

1 **Public Comment on Draft Bay Area Plan (State Clearinghouse No. 2012062029):**
2 **by Robert Silvestri, 73 Surrey Ave. Mill Valley, CA 94941; May 10, 2013: Housing**
3 **Needs Not Addressed by Plan Bay Area**
4

5 This letter is submitted as public comment on the Draft Bay Area Plan
6 (State Clearinghouse No. 2012062029) regarding high density, multifamily and
7 other housing types.

8 **INTRODUCTION**

9 Per Senate Bill 375 ("SB375"), a statutory requirement of the Sustainable
10 Communities Strategy ("SCS") and Plan Bay Area and its Alternatives is to *"house*
11 *the region's projected growth by income level (very-low, low, moderate, above-*
12 *moderate) without displacing current low-income residents in addition to*
13 *providing adequate housing for anticipated regional growth."* The Sustainable
14 Communities Strategy requires all Metropolitan Planning Organizations (MPOs) to
15 create transportation oriented development plans as a means of achieving those
16 goals. However, a review of the Draft Bay Area Plan and the Plan Alternatives (the
17 "Plan") and the Draft Environmental Impact Report (the "DEIR") for the proposed
18 Plan indicates that the Plan fails to adequately establish reasonably proof of its
19 efficacy in encouraging the development of affordable housing, and in particular
20 the types of affordable housing and community development most needed in
21 Marin County and other similar areas in the region covered by the Plan. In fact the
22 Plan's proposals and implementation, as conceived, will work against achieving
23 the goals of SB375.

24 **1 – The Plan Will Not Address Our Actual Affordable Housing Needs in Marin**
25 **County or Similar Bay Area Cities and Counties.**

26 As written, the Plan will contribute to the continuing loss of existing
27 affordable housing and it will discourage and possibly preclude the types of
28 affordable housing and community development that are actually most needed in

Marin County and by most of the Bay Area cities and counties outside of the urban core areas (San Francisco, San Jose, Oakland). Please note the following comments to support this conclusion:

The Plan essentially promotes only one affordable housing and growth solution: high density, transit oriented, multifamily development. However, the Plan fails to address, consider or even acknowledge other types of housing or our real affordable housing needs in areas like Marin. Because of this, the Plan is likely to have a counterproductive effect on that type of development needed most in most ex-urban, suburban and rural communities covered by the Bay Area Plan.

The analysis that follows will show that rather than simply counting units, as the RHNA does, the Plan needs to analyze and facilitate the types of housing that are actually needed in each prototypical community in order to achieve its goals. For the purposes of this comment “prototypical community” is defined as each different type of community development pattern that is found in the nine county Bay Area, which will be impacted by the Plan.

Definitions used in this analysis:

“Urban” (San Francisco, San Jose, Oakland): Areas that have fully developed high density housing and public transportation systems in place.

“Ex-urban” (Walnut Creek, Burlingame, Berkeley): Areas that have a mix of developed high density housing and some significant public transportation systems in place (e.g. BART).

“Suburban” (Marin County cities, Danville, Saratoga): Areas that do not have significant high density housing development or significant public transportation systems in place and are unlikely to have significant public transportation systems in place in the foreseeable future.

“Rural” (West Marin and many parts of Napa and Sonoma counties): Areas that have no high density housing development or significant public transportation systems in place and will not have significant public transportation systems in place in the foreseeable future.

Marin County Suburban / Rural Example:

Examination of the affordable housing needs of Marin County cities and its unincorporated areas results in a list of housing types that are not recognized or acknowledged by the Plan. Most of the actual affordable housing “opportunity sites” in small Marin communities are found in smaller, infill locations and not in larger land parcels located near our major freeway, Route 101 (the only actual transportation corridor in Marin County). This creates a disconnect between the solutions envisioned by the Plan and the reality that our county and cities have to work with when addressing the Regional Housing Needs Assessment quotas as prescribed in their Housing Elements. Infill and mixed-use, infill development opportunities will not benefit in any way from the methods or transportation oriented investments prescribed by the Plan.

