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GOLDEN GATE VILLAGE RESIDENT COUNCIL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOLDEN GATE VILLAGE RESIDENT
COUNCIL, a California nonprofit public
benefit corporation,

Plaintiff,

v.

COUNTY OF MARIN, a political
subdivision of the State of California;
MATHEW HYMEL, in his official
Capacity as Marin County Administrator;
MARIN COUNTY PACIFIC
ASSOCIATES, a California Limited
Partnership; PACIFIC WEST
COMMUNITIES, INC., an Idaho
Corporation; and AFFORDABLE HOUS-
ING LAND CONSULTANTS, LLC,
a California Limited Liability Company,

Defendants.

CASE No. 3:23-CV-04624

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1. National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*
2. Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*
3. Administrative Procedure Act, 5 U.S.C. § 500 *et seq.*

1 Plaintiff, GOLDEN GATE VILLAGE RESIDENT COUNCIL (“GGVRC” or “Council”),
2 files this Complaint for Declaratory and Injunctive Relief against Defendants, COUNTY OF
3 MARIN (“County”); MATHEW HYMEL, Marin County Administrator (the County and De-
4 fendant Hymel together are sometimes referred to herein as the “County Defendants”);
5 MARIN COUNTY PACIFIC ASSOCIATES (“MCPA”); PACIFIC WEST COMMUNITIES,
6 INC. (“Pacific West”); and AFFORDABLE HOUSING LAND CONSULTANTS, LLC
7 (“AHLC”) (MCPA, Pacific West, and AHLC together are sometimes referred to herein as the
8 “Real Parties-in-Interest”), and alleges as follows:

9 INTRODUCTION

10 1. This action challenges a decision by the County Defendants to forgo compliance with
11 clear requirements of the federal National Environmental Policy Act of 1969, 42 U.S.C.
12 § 4321 *et seq.* (“NEPA”), to prepare a full environmental impact statement (“EIS”) for the
13 Drake Avenue Apartments Project (the “Project”) located in Marin City, California. That de-
14 cision was arbitrary and capricious, an abuse of Defendants’ allowed discretion under law, and
15 not in accordance with applicable statutory and regulatory requirements.

16 2. Defendants’ decision relied primarily on two, related documents issued by the
17 County’s Community Development Agency, Housing and Federal Grants Division. The first
18 document is a report entitled “Environmental Assessment Determinations and Compliance
19 Findings for HUD-assisted Projects,” dated April 3, 2023, referred to herein as the “EA.” (A
20 copy of the EA is available at <https://www.marincounty.org/depts/cd/divisions/environmental-planning/nepa>.) The second document is a memorandum entitled “Notice of Finding of No
21 Significant Impact and Notice of Intent to Request Release of Funds,” dated April 7, 2023 and
22 referred to herein as the “FONSI.” (A true and correct copy of the FONSI is attached hereto
23 as Exhibit A.)
24

25 3. Both the EA and the FONSI were issued without adequate consideration of the unique
26 environmental setting in which the Project is situated. The Project is located in close proximity
27 to a large and historic low-income housing project known as Golden Gate Village (“GGV”).
28 The residents of GGV, which is listed on the National Register of Historic Places, are

1 overwhelmingly African-American. For years, this group has been disproportionately affected
2 by a range of discriminatory regulations and land use practices sanctioned (implicitly or explic-
3 itly) by local Marin County government entities and development interests.

4 4. The residents of GGV are represented by Plaintiff in this action – the Golden Gate Vil-
5 lage Resident Council. The Council was, to the extent it was allowed to be, an active participant
6 in the administrative process leading up to the issuance of the EA and FONSI. The Council
7 submitted lengthy and detailed written comments on a range of environmental and social im-
8 pacts associated with the Project, including aesthetic impacts, impacts on local parking availa-
9 bility, and impacts on the use of local recreational facilities and other public infrastructure.
10 Taking the Council’s comments fully into account, it is clear that a more fulsome review of the
11 Project’s environmental impacts is necessary, and that can only be accomplished through the
12 preparation and implementation of an EIS.

13 5. Wherever they could, the County Defendants made every effort to constrain the Coun-
14 cil’s participation in the administrative process supporting the Project. They unreasonably lim-
15 ited the amount of time allowed for public comment; they summarily denied the Council’s le-
16 gitimate requests for additional time; and they ignored comments the Council did provide in
17 making their final decision approving the Project. As a result, the approval not only violated the
18 plain requirements of NEPA, but it also disregarded fundamental due process requirements
19 embodied in the federal Administrative Procedure Act (“APA”).

20 6. Now, Defendants’ have decided to ignore continuing public opposition to the Project
21 and move forward with its development as quickly as possible. Demolition of existing buildings
22 to make way for new construction has already begun and may be largely completed. Numerous
23 trees at the site, including a heritage redwood tree, have been cut down. No permits, signage, or
24 other information was ever posted to indicate that demolition activities were about to proceed.

25 7. Judicial intervention clearly is necessary to avoid continued, irreparable damage to
26 Plaintiff and the community of Marin City at large. Only an order by this Court will put a stop
27 to the County Defendants’ continued indifference toward the concerns of this community and
28 compel Defendants to comply with the law.

JURISDICTION AND VENUE

1
2 8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331, because this case in-
3 volves a civil action under the Laws of the United States. The Court also has jurisdiction under
4 28 U.S.C. § 1346, because this is a civil action founded upon an Act or Acts of Congress. Juris-
5 diction is proper under the judicial review provisions of the Administrative Procedure Act,
6 5 U.S.C. §§ 701-06. The Court also has jurisdiction to provide relief under the Declaratory
7 Judgment Act, 28 U.S.C. § 2201.

8 9. Pursuant to 28 U.S.C. §§ 1391 (b)(2) and (e)(1), venue is proper in the Northern Dis-
9 trict of California, where a substantial number of the events alleged herein occurred.

10 **DIVISIONAL ASSIGNMENT**

11 10. Assignment to the San Francisco Division of this District is proper pursuant to Civil
12 Local Rule 3-2 (c)-(d), because this is a civil action arising in the County of Marin, where a sub-
13 stantial part of the events giving rise to the claims alleged herein occurred.

