



September 8, 2023

By E-Mail

Hon. Mayor Kate Colin
Members of the City Council
City of San Rafael
c/o City Clerk, city.clerk@cityofsanrafael.org
1400 Fifth Avenue, Room 209
San Rafael, CA 94901

Cc: Alicia Giudice, Community Development Director
(community.development@cityofsanrafael.org)
Cc: Robert Epstein, City Attorney (rob.epstein@cityofsanrafael.org)

Re: SB 330 Preliminary Applications for residential development submitted to the City of San Rafael by Dominican Valley LLC for the property at Magnolia Avenue at Deer Park Avenue in San Rafael (APN 015-163-03).

Dear Mayor Colin and Members of the City Council,

We, the Steering Committee of Save Dominican Valley, a local community organization representing nearly 300 residents and homeowners in the Dominican Valley neighborhood in San Rafael, are writing to draw your attention to the five SB 330 Preliminary Application Forms submitted by Dominican Valley LLC (the "Applicant") for residential development proposals, known as PLAN 23-075, 23-077, 23-080, 23-081, and 23-086 (the "Project"), for the property located at the intersection of Magnolia Avenue at Deer Park Avenue in San Rafael (APN 015-163-03).

We wish to notify you that those SB 330 Preliminary Application Form submissions contain significant material misstatements, inaccuracies, and factual misrepresentations, which correspond to deficiencies in the responses to those submissions by the San Rafael Department of Community Development, on July 28, 2023. As a result, the Applicant's SB 330 Preliminary Application Forms and the City's acceptance of them should be rescinded and the Applicant directed to resubmit the Forms.

We fully acknowledge that the SB 330 Preliminary Application is just the first step in a multi-step process and its statutory requirements are minimal. However, the legal issues and the inaccuracy of the information provided by the Applicant, in this instance, are so significant that we feel obligated to alert the City and the Applicant at this time.

Our supporting analysis, presented below, generally follows the sequence of the 12 Questions in the SB 330 Preliminary Application Form. However, some comments are grouped together and are out of sequence when our comments relate to more than one of the 12 Questions on the SB

330 Preliminary Application Form. We have only included responses to those Questions we wish to comment on at this time, reserving the right to make additional comments, in the future, as we receive more information about the proposed projects.

We have also added a new section: “13. COMMENTS ON ISSUES THAT MATERIALLY IMPACT THE ACCURACY AND COMPLETENESS OF THE APPLICANT’S SB 330 PRELIMINARY APPLICATION FORMS.” In this Section, we document related issues that may significantly impact the health, safety, and general welfare of residents of San Rafael as well as the design and feasibility of the projects proposed in the Applicant’s SB 330 Preliminary Application documentation.

SUMMARY OF FINDINGS:

Having reviewed the documents submitted by the Applicant and the requirements under local regulations, state law, federal law, and the SB 330 Preliminary Application submission requirements, for the reasons noted herein, we find that both the Applicant and the City of San Rafael made significant errors in submitting and reviewing the SB 330 Preliminary Applications.

Although we acknowledge that the SB 330 Preliminary Application Form does not require the level of detail examined in this comment letter, as with any other legally binding document, the law requires responses to the Form’s questions and the representations made by the Applicant to be reasonably complete and factually accurate for the document to be enforceable.

As such, neither the Applicant nor the City should assume that “vested rights” (under SB 330) are automatically granted simply because an Applicant has filled out a form, signs it, and delivers it to the City. Likewise, the City cannot reasonably establish a date of the granting of vested rights without reviewing the factual accuracy of the information submitted, particularly as it relates to violations of the City’s own General Plan and Zoning Code.

In our opinion, the City’s review was inadequate and the dates of the granting of “vested rights” are unsubstantiated and subject to challenge.

In addition, while we are also aware that a comprehensive assessment of environmental impacts will not be required until the CEQA Environmental Impact Report phase of the project’s review, we feel it is of great importance that we alert the City and Applicant, at the outset, of the broad range of potentially significant environmental impact noted herein, so proper procedures are adhered to in the interim and no pre-development site clearing or landscape modifications are permitted until such studies and assessments are completed.

It is important to note that all of the regulatory information presented in this comment letter is generally available to the public or anyone doing a Google search. As such, in our opinion, both the Applicant and the City should have been aware of the federal and state regulations, government agency maps, and guidelines we’ve cited.

Finally, please note that it is a fundamental requirement of *The Permit Streamlining Act* (Assembly Bill 2234), *The Housing Accountability Act* and *Senate Bill 330* that in order to qualify

for expedited processing a project proposal must be “consistent” with the City’s General Plan and Zoning Codes, further defined as the existing “ordinances, policies, and standards” in effect (*SECTION 1. Section 65589.5 of the Government Code, 65589.5.(o)(1)*). Under 65589.5.(o)(4), ‘Ordinances, policies, and standards’ are further defined to include the...