Furthermore, in most Marin communities, social, economic and demographic trends show that there are significant under-served populations that need different types of affordable housing than the high density, multifamily housing contemplated by the Plan. However, every one of the types of housing described hereunder and the low income residents who need them will not benefit from any types of support, subsidy or investment noted in the Plan.

The types of housing needed in Marin County that are not supported or promoted by the Plan include:

- Low income housing integrated into existing communities: These would predominately include, small scaled, low density, mixed use, retail and

residential, and stand-alone duplex, triplex and fourplex housing. These represent the vast majority of housing growth opportunity sites in Marin.

- Housing for the elderly and assisted living facilities: A rapidly growing need, these would include a variety of types that are either not addressed by the Plan or not recognized by RHNA as qualifying units.
- Housing for people with disabilities and special medical needs: This is a growing need that remains under-served. In light of well accepted data on health and pollution, it is not recommended that this demographic group live in proximity to major highways or other sources of air pollution. So even if multifamily housing was developed according to the guidelines on the Plan, it would be putting this population in harm's way. Please also note that this correlation between proximity to freeways or major rails lines (e.g. Marin's SMART train) also applies to anyone suffering from emphysema, asthma, heart conditions, cancer or other serious illnesses, and there is growing evidence that there is also a correlation with instances of autism.
- Homeless shelters and abused women's safe houses: This is another area where housing need is increasing that is under-served and largely unrecognized by the RHNA quota system since almost all shelters are communal living. This is an instance where Housing Element law and the RHNA quota system are in conflict with SB375, a conflict that remains unresolved in the Plan. In addition, shelters and safe house facilities are most advantageously located within existing communities, which in the case of Marin means they will not be in direct proximity to Highway 101 or significant public transportation, and not best suited for transportation oriented development.

- 105 • Live/work opportunities such as lofts and cooperative housing: There is an
106 increasing demand and need for live / work housing opportunities and
107 housing for those choosing or requiring alternative lifestyles. These units
108 are typically only partially or sparsely finished and therefore by definition
109 generally more affordable. The opportunities for these types of projects are
110 typically on marginal land near suburban downtowns where there is little
111 public transportation besides occasional bus routes.

- 112 • Co-housing: Co-housing may be one of the biggest emerging trends in
113 housing that is likely to impact the types of housing built over the next 20
114 years, particularly in places like Marin County. In these situations residents
115 design and/or operate their own housing solutions (typically a hybrid of
116 multifamily, townhome and zero lot, single family homes) and share
117 common grounds, supporting recreational facilities or gardens, and often
118 communal cooking / kitchens and dining areas. It is also typically moderate
119 density development. Ownership is either fee simple or a form of
120 condominium or both. This very important housing type has significant
121 advantages because it frees up larger existing housing (as older residents
122 downsize and move to smaller co-housing), it conserves land use, reducing
123 auto use for socializing, and is generally less energy intensive. However,
124 under RHNA and therefore the Plan, the way units are “counted” against
125 the RHNA quota, a 35 unit project with a communal kitchen would be
126 counted as one living unit of housing. This would discourage any city from
127 assisting in this type of development. In addition, these kinds of projects
128 are almost always in suburban or rural locations which are preferred by the
129 owner/developers. The Plan, as it is written, with its emphasis on transit
130 oriented development, actually discourages this important housing trend.
131 Some examples of co-housing applications include communities for active

seniors, migrant and seasonal worker housing, homeless and family transition housing, young singles housing and micro unit complexes.

