

December 7, 2020

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

**CITYCOUNCIL Meeting for Monday, December 7, 2020**  
**Agenda Item 7.c. Housing Work Plan Update**

Honorable Mayor Colin and City Council members:

I would like to comment on several Policy items listed in the staff report for the Housing Work Plan Update, agenda item 7.c.:

**1. Policy 4: Reduce Requirements for Technical Studies**

In a staff report on “Challenges to Housing Development” prepared by Paul Jensen for the City Council on September 3, 2019, he suggested reducing the requirements for technical studies. He says in the report:

*“Issues such as geotechnical/soil conditions, biological resources, traffic, historic resources, and drainage are critical and integral to the design and review of the development project. Therefore, it is not expected that this practice and policy will significantly change. However, there are certain topic areas that trigger technical studies that are costly and often result in delays in the process; traffic and historic resources fall in this category.”*

He recommended 2 changes affecting historic resources and traffic methodologies. He did NOT represent to the City Council that there would be any changes to technical studies required for hillside development. In fact, he suggests these reports are critical to the design and review of these projects.

However, on 2 recent hillside projects in the West End neighborhood, one having a slope of ~60% and the other with ~40% slope and a history of landslides, planning staff is not following the requirements for geotechnical/hazardous soils reports, as I understand it, per the Hillside Residential Guidelines Manual, Appendix C Planning Department Procedures For Geotechnical/Hazardous Soils Review.

My concern is that the planning department may be applying this directive from the City Council to reduce or “minimize” reporting requirements for ALL technical studies, not just the ones identified in the staff report to the Council on September 3, 2019. Geotechnical/hazardous soil studies are important on steep hillside lots, especially those with a hazardous soil stability rating, to determine the safety and feasibility of a proposed development. To circumvent these studies may put the City at an increased liability risk. Written departmental procedures provide planning staff with clear guidance and result in consistent application within the department. An applicant should be given the same requirements, regardless of which planner they meet with. Allowing for individual planner discretion could give the appearance of preferential treatment to some developers.

## **2. Policy 12: Consider Changes to Design Review Board (DRB)**

This policy change has gotten considerable push-back from the community, for good reason. The Design Review Board provides an invaluable service for the City. We currently have a terrific group of professionals who volunteer their time to ensure that new development is attractive and is in harmony with our neighborhoods.

It's really important to have the full 5-member board review hillside developments at a public hearing, especially if the application includes an Exception to the Hillside Design Guidelines (HDG). The expertise of the DRB can direct the applicant to a better design that complies with the HDG and avoid Exceptions. I don't understand what is accomplished by reducing the board from 5 to 2 or 3 and I think there is value in having 5 members contribute different points of view. Ultimately, you end up with a better project with the full board.

The City Council should seriously consider postponing the consideration of any changes to the DRB until after the COVID restrictions are lifted and the Planning department is fully staffed and trained. The current DRB is a very stable, committed group of professionals, with a long history of excellent service to the community. The Planning Department has recently lost several employees and is really operating with minimal staff. The Planning Commission has several new members, including a Design professional with DRB experience, but no licensed architects. I think the current DRB serves a valuable service which cannot be replaced or substituted by the Planning Department or the Planning Commission at this time. Please consider postponing any changes to the DRB; I don't think we need any additional disruptions to our review process at this time.

At a recent hearing with the DRB regarding possible changes, planning staff expressed concerns over the amount of time required to prepare a staff report for a DRB public hearing. With staffing shortages in the Planning Department, I can understand staff wanting to reduce their workload, but it's not a good reason to eliminate DRB hearings.

## **3. Policy 15: Raise Appeal Fee and/or Change Appeal Process**

I think the current appeal fees of \$300/\$350 are high enough. The West End neighborhood is not an affluent neighborhood and the current appeal fee is a significant amount to pay for most of our residents and can effectively discourage public participation. Filing an appeal also takes a considerable amount of time and organization and most residents are not interested in filing what would be considered a "frivolous" appeal. I encourage you NOT to raise the appeal fees.