...general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

Furthermore, the parcel is located in the “Dominican / Black Canyon” Neighborhood. As clearly stated in The General Plan, under the *Neighborhood Element, Program NH-2.14B*, page 4-26:

“Dominican Hillside Parcels. Work with Dominican University and neighborhood residents to plan for the undeveloped hillside parcels located east of Deer Park Avenue and south of Gold Hill Grade. Much of the property is steep and heavily wooded. Other portions have the potential for housing, including student housing and faculty/staff housing, which is a significant local and community need. In the event housing is pursued, the permitted density should reflect site constraints. Development should conform to the City’s Hillside Residential Design Guidelines and include provisions for substantial open space. **The neighborhood should be involved in the planning and review process, which would include an amendment to the Master Use Permit and the PD-district zoning.**” [Emphasis added]

This is again acknowledged by the City in its responses to the developer, under “Policies, 1. General Plan, c, where it states,

“Policies under the “Neighborhood Element” for Dominican/Black Canyon Neighborhood applies for the project property.”

For the reasons enumerated in this comment letter, in our opinion, the City should inform the Applicant that the five *SB 330 Preliminary Applications* filed by the Applicant for the Project(s) known as PLAN 23-075, 23-077, 23-080, 23-081, and 23-086 are not eligible for processing under SB 330 because, (1) they contain incorrect and misleading information, (2) they are not “consistent” with the City of San Rafael’s *General Plan and Zoning Code*, making them categorically ineligible for “streamlining” processing under *SB 330, The Permit Streamlining Act, and The Housing Accountability Act*, (3) they violate local, state, and federal regulations regarding wetlands, fire safety, and WUI development requirements, and (4) they are categorically ineligible for “streamlining” processing under *SB 330, The Permit Streamlining Act, and The Housing Accountability Act* because the San Rafael *General Plan* specifically requires that any application for the development of the subject parcel will require a Master Use Permit Amendment and Zoning Code Amendment, under the *Neighborhood Element, Program NH-2.14B*.

OUR SPECIFIC FINDINGS ARE AS FOLLOWS:

Question 2: “EXISTING USES – The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.”

Comment 2a: The Applicant’s responses regarding “Existing Uses” are incorrect and incomplete because the site has historically provided public trails to adjacent open space.

In each of the five proposals submitted, the Applicant stated,

“Grading of existing site for new home pads, streets, sidewalk. Existing use is undeveloped land.”

The Applicant’s response fails to acknowledge that the general public has enjoyed open and unrestricted access to the subject property, historically, for many generations. As such, it has acted as a gateway to the contiguous public open space: the Harry Barbier Memorial Park, the San Pedro Mountain Preserve, and the China Camp State Park to the northeast and east.

This historic public use and the requirement to plan for the continuation of public access is affirmed and specifically stipulated by San Rafael, Senior Civil Engineer, Matthew Pepin, in his memo of June 29, 2023, in paragraph 12, items “e” and “f,” ([ATTACHMENT A](#)) which notes that “the Applicant must,”

“e. Provide a parking area at Gold Hill Grade to accommodate public access to the City Open Space.”

“f. Dedicate a public access easement (PAE) for the walking trail through the property that historically has been used by the public to access City Open Space.”

Similarly, in a letter sent to the Applicant on July 7, 2023, prominent San Rafael real estate attorney, Len Rifkind, opined that the project proposals need to acknowledge;

“...the recreational benefits of the area provided to the residents of the development and to the community at large, who through use over the past 100 + years have **implied dedication access rights**. Specifically, the Highland Spur public trail in the middle of the site, as well as all other established public use trails, must be preserved and adopted as an express easements for use by the public for hiking and biking.” [Emphasis added]

In each instance, the site plans submitted for the five SB 330 Preliminary Application proposals ignore the locations, block access and use, and/or completely obliterate the existence of historic pedestrian walking/hiking trails/rights that traverse the site by placing dwelling units, roadways,

private driveways, and private property lines in their path, particularly at the existing main public entrances to the central trail located along Deer Park Avenue and Gold Hill Grade.

This is in direct contradiction to the requirements stipulated by Matthew Pepin and the explanation of “implied dedication access rights” above. As such, the City’s responses to the Applicant’s Preliminary Application proposals fail to hold the Applicant to the City’s own stated standards. Therefore, the City should inform the Applicant that the SB 330 Preliminary Application project plans and designs are incomplete and incorrect, regarding “Existing Uses,” and acknowledge the historical access rights of the general public before the Preliminary Application review process can proceed.

Comment 2b: The Applicant’s responses to “Existing Uses” fails to acknowledge that portions of the site have been used, historically, as a dumpsite.

The Applicant may not be aware or has otherwise failed to disclose that in the past, portions of the development property, particularly along Gold Hill Grade and the south side of the gravel road that runs through the center of the property near where this central road intersects with the upper fire road that connects Gold Hill Grade to the Highland/Margarita, were used as a “dumpsite.”