14 **PARTIES**

15 11. Plaintiff, **GOLDEN GATE VILLAGE RESIDENT COUNCIL**, is a nonprofit public
16 benefit corporation established by the residents of Golden Gate Village in Marin City, Califor-
17 nia and organized under the California Nonprofit Public Benefit Corporation Law, Cal. Corpo-
18 rations Code, division 2, part 2, § 5110 *et seq.*, for certain charitable purposes and educational
19 activities within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as
20 amended, that improve the living conditions of public housing residents in Marin City. The
21 Council has been recognized to be the designated “resident council” (as that term is defined
22 and used in U.S. Department of Housing and Urban Development (“HUD”) regulations re-
23 garding Tenant Participation and Tenant Opportunities in Public Housing, 24 C.F.R. Part 964)
24 representing the residents of Golden Gate Village.

25 12. Defendant, **COUNTY OF MARIN**, is a political subdivision of the State of California.
26 It exists as a public body, corporate and politic, pursuant to Government Code, title 3, divi-
27 sion 1, chapter 1, § 23900 *et seq.*, with such powers as are specified therein and necessarily im-
28 plied from those expressed. Gov. Code § 23003. Among other things, the County has been

1 given the power to sue and be sued. Gov. Code § 23004, subd. (a). The County is governed by
2 a five-member Board of Supervisors, and it may exercise its powers only through the Board of
3 Supervisors or through agents and officers, including the County Administrator, acting under
4 authority of the Board or as otherwise conferred by law. Gov. Code § 23005.

5 13. Defendant MATTHEW HYMEL is the current County Administrator for the County
6 of Marin. Defendant Hymel also is the designated Certifying Officer for the Project pursuant to
7 23 C.F.R. § 58.2 (a)(2). In that role, Defendant Hymel has been deemed by the County to have
8 expressly consented to accept the jurisdiction of the U.S. District Courts in any action brought
9 to enforce the County's responsibilities regarding any environmental review process conducted
10 for the Project.

11 14. Real Party-in-Interest MARIN COUNTY PACIFIC ASSOCIATES ("MCPA") is a
12 California Limited Partnership and a private real estate developer for the Project. On infor-
13 mation and belief, MCPA is the beneficial owner of a land use and zoning permit issued by the
14 County for the Project. MCPA's legal address in California is c/o Cogency Global Inc., 1325
15 J Street, Suite 1550, Sacramento, CA 95814. MCPA's principal place of business and headquar-
16 ters office is located at 430 E. State Street, Suite 100, Eagle, Idaho 83616.

17 15. Real Party-in-Interest PACIFIC WEST COMMUNITIES, INC. ("PacWest") is a
18 stock corporation incorporated in the State of Idaho and a private real estate developer for the
19 Project. On information and belief, PacWest is a general partner of MCPA and the beneficial
20 owner of a land use and zoning permit issued by the County for the Project. PacWest's legal ad-
21 dress in California is c/o Cogency Global Inc., 1325 J Street, Suite 1550, Sacramento, CA
22 95814. PacWest's principal place of business and headquarters office is located at 430 E. State
23 Street, Suite 100, Eagle, Idaho 83616.

24 16. Real Party-in-Interest AFFORDABLE HOUSING LAND CONSULTANTS, LLC
25 ("AHLIC") is a California Limited Liability Company and a private real estate developer for
26 the Project. On information and belief, AHLIC is the beneficial owner of a land use and zoning
27 permit issued by the County for the Project. AHLIC's principal place of business and headquar-
28 ters office is located at 700 N. Central Ave., Suite 310, Glendale, CA 91203.

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STATEMENT OF FACTS***A. The Project and Its Environmental Setting***

17. The Project consists of the prospective development of a 1.01-acre site in the heart of Marin City and the construction of a new, five-story, 74-unit apartment building at the site. This is a dramatic change from the site's current level of development, which previously was limited to the presence of a single triple-wide manufactured housing structure that was used by a local non-profit organization for office purposes. A small storage shed previously was situated on the western side of the site, but it has now been torn down. The property is otherwise undeveloped.

18. The cost of the Project, which is estimated to exceed \$56 million, would be built by Real Party-in-Interest PacWest and/or its corporate affiliates, and it will be funded over its lifetime using federal monies provided by HUD under the federal government's project-based Section 8 voucher program (24 C.F.R. Part 983). These funds ordinarily would be used to provide monthly rental subsidies for low-income households; however, the County has decided to reallocate and use these public monies to subsidize PacWest's private party development efforts. The County also would use tax-exempt bonds, taxable bonds, and local government housing funds to subsidize PacWest's planned construction of the Project.

19. The County's rationale for underwriting the substantial cost of the Project is that it is necessary to help meet state requirements encouraging the development of affordable housing. As noted in the EA, a Regional Housing Needs Allocation ("RHNA") has been prepared for the County by the Association of Bay Area Governments ("ABAG"). ABAG's calculation of the RHNA for unincorporated areas of Marin County will require the County to provide over 3,500 new affordable housing units over the next few years; however, there is nothing in this calculation that compels the County to locate housing specifically at the proposed Project site or at any other particular location within the County's jurisdictional boundaries.

20. Very few, if any, of the Project's 74 new residential units would support low, very low, and/or extremely low-income households. The Project is designed to support households earning 70 percent of the median household income across the entire San Francisco HUD

1 Metropolitan Fair Market Rent/Income Area (“HMFA”), which includes Marin as well as San
2 Francisco and San Mateo counties. According to HUD, the 2023 San Francisco MMFA me-
3 dian income level is projected to be approximately \$175,000 – that means the Project is planned
4 to support households earning \$122,500 (70% of \$175,000). This is more than 12% higher than
5 the median income level in the State of California overall (\$109,200).

6 21. Among the other glaring problems with the Project (as described in the EA) is its lack
7 of adequate residential vehicle parking. According to the EA, only a “total of 24 surface parking
8 spaces would be developed as part of the proposed project, including one space reserved for
9 ride sharing” EA, at 2. In other words, less than 20 percent of the Project’s residential units
10 would be provided with adequate on-site parking, leaving the residents of other units to negoti-
11 ate space for their cars and find off-site, on-street parking in an already congested local neigh-
12 borhood.

