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**MARIN COUNTY
CLERK**

Planning Division
Marin County
3501 Civic Center Drive
San Rafael, CA

Re: Project ID No.: P4134
Notice Pursuant To Government Code Section 65589.5(h)(6) Of County's
Failure To Cease A Course Of Conduct Undertaken For An Unlawful
Purpose, Effectively Disapproving Project Under Housing Accountability Act
For Housing Development Project Proposed On Housing Element Site at
1501 Lucas Valley Road

To Whom It May Concern:

This firm represents 330 Land Company and Lucas Valley Road, LLC (collectively, "Applicant") in their housing development project application to construct 36 homes at 1501 Lucas Valley Road in the County ("Project"). The Project is proposed on a housing inventory site included in the County's 2023 Housing Element Update ("HEU") and would provide critically needed market rate and affordable homes to the community. As you know, the County's processing and consideration of the Project is subject to the mandatory pro-housing provisions in Senate Bill 330 ("SB 330"), the Housing Accountability Act ("HAA", Gov. Code § 65589.5), and the Density Bonus Law ("DBL", Gov. Code § 65915.).

This letter is sent pursuant to HAA subdivision (h)(6)(D) and notifies the County that in its delayed processing of the Project application, the County has proceeded in a course of conduct undertaken for an improper purpose – to harass, to cause unnecessary delay, and add excessive and unnecessary cost to the Project - in a manner that violates state housing law. The Applicant is disappointed and frustrated that County staff do not take seriously their obligation to follow binding state housing law in processing the Project on a site *it represented to HCD* as appropriate and available to meet its regional housing needs allocation ("RHNA"). (Gov. Code § 65583(a)(3).) It is not at all surprising, when viewing staff's conduct with respect to the Project, that the County still finds itself in one of the most severe and pernicious housing supply crises in the state. If continued, the County's conduct would expose the County to costly litigation that it would no doubt lose and then be obligated to pay the Applicant's attorney's fees and potential penalties.

When taking into account an available 35 percent density bonus, incentives/concessions, and waivers under the DBL, the Project is consistent with the type of residential development assumed for the Project site in the HEU and corresponding Countywide Plan and zoning updates. Despite this, the County has processed the Project application at a glacial pace, *for more than two years*, with no apparent end in sight. The Project's proposed use and density was already studied in detail with respect to the Project site in the comprehensive environmental impact report ("EIR") prepared for the HEU. The County has no excuse to further delay in its modification of the Project's problematic HCR approval conditions and finalizing the Project's vesting tentative map application and environmental review document so that it may schedule a Planning Commission hearing to consider the Project on the merits.

Pursuant to Government Code section 65589.5(h)(6)(D), we hereby notify the County of its unlawful conduct constituting unlawful disapproval of the Project:

I. **The County Continues To Insist On A Scope Of Environmental Review Far Beyond That Which Is Appropriate Under CEQA.**

The County has now provided the Applicant with two proposals from a single consultant, Sicular Environmental Consultants ("Sicular"), to complete environmental review of the Project pursuant to CEQA Guidelines section 15183 streamlining, which the Project no doubt qualifies for. Unlike the vast majority of cities and counties in California, which allow for a competitive proposal process, County staff is demanding that the Applicant hire staff's single preferred environmental consultant.

Both Sicular proposals include work far exceeding that authorized by CEQA Guideline 15183 and - in a reflection of the lack of a competitive proposal process - significantly exceed the costs and timelines required to complete Guideline 15183 checklists for projects of similar size. These include an estimated total of 8-12 months of review time and a cost of \$355,760 to \$427,792 to complete. These excessive costs and timelines are more typically associated with full EIRS for larger and more complex projects. Moreover, despite the fact that the Applicant requested the County to solicit additional proposals, as required by subpart (H) of Appendix A of the County's Environmental Impact Review Guidelines, County staff have thus far failed to do so.

Sicular's proposal acknowledges that - although not at all required by CEQA Guidelines section 15183 - Sicular would circulate the Project's Guideline 15183 streamlining checklist for public comment and review, with approximately 60 hours of time dedicated to responding to such public comments. Nothing in CEQA Guidelines section 15183 authorizes the lengthy delays and increased costs of this type of public comment, review, and response typically associated with a full Environmental Impact Report ("EIR"). The appropriate time for this level of public comment was when the County prepared the comprehensive EIR associated with its 2023 Housing Element Update. Several of the analyses proposed by Sicular also appear to expand beyond what is actually necessary to examine "effects on the environment which are peculiar

to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report...” (Public Res. Code, § 21083.3.) We remind the County that Section 15183 streamlining is a statutory exemption, therefore, unlike categorical exemptions, it must *not be* narrowly construed, but rather must be broadly construed to achieve its statutory purpose of exempting covered actions from CEQA review.¹

County staff have also unlawfully refused to process the Project pursuant to the recently enacted AB 130 infill exemption and SB 131 “near miss” streamlining. As we previously communicated, the Project meets the conditions necessary to qualify for the AB 130 infill exemption but for a single condition. As a result, SB 131 further strictly limits environmental review of the Project, providing that the application of CEQA “to the approval of the proposed housing development project *shall be limited to the effects upon the environment that are caused solely by that single condition.*” (PRC, § 21080.1(a)(1) (emph. added.) Like Section 15183 streamlining, AB 130 and SB 131 are statutory exemptions which shall be broadly construed to achieve their statutory purpose.