- Apartment building preservation, reconfiguration and substantial rehabilitation: Renovation and rehabilitation of existing market rate, affordable housing projects is probably the biggest need and the biggest impact opportunity in Marin County in terms of preserving communities, allowing existing affordable housing residents to remain in place, and improving the lives of those most in need of assistance (a required criteria under SB375). This is in evidence in areas such as the Canal District in San Rafael and Marin City. However, as written, the Plan does not in any way acknowledge or encourage this need. To continue to promote the construction of new, highly impactful, high density projects while allowing existing affordable housing to fall into disrepair or worse, disuse, makes no social or economic sense whatsoever.
- Loss of existing public affordable housing: A related category of affordable housing need would include existing public housing units that are falling out of service due to the expiration of Housing Assistance Payments (HAP) Contracts, loss of economic use due to aging structures and too much deferred maintenance, or the voluntary withdrawal from the Section 8 program by the landlords. This is true throughout Marin and is evidenced by Marin County Housing Authority historical records. The annual loss of units in this category is a significant public housing problem in Marin and other Bay Area counties that the Plan does not address or acknowledge. The lack of federal or state funding (subsidies, tax credits or other financial incentives) to support the preservation of this essential affordable housing stock adds to the problem. Again, for the Plan to promote the construction of new, high impactful, high density projects while allowing existing

affordable housing to fall into disrepair or worse, disuse, is a waste of public funds and makes no social or economic sense whatsoever.

- Building conversions from commercial to mixed use residential: Another major affordable housing opportunity throughout Marin, and places like it, are existing structures that lend themselves to conversion to residential and residential mixed use (commercial or retail) redevelopment. The Plan's single minded proposal to support only the development of new, high density, transit oriented development, ignores more economical and socially beneficial solutions.
- Sweat equity opportunities: The implementation of deed restricted, for sale housing as a sustainable affordable housing solution has been discredited over the past decades in many cities where it's been attempted (e.g. San Francisco). Deed restriction on for sale housing amounts to nothing more than a form of indentured servitude that is contrary to why anyone buys a home (for equity appreciation). Similar to the "live / work" opportunities described above, a better solution is "sweat equity" opportunities where low income owners can attain ownership or co-ownership with an equity partner, who they will share the appreciation upside with, or have the opportunity to pay off their equity partner / lender (equity plus interest) upon resale. However, they still get to directly benefit from the rewards of ownership and their hard work to improve and maintain their home. This method is effective for either new housing or existing housing purchase programs. However, because it does not generally create new housing units, it is ignored by RHNA and consequently ignored by the Plan.
- Very small starter rental and condo units: These include housing for singles, single parent households and young couples, often called "micro units,"

and is another emerging housing type. However, in Marin, this again lends itself more to smaller scaled, infill, mixed use development that is atypical, both in location and proximity to significant public transportation options, than what is supported, analyzed and promoted by the Plan.

- Active elderly housing: Similar to micro units, these are smaller single family housing (condo or fee simple ownership) for the “active elderly” (partially retired and very active but not wanting any maintenance obligations). Similar to co-housing, these projects often have condominium shared spaces and shared amenities that are not aligned with RHNA, which deters cities from promoting their development. The Plan fails to consider this need.
- Second units: Marin and many other parts of the Bay Area would benefit from a more liberal and creative definition of second units. As it is, these are typically a battleground that pits small cities against HCD as to what does or does not qualify. The Plan does nothing to alleviate or clarify or help promote the construction of this critical category.

Conclusion:

The Plan, as written, with its single minded obsession with questionable high density multifamily housing as the only solution to the requirements of SB375 is both short-sighted and detrimental to promoting the types of affordable housing that are in critical need in Marin County and similar suburban and rural communities in the Bay Area. In fact the types of housing needs noted above would also apply to most ex-urban communities as well. The Plan seems to only be suited to urban areas, while ignoring feasibility in other areas impacted. How can the Plan justify its conclusions and proposals in light of the need for the many types of housing and affordable housing that it fails to consider or at all analyze?

