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166 Greenwood Avenue
San Rafael, CA 94901

September 6, 2020

San Rafael City Council
1400 Fifth Avenue
San Rafael, CA 94901

Re: Proposed Housing Policy Revisions

Honorable Mayor and Council Members,
Sustainable San Rafael welcomes the City's intention to incentivize more affordable housing, especially through revisions to San Rafael's inclusionary housing requirement. We offer the following comments to assist those efforts:

- Of the inclusionary housing scenarios proposed, Scenario 2 (15% onsite equivalent) seems the most promising. While encouraging more housing production by relaxing overall requirements, it also creates a path for more units affordable to moderate-income residents, the so-called "missing middle" in the housing market. The moderate-income option addresses a pressing need and makes developments more feasible by providing returns close to or in some cases exceeding market-rate units (Exhibit A).
- However, the in-lieu payment option in this scenario needs to be equivalent to 10% of total units (not 5%) in order to incentivize more affordable units being built more quickly on site—thereby furthering the basic purpose of inclusionary housing, which is to produce a more economically integrated San Rafael. For the same reason, the same 10% equivalency should apply to the options for offsite units and land conveyances. The staff report shows the 10% level of in-lieu payments is economically feasible (see Scenario 1). With the merger of current inclusionary categories into a single category over 15 units, the use of this standard is appropriate. Feasibility is the key metric here, not an imposed symmetry of monetary values that undercuts the public purposes of an economically integrated community and speedy delivery of housing supply.
- We also suggest allowing in-lieu payments for all 'fractional' on-site units, including those that are now 'rounded up.' This would provide the City with more funds to leverage State housing resources (to the extent these are likely to be available), while simplifying the complex calculations described on page 8 of the staff report.
- We urge the City to increase in-lieu payments for both housing and commercial developments to track current construction costs and better balance jobs and housing.

- Although we agree with the goal of incentivizing the start of construction of already approved developments in these difficult times, any retroactive ‘buyouts’ of affordable on-site units with in-lieu payments (or other sweeteners such as more moderate-income units) should be governed by Scenario 1, especially in cases where both the State and City have already granted sizable density bonuses with no increase in affordable units.
- While recognizing the need for more streamlined and predictable review processes, the need also remains for informed and public deliberation on matters of design quality in order to encourage development that fits and improves the city’s built environment. For these reasons, we recommend that the proposed Design Review Advisory Committee include a third member and conduct its meetings with customary public notice and participation.
- The dated material in Exhibit D shows the need for a comprehensive effort to integrate the city’s height bonuses with additional incentives for affordable housing and other public objectives, notably State housing density bonuses, the emerging Downtown Precise Plan and General Plan, potential use of Transferable Development Rights (TDRs) to support historic resources and shoreline resilience, and other current best practices. Decision makers and the public at least need a clear graphic indicating both base allowable heights and maximum allowable heights if all bonuses and incentives were applied to various districts.

Given the magnitude of changes proposed, the uncertainty of the economy, and the ongoing crisis of housing affordability and availability, we recommend that the effectiveness of these revisions in meeting housing goals be reevaluated annually, at least until the adoption of the City’s next Housing Element.

Finally, we suggest that the potential displacement of low-income families as existing properties are redeveloped be ameliorated by requiring higher relocation payments, longer notice provisions, and certificates of preference, so displaced tenants can rent the new affordable units built, whether on-site or with in-lieu funds.

Thank you for your close consideration.

Sincerely,

William Carney
Board President

September 4, 2020

Honorable Mayor Phillips and City Council members
City of San Rafael
1400 Fifth Ave. Room 203
San Rafael, CA. 94901

CITY COUNCIL Hearing for Tuesday, Sept 8

**Agenda Item 5.a: Measures to Facilitate Housing Development & Streamline Approvals -
Comments on proposed changes to the Design Review Board and Hillside Exception Approval**

Honorable Mayor Phillips and City Council members:

We are a group of civically engaged residents that live on a hillside in San Rafael that includes Fremont Rd, Upper Fremont Drive, and Marquard Ave (aka Moore Hill) in the West End neighborhood. We are concerned about changes proposed by the Community Development Department that, if adopted, will directly impact future development on our hillsides. We think our surrounding hillsides present significant challenges for the development of remaining infill lots, including 1 acre on Upper Fremont Drive and 5.5 acres on Dunand Court, as well as much smaller lots with slopes exceeding 80%. Your decision to reduce (aka “streamline”) the review of development on our hillsides in our community will have a major impact on the safety, liveability and enjoyment of our neighborhoods.