## **4. New Policy: Minor Streamlining Amendments –**

**Downgrading approval of Exceptions for Hillside from the City Council to the Planning Commission** (align the Hillside Exception process):

I oppose the proposed downgrading of the Hillside Exception approval process from the City Council to the Planning Commission because it will weaken compliance with the Hillside Guidelines and compromise public participation. Currently, a project with an Exception to the Hillside Design Guidelines will go to the City Council for approval. This proposal changes the process by ADDING an appeal to the City Council to hear a Hillside Exception, shifting the burden onto the public to prove

why the Exception should be denied. In addition, this creates a barrier to public participation by requiring payment of an appeal fee where no fee is currently required for City Council approval.

The current process has been in place almost 30 years and it works. The requirement for City Council approval of an Exception to Hillside standards serves to discourage exceptions and promote compliance. This motivates the developer to comply with the Hillside Guidelines. The Planning Department discourages Exceptions precisely because of the extra step required for City Council approval. The Hillside review process works exactly as intended. Changing this process will result in more Exceptions and will undermine the Hillside standards meant to protect our hillsides and public safety.

The City Council's job is to protect public health and safety and the Council should be in front of this responsibility by maintaining review of Hillside Exceptions that could threaten the public's safety, not shift that burden to the Public to file an appeal and pay \$350 to bring the issue to the City Council's attention. The City Council is the right body to assess and address health and safety impacts and protect the public. I urge you to maintain the current process requiring City Council approval of Exceptions to Hillside development standards.

Please review the attached letters which were submitted for previous meetings. *Thank you for your consideration of these comments.*

Sincerely,

Victoria DeWitt  
West End neighborhood resident

att: 1) November 2, 2020 letter to the Design Review Board  
2) September 4, 2020 letter to the City Council, signed by several residents from the West End and Gerstle Park neighborhoods

November 2, 2020

Design Review Board members  
City of San Rafael  
1400 Fifth Ave  
San Rafael, CA. 94901

Dear Board members:

I support the decision to continue reviewing projects with the full 5-member Design Review Board (DRB) and noticed public hearings; I do NOT support reducing the number of board members to form a Design Review Advisory Committee (DRAC). I think it would be a mistake to disband this group of seasoned professionals. Where the Planning Commission and Planning Department have both had recent turnover and where the economic fall-out from COVID may have further economic impacts on City staffing, this committed group of volunteers provides a valuable and stable sounding board for design review.

I don't think the Planning Department has thoroughly explained the reasoning for reducing the DRB from 5 members to 2 or 3 members. The suggestion to reduce board members and hearing protocol is based on 40 people that attended a workshop where 81%, or only 32 people supported making changes to the Design Review Board in order to "streamline project review". This is hardly a consensus, if you define consensus as being wide-spread agreement among community members. Do we even know if the participants were San Rafael residents or could anyone attend who has an interest in development policies within the City?

I would like to hear the Design Review Board members' suggestions on how project review could be "streamlined" or improved. Looking at the scheduled DRB meetings for 2019, 18 occurred as scheduled and 6 meetings were cancelled. Many of these hearings only had 1 item on the agenda so it doesn't appear that there was a bottleneck of projects unable to get scheduled for design review.

The projects reviewed by the DRB in 2019 included 2 with 10 units or less, 3 with more than 10 units, 2 downtown multi-use projects, 2 hotels, 1 new Single Family Dwelling (SFD), 2 new hillside SFDs, 1 Church addition, 1 gas station, 1 commercial facade upgrade, 2 Fire Stations, 1 Assisted Living facility, 1 conceptual review, and 1 residential garage enlargement, for a total of 20 projects. 3 projects were scheduled twice on the DRB calendar, including Northgate Walk (136 units), 104 Shaver (6-7 units), and the commercial facade upgrade for Northgate III which required an exception. It makes good design sense that some projects would come back for a second review; only 15% (3/20) of projects were reviewed a second time which indicates that the DRB was effective and efficient. I would suggest the Design Review Board consider these projects they reviewed in 2019 and decide which ones or types of projects, IF ANY, may be amenable to the proposed DRAC pilot process.