Personal recollections by Save Dominican Valley members, other long-time residents, and contractors indicate that the contents of this dumping site included but was not limited to household waste materials, plastics, abandoned appliances, construction debris, house paint, refrigerants, used car batteries (lead, cadmium, nickel, zinc and arsenic), motor oil, and other potentially toxic or toxic leaching materials.

These items and substances were buried and covered with soil and it is not known to what extent any were ever excavated, removed, or otherwise properly assessed. We are bringing this to your attention now because during the environmental assessment phase, any disturbance could release potentially hazardous substances into the air and water table. Toxins may already be present and leaching into the water-table.

This assessment should also be part of any hydrological impact assessment of the proposed development.

Comment 2c: The Applicant’s responses regarding “Identification of Major Physical Alterations” are misleading and inaccurate.

As described in detail under Questions “3. SITE PLAN” and “4. ELEVATIONS,” below, the Applicant has failed to disclose and has incorrectly described the major physical alternations of the property required for each of the five project proposals submitted.

The scope of the work required to develop any of the five schemes will necessitate major regrading and other physical reconfigurations of the existing topography and wholesale destruction and removal of large sections of the existing public use trails and the forest and its vegetation in order to access and build the housing proposed. In each instance, the proposed development plans will result in:

- (a) Massive clear-cutting of the existing forest and clearing of terrain vegetation,
- (b) Intense regrading of the land, resulting in significant cut and fill, and off-haul, and
- (c) Significant need to install hillside retainage structures and hillside drainage channels.

Once again, although we recognize that Senate Bill 330 does not require detailed assessment of these issues, we feel the potential significance of these issues is so great that we are compelled to notify you. Under SB 330, any proposal submitted must be consistent with the City's existing General Plan and Zoning Code requirements. In our opinion and as explained below, all of the Applicant's proposals fail to do so. Therefore, the Applicant's claim to be eligible for processing under SB 330 has not been established.

Questions 3 and 4:

"3. SITE PLAN – A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied."

"4. ELEVATIONS – The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance."

Comment 3a and 4a: Depictions are inaccurate regarding existing conditions.

As noted above, under "Major Physical Alterations," the SITE PLANS and ELEVATIONS for each of the development proposals submitted are incomplete in their depictions and descriptions of the physical consequences of the development projects being proposed.

Moreover, in addition, the Site Plans and the Elevations submitted and the proposed housing designs are equally inaccurate, misleading, and essentially nonsensical in that *they do not correlate with or in any way accurately reflect* the existing topography, soils instability, or other potential challenges to construction on or access to the various "housing parcels" shown in the documentation submitted.

For example, in each scheme showing the development of single family homes, particularly those located along Margarita Avenue, the change in topography beneath the outlined "footprints" of the homes, shown on the Site Plans, is at times **as great as 25 feet of elevation** change, and the topography runs at angles to the rectangular housing footprints depicted. Yet, the Elevations submitted show homes fronting on level/flat topography and/or depict elevation changes that are modest and no more than one story high, which typically 10 feet high from floor to floor. This results in homes that are over 50 feet height on some sides.

Equally, the multifamily building Elevations submitted are inaccurate and misleading because they also depict construction on level/flat topography, which does not in any way reflect the

topographical realities of the development sites depicted on the Site Plans. In some instances, the grade change beneath the multifamily building footprints varies by **as much as 23 feet of elevation change**. In both these examples, the heights of some of the building roofs and exterior walls, from the existing grade, will be more than twice the heights shown in the Elevations and exceed the allowable limits of the applicable San Rafael Zoning Code. This results in homes that are over 40 feet height on some sides, slightly less than single-family homes due to flat roofs.

Finally, regarding the Plans and Elevations designs submitted, per the San Rafael Zoning Code, there are findings required before the City can approve a development application in a “PD” zoned area.

For example, *Section 14.06.090 – Findings*, states;

A recommendation by the planning commission to the city council or a decision by the city council to reclassify property to the PD district and/or to approve a development plan shall be based on the following set of required findings:

A. The development plan is consistent with the general plan, adopted neighborhood plans and other applicable city plans or policies;

B. Any residential development shall constitute a residential environment of sustained desirability and stability in harmony with the character of the surrounding neighborhood, and where applicable, adequate open space shall be provided; [Emphasis added]

The Applicant’s proposals do not address the City’s need to make these findings. Also, consider that *Division II – Base District Regulations* of the San Rafael Zoning Code indicate that building heights in the subject property’s “PD” zoning designation must conform to the residential height limitations found elsewhere in the Code. The Applicant’s failure to show accurate building heights in the ELEVATIONS, when the actual grade changes are accounted for, obfuscates the fact that the dramatic topography changes under the footprint of many of the homes will result in violations of the allowable residential heights.

Once again, **all five proposals fail to conform to the existing zoning at the time of the submission of the SB 330 Preliminary Applications**, making them ineligible for expedited, “streamlining” processing. For more information about unacknowledged issues in the Applicant’s response to this Question, please see our Comments under Item “13.b” below.