Parcels in this area were created over 100 years ago, in 1913, when the roads were dirt and San Francisco residents built summer cabins in the area. Over the years, many of the original lots have been combined to create reasonably sized parcels more amenable to hillside development. The streets are city-maintained, very narrow and steep with hair-pin turns; in fact, a portion of Upper Fremont Drive remains as a dirt road.

Fremont and Upper Fremont are both 2-way dead-end streets with an average width of 12 feet, but in places only 9 feet wide! City code requires a minimum width of 25’ for a public street (15.07.030). When 2 cars going opposite directions meet, someone must back-up onto private property in order for the cars to pass, sometimes perilously backing uphill. There are no Fire Truck turn-arounds on either road and Fed-Ex has refused to deliver packages to portions of the hill due to the inability to turn their trucks around. Residents’ property has been damaged from vehicles backing into railings, fences, garages, and other cars, parked on private property.

We appreciate the City having the foresight to adopt the Hillside Design Guidelines (HDG) which protect our hillsides and provide a template for sensible development. We think the current process has been successful and question whether any streamlining or shortening of the public process will serve the City’s goal of providing a safe, healthy, and liveable environment in partnership with the community (Mission Statement, FY 2019-20).

Summary of our positions:

1. Design Review Board (DRB) – We strongly SUPPORT public hearings by the full board for all hillside development

2. Downgrade the review and action on Hillside Exception requests from the City Council to the Planning Commission – We strongly OPPOSE the transfer of authority from the City Council to the Planning Commission to decide any Exceptions to Hillside development guidelines or standards.

Discussion:

1. We **SUPPORT** maintaining the full Design Review Board hearings for hillside development.

The Design Review Board:

- Provides a valuable service to the city.
- Has extensive experience and expertise that is difficult to replicate or replace if disbanded.
- Provides expertise with design on sites that are difficult to develop because of shape, size or topography.
- Has extensive experience resolving design challenges for hillside development.
- Improves compliance with the Hillside Design Guidelines and limits the need for Exceptions.
- Public hearings should be required for projects requesting Exceptions to the HDG.
- Promotes excellence in project design.
- Provides support and oversight to “fill in the gaps” for reduced staffing or inexperienced staff in the Planning Department.
- Provides interested residents and those directly impacted an opportunity to comment on the design.
- Proposed changes would not allow the public to submit comments about the design or in any way participate in the design review process.
- Design issues not adequately addressed by the DRB will be moved to the Planning Commission which holds less design expertise.
- Instead of saving time, it may increase time at the Planning Commission to resolve issues that were previously heard before the DRB.
- The City, as a whole, benefits from well designed buildings that, once built, will be there for the enjoyment and harmony of the community for many years to come.

The Council may want to differentiate between process changes for large commercial/residential projects in the downtown or Costco at Northgate that generate a large public response versus hillside development which usually involves smaller projects but needs extra attention to the design because of the City’s intention and adoption of additional design criteria to protect our hillsides.

We see significant value in maintaining the Design Review Board hearings for hillside development. In a recent application for a 3-story home on this hillside, the planning department chose to forgo the DRB hearing for a less formal review. The plans only showed one exterior door and code requires at least two means of egress; the limited design review did not discover this. We included this deficiency

in our comments but we didn't see the plans until after the design review. The Planning Commission will now need to address this design flaw. The planner suggested that the building department could swap a window out for a door but we feel all design issues should be addressed in the early stages of review, not after the project has been approved, sparing all parties wasted time, costs and frustration.

In another instance, a member of the Design Review Board discovered that the square footage of the lot was overstated by more than 1,000 sq feet on the plans. This is critical on hillside lots because both the lot square footage and slope are used to determine the natural state requirement (ie: amount of square footage to be left in a "natural state") which ultimately determines the size of the home that can be built. An overstatement of the lot size can result in a larger house than would otherwise be allowed.