The pilot program, DRAC, was used to review the design for a new hillside SFD at 38 Upper Fremont. Neighborhood residents were not informed about the change in process until after the DRAC review. Plans reviewed by the DRAC were not provided to the West End Neighborhood Association (WENA) until after the DRAC meeting so we were unable to comment on these plans but WENA had previously submitted 6 comment letters for this project, including comments about the design. We weren't offered

any description or result of the DRAC meeting and, apparently, WENA's previous comments about the design were not considered.

No story pole plan was provided as initially required and no story poles were installed. When we asked about having the story poles installed for the benefit of the residents, we were told to talk directly with the owner of the property about it. Not only were residents not included in the design review process, we were not provided the visual benefit of having story poles installed, as is customary.

Based on this experience with DRAC, I would NOT recommend it for other hillside projects. I would support the full 5-member Design Review Board and noticed public hearing to review all applications subject to the Hillside Design Guidelines (HDG) and especially those requesting an Exception. Projects subject to the Hillside Design Guidelines are best reviewed by the full DRB because of the additional design requirements applied to hillside development. The suggestion to include "Hillside Exceptions" for DRAC review is ill-advised. (see Staff Report "4. Types of project subject to Review by the DRAC", pg 4)

The City has a long history of discouraging Exceptions to the Hillside Guidelines and requires approval by the City Council. Exceptions to the Hillside Guidelines could be controversial and are best reviewed by the full 5-member board at a noticed public hearing. The DRAC type of review is NOT appropriate for the review of a Hillside development, especially one that requires an Exception approval.


Looking at the big picture, an important part of design review is public participation where the review and discussion of the project design is transparent and open to input from the public, at the beginning of the process. It's important to consider that any reduction or limitation of design review may result in public frustration and the filing of an appeal before the City Council, at the end of the process, delaying approval and negating any advantage in attempts to "streamline" the review process.

Is it possible that developer frustration with the approval process has more to do with staffing levels and less to do with the Design Review process or public participation? By downgrading the review process to a DRAC are you really "improving" the process or is the quality of the process being compromised?

I have attached a letter dated September 4, 2020, addressed to the Mayor and City Council members, that supports public hearings by the full Design Review Board for all hillside development. This letter is signed and supported by several hillside neighbors in the Gerstle Park and West End neighborhoods.

Thank you for your consideration of these comments.

Sincerely,

Victoria DeWitt  
  
San Rafael, CA

att: Letter to Mayor and City Council dated September 4, 2020

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

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**

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- 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



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P.O. Box 9633

San Rafael CA 94912

[www.MarinMEHC.org](http://www.MarinMEHC.org)

[MarinMEHC@gmail.com](mailto:MarinMEHC@gmail.com)

December 2, 2020

San Rafael City Council  
1400 Fifth Ave., Rm. 209  
San Rafael, CA 94901

Dear Mayor and Councilmembers:

Marin Environmental Housing Collaborative (MEHC) is a consortium of advocates building support for projects and policies that advance affordable housing as well as environmental integrity and social justice. We are writing to urge you to reject the proposed ordinance amendment that would reduce the inclusionary housing requirement in the city's zoning ordinance from the current rate of 20% down to 10%. MEHC agrees that the ordinance should be amended to assure financial feasibility. However, analysis in the September 8, 2020 report to the shows that a 15% inclusionary rate is financially feasible in most cases, and that a 15% will pencil in all scenarios with minor adjustments to the formula.

Further, we strongly object to the proposals to encourage payment of in-lieu fees, which will allow project sponsors to reject lower income households, thereby reinforcing economic inequity, systemic racism, and housing discrimination in the most segregated county in the Bay Area.