Question 7: “PARKING – The proposed number of parking spaces.”

Comment 7a: Public access parking is not provided.

As referenced in our comments on Question 2.a, above, the Applicant fails to acknowledge that the existing public parking currently along Gold Hill for visitors to park to access public, open lands, and trails must be maintained in the future. As such, the Preliminary Application SITE PLANS must include indications of the number, sizes, and locations of public parking spaces provided for each proposed project configurations and their relationships to existing landscape features (trails, vehicular access, streams, drainage, flora and fauna, etc.) on the Site Plans.

This is particularly important in this Project's location because the roadways and neighborhoods contiguous to the proposed development proposals **are already extremely parking constrained** because of the narrowness of the streets, all of which are substandard and nonconforming with current City Codes and grossly inadequate to accommodate the parking demands of special events held in adjacent Dominican University buildings and for Dominican student housing.

Question 8: "AFFORDABLE HOUSING INCENTIVES, WAIVERS, CONCESSIONS and PARKING REDUCTIONS - Will the project proponent seek Density Bonus incentives, waivers, concessions, or parking reductions pursuant to California Government Code Section 65915?"

Comment 8: "Incentives, waivers, concessions, and parking reductions" available to the Applicant will be minimal.

Incentives, waivers, concessions, or parking reductions pursuant to the California State Density Bonus Law (SDBL) will be minimal, if any, because the project proposals fail to meet sufficient low-income unit thresholds and because the Applicant cannot use SDBL to override CEQA or the violations of state and the federal regulations discussed in this comment letter. It is also important to note that "waivers" are related to "building standards," but zoning" is not a "building standard" and therefore cannot be "waived" under the State Density Bonus Law.

Question 10: "POLLUTANTS – Are there any proposed point sources of air or water pollutants?"

Comment 10: The Applicant's response is incorrect in light of the proposals' violations of the creek setback regulations.

In each of the five proposals submitted, the Applicant checked off the box for "No." This is incorrect if one considers the implicit water pollution impacts caused by multiple violations of the required creek setbacks noted in our comments under **Question 12.a.ii**, below. In addition, the disturbance of the site during construction must consider the historical use of the site as an unofficial dumpsite. Please see our discussion under "**Question 2, Comment 2b.**"

Question 12: "ADDITIONAL SITE CONDITIONS"

“a. Whether a portion of the property is located within any of the following:

- i. A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, pursuant to Section 51178?”**
-

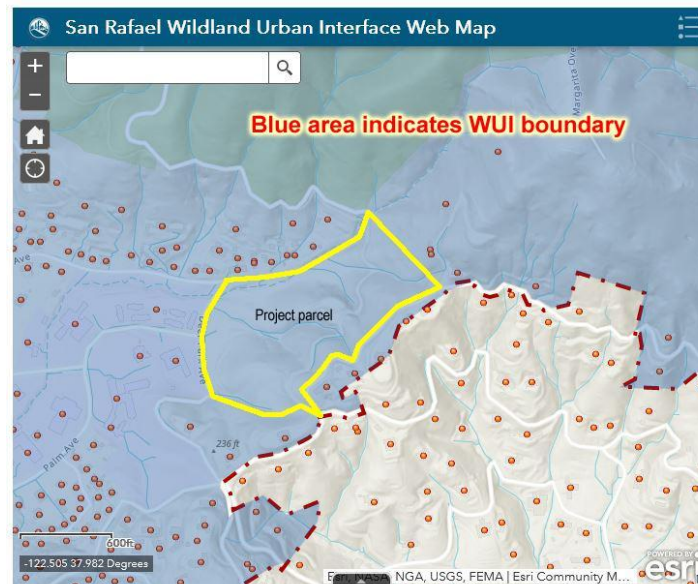
Comments 12.a.i: The entire development site located in the Wildlands Urban Interface (WUI) and in violation of local and state regulations.

In each of the five proposals submitted, the Applicant checked off the box for “No.” However, the City and the Applicant must consider that parcel (APN 015-163-03) is located in the San Rafael Code Wildlands Urban Interface designation (the “WUI”) ([ATTACHMENT B](#)) and as such is subject to the requirements (vegetation management and ground clearing, etc.) of [Chapter 4.12. Wildland-Urban Interface – Vegetation Management Standards](#) of the San Rafael Fire Code, as authorized and provided for under *California Government Code, Section 51179*, which modifies the determinations under Section 51178.

