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Attorney for Petitioner Bruce Corcoran

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

BRUCE CORCORAN, an individual,

Petitioner

vs.

COUNTY OF MARIN,

Respondent

Case No. \_\_\_\_\_

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR DECLARATORY RELIEF**

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## I. INTRODUCTION

1. Petitioner Bruce Corcoran (“Petitioner”) challenges the County of Marin’s January 24, 2023 approval of the 2023-2031 Housing Element Update (Housing Element) of the Marin Countywide Plan (CWP) and corresponding CWP and zoning amendments (together, the “Project”) based on the County’s failure to comply with the state Planning and Zoning law, Government Code §§ 65000 *et seq.*

2. The Project violates state law, which requires that the CWP and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the County of Marin. Instead of an internally consistent CWP, the Project includes CWP amendments that elevate the Housing Element above other elements and parts of the CWP, including the CWP community plans, as well as stating that CWP standards control over community plans in the CWP. Such ‘precedence clauses’ are unlawful under the State Planning and Zoning Law. *See* Govt. Code § 65300.5; *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698.

3. Petitioner seeks a writ of mandate under Code of Civil Procedure § 1085 to set aside the County’s approval of the Project until the County has complied with the requirements of the Government Code by resolving internal inconsistencies within the CWP without the use of precedence clauses.

4. Petitioner also seeks declaratory relief based on the actual and present controversy that has arisen and now exists between Petitioner and the County regarding the legality of the County’s current approach to resolve internal inconsistencies within the CWP through the use of precedence clauses. *See* Code Civ. Proc. § 1060; *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal. App. 4th 1547.

## II. PARTIES

5. Petitioner is an individual citizen and Marin County resident concerned about the County’s decision to adopt CWP amendments that purport to override existing community plans in unincorporated areas of Marin County. Petitioner has participated in the administrative process for, and objected to the County’s approval of, the Project.

6. Respondent County of Marin is and was at all relevant times the governmental entity responsible for reviewing and approving the Project challenged in this action.

### III. JURISDICTION AND EXHAUSTION OF REMEDIES

7. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure §§ 1060 and 1085.

8. Petitioner has performed all conditions precedent to filing this instant action and has exhausted any and all available administrative remedies to the extent required by law by providing written and oral comments to the County during the administrative phase of this Project.

9. On April 20, 2023 Petitioner's attorney mailed a copy of its Verified Petition and Complaint for Declaratory Relief to the Attorney General's office to give notice of Petitioner's intent to bring this proceeding as a private attorney general under Code of Civil Procedure section 1021.5. (See Exhibit 1, attached hereto.)

10. Petitioner has no other adequate remedy in the course of law unless this Court grants the requested writ of mandate. In the absence of such remedy, the City's Project approval will remain in effect, in violation of law.

### IV. FACTUAL AND LEGAL BACKGROUND

#### A. BACKGROUND ON GENERAL PLANS AND COMMUNITY PLANS AND INTERNAL CONSISTENCY REQUIREMENT.

11. California state law requires each city and county to adopt a general plan "for the physical development of the county or city, and any land outside its boundaries which in the planning agency's judgment bears relation to its planning." Gov. Code § 65300. General plans benefit local communities by promoting better projects, streamlined processes, integrated planning, and improved access and use of available resources. In Marin County, the general plan is referred to as the Countywide Plan ("CWP").

12. An important characteristic of general plans is that are internally consistent. Internal consistency requires that no policy conflicts, either textual or diagrammatic, can exist between the components of an otherwise complete and adequate general plan. In particular, Government Code § 65300.5 states that "the general plan and elements and parts thereof comprise an integrated, *internally consistent* and compatible statement of policies for the adopting agency. (emphasis added.) This law has been interpreted to require internal consistency among all elements and parts of a general plan. See *Denham, LLC v. City of Richmond* (2019) 41 Cal.App.5th 340; *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698.

13. Area and community plans are part of a general plan. “Area plan” and “community plan” are terms for plans that focus on a particular region or community within the overall general plan area. A resolution is required to adopt an area or community plan as an amendment to the general plan, in the manner set out in Government Code section 65350. Such plans refine the policies of the general plan as they apply to a smaller geographic area and are implemented by ordinances and other discretionary actions, such as zoning. The area or community plan process also provides a forum for resolving local conflicts.