13 22. In its description of the physical setting for the Project, the FONSI notes that “sur-
14 rounding existing land uses include residential uses to the north, south, and west” FONSI,
15 p. 1. Neither the FONSI nor the EA provides any information about the scope, character, or
16 significance of those surrounding uses. None of the adjacent residential parcels, for example,
17 involve physical structures representing anything close to the scale and height of the proposed
18 Project (five stories).

19 23. Perhaps most egregious is the complete absence in the EA and FONSI of any meaning-
20 ful discussion of the cultural and architectural significance of the residential communities sur-
21 rounding the proposed Project. Those communities, which include GGV, are the historical
22 core of Marin City and have their origins in the influx of Black American workers during World
23 War II. Many of these workers helped build cargo ships, including the famous Liberty ships, at
24 the nearby Marinship shipyard in Sausalito, for use by the U.S. Merchant Marine to support
25 the nation’s ongoing war effort.

26 24. Housing for the local workforce was built during the War in what became known as
27 Marin City, but later those facilities fell into disrepair. In 1957, the Marin Housing Authority
28 (“MHA”) retained Aaron Green, a protege of Frank Lloyd Wright, and noted local architect,

1 John Carl Warnecke, to design the historic 300-unit GGV public housing complex to replace
2 the existing housing structures. GGV was completed in 1961, was awarded First Honors for De-
3 sign Excellence by the federal Public Housing Administration (HUD's predecessor agency),
4 and more recently was placed on the federal list of National Historic Places.

5 25. Given GGV's close proximity to the Project's outsized, architecturally unremarkable
6 main building (which bears no relationship to the culturally important and the historic nature of
7 GGV), the residents of that community and Marin City generally cannot help but be affected in
8 significant, adverse ways by the presence of the Project right next door. In order to even begin
9 to protect the interests of those parties, it is essential that the County Defendants be compelled
10 to prepare an EIS in full compliance with the requirements of NEPA.

11 *B. Statutory and Regulatory Framework*

12 26. NEPA is the nation's central and foundational environmental law. Section 101 of
13 NEPA declares that the national policy is "to use all practicable means and measures, including
14 financial and technical assistance, in a manner calculated to foster and promote the general wel-
15 fare, to create and maintain conditions under which man and nature can exist in productive har-
16 mony, and [to] fulfill the social, economic, and other requirements of present and future gener-
17 ations of Americans." 42 U.S.C. § 4331(a). Section 102 of NEPA sets out the basic procedures
18 governing how Federal agencies must carry out the national policy established in Section 101.
19 42 U.S.C. § 4332. That section specifically directs federal agencies (and their state and local
20 delegates) to interpret and administer federal laws and regulations in a manner consistent with
21 the policies set forth in NEPA, to determine whether proposed actions will have significant en-
22 vironmental impacts, and to consider the reasonably foreseeable environmental and related so-
23 cial and economic effects of those impacts.

24 27. The principal statutory basis for HUD's environmental review requirements under
25 NEPA is set out at 42 U.S.C. § 1437x, which is not part of NEPA itself but rather is a provision
26 of federal housing law. Section 1437x codifies a 1994 statute (Section 305(b) of the Multifamily
27 Housing Property Disposition Reform Act of 1994, Public Law No. 103-233), amending the
28 Federal Housing Act of 1937, 42 U.S.C. § 1437 *et seq.* The amendment directed HUD to

1 establish procedures governing how local public housing agencies must comply with NEPA as a
2 condition of receiving grants for federal housing funds. 42 U.S.C. § 1437x (a).

3 28. So long as a local agency certifies that it has complied with NEPA, and HUD approves
4 its certification, the local agency will be deemed to have satisfied HUD's NEPA compliance
5 obligations when it makes grant determinations. 42 U.S.C. § 1437x (b). Certification of compli-
6 ance does not, however, release the local agency from its own, separate NEPA compliance obli-
7 gations; indeed, the law expressly requires that any local government official charged with cer-
8 tifying compliance must consent "to assume the status of a responsible Federal official" under
9 NEPA and consent "on behalf of the State or unit of general local government and himself or
10 herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his or
11 her responsibilities as such an official" (42 U.S.C. § 1437x (c)).

12 29. HUD regulations adopted pursuant to 42 U.S.C. § 1437x are set out at Title 24 of the
13 Code of Federal Regulations, Subtitle A, Part 58 (Environmental Review Procedures for Enti-
14 ties Assuming HUD Environmental Responsibilities, known as "Responsible Entities"). The
15 regulations require that Responsible Entities meet not only the requirements of NEPA itself,
16 but also a range of federal environmental, cultural, and environmental justice standards above
17 and beyond NEPA, including without limitation: the National Historic Preservation Act of
18 1966, 16 U.S.C. § 470 *et seq.*; Executive Order 11593, *Protection and Enhancement of the Cultural*
19 *Environment*, 36 Fed. Reg. 8921 (May 13, 1971); and Executive Order 12898, *Federal Actions to*
20 *Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed.
21 Reg. 7629 (February 11, 1994).

22 30. For the most part, the environmental review process contemplated by HUD regula-
23 tions is the same as that generally required under NEPA. If a project is neither exempt nor cate-
24 gorically excluded from coverage under NEPA, but is determined to have a potentially signifi-
25 cant impact on the human environment, the Responsible Entity ordinarily will begin by prepar-
26 ing an environmental assessment, or EA. 24 C.F.R. § 58.36. If it is evident from the start that
27 an EIS is warranted, the Responsible Entity should proceed directly to the preparation of an
28 EIS instead of an EA. *Id.* Factors suggesting this course of action include the existence of

1 “extraordinary circumstances,” e.g., conditions that make the project “unique or without
2 precedent” or that “due to unusual physical conditions on the site or in the vicinity, have the
3 potential for a significant impact on the environment” 24 C.F.R. § 58.2 (a)(3)(i).

