further response is required.</p>

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			<p>Our only request throughout this process was to exclude HUD money and overlay the property with a BID (Business Improvement Development) so as to ensure our tenants remained housed.</p> <p>Prior to 1944 the Town of Fairfax zoned this property for housing. In 2004 the Town of Fairfax tried to include the MT&CC in their Housing Element. It has been suggested that both of these prior events should include the MT&CC as a housing opportunity site, by right.</p> <p>May 13, 2022, (Council meeting) Town of Fairfax Staff reports illustrate how the Town conspired, without stakeholder knowledge, to rezone the MT&CC by allocating \$152k for an Initiative by and for Fairfax. Later on, June 15, 2022 (Council meeting); presentation and Staff reports illustrated how the Town had planned to proceed with a taking, through inverse condemnation, to re-zone the MT&CC for very dense housing.</p> <p>The housing Fairfax tried to foist upon the MT&CC was to restrict the housing to "only" "Co-housing" and tiny "Eco-Villages". Conversations with Fairfax= Police Department discussed, should such a density occur, a police/fire sub-station was needed.</p> <p>The MT&CC questions, if property is currently zoned "Commercial" and the property was zoned for residential zoning; can housing by right exclude this viable site, MT&CC, from being incorporated into the out of compliance Housing Element?</p>	
B6-6	Michael Mackintosh	11/8/23	<p>The DEIR states: (page 11, E-6; page 408, 4-16)</p> <p>"The MTCC site currently does not have zoning that permits residential development. In order to make the site available for housing, the Town of Fairfax would be required to develop a ballot initiative to rezone the site. As such, it is uncertain that the site could be rezoned and housing could be developed within the eight-year planning</p>	<p>The comment is noted. See Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site. The remainder of the comment pertaining to the housing sites inventory is not related to the</p>

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			<p>period. Therefore, the Mixed-Use Development Alternative is considered infeasible."</p> <p>Zoning by Initiative precludes certain CEQA restrictions/impediments as it is assumed the local voting block has already taken in to account some of these impeding mitigatable factors. Therefore, an Initiative with comprehensive language and design illustrations is actually the fastest and best way to ensure the fruition of any project.</p>	adequacy of the DEIR; thus, no further response is required.
B6-7	Michael Mackintosh	11/8/23	<p>Cal Gov Election Code 119217</p> <p>If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.</p> <p>Therefore, the Initiative zoning on MT&CC with a new vote by the people could be permit ready as soon as signatures are collected and voted upon, plus 30 days to adopt. Theoretically; this could be done within 6 months. (Very Optimistic.)</p>	The comment is noted. See Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site. The remainder of the comment pertaining to the housing sites inventory is not related to the adequacy of the DEIR; thus, no further response is required.
B6-8	Michael Mackintosh	11/8/23	<p>MIXED USE DEVELOPMENT ALTERNATIVE: (Vol 1 ES-S)(page 395 4-3) (additional: page:402)</p> <p>To reduce significant impacts related to VMT and GHG emissions, this alternative seeks to foster an integrated mixed-use development on the Marin Town and Country Club (MTCC) site. According to data from the US Census, over 3,100 residents of Fairfax commute to jobs in other</p>	The comment is noted. The comment is not related to the adequacy of the DEIR; thus, no further response is required.

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			<p>communities each day, while only 1,200 residents of other communities commute to jobs in Fairfax and only 239 both live and work in Fairfax.</p> <p>Therefore, intent of this alternative is to create new jobs and housing within easy walking distance of Downtown Fairfax and the main transit route through the community along Sir Francis Drake Boulevard in order to rebalance commute patterns and increase opportunities for people to live and work in Fairfax and to travel within the community without the need for a vehicle.</p> <p>This alternative would involve the development of a master plan for the MTCC site in coordination with the property owner to integrate up to 200 additional new housing units and 50,000 square feet of office and studio space for local businesses, artists, and craftsmen. It is assumed that at least 20 percent of the new homes would be affordable to moderate income households, consistent with the Town's draft inclusionary ordinance.</p>	
B6-9	Michael Mackintosh	11/8/23	<p>Chapter 4-4 Alternative Analysis: (page 395)</p> <p>IDENTIFICATION OF ENVIRONMENTALLY SUPERIOR ALTERNATIVE</p> <p>The CEQA Guidelines Section 15126.6 requires the Identification of an environmentally superior alternative among the alternatives analyzed in an EIR. If the No Project Alternative Is identified as the environmentally superior alternative, the guidelines require another environmentally superior alternative to be identified.</p> <p>For the Proposed Project, three impacts were expected to be significant and unavoidable, seven impacts were expected to be less than significant with mitigation, and 53 impacts were expected to be less than significant.</p> <p>For the No Project Alternative, two impacts were expected to be significant and unavoidable, eight impacts were expected to be less than significant with mitigation, and 53</p>	<p>The comment is noted. As detailed on page 4-15 of the DEIR, the Mixed Use Development Alternative has an increased development footprint within the Planning Area. As such, wildfire impacts would be slightly increased under this Alternative since a larger population under buildout projected by this Housing Element alternative would be more susceptible to wildfire risks and may further impair evacuation times.</p>

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			<p>impacts were expected to be less than significant. In addition, impacts would be nominally reduced for aesthetics, air quality, biological resources, energy, geology and soils, GHG emissions, hydrology and water quality, noise, public services, and recreation, utilities and service systems, and wildfire.</p> <p>For the Mixed Use Development Alternative. similar to the Proposed Project, three Impacts were expected to be significant and unavoidable, seven impacts were expected to be less than significant with mitigation, and 53 impacts were expected to be less than significant. In addition, impacts would be nominally reduced for GHG emissions and VMT as compared to the Proposed Project. However, impacts would be nominally increased for air quality, energy, noise, utilities and service systems, and wildfire risk and evacuation.</p> <p>The fact that the MT&CC is a flat piece of land, below the surrounding hills of Fairfax, the MT&CC is the bastion of hope where the Town's people need to congregate for a safe haven from Fire.</p>	
B6-10	Michael Mackintosh	11/8/23	<p>Studies have shown that promoting more compact housing development in mixed land use areas is more strongly correlated to increases in non-vehicular modes of travel and reduction of VMT. As such, this alternative would address the significant impacts of the Proposed Project related to VMT and GHG emissions. This alternative would implement the project objectives and further increase housing density in the Town Center. As such, there would be an additional 200 housing units developed under this Alternative compared to the Proposed Project, for a total of 808 units.</p>	<p>The comment is noted. See Master Response 3 regarding housing at the Marin Town & Country Club (MTCC) site</p>

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			Development at the MT&CC is the only viable placement for the RHNA requirement.	
B6-11	Michael Mackintosh	11/8/23	<p>Vol 1. ES-3: states 1.171 new residents. Yet Vol 2. page 246:</p> <p>The Draft EIR illustrates that the restricted SFD segment between Willow and Butterfield will increase from 19,400 traffic units current and will only see a.600 traffic increase with the new 1,171 residents occupying almost 600 new units. Absent this count, Center Blvd, is a major traffic throughfare additionally hosting our bicycle traffic. It appears Center Blvd is excluded from this nexus. Did we include all the support VMT with medical service support?? According to Marin County statistics (preCovid) the average Marin household generates approx. 11.7 car trips per day.</p> <p>There is no way that 1,171 new residents will only generate 600 new daily car/bicycle trips.</p>	<p>The comment is noted. The incremental number of daily vehicle trips noted in the comment is not an estimate of the daily vehicle trips generated by the 608 new housing units, but the change in daily vehicular volume that would occur on a single road segment, Sir Francis Drake, between Willow Avenue and Butterfield Road at the eastern edge of the Town of Fairfax. This segment of Sir Francis Drake, as it is located at the eastern boundary of Fairfax, captures vehicle trips traveling to and from the east. The existing daily volume for this segment was obtained from counts collected by Marin County. The forecast volumes were generated using the Marin County travel demand model developed for the Transportation Authority of Marin (TAM) for both 2040 No Project and 2040 plus Project scenarios. The volumes account for all vehicle trips on the referenced segment of Sir Francis Drake. Vehicle trips generated by the new housing units would use other roads to reach internal and external destinations such as Center Boulevard, Bolinas Road, and Sir Francis Drake to and from the west. As such, the cited</p>

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				<p>volume on the segment of Sir Francis Drake between Willow Avenue and Butterfield Road represents only a portion of the added vehicle trips on the network due to added housing units. The trip generation of 11.7 car trips per day noted in the comment is higher than the average vehicle trip generation per dwelling unit for single-family detached housing of 9.43 in ITE Trip Generation 11th Edition. Single family homes, which represent 11 percent of the new units, generate significantly more vehicle trips per unit than multi-family units or accessory dwelling units (ADUs) which are significantly smaller and have significantly fewer vehicles per unit than single family homes. As an example, the ITE Trip Generation 11th Edition trip rate for low-rise multi-family housing is 6.74 daily vehicle trips per unit, about 30 percent less than the trip rate for single family homes. Multi-family units represent 63 percent and ADUs represent 26 percent of the new housing units. As ADUs in Fairfax are limited to a maximum of 800 square feet and provide a maximum of one parking space, they would generate fewer daily vehicle trips than the average multi-family housing unit and substantially fewer daily vehicle trips</p>

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				<p>than a single-family home. About 60 percent of the new multi-family and ADU housing units are designated for very low-, low-, or moderate-income residents as workforce housing. Residents of this new workforce housing who work in Fairfax would not have to commute to work via car as they do today, allowing them to walk or bike to and from work and other local destinations. This would result in a reduction in existing vehicle commute trips on the segment of Sir Francis Drake at the east town limits, as a share of existing local workforce commute trips would shift from auto to walk or bike trips for residents of the workforce housing that work in Fairfax. The location of new workforce housing at moderate densities in the core of Fairfax would also allow these new residents to use transit service provided by Marin Transit to travel to other communities and transit providers (i.e., SMART, Golden Gate Transit, and Golden Gate Ferry) to the east.</p>
B6-12	Michael Mackintosh	11/8/23	Vol 1. ES-4 Controversies. Geology and Soils does not site any issues of Liquefaction.	The comment is noted. Liquefaction impacts are analyzed on page 3.6-22 of the DEIR.
B6-13	Michael Mackintosh	11/8/23	DEIR Volume 2: Page: 9; Environmental Constraints Map: incorrectly illustrates that the MTCC lies in a "High Very High Liquefaction" zone.	The comment is noted. Liquefaction hazard areas were mapped with the most up to date data available from

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			<p>Soil borings support that the MT&CC has Hard Rock at 35-55' (West to East). The entirety of the site is "Colluvial" as opposed to "Alluvial". The soil throughout the Town is very stable in comparison to the entirety of the Ross Valley and beyond where the colluvial material transitions to alluvial which is more prone to liquefaction.</p> <p>Colluvial defined as the material sluffed and eroded from an elevated site. Alluvial defined as the deposition of material from a body of water generally containing a higher concentration organic material and fines.</p> <p>One last question, how will Fairfax justify all these General Plan alterations, with regards to Cal Gov Core: 66300(b)(1)(a); when you are out of compliance?</p> <p>Thank you in advance for submitting this summation with supporting documentation to the Public Record of the Draft EIR for the Public to review.</p>	<p>Marin County found at this link: https://gisopendata.marincounty.gov/datasets/marincounty::liquefaction-1/about.</p> <p>The remainder of the comment is not related to the adequacy of the DEIR; thus, no further response is required.</p>
B7-1	Frank Egger	11/10/23	<p>Dyett & Bhatia has prepared Fairfax's Housing & Safety Elements, it is clear they have no institutional knowledge of Fairfax, neither the historical background as to why Fairfax remains the last of the old small towns in Marin nor the legal battles fought out in local & appellate courts to preserve, protect & restore Fairfax. Dyett & Bhatia prepared the 2nd reiteration of Fairfax's Housing & Safety Elements after the initial process had been started by the EMC Planning Group and then after the firing of EMC. The DEIR is riddled with misinformation and inaccuracies. The proposed program Draft Environmental Impact Report does not provide sufficient data for the public and decision makers to make an informed decision.</p> <p>It advises the public and decision makers that the result of the Project as proposed would result in a total of 598 Units, RHNA's required 490 Units and a 108 Unit Buffer but it does not advise either the public or decision makers of what the results would actually be, visually and</p>	<p>Thank you for your letter. The comment is noted. The DEIR does disclose and analyze all impacts associated with aesthetics, flooding, and wildfire located in chapters 3.1, 3.9, and 3.15, respectively. This includes an environmental setting, which discloses existing conditions, a regulatory setting which discloses applicable regulations, and an impact analysis which analyzes potential impacts from the Housing Element. The remainder of the comment is not related to the adequacy of the DEIR; thus, no further response is required.</p>

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			environmentally. The use of the wording "less than significant impact" throughout the DEIR incorrectly implies the addition of 490 to 598 units in both Wildland Urban Interface (WUI) and flood zones is not a problem.	
B7-2	Frank Egger	11/10/23	The methodology of the Dyett & Bhatia project was flawed from the start. Their proposed Fairfax Housing Element has identified almost every vacant parcel of land in Fairfax and Dyett & Bhatia has set a density on these vacant and some underutilized parcels Town in direct violation of existing Town Codes knowing neither the history of Fairfax nor the Court decisions impacting any future development nor the applicable Town Code sections that apply to these parcels, including building site requirements and slope impacts on lot size, i.e.:	The comment is noted. Please see Master Response 2 above. As detailed on page 3.10-17 of the DEIR, to minimize impacts of already permitted levels of development and support achievement of the RHNA allocation, Zoning Code amendments will be prepared as appropriate to allow for low impact clustered residential development and to establish development standards and design review criteria. As such, no conflicts would result. All future residential development occurring within the town would be required to be evaluated in accordance with local regulations, including the General Plan and Town Code. Therefore, implementation of the Housing Element would have no impact regarding conflicts with a land use plan, policy, or regulation adopted to avoid an environmental effect.
B7-3	Frank Egger	11/10/23	§ 17 .076.050 BUILDING SITE REQUIREMENTS. Except as otherwise provided in §§ 17.044.030 through 17.044.050 of this title, a use permit or hill area residential development permit (HRD) must be first secured in the RS-7.5 zone for any use, occupancy or physical improvement of or on a building site failing to meet the	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.

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			<p>following minimum requirements:</p> <p>(A) Minimum area of 7,500 square feet and minimum width of 75 feet with a slope of ten percent or less;</p> <p>(B) The minimum building site area shall be increased by 300 square feet for each one percent increase in slope over ten percent to and including 15 percent ; and the minimum width shall be increased three feet for each 500 square feet of additional area required, so that a building site having a slope of 15 percent shall have a minimum area of 10,000 square feet and a minimum width of 100 feet;</p> <p>(C) Building sites having a slope of more than 15 percent shall increase in area above 10,000 square feet and in minimum width above 100 feet, at the rate of 1,200 square feet of area and three feet of width for each one percent increase in slope; and</p> <p>(D) Fractions shall be disregarded and dropped in all computations made under this section. (Prior Code, § 17.40.050) (Ord. 352, passed --1973; Am. Ord. 605, passed --1991)</p>	
B7-4	Frank Egger	11/10/23	<p>Fairfax's Town Attorney is rushing through zoning amendments to overturn historic zoning codes that Fairfax adopted in 1973 to protect scenic ridgeline scenic corridors, steep hillside parcels and both private and public open space. Fairfax's 1973 Zoning Ordinance was prepared by the Marin County Planning Department under a contract between Fairfax and the County of Marin. Fairfax's large lot zoning ordinance, Upland Residential, UR-7 and UR-10, was modeled after Marin County's Agricultural zones like A-60. It purposely prohibits clustering. As the Town Councilmember most responsible for adopting Ordinance # 352, anyone can read the official Town Council minutes that describes the process, purpose and intent. Those bounded minute books are in the Walk-</p>	<p>The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.</p>

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			in Safe at Town Hall. Marin's A-60 zoning was put to the test many times and I, as a California Coastal Commissioner, was directly involved in upholding the purpose and intent of Marin's large lot zoning in the 1970's. The subdivision of a large ranch property in West Marin came before the Coastal Commission with units clustered but meeting the 60 acre minimum by having the 60 acre lots fan out like spokes on a wheel to make the 60 acre requirement. The subdivision almost slipped by the Commission but I caught the mistake and the subdivision application was rejected. We were threatened with litigation but that never materialized.	
B7-5	Frank Egger	11/10/23	Volume 1, Figure 2.2: Environmental constraints correctly show almost all of Fairfax is located in High Hazard areas, High and Very High Liquefaction, Mostly or Many Landslides, both 100 and 500 year Floodplains and the most threatening, what neighborhoods are not in a Floodplain, are in the High Fire Hazard Severity Zone. One of the recommendations is to allow cluster development on hillside parcels in both private and public open space parcels, some are listed.	The comment is noted. Please see Master Response 2 above. The comment does not make a comment regarding the adequacy of the DEIR; thus, no further response is required.
B7-6	Frank Egger	11/10/23	Figure 2-3: Sites available for housing, page 61. Many of these sites are not available for housing if Fairfax's current zoning ordinances are held up. Why does the Draft EIR refuse to accept that fact?	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.
B7-7	Frank Egger	11/10/23	Dyett & Bhatia has designated the 10.53 acre ridgetop open space parcel (174-060-21) for six units. It was the private Open Space for the 52 unit Meadowland subdivision that Fairfax annexed and re-approved in the later 1960's and zoned it as a Planned District Development (PDD). The County of Marin had initially approved the 52 unit subdivision conditioned on the 10.53	The comment is noted. Please see Master Response 2 and response to comment B7-2 above. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.