14. As noted by the state Office of Planning and Research, an area or community plan must be internally consistent with the general plan. To facilitate such consistency, the general plan should provide a policy framework for the detailed treatment of specific issues in the various area or community plans. Ideally, to simplify implementation, the area or community plans and the general plan should share a uniform format for land use categories, terminology, and diagrams. While an area or community plan may provide greater detail regarding policies affecting development in a defined area, adopting one or a series of such plans does not substitute for regular updates to the general plan.

15. The CWP describes the importance of community plans in Marin County. It states that “[m]any unincorporated communities are guided by community plans that provide specific direction regarding land use, transportation, community facilities, building design, and environmental quality, as well as issues unique to a particular community. Such issues may include, but are not limited to: customized building and site design standards to protect key resources; protection of important ridgeline and view corridors; evaluation and refinement of the Ridge and Upland Greenbelt and Baylands Corridor; regulations concerning home size; affordable housing sites; hazards; evacuation routes; flooding; and bicycle and pedestrian circulation.”

**B. COMMUNITY PLANS IN MARIN COUNTY.**

16. According to the CWP, “a Community plan is considered part of the Marin Countywide Plan and sets forth goals, objectives, policies, and programs to address specific issues relevant to that particular community.” Prior to the County’s adoption of the Project, the CWP stated that “[w]here there are differences in the level of specificity between a policy in the Community Plan and a policy in the Countywide Plan, the document with the more specific provision shall prevail.”

17. There are 24 community plans in the unincorporated area of the County, which include: Black

Point; Bolinas; Bolinas Gridded Mesa; Dillon Beach; Green Point; East Shore (Tomaes Bay); Indian Valley; Inverness Ridge; Kentfield/Greenbrae; Kent Woodlands; Marin City; Muir Beach; Nicasio Valley; Paradise Drive; Paradise Ranch; Point Reyes Station; Point San Quentin; Richardson Bay; San Geronimo Valley; Santa Venetia ; Stinson Beach; Strawberry; Tamalpais Valley; Tomaes.

18. These community plans represent enormous effort on the part of local communities. They are the product of significant consultation with residents, deep local knowledge, thoughtful discussions by neighborhood leaders, and an important form of democratic voice and representation for the covered areas within unincorporated Marin. Each community plan was approved and adopted by the Marin County Planning Commission and the Board of Supervisors and incorporated into the Countywide Plan. These vital planning guides are critical parts of the CWP.

#### **C. THE PROJECT AND PROJECT APPROVAL BY THE COUNTY**

19. The impetus for the Project was the state law requirement that the County update its existing Housing Element to meet the County's Regional Housing Needs Allocation ("RHNA"). The Project is described in County staff reports as updates to the Housing Element and Safety Element of the CWP, associated amendments to other elements in the CWP as necessary to ensure consistency, and amendments to the Marin County Code to provide for effective implementation of the Project.

20. The Housing Element of the Project is an update to the Housing Element for the planning period 2023 through 2031. The update proposes locations for housing that would facilitate the development of up to 5,197 new housing units, which, according to County staff reports, exceeds the County's Regional Housing Needs Allocation (RHNA) as well as a reasonably foreseeable number of density bonus units and a buffer number of additional units. The Project also rezones sites at these locations to enable the development of these new housing units.

21. Beginning in October of 2020, the Board of Supervisors held eight public hearings and five joint sessions with the Planning Commission on the Draft Housing Element, including its final hearing and approval on January 24, 2023.

22. The County released a Notice of Preparation of an Environmental Impact Report ("EIR") for the Project on December 8, 2021, and held a public scoping meeting on January 11, 2022. On October 7, 2022, the County issued a Draft EIR for the Project, beginning a 45-day public review and comment period, which concluded on November 21, 2022. On November 16, 2022, during the public

review and comment period, the Board of Supervisors and Planning Commission held a joint public hearing to receive comments on the Draft EIR.

23. The Final EIR for the Project was issued on December 20, 2022. The Final EIR identified a total of 18 significant project impacts, with 15 of these significant impacts considered to be *unavoidable* with regard to: Aesthetics (effects on scenic vistas; existing visual character and quality), Air Quality (local air plan conflict; exceedance in criteria air pollutants/toxic air contaminant emissions), Cultural/Tribal Cultural and Historic Resources (effects on historic resources), Greenhouse Gas Emissions and Energy (GHG emission quantity and inconsistency with adopted plans), Noise and Vibration (traffic noise levels), Transportation (impacts related to vehicle miles traveled), and Utilities and Service Systems (water supply; wastewater treatment capacity). The Final EIR identifies a total of 14 cumulative impacts, all found to be significant and unavoidable.