The San Rafael Code describes the WUI as “**a designation of a very high severity zone** as provided in Government Code Section 51179” that requires developers “**to create defensible space around structures** that will minimize the spread of fires from wildlands to structures, from structures to wildlands, and from structures to structures.” (i.e., ground clearing/ground hardening) [Emphasis added]

“Defensible space” is further defined in the Code as an “**area one hundred feet (100’) around a structure** where vegetation management has been conducted to reduce the potential for transfer of fire between the structure and the adjacent wildland, the adjacent wildland and the structure, or from structure to structure.” [Emphasis added]

Wildland Urban Interface



[ATTACHMENT B](#)

This standard makes all Site Plans of the five of the project proposals *infeasible and illegal* because the distances shown between structures are grossly inadequate and no “ground clearing/hardening” can occur within the mandatory 25 foot riverine stream and tributaries setbacks (See our comments to Question 12, below). **This increases the required distance between structures to 100 feet and the distance of structures from streams or tributaries to 125 feet.**

Also note that homeowners’ insurance companies are presently withdrawing from the California market and declining to insure homes in “very high fire hazard” zones” (the WUI). As such, fire safety and adequate access for first responder emergency vehicles and fire trucks and equipment is of paramount importance. The hazards in this case are increased by the fact that existing roads accessing and surrounding the development site are narrow and substandard, which decreases firefighting and first responder access and resident safety.

This was affirmed by Bob Sinnot, Assistant Fire Chief for San Rafael, in conversations with local residents following the June 6, 2022 “Magnolia” fire in San Rafael, during which Mr. Sinnot commented that with regard to fire evacuation issues in the area serviced by Deer Park Avenue, Gold Hill Grade, Magnolia Avenue, and Highland Avenue,

"The existing infrastructure [roads] are inadequate and do not meet California Fire Code."

Question 12: “ADDITIONAL SITE CONDITIONS”

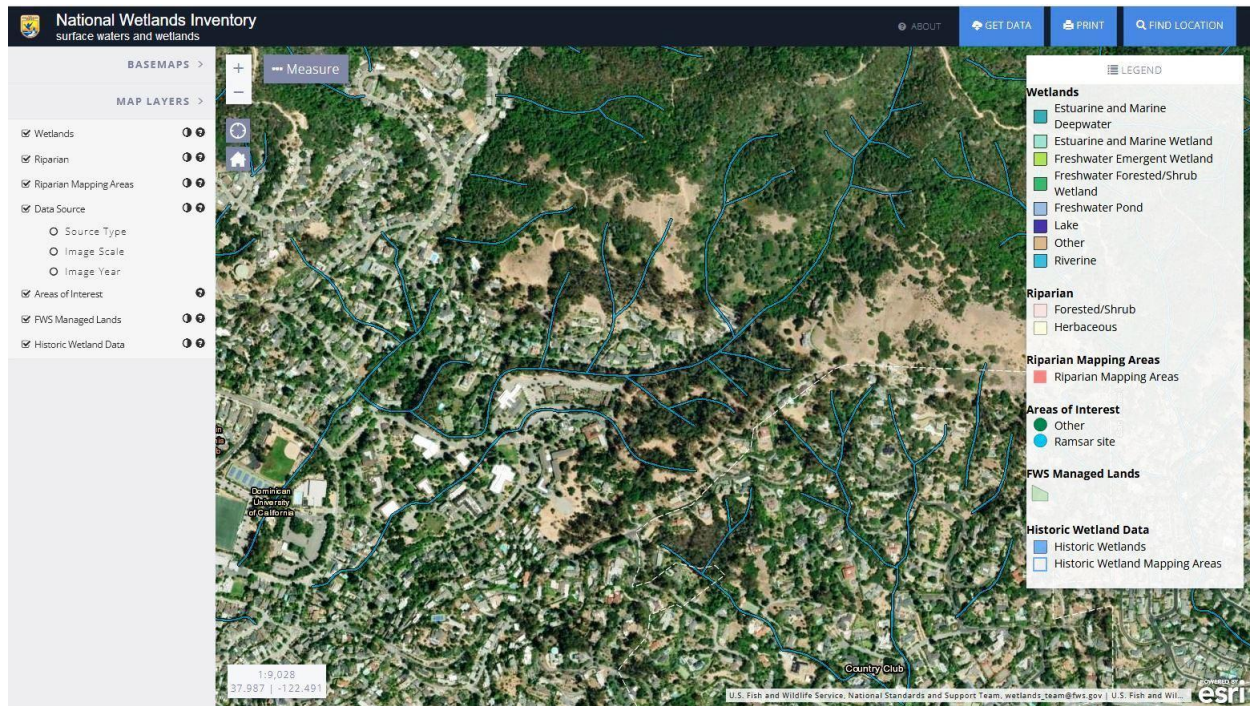
Question 12.a.ii

ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)?

Comment 12.a.ii: The Applicant’s responses are incorrect and incomplete.

In each of the five proposals submitted, the Applicant checked off the box for “No.” This is incorrect.