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			acre parcel being set aside as Private Open Space. That parcel is landlocked. The 10.53 acre open space parcel was sold about 4 years ago and the new owner still has no frontage on an improved Fairfax public street as required by Fairfax Town Code. The only way a vehicle can access the 10.53 acre Meadowland ridgetop parcel is by leaving Fairfax Town Limits and driving through unincorporated Fairfax up a very steep side ridge portion of the Marin County Open Space District's land which is prohibited by a Fairfax Ordinance adopted in 2001. The Private Open Space Parcel is above the Canon Tennis & Swim Club and has no access from Canon Village either.	See also Master Response 2 regarding open space preservation.
B7-8	Frank Egger	11/10/23	Fairfax has many zoning ordinances on the books that I authored. One says a Fairfax development must be accessed through a Fairfax roadway and a developer cannot access their property in Fairfax through another jurisdiction like either Marin County or San Anselmo. The purpose there is to give direct access for emergency response from Fairfax Police and not require FPD to travel through another jurisdiction thereby extending response times to get to a Fairfax property for emergencies. Then Councilmembers Niccolo Caldararo and Lew Tremaine voted with me on the adoption of that ordinance in 2001. It seems to have magically disappeared from the current Town Code.	The comment is noted. Please see Master Response 2 and response to comment B7-2 above.. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.
B7-9	Frank Egger	11/10/23	Another ordinance says any housing development in Fairfax must have frontage on a Fairfax public street. Each unit must have frontage on an improved public street, The 10.53 acre parcel has no Fairfax street frontage.	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.
B7-10	Frank Egger	11/10/23	Another parcel is a large parcel that was dedicated as Open Space through a Marin County Superior Court Order, the mandatory settlement requirement when the	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al.,

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			<p>owner of the proposed Fairfax Hills subdivision, Leyton Hills sued Fairfax in the 1980's over our restrictions on the project. Dyett & Bhatia has designated a portion of that Private Open Space, Parcel #174-070-71 with an address of 615 Oak Manor Drive, for 34 units, 7 estate houses with 7 Accessory Dwelling Units (ADUs) on the steep hillside Open Space Parcel at 615 Oak Manor Drive and another 20 units on Sir Francis Drake frontage of that same parcel. The bottom portion of that court ordered Open Space Parcel is a massive landslide where the Fairfax Public Works Department used to get shale debris for road projects when Fairfax had a grader. The Fairfax right of way along Drake Blvd. at that location goes so far back that with setback requirements, there is insufficient land to build on.</p> <p>That parcel is the Remainder Parcel, originally the 50 or so acre parcel that was all Private Open Space as required by Marin County Superior Court Judge William H. Stephens' Order and signed by the Hill Family and the Town of Fairfax. The Fairfax Town Attorney, Ms. Janet Coleson, has incorrectly opined that the original Court Mandated Settlement Agreement is null and void. Ms. Coleson has no knowledge of what transpired over the Fairfax Hills subdivision application, public hearings, approvals, the subsequent lawsuit and the various closed sessions leading up to the Court Ordered Settlement. Research by Dyett & Bhatia into the property files and official Town Council meeting minute books in the Town Safe is necessary information that should be included in the Draft EIR. The presiding Marin County Superior Court judge at the time was Judge William Stephens and he passed away on May 17th, 2023. To my knowledge, only former Councilmember Wendy Baker and myself are the remaining Fairfax participants in that process.</p>	<p>Marin Superior Court No. CIV 140706.</p>

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			<p>The DEIR is insufficient as it must address the conflict with Town Attorney Ms. Coleson's opinion on developing the Private Open Space at the Fairfax Hills Subdivision where she says the Marin County Superior Court Ordered Settlement is null and void and the Planning Commission meeting where the last two living units allowed by the Marin County Superior Court Ordered Settlement were approved:</p> <p>The missing video of the June 16, 2016 Planning Commission Meeting where the building permit application (16-24) for 615 Oak Manor Dr. was approved has been found. There was an exchange discussion of the 2 home sites (01 and D2) somehow converting to 2 homes on 1 lot (Di). Here is the following exchange between Linda Neal, Commissioner Green and Jim Moore, whose comment is quite definitive: 1 :56:50 in video Phillip Green asks: is this properly part of the agreement of settlement of Fairfax Hills versus Fairfax ? Linda Neal responds: yes, it is. Phillip Green: asking where is ii?</p> <p>Linda Neal responds: it's where the judge approved a house pad, you know originally this site the judge approved two parcels and two home sites Phillip Green asks: Is this one of the two allowed homes? Linda Neal: there's no longer two allowed homes because they had to file a map for two Parcels within a certain amount of time so he's just taking the one parcel the judge originally approved for two home sites and applying for one house and a second unit.. Jim Moore adds: ... and as Linda mentioned, this exhausts development potential in all 50 acres. end 1 :58:40 in video</p>	
B7-11	Frank Egger	11/10/23	Another 2 parcels that Fairfax purchased for Open Space in the early 1970's, Parcels 002-123-17 & 002-144-01, are on the down side of Forrest Avenue, adjacent to the Marin Town & Country Club (MT&CC). These two parcels are	The comment is noted. Please see Master Response 2 regarding open space preservation. See also Master Response 3 regarding housing at the

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			very steep, pretty much unbuildable, and the previous owners did not pay taxes for a number of years resulting in a Tax Default Sale. As mayor, whenever these tax default parcels came up, I made it a point to inspect the properties to determine viability as open space. I agendized the purchase of these two of these parcels by Fairfax at a Town Council meeting for Public Open Space. The advantage to Fairfax was twofold, removing two very steep parcels in a known landslide area from future development and having potential pedestrian access to the MT&CC should it ever become a resort inn or a recreational project. Dyett & Bhatia proposes putting 10 units on them.	Marin Town & Country Club (MTCC) site. See also response to comment B1-5 regarding landslide impacts.
B7-12	Frank Egger	11/10/23	There are 2 landlocked parcels close to our easterly border with San Anselmo, Parcels 002-181-04 and 002-181-05 (same owner) are designated for six units, roughly 10 acres combined and zoned Upland Residential 10 acre minimum, UR-10. It is impossible to extend Hillside Drive to these two parcels and access from Scenic Avenue in San Anselmo and either Francis Avenue or Crest Road in Fairfax will not work either. The Marin Open Space District will not allow access through Sky Ranch. The DEIR must include how Dyett & Bhatia intend to provide access to those parcels and how they will resolve the conflict with current zoning.	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.
B7-13	Frank Egger	11/10/23	There are a number of other parcels shown on Dyett & Bhatia's (D&B) new parcel map to allow for cluster zoning for market rate housing developments, a.k.a. multi-million dollar estate houses, in violation of Fairfax's current zoning requirements: The one acre parcel between Meadow Way and Bolinas Road is shown for cluster development. Because of the steepness of that parcel, the current zoning allows only	The comment is noted. Please see Master Response 2 and response to comment B7-2 above. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.

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			one house on that property. That parcel cannot be subdivided, access and landslide issues.	
B7-14	Frank Egger	11/10/23	The Ben Ross property, parcels 003-171-02, 05 and 08 at the top of the north side of Toyon is shown with four units. The parcels are known as Northern Spotted Owl habitat and they sit in the middle of the Town's WUI Zone. A public roadway would have to be built and accepted by the Town for maintenance to provide vehicle access to 3 of the 4 units. The property off of Toyon Drive is above Hickory Road and Lower Cypress Drive may not be able to be subdivided because of slope and without a new public road serving the property. The DEIR is silent as to how that property would be accessed and the adverse impact the development would have on local Northern Spotted Owl habitat.	The comment is noted. Mitigation has been revised regarding northern spotted owls; see response to comment A2-5. See also response to comments B4-6 and B4-8 regarding transportation access improvements.
B7-15	Frank Egger	11/10/23	The new D&B map shows cluster development at the top of the hill at the end of Fawn Drive, a highly visible ridge top parcel above Deer Park Villa. Should the Wall Property not be purchased for Open Space, both the parcel to the West of the upper side of the Wall Property and the Wall Property itself, the DEIR will allow for cluster development on those parcels in violation of Fairfax's UR-7 and UR-10 Zoning. The D&B cluster development map also shows parcels to be developed at the end of Pine Drive and the top of Scenic Drive and Redwood Road.	It is unclear which map is being referenced; however, the Proposed Project does not propose any development on ridgelines. On the contrary, Program 2-D of the Housing Element proposes ridgeline protections. Please see Master Response 2 and response to comment B7-2 above.. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.
B7-16	Frank Egger	11/10/23	10 Olema Road: Parcel 001-104-12 is zoned CL Limited Commercial, it has the same zoning constraints as School Street Plaza. It backs onto Fairfax Creek with a required creek setback of at least 20 feet from the top of the bank. The Creek Setback Law requires development to be setback from the top of the bank twice the depth of the	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations. As detailed on page 3.4-16 of the

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			creek bank or 20 feet whichever is greater. D&B must measure the depth of the creek bank at 10 Olema to determine the legally required creek setback. The whole property flooded in 1982 and 2005. Dyett & Bhatia designated it for 31 units .Most of the property is located in the 100 year flood plain. In addition, the property is the location of one of the first built homes in Fairfax, a Victorian built in the late 1800's. The DEIR must address the historical structure on the property and how it will be incorporated into the proposed 31 unit development.	DEIR, the Housing Element identifies an inventory of sites available for housing development and properties. None of these properties contain or are adjacent to historic buildings or structures as identified by NWIC. However, Mitigation Measure CUL-1 requires that project sponsors proposing development on a property with structures more than 45 years old be evaluated for historic significance. Proposed development projects shall then be evaluated for potential direct and/or indirect effects on the identified historic resource(s) per CEQA Guidelines Section 15364, and Mitigation Measure CUL-2, requiring avoidance or minimization of impacts to historic structures, shall be implemented as appropriate. See also response to comment B5-11 regarding flooding impacts.
B7-17	Frank Egger	11/10/23	Redevelopment of School Street Plaza: It has been designated for 175 units in the D&B Housing Element with a seven story building on 1.92 acres. A large portion of the property is in the 100 year floodplain and backs onto Fairfax Creek. The back of the property flooded in 1982 and 2005. The property is in a known hot-spot for buried Native American artifacts, Miwok Cultural Resources. The adjacent parcel is Fairfax Park property when Native American artifacts have been uncovered. The parcel is zoned CL, a LIMITED COMMERCIAL ZONE: § 17.092.040 PRINCIPAL PERMITTED USES AND STRUCTURES are commercial but CL is not zoned for	<p>The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.</p> <p>In addition, page 3.10-16 of the DEIR states that the Workforce Housing Overlay District allows multifamily residential development at much</p>

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			<p>retail. School Street Plaza is a place for small businesses to locate, a spot for incubator businesses. The Fairfax zoning ordinance does not allow residential as a principal permitted use in the CL Limited Commercial Zone. Residences may be allowed by Use Permit if appropriate findings can be made by the Planning Commission & ultimately the Town Council. The height limit is 28.5 feet and may not contain more than two stories.</p> <p>The DEIR must show how the proposed seven story building and its onsite parking will work, height wise. Since the site is one of the few locations where a licensed cannabis dispensary can be sited in Fairfax, the DEIR must find an alternative for the historic cannabis business.</p>	<p>higher densities in the downtown area and along Sir Francis Drake Boulevard than previously permitted in the town, and it allows housing on some sites where residential uses were not previously permitted at all. As such, there would be no zoning conflicts. Detailed on page 3.4-18 of the DEIR, Mitigation Measure CUL-3 requires construction personnel to receive cultural awareness training on existing regulations and unanticipated discovery protocol for developments that have a high potential for uncovering archaeological deposits. Therefore, at the program level, the impact of development projected under the Housing Element on archaeological resources would be less than significant. See also response to comment B5-11 regarding flooding impacts.</p>
B7-18	Frank Egger	11/10/23	<p>Wall Property: There is a 99.5 acre parcel that a developer wanted to subdivide into 10 estate lots with ADUs that is in a mapped Wildland Urban Interface Zone (WUI), a known high landslide prone area with mansions built on the Ridgeline Scenic Corridors, it was called Marinda Heights. 250 trees would have to be cut down and some years ago the then Town Council said an EIR was necessary for CEQA compliance but the developer refused to pay for an EIR. So, no EIR was ever done and now Dyett & Bhatia wants to designate it for a 10 estate lot subdivision with 10 acres for each lot with the possibility of both an ADU and JADU on each parcel, perhaps 30 units</p>	<p>The comment is noted. Please see Master Response 2 and response to comment B7-2 above. As noted on page ES-1 of the DEIR, this EIR is a programmatic document and does not assess project-specific impacts that may result from developments pursuant to the Proposed Project. To the extent that any future development projected by the Housing Element may have individual, site specific impacts not</p>

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			and at the same time Fairfax is trying to put together a proposal to purchase the three parcels that we zoned UR-10 in the 1980's.	addressed in this program EIR, such projects would be subject to project-level environmental review, as required by State law.
B7-19	Frank Egger	11/10/23	<p>Fairfax's 1974 Open Space Element included two pertinent maps for the Wall property prepared by Wallace McHarg Roberts & Todd, WMRT, based on State geologist Ted Smith's field notes of his landslide mapping prepared by him for the State Division of Mines and Geology. The first is the Landslide Abundance Map and the second is the Wildland Fire map.</p> <p>Landslide mapping: Fairfax has been plagued by landslides for years, homes had been sliding down Fairfax hillsides and the State finally reacted. In late 1972, the State Division of Mines & Geology rented a house in Fairfax for one year and sent one of their top geologists, Ted Smith, to live in Fairfax and map every street and parcel in Town. Fairfax's Open Space Element with the mapping of the whole Town prepared by WMRT was a town-wide reconnaissance and considered one of the foremost Open Space Elements for any California City/Town.</p> <p>Homes slide on Canyon Road, Cascade Drive, Meadow Way, Pine Drive, Woodland Road, Spring Lane, Crest Road, Hillside Drive, Cypress, Toyon, Forrest Avenue, Scenic, Berry Trail, Tamalpais, Iron Springs, Bay Road, Willow, Live Oak, San Gabriel Drive and Court to name a few.</p>	<p>The comment is noted. See response to B1-5 regarding landslides. Landslide mapping for the DEIR has been conducted with the most up to date data available from Marin County.</p>
B7-20	Frank Egger	11/10/23	Fairfax banned septic tanks in 1974 and that ordinance has never been repealed. Canyon Road residents taxed themselves to install Ross Valley Sanitary District's sewer system for both existing homes and for new development. Fairfax now allows new development	The comment is noted. Page 3.6-27 of the DEIR states that The Town Code (Chapter 13.04) requires that every building be connected to the public sewer system maintained by the sanitary district. In addition,

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			on Cascade Drive on a septic tank in violation of Fairfax's ordinance. There are a number of Fairfax properties still using septic tanks for waste water disposal. The Dyett & Bhatia project does not recognize Fairfax's ban on new septic tanks for wastewater disposal.	Chapter 15.04 states a permit may be issued for the repair, replacement, or alteration of a previously constructed septic tank or sewage disposal system other than a septic system where no public sewer is available upon approval by the Town Council, the Planning Commission, the Marin County Health Department, Sanitary District Number 1 of Marin County, and the Bay Area Water Quality Control Board. Future development projected under the Housing Element would generally connect to existing sewer trunk lines or require future expansion of existing sewer trunk lines. In the event that the use of septic tanks is permitted during development under the Proposed Project, compliance with all requirements outlined in Chapters 13.04 and 15.04 of the Town Code would be required. As a result, the impact would be less than significant.
B7-21	Frank Egger	11/10/23	During the early 1980's Fairfax merged over 1,000 parcels because they did not meet development, slope and zoning requirements and standards. The Dyett & Bhatia proposal lists a number of vacant parcels to be developed. There is an Assessor's Parcel Book, probably 1984, in the Town Safe with all of the merged parcels marked. Fairfax recorded the merged parcels at the Marin County Recorder's Office. Dyett & Bhatia listed vacant parcels to be developed and D&B needs to determine if any of them have been merged.	The comment is noted. See response to comment B7-2. Development projected under the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.
B7-22	Frank Egger	11/10/23	Two parcels at the east end of SF Drake, the historic "Old Timer Club", now a beer pub, and one of the oldest	The comment is noted. See response to comment B7-2. Development

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			homes in Fairfax next door adjacent to the Town Limits of San Anselmo. Dyett & Bhatia has designated them for at least 6 units with no way to preserve the existing historic structures. Dyett & Bhatia's Redevelopment proposals will turn the SF Drake Boulevard corridor from small commercial shops into a medium-rise zone.	projected under the Housing Element will be required to adhere to all applicable Town Code and zoning regulations. See also response to comment B7-16 regarding historic structures.
B7-23	Frank Egger	11/10/23	Page 2-3 Sites reused from prior inventories: 6 School Street Plaza is not zoned Retail/General Commercial, it is zoned CL, Limited Commercial. That error needs to be corrected.	The comment is noted. See response to comment B7-17. Development projected under the Housing Element will be required to adhere to all applicable Town Code and zoning regulations. As stated on page 3.10-17 of the DEIR, even with additional zoning overlay districts, the Housing Element would not involve changes to base zoning districts.
B7-24	Frank Egger	11/10/23	3.1-3 Creation of open space: encourage cluster development on parcels in inventory zoned UR-7 and UR-10 and located on scenic ridgeline corridors. These parcels are already protected open space, that is why they have not been developed over the past 50 years, the prohibition of cluster development in certain zones and Fairfax's slope ordinance requiring larger lot sizes because of the percentage of slope.	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations. See also Master Response 2 regarding open space preservation.
B7-25	Frank Egger	11/10/23	3.1-8 Impact analysis for the purpose of this EIR. The words program EIR and EIR are used. Is this proposed EIR a Programmatic EIR?	The comment is noted. This DEIR is a programmatic EIR. See also response to comment B7-18.
B7-26	Frank Egger	11/10/23	3.1-10 Program 2-D. Standards for low impact clustered residential development on large sites. Objective landuse regulations and standards for clustered housing development that expands opportunities for market rate housing. This proposal will open up these large parcels that allow one unit under current zoning requirements for	The comment is noted. See response to comment B7-2. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations.