2 - The Unintended Consequences of Plan Bay Area

Because the Plan only emphasizes programs and investments that promote high density residential development, more creative mixed use and adaptive reuse, locally based solutions are essentially “crowded out” of the market. With local zoning and planning tools (zoning bonuses, density bonuses, site designation lists, fast track processing, etc.) and the present Low Income Housing Tax Credit allocation system being dramatically skewed to only support over-sized, high density, low income or in-lieu low income schemes in Marin, affordable housing development has become a game where those are the only projects that get considered by local planning departments, whether or not they make financial sense, community sense, common sense or there’s any real market demand for them. Note that “in lieu” housing projects typically have a mix of 80 percent high end, market rate housing, 10 percent “80 percent median income” housing, and 10 percent low and very low income housing. These are the only types of projects that can be profitable with our high land costs in Marin.

As it is, creative capital investors have little incentive to even try to fill our real housing needs (as listed above) and even if we could get these kinds of projects built, most wouldn’t be counted against our RHNA quota requirements. The Plan only makes all of this worse. The Plan is a disincentive to private investment in affordable housing and other types of needed market rate housing.

The Plan ignores many unintended consequences of its policies and programs. The problem is that the Plan, as written, only promotes one interpretation of SB375 and the Housing Law: the one that most benefits big, nonprofit developer driven, urban development projects which are inappropriate and impossible to build in Marin and other counties and cities like it. Marin has many more opportunities for infill, mixed-use renovation projects with affordable units included than for “high density housing near public transportation.”

239 Question:

240 How can the Plan justify its methods and goals in light of the fact presented
241 above? If its charge is to create more affordable housing, how can it fail to
242 acknowledge that its approach essentially excludes success in more than two
243 thirds of the Bay Area impacted by the Plan? How can the Plan claim to have
244 adequately analyzed and considered the actual housing needs and growth
245 opportunities in Marin County or similar Bay Area communities, and arrived at the
246 Plan in its present form?

247 **3 – Citations of SB375 Where the Plan Is Not In Conformance.**

248 The Plan and the Plan Alternatives are not in uniform compliance with the
249 requirements of SB375.

250 Consider the following:

251 SB375 Citation: Section 4 (b)(2)(B) of SB375 states: *“Each metropolitan*
252 *planning organization shall prepare a sustainable communities strategy, subject*
253 *to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code*
254 *of Federal Regulations, including the requirement to utilize the most recent*
255 *planning assumptions considering local general plans and other factors. The*
256 *sustainable communities strategy shall (i) identify the general location of uses,*
257 *residential densities, and building intensities within the region;”*

258 Comment: The analysis presented above (item #1) indicates that the Plan has
259 failed to accurately identify the general location of uses, residential densities and
260 building intensities with regard to the actual needs and housing opportunities
261 Marin County and other similar Bay Area locations. How can the Plan justify its
262 claim to have adequately identified the general location of uses, residential
263 densities and building intensities within Marin County and arrived at proposals

that do not include so many types of housing actually needed in our communities?

SB375 Citation: Section 4(b)(1)(J) of SB375 states: *“Neither a sustainable communities strategy nor an alternative planning strategy regulates the use of land, nor, except as provided by subparagraph (I), shall either one be subject to any state approval; Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region; Nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy.”*

Comment: As demonstrated in the analysis presented above (item #1), the Plan’s single-minded adherence to proposing high density, multifamily development forces cities and counties in Marin, for all practical purposes (by way of the Housing Element certification process at HCD), to rezone and adjust their planning to conform with the development of housing types that do not address their actual affordable or market rate housing needs, or reflect the realities of the opportunities available to do so.