24. An important theme of the Project documents as they were developed was how the proposed amendments to the Housing Element and CWP would affect the integrity of the existing 24 community plans in the County. The draft Housing Element states, for example, that “[e]xisting community plans contain goals, policies, and programs that are inconsistent with the Countywide Plan. Where such conflicts exist, the Countywide Plan prevails.” More specifically, text amendments to the CWP were introduced stating that the Housing Element and CWP would override any inconsistent standards or policies in the CWP community plans.

25. Comments on the Project criticized this approach, noting that the proposed new Housing Element purported to “trump any existing community plans,” which “were legislated local laws.” One comment notes that her local community plan is an “ordinance that our neighborhood carefully crafted, and all members abide by,” and that “[n]o one in these affected communities know that their community plans and ordinances have been upended by the county. Where is the notice that this has happened? This is an unacceptable overreach by the government.” In response, the County stated that staff had proposed revisions to the proposed Countywide to better reflect the fact that the Countywide Plan *incorporates the community plans and does not invalidate them.*” (emphasis added.)

26. On December 28, 2022 a local attorney wrote to the Planning Commission, noting that;

There are many major sites and large areas carefully planned for in a community plan, but with nothing more than a land use designation in the CWP. Implementing these edits would eliminate all of this careful planning, and is not necessary for housing preservation. Furthermore, these edits are horizontally inconsistent with the proposed edit to Policy 3.4-3,

1 which says the community plans only supersede the CWP in regards to density or FAR.  
2 Community plans have been developed via a comprehensive, thoughtful, transparent, , and  
fair process with all stakeholders. While they could certainly use some updating, overriding  
them in one fell swoop is unnecessary. Many community plans serve as the entire planning  
document for large sites. Simply reverting to the CWP designation would be catastrophic.

3 27. Further, on December 31, 2022, a Marin County Planning Commissioner emailed the acting  
4 County Planning Director, alerting the Director that the proposed text amendments to the CWP,  
5 which stated that CWP land use designations would supersede community plan standards and  
6 designations, was contrary to long standing law that a general plan be internally consistent. The email  
7 pointed out that community plans are part of a general plan and must be consistent with all parts of  
8 the general plan. In response the acting County Planning Director stated that the Commissioner was  
9 raising a legal issue that the County planning staff and County counsel had been already discussing.

10 28. On January 5, 2023, the Planning Commission held a hearing to review the draft Housing  
11 Element. The Planning Commission recommended that the Board of Supervisors *not* adopt the Draft  
12 Housing Element in its proposed form. Among the Planning Commission's objections were concerns  
13 that the draft Housing Element proposed not to limit upzoning to housing inventory sites but instead  
14 would apply such upzoning to all community plan areas, as well as Baylands and Ridge and Upland  
15 Greenbelt Corridors designated in the CWP for lowest density. The Planning Commission  
16 recommended that removal of density limits in community plan areas and Baylands and Ridge and  
17 Upland Greenbelt Corridors be applied to Housing Element inventory sites only.

18 29. In its January 24, 2023 staff report for the Housing Element changes, staff rejected these  
19 Planning Commission recommendations, stating that wholesale upzoning was "needed to ensure that  
20 there is not conflicting policy direction between a Community Plan and the Housing Element that  
21 would limit multifamily housing proposed within a Community Plan area," and that removing the  
22 limits on housing to the low end of the density range in sensitive corridor areas "would eliminate  
23 existing constraints to housing production." The staff report does not provide further information as  
24 to why such widespread zoning changes would be necessary to comply with state housing law.  
25 Instead the staff report states that policies in community plans contain standards that limit the  
26 County's ability to encourage and facilitate multifamily housing and meet the RHNA. The staff report  
27 instead recommended a "clarified policy" that "the CWP would govern if there are differences with  
28 respect to land use designations, density, and development standards" between community plans and

1 the CWP. This proposed policy stated: “No provision of the Countywide Plan, including its  
2 community plans, may be applied by the County in a manner that conflicts with State law, or the  
3 policies and programs contained in the Housing Element and/or the ordinances implementing those  
4 policies.” This language would eventually be included in the CWP text amendments later approved  
5 by the Board.