San Rafael is failing to meet its housing goals and should maximize its effort to achieve its RHNA allocation, especially for affordable housing. The city has met only 2% of its very low-income goal, 53% of the low-income goal, 6.6% of the moderate goal, and 46% of the market rate goal. The proposed inclusionary rate of 10% not only cuts the current formula in half, it also eliminates the requirement to include any very low-income units, *the category in which San Rafael has the least success and the need is greatest*. In contrast, the 15% formula includes very low-income units.

The September 8, 2020 staff report concludes (see Tables 5 and 6, on pages 6 and 7 of the staff report) that a 15% inclusionary rate is financially feasible, yielding better than 15% profits and supporting very low-, low-, and moderate-income units in three out of four scenarios. The one exception is mid-rise projects supporting very low and or low-income inclusionary units. We believe the inclusionary formula for this scenario can be effectively adjusted by changing the percentage inclusionary rate or the income mix, such as substituting moderate rate units for low-income units.

Payment of in-lieu fees should be allowed only for exceptional circumstances. Paying a fee in-lieu of providing housing on site effectively excludes lower income households who would otherwise have the opportunity to live in housing they could afford. There is no legitimate reason for a project to exclude lower income households from a project when the inclusionary rate allows the sponsor a reasonable profit. As you know, in Marin minority persons are more likely to live in lower income households than white people. Allowing project sponsors to pay an in-lieu fee, rather than provide affordable housing, continues the pattern of economic exclusion, whether intentional or not.

The history of in-lieu fees is that they sit in the Affordable Housing Fund for extended periods – years in some cases – and lose value. In the meantime, needy families could have been occupying the affordable units that did not get built.

The contention that in-lieu fees can be leveraged to support affordable housing projects is not supported in Marin. To our knowledge, no affordable housing project that has secured zoning approvals in Marin has failed to move forward due to a lack of funds. Further, the Affordable Housing Impact Fee, paid by non-residential projects, remains as a solid resource for the Affordable Housing Fund. There is no need to dilute the effort to offer housing opportunity throughout the community in order to bolster the Affordable Housing Fund.

Inclusionary housing zoning programs were first developed in the late 60's and early 70's for two purposes: to provide affordable housing and to exclude discrimination in market rate projects. San Rafael cannot meet its affordable housing goals by drastically reducing the inclusionary formula. As part of the most segregated county in the Bay Area, San Rafael should not allow project sponsors the option to reduce the city's commitment to include lower income and minority households in every neighborhood. We strongly urge you to adopt a 15% inclusionary formula and to adopt policies minimizing the in-lieu fee option.

Sincerely,

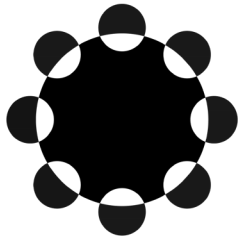
Respectfully,



David Levin  
Co-Chair



Sami Mericle  
Co-Chair



## MARIN ORGANIZING COMMITTEE (MOC)

December 3, 2020

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

Dear Councilmembers:

The Marin Organizing Committee (MOC) is a broad-based member organization of 23 Marin County institutions that was founded in 2009. Our network of institutions include faith-based, non-profits, such as Legal Aid of Marin, Marin Community Clinics, and civic organizations.

We are writing concerning the City of San Rafael's consideration of proposed changes to the San Rafael Municipal Code designed to encourage development and streamline approval of housing. Specifically, we wish to address the proposed changes to the Inclusionary Housing Requirements and Density Bonus.

Inclusionary housing zoning programs were first developed in the late 60's and early 70's for two purposes: (1) to provide affordable housing and (2) to exclude discrimination in market rate projects. Historically, affordable housing projects were part of the social safety net, but in Marin County the definition of "low income" for a family of four requires earning **\$117,400** a year, and "very low income" is considered **\$73,300**. Therefore, more and more people who are middle income wage earners are struggling in San Rafael and Marin County to afford a decent place to live.

The City of San Rafael has had ordinances related to affordable housing requirements since the late 1980's. In 2010 the City of San Rafael adopted an affordable housing requirement (inclusionary housing). This ordinance states that affordable housing units are required in new housing developments. Specifically, "for projects containing 2-10 housing units the inclusionary requirement is 10%. For projects containing 11-20 housing units, the requirement is 15%, and for projects with 21 or more units, the requirement is 20%." It is also important to note that these new affordable housing units must remain affordable for the longest feasible time or at least for 55 years.