The U.S. Fish & Wildlife Service *National Wetlands Inventory Map* ([ATTACHMENT C](#)) and the California ECO/Atlas of the California Aquatic Resource Inventory ([ATTACHMENT C2](#)) and the tenets of the State [Wetland and Riparian Area Monitoring Plan](#) (WRAMP) and the California [Wetland and Riparian Area Protection Policy](#) (WRAPP), clearly indicate that the subject property is traversed by no less than six “Riverine” Wetlands/streams and tributaries, a designation that is subject to both federal and state regulations in addition to the San Rafael Zoning Code.



[ATTACHMENT C](#)

In the Applicant’s Exhibit, “Roads and Hydrology 20230606c-2, by Sunset Ecological Solutions,” there is acknowledgment of the presence of only *some* of the intermittent streams and drainages on the subject property. Its information (presumably based on local Marin County GIS Open Data) is incomplete and its veracity is superseded by the designation procedures and requirements of the San Rafael Zoning Code and evidenced by the *National Wetlands National Inventory Map* and the California ECO/Atlas of the California Aquatic Resource Inventory.

As such, the Applicant's SB 330 Preliminary Application Forms fail to fully acknowledge the presence of these "riverine wetlands" and the development-related requirements and consequences of these designations. After reviewing the development schemes submitted, in a memo sent to the Save Dominican Valley Steering Committee on July 12, 2023, Chris Rogers, Principal Ecologist at Wood Biological Consulting, ([ATTACHMENT C1](#)) wrote:

"The Applicant's five SB 330 Preliminary Application Forms incorrectly state that no portion of the property is located within wetlands as defined by the U.S. Fish and Wildlife Service Manual, Part 660 FW2¹. This manual relies on the National Wetland Inventory, which broadly defines wetlands as follows. [Emphasis added]

Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes (plants specifically adapted to live in wetlands); (2) the substrate is predominantly undrained hydric (wetland) soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year. (USFWS, Part 660 FW2).

"The manual further describes the classification system for wetlands and deep water habitats, which is consistent with the National Wetlands Inventory² (NWI)." The NWI Wetland Mapper, and online visualization tool for the NWI, depicts Sisters Creek, including four of its tributaries on the DV parcel, are classified as Riverine, intermittent streambed, temporarily flooded."

The streams that traverse the development site ([ATTACHMENT C](#)) are subject to regulation under *Section 1600-1616* of the *California Fish and Game Code*. Again, according to Mr. Rogers:

"These [federal and state] regulations are in place to protect fish and wildlife resources associated with streams, including wetlands and riparian vegetation, and prohibit the alteration of the bed or bank of a stream or associated habitat without a Streambed Alteration Agreement with the CDFW."

"The developer's five Applications fail to acknowledge that the proposed development also would be subject to regulation by the U.S. Army Corps of Engineers (USACE) under Section 404 of the federal Clean Water Act, which regulates the discharge or placement of fill material into waters of the U.S., which may include Sisters Creek. The application should indicate awareness of the need to conduct a routine delineation of federal jurisdictional waters to determine if a permit from the USACE is needed for activities

¹ <https://www.fws.gov/policy-library/660fw2>

² <https://www.fws.gov/policy-library/660fw2>

² Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States*. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. 131 pp. Available online at <http://www.npwrc.usgs.gov/resource/wetlands/classwet/index.htm>

such as placing portions of the creek in underground culverts, replacing culverts, realigning sections of the creek channel, armoring the creek bank, constructing stormwater outfalls that discharge into the creek, construction of driveway crossings or other structures. The delineation survey and report should have been conducted prior to the preparation of project plans so that the plans would incorporate the results, and would be better informed about the best ways to avoid or minimize project impacts to the creek.”

“Sisters Creek and its tributaries *qualify as waters of the state*, which also are regulated by the San Francisco Regional Water Quality Control Board (RWQCB) under Section 401 of the federal Clean Water Act and under the state’s Porter-Cologne Water Quality Control Act. Activities that have a substantial effect on water quality and other Beneficial Uses, as defined in the San Francisco Basin Plan are subject to review and permitting by the RWQCB, in coordination with the other regulatory agencies (USFWS and CDFW). The application should address the potential for the proposed project to cause adverse water quality impacts, such as through the hardscaping of a significant portion of the upper Sisters Creek watershed leading to increased discharge of sediment and pollutants and the decrease in wildlife value.” [Emphasis added]

The required setbacks from intermittent streams/riverine wetlands are not shown or detailed in the Site Plans of any of the proposed schemes nor is it shown how required setbacks will conflict with the locations of housing units. (ATTACHMENTS [E1](#), [E2](#), and [E3](#))

Mr. Rogers notes:

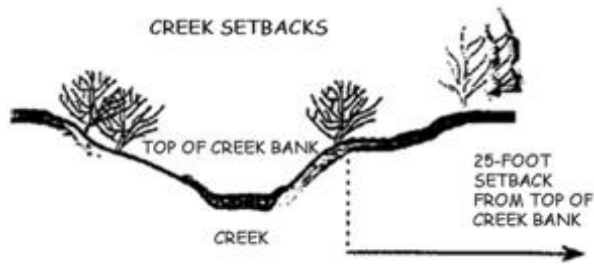
“Creek Setback – all portions of the 25-foot creek setback intended to protect and preserve Sisters Creek and its tributaries should be eliminated from the lots and included in the open space conservation easement. *Identifying this area as a setback on a tentative map will provide no protection to the creek from future development, alteration, and impact if included within the private lots.*” [Emphasis added]

This one requirement, which is also found in the San Rafael Zoning Code, indicates that major revisions to the development Site Plans are needed and may dramatically change the housing locations and reduce the housing density on the development site in each of the proposals. Mr. Rogers comment is affirmed by the San Rafael Zoning Code. Consider *Section 14.16.080 - Creeks and other watercourses*, wherein it states.