4 31. If, based on an EA, the Responsible Entity determines that the project is not an action
5 that will result in significant environmental impacts, it *may* (but is not required to) proceed with
6 the issuance of a Finding of No Significant Impact, or FONSI, pursuant to 24 C.F.R. § 58.43;
7 otherwise, it *must* proceed with the preparation of an EIS. 24 C.F.R. § 58.40. HUD regulations
8 require Responsible Entities to give public notice of the proposed issuance of a FONSI and any
9 related requests for the release of federal housing funds. 24 C.F.R. § 58.43 (a), (b). The Re-
10 sponsible Entity must consider any public comments on the FONSI received in a timely man-
11 ner, and it *must* make modifications to the FONSI, if appropriate, in response to those com-
12 ments before it completes its environmental certification and submits any request for release of
13 funds for the project. 24 C.F.R. § 58.43 (c).

14 32. While the Responsible Entity also must allow certain specified, minimum amounts of
15 time to receive comments, those minimum periods must be extended when, for example, there
16 is “considerable public interest or controversy concerning the project.” 24 C.F.R. §§ 58.45-46.
17 If (based on comments received or for any other reason) the Responsible Entity determines that
18 a finding of no significant impact is no longer valid, it must either prepare a new EA *or proceed*
19 *directly to preparation of an EIS*. 24 C.F.R. § 58.47 (b)(2).

20 33. In the present case, the County, as the Responsible Entity for the Project, failed to
21 comply with NEPA, with section 1437 of the federal Housing Act, and with HUD’s own imple-
22 menting regulations. It disregarded substantial evidence that the Project would have numerous,
23 significant environmental impacts that warranted consideration in a full EIS. It failed to give the
24 public adequate time to provide comments on those impacts, and it ignored important factual
25 considerations provided in whatever comments it did allow. For these and other reasons, the
26 County’s approval of the FONSI and its concurrent request for federal housing funds cannot
27 be sustained.
28

1 ***C. The County's Flawed Project Environmental Review***

2 34. Instead of committing from the outset to prepare an EIS for the Project, the County
3 initially prepared an Environmental Assessment (“EA”) pursuant to 24 C.F.R. Part 58. The
4 EA, dated April 3, 2023, is based primarily on source documents self-selected by the County
5 and reflects only minimal public outreach to gather additional information and identify poten-
6 tial environmental impacts and mitigation measures.

7 35. Almost all of the organizations contacted by the County as part of its public outreach
8 for the EA have no particular contact with or particularized knowledge of environmental condi-
9 tions at Marin City. *See* EA, at 50. The EA indicates that “Golden Gate Village” was con-
10 tacted, but it does not indicate to whom specifically the contact was made. It also indicates that
11 the response to this contact was a request for a meeting with the County, but no meeting was
12 ever scheduled.

13 36. Given the limited nature of the public outreach process, it is not surprising that the
14 County concluded in the EA that the Project “will not result in a significant impact on the hu-
15 man environment,” and it consequently issued its Finding of No Significant Impact pursuant to
16 24 C.F.R. 58.40(g)(1). *See* EA, at 4. This Finding, however, is in direct conflict with the
17 County’s separate finding that the Project would create “adverse environmental impacts upon
18 a low-income or minority community.” EA, at 90. That latter finding was required under fed-
19 eral Executive Order 12898, Fed. Reg. 7629 (Feb. 16, 1994), which directs government agencies
20 to, among other things, “identify and address the disproportionately high and adverse human
21 health or environmental effects of their actions on minority and low-income populations, to the
22 greatest extent practicable and permitted by law.” As noted in the EA, if such impacts are iden-
23 tified, agencies are required to “engage the community in meaningful participation about “mit-
24 igating the impacts or *move the project.*” EA, at 90 (emphasis added).

25 37. The County found that the Project indeed would have adverse environmental justice
26 impacts of the sort contemplated by Executive Order 12898; however, it dismissed those im-
27 pacts on the entirely specious grounds that they would not be “disproportionately high for low-
28 income and/or minority communities.” EA, at 90. The EA observed that the Project site “is

1 not located in a census tract that has been identified as having a disproportionate pollution bur-
2 den,” but in making that observation, the EA merely focused on a relatively narrow set of spe-
3 cific pollution-related concerns, such as exposure to particulate matter, air toxics cancer risk,
4 superfund proximity, and hazardous waste proximity. *Id.*

5 38. HUD’s own regulatory guidance documents, which seek to implement Executive Or-
6 der 12898, make clear that NEPA requires consideration of broader range of environmental jus-
7 tice impacts than just the risks associated with exposure to industrial pollutants. *See, e.g.*, HUD
8 Environmental Justice Strategy 2016-2020 (Nov. 2016 – Draft Version for Public Comment), at
9 [https://files.hudexchange.info/resources/documents/HUD-Environmental-Justice-Strat-](https://files.hudexchange.info/resources/documents/HUD-Environmental-Justice-Strategy.pdf)
10 [egy.pdf](https://files.hudexchange.info/resources/documents/HUD-Environmental-Justice-Strategy.pdf); Federal Interagency Working Group on Environmental Justice and NEPA Committee,
11 Community Guide to Environmental Justice and NEPA Methods (March 2019), Community
12 Guide to Environmental Justice and NEPA Methods, at [https://www.energy.gov/sites/de-](https://www.energy.gov/sites/default/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf)
13 [fault/files/2019/05/f63/NEPA Community Guide 2019.pdf](https://www.energy.gov/sites/default/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf), p. 37 (“ Under NEPA review, the
14 following types of impacts of a proposed action must be analyzed as they relate to environmen-
15 tal effects (40 CFR 1508.8): • Natural resources and ecosystems, • Aesthetic impacts, • His-
16 toric impacts, • Cultural impacts, • Economic impacts, • Social impacts, and • Health im-
17 pacts.”) As discussed below, the proposed Project will have adverse environmental impacts in
18 at least one or more of these categories.