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			multi-unit developments. 50 years of protecting Fairfax's hillside parcels from over-development will be discarded.	See also Master Response 2 regarding open space preservation.
B7-27	Frank Egger	11/10/23	Page 3-15, 2nd paragraph states Fairfax will undertake a focused geologic study to identify a range of measures that developers could incorporate to save costs. What Dyett & Bhatia do not know is that Fairfax already has town-wide geological mapping. State Geologist Ted Smith had mapped the whole Town and each landslide area was marked on the map with a number. A 4 being the most susceptible for a landslide. Now Dyett & Bhatia wants Fairfax to spend hundreds of thousands of dollars to remap all of the known landslides. That General Plan Open Space Map was in the Town Safe when I left the Town Council in 2005.	The comment is noted. The comment pertains to the content of the Housing Element programs and not the adequacy of the DEIR; thus, no further response is required.
B7-28	Frank Egger	11/10/23	Fairfax is in the worst shape for disasters, fires and floods, than any other of Marin's towns/cities. Most of Fairfax is in the Wildland Urban Interface Zone (WUI) and what is not in the WUI Zone, is in the Flood Zone. In 1982 we had 18 inches of rainwater flowing through downtown Fairfax businesses. The Sunnyside Detention Basin constructed by the Ross Valley Flood Zone 9 will reduce flooding in downtown Fairfax by 4 inches so instead of 18 inches of flood water flowing through downtown businesses, only 14 inches of flood-water will flow through them. The Storm Drainage Study for the Fairfax Area, a Special Report of the General Plan prepared for the City of Fairfax and the Marin County Planning Department by the Marin County Flood Control and Water Conservation District. One of the key recommendations to reduce downtown Fairfax flooding was to daylight the concrete culvert under Bolinas Road and increase its size from 10' X 6' to 14' X 7'. The Study was presented to the	The comment is noted. The environmental setting sections in chapters 3.9 and 3.15 adequately account for existing hydrological and wildfire hazards in Fairfax.

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			<p>Fairfax City Council by Paul C. Zucker, Marin County Planning Director.</p> <p>The 1980 preliminary general plan city of fairfax, california was prepared by wilsey & ham engineers and planners april, 1958 (note all lower case lettering was used on the cover). The population of incorporated Fairfax in 1958 was 4,628. The plan addressed the flooding of downtown Fairfax and recommended enlarging the 500 foot culvert from Bolinas Road to San Anselmo Creek under Sherman Avenue to end the regular flooding.</p>	
B7-29	Frank Egger	11/10/23	<p>3.3-2 Special Status Animal species to occur in the planning area, less than significant impact. Coho Salmon and steelhead Central CA Coast. We have photos from March 2nd, 2020 of Chinook Salmon in San Anselmo Creek between Bolinas Road and the Elliott Nature Preserve.</p>	<p>The comment is noted. In Table 3.3-2 of the DEIR, coho salmon is documented as a special-status species with the potential to occur in the Planning Area. However, as explained on page 3.3-14, using the most up to date data by CDFW, the species has not been documented on or near the Housing Element 's sites projected for development. As such, no mitigation for the species is required. The chinook salmon was not identified by CDFW as a special-status species with the potential to occur in the Planning Area. See also response to comment B3-5 regarding protection measures for special-status species.</p>
B7-30	Frank Egger	11/10/23	<p>Sensitive Habitats: No Critical habitat as designated by the USFWS within the planning area. That statement is false. We have photos of Northern Spotted Owl nests and Northern Spotted Owls here in the Cascade Canyon. We have recent photos and videos of Chinook Salmon</p>	<p>The comment is noted. See response to comment B7-29. Mitigation has been revised regarding the northern spotted owl; see response to comment A2-5. According to the most</p>

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			<p>spawning in San Anselmo Creek. There are recent photos and videos of steelhead being rescued from San Anselmo Creek on the net. At the time Fairfax prepared the Mitigated Negative Declaration in 2020 for replacement of the Meadow Way Bridge, their environmental consultant included in their report that in the few years they studied San Anselmo Creek in and around the Meadow Way Bridge, they never saw any steelhead but they had heard there were steelhead in the creek in the past. That very same year, dozens of steelhead fry were rescued from numerous pools before they dried up between the Meadow Way and Canyon Road bridges. In recent years, hundreds of salmonids have been rescued from locations in San Anselmo Creek and relocated downstream. There are photos and videos on the net. The Meadow Way neighborhood had heard earlier in October that Fairfax contractors would be doing work in and around the large pool of water in San Anselmo Creek under the Meadow Way Bridge repairing the cavity under the bulkhead. There were at Federally listed salmonids in the pool under the bridge and four steelhead, 7 to 9 inches long, were rescued and moved downstream a few days before Fairfax contractors dewatered the portion of San Anselmo Creek under the bridge on October 24th. Fairfax's contractors worked on the bulkheads under the Meadow Way Bridge on October 24th and 25th, 2023. First they dewatered the pool of water and the next day they poured probably 14 yards of concrete filling up the hole where the previous standing pool of water was located. I observed the work and asked Fairfax's bridge contractor if he had secured a "take permit" from the CDFW for any steelhead that would have been killed in that pool under the bridge. He responded no, that this was an emergency. I told him he</p>	<p>up to date information from USFWS, there is designated critical habitat in the Planning Area (see page 3.3-8 of the DEIR).</p>

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			could have secured an emergency "take permit" from the CDFW.	
B7-31	Frank Egger	11/10/23	The Safety Element must address Fairfax's plan for preserving what's left of the fisheries in Fairfax, San Anselmo and Carey Camp Creeks and a Coho Salmon restoration plan.	The comment is noted. The comment pertains to the content of the Safety Element and not the adequacy of the DEIR; thus, no further response is required.
B7-32	Frank Egger	11/10/23	Impact: 3.3-2 Bothin Creek, Fairfax Creek and San Anselmo Creek. Not listed in Fairfax Town Limits are Carey Camp Creek and Deer Park Creek.	<p>The comment is noted.</p> <p>To acknowledge all creeks in the area, the following addition has been made to the Environmental Setting of Chapter 3.3:</p> <p>DEIR p. 3.3-1: "...while the riparian corridors along Bothin Creek, Carey Camp Creek, Deer Park Creek, Fairfax Creek and San Anselmo Creek provide habitat and movement corridors for wildlife."</p>
B7-33	Frank Egger	11/10/23	<p>3.4 Cultural and Tribal Cultural Resources. Appendix C.</p> <p>3.4-1 Implementation of the project will not cause substantial adverse impacts. This is the common theme throughout</p> <p>3.4-3 Implementation of the proposed project would not have potential to disturb human remains including those interned outside of funeral cemeteries. Miwok people Summered in and around the original confluence of San Anselmo Creek and Fairfax Creek behind the Fairfax Post Office and in areas of Fairfax Park and Pavilion Hill. Evidence of Tribal life in the area was found when excavations took place for the rebuilding of the old Lucky</p>	Detailed on page 3.4-18 of the DEIR, Mitigation Measure CUL-3 requires construction personnel to receive cultural awareness training on existing regulations and unanticipated discovery protocol for developments that have a high potential for uncovering archaeological deposits, including human remains. At the program level, the impact of development projected by the Housing Element on human remains

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			Market, site of today's Good Earth Store and the Midden on Pavilion Hill when Fairfax dug up the Hill for a new sewer line going down the hill to Bolinas Road. Discussions with old timers fifty years ago included stories of the Coho and Chinook Salmon they caught in San Anselmo and Corte Madera Creek. The stories also included the digging around Town and finding full skeletal remains of Native Americans.	would therefore be less than significant with implementation of existing regulations and policies.
B7-34	Frank Egger	11/10/23	3.6 Geology and soils: The State Office of Mines & Geology completed a block by block, lot by lot environmental reconnaissance on the stability of Fairfax's hillsides. 3.6-5 Proposed Project would not have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for disposal of wastewater. In 1974, because of leach lines leaking into San Anselmo Creek, and the adverse impact on salmonids, the Fairfax Town Council on a 4 to 1 vote, passed an ordinance prohibiting new septic tanks for use in wastewater disposal systems in Fairfax. That ordinance has never been withdrawn or amended.	The comment is noted. See response to comment B1-5 regarding landslide impacts and slope stability and response to comment B7-20 regarding septic tanks.
B7-35	Frank Egger	11/10/23	3.7-23 School Street Plaza is a 1.92 acre site. A Tower with 175 units is proposed with 35 affordable units and 140 market Rate units. A single person can make \$104,000 a year and meet the affordability criteria for the 35 affordable units. How does that happen since not many local workers in Fairfax make \$104,000 a year? Fairfax's consultant determines Fairfax's benchmark for affordability by averaging the incomes of residents of all Marin County cities and towns including Sausalito, Mill Valley, Tiburon, Belvedere, Larkspur, Ross and San Anselmo with Fairfax residents. This puts Fairfax residents at a disadvantage when competing for an affordable	The comment is noted. The comment pertains to the content of the Housing Element and not the adequacy of the DEIR; thus, no further response is required.

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			Fairfax rental unit, up to \$104,000 a year but a male in Fairfax actually earns \$51,457 per year and a female earns \$40,815 per year. Fairfax's consultants, Dyett & Bhatia, must be directed to use only Fairfax resident's annual income to determine affordability in Fairfax, not the Marin County average income.	
B7-36	Frank Egger	11/10/23	3.9-1 Waterways and flood zones in the planning area. The floods of 1982 and 2005 are well documented. Two feet of water flowed through the Fairfax Town Hall extension over Fairfax Creek in the Flood of 1982. Town Council meeting records from the 1970's will show that when Fairfax proposed building the Town Hall addition over the Creek, I objected saying it would flood. At that meeting Fairfax Town Engineer Ben Albritton said "Frank, you and I will not see this extension flood in our lifetime". Ben has passed but I have already seen the Town Hall extension flood twice, 1982 and 2005. The Safety Element should recommend that the extension of Town Hall over Fairfax Creek should be removed.	The comment is noted. See response to comment B5-11 regarding flooding impacts. The remainder of the comment pertains to the content of the Safety Element and not the adequacy of the DEIR; thus, no further response is required.
B7-37	Frank Egger	11/10/23	3.10-1 Existing landuse. Shown in red-a Retail General Commercial Zone (in reference to School Street Plaza). Fairfax does not have a Retail General Commercial Zone in its zoning ordinances.	The comment is noted. See response to comment B7-17. Development projected by the Housing Element will be required to adhere to all applicable Town Code and zoning regulations. As stated on page 3.10-17 of the DEIR, the Housing Element would not involve changes to base zoning districts.
B7-38	Frank Egger	11/10/23	4.1 Alternatives Analyzed in This EIR NO PROJECT ALTERNATIVE: State CEQA Guidelines Section 15126.6(e) requires an EIR to analyze the specific alternative of "No Project". The purpose of describing and analyzing the No Project	The comment is noted. The comment is not making an assertion about the adequacy of the DEIR; thus, no further response is required.

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			<p>alternative is to allow decision makers to compare the impacts of approving a proposed project with the impact of not approving the proposed project. The No Project Alternative shall discuss the existing conditions at the time the EIR notice of preparation is published, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. Additionally, State CEQA Guidelines Section 15126.6(e)(3)(a) states that when the project is the revision of an existing land use or regulatory plan, the “No Project” alternative will be the continuation of the existing plan. Typically, this is a situation where new projects would be proposed under the existing plan. Thus, the impacts of the proposed project would be compared to the impacts that would occur under the existing plan. Under the No Project Alternative, the Town would not update the existing 2015 to 2023 Housing Element. The existing Housing Element would continue to direct the Town’s decisions related to housing development and the RHNA assignment of 61 units in the current Housing Element would remain the Town’s goal for new housing units. In addition, the Town is responsible for addressing the remaining RHNA from the previous planning period (2007–2014) totaling 80 units. The 2015 to 2023 Housing Element goals, policies, and implementing programs would continue to guide Town decisions regarding housing within the Planning Area. Under these conditions it would be reasonable to assume that applications for new housing developments consistent with the 2015 to 2023 Housing Element would continue to be submitted and approved.</p> <p>Although the No Project Alternative does not meet any of the Housing Elements Update project objectives and is not</p>	

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			considered a feasible project alternative, it is presented below as required by the State CEQA Guidelines.	
B7-39	Frank Egger	11/10/23	<p>MIXED USE DEVELOPMENT ALTERNATIVE</p> <p>To reduce significant impacts related to VMT and GHG emissions, this alternative seeks to foster an integrated mixed-use development on the Marin Town and Country Club (MTCC) site. According to data from the US Census, over 3,100 residents of Fairfax commute to jobs in other communities each day, while only 1,200 residents of other communities commute to jobs in Fairfax and only 239 both live and work in Fairfax. Therefore, intent of this alternative is to create new jobs and housing within easy walking distance of Downtown Fairfax and the main transit route through the community along Sir Francis Drake Boulevard in order to rebalance commute patterns and increase opportunities for people to live and work in Fairfax and to travel within the community without the need for a vehicle. This alternative would involve the development of a master plan for the MTCC site in coordination with the property owner to integrate up to 200 additional new housing units and 50,000 square feet of office and studio space for local businesses, artists, and craftsmen. It is assumed that at least 20 percent of the new homes would be affordable to moderate-income households, consistent with the Town's draft inclusionary ordinance.</p>	The comment is noted. The comment is not making an assertion about the adequacy of the DEIR; thus, no further response is required.
B7-40	Frank Egger	11/10/23	<p>Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update Chapter 4: Alternatives Analysis 4-4</p> <p>Studies have shown that promoting more compact housing development in mixed land use areas is more strongly correlated to increases in non-vehicular modes of travel</p>	The comment is noted. See Master Response 3 regarding the feasibility of housing at the Marin Town & Country Club (MTCC) site.

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			<p>and reduction of VMT.</p> <p>As such, this alternative would address the significant impacts of the Proposed Project related to VMT and GHG emissions. This alternative would implement the project objectives and further increase housing density in the Town Center. As such, there would be an additional 200 housing units developed under this Alternative compared to the Proposed Project, for a total of 808 units.</p> <p>The discussion of the MIXED USE DEVELOPMENT ALTERNATIVE does not include the need for a second access to the MT&CC on Pacheco Avenue and the construction of a new bridge at the end of Pacheco. MT&CC is not zoned for this proposed alternative. The DEIR does not address how the MT&CC would be rezoned for the proposed alternative. The map showing all Retail General Commercial uses in Town incorrectly identifies the front half of the MT&CC adjacent to San Anselmo Creek as Retail General Commercial. It is currently developed with the former cabins and apartments that were seasonal rentals for the former resort and holds forty affordable living units.</p>	
B7-41	Frank Egger	11/10/23	<p>3.15-1 WUI areas in Marin County: Page 375. Historical wildfires are listed but the 1944/45 wildland fire that came off of Mount Tamalpais towards Fairfax is not listed. Marin County was preparing to evacuate all of Fairfax when the wind shifted and took the fire west to Camp Taylor. My father drove us out to Lagunitas after the wind shifted and we continued to the second bridge, the next bridge after the Inkwells. It was dark and we stopped there as the fire had burned right down to the SF Drake Blvd and Lagunitas Creek, it was still burning and there was not a fire engine in sight. We were familiar with the area as we often held family picnics at Camp Taylor before it became a State Park.</p>	<p>The comment is noted. Page 3.15-5 of the DEIR correctly explains that the historical record shows that many large wildfires (greater than 500 acres) have occurred in Marin County since 1850. Many more frequent and smaller fires have occurred throughout the county.</p>

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B7-42	Frank Egger	11/10/23	Fires repeat themselves and the biggest threat to Fairfax is from future wildland fires coming off the Mountain or from the Elliott Nature Preserve area burning towards Bolinas Road and Town. Evacuation is a huge issue and drawback as Fairfax has one road in and one road out of most neighborhoods. One accident on SF Drake Blvd. can put the Upper Ross Valley in total gridlock for hours. A tree falling on Laurel or Cascade Drive can block evacuations. Many of these evacuations take place in the middle of the night and it's easy to get disoriented when trying to evaluate in a smoke filled canyon.	The comment is noted. See response to comment B3-7 regarding evacuation.
B7-43	Frank Egger	11/10/23	The DEIR says fire evacuations routes are shown on local websites. Who will run to their computer to check evacuation routes first if they have to evacuate? The DEIR should include recommendations to assist with evacuations like voice over commands on Fairfax's emergency sirens, posted evacuation route signs with solar attachments to light up at night. Enforcing Fairfax's minimum vehicle clearance ordinances and keeping up to 20 feet of public right of ways clear where possible for incoming engines and evacuating vehicles.	The comment is noted. See response to comments B3-7 and B5-3 regarding evacuation and notification for residents.
B7-44	Frank Egger	11/10/23	Fairfax needs to learn from recent fires, the 2017 Tubbs Fire in Santa Rosa was moving a mile a minute, many did not get out. My God-daughter woke up early on Monday morning after the Tubbs fire started. She looked up on the ridge above Santa Rosa and saw flames and smoke. She lived in Coffee Park about six miles from the fire on the ridge. She drove out to Guerneville Road to check on her Dad. She returned home an hour later and her home was gone, the Tubbs fire had crossed Highway 101's 7 lanes and 4 lanes of frontage roads, burned through commercial buildings on the West side of 101 and burned out 500 homes in Coffee Park. The fire blew	The comment is noted. Page 3.15-5 of the DEIR correctly explains that the historical record shows that many large wildfires (greater than 500 acres) have occurred in Marin County since 1850. Many more frequent and smaller fires have occurred throughout the county.