Improvements on a lot which is adjacent to, or contains, a creek, drainageway, or the San Rafael Canal shall be subject to the following provisions:

A. Setback, Creek. Creek setbacks shall be determined based on the setback criteria in subsection C below. These setbacks should include a twenty-five foot (25') or greater setback between any structure and the high top of the creek bank. On lots two (2) or more acres in size, a twenty-five foot (25') to one hundred foot (100') setback between any structure and the high top of the creek bank shall be provided.

Illustration [14.16.080](#)



(Ord. 1625 § 1 (part), 1992).

The wetlands provisions in the San Rafael Zoning Code also indicate that the Applicant's proposals are not feasible and therefore cannot be approved. The subject property is zoned "PD," however, Code *Section 14.13.202 (-WO)* is also relevant because the City's zoning ordinance acknowledges that the City's maps do not show all of the wetlands that exist in the City -- in this case, the riverine wetlands, streams, and tributaries delineated on the U.S. Fish & Wildlife Service's *National Wetlands Inventory* maps. ([ATTACHMENT C](#)) and the California ECO/Atlas of the *California Aquatic Resource Inventory*. ([ATTACHMENT C2](#))

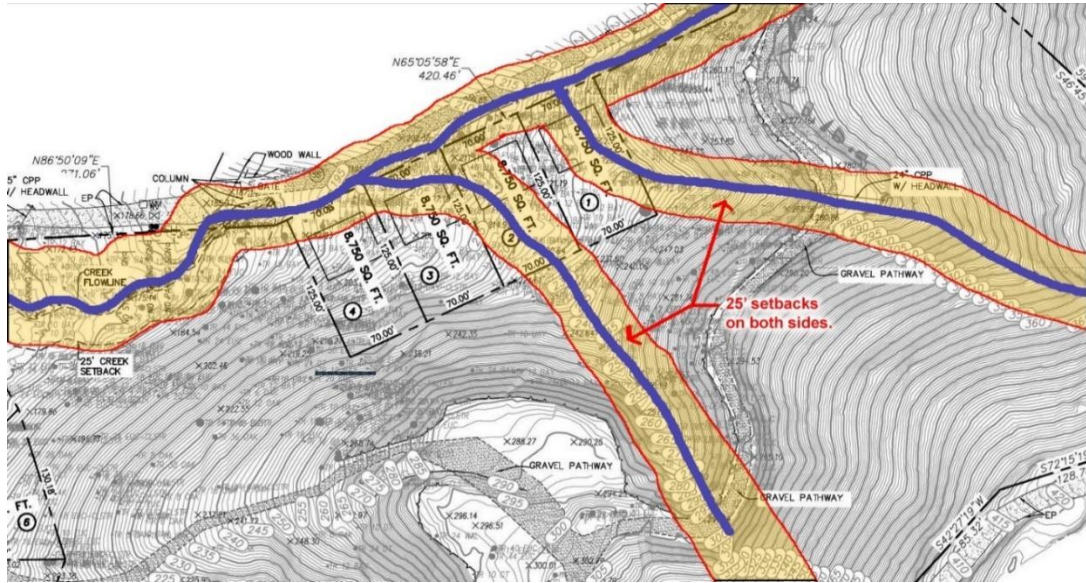
Under *Section 14.13.202 (-WO) B* it clarifies,

B. Wetlands are known to exist throughout the community that are not identified or shown in the wetland overlay district, as they are typically discovered and confirmed as part of a site-specific assessment. Nonetheless, all wetlands are protected under all of the terms and provisions of this chapter. A property containing wetlands that have been confirmed by the U.S. Army Corps of Engineers shall be rezoned to combine the wetland overlay district with the base zoning adopted for the property. [Emphasis added]