19 39. Notice of the FONSI was issued on April 7, 2023, concurrently with a separate Notice
20 of Intent to Request the Release of Funds (“RROF”) that included certain Project-Based Sec-
21 tion 8 Vouchers under section 8(c)(9) of the federal Housing Act of 1937, as amended, 42
22 U.S.C. §§ 14011-1440. The County imposed a deadline of April 24, 2023, for members of the
23 public to provide formal comments on the FONSI. Given the complex and highly controversial
24 nature of the Project, the Council sent a letter to Defendant Hymel on April 17, 2023, request-
25 ing that the County allow additional time to prepare and submit comments. (A true and correct
26 copy of the Council’s April 17, 2023, letter is attached hereto as Exhibit B.) Federal regula-
27 tions, in particular 24 C.F.R. § 58.46, expressly allow for “time delays for exceptional
28

1 circumstances” of the sort presented here; nevertheless, the County summarily denied the
2 Council’s request by letter dated April 18, 2023, without explanation.

3 40. Despite the County’s denial of its request for extension, the Council made a good faith
4 effort to review the FONSI and EA in as much detail as possible and submitted a nine-page
5 comment letter to Defendant Hymel on April 24, 2023. (A true and correct copy of the Coun-
6 cil’s April 24, 2023, letter is attached hereto as Exhibit C.) Where practicable and appropriate,
7 the Council’s comments referenced relevant environmental assessment factors considered in
8 the EA. *See* 24 C.F.R. § 58.40, 40 C.F.R. §§ 1508.8, 1508.27.

9 *D. Review of Impacts Not Adequately Addressed in the EA*

10 41. The Council’s April 24, 2023, letter identified, without limitation, six areas where the
11 environmental analysis provided in the EA was clearly deficient.

12 *(a) Compatible Land Use and Zoning / Scale and Urban Design (EA, at 16-18).*

13 42. The Project contemplates the construction of high-density housing without providing
14 adequate parking for residents. The lack of adequate parking will adversely impact the existing
15 296 housing units located at nearby GGV. The Project will leave residents and others with few
16 places to park on a steep hillside that many cannot physically navigate. Seniors and handi-
17 capped individuals in many cases will be at risk when parking cars and navigating to their exist-
18 ing homes. There is no other area of Marin County that has this much existing and very dense
19 affordable housing. Increased traffic will be on a street that has a children’s park and a blind
20 curve that leads directly to the park. Speeding on the street is a frequent occurrence.

21 43. The physical structure of the Project would be entirely out of scale with other buildings
22 in the vicinity. Among other things, the proposed five-story height of the Project would block
23 the light and views of 25 units of senior housing (called Village Oduduwa) directly behind it.
24 The blockage of sunlight tends to encourage the growth of mold, and mold exposure presents a
25 real risk to vulnerable senior residents.

26 44. Older buildings, such as the 33-year-old Village Oduduwa complex, are more suscepti-
27 ble to mold growth due to aged windows, cracks and decaying materials. The Institute of Medi-
28 cine (IOM) has found there is sufficient evidence to link indoor exposure to mold with upper

1 respiratory tract symptoms, such as coughing and wheezing, in otherwise healthy people; exac-
2 erbated symptoms in people with asthma; and hypersensitivity pneumonitis in individuals sus-
3 ceptible to that condition.

4 45. Construction-related pollution (including pollution from already completed demolition
5 activities) is a given with any development; however, the Village Oduduwa residents will be a
6 mere five yards away from the Project, exposing this vulnerable, low-income senior population
7 to a litany of construction contaminants. Airborne construction contaminants include PM10
8 (particulate matter with a diameter less than 10 microns), PAHs (polycyclic aromatic hydrocar-
9 bons) bound to particulate matter, VOCs (volatile organic compounds), asbestos, and gases
10 such as carbon monoxide, carbon dioxide, and nitrogen oxides.

11 *(b) Socioeconomic Factors – Employment and Income Patterns (EA, at 25-27).*

12 46. There are no assurances that Project-related jobs will be filled by local workers. No
13 commitments have been made to hiring local residents for the construction or maintenance of
14 the property. There also has been no commitment to a worker training or apprenticeship pro-
15 gram by the proposed developer of the Project, who was specifically asked about hiring and/or
16 training local residents during a presentation at the Marin City Community Services District
17 meeting on April 12, 2003.

18 *(c) Demographic Character Changes/Displacement (EA, at 26-29.)*

19 47. The 182 new residents living in the Project, if it is built, will have a disproportionate
20 impact on Marin City's already overtaxed infrastructure. For example, because of HUD subsi-
21 dies, those residents likely will *not* be responsible for paying taxes owed to the local public
22 school district.

23 48. The Project is in a state-designated high fire hazard zone. The development is within a
24 few hundred feet of the Marin Headlands, which consists of 2,100 acres of undeveloped federal
25 parkland – a recent forest fire in the Marin Headlands triggered a shelter-in-place order to
26 Marin City residents. The area also is prone to flooding and is served by only one road for both
27 ingress and egress. Marin City's main thoroughfare, Donahue Street, has a history of flooding.
28 Residents have been stranded inside their cars or prevented from reaching their homes as a

1 result – under these conditions, children have been unable to make their way home after school
2 and emergency vehicles are unable to move to and from locations where they are needed.

3 49. Flooding problems will worsen with sea level rise and increased rainfall intensity due to
4 climate change. The Marin City watershed has no upstream ponds or wetlands. Without stor-
5 age areas, there is nothing to slow down the stormwater flow from steep hillsides. Floodwaters
6 reach the bottom of the watershed quickly with few diversions available to send floodwater to
7 the Bay.

8 50. The County is working with Caltrans on a traffic improvement project that includes
9 plans to bore a second culvert to direct floodwaters under Highway 101 and construct a new
10 flood wall around Marin City’s drainage pond. The upgrade reportedly will not be sufficient,
11 however, to prevent flooding and will place an additional burden on the community during a
12 flood emergency. Increasing Marin City’s total population by almost 7% will make it more diffi-
13 cult to safely evacuate residents during a major flood.

14 *(d) Environmental Justice (EA, at 27-29).*

15 51. Environmental justice means ensuring that the environment and human health are pro-
16 tected fairly for all people regardless of race, color, national origin, or income. As part of com-
17 pliance with applicable federal laws, government agencies, including HUD, must consider how
18 federally assisted projects may have disproportionately high and adverse human health or envi-
19 ronmental effects on minority and low-income populations.