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			<p>through the urban subdivision, house to house. Burning embers 20 inches square were flying through the air. This is what we have to look forward to. A wildland fire will burn from the Elliott Nature Preserve to Cascade and Bolinas Road in a matter of minutes if the winds are blowing north-east.</p> <p>2017 North Coast Fires: A Mendocino County family trying to evacuate their Redwood Valley home lost their two children, 14 and 17, who were mortally burned in the wildland fire that burned from Potter Valley over the ridge to Redwood Valley.</p> <p>The 2018 Camp Fire burned through 18,000 homes and businesses in Paradise and 85 people died, some in their cars trying to evacuate. Five years later, one third of Paradise's homes have been rebuilt.</p> <p>Wildland fires continue. This year the 2023 Maui Fire burned through Lahaina in a short period of time. Many died trying to evacuate.</p>	
B7-45	Frank Egger	11/10/23	<p>Fairfax must have a real Evacuation Plan to get 7,500 people out of here. The mapping we have today is useless in a major conflagration. Fairfax will end up being another "Paradise" if this Redevelopment Plan proposed by Dyett & Bhatia is approved as written. Who will accept liability for death and destruction when the conflagration hits Fairfax, the Town Council? The State of California? The State Legislators who forced these housing laws on us? Fairfax and San Anselmo passed joint resolutions years ago. We each said we would notify the other Town if there was a "project" in their Town that could adversely impact the other Town. Has Fairfax notified San Anselmo that the Fairfax "project" will adversely impact San Anselmo?</p>	<p>The comment is noted. See response to comments B3-7 and B5-3 regarding evacuation and notification for residents. The remainder of the comment does not pertain to the adequacy of the DEIR; thus no further response is required.</p>
B8-1	Fairfax Open	11/11/23	<p>Introduction: Role of the OS Committee The Fairfax Open Space Committee (FOSC) was</p>	<p>Thank you for your letter. The comment is noted. The comment</p>

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	Space Committee		established by Resolution of the Town (Resolution No. 2334, as subsequently amended) in 2004. Under that resolution the purposes of the Committee include advising the Town on matters affecting open space lands which are environmentally sensitive and which have aesthetic qualities. In addition, the Committee was given the responsibility to participate as an advisory body and to “review planning and development matters in order to formulate policies that it may deem appropriate to advocate”.	presents background information related to the FOSC and is not related to the adequacy of the DEIR; thus, no further response is required.
B8-2	Fairfax Open Space Committee	11/11/23	Overview of Commentary FOSC has previously submitted comments on various iterations and aspects of the Updated Housing Elements. Rather than repeat in full those comments here, they are collected and incorporated into Attachment 1, which accompanies this memo. One overriding theme of those comments is that certain undeveloped parcels have been given special status as priority open space areas that ought to be protected and preserved because they contain exceptional recreational, biological and visual resources, provide important wildlife habitat and corridors and preserve an existing greenbelt which frames the developed portions of the town. This special status has been given to these properties by the existing General Plan and its Open Space and Conservation Elements (also see Appendix OS-A: Inventory of Priority Open Space Lands, Attachment 2) and by subsequent resolution of the Town Council identifying these and additional areas as Priority Conservation Areas entitled to special protection and conservation. The special status has been confirmed by the later adoption by ABAG of these areas on application of the Town as regionally significant PCA’s under the “One Bay Area” process. For some reason, the drafters of the Draft EIR and the	The comment is noted. Please see Master Response 2 regarding open space preservation. The comments regarding the location of the sites projected for development by the Housing Element and are not related to the adequacy of the DEIR; thus, no further response is required.

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			Housing Element give short shrift to this special status. Their maps do not show it, they don't mention it as an important limitation on development, nor do they identify it as a regulatory constraint in the Draft EIR, Project Description, Regulatory Setting section. They have argued in the past that ABAG never created a map showing the Fairfax PCA's, so it should not be applied to specific parcels. That simply ignores the fact that 3 detailed parcel-based maps were submitted to and used as the basis for ABAG's approval of the 3 PCA areas. It also ignores the fact that the Town specifically adopted these 3 maps and authorized the submission of them to ABAG and that they were included in the application to ABAG, which ABAG approved. Finally, it ignores that all of the supporting data submitted to ABAG demonstrating that the mapped properties collectively met the PCA criteria were also submitted to ABAG in connection with the application and were was also in map form.	
B8-3	Fairfax Open Space Committee	11/11/23	These undeveloped priority open space properties are predominantly located on the upland portions of the Town, and are typically steeply sloped, subject to landslide, and contain relatively undisturbed woodlands and grasslands. Virtually every upland property that is identified in the Updated Housing Element is contained within one of these PCA areas. So, generally speaking, it would seem inconstant to rely on these as sites for much of the required RNHA-required housing	The comment is noted. Please see Master Response 2 regarding open space preservation. The comments regarding the location of the sites for development pertain to the Housing Element and are not related to the adequacy of the DEIR; thus, no further response is required.
B8-4	Fairfax Open Space Committee	11/11/23	The special status conferred on these properties does not preclude all development. Instead the General Plan and the identification of these properties as PCAs discourages development undertaken in a way that impacts the very resources that resulted in these properties being	The comment is noted. Please see Master Response 2 regarding open space preservation.

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			<p>recognized as special status properties. The Town Planning Staff in its recent draft changes to the Chapter 17.060: Ridgeline Development and to Chapter 17.072: Hill Area Residential Development Overlay Zone adding the “low impact clustered development option” have made a good start in confirming and developing objective criteria which would serve to encourage housing development that would be consistent with current General and Town policies related to open space. However, neither of these has yet to be adopted. FOSC has submitted a number of comments to the Planning staff on the proposed amendments which it believes would improve consistency with the open space policies at the same time as encouraging housing development.</p>	
B8-5	Fairfax Open Space Committee	11/11/23	<p>As a general proposition, since the proposed planning code changes are not yet adopted, indeed not even beyond draft form, the draft EIR should not rely on them as means of avoiding or offsetting potential impacts. Instead the Draft EIR should require those changes as specific avoidance or mitigation measures that will reduce the potential impact. Specific examples are detailed below.</p>	<p>The comment is noted. Please see Master Response 2 regarding open space preservation.</p>
B8-6	Fairfax Open Space Committee	11/11/23	<p>Another general theme is that there must be consistency between the Updated Housing Element and other elements of the General Plan and other local policies. HCD has said: The goals, policies, and objectives of an updated housing element should be reviewed in the context of the land-use, circulation, open-space elements, zoning, and/or redevelopment and capital improvement plans, especially if these plans or elements have not recently been updated. The general plan is required to be “internally consistent” meaning any and all conflicts between general plan elements should be acknowledged and resolved.</p>	<p>The comment is noted. Impact 3.10-2 starting on page 3.10-13 analyzes whether the development projected under the Housing Element would conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Future residential projects consistent with the Housing Element will be required to comply with the policies in the General Plan regarding land use and</p>

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			Jurisdictions must ensure programs and policies in other elements do not conflict with those of the housing element. See https://www.hcd.ca.gov/planning-and-communitydevelopment/housing-elements/building-blocks/analysis-consistency-general-plan-andcoastal-zone-requirements . Also see 5/19/23 email sent to Housing Element Subcommittee members and consultant through FOSC Liaison, Chance Cutrano, Appendix 1.	Town Code requirements associated with zoning districts, allowable uses, and development standards. All future residential development occurring within the town would be required to be evaluated in accordance with local regulations, including the General Plan and Town Code. Therefore, implementation of the Housing Element would have no impact in regard to conflicts with a land use plan, policy, or regulation adopted to avoid an environmental effect.
B8-7	Fairfax Open Space Committee	11/11/23	A final general theme is that the potential housing development site at 615 Oak Manor Drive, identified as a site for future housing and as a “pipeline project”, is subject to a great deal of uncertainty about whether it can be further developed at all. A 1991 recorded Settlement Agreement between the Town and the then-owner of the site would appear to limit development of that site to 2 units. The Town apparently has been advised recently that the Settlement Agreement has not been in effect for decades under its Term of Agreement section. However, at the June 16, 2016 Planning Commission Meeting, at which the building permit application (16- 24) for the residential development of 615 Oak Manor Dr. was approved, the following exchange between Linda Neal, Planning Staff, Commissioner Green and Jim Moore, Planning Director, took place: start 1:56:50 in video Phillip Green asks: Is this property part of the agreement of settlement of Fairfax Hills versus Fairfax ? Linda Neal responds:Yes, it is	The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706.

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			<p>Phillip Green asks: Where is it?</p> <p>Linda Neal responds: ...it's where the judge approved a house pad, you know originally this site the judge approved two parcels and two home sites</p> <p>Phillip Green asks: Is this one of the two allowed homes?</p> <p>Linda Neal: There's no longer two allowed homes because they had to file a map for two parcels within a certain amount of time so he's just taking the one parcel the judge originally approved for two home sites and applying for one house and a second unit.</p> <p>Jim Moore adds:... and as Linda mentioned, this exhausts development potential in all 50 acres.</p> <p>end 1:58:40 in video</p> <p>Later in the Planning Commission hearing, in response to a question by Commissioner Newton, the Planning Director reiterates the notion that the Settlement Agreement prevented any further subdivision of the property under the Agreement because a final map had not been submitted within the time limit set by the Term of Agreement Section of the Settlement Agreement:</p> <p>start 2:38:10 in video</p> <p>Jim Moore says: This is an interesting case because of how the entitlements through the Court were identified and then because it [the 615 Manor property] wasn't bifurcated into 2 parcels that entitlement was lost.</p> <p>end 2:38:26in video</p> <p>In other words, it appears that the Planning staff interpreted the Term of Agreement section to mean not that the Agreement itself was invalidated after the term expired but that any right to further subdivide the property</p>	

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			would be lost if a final subdivision map was not submitted prior to the expiration of the term. That approach is consistent with the Subdivision Map Act in the sense that a Tentative Map does not finalize a subdivision unless and until a Final Map is submitted and approved. While a Tentative map was approved under the Settlement Agreement, it was up to the land owner to file a Final Map. Under this analysis, the right to further subdivide as allowed under the Agreement was lost. This view is consistent with those of past Town Council members who viewed the settlement as an agreement which would prevent any future further subdivision and development beyond that allowed under the Agreement. There needs to be an adequate independent assessment of these two apparently conflicting views of the applicability of the Settlement Agreement	
B8-8	Fairfax Open Space Committee	11/11/23	<p>Visual Impacts</p> <p>Although, as acknowledged by the Draft EIR there are a number of proposed building sites that include portions of the properties that involve the potential for substantial impact to the visual resources (ridgelines, ridgeline scenic corridors and significant view corridors), the draft EIR finds no potential for significant impact, because of the existing local zoning and related regulations, including those that have as yet only been proposed. There should not be reliance Relying on avoidance or mitigation measures embedded in codes that have not yet been adopted ,]=. Instead those principles ought to be made clear through the identification of specific avoidance or mitigation measures. One example is the pipeline project at 615 Oak Manor Drive. The upper portion of that “pipeline” project appears to propose development that would quite clearly restrict views from neighboring properties and roadways and impinge on the ridgeline</p>	The comment is noted. As noted on page 3.1-10 of the DEIR, Zoning Code amendments related to standards for low impact clustered residential development will be drafted by end of 2023 for review and adopted by June 2024. Given this timeline, any developments projected pursuant to the Housing Element would be required to adhere to related Zoning Code amendments that preserve visual resources. As such, adherence to additional local regulations, policies, Housing Element programs and standards would mitigate the Proposed Project’s potentially substantial adverse effects

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			scenic corridors and significant view corridors. There should be specific identified criteria that would prevent that.	on scenic vistas to a less-than-significant level.
B8-9	Fairfax Open Space Committee	11/11/23	Biological Resources Northern spotted owls, endangered bats and yellow legged-frogs have been observed in areas proposed for development. The EIR assessment of impacts on these special status species depends on future mitigation. This is an improper deferral and delegation of mitigation. The program effects need to be considered and appropriate mitigation identified in this draft EIR.	The comment is noted. Mitigation has been revised regarding northern spotted owls and endangered bats. See response to comments A2-5 and A2-6. Mitigation Measure BIO-6 pertains to foothill yellow-legged frogs. By implementing Mitigation Measures BIO-1 through BIO-6 and adhering to existing policies and local regulations, development would not significantly impact special-status species. All construction activities would be required to conduct preconstruction surveys for special-status species and implement a worker environmental awareness training program, along with a suite of other species protection measures.
B8-10	Fairfax Open Space Committee	11/11/23	Soils and Geology Much of the upslope properties identified for additional housing contain very steep slopes, exceed 40% , have contain areas subject to historic slumping and landslides and are adjacent to other developed areas with existing issues. The Town of Fairfax was cognizant of that and indeed relied on that fact in appealing the ABAG RHNA assessment in 2021. See Attachment 3.	The comment is noted. See response to comment B1-5 regarding landslides.
B8-11	Fairfax Open Space Committee	11/11/23	Public Safety Likewise, the Town also recognized in its RNHA appeal (Attachment 3) the severe impact to public safety imposed by developing upslope vegetated properties with	The comment is noted. Please see response to comment B3-7 regarding impacts on evacuation.

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			inadequate means of egress along the constrained Ross Valley street system relying limited means of escaping wildfire.	
B9-1	Diana Perdue	11/9/23	This plan is long and hard to digest and I believe it does not come to correct conclusions. It gives a huge pass to developers by reducing the seriousness of its impact. The town would need to rezone our current requirements to allow this plan and that alteration should go to the voter. We have never had cluster housing and most do not want it. Our ridgelines have been protected and they need to stay protected. We need to have parking for every unit, not some pie in the sky formula used because there is a bus stop in town.	Thank you for your letter. The comment is noted. The comments regarding rezoning programs and parking requirements pertain to the Housing Element Action Plan and are not related to the adequacy of the DEIR; thus, no further response is required. Regarding ridgeline preservation, Page 3.1-10 of the DEIR outlines how Housing Element Program 2-D will adopt standards for low impact clustered residential development in order to preserve ridgeline views. As such, adherence to additional local regulations, policies, Housing Element programs and standards would mitigate the Proposed Project's potentially substantial adverse effects on scenic vistas to a less-than-significant level.
B9-2	Diana Perdue	11/9/23	We do not have adequate water for a huge influx in population. Our roads are already at maximum capacity. We need no further vehicle trips to spoil our air quality. PG&E is not a reliable source of electricity as has been proven in the past 5 years. We have had more blackout days than ever before. The grid cannot handle hundreds of new houses.	The comment is noted. Page 3.14-18 of the DEIR outlines how development projected by the Housing Element would have sufficient water supplies available to serve all Fairfax residents. According to Marin Municipal Water District's Strategic Water Supply Assessment, water management actions available to Marin Water provide sufficient

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				<p>capability to address historical and projected future droughts. As such, the impact is less than significant.</p> <p>An assessment of impacts on traffic congestion is no longer required under CEQA and thus, not incorporated into the DEIR. With the passage of SB 743 (September 27, 2013) and the subsequent adoption of revised CEQA Guidelines in 2019, level of service (LOS) can no longer be used as a criterion for identifying significant transportation impacts for most projects under CEQA. LOS measures the average amount of delay experienced by vehicle drivers at an intersection during the most congested time of day, while the new CEQA metric (vehicle miles traveled, or VMT) measures the total number of daily miles traveled by vehicles on the roadway network and the impacts on the environment from those miles traveled.</p> <p>Further, development projected under the Housing Element would not substantially degrade air quality. As noted on Page 3.2-42 of the DEIR, intersection traffic volumes would not exceed the screening criterion of 24,000 vehicles per hour that the BAAQMD recommends for areas</p>

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				where vertical and/or horizontal mixing is substantially limited. The Housing Element would not result in, or contribute to, a localized concentration of CO that would exceed the applicable NAAQS or CAAQS. This impact would be less than significant.
B9-3	Diana Perdue	11/9/23	<p>This plan is long and hard to digest and I believe it does not come to the correct conclusions. It gives a huge pass to developers by reducing the seriousness of its impact. The town would need to rezone our current requirements to allow this plan and that alteration should go to the voters.</p> <p>The environmental effect on our flora and fauna is critical. Your report says that it will be protected but I only see the careless disregard given by Fire Safe Marin and PG&E as they annihilate entire hillsides in gross disregard to all. I see that only expanding under this plan. This is a takeover of our town that I wish had played out with the staff and elected council pushing back. The entire sentiment only defiles our town. My conclusion is If you want to avoid adverse impacts then you need to scrap this entire premise.</p>	<p>The comment is noted. As explained on page 3.3-15 of the DEIR, by implementing Mitigation Measures BIO-1 through BIO-6 and adhering to existing policies and local regulations, development would not significantly impact special-status species. All construction activities would be required to conduct preconstruction surveys for special-status species and implement a worker environmental awareness training program, along with a suite of other species protection measures.</p>
B10-1	Terry Balestrine	11/9/23	<p>I'm sorry, but I'm not on board with any plans to development the Town of Fairfax. In fact, the whole State of California is overpopulated as it is. Everyone talks about climate change but yet continue to insist on more housing. We don't have a housing problem, we have a population problem. We have water shortages, food shortages, now housing shortages. There is a point where we can no longer sustain any more population. And I think</p>	<p>Thank you for your letter. The comment is noted. The comment pertains to the Housing Element and is not related to the adequacy of the DEIR; thus, no further response is required.</p>

Letter	Commenter	Date	Comment	Response
			we are at that point. Not the comments you want but this is how I feel.	
B11-1	Katy Flores	11/7/23	<p>I am very concerned about the safety of our residents when a fire rushes through Fairfax, and it will someday. As it is today, when there is fender bender on Sir Francis Drake Blvd the traffic is back up for miles! Do you want to be stuck in your car when the fire rages over head? This draft EIR plan claims it would not impact the Emergency Evacuation Response in Fairfax! How is this so? Please explain how implementing high density housing will not increase the traffic on the one road in and out of Fairfax?</p>	<p>Thank you for your letter. The comment is noted. As detailed on Page 3.15-14 of the DEIR, development projected under the Housing Element would increase traffic on Sir Francis Drake; however, there is a robust framework of emergency preparedness and evacuation actions in place to facilitate evacuation. These numerous robust strategies in place range from regional to local planning efforts to facilitate emergency response and evacuation plans. Housing development projected under the Housing Element would not impede the implementation of these emergency response strategies and evacuation plans and this impact would be less than significant.</p>
B11-2	Katy Flores	11/7/23	<p>Is there a plan in place for adequate emergency access? (If so please tell us NOW since traffic is already terrible when parents are dropping off/picking up their children from school or Drake/Archie kids are driving to/from school). Before this plan is adopted please review how an Emergency Response Vehicle will get through to help save lives. Before this plan is adopted please review how Fairfax residents will get out safely when there is a fire.</p>	<p>The comment is noted. There are plans in place for adequate emergency access. Page 3.13-20 of the DEIR states that access improvements to accommodate development projected under the Housing Element would be required to comply with applicable provisions of the General Plan, Town Code, and the Ross Valley Fire Department (RVFD) Fire Prevention Standards.</p>