6 30. In light of the staff’s rejection of the Commission recommendations to limit significant  
7 upzoning to the housing inventory parcels, comments were received by the Board imploring it not to  
8 undermine the carefully crafted standards developed in the many County community plans:

9 Once again, the Housing Element and Amendments to the Marin Countywide Plan go too far  
10 with regard to Community Plans. Proposed edits to the Marin Countywide Plan (Policies 1.4-3  
11 and 1.5-3) completely eviscerate vital Community Plans. There is no need to make any  
12 sweeping changes to the Community Plans. Only the parcels identified in the DRAFT  
13 Housing Element Inventory need to be addressed, not entire communities: We strongly urge  
14 you to uphold the integrity, legality, and authority of Community Plans to the fullest extent  
15 possible, when considering amendments to the Housing Element, Countywide Plan, and  
16 Development Code. Community Plans should be used to guide you in your decision making,  
17 as each community has different physical aspects, goals and desires.

18 and:

19 Time and again your Board, and the Planning Commission, have given clear direction that  
20 Community Plans should be preserved to the fullest extent possible. Each time thereafter, a  
21 new set of opaque amendments gets proposed that is held out as honoring your direction, but  
22 in actuality would still completely eviscerate Community Plans. This final version is no  
23 different. There are many major sites and large areas carefully planned for in a Community  
24 Plan, but with nothing more than a land use designation in the CWP. Implementing these edits  
25 would eliminate all of this careful planning, and is not necessary for housing preservation.  
26 Community Plans have been developed via a comprehensive, thoughtful, transparent, and fair  
27 process with all stakeholders. While they could certainly use some updating, overriding them  
28 in one fell swoop is unnecessary. Many Community Plans serve as the entire planning  
document for large sites. Simply reverting to the CWP land use designation would be  
catastrophic. The real question is: why is this edit proposed at all? We already know that  
state law supersedes local regulations. It's also a fact that housing projects may avail  
themselves of waivers from any local standard that precludes the project from reaching its  
maximum density. So, what is the point here other than to try and eliminate Community Plans  
in a roundabout way? Please reject these amendments, as the stated goal of allowing housing  
is already covered by state law.

31. Subsequently, on January 24, 2023, the County Board of Supervisors held a hearing and  
approved the Project. The approved ‘text amendments’ to the CWP include three changes with  
respect to community plans.

32. First on CWP page 1.4.3, ‘How to Read the Countywide Plan,’ the following is added:

No provision of the Countywide Plan, including its community plans, may be applied by the  
County in a manner that conflicts with state housing law, or the Housing Element and/or the  
ordinances implementing those policies. There are a number of community plans containing



policies and programs to support implementation of the Countywide Plan. When reading interpreting, and implementing the community plans, none of their provisions can conflict with the Countywide Plan or state housing law.

33. Second, on CWP page 1.5-3. 'Land Use Designations,' the following language is added:

No provision of the Countywide Plan, including its community plans, may be applied by the County in a manner that conflicts with State law, or the policies and programs contained in the Housing Element and/or the ordinances implementing those policies.

34. Third, on CWP page 3.4-3, the prior language stating "Where there are differences in the level of specificity between a policy in the Community Plan and a policy in the Countywide Plan, the document with the more specific provision shall prevail" is deleted and replaced with:

A Community plan is considered part of the Marin Countywide Plan and sets forth goals, objectives, policies, and programs to address specific issues relevant to that particular community. For residential and mixed-use projects where there are land use designation or development density and floor area ratio differences, the Countywide Plan shall prevail.

35. Each of these changes represent 'precedence clauses' which explicitly state that either 1) both the Housing Element and the CWP trump over any inconsistent provisions, standards or policies in the County community plans; or 2) the Housing Element trumps over any inconsistent provisions, standards or policies in the CWP or the County community plans.

36. The Project makes significant land use changes to unincorporated lands in the County, including but not limited to *eliminating* longstanding CWP policy and language that potential residential density and commercial floor area ratio (FAR) for lands in Baylands and Ridge and Upland Greenbelt Corridors, sites with sensitive habitat or with environmental constraints or that lack public water or sewer systems, be calculated at the "lowest end of the applicable range." Such changes are not limited to housing inventory parcels intended to meet the County's RHNA but instead to all parcels in the unincorporated County, including considerable lands in community plan areas.

37. As a result of these and other changes enacted in the Project, many if not all community plans in the County are no longer consistent with the CWP and/or the new Housing Element. For example, most if not all community plans currently protect sensitive areas, including in Baylands and Ridge and Upland Greenbelt Corridors, by limiting the height, FAR or density of development. Other community plan provisions have standards and policies that are now inconsistent with the CWP as amended by the Project. Rather than address these inconsistencies directly, the County has improperly relied on precedent clauses to create an unlawful hierarchy within the CWP.