SB375 Citation: Section (b)(2)(E)(i) of SB375 states that the MPO shall conduct: *“Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency's adopted Federal Public Participation Plan, including, but not limited to, affordable housing advocates, transportation advocates, neighborhood and community groups, environmental advocates, home builder representatives, broad-based business organizations, landowners, commercial property interests, and homeowner associations.”*

Comment: Based on the analysis presented above (item #1), it is clear that in arriving at its conclusions the drafters of the Plan either did not adequately

research or reach out to local landowners and property owners, smaller commercial property interests (which make up the vast majority of this group in Marin County) or homeowner associations in Marin County cities in developing the Plan, or chose to ignore the needs of these groups in favor of the needs or agendas of other groups such as affordable housing advocates, transportation advocates and development interests, the needs of which the Plan better addresses. However, as demonstrated in Item #1 above, if the needs of all impacted groups had been properly assessed and reflected, the Plan would have to have included all the actual opportunities and housing needs in Marin County, which it fails to do.

Question: In light of the lack of acknowledgment of the needs of all stakeholder groups noted in this comment and analysis, how does the Plan justify its conclusions, proposals and choices of Alternatives and options?

SB375 Citation: Section 5(b)(2) of SB375 defines terms for the regulation and adds definitions to Section 65080.01 of the Government Code, such as: “(c) *“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.*”

Comment: Based on the analysis presented above (item #1), it is clear that the Plan failed to adequately assess what kinds of housing solutions are or are not feasible in locations such as Marin County.

Question: How can the Plan justify its conclusions and bias toward transit oriented development based on a reasonable and complete assessment of the actual affordable and market rate housing opportunities and needs in Marin, as noted in Item #1 above?

SB375 Citation: Section 7 amends Section 65583 of the Government Code is amended to read: *“The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobile homes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following: (a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs.”*

Comment: Based on the analysis presented above (item #1), it is clear that the Plan failed to adequately inventory the resources and constraints relevant to meeting the needs for affordable and market rate housing in locations such as Marin County. Further, a reasonable assessment of the opportunities for preservation and improvement of existing housing (public and privately owned), and any reasonable assessment of Marin’s actual housing needs (noted in Item #1 above) and an inventory of its resources and constraints would have produced a greater variety of solutions to Marin’s housing needs than just high density, multifamily, transit oriented development. Therefore, because the Plan is lacking this required assessment and analysis that is demonstrated in Item #1 of this comment, the Plan fails to be in conformance with either SB375 or the Housing Element law.

SB375 Citation: Section 7 (a)(6) of SB375 requires: *“An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction; and (7) An analysis of any special housing needs, such as those of the elderly, persons with disabilities,*

344 *large families, farmworkers, families with female heads of households, and*
345 *families and persons in need of emergency shelter.”*

346 Comment: Based on the analysis presented above (item #1), it is clear that the
347 Plan failed to adequately analyze the potential and actual nongovernmental
348 constraints upon the maintenance, improvement, or development of housing to
349 meet the actual needs for affordable and market rate housing in locations such as
350 Marin County, or properly analyze the special housing needs of the groups noted
351 in Section 7(a)(7) above. If it had done so, with its full knowledge of how the
352 RHNA housing quota system “counts” qualifying housing units, it could not have
353 possibly come up with the proposals contained in the Plan that ignore and
354 exclude consideration of so many types of needed affordable housing (e.g.
355 housing for the elderly, persons with disabilities, large families, farmworkers,
356 families with female heads of households, and families and persons in need of
357 emergency shelter). Further, the land cost and construction costs in Marin are
358 some of the highest in the Bay Area yet they do not appear to have been factored
359 into any reasonable analysis of feasibility, as required by law. Therefore, for the
360 reasons cited here, the Plan is not in conformance with either SB375 or the
361 Housing Element law.

362 SB375 Citation: Section 7 (a)9)(B) of SB375 reads: *“The analysis shall estimate*
363 *the total cost of producing new rental housing that is comparable in size and rent*
364 *levels, to replace the units that could change from low-income use, and an*
365 *estimated cost of preserving the assisted housing developments.”* In addition
366 Section 7 (4) directs the SCS and Housing Element law to: *“Conserve and improve*
367 *the condition of the existing affordable housing stock, which may include*
368 *addressing ways to mitigate the loss of dwelling units demolished by public or*
369 *private action.”*

Comment: Based on the analysis and commentary presented above (item #1), it is clear that the Plan fails to adequately analyze or compare the relative costs or opportunities to preserve existing assisted housing developments in locations such as Marin County. If it had, it would have concluded that renovation and rehabilitation of existing affordable housing in Marin is of paramount importance and it financially more economical and socially equitable than building new, high density, multifamily development. In addition the Plan completely ignores this practical and economical solution and does not in any way address ways to mitigate the loss of dwelling units demolished, or lost from service. Therefore, the Plan is not in conformance with either SB375 or the Housing Element law.