Letter	Commenter	Date	Comment	Response
			Before this plan is adopted please have an Evacuation Plan written out with routes to maneuver cars to safety.	<p>Town staff will review all development applications to ensure that applicable requirements are met, including provisions for adequate access for emergency responders and response vehicles, consistent with the Fire Code. Further, Section 17.040.070 for the Town Code also requires all fire protection plans for development to be approved by the Fire Department Chief.</p> <p>Page 3.15-15 of the DEIR also details the robust framework of emergency preparedness and evacuation actions in place to facilitate the evacuation of residents. RVFD has published detailed emergency evacuation maps and routes in order to inform residents about evacuation procedures. Marin County has also developed AlertMarin which is the county's system used for notification when there is some sort of imminent threat (wildfire, flooding, criminal activity) and residents need to take some sort of protective action (evacuate, shelter in place).</p>
B12-1	Mary Alber	10/2/23	<p>I am writing in to discourage you not to add 615 Oak Manor Drive to the Housing Element. I live at 510 Oak Manor Drive, on the opposite side the 615 Oak Manor property.</p> <p>These are the facts.</p> <p>The homeowner does no fire protection for his property.</p> <p>As I write the , the fire road in the middle of the property is over grown(fire road goes down the middle of the property</p>	<p>Thank you for your letter. The comment is noted. As detailed on Page 3.13-20, any development projected under the Housing Element would be required to maintain access improvements that comply with applicable provisions of the General Plan, Town Code, and the Ross</p>

Letter	Commenter	Date	Comment	Response
			all the way to Seven Eleven, the road way going up Oak MAnor has not been cleared and the property Sir Francis Drake . I would hope you would be alarmed by this and I would address it immediately.	Valley Fire Department (RVFD) Fire Prevention Standards. Town staff will review all development applications to ensure that applicable requirements are met, including provisions for adequate access for emergency responders and response vehicles, consistent with the Fire Code. Further, Section 17.040.070 for the Town Code also requires all fire protection plans for development to be approved by the Fire Department Chief.
B12-2	Mary Alber	10/2/23	There are two facts to the neighbor that should prevent this development. 1. We have a history of landslides and open spaces has nature springs through out the neighbor hood. When the rains come , the water comes off the hills. I have three pumps under my house along with french drains and rock river beds in my yard.	The comment is noted. As detailed on page 3.6-23 of the DEIR, seismically induced landslides and precipitation-induced landslides can occur on much of the steep terrain in much of Fairfax, particularly in wet weather months. Given that almost all remaining vacant land is located in steeply sloped hillsides areas in the town, the Housing Element has identified several sites for development on steeply sloped hillsides. However, compliance with the National Pollutant Discharge Elimination System (NPDES) permit requirements and local Town Code and General Plan regulations would reduce impacts related to landslides. The impact would be less than significant.

Letter	Commenter	Date	Comment	Response
B12-3	Mary Alber	10/2/23	<p>2. Numerous neighbors have a settlement attached to the deal of their property preventing any new housing. This is a legal document that should not be ignored or think it has expired. If you think it's not applicable then you need to correct those homeowner deeds and make it right with those properties.</p> <p>The zoning is for two dwelling not all the affording housing that is proposed. Plus, Oak Manor neighbors are county and 615 Oak Manor is Fairfax. We as tax payers should not be paying for this development on our road way and the major element to start a development . (water, sewage, power lines, etc.)</p> <p>I simple don't understand why the town would challenge such history of our neighborhood. The neighborhood is not meant for Affording Housing and it is a thoroughfare to outdoor recreation.</p> <p>The town needs to relook at the locations near town and come up with a new plan for the Housing Element. I would be more than willing to volunteer if you have a sub committee to design a smart plan for our town.</p>	<p>The comment is noted. Please see Master Response 1 regarding Fairfax Hills, et al. v. Town of Fairfax, et al., Marin Superior Court No. CIV 140706. The remainder of the comment pertains to the Housing Element sites and is not related to the adequacy of the DEIR; thus, no further response is required.</p>

3 Revisions to the Draft EIR

This chapter lists revisions to the Draft EIR by chapter and page, in the same order as the revisions would appear in the Draft EIR. New text is indicated with an underline in red and deleted text is indicated with ~~strikethrough~~.

Executive Summary

Table ES-1 is hereby amended as follows:

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
3.3 Biological Resources			
<p>3.3-1 Implementation of the Proposed Project could have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service, but impacts would be reduced with implementation of Mitigation Measures BIO-1 through BIO-6.</p> <p>Given the extent of biological resources throughout the community, housing sites identified in the Proposed Project do occur along riparian areas near Bothin, San Anselmo, and Fairfax Creeks; the construction of which could potentially adversely affect several special-status species.</p>	<p>MM BIO-1: Conduct Preconstruction Surveys for Special Status Species.</p> <p>Prior to ground-disturbing activities and during the appropriate identification periods for special-status plants and wildlife listed in Tables 3.3-1 and 3.3-2, project applicants proposing development on sites with the potential for special-status species to occur shall engage a licensed biologist with prior experience conducting surveys for subject species in Marin County to conduct field surveys within work areas and the immediately adjacent areas to determine the presence of habitat for special status plant and wildlife species. The field surveys are to be conducted when special status species that could occur in the area are evident and identifiable, generally during the blooming or breeding period. One or more surveys shall be conducted as needed to account for different special status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur. <u>qualified biologist with adequate prior experience (ex: at least 2 years for pallid bat) conducting surveys and using relevant survey equipment for subject species in Marin County to conduct field surveys within work areas and the immediately adjacent areas to determine the presence of habitat for special-status plant and wildlife species. Surveys for northern spotted owl habitat shall identify the type and quality of potential habitat as described in the U.S. Fish and Wildlife Service (USFWS) Protocol</u></p>	Potentially significant	Less than significant with mitigation incorporated

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p><u>for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. The field surveys are to be conducted when special-status species that could occur in the area are evident and identifiable, generally during the blooming or breeding period. Roosting Bat habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities. One or more surveys shall be conducted as needed to account for different special-status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat-specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report shall be submitted to CDFW for review and will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur. Project applicants shall obtain CDFW's written approval of the assessment prior to commencement of Project activities.</u></p> <p>MM BIO-2: Worker Environmental Awareness Training Program.</p> <p>If it is established pursuant to Mitigation Measure BIO-1 that special status species occur on the site, prior to the issuance of grading or building permits, and for the duration of construction activities, the project proponent shall demonstrate that it has in place a Construction Worker Environmental Awareness Training Program for all construction workers at the project site. All construction workers shall attend the Program prior to participating in construction activities. The Program shall be developed and conducted by a licensed <u>qualified</u> biologist with experience in Marin County. The training may be presented in video form. The Program shall include:</p>		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<ul style="list-style-type: none"> Information on the life history of wildlife and plant species that may be encountered during construction activities and legal protection status of each species; The definition of “take” under the Federal Endangered Species Act and the California Endangered Species Act; Measures the project proponent/operator is implementing to protect the species; and Specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the Federal Endangered Species Act or California Endangered Species Act. <p>MM BIO-3: Install Temporary Flagging or Barrier Fencing to Protect Sensitive Biological Resources Adjacent to the Work Area.</p> <p>If required pursuant to Mitigation Measure BIO-1, a <u>licensed qualified</u> biologist with prior experience for subject species in Marin County shall identify and flag or fence sensitive biological habitat onsite to ensure it is avoided during construction and pre-construction activities. Flagging or fencing shall be installed prior to the site of site preparation activities remain in place for the duration of construction activities.</p> <p><u>Additional requirements for northern spotted owl: No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the USFWS survey protocol listed in MM BIO-1 for disturbance-only projects. If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist</u></p>		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p><u>determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year. If nesting or foraging habitat for northern spotted owls is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW. If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.</u></p> <p><u>Additional requirements for roosting bats: If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.</u></p>		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p><u>Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</u></p> <p>MM BIO-4: Avoid and Minimize Disturbance to Special-Status Plant Species.</p> <p>If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible,, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town of Fairfax with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedings shall be monitored annually for three to five years by a licensed biologist paid for and hired by the applicant to determine the success of the relocation. For individual plants, the success criteria would be the establishment of new viable occurrences equal to or greater in number than the number of plants impacted.</p>		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p>On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the applicant. An annual report by a licensed biologist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. <u>Following the relocation, the plantings/seedlings shall be monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.</u></p> <p>MM BIO-5: Disturbance to Obscure Bumble Bee.</p> <p>If required pursuant to Mitigation Measure BIO-1, in order to minimize disturbance to the obscure bumble bee, a licensed <u>qualified</u> entomologist paid for and hired by the applicant shall conduct a take avoidance survey for active bumblebee colony nesting sites in any previously undisturbed area no more than 14 days prior to each phase of construction, if the work will occur during the flying season, generally between March 1 and September 1.</p> <p>The surveys shall occur when temperatures are above 60 degrees Fahrenheit (°F), on sunny days with wind speeds below 8 miles per hour, and at least 2 hours after sunrise and 3 hours before</p>		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p>sunset. Surveyors shall conduct transect surveys focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars. If no obscure bumble bees or potential obscure bumble bees are detected, no further mitigation is required. If potential obscure bumble bees are seen but cannot be identified, the applicant shall obtain authorization from CDFW within 14 days prior to groundbreaking to use nonlethal netting methods to capture bumble bees to identify them to species. If protected bumble bee nests are found, they shall be protected in place until they are no longer active as determined by a licensed qualified entomologist. Survey results, including negative findings, shall be submitted to CDFW and the Town prior to groundbreaking within 14 days of completing the take avoidance survey.</p> <p>MM BIO-6: Disturbance to Foothill Yellow-Legged Frog (FYLF).</p> <p>If required pursuant to Mitigation Measure BIO-1, in order to minimize disturbance to dispersing or foraging FYLF, all grading activity within 100 feet of aquatic habitat shall be conducted during the dry season, generally between May 1 and October 15, or before the onset of the rainy season, whichever occurs first, unless exclusion fencing is utilized. Construction that commences in the dry season may continue into the rainy season if exclusion fencing is placed between the construction site and Bothin Creek, Fairfax Creek, or San Anselmo Creek, and includes drainage features to keep the frog from entering the construction area. Additionally, the following measures shall be implemented to lessen impacts to FYLF:</p> <ol style="list-style-type: none"> Prior to building permit issuance the applicant shall submit evidence to the building department to demonstrate that they have retained a licensed qualified biologist with experience with FYLF to implement each of the following measures. 		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p>b) No more than 14 days before the start of ground disturbance activities, pre-construction surveys for FYLF shall be conducted by a qualified biologist and shall cover the project site, access areas, and aquatic features within 200 feet of the project site. Additionally, for construction activity within 100 feet of Bothin Creek, Fairfax Creek or San Anselmo Creek, a survey shall be conducted by a qualified biologist every morning before construction activities commence for the day to ensure that no FYLF are present in the construction area. If FYLF are observed in the construction area or access areas, all work in the vicinity of the FYLF shall be stopped and the USFWS shall be consulted immediately. The biologist shall submit a summary of their surveyed findings to the town planner by email within 14 days prior to groundbreaking.</p> <p>c) Exclusion fencing shall be installed around any work area within 100 feet of a drainage, wetland, or Bothin Creek, Fairfax Creek or San Anselmo Creek, unless construction activity will be completed in one day or less at that location. A qualified biologist shall be present to monitor the installation of the exclusion fence.</p> <p>d) Because dusk and dawn are often the times when FYLF are most actively foraging, all construction activities shall cease one half hour before sunset and shall not begin prior to one half hour before sunrise. Construction activities shall not occur during rain events, which are any occurrences of rain that result in an accumulation of 0.1 inches or more in 24 hours, unless a survey is conducted by a licensed <u>qualified</u> biologist each day prior to the start of construction activities and one-half hour before sunset</p>		

Table ES-1: Summary of Impacts and Mitigation Measures			
Impact	Mitigation Measures	Significance before Mitigation	Significance after Mitigation
	<p>to ensure that no FYLF are observed in the construction area or access areas.</p> <p>e) Any open holes or trenches shall be covered using timber mats or an equally effective material at the end of each working day to prevent FYLF from becoming entrapped.</p> <p>f) A Spill Prevention and Control Plan shall be created and made part of the plans for the building permit application. The plan shall outline equipment and procedures to prevent and respond to a spill. Containers (tanks, drums, totes) are required to have sized secondary containment and overfill prevention. The plan and materials necessary to implement it shall be accessible on-site. Heavy equipment shall be checked daily for leaks. Equipment with leaks shall not be used until leaks are fixed. Refueling shall occur at designated sites outside of active stream channels or above the ordinary high water mark.</p> <p>g) Any disturbed ground shall receive erosion control treatment pursuant to Chapter 8.32 of the Town Code and native seed mix within seven days following completion of construction or within seven days following a seasonal stoppage of construction.</p> <p>All workers shall ensure that food scraps, paper wrappers, food containers, cans, bottles, and other trash from the construction area are deposited in covered or closed trash containers. The trash containers shall not be left open and unattended overnight.</p>		

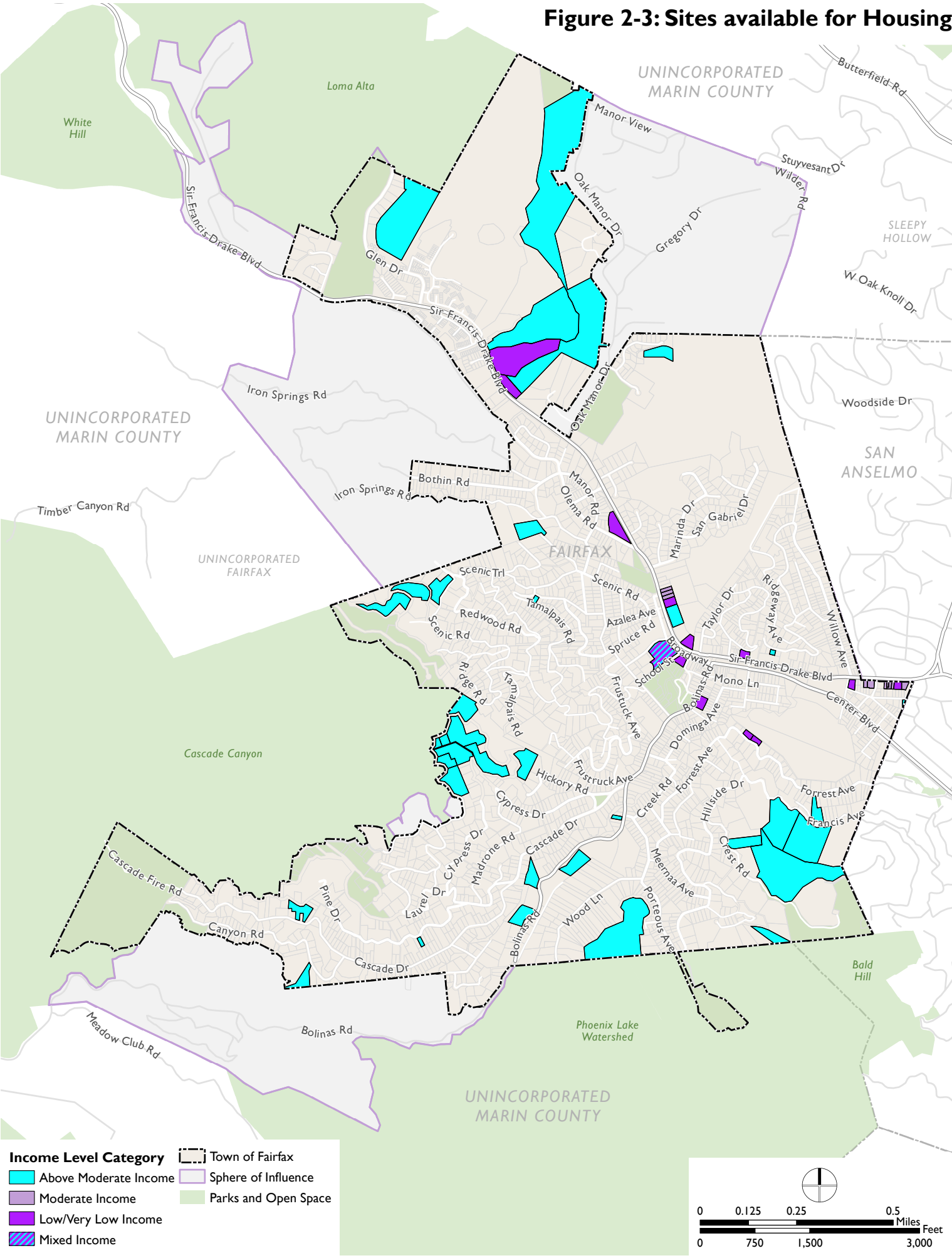
Chapter 2: Project Description

The Table 2-1 on page 2-8 and Figure 2-3 are hereby amended as follows:

Table 2-1: Sites Inventory

	<i>Total Units</i>	<i>Low/Very Low</i>	<i>Moderate</i>	<i>Above Moderate</i>
Vacant Single-Family Sites	46			46
Pipeline Projects				
<i>School Street Plaza</i>	175	35		140
<i>Fairfax Market</i>	8			8
<i>Various Single Family</i>	11			11
Town-Owned Sites (002-123-17/144-01)	10	10		
Workforce Housing Overlay Sites	188	137 48	52 40	
ADU/JADU Projection (@20/yr)	160	96	48	16
Total	598	27889	10088	221
RHNA	490	235	71	184
Buffer	108	5443	1729	37

Figure 2-3: Sites available for Housing



Sources: MarinMap, 2022; Town of Fairfax, 2022; Dyett & Bhatia, 2022

Section 3.3: Biological Resources

The third paragraph of page 3.3-1 is hereby amended as follows:

The Town's location in a valley between wooded hillsides provides a natural habitat for flora and fauna, including some endangered and threatened plant and wildlife species, while the riparian corridors along Bothin Creek, Carey Camp Creek, Deer Park Creek, Fairfax Creek and San Anselmo Creek provide habitat and movement corridors for wildlife.