2. We strongly **OPPOSE** the downgrading of Exception approval from the City Council to the Planning Commission for all projects subject to the Hillside Development standards for the following reasons:

- The current process has been in effect for almost 30 years and has been very effective at improving design quality in our hillside residential neighborhoods, as intended.
- The City Council further clarified their intention of requiring Exception approval by the City Council in 2010 by inserting the phrase "City Council Exception Required" in 14.12.040 (Ord. No. 1882).
- The proposed change undermines the Hillside Design Guidelines' original intent to require oversight by the City Council for any deviation from the objectives of Hillside Development standards.
- The proposed change would allow the Planning Commission "carte blanche" to approve any and all Exceptions without limitation on the number or extent of deviation from the standard.
- The Planning Commission doesn't have the gravitas to evaluate Exceptions that carry the potential to threaten public health and safety, e.g: an Exception to the parking requirement that results in road blockages and lack of access for fire and emergency vehicles.
- Reverses successful practices of the past, changing the character of hillside neighborhoods, and creating ill-intended negative impacts on residents.
- Shifts the burden from the developer justifying the Exception to an appellant proving why an Exception approved by the Planning Commission should be reversed.
- Creates a barrier to public participation by requiring payment of a \$350 filing fee to appeal a Planning Commission decision to the City Council for an Exception.
- Possible increase in the number of appeals filed before the City Council.
- What appears as a minor change could prove disastrous over time as developers pursue approval of hillside Exceptions more aggressively and with more frequency and acceptance, resulting in "process creep" where Exceptions become the "norm" and Hillside Development Standards are no longer relevant.
- With the paring down of the Design Review Board input and proposed downgrading of City Council's authority for approving Exceptions, the review and approval process of a hillside development is reduced to the Planning Commission, as the sole hearing body, or in some cases, the Zoning Administrator, reversing years of past practice involving a careful and thorough review and resulting in what we believe is an incomplete process.
- Decisions about Exceptions that impact Public Health and Safety are best made by the City Council, NOT the Planning Commission.

The original development of the Hillside Design Guidelines, in 1992, went through a rigorous development and review process. It received outstanding national recognition for protecting environmental resources and providing architectural guidelines to prevent massive, out-of-scale hillside development. The City received several outstanding planning awards from the American Planning Association and the Guidelines have served as a model for other communities across the country!

It was the intention of the City Council at the time of adoption of the Hillside Guidelines that City Council approval was required for all Exceptions. As Council member Joan Thayer said, “how could we carry out the objectives of the standards if all of the criteria is waivable.” Council member Cyr Miller said that “exceptions should be limited to those which are absolutely legally necessary and limit approval to the City Council.” Sheila Delimont, the assistant Planning Director at the time, said that “if it is approved by the City Council, it has to be superior to what the Guidelines require” and that exceptions would not be granted wholesale, but only after careful consideration by the Design Review Board and City Council.

The decision to require the City Council to hear exceptions was intentional. There was careful deliberation about what this meant and why it was important to require City Council approval of Exceptions. With enough flexibility in the guidelines, any exception to the guidelines should be based on a superior application of the guidelines, not a dismissal of them. That is reflected in the current municipal code, 14.12.040. B. which states the criteria for granting an exception:

“Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.”

In fact, the City Council strengthened the wording for Exceptions to Hillside development standards in 2010 (Ord. 1882) by adding the words “City Council Exception Required”.

Now is not the time to reverse course. Thorough Design Review and Exception approval by the City Council are critical to maintain the continued success of hillside development in San Rafael. A temporary economic slump is not a reason to loosen the standards. Once changed, it would be very difficult to reinstate after the economy recovers and the negative impacts on our neighborhoods are permanent.

The Planning Commission’s role is to make decisions on development and land use applications, not Public Safety. Many of the Exceptions to the Hillside development standards have a direct impact on Public Health and Safety and are best decided by the City Council. For example:

a. Exceptions to the natural state requirement or parking requirements can compromise Public Health and Safety by impacting emergency access or facilitating the spread of fire to neighboring structures.