In order to cease violating state housing and environmental laws, the County must (1) provide the Applicant with a scope of work to complete the Project’s 15183 checklist that actually reflects the level of environmental review that the statutory exemption contemplates and authorizes, the County should solicit proposals from additional consultants as part of this process, and (2) determine that the Project is also partially exempt pursuant to AB 130 / SB 131.

II. **County Staff Continue To Assert That The Project Must Incorporate Unlawful Conditions Of Approval Associated With the Project’s Housing Sites Compliance Review.**

On May 10, 2025, County staff issued the Project’s Housing Sites Compliance Review approval. Without any prior notification or discussion with the Applicant, the HCR approval effectively denies the Project application by refusing to grant waivers requested by the Applicant to reduce local street width and sidewalk standards that far exceed those required by the state law or the fire code.

¹ E.g., *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 386-387 [observing it would be incorrect to assume a harmony exists between CEQA’s general purposes and those of its statutory exemptions, which, on the contrary, reflect a variety of policy goals promoting interests deemed important enough to justify foregoing the benefits of CEQA review; further stating, in upholding application of CEQA’s emergency exemption, that courts “do not balance the policies served by the statutory exemptions against the goal of environmental protection” and “the self-evident purpose of the exemption is to provide an escape from the EIR requirement despite a project’s clear, significant impact”].

Indeed, the Project's proposed street width and sidewalk configurations are the same or wider than those included in multiple recently approved residential projects throughout Northern California.² Moreover, as we already explained in prior letters, multiple recent academic studies demonstrate that narrower traffic lanes, like those proposed by the Project are safer for pedestrians, bikes, and vehicles. These studies recognize that roadways as narrow as twelve to twenty feet wide encourage slower traffic speeds and reduce the likelihood of vehicle, pedestrian, or bike collisions.³

There is no basis for the County to deny the Project's requested waivers of the County's roadway development standards and the County cannot point to purported inconsistencies with these standards to deny the Project. Because the County has fallen short of meeting its burden to identify a "quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" a refusal to grant the Applicant's requested waivers would result in a clear violation of the HAA and DBL. (*See Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App 5th 755, 775.)

Although not obligated to do so under state law, the Applicant has worked with the County on a modified Project design that would add additional sidewalks, so that the Project would include sidewalks on both sides of internal project streets. These

² As we have already explained to the County, the 350 Merrydale housing development project in San Rafael was recently approved with a request to reduce the private street pavement width to 20 feet with a single sidewalk. By way of further illustration, members of the applicant team have also worked on projects involving the same or narrower roadway widths for: (1) the Veranda project in Fremont (24' paved roadway width), (2) The Castro Valley Boulevard Commons in Castro Valley (24' paved roadway width), and (3) the Hercules Waterfront District Project in Hercules (20' to 26' paved roadway width).

³ See e.g. A National Investigation on the Impacts of Lane Width on Traffic Safety, November 2023, Johns Hopkins University, at p. 8 <https://narrowlanes.americanhealth.jhu.edu/report/JHU-2023-Narrowing-Travel-Lanes-Report.pdf> [noting that AASHTO guidelines recommend a minimum lane width of 12 feet for high-speed and high-volume roadways and a minimum of 10-feet to 11-feet for urban areas with heavy pedestrian traffic. Also noting that narrowing travel lanes in areas with lower speed classes such as 30-35 mph "is associated with significantly lower numbers of non-intersection traffic crashes and could actually contribute to improvements in safety."]; see also Moving Beyond Prevailing Street Design Standards: Assessing Legal and Liability Barriers to More Efficient Street Design and Function, the Center for Law, Energy and The Environment at the Berkeley Law School, 2011, https://www.law.berkeley.edu/files/4.1_CREC_codes_and_standards.pdf; and see Yield Roadway – Rural Design Guide, Small Town and Rural Design Guide, <https://ruraldesignguide.com/mixed-traffic/yield-roadway>, ["the paved two-way travel lane should be narrow to encourage slow travel speeds and require courtesy yielding when vehicles traveling in opposite directions meet... total traveled way width may vary from 12 ft (3.6 m) – 20 ft (6.0)."]; see also National Association of City Transportation Officials, Urban Streets Design Guide, [Urban Street Design Guide - NACTO](#), [recommending 11 foot wide travel lanes].

modifications only further ensure that the Project's proposed design would in no way result in the type of rare significant and unavoidable health and safety impacts that would justify denial of the Applicant's requested waivers under the DBL. Unfortunately, County staff still has not identified a path to incorporate these changes into the Project's design without undergoing a lengthy and costly application resubmittal process.

The County also continues to assume that the Project's 51.6-acre remainder parcel would be designated as private open space. As we already expressed, nothing in the County General Plan, zoning, or subdivision standards authorizes this condition. There is similarly no basis under state or federal law justifying such condition as it lacks the requisite rough proportionality and essential nexus in relation to project impacts to be constitutionally imposed. (*See Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825, 834; *see also Dolan v. City of Tigard* (1994) 512 U.S. 374.)

County staff must reverse this course of conduct by accepting the Applicant's modified Project design, granting the Applicant's requested waivers, and amending the Project's HCR approval without requiring the application to undergo a costly and time-consuming re-application process.

III. **Conclusion.**

For the above reasons and as explained in multiple letters provided by the Applicant, County staff must immediately reverse its unlawful course of conduct and comply with state housing law. County staff must cease any further unwarranted delays, demands that the Applicant incur excessive and unnecessary costs, remove the unlawful conditions incorporated in the Project's HCR approvals, complete the *appropriate* level of environmental review, and schedule the Project's vesting tentative map for a hearing before the Planning Commission.

Very truly yours,

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Cc:

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