The first paragraph of page 3.3-10 is hereby amended as follows:

~~Ross~~ Fairfax falls under the jurisdiction of the San Francisco Bay RWQCB.

The second paragraph of page 3.3-2 is hereby amended as follows:

Consistent with the 2007 Marin Countywide Plan (CWP) Update EIR, there are five natural communities present within ~~Ross~~ Fairfax (See Exhibit 4.61 of the 2007 CWP Update DEIR).

The fourth paragraph of page 3.3-15 is hereby amended as follows:

Further, **Mitigation Measures BIO-4 through BIO-6** outline additional construction requirements to ensure the protection of special-status plant species, the obscure bumble bee, and the foothill yellow-legged frog. In addition, individual developments pursuant to the Proposed Project are required to complete a Project-Specific Analysis (PSA) checklist, located in Appendix G of the DEIR, to determine whether the development qualifies as within the scope of this DEIR or requires additional environmental documentation or its own independent environmental review. Such evaluations will ascertain whether the development project's effects on the environment were covered in the DEIR.

The first paragraph of page 3.3-16 is hereby amended as follows:

Prior to ground-disturbing activities and during the appropriate identification periods for special-status plants and wildlife listed in Tables 3.3-1 and 3.3-2, project applicants proposing development on sites with the potential for special-status species to occur shall engage ~~a licensed biologist with prior experience conducting surveys for subject species in Marin County to conduct field surveys within work areas and the immediately adjacent areas to determine the presence of habitat for special-status plant and wildlife species. The field surveys are to be conducted when special-status species that could occur in the area are evident and identifiable, generally during the blooming or breeding period. One or more surveys shall be conducted as needed to account for different special-status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur.~~ qualified biologist with adequate prior experience (ex: at least 2 years for pallid bat) conducting surveys and using relevant survey equipment for subject species in Marin County to conduct field surveys within

work areas and the immediately adjacent areas to determine the presence of habitat for special-status plant and wildlife species. Surveys for northern spotted owl habitat shall identify the type and quality of potential habitat as described in the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. The field surveys are to be conducted when special-status species that could occur in the area are evident and identifiable, generally during the blooming or breeding period. Roosting Bat habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities. One or more surveys shall be conducted as needed to account for different special-status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat-specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report shall be submitted to CDFW for review and will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur. Project applicants shall obtain CDFW's written approval of the assessment prior to commencement of Project activities.

The second paragraph of page 3.3-16 is hereby amended as follows:

The Program shall be developed and conducted by a ~~licensed~~ qualified biologist with experience in Marin County.

The first paragraph of page 3.3-17 is hereby amended as follows:

If required pursuant to Mitigation Measure BIO-1, a ~~licensed~~ qualified biologist with prior experience for subject species in Marin County shall identify and flag or fence sensitive biological habitat onsite to ensure it is avoided during construction and pre-construction activities. Flagging or fencing shall be installed prior to the site of site preparation activities remain in place for the duration of construction activities.

Additional requirements for northern spotted owl: No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the USFWS survey protocol listed in MM BIO-1 for disturbance-only projects. If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year. If nesting or foraging habitat for northern spotted owls is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual

disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW. If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.

Additional requirements for roosting bats: If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

The second paragraph of page 3.3-17 is hereby amended as follows:

~~Following the relocation, the plantings/seedlings shall be monitored annually for three to five years by a licensed biologist paid for and hired by the applicant to determine the success of the relocation. For individual plants, the success criteria would be the establishment of new viable occurrences equal to or greater in number than the number of plants impacted. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the applicant. An annual report by a licensed biologist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review.~~
Following the relocation, the plantings/seedlings shall be monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.

The third paragraph of page 3.3-17 is hereby amended as follows:

If required pursuant to Mitigation Measure BIO-1, in order to minimize disturbance to the obscure bumble bee, a ~~licensed~~ qualified entomologist paid for and hired by the applicant shall conduct a take avoidance survey for active bumblebee colony nesting sites in any previously undisturbed

area no more than 14 days prior to each phase of construction, if the work will occur during the flying season, generally between March 1 and September 1.

The fourth paragraph of page 3.3-17 is hereby amended as follows:

If protected bumble bee nests are found, they shall be protected in place until they are no longer active as determined by a ~~licensed~~ qualified entomologist.

The second paragraph of page 3.3-18 is hereby amended as follows:

Prior to building permit issuance the applicant shall submit evidence to the building department to demonstrate that they have retained a ~~licensed~~ qualified biologist with experience with FYLF to implement each of the following measures.

The fifth paragraph of page 3.3-18 is hereby amended as follows:

Construction activities shall not occur during rain events, which are any occurrences of rain that result in an accumulation of 0.1 inches or more in 24 hours, unless a survey is conducted by a ~~licensed~~ qualified biologist each day prior to the start of construction activities and one-half hour before sunset to ensure that no FYLF are observed in the construction area or access areas.

The third paragraph of page 3.3-20 is hereby amended as follows:

Future development would also be subject to the CDFW Lake and Streambed Alteration Program, which would require any project that could substantially divert or obstruct the flow of, substantially change or use any material from, or deposit debris into a river, stream, or lake to agree to measures that would protect existing fish or wildlife resources. If impacts to any stream cannot be avoided, then prior to ground disturbance a project applicant must submit a Lake and Streambed Alteration (LSA) notification to CDFW and comply with the LSA Agreement. If issued for stream, wetlands, or other water impacts, a project applicant must obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.

Section 3.11: Noise

The first paragraph of page 3.11-17 is hereby amended as follows:

Noise standards found in the Town of ~~Reese~~ Fairfax General Plan ~~2007-2025~~ are used to evaluate potential traffic noise impacts in the Planning Area, as discussed above.

Section 3.13: Transportation

The following paragraph is hereby added below paragraph four of page 3.13-6 as follows:

California Transportation Plan (CTP) 2050:

The CTP is California's long-range transportation plan, which is updated every five years pursuant to state and Federal law, offering an opportunity to identify new and innovative solutions to the state's most pressing transportation challenges. Although the CTP is statutorily required to be fiscally unconstrained, the plan provides a unifying and foundation policy framework that is designed to close the gap between what our RTPs propose and what is needed to meet 2050 targets. The CTP strategies and policies demonstrate the level of ambitious action required to make transparent and transformational transportation decisions in California. While the plan recognizes a mix of proposed strategies that may require legislative change or do not yet identify a funding source, it is intended to guide transportation decision makers at all levels of government, while emphasizing the importance of shared responsibility in meeting transportation needs. It identifies a vision for the future transportation system, establishes new statewide priorities, and serves as a roadmap to guide Caltrans and partner agencies in implementing these recommendations. The CTP 2050 vision is: California's safe, resilient, and universally accessible transportation system supports vibrant communities, advances racial and economic justice, and improves public and environmental health. The Plan's goals revolve around safety, climate, equity, accessibility, quality of life and public health, economy, environment and infrastructure.

The second paragraph of page 3.13-7 is hereby amended as follows:

The TAM also administers the Safe Routes to Schools (SR2S) Program, which the Town of ~~Ross~~ Fairfax participates in.

The third paragraph of page 3.13-14 is hereby amended as follows:

Development under the Proposed Project would be consistent with the goals of the current California Transportation Plan (CTP) and local ~~such~~ policies and regulations by increasing housing opportunities in already urbanized areas which is an integral part of VMT reduction and encouraging transportation alternatives, such as walking and biking.

Section 3.15: Wildfire

The first paragraph of page 3.15-11 is hereby amended as follows:

In compliance with Standard 1.E of this General Order, Pacific Gas and Electric Company (PG&E) adopted a 2022 Wildfire Mitigation Plan Update dated February 25, 2022. PG&E developed a High Fire Risk Area (HFRA) map that designates steeper areas of ~~Ross~~ Fairfax as Tier 2 and Tier 3 High Fire Threat Districts (HFTD).

The fourth paragraph of page 3.15-12 is hereby amended as follows:

Resale Inspections occur whenever a property is (re)sold in ~~the town of Ross~~ Fairfax and other communities in the Ross Valley.

Section 3.16: Effects Found Not to be Significant

The first paragraph of page 3.15-11 is hereby amended as follows:

The current Marin County Williamson Act Parcel Map does not list any Williamson Contract parcels located within the Town of ~~Ross~~ Fairfax.

Volume 2: Appendices

The following Appendix G is hereby added to the EIR as follows:

Appendix G

Project-Specific Analysis

PD-3: PROJECT-SPECIFIC ANALYSIS

PD-3.1: INTRODUCTION

The Draft Environmental Impact Report (DEIR) evaluates the potential impacts of the proposed General Plan Housing Element Update, referred to as the "Proposed Project," in the Town of Fairfax, located in Marin County, California. The Proposed Project is both a policy document and an implementation tool for implementing the Town's General Plan. It contains goals, policies, and programs to guide future housing development within the approximately 2.2-square-mile Planning Area that encompasses the entire town. Implementation will include amendments to the Town's Zoning Ordinance. The Town is the Lead Agency for environmental review, as defined by the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (CEQA).

Using the Project-specific Analysis (PSA) in reliance on the DEIR, the lead agency or other project proponents will evaluate each development pursuant to the Proposed Project to determine whether the development qualifies as within the scope of this DEIR or requires additional environmental documentation or its own independent environmental review. Such evaluations will ascertain whether the development project's effects on the environment were covered in the DEIR. Also, the project proponent will evaluate whether the development project would (1) cause any new impact, (2) cause any substantially more severe significant impact than was addressed in the DEIR, or (3) reveal a mitigation measure or alternative that is substantially different from those in the DEIR or found infeasible in the DEIR, but that is now is feasible, and that the project proponent declines to implement. If none of those outcomes are determined, and the effects on the environment were covered in the DEIR, the impacts of the later development project can be found to be within the scope of this DEIR, and no additional environmental documentation would be required (State CEQA Guidelines Section 15168[c][1], [2] and [4]). The determination that a project is within the scope of the DEIR is a factual determination that should be supported by substantial evidence. The substantial evidence underpinning the finding is developed using the PSA checklist provided in this section. If a project is within the scope of this DEIR, the project proponent may act on the project using the PSA and DEIR without public circulation of any additional environmental document. If the project is approved, the project proponent would file a Notice of Determination.

Under this CEQA compliance approach, a project proponent must incorporate from the DEIR into the later development project all feasible mitigation measures in response to significant impacts caused by the later project. A "within the scope" finding for later development projects would facilitate an increase in the pace and scale of project approvals in a manner that includes environmental protections.

If a later development project would have impacts that were not covered by the DEIR (and therefore would not qualify for a within the scope finding), then additional documentation may need to be prepared that accompanies the DEIR to demonstrate the project's CEQA compliance (State CEQA Guidelines Section 15168(c)(1)). If additional documentation is needed, it may be a Negative Declaration, Mitigated Negative Declaration, or an EIR, depending on the environmental impact differences encountered. In this situation, the PSA serves the same function as an initial study to identify which impacts were not covered by (and are therefore not within the scope of) the DEIR and, therefore, must be addressed in a Negative Declaration, Mitigated Negative Declaration, or an EIR, as well as documenting those impacts that are within the scope of the DEIR. Refer to Section PD-3.2.3 (under Checklist Answers) for additional explanation regarding the function of the PSA checklist.

PD-3.2: EVALUATION OF ENVIRONMENTAL IMPACTS

The PSA provided herein is to be used to determine whether later development projects have been covered in the DEIR to allow for approval without further environmental review and documentation (beyond what is needed to complete the PSA), or whether additional CEQA documentation is required (i.e., a Negative Declaration, Mitigated Negative Declaration or EIR). Environmental effects are not necessarily limited to those identified in the PSA checklist,

which encompasses all effects disclosed in the DEIR. For this reason, the checklist includes a row for “Other Impacts” under each resource area.

The determination as to whether an ND, MND, or EIR is required for impacts that are not within the scope of the DEIR is subject to the “fair argument” standard, which requires preparation of an EIR when there is a fair argument, based on substantial evidence in the record, that the proposed project may have a significant effect on the environment.

PD-3.2.1: Documenting Whether Impacts of a Proposed Projects are Within the Scope of the DEIR

For the PSA to adequately document the impacts that are within the scope of this DEIR and do not require additional CEQA review and documentation, the PSA must identify the following:

- ▶ Relevant DEIR analysis. Identify the specific sections, impact numbers, and page numbers from this DEIR that contain information relevant to the proposed project.
- ▶ Additional Studies Prepared and References Cited. Attach to the PSA site-specific studies, reports, and survey results used in support of the within-the-scope finding or impact significance determination, if less severe than that identified in the DEIR. Include copies of references cited in the PSA, which will be made available to the public by the project proponent upon request.
- ▶ Environmental Impacts. Identify which impacts in the DEIR would occur from implementation of the proposed development project. Because the intent of the DEIR is to disclose potentially significant impacts that are reasonably foreseeable to occur from any of the developments within the Planning Area, it is expected that, due to site-specific conditions, proposed development projects may result in impacts less severe than those identified in the DEIR. A project proponent may rely on the impact significance determination in the DEIR, and for significant impacts, apply the relevant mitigation measures. Alternatively, if an impact identified as significant in the DEIR would be less than significant for the later development project, the project proponent may demonstrate with substantial evidence in the PSA that the project impact is less than significant and mitigation measure(s) are not needed. Similarly, potentially significant environmental effects identified in the DEIR may be minimized or found to be less than significant without mitigation in the future due to technological advances, further research, or industry response (e.g., air quality, greenhouse gas emissions, utilities and service systems); these effects and the reasons they are less severe than those identified in the DEIR will be documented in the PSA.
- ▶ Mitigation Measures. Identify each mitigation measure from the DEIR that is relevant to the proposed project. In the PSA, explain any components of the mitigation measures that are not applicable to the project, and for any significance determination that is different than the DEIR, describe how each measure will address site-specific conditions and reduce the impact of the proposed development project.

PD-3.2.2: Providing Substantial Evidence

The impact determinations and within-the-scope findings in the PSA, as well as any explanation for planned deviations, identified parameters, or feasibility determinations associated with mitigation measures, must be based on substantial evidence (defined in the CEQA Guidelines as “facts, reasonable assumptions predicted upon facts, and expert opinion supported by facts”). Therefore, the PSA will include analytical discussions of the conclusions reached. Portions of the DEIR relied on for conclusions should be identified by section number and page number. Ancillary information (e.g., site-specific surveys) not included in the DEIR but relied on for conclusions or required by DEIR measures will be attached to the PSA. A list of references cited in the PSA will be included with the PSA and copies of such references made available to the public by the proponent agency upon request.

PD-3.2.3: Project-Specific Analysis

MITIGATION MEASURES AND MONITORING AND REPORTING

The analysis must consider the measures identified in the DEIR that will avoid, reduce, or otherwise mitigate potential impacts of the project. These measures take the form of mitigation measures. Some mitigation measures apply to all projects, while others only apply to projects that include specific development types or locations. Attachment A to this checklist provides a comprehensive list of mitigation measures applicable to each project type. The project proponent should complete Attachment A and verify that all applicable mitigation measures will be implemented, the timing of implementation, and identify the entity responsible for implementing and verifying or enforcing each measure. In effect, a completed Attachment A to the PSA will function as the Mitigation Monitoring and Reporting Program for the development project.

RESOURCE AREAS

The environmental resource areas in the PSA checklist are the same as those analyzed in Chapter 3 of the DEIR. The project proponent will review the environmental analysis in the DEIR for each corresponding resource area in the PSA checklist. The project proponent will consider whether required mitigation measures would be effective in avoiding, reducing, or mitigating environmental impacts of the project considering the proposed activities and site-specific characteristics. Written explanations supporting all conclusions should be provided in the discussion following the checklist questions for each resource area.

CHECKLIST ANSWERS

The primary functions of the checklist are to determine:

- ▶ whether any of the significant impacts of the later development project would be substantially more severe than those covered in the DEIR;
- ▶ whether the later development project would result in any new impacts that were not covered in the DEIR; and
- ▶ the type of CEQA document, if any, that is appropriate to examine impacts that are not within the scope of the DEIR.

Accordingly, the checklist questions presented for each resource area identify, for each impact addressed in the DEIR, whether the impact applies to the project and if so, identify the mitigation measures that are applicable to the development project. The checklist is also intended to identify whether the impact significance determination for the development project is different than the impact significance determination in the DEIR; if it is different, the checklist will identify whether the difference constitutes a substantially more severe significant impact and is therefore not within the scope of the DEIR. If it is determined that a substantially more severe significant impact that cannot be mitigated down to the same level as, or lower level than, identified in the DEIR would result from a later development project, an EIR must be prepared, unless one or more mitigation measures incorporated into the project would mitigate the effects to a point where clearly no significant effect on the environment would occur, in which case an MND would be appropriate. The MND or EIR may be limited to examining the impacts that are not within the scope of the DEIR.

“New” impacts are effects on the environment that were not addressed in the DEIR.