4 – The Plan Fails To Resolves Its “Known Controversies.”

On page ES-11, the Plan acknowledges unresolved controversies, and continuing on page ES-12 it further acknowledges that only some of these are addressed in the Draft Environmental Impact Report (DEIR) for the Plan.

Among those not addressed in the DEIR are:

“(1) Whether the proposed Plan’s assumptions of future land use development patterns are feasible given that MTC and ABAG cannot regulate land uses at a regional or local level. ”

Comment: Based on the analysis and commentary presented above, the Plan fails to adequately assess whether or not the Plan’s assumptions of future land use development patterns are feasible in Marin County and other similar locations. If the Plan had considered all factors, it would have to have concluded that it single-minded promotion of high density, multifamily development would not adequately address the actual and critical affordable housing needs in Marin or similar locations, and that the development of large, high density, multifamily housing projects in Marin would be in conflict with many of the existing plans and

regulations of Marin's local jurisdiction with regard to high limits, parking requirements, zoning density regulations and local general plans. An example of this kind of "conflict" with local regulations would be the proposed Planned Development Area (PDA) in San Rafael at the Civic Center where the Plan's proposed housing density is greatly in excess of the city's general plan proposed densities. The city's general plan calls for a maximum development density of 620 units in that location that are two to three stories in height. MTC, in its grant agreement with the City of San Rafael, requires the recipient to "maximize housing," which resulted in a study by the city concluding that the general plan maximum could be raised to over 1,100 units in the PDA, despite providing no evidence of how the potential impacts would be mitigated and over the vociferous objections of the majority of residents who commented on the proposal. All public input suggests that this kind of proposed density is not economically, social or environmentally feasible, sustainable or desirable in Marin, yet there is no evidence of responsiveness to that in the Plan.

"(2) Concerns about whether the degree and scale of growth proposed within existing communities would alter their appearance, quality of life, and affordability, and whether it would conflict with the existing plans and regulations of the local jurisdiction."

Comment: Based on the analysis and commentary presented above, and the preponderance of public comment on the Plan, locally, it is clear that the Plan fails to adequately assess its assumptions about the impacts of the degree and scale of growth it proposes on existing communities in Marin County and other similar locations. The Plan's single-minded promotion of large scaled, high density, multifamily development will dramatically alter the appearance, quality of life, and by the Plan's own admission, the affordability of housing in all Marin communities that are typically one to three story development and generally suburban or rural in nature. In addition, the scale of development being proposed

would be detrimental to the quality of life, contradicting and ignoring the requirements of SB375 to be sensitive to this outcome.

“(3) Concerns that increased concentrations of population in focused areas would overwhelm existing public services and utilities such as parks, police and fire services, water supply, etc.”

Comment: The types of large scaled, high density, multifamily, low income projects that are proposed and analyzed in the Plan are inconsistent with the way sustainable planning and growth can succeed in Marin County, and since low income housing projects do not pay property taxes for vital city services, the Plan places an unsustainable financial burden on Marin’s financially stretched small cities and unincorporated areas. The Plan offers no comment or solutions or financial mechanisms to assist small Marin County cities in dealing with these fiscal challenges and is therefore infeasible, as defined in SB375, and not in compliance with SB375’s requirements for an accurate assessment of these impacts, or the California State Constitution’s ban on unfunded mandates that can unfairly and without adequate compensation, financially burden cities. For example, as a result of the RHNA quota system and SB375, and as endorsed by the Plan, a proposed PDA development in the Marinwood neighborhood in San Rafael would increase primary school and middle school enrollment by more than 40 percent. This places an impossible financial burden on one community that will ultimately be detrimental to all its residents of all income levels. These types of outcomes are evidence that the Plan fails to adequately resolve or consider development impacts that will overwhelm existing public services and utilities such as parks, police and fire services, water supply, etc., as required by SB375.