20 52. According to the 2020 U.S. Census, Marin County has an approximate population of
21 260,200, and the average household size is 2.46 persons per household. The proposed Project
22 is expected to accommodate approximately 182 future residents (2.46 persons/unit x 74 units).
23 As such, it would represent a 0.07 percent population increase for the County, assuming all res-
24 idents of the Project would be new residents of the County.

25 53. Marin City is a small, historically Black enclave located at the Southern end of one of
26 the wealthiest, most segregated counties in the Bay Area. The community was established by
27 the federal government during World War II to house workers building ships for the war ef-
28 fort. At the conclusion of the war, the Black residents of Marin City were unable to buy or rent

1 homes elsewhere in the area due to County-sanctioned redlining practices and racially restric-
2 tive private land use covenants. Instead, they were left to languish for the next 15 years in shod-
3 dily built structures that originally were intended to be temporary.

4 54. GGV, a public housing project, was built in the early 1960s to replace existing, dilapi-
5 dated housing structures. GGV is home to around 600 predominantly Black residents, many of
6 whom are descendants of wartime shipbuilders. Other housing also was built in Marin City for
7 Black residents during the years of redlining. Since then, additional low-income and market rate
8 housing has been added to the community, resulting in a small geographic area becoming
9 densely populated, predominately low-income, and highly segregated.

10 55. The County's view that the Project will not disrupt the demographic character of the
11 community is false. It is disingenuous to use County-wide population data when discussing the
12 impact of a five-story, 74-unit development in a small community. The 182 new residents of the
13 Project may represent just a 0.07 percent population increase in the County's population, yet
14 they will cause a 6.2% increase in Marin City's overall population. Marin City's population is
15 just 2,993, according to 2020 data from United States Census Bureau, but almost 23% percent
16 of that is Black.

17 56. The County purports to be using the Project to correct its past failures in managing
18 low-income housing facilities in Marin City. The County's goals are in direct conflict with pre-
19 serving the character of a local community that is historically Black and economically dis-
20 tressed. The reality is that no one else in affluent, predominantly white Marin County would
21 accept the County's efforts to "improve" the neighborhood with an out-of-scale, five-story de-
22 velopment perched atop a hill on a one-acre plot of land. The building will loom over the com-
23 munity's only park, where school children play during weekdays and families gather on week-
24 ends.

25 57. Adding the proposed new 74 units also will not resolve any so-called "over housing"
26 issue at GGV. Over housing typically occurs when children become adults and depart from the
27 family home, leaving bedrooms without occupants. Since this issue has not previously been ad-
28 dressed by MHA, the majority of the over housed units at GGV are occupied by seniors. HUD

1 has been very clear with MHA and its Board of Commissioners (which is made up primarily of
2 members of the Marin County Board of Supervisors) that the over housing issue must be re-
3 solved as soon as possible. In fact, HUD has been exerting pressure on the agency since at least
4 May 2021 to correct all over housing at GGV. Regrettably, HMA has done next to nothing to
5 address the issue.

6 58. The Project has received streamlined approvals under California’s Housing Accounta-
7 bility & Affordability Act, Senate Bill (“SB”) 35. The SB 35 “fact sheet” states that “when lo-
8 cal communities refuse to create enough housing—instead punting housing creation to other
9 communities—then the State needs to ensure that all communities are equitably contributing
10 to regional housing needs. Local control must be about how a community meets its housing
11 goals, not whether it meets those goals.” SB 35 requires compliance with state and federal fair
12 housing laws, but this Project complies with neither of set of these requirements, given its loca-
13 tion in Marin City - an area of Marin County that already meets almost 60% of the County’s fair
14 housing.)

15 59. In reality, Marin County has continued to place low-income housing projects in Marin
16 City, a densely populated community overrun with infrastructure problems. The County
17 should disperse affordable housing throughout other areas of the unincorporated County, ra-
18 ther than overburdening Marin City with the detrimental effects of clustering low-income
19 households in a small geographic region. Dispersing low-income housing to other areas would
20 allow “low-income families to secure housing options in more affluent communities—a proven
21 strategy for promoting better health, increased employment, and earnings and educational at-
22 tainment for low-income residents.” *See Margery Austin Turner and Lynette A. Rawlings, Pro-*
23 *moting Neighborhood Diversity: Benefits, Barriers, and Strategies* (Urban Institute, 2009).

24 60. The average Marin City resident will not be able to afford a unit in the Project using
25 the rental rates in the developer’s plan. The rents are determined by Marin County’s area me-
26 dian income; however, according to HUD, Marin City’s area median income is just 28% of the
27 county’s figure. Making the Project virtually unaffordable for local residents will only
28

1 exacerbate existing trends encouraging the gentrification of Marin City and increased marginal-
2 ization of those currently living there.

3 61. The Project site has considerable historical significance for the African American com-
4 munity. One large original family, the Banks family, has deep roots in this property as their an-
5 cestor, Reverend Samuel Banks, established the Village Baptist Church on the site and their
6 family worked extensively as volunteers to build the church and feed and support the commu-
7 nity for many years. For this previously wooded, pastoral parcel of land to be consumed by a
8 huge, towering structure that is entirely out of scale with nearby buildings, that will not offer
9 housing affordable to the existing Marin City low-income community, that will encourage con-
10 tinued gentrification of the neighborhood and displacement of current residents, and which is
11 to be built by development interests that previously have spoken derisively of the local African
12 American populace, hugely disrespects and insults the heritage left by the Banks family and
13 others who made Marin City a reality.

14 *(e) Educational and Cultural Facilities (Access and Capacity) (EA, at 29-31)*

15 62. The EA states that “Public school services for the proposed project would be provided
16 by the Sausalito Marin City School District (SMCSD) for grades K-8 and the Tamalpais Union
17 High School District (TUHSD) for high school. ... According to the SMCSD’s Facilities Mas-
18 ter Plan, the existing school facilities are projected to have the capacity to support the increas-
19 ing population of Marin County.”