For each new impact listed in the checklist, the project proponent should indicate whether the impact would be one of the following:

- ▶ New Impact that is Less Than Significant: The project would result in a new adverse impact that is not analyzed in the DEIR; however, the impact would not be significant. In this case, the impact is not “within

the scope” of the DEIR and preparation of a Negative Declaration could be prepared. Pursuant to CEQA Guidelines Section 15168(d), a subsequent negative declaration could be prepared to document the new impact and substantial evidence supporting the less-than-significant conclusion, along with the PSA checklist documenting the rest of the “within-the-scope” impacts.

- ▶ New Impact that is Less Than Significant with Mitigation Incorporated: The project would result in a new significant impact that is not analyzed in the DEIR, but due to the project proponent’s willingness to incorporate new mitigation into the proposed project, the impact is clearly less than significant with feasible mitigation. In this case, the impact is not “within the scope” of the DEIR and a Mitigated Negative Declaration could be prepared, consistent with CEQA Guidelines Section 15168(d), which allows for use of a subsequent negative declaration to document the new impact and substantial evidence supporting the less-than-significant conclusion, along with the PSA checklist documenting the rest of the “within-the-scope” impacts.
- ▶ New Impact that is Potentially Significant: The project would result in a new significant impact that is not analyzed in the DEIR (which would be subject to the “fair argument” standard as a new impact), the impact cannot be clearly mitigated to less than significant. In this circumstance, the impact is not “within the scope” of the DEIR and preparation of an Environmental Impact Report (EIR) is required. The EIR will cover the new potentially significant or significant impact(s) and need not further evaluate significant impacts already covered in the DEIR, which are documented in the PSA.

In summary, when additional environmental documentation is needed to augment the DEIR for CEQA compliance, the PSA checklist and accompanying analysis would serve the same function as an initial study that defines the topics to be addressed in the EIR, MND, or ND to cover the impacts that are not within the scope of the DEIR, as directed by State CEQA Guidelines Section 15168(d)(1). Pursuant to State CEQA Guidelines Section 15168(d), a later ND could be prepared, if the new impact would be less than significant, or MND, if the new impact or substantially more severe significant impact could be clearly mitigated to less than significant. The analysis of any new impact to support adoption of an ND or MND, along with the analysis of impacts that are within the scope, would be documented in the PSA checklist. If a later EIR is prepared, it could be limited in its scope to the new significant impact(s) or substantially more severe significant impact(s), with the remainder of the impacts that are within the scope of the DEIR being documented in the PSA checklist.

ENVIRONMENTAL CHECKLIST

PROJECT INFORMATION

1. Project Title:
2. Project Proponent Name and Address:
3. Contact Person Information and Phone Number: *[provide phone number and email]*
4. Project Location: *[include county and coordinates; also include cross streets or other major landmark as useful to identify site location]*
5. Description of Project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
[insert text here]
6. Regional Setting and Surrounding Land Uses: (Briefly describe the project's surroundings)
[insert text here]
7. Other Public Agencies Whose Approval is Required: (e.g., permits)
[insert text here; note status of any required approvals (permits)]
9. Native American Consultation. *For development projects that are within the scope of the DEIR, AB 52 consultation for AB 52 compliance has been completed. The lead agency conducted consultation pursuant to Public Resources Code section 21080.3.1 during preparation of the DEIR. For development projects with impacts not within the scope of the DEIR, pursuant to PRC Sections 21080.3.1, 21080.3.2, and 21082.3, project proponents preparing a new negative declaration, mitigated negative declaration, or EIR must notify any California Native American tribe who has submitted written request for notification of a project in the area of the development site. Upon written request for consultation by a tribe, the project proponent must begin consultation before the release of the environmental document and must follow the requirements of the cited PRC sections.*
[insert text here]

DETERMINATION (To be completed by the project proponent)

On the basis of this PSA and the substantial evidence supporting it:

- ☐ I find that all of the effects of the proposed project (a) have been covered in the DEIR, and (b) all applicable mitigation measures identified in the DEIR will be implemented. The proposed project is, therefore, WITHIN THE SCOPE of the DEIR. **NO ADDITIONAL CEQA DOCUMENTATION** is required.
- ☐ I find that the proposed project will have effects that were not covered in the DEIR. These effects are less than significant without any mitigation beyond what is already required pursuant to the DEIR. A **NEGATIVE DECLARATION** will be prepared.
- ☐ I find that the proposed project will have effects that were not covered in the DEIR or will have effects that are substantially more severe than those covered in the DEIR. Although these effects may be significant in the absence of additional mitigation beyond the DEIR's measures, revisions to the proposed project or additional mitigation measures have been agreed to by the project proponent that would avoid or reduce the effects so that clearly no significant effects would occur. A **MITIGATED NEGATIVE DECLARATION** will be prepared.
- ☐ I find that the proposed project will have significant environmental effects that are (a) new and were not covered in the DEIR and/or (b) substantially more severe than those covered in the DEIR. Because one or more effects may be significant and cannot be clearly mitigated to less than significant, an **ENVIRONMENTAL IMPACT REPORT** will be prepared.

Signature

Date

Printed Name

Title

Agency

EVALUATION OF ENVIRONMENTAL IMPACTS

1. Refer to the applicable resource analysis section in the DEIR for relevant information on each environmental topic.
2. A brief explanation is required for each impact, including impacts that have been identified in the DEIR as well as any "new impacts".
3. The discussion of each impact identified in the DEIR that is also applicable to the proposed development project should generally include the following information:
 - ▶ Briefly describe the impact of the proposed development project.
 - ▶ Summarize the impact as it was presented in the DEIR, including a statement that the impact is covered in DEIR.
 - ▶ Provide evidence that (explain why) the project impact is covered in DEIR, considering whether the proposed development is consistent with the activities addressed in the DEIR as well as the associated intensity.
 - ▶ Identify MMs applicable to the development project.
 - ▶ (If applicable) Explain which components of the MM would be applied. This circumstance exists if the MM allows for deviation from requirements, identification of parameters, and determinations of feasibility. A site- and/or activity-specific explanation for the planned deviation, identified parameter, or feasibility determination must be provided in the PSA.
 - ▶ (If applicable) Explain why the impact significance in the PSA is different than that found in the DEIR; substantiate the different (new) significance conclusion.
 - ▶ (If applicable) Explain why MM identified for this impact in DEIR do not apply to this project. This circumstance may exist where a PSA impact was identified in the DEIR, but the impact severity would be less for the development project or the MM does not otherwise apply.
4. If the project proponent has determined that a new impact would occur, then the checklist answers for the new impact must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant without the need for mitigation.
5. "Potentially Significant" is appropriate if there is substantial evidence that a new impact may be significant. If there are one or more "Potentially Significant" new impacts identified, or if any impact would constitute a substantially more severe significant impact than was covered in the DEIR, an EIR is required unless one or more mitigation measures incorporated into the project would mitigate the effects to a point where clearly no significant effect on the environment would occur, in which case an MND would be appropriate. AND could be prepared, if the new impact would be less than significant, or MND, if the new impact could be clearly mitigated to less than significant. The analysis of any new impact to support adoption of an ND or MND, along with the analysis of impacts that are within the scope, would be documented in the PSA checklist. If a later EIR is prepared, it could be limited in its scope to the new significant impact(s) or substantially more severe significant impact(s), with the remainder of the impacts that are within the scope of the DEIR being documented in the PSA checklist and attached to the EIR as an appendix. When preparing any environmental document, the environmental analysis should incorporate by reference pertinent portions of the analysis from the DEIR and focus the environmental analysis solely on issues that were not addressed in the DEIR.
6. Project proponents should incorporate into the PSA checklist references to information sources for potential impacts. Include a list of references cited in the PSA and make copies of such references available to the public upon request.

PD-3.3: AESTHETICS

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.1-1 Have a substantial adverse effect on scenic vistas.	LTS	Impact 3.1-1 pp. 3.1-10 – 3.1-12					
3.1-2 Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.	NI	Impact 3.1-2 pp. 3.1-12					
3.1-3 Substantially degrade the existing visual character or quality of public views of the site and its surroundings in non-urbanized areas or conflict with applicable zoning and other regulations governing scenic quality in urbanized areas.	LTS	Impact 3.1-3 pp. 3.1-12 – 3.1-14					
3.1-4 Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.	LTS	Impact 3.1-4 pp. 3.1-14					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Aesthetic and Visual Resource Impacts: Would the project result in other impacts to aesthetics and visual resources that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.1-1

Impact 3.1-2

Impact 3.1-3

Impact 3.1-4

New Aesthetic and Visual Resource Impacts

PD-3.4: AIR QUALITY

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.2-1 Conflict with or obstruct the implementation of the applicable air quality plan.	PS	Impact 3.2-1 pp. 3.2-32 – 3.2-35					
3.2-2 Result in a cumulatively considerable net increase of criteria pollutants for which the Project region is nonattainment under an applicable federal or State ambient air quality standard.	PS	Impact 3.2-2 pp. 3.2-35 – 3.2-40					
3.2-3 Expose sensitive receptors to substantial pollutant concentrations.	LTS	Impact 3.2-3 pp. 3.2-40 – 3.2-42					
3.2-4 Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.	LTS	Impact 3.2-4 pp. 3.2-42 – 3.2-43					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Air Quality Impacts: Would the project result in other impacts to air quality that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.2-1

Impact 3.2-2

Impact 3.2-3

Impact 3.2-4

New Air Quality Resource Impacts

PD-3.5: BIOLOGICAL RESOURCES

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.3-1 Have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.	PS	Impact 3.3-1 pp. 3.3-14 – 3.3-19					
3.3-2 Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.	LTS	Impact 3.3-2 pp. 3.3-19 – 3.3-20					
3.3-3 Have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act (including, but not limited to, marshes, vernal pools, coastal areas, etc.) through direct removal, filling, hydrological interruption, or other means.	LTS	Impact 3.3-3 pp. 3.3-20 – 3.3-21					
3.3-4 Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.	LTS	Impact 3.3-4 pp. 3.3-21 – 3.3-22					
3.3-5 Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.	LTS	Impact 3.3-5 pp 3.3-22– 3.3-23					
3.3-6 Conflict with the provisions of an adopted habitat	NI	Impact 3.3-6 pp. 3.3-23					

Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
conservation plan, natural community conservation plan, or other approved local, regional, or State habitat conservation plan.							

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Biological Resources Impacts: Would the project result in other impacts to biological resources that are not evaluated in the DEIR??	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.3-1

Impact 3.3-2

Impact 3.3-3

Impact 3.3-4

Impact 3.3-5

Impact 3.3-6

New Biological Resources Impacts

PD-3.6: CULTURAL AND TRIBAL CULTURAL RESOURCES

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.4-1 Cause a substantial adverse change in the significance of a historical resource, as defined as physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historic resource would be materially impaired.	PS	Impact 3-4.1 pp. 3.4-15 – 3.4-17					
3.4-2 Cause an adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5.	PS	Impact 3-4-2 pp. 3.4-17 – 3.4-18					
3.4-3 Have the potential to disturb human remains, including those interred outside of formal cemeteries.	PS	Impact 3-4-3 pp. 3.4-18 – 3.4-19					
3.4-4 Cause an adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is: (a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k), or (b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in	PS	Impact 3-4-4 pp. 3.4-19 – 3.4-20					

Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
subdivision (c) of PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.							

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Cultural and Tribal Cultural Resources Impacts: Would the project result in other impacts to cultural and tribal cultural resources that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.4-1

Impact 3.4-2

Impact 3.4-3

Impact 3.4-4

New Archaeological, Historical, and Tribal Cultural Resource Impacts

PD-3.7: ENERGY

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.5-1 Cause wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation.	LTS	Impact 3.5-1 pp. 3.5-9 – 3.5-11					
3.5-2 Conflict with or obstruct a State or local plan for renewable energy or energy efficiency.	LTS	Impact 3-5.2 pp. 3.5-11					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Energy Impacts: Would the project result in other energy-related impacts that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

Impact 3.5-1

Impact 3.5-2

New Energy Impacts

PD-3.8: GEOLOGY AND SOILS

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.6-1 Expose residents, visitors and employees, as well as public and private structures, to substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault; strong seismic ground shaking; seismically related ground failure, including liquefaction; or landslides.	LTS	Impact 3.6-1 pp 3.6-22–3.6-23					
3.6-2 Result in substantial soil erosion or the loss of topsoil.	LTS	Impact 3.6-2 pp. 3.6-24–3.6-25					
3.6-3 Locate structures on expansive soils or on a geologic unit or soil that is unstable, or that would become unstable as a result of new development under the Proposed Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse, or create substantial risks to life or property.	LTS	Impact 3.6-3 pp 3.6-25–3.6-26					
3.6-4 Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property.	LTS	Impact 3.6-4 pp 3.6-26–3.6-27					
3.6-5 Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater.	LTS	Impact 3.6-5 pp 3.6-27					
3.6-6 Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.	LTS	Impact 3.6-6 pp 3.6-28					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Geology and Soils Impacts: Would the project result in other impacts to geology and soils that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.6-1

Impact 3.6-2

Impact 3.6-3

Impact 3.6-4

Impact 3.6-5

Impact 3.6-6

New Geology and Soils Impacts

PD-3.9: GREENHOUSE GAS EMISSIONS

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.7-1 Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.	Construction: PS Operations: SU	Impact 3.7-1 pp 3.7-30					
3.7-2 Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.	Construction: PS Operations: SU	Impact 3.7-2 pp 3.7-30–3.7-34					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New GHG Emissions Impacts: Would the project result in other impacts to GHG emissions that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.7-1

Impact 3.7-2

New Impacts Related to GHG Emissions

PD-3.10: HAZARDS AND HAZARDOUS MATERIALS

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.8-1 Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.	LTS	Impact 3.8-1 pp 3.8-14–3.8-16					
3.8-2 Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	LTS	Impact 3.8-2 pp 3.8-16					
3.8-3 Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.	LTS	Impact 3.8-3 pp 3.8-17					
3.8-4 Result in development located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment.	LTS	Impact 3.8-4 pp 3.8-17					
3.8-5 Result in development located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public uses airport, and would result in a safety hazard or excessive noise for people residing or working in the Planning Area.	NI	Impact 3.8-5 pp 3.8-17–3.8-18					
3.8-6 Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.	LTS	Impact 3.8-6 pp 3.8-18					
3.8-7 Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.	LTS	Impact 3.8-6 pp 3.8-18–19					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Hazards and Hazardous Materials Impacts: Would the project result in other impacts to hazards that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.7-1

Impact 3.7-2

Impact 3.7-3

Impact 3.7-4

Impact 3.7-5

Impact 3.7-6

Impact 3.7-7

New Hazards and Hazardous Materials Impacts

PD-3.11: HYDROLOGY AND WATER QUALITY

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.9-1 Violate any federal, state, or local water quality standards or waste discharge requirements.	LTS	Impact 3.9-1 pp 3.9-12–3.9-14					
3.9-2 Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin.	LTS	Impact 3.9-2 pp 3.9-14–3.9-15					
3.9-3 Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces in a manner which would result in substantial erosion, siltation, or flooding on- or off-site; substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite; create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or impede or redirect flood flows.	LTS	Impact 3.9-3 pp 3.9-15–3.9-16					
3.9-4 In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation.	LTS	Impact 3.9-4 pp 3.9-16					
3.9-5 Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan	LTS	Impact 3.9-5 pp 3.9-17					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Hydrology and Water Quality Impacts: Would the project result in other impacts related to hydrology and water quality that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

Impact 3.9-1

Impact 3.9-2

Impact 3.9-3

Impact 3.9-4

Impact 3.9-5

New Hydrology and Water Quality Impacts

PD-3.12: LAND USE, POPULATION, AND HOUSING

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.10-1 Physically divide an established community.	NI	Impact 3.10-1 pp 3.10-13					
3.10-2 Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.	NI	Impact 3.10-2 pp 3.10-13–3.10-17					
3.10-3 Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure).	LTS	Impact 3.10-3 pp 3.10-173.10-18					
3.10-4 Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere.	LTS	Impact 3.10-4 pp 3.10-18–3.10-18					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Land Use, Population, and Housing Impacts: Would the project result in other impacts to land use, population, and housing that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

Impact 3.10-1

Impact 3.10-2

Impact 3.10-3

Impact 3.10-4

New Land Use, Population, and Housing Impacts

PD-3.13: NOISE

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.11-1 Generate substantial temporary or permanent increases in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.	LTS	Impact 3.11-1 pp 3.11-18–3.11-21					
3.11-2 Generate excessive groundborne vibration or groundborne noise levels.	LTS	Impact 3.11-2 pp 3.11-23–3.11-24					
3.11-3 Be located within the vicinity of a private airstrip or an airport land use plan or expose people residing or working in the Planning Area to excessive noise levels.	NI	Impact 3.11-3 pp 3.11-24					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Noise Impacts: Would the project result in other noise-related impacts that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.11-1

Impact 3.11-2

Impact 3.11-3

New Noise Impacts

PD-3.14: PUBLIC SERVICES AND RECREATION

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.12-1 Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: fire protection, police protection, schools, parks, or other public facilities.	LTS	Impact 3.12-1 pp 3.12-9–3.12-13					
3.12-2 Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.	LTS	Impact 3.12-2 pp 3.12-13–3.12-14					
3.12-3 Require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.	LTS	Impact 3.12-3 pp 3.12-14					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Public Services and Recreation Impacts: Would the project result in other impacts to public services and recreation that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Discussion

Impact 3.12-1

Impact 3.12-2

Impact 3.12-3

New Public Services and Recreation Impacts

PD-3.15: TRANSPORTATION

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.13-1 Conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, and bicycle and pedestrian facilities.	LTS	Impact 3.13-1 pp 3.13-14-3.13-15					
3.13-2 Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b).	SU	Impact 3.13-2 pp 3.13-15-3.13-19					
3.13-3 Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible land uses (e.g., farm equipment)	LTS	Impact 3.13-3 pp 3.13-19-3.13-20					
3.13-4 Result in inadequate emergency access.	LTS	Impact 3.13-4 pp 3.13-20-3.13-21					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Transportation Impacts: Would the project result in other impacts to transportation that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion		
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant		
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Discussion

Impact 3.13-1

Impact 3.13-2

Impact 3.13-3

New Transportation Impacts

PD-3.16: UTILITIES AND SERVICE SYSTEMS

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.14-1 Require or result in the relocation or construction of new or expanded water, or wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.	LTS	Impact 3.14-1 pp 3.14-13-3.14-18					
3.14-2 Have sufficient water supplies available to serve the Planning Area and reasonably foreseeable future development during normal, dry and multiple dry years.	LTS	Impact 3.14-2 pp 3.14-18-3.14-20					
3.14-3 Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.	LTS	Impact 3.14-3 pp 3.14-20					
3.14-4 Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals.	LTS	Impact 3.14-4 pp 3.14-20-3.14-21					
3.14-5 Conflict with federal, state, and local management and reduction statutes and regulations related to solid waste.	LTS	Impact 3.14-5 pp 3.14-21-3.14-22					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Utilities and Service System Impacts: Would the project result in other impacts to utilities and service systems that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion	
	Potentially Significant	Less Than Significant with	Less than Significant	

		Mitigation Incorporated	
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

Impact 3.14-1

Impact 3.14-2

Impact 3.14-3

Impact 3.14-4

Impact 3.14-5

New Impacts to Utilities and Service Systems

PD-3.17: WILDFIRE

Impact in the DEIR			Project-Specific Checklist				
Environmental Impact Covered In the DEIR	Identify Impact Significance in the DEIR	Identify Location of Impact Analysis in the DEIR	Does the Impact Apply to the Project?	List MMs Applicable to the Project ¹	Identify Impact Significance for Project	Would this be a Substantially More Severe Significant Impact than Identified in the DEIR?	Is this Impact Within the Scope of the DEIR?
Would the project:							
3.15-1 Substantially impair an adopted emergency response plan or emergency evacuation plan.	LTS	Impact 3.15-1 pp 3.15-14-3.15-15					
3.15-2 Exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire.	LTS	Impact 3.15-2 pp 3.15-17-3.15-18					
3.15-3 Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment.	LTS	Impact 3.15-3 pp 3.15-18-3.15-19					
3.15-4 Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.	LTS	Impact 3.15-4 pp 3.15-19					

¹NA: not applicable; there are no MMs identified in the DEIR for this impact. None: there are MMs identified in the DEIR for this impact, but none are applicable to the project.