CONCLUSIONS:

The Plan and the Plan Alternatives are not in compliance or conformance with many of the requirements of SB375 or the State Housing Element Law. Building

more and more housing without commensurate jobs growth first, places and unsustainable financial burden on Marin County cities and unincorporated areas which can lead to potential bankruptcy for small cities (e.g. Vallejo, Modesto and San Bernadino). The Plan ignores the local land use and social, economic and physical / natural constraints in Marin County and similar locations, as required under SB375. The Plan's planning approach and skewed incentives toward large scaled TOD will contradict local efforts to promote the development of the types of affordable housing actually needed in Marin County and similar locations. If the goal of our housing laws is to provide adequate affordable housing opportunities for all income groups and particularly for those most in need (as defined in each particular location) then the Plan, as written, fails in every way to achieve that.

Examination of the Bay Area Plan and the DEIR shows that the Plan fails to satisfy the requirements of SB375 because it fails to prove that the Plan or any of the Alternatives will actually achieve the goals of providing a significant amount of housing and affordable housing for future demographic needs. The analysis presented by the Plan is neither feasible nor reasonable to achieve Marin's future housing needs, and therefore fails to conform to the requirements of SB375 and state Housing Law.

The over-riding question is why have so many mandatory provisions of SB375 and the State Housing Law, and so many considerations for feasibility, local quality of life, land constraints, economic realities and actual housing needs, been summarily ignored in the Plan's analysis and its proposals? In light of the comments and analysis noted herein, on what basis can the Plan justify its conclusions and proposals?

Final Comments

Although SB375 clearly separates its requirements from mandatory conformance by local governments in creating their general plans and making

478 local land use decisions, there is a stark difference between what is technically
479 required and the reality created by the nexus of Housing Element Law, SB375's
480 Sustainable Communities Strategy, the Plan, the RHNA quota process and the
481 MTC / OBAG grant and transportation process. The Regional Transportation Plan
482 (RTP) ("Transportation 2035" is the Bay Area's RTP and allocates funding to
483 regional transportation) contains an internal consistency requirement. This
484 consistency requirement impacts cities and counties because the "Metropolitan
485 Planning Organization" (MPO – MTC and ABAG) only award funding to projects
486 that are consistent with the "Sustainable Communities Strategy"
487 (SCS). Therefore, the incentive for cities to receive funding - or rather the threat
488 of being denied funding - gives local governments a good reason to draft their
489 general plans and zoning ordinances and land use regulations in ways that are
490 consistent with the Plan and the SCS. Combine this with the fact that under the
491 Regional Housing Needs Allocation (RHNA), state law and the process of
492 certification from HCD, a local government is required to amend its Housing
493 Element and rezone its land in order to accommodate the quantity of housing it is
494 assigned under the RHNA. So in effect local government is being required to
495 implement major aspects of the SCS, whether or not they want to or it makes any
496 economic sense or addresses their actual affordable housing needs, and thereby
497 losing local control of their planning and zoning despite the provisions of SB375
498 that disclaim that responsibility. With this being the case, the Plan's strict
499 conformance with all the provisions and requirements of SB375 and state Housing
500 Law, as discussed in this comment, become even more critical.

501 As indicated in this comment letter, the Plan fails to conform to the
502 requirements of SB375 in numerous areas, making its proposals and programs
503 unsuitable for achieving the goals of that legislation for most ex-urban, suburban
504 and rural communities impacted by the Plan in the Bay Area.