In January and August of 2020, the City staff presented an informational report and recommendations to the City Council and to the Planning Commission. City of San Rafael proposes to amend its long-standing policy of requiring new residential developments to offer 20% of the new units at prices affordable to very-low, low, and moderate-income households. A study commissioned by the City concludes that the 20% rate makes projects infeasible. The study finds that certain mid-rise projects would not be feasible with a 15% inclusionary requirement. These projects would also “pencil” at the 15% rate with adjustments to the mix of affordable units. The Planning Commission has endorsed a draft policy that would set the inclusionary rate at 10% with an option to pay a fee in lieu of building half of the required affordable housing units.

MOC advocates that San Rafael set the inclusionary rate at 15% for most projects for the following reasons:

1. San Rafael is failing to meet its housing goals and should maximize its effort to achieve its RHNA allocation, especially for affordable housing. The city has met only 2% of its very low-income goal, 53% of the low-income goal, 6.6% of the moderate goal, and 46% of the market rate goal.
2. The proposed inclusionary rate of 10% not only cuts the current formula in half, it also eliminates the requirement to include any very low-income units, the category in which San Rafael has the least success and the need is greatest.
3. The September 8, 2020 staff report concludes (Tables 5 and 6, on pages 6 and 7) that a 15% inclusionary rate is financially feasible, yielding better than 15% profits and supporting very low-, low-, and moderate-income units in three out of four scenarios. The one exception is mid-rise projects supporting very low and or low-income inclusionary units. The inclusionary formula for this scenario can be effectively adjusted by changing the percentage inclusionary rate or the income mix (such as substituting moderate rate units for low-income units).
4. Payment of in-lieu fees should be allowed only for exceptional circumstances. We have the following concerns:
  - A. Paying a fee in-lieu of providing housing on site effectively excludes lower income households who would otherwise have the opportunity to live in housing they could afford. There is no legitimate reason for a project sponsor to exclude lower income households from a project when the inclusionary rate allows the sponsor a reasonable profit. Allowing the project sponsor to pay an in-lieu fee continues the pattern of economic exclusion, whether intentional or not.
  - B. The history of in-lieu fees is that they sit in the Affordable Housing Fund for extended periods – years in some cases – and lose value. In the meantime, needy families or individuals could have been occupying the affordable units that did not get built.
  - C. The contention that in-lieu fees can be leveraged to support affordable housing projects is not supported in Marin. To our knowledge, no affordable housing project that has secured zoning approvals in Marin has failed to move forward due to a lack of funds.

- D. The affordable housing impact fee, paid by non-residential projects, remains as a solid resource for the Affordable Housing Fund.

The staff report states that unspecified number of approved projects have not been built, and that project sponsors claim that the projects are not financially feasible, due to the inclusionary requirement. MOC would like to request that the City of San Rafael provide information on all of these projects to allow for full transparency to understand if this is indeed the case.

When developers are granted the right to do business in this community, they also gain other benefits: (1) additional height or density; (2) reduced parking requirements; (3) fast-tracked processing; (4) fee waivers or tax benefits. Developers of apartment buildings are not in a “zero sum” game. “Inclusionary housing is a value exchange between the local jurisdiction and developers. Viewed this way it is a fair deal for developers.” (Sasha Hauswald, Grounded Solutions Network, 2017)

While we understand the rationale behind modifying the various existing San Rafael regulations, the City should not allow project sponsors the option of reducing the inclusionary housing ordinance by such a large percentage. What makes the city of San Rafael special is its diversity, and a continued commitment to include lower income and minority households in every neighborhood. Setting the inclusionary rate at 15% is the best option.

Sincerely,  
Judith Bloomberg  
Congregation Rodef Sholom

Jeff Bialik  
Marin Interfaith Council