New Wildfire Impacts: Would the project result in other impacts related to wildfire that are not evaluated in the DEIR?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, complete row(s) below and discussion
	Potentially Significant	Less Than Significant with Mitigation Incorporated	Less than Significant
[identify new impact here, if applicable; add rows as needed]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

Impact 3.15-1

Impact 3.15-2

Impact 3.15-3

Impact 3.15-4

New Impacts to Wildfire

ATTACHMENT A -MITIGATION MEASURES CHECKLIST

Instructions: Review the mitigation measures and verify that those that are applicable will be implemented. Provide information for each column as follows:

- ▶ **Applicable (Yes/No).** Document whether the mitigation measure is applicable to the development project (Yes or No). The applicability should be substantiated in the Environmental Checklist Discussion.
- ▶ **Timing.** This column identifies the time frame in which the mitigation measure will be implemented (e.g., prior to construction, during construction, etc.).
- ▶ **Implementing Entity.** The implementing entity is the agency or organization responsible for carrying out the requirement. This could include the project proponent's project manager, a technical specialist (e.g., archeologist or biologist), a partner agency or organization, or other entities that are primarily responsible for carrying out each project requirement.
- ▶ **Verifying/Monitoring Entity.** The verifying/monitoring entity is the agency or organization responsible for ensuring that the requirement is implemented. The verifying/monitoring entity may be different from the implementing entity.

Mitigation Measures	Applicable? (Y/N)	Timing	Implementing Entity	Verifying/Monitoring Entity
Air Quality				
<p>MM AQ-1: Implement BAAQMD Basic Construction Mitigation Measures. The Town shall require new project development projects to implement the BAAQMD's Basic Control Mitigation Measures to address fugitive dust emissions that would occur during earthmoving activities associated with project construction. These measures include:</p> <ul style="list-style-type: none"> a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered. c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. d) All vehicle speeds on unpaved roads shall be limited to 15 mph. e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. h) Post a publicly visible sign with the telephone number and person to contact at the Town regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. 				
<p>MM AQ-2: Prepare Project-level Construction Emissions Assessment. The Town shall require new development projects to submit a quantitative project-level construction criteria air pollutant and toxic air contaminant emissions analysis prior to the start of construction activities that shows project construction activities would not exceed BAAQMD project-level thresholds of significance. The analysis may rely on BAAQMD construction screening criteria to demonstrate that a detailed</p>				

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<p>assessment of criteria air pollutant and toxic air contaminant construction emissions is not required for the project. If the project does not satisfy all BAAQMD construction screening criteria, the analysis shall estimate and compare construction criteria air pollutant and toxic air contaminant emissions against the project-level thresholds of significance maintained by BAAQMD and, if emissions are shown to be above BAAQMD thresholds, then the project must implement measures to reduce emissions below BAAQMD thresholds. Mitigation measures to reduce emissions could include, but are not limited to:</p> <ul style="list-style-type: none"> a) Watering exposed surfaces at a frequency adequate to maintain a minimum soil moisture content of 12 percent, as verified by moisture probe or lab sampling; b) Suspending excavation, grading, and/or demolition activities when average wind speeds exceed 20 miles per hour; c) Selection of specific construction equipment (e.g., specialized pieces of equipment with smaller engines or equipment that will be more efficient and reduce engine runtime); d) Installing wind breaks that have a maximum 50 percent air porosity; e) Restoring disturbed areas with vegetative ground cover as soon as possible; f) Limiting simultaneous ground-disturbing activities in the same area at any one time (e.g., excavation and grading); g) Scheduling/phasing activities to reduce the amount of disturbed surface area at any one time; h) Installing wheel washers to wash truck and equipment tires prior to leaving the site; i) Minimizing idling time of diesel-powered construction equipment to no more than two minutes or the shortest time interval permitted by manufacturer's specifications and specific working conditions; j) Requiring equipment to use alternative fuel sources (e.g., electric-powered and liquefied or compressed natural gas), meet cleaner emission standards (e.g., U.S. EPA Tier IV Final emissions standards for equipment greater than 50-horsepower), and/or utilizing added exhaust devices (e.g., Level 3 Diesel Particular Filter); k) Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM; l) Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines; and 				

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m) Applying coatings with a volatile organic compound (VOC) that exceeds the current regulatory requirements set forth in BAAQMD regulation 8, Rule 3 (Architectural Coatings).				
MM AQ-3: Review Air Quality Risks to New Housing Sites. The Town shall require new residential development projects to review and identify, using the BAAQMD's publicly available Stationary Source Screening Map or another standard methodology (e.g., BAAQMD public records request), permitted stationary sources within 1,000 feet of the project that may result in risks and hazards to new receptors. If screening-level information indicates potential stationary source risks and hazards would exceed the BAAQMD's thresholds, the project applicant shall: 1) incorporate site and building design measures into the project that reduce exposure to pollutants; or 2) conduct refined, site-specific modeling, using the latest information and guidance from the BAAQMD, demonstrating sources risks and hazards would not exceed BAAQMD thresholds for new receptors. Site and building design measures that may reduce potential exposure to pollutants would include, but are not limited to, buffering/increasing the distance between sources and receptors, designing the site to limit exposure to the highest pollutant concentrations, and incorporating enhanced filter systems into heating, ventilation, and air conditioning equipment.				
Biological Resources				
MM BIO-1: Conduct Preconstruction Surveys for Special Status Species. Prior to ground-disturbing activities and during the appropriate identification periods for special-status plants and wildlife listed in Tables 3.3-1 and 3.3-2, project applicants proposing development on sites with the potential for special-status species to occur shall engage a qualified biologist with adequate prior experience (ex: at least 2 years for pallid bat) conducting surveys and using relevant survey equipment for subject species in Marin County to conduct field surveys within work areas and the immediately adjacent areas to determine the presence of habitat for special-status plant and wildlife species. Surveys for northern spotted owl habitat shall identify the type and quality of potential habitat as described in the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. The field surveys are to be conducted when special-status species that could occur in the area are evident and identifiable, generally during the blooming or breeding period. Roosting Bat habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities. One or more surveys shall be conducted as needed to account for different special-status species identification periods. The results of field surveys shall be summarized in an accompanying report documenting all proposed work areas and the presence or				

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absence of any sensitive resources that could be affected by development. Additionally, the report shall outline where species and/or habitat-specific mitigation measures (as required under Mitigation Measures BIO-2 through BIO-6) are required. This report shall be submitted to CDFW for review and will provide the basis for any applicable permit applications and consultations with regulatory agencies where incidental take may occur. Project applicants shall obtain CDFW's written approval of the assessment prior to commencement of Project activities.				
<p>MM BIO-2: Worker Environmental Awareness Training Program.</p> <p>If it is established pursuant to Mitigation Measure BIO-1 that special status species occur on the site, prior to the issuance of grading or building permits, and for the duration of construction activities, the project proponent shall demonstrate that it has in place a Construction Worker Environmental Awareness Training Program for all construction workers at the project site. All construction workers shall attend the Program prior to participating in construction activities. The Program shall be developed and conducted by a qualified biologist with experience in Marin County. The training may be presented in video form. The Program shall include:</p> <ul style="list-style-type: none"> • Information on the life history of wildlife and plant species that may be encountered during construction activities and legal protection status of each species; • The definition of "take" under the Federal Endangered Species Act and the California Endangered Species Act; • Measures the project proponent/operator is implementing to protect the species; and • penalties for violation of the Federal Endangered Species Act or California Endangered Species Act. • Specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the Federal Endangered Species Act or California Endangered Species Act. 				
<p>MM BIO-3: Install Temporary Flagging or Barrier Fencing to Protect Sensitive Biological Resources Adjacent to the Work Area.</p> <p>If required pursuant to Mitigation Measure BIO-1, a qualified biologist with prior experience for subject species in Marin County shall identify and flag or fence sensitive biological habitat onsite to ensure it is avoided during construction and pre-construction activities. Flagging or fencing shall be installed prior to the site of site preparation activities remain in place for the duration of construction activities.</p> <p><i>Additional requirements for northern spotted owl:</i> No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31</p>				

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<p>unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the USFWS survey protocol listed in MM BIO-1 for disturbance-only projects. If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year. If nesting or foraging habitat for northern spotted owls is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW. If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.</p> <p><i>Additional requirements for roosting bats:</i> If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using</p>				

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chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.				
MM BIO-4: Avoid and Minimize Disturbance to Special-Status Plant Species. If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town of Fairfax with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedlings shall be monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.				
MM BIO-5: Disturbance to Obscure Bumble Bee. If required pursuant to Mitigation Measure BIO-1, in order to minimize disturbance to the obscure bumble bee, a qualified entomologist paid for and hired by the applicant shall conduct a take avoidance survey for active bumblebee colony nesting sites in any previously undisturbed area no more than 14 days prior to each phase of construction, if the work will occur during the flying season, generally between March 1 and September 1. The surveys shall occur when temperatures are above 60 degrees Fahrenheit (°F), on sunny days with wind speeds below 8 miles per hour, and at least 2 hours after sunrise and 3 hours before sunset. Surveyors shall conduct transect surveys focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars. If no obscure bumble bees or potential obscure bumble bees are detected, no further mitigation is required. If potential obscure bumble bees are seen but cannot be identified, the applicant shall obtain authorization from CDFW within 14 days prior to groundbreaking to use nonlethal netting methods to capture bumble bees to identify them to species. If protected bumble bee nests are found,				

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they shall be protected in place until they are no longer active as determined by a qualified entomologist. Survey results, including negative findings, shall be submitted to CDFW and the Town prior to groundbreaking within 14 days of completing the take avoidance survey.				
<p>MM BIO-6: Disturbance to Foothill Yellow-Legged Frog (FYLF).</p> <p>If required pursuant to Mitigation Measure BIO-1, in order to minimize disturbance to dispersing or foraging FYLF, all grading activity within 100 feet of aquatic habitat shall be conducted during the dry season, generally between May 1 and October 15, or before the onset of the rainy season, whichever occurs first, unless exclusion fencing is utilized. Construction that commences in the dry season may continue into the rainy season if exclusion fencing is placed between the construction site and Bothin Creek, Fairfax Creek, or San Anselmo Creek, and includes drainage features to keep the frog from entering the construction area. Additionally, the following measures shall be implemented to lessen impacts to FYLF:</p> <ul style="list-style-type: none"> a) Prior to building permit issuance the applicant shall submit evidence to the building department to demonstrate that they have retained a qualified biologist with experience with FYLF to implement each of the following measures. b) No more than 14 days before the start of ground disturbance activities, pre-construction surveys for FYLF shall be conducted by a qualified biologist and shall cover the project site, access areas, and aquatic features within 200 feet of the project site. Additionally, for construction activity within 100 feet of Bothin Creek, Fairfax Creek or San Anselmo Creek, a survey shall be conducted by a qualified biologist every morning before construction activities commence for the day to ensure that no FYLF are present in the construction area. If FYLF are observed in the construction area or access areas, all work in the vicinity of the FYLF shall be stopped and the USFWS shall be consulted immediately. The biologist shall submit a summary of their surveyed findings to the town planner by email within 14 days prior to groundbreaking. c) Exclusion fencing shall be installed around any work area within 100 feet of a drainage, wetland, or Bothin Creek, Fairfax Creek or San Anselmo Creek, unless construction activity will be completed in one day or less at that location. A qualified biologist shall be present to monitor the installation of the exclusion fence. d) Because dusk and dawn are often the times when FYLF are most actively foraging, all construction activities shall cease one half hour before sunset and shall not begin prior to one half hour before sunrise. Construction 				

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<p>activities shall not occur during rain events, which are any occurrences of rain that result in an accumulation of 0.1 inches or more in 24 hours, unless a survey is conducted by a qualified biologist each day prior to the start of construction activities and one-half hour before sunset to ensure that no FYLF are observed in the construction area or access areas.</p> <p>e) Any open holes or trenches shall be covered using timber mats or an equally effective material at the end of each working day to prevent FYLF from becoming entrapped.</p> <p>f) A Spill Prevention and Control Plan shall be created and made part of the plans for the building permit application. The plan shall outline equipment and procedures to prevent and respond to a spill. Containers (tanks, drums, totes) are required to have sized secondary containment and overfill prevention. The plan and materials necessary to implement it shall be accessible on-site. Heavy equipment shall be checked daily for leaks. Equipment with leaks shall not be used until leaks are fixed. Refueling shall occur at designated sites outside of active stream channels or above the ordinary high water mark.</p> <p>g) Any disturbed ground shall receive erosion control treatment pursuant to Chapter 8.32 of the Town Code and native seed mix within seven days following completion of construction or within seven days following a seasonal stoppage of construction.</p> <p>h) All workers shall ensure that food scraps, paper wrappers, food containers, cans, bottles, and other trash from the construction area are deposited in covered or closed trash containers. The trash containers shall not be left open and unattended overnight.</p>				
Cultural and Tribal Cultural Resources				
<p>MM CUL-1: Evaluate Age-Eligible Properties That Have Not Previously Been Evaluated Prior to Development Projects to Identify Historic Resources.</p> <p>As a condition of project approval for a development project proposed on a parcel within the Planning Area that includes a building, structure, or landscape more than 45 years old (typical age threshold applied by the California Office of Historic Preservation) and that has not previously been evaluated for potential historic significance, the Town shall require the project applicant shall retain a professional who meets the Secretary of the of the Interior's Professional Qualifications Standards for architectural history or history (as appropriate), to conduct an evaluation of historic significance and eligibility for listing on local, State, or national registers.</p>				

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<p>MM CUL-2: Avoidance or Minimization of Effects on Identified Historic Resources.</p> <p>The project applicant shall consult with Town staff to determine whether a project can be feasibly redesigned or revised to avoid significant adverse impacts on listed and identified eligible historic resource(s), including historic districts. If a local landmark or historic district is part of a proposed development, the project's Historic Application must be reviewed by the Town's Planning Commission. If avoidance of historic resource(s) is not feasible, where feasibility is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors," the project sponsor shall seek to reduce the effect on historic resource(s) to a less-than-significant level pursuant to CEQA Guidelines Section 15364. Projects that conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties are considered to have a less-than-significant effect on historic architectural resources.</p>				
<p>MM CUL-3: Conduct Cultural Resources Awareness Training.</p> <p>Prior to the start of any ground disturbance or construction activities, developers of projects within 50 feet of a creek or within 50 feet of recorded archaeological resources or tribal cultural resources in the Planning Area shall retain a qualified professional archaeologist to conduct cultural resource awareness training for construction personnel. This training shall include an overview of what cultural resources are and why they are important, archaeological terms (such as site, feature, deposit), project site history, types of cultural resources likely to be uncovered during excavation, laws that protect cultural resources, and the unanticipated discovery protocol per the PRC Section 21083.</p>				
Greenhouse Gas Emissions				
<p>MM GHG-1: Require implementation of BAAQMD-recommended BMPs.</p> <p>All applicants within the Planning Area shall require their contractors, as a condition of contract, to reduce construction-related GHG emissions by implementing BAAQMD's recommended best management practices, including (but not limited to) the following measures (based on BAAQMD's CEQA Guidelines):</p> <ul style="list-style-type: none"> • Ensure alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment make up at least 15 percent of the fleet. • Use local building materials of at least 10 percent (sourced from within 100 miles of the Planning Area). 				
<p>MM GHG-2: Update the Fairfax Climate Action Plan 2030.</p> <p>The Town will update its CAP to reach carbon neutrality by 2045, consistent with Executive Order B-55-18. The updated CAP shall include community emission forecasts that</p>				

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incorporate the changes in population and number of households anticipated under the Proposed Project.				



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