20 63. These statements are inaccurate and misleading. The SMCSD Superintendent, Dr.
21 Itoco Garcia, stated at the April 20, 2023 SMCSD Board of Trustees meeting that he was never
22 contacted about the Project and its potential impact on the school, and that the school district
23 does not support the Project. Safety concerns were also cited by Dr. Garcia. Being in a high fire
24 risk and flood occurrence, with only one road in and out of Marin City, the ability to evacuate
25 children from the school (given competition with so many people trying to leave at the same
26 time), will be significantly reduced.

27 64. The SMCSD Superintendent also cited concerns about the impact on parking available
28 for teachers and staff. Limited existing parking is already shared by several adjacent community

1 organizations, including the Cornerstone Community Church of God in Christ, Marin City
2 Community Services District offices, Marin City Rec Center, Senior Center and likely the
3 Marin City Health and Wellness Center.

4 65. No information is provided about the kindergarten-5th grade Sausalito campus of the
5 SMCSD and its greater distance from the Project. There is no mention of school transportation
6 impacts for these students. The Sausalito campus Facilities Master Plan says that the school is
7 “projected to have capacity to support increasing populations;” yet no numbers or any specific
8 clarifications are given. The middle school campus in Marin City does not have adequate class-
9 room space now, and there is no plan to increase it.

10 *(f) Community Facilities and Services: Public Safety - (EA, at 37).*

11 66. The EA states that the Project would be provided with law enforcement services from
12 the Marin County Sheriff’s Department and fire protection services from the Marin County
13 Fire Department. However, public Safety is much more than just police and fire services.
14 Marin City has one route in and one route out. This is an ongoing and growing concern as the
15 climate crisis makes wildfires, flooding, and mudslides in Marin City more likely. There cur-
16 rently are occasions when the Bridge Street tunnel floods, and in the future those occurrences
17 will increase. Even more concerning is the growing likelihood of wildfires.

18 67. The project sits in an area that is surrounded on two sides by the Golden Gate National
19 Recreation Area (“GGNRA”). The GGNRA is full of dense and dying vegetation, including
20 Oak, Eucalyptus, Pine, Madrone and Bay trees. Shrubs closer to the ground include several
21 species of Broom, Coyote Bush, and Manzanita – all of these plants are highly flammable.
22 Highway 101 runs along the East side of Marin City, adding to the danger of wildfires. There
23 have been several instances of wildfires starting along this stretch of 101 in the past few years.

24 68. Bay marsh lands run along a northern portion of Marin City, near a shopping center
25 and the entrance and exit to Highway 101 South. There are efforts underway to preserve the
26 marshland and control flooding, but there is no way of knowing how long these efforts will take
27 or whether they will be sufficient to prevent flooding from sea level rise. Placing a 74-unit high
28 rise apartment building with just 24 parking spots, in an already very densely populated area in

1 Marin City, is inconsistent with public safety concerns that are escalating due to climate
2 change.

3 *E. Submission of the FONSI and RROF and Subsequent Developments*

4 69. Defendants never acknowledged receipt of the Council's April 24 comment letter. No
5 changes were ever made to the FONSI or the RROF based on the Council's comments, and
6 there is no evidence that Defendants even considered them. The RROF was formally submit-
7 ted to HUD on or about April 25, 2023, the day after Defendants received the Council's com-
8 ment letter.

9 70. Submission of the RROF did not bring an end to controversy over the Project. On May
10 18, 2023, an organization called Save Our City (not formally related to the Council) filed a com-
11 plaint for reverse validation pursuant to Cal. Code Civ. Proc. § 863, and in the alternative, a
12 writ of mandate petition with Marin County Superior Court, challenging a March 21, 2023, de-
13 cision by the Marin County Board of Supervisors to approve bond financing for the Project.
14 The purpose of this Board decision was to provide County funding that would supplement re-
15 sources being sought for the Project from HUD. *See Save Our City v. All Persons Interested in*
16 *Resolution No. 2023-31, et al.*, Marin Sup. Ct. No. CIV 2301468. Notwithstanding the filing of
17 Save Our City's state court action (which established clear grounds for awarding injunctive re-
18 lief to suspend work on the Project), the County issued a building permit on May 26, 2023.

19 71. Demolition work was scheduled to begin after issuance of the permit, but construction-
20 related activities have been suspended for the time being. On July 26, 2023, Petitioner in the
21 *Save Our City* litigation filed a motion for issuance of temporary restraining order and prelimi-
22 nary injunction to delay further work until the Superior Court is able to consider the merits of
23 the case. In light of that motion, Respondents agreed not to proceed with work on the Project
24 until the Superior Court can address the merits of Petitioner's motion.

25 72. Petitioner's pending motion in the *Save Our City* matter was heard by the Superior
26 Court on August 25, 2023. The Superior Court took the matter under consideration and did
27 not rule on the motion at that time. On September 6, 2023, the Superior Court did issue a lim-
28 ited preliminary injunction enjoining the County from issuing further bond financing for the

1 Project; however, the Court's order does not on its face enjoin the resumption of construction
2 activity.

3 73. Given the limited scope of the Superior Court's September 6, 2023, order, the Real
4 Parties in Interest appear potentially free to move forward with construction of the Project. If
5 they do, Plaintiff here may have no choice but to file a separate motion or motions to obtain fed-
6 eral injunctive relief from this Court.

7 *FIRST CLAIM FOR RELIEF*

8 *(National Environmental Policy Act, 42 U.S.C. § 4321 et seq., Housing Act of 1937,*
9 *42 U.S.C. § 1437 et seq., and Administrative Procedure Act, 5 U.S.C. § 500 et seq.)*

10 74. Plaintiff hereby incorporates by reference each and every allegation set forth above.

11 75. Plaintiff is a "person" within the meaning of 5 USC § 551(2) and is beneficially inter-
12 ested in the outcome of this litigation, insofar it is the lawfully recognized representative of the
13 residents of Golden Gate Village, whose rights and interests have been and are directly injured
14 by the actions of Defendants as alleged herein.

