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May 11, 2009

VIA FEDERAL EXPRESS AND E-MAIL

Mr. Robert Westmeyer
County Counsel
County of Napa
1195 Third Street, Suite 301
Napa, CA 94559

Re: County of Napa Revised Draft Housing Element

Dear Mr. Westmeyer:

As you know, we represent Napa Redevelopment Partners LLC, the owner of the Napa Pipe property. We are writing to make it clear that the Revised Draft Housing Element dated April 22, 2009, proposes development of housing at Napa Pipe in a manner that is patently infeasible. Napa Redevelopment Partners would not, under any circumstances, be able to go forward with the housing development project that the Revised Draft Housing Element identifies at the Napa Pipe site. As a result, it is our belief that the County's Revised Draft Housing Element does not comply with the requirements of California's Housing Element Law.

The Revised Draft Housing Element fails to meet the requirement under the Housing Element Law that it demonstrate that the projected residential capacity of each site identified in the inventory of available sites can *realistically* be achieved. (Cal. Gov't Code § 65583.2(c); HCD, *Building Blocks for Effective Housing Elements*, Adequate Sites Inventory and Analysis: Realistic Development Capacity). The proposed rezoning of the Napa Pipe site that the Revised Draft Housing Element calls for would allow development of only 304 units on only 20 acres of the 150-acre Napa Pipe site. The Revised Draft Housing Element relies heavily upon 152 of those units to meet the County's Regional Housing Needs Allocation (RHNA) for low- and very low-income housing. Thus, the Revised Draft Housing Element contemplates a project that would include 50% of the units as housing affordable to low- and very low-income households.¹ As we stated in our previous letter dated March 16, 2009, and as Napa

¹ We understand that the County is now contemplating additional Housing Element revisions that would provide that a range of 152 to 202 of the units would be allocated as affordable to low- and very low-income households, resulting in a project that could include up to 66% affordable housing. This would be even less feasible than a 50% affordable housing project.

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Redevelopment Partners has consistently asserted, the designation of only a 20-acre area of Napa Pipe for multifamily housing has no practical ability to help the County meet its affordable housing needs.

No developer would ever go forward with development or the subdivision and sale of such a small portion of the Napa Pipe site for a residential development of any kind because of the massive upfront remediation and infrastructure costs necessary to construct housing, including the substantial pollution legal liability challenges arising from segmenting the property in the manner proposed. Furthermore, even within a conventional site (with no remediation requirements and all infrastructure in place), it is not "realistic" to expect that any private property owner would produce a stand-alone project with 50% or more of the housing units designated affordable. Nor is it any more realistic to imagine that a non-profit housing organization would be able to purchase a portion of the Napa Pipe property for such a purpose.

The Revised Draft Housing Element ignores the fact that a Remediation Action Plan covering remediation of the entire Napa Pipe site already has been approved. In that context, piecemeal remediation of only 20 acres of the site makes no sense. Further, the 20-acre project would represent a quintessential example of poor planning by placing housing directly adjacent to a 130-acre industrial park, resulting in obvious land use conflicts. Under the Revised Draft Housing Element, the only viable course of action would be to maintain the entire Napa Pipe property as a single landholding for industrial uses. Thus, the proposed rezoning of the 20-acre site is impractical and would *never* lead to the construction of real housing units. Consequently, the Revised Draft Housing Element creates nothing but illusory "paper housing."

Moreover, the Revised Draft Housing Element fails to meet the Housing Element Law's requirements for identifying properties to be rezoned to provide for affordable housing. The Housing Element Law provides that sites requiring rezoning in order to accommodate very low- and low-income housing allocations must be zoned in a manner that does both of the following: (a) permits residential use by right; and (b) has minimum density and development standards that permit at least 20 units per acre in jurisdictions such as the County of Napa. (Cal. Gov't Code § 65583.2(h)).

Although the Revised Draft Housing Element pays lip service to this requirement by stating that the rezoned 20-acre portion of Napa Pipe shall be subject to a 20-unit per acre minimum density standard, it also includes contradictory language that prevents that minimum density from ever being achieved. A true 20-unit per acre minimum requirement would prohibit any development proposal resulting in fewer than 400 units on the 20-acre site. However, the Revised Draft Housing Element provides that the new zoning for the 20-acre site shall permit "a total of up to 304 units,

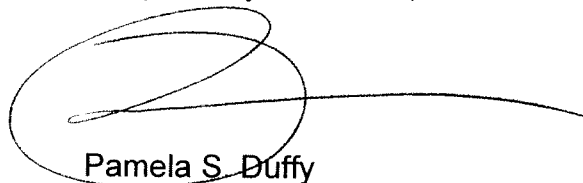
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including 152 units that could be developed by right." (Revised Draft Housing Element at H-43). A 304-unit cap for a 20-acre site effectively results in a minimum density standard barely above 15 units per acre. Thus, the Revised Draft Housing Element does not meet the legal requirements that would enable it to rely upon the 152 units that it contemplates could be developed "by right" at the Napa Pipe site.

As we explained when the City of Napa initially proposed the drastic reduction to the Napa Pipe project now contemplated in the Revised Draft Housing Element, this proposal exposes the County to other significant legal risks. Rather than allowing a comprehensive, phased plan for Napa Pipe, the Revised Draft Housing Element would reduce the development potential of the site to the point where it is questionable whether *any* economically beneficial use of the property would be possible, exposing the County to liability for an unconstitutional taking of private property.

In sum, the Revised Draft Housing Element fails to meet the basic legal requirements to demonstrate that a 20-acre Napa Pipe could *realistically* be developed with multifamily housing and to utilize this site to provide a significant portion of the County's RHNA allocation for low- and very low-income housing. The only feasible manner to develop any housing at the Napa Pipe property is through comprehensive planning that encompasses the entire site.

Respectfully submitted,



Pamela S. Duffy

PSD:rbh

cc: Napa County Board of Supervisors
Lawrance Florin, Community and Intergovernmental Affairs Manager
Nancy Watt, Executive Officer
Hillary Gitelman, Director, Conservation, Development and Planning Department
Napa Redevelopment Partners LLC