On January 4, 2016, a house on Upper Fremont Drive caught fire and resulted in a total loss. To avoid the first hair-pin turn on Fremont Rd, a large Fire truck stopped on Fremont, just past Marquard, where fire fighters decided to physically carry heavy equipment 800 feet up the steep hill and down a dirt road to the burning house. According to the Fire log, at 1:42 am, it says “E54 and B52 are stuck unable to get out at this time.” The Chief officer car and a Suppression Engine were stuck and could not get off the hill. There is no fire truck turn-around on Upper Fremont, as required by the International Fire

Code which requires a turn-around on access roads in excess of 150 feet (Section D 103.4). Lack of a fire truck turn-around makes it impossible to maneuver emergency vehicles.

Fortunately, this disaster occurred during a cold rainstorm, in the dead of night. If not for the rain, it could have been much worse. Imagine if it had happened on a dry, windy, hot summer day during a rolling PG&E blackout. The burning house was far enough from other homes that flying embers were less likely to land on neighboring rooftops. Development that complies with the natural state requirement creates enough distance between hillside homes to prevent the quick spread of fire. If hillside parking standards are relaxed, illegally parked cars could block access for fire and emergency vehicles or block evacuation and trap residents during an emergency.

The Fire Marshall recently commented on access issues for a vacant lot on Upper Fremont:

“The Fire Department is unable to provide emergency fire or EMS services that meets NFPA Standard 1710 response time criteria because the existing public roadway does not accommodate fire apparatus vehicles and does not meet CFC provisions for Fire Apparatus Access Roads. San Rafael Fire vehicles are unable to maneuver to this property due to unusual topographical conditions, substandard roadway width, and hairpin type curves that do not meet CFC turning radius provisions. Additionally, there is no existing provision on Upper Fremont Drive to accommodate the turning around of fire apparatus as required by CFC Appendix D.”

There is no firetruck turnaround on Upper Fremont Drive or at the end of Fremont Road. These are both dead-end streets with only one way in, and one way out.

b. Comprehensive geotechnical and hydrological assessment is important to avoid building on unstable slopes and underground aquifers, causing damage to nearby properties or city streets.

This hillside has a history of landslides caused by unstable slopes and excessive runoff during the rainy season. Areas subject to slides or instability are a threat to public safety. Slippage and collapse, drainage and erosion can threaten neighboring properties.

Exceptions to Hillside development standards should remain the exception and not the norm. The City Council is the appropriate body to make the final determination whether an Exception will compromise public safety or subject the City to potential litigation in the future.

In closing, we request that you ask yourselves the following:

- What is the outcome you envision as a result of these "streamlining" proposals? Do you expect the outcome, in this case the approved development, to be the same?
- We understand the need to create an efficient system that works for everyone. However, by eliminating steps in the review process (taking short-cuts), are you really "improving" the process, or is the quality of the process being compromised?
- Whose interests are best served by eliminating public hearings in front of the Design Review Board and City Council (re Exceptions) for hillside developments)?
- Have you considered that eliminating these public hearings may be perceived as a lack of transparency, especially during COVID-19 restrictions.
- Finally, please explain how eliminating public hearings fulfills your Mission Statement (FY 2019-20) to work in partnership with the community to create safe, healthy and liveable environments.

We are pleased to receive support from our hillside neighbors in Gerstle Park, as noted below. We trust our comments will be taken seriously, and we appreciate your careful consideration.

Sincerely,

Victoria DeWitt, Fremont Rd
Fred P. Cushing, Upper Fremont
Michael Smith, Upper Fremont
Davis Perkins, Upper Fremont
Toni McIntyre, Marquard
Mikei Davis, Upper Fremont
Steve Thomson, Fremont Rd
Maren DeGraff, Fremont Rd
Zanette Johnson, PhD, Marquard
Crystal Wright, Upper Fremont
Tim Bowen, Fremont Rd

Amy and Joe Likover, Reservoir (Gerstle Park)
Tom Heinz, Clorinda (Gerstle Park)
Denise Van Horn, Clorinda (Gerstle Park)
Emese Wood, Gloria Dr (Gerstle Park)
Dolores Manuel, Estates Court (Gerstle Park)
Lori Davis, Upper Fremont
Jasmin Thomson, Fremont Rd
Adam DeGraff, Fremont Rd
Mark Abadi, Marquard
Rena Harel, Upper Fremont
Anne Bowen, Fremont Rd

cc: Paul Jensen, Community Development Director