15 76. The County is an "agency" within the meaning of 5 USC § 551(1) and a "responsible
16 entity" within the meaning of 24 C.F.R § 58.2(a)(7). Pursuant to 24 C.F.R § 58.4(a), the
17 County has responsibility for environmental review, decision-making, and related actions that
18 apply to HUD under NEPA and other provisions of law that further the purposes of NEPA. As
19 a responsible entity, the County must certify that it has complied with those laws and with re-
20 lated laws and authorities specified in 24 C.F.R § 58.5, and it must consider the criteria, stand-
21 ards, policies, and regulations relevant to those laws and authorities.

22 77. Defendant Hymel, in his capacity as County Administrator, is the "certifying officer"
23 for the County within the meaning of 24 C.F.R § 58.2(a)(2), and is the "responsible Federal
24 official" for the County as that term is used in section 102 of NEPA, 42 U.S.C. § 4332, and in
25 those statutory provisions cited in 24 C.F.R § 58.1(b). As certifying officer, Defendant Hymel
26 is responsible for complying on behalf of the County with all the requirements of NEPA section
27 102 and with related provisions of 40 C.F.R. parts 1500 through 1508 and 24 C.F.R. part 58.

28 78. The Project is a "project" within the meaning of 24 C.F.R § 58.2(a)(4).

1 79. Issuance of the FONSI and related RROF constitute final “agency actions” by De-
2 fendants within the meaning of 5 USC § 551(12).

3 80. To the extent Defendants allowed it, Plaintiff fully and actively participated in the ad-
4 ministrative process leading to Defendants’ approval of the FONSI and RROF. Among other
5 things, Plaintiff submitted timely and detailed written comments to Defendants describing sig-
6 nificant environmental impacts associated with the Project. Defendants ignored or otherwise
7 failed to give sufficient consideration to Plaintiff’s comments. Plaintiff has exhausted its admin-
8 istrative remedies in this matter, and it therefore is now ripe for adjudication.

9 81. The County’s and Defendant Hymel’s conduct as alleged herein violated NEPA sec-
10 tion 102, 42 U.S.C. § 4332, and section 1437x of the Federal Housing Act, 42 U.S.C. § 1437x,
11 by failing to prepare an EIS notwithstanding substantial evidence in the record that the Project
12 would have significant environmental impacts, including: land use and zoning-related impacts;
13 building scale and urban design impacts; impacts on employment and income patterns; envi-
14 ronmental justice impacts; demographic character and displacement impacts; impacts on edu-
15 cational and cultural facilities; and impacts on community facilities and public safety services.

16 82. Defendants’ actions were arbitrary, capricious, an abuse of discretion, and undertaken
17 in violation of the APA, 5 U.S.C. § 706.

18 *SECOND CLAIM FOR RELIEF*
19 *(Declaratory Judgment Act, 28 U.S.C. § 2201)*

20 83. Plaintiff hereby incorporates by reference each and every allegation set forth above.

21 84. An actual controversy exists as to the lawfulness of County Defendants’ conduct as al-
22 leged herein under NEPA section 102, 42 U.S.C. § 4332, and section 1437x of the Federal
23 Housing Act, 42 U.S.C. § 1437x.

24 85. Plaintiff contends that County Defendants have violated NEPA section 102 and sec-
25 tion 1437x of the Federal Housing Act by (1) failing to prepare an EIR for the Project, notwith-
26 standing substantial evidence in the record that the Project would have significant environmen-
27 tal impacts; (2) failing to provide Plaintiff with adequate notice and opportunity to comment on
28

1 the EA and FONSI; and (3) failing to provide meaningful consideration of any comments that
2 Plaintiff did submit.

3 86. Defendants contend that the Project will not have significant environmental impacts
4 and that an EIS was not required. Plaintiff is informed and believes Defendants will contend
5 that: (1) they complied with the minimum time limits permitted for allowing public comments
6 on the EA and FONSI and that additional time was not warranted; and (2) that any comments
7 Plaintiff submitted were adequately addressed beforehand in the EA and FONSI.

8 87. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a binding, judicial determination
9 of the rights, duties, and other legal relations of the parties as to the matters alleged herein.
10 Plaintiff specifically is entitled to a judicial declaration that (a) County Defendants violated
11 NEPA section 102 and section 1437x of the Federal Housing Act by failing to prepare an EIS
12 for the Project; and (b) County Defendants' issuance of the FONSI and approval of the Project
13 was arbitrary, capricious, and contrary to law.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff requests judgment as follows:


- 16 1. For entry of a declaratory judgment and order vacating and setting aside County De-
17 fendants' issuance of the FONSI and approval of the Project;
 - 18 2. For issuance of a permanent injunction prohibiting Defendants' from taking any fur-
19 ther action, including construction-related action, to implement the FONSI and approval of the
20 Project;
 - 21 3. For issuance of a preliminary injunction prohibiting Defendants from taking any ac-
22 tion, including construction-related action, with respect to the implementation of the FONSI
23 and approval of the Project pending the issuance of a permanent injunction;
 - 24 4. For an award to Plaintiff of the costs of this litigation, including reasonable attorneys'
25 fees and court costs; and
- 26
27
28

1 5. For a grant of such other and further relief as the Court deems just and proper.

2 Dated: September 8, 2023

Respectfully submitted,

3 HAROFF LAW P.A.

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5
6 By: Kevin T. Haroff, Esq.
7 Attorney for Plaintiff
8 GOLDEN GATE VILLAGE RESIDENT COUNCIL

9 PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff requests judgment as follows:

11 1. For entry of a declaratory judgment and order vacating and setting aside County

12 Defendants' issuance of the FONSI and approval of the Project.

13 2. For issuance of a permanent injunction prohibiting Defendants from taking any

14 further action, including construction-related action, to implement the FONSI and approval of

15 the Project.

16 3. For issuance of a preliminary injunction prohibiting Defendants from taking any

17 further action, including construction-related action, with respect to the implementation of the FONSI

18 and approval of the Project pending the issuance of a permanent injunction.

19 4. For an award to Plaintiff of the costs of this litigation, including reasonable attorney

20 fees and court costs and

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PROOF OF SERVICE