**V. FIRST CAUSE OF ACTION**  
(Violation of Government Code)

38. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

39. As a result of the Project, many standards and policies in community plans in the County are now inconsistent with the amended CWP and Housing Element. Rather than address these inconsistencies, the County has instead relied on ‘precedence clauses’ in the CWP amendments. This result violates Government Code § 65300.5, which requires that the CWP and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the County of Marin. The CWP text amendments at pages 1.4-3, 1.5-3 and page 3.4-3 establish two types of precedence clauses: 1) CWP takes precedence over any conflict or inconsistency with community plans in the County; and/or 2) Housing Element & policies takes precedence over all conflicts or inconsistencies with the CWP, including the community plans. As a result, instead of an internally consistent CWP, the CWP amendments elevate the Housing Element above other elements and parts of the CWP, including the CWP Community Plans, and, in the alternative, elevate the CWP standards as controlling over Community Plans in the CWP. These type of ‘precedence clauses’ are unlawful. *See* Government Code § 65300.5; *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698.

40. Petitioner seeks a writ of mandate under Code of Civil Procedure § 1085 to set aside the County’s Project approval until the County has complied with the Government Code requirements by resolving internal inconsistencies within the CWP without the use of precedence clauses.

**VI. SECOND CAUSE OF ACTION**  
(Declaratory Relief: Code Civ. Proc. § 1060)

41. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

42. Petitioner seeks declaratory relief based on the actual and present controversy that has arisen and now exists between Petitioner and the County regarding the legality of the County’s current approach to resolve internal inconsistencies within the CWP through the use of precedence clauses. *See* Code Civ. Proc. § 1060; *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal. App. 4th 1547; *Californians for Native Salmon and Steelhead Association v. Department of Forestry* (1990) 221 Cal. App. 3d 1419.

43. Petitioner seeks declaratory relief that these precedence clauses are unlawful and that the

County's CWP is internally inconsistent and thus in violation of state law. *See* Government Code § 65300.5; *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698.

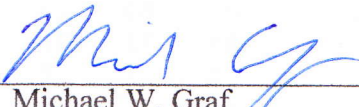
## VII. PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

1. For a Writ of Mandate ordering the County to a) set aside the County's approval of the Project until the County has complied with the requirements of the Government Code by resolving internal inconsistencies within the CWP without the use of precedence clauses; (b) take whatever additional action is necessary in conformance with the Court's decision; and (c) file a return with the Court showing compliance with the writ of mandate. Code Civ. Proc. § 1085.
2. For declaratory relief that the County's text amendments to the CWP constitute precedence clauses that are unlawful in that they create an internal inconsistency within the CWP between the Housing Element, the CWP and community plans in the County. Code Civ. Proc. § 1060.
3. For preliminary and permanent injunctive relief precluding implementation of the Project until the City has complied with applicable law;
4. For reasonable attorney's fees under Code of Civil Procedure § 1021.5;
5. For costs of suit; and
6. For such other and further relief as the Court deems proper.

DATED: April 20, 2023

By: \_\_\_\_\_

  
Michael W. Graf  
Attorney for Petitioner

P001 PWM.wpd

VERIFICATION

*Bruce Corcoran v. County of Marin,*  
Marin County Superior Court, Case No. \_\_\_\_\_.

I, Michael W. Graf, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State.

I have my professional office at 227 Behrens Street, El Cerrito California, 94530.

2. I am the attorney of record for Petitioner *Bruce Corcoran*, who resides in Marin County. Petitioner is absent from Contra Costa County in which I have my office. For that reason, I make this verification on its behalf.

3. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 20<sup>th</sup> day of January, 2023 at El Cerrito, California.

  
Michael W. Graf

# **EXHIBIT 1**

**Michael W. Graf  
Law Offices**

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April 20, 2023

**Via Regular Mail**  
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1300 I Street  
Sacramento, CA 95814-2919

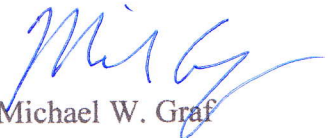
Re: Petition for Writ of Mandate Challenge to the County of Marin's approval of the  
2023-2031 Housing Element Update of the Marin Countywide Plan and  
corresponding CWP and zoning amendments

To Whom it May Concern:

Pursuant to Code of Civil Procedure 388, enclosed please find a copy of Petitioner's  
Verified Petition for Writ of Mandate in the above referenced matter.

Please let me know if you have any questions.

Very truly yours,



Michael W. Graf