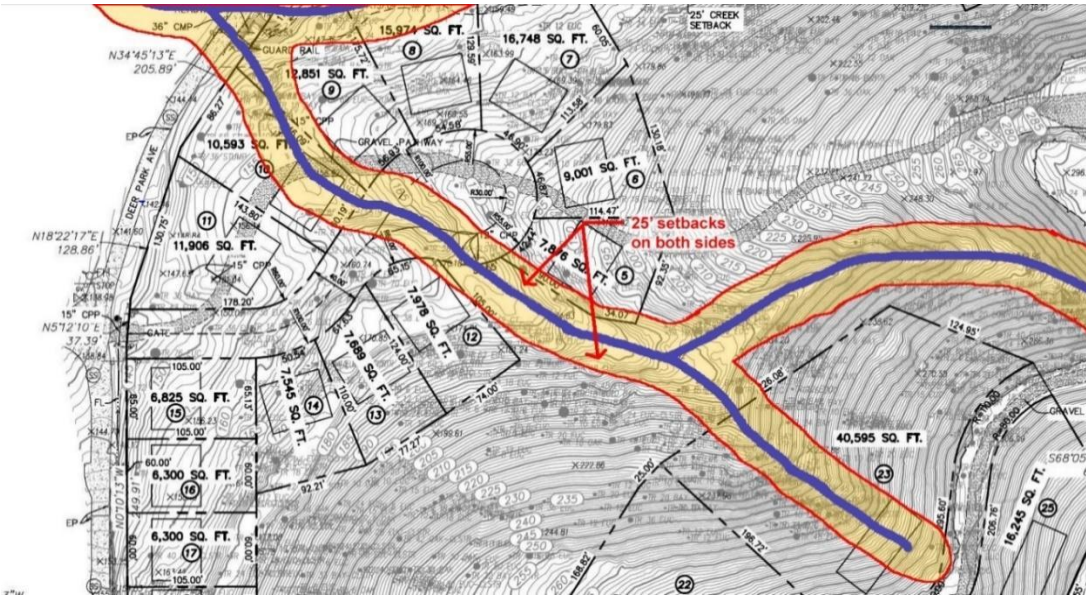
This clearly indicates that the subject property or portions thereof would need to be rezoned in order to allow the Applicant's proposals to be processed and approvable.

Note that the need for rezoning categorically disqualifies the applications from being processed under the provisions of the SB 330 Preliminary Application "streamlining" process. Similarly, the Applicant's failure to consider creek setback requirements in the San Rafael Zoning Code make each of the five project proposal Site Plans, as submitted, categorically ineligible for "streamlining" under the *Permit Streamlining Act*, the *Housing Accountability Act*, and *Senate Bill 330*.

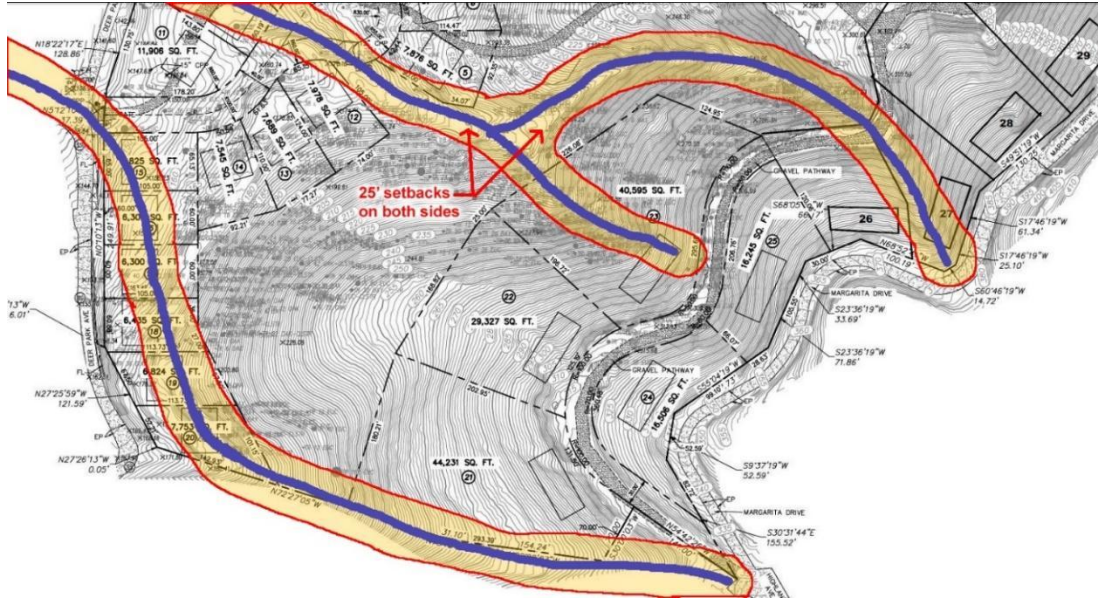
The maps shown, below, ([ATTACHMENTS E1](#), [E2](#), and [E3](#)) illustrate the impermissible conflicts between the locations of the housing units, Sister's Creek and its tributaries, evidenced by the riverine wetlands streams noted on the *U.S. Fish & Wildlife National Wetlands Inventory* ([ATTACHMENT C](#)), the California ECO/Atlas of the *California Aquatic Resource Inventory*. ([ATTACHMENT C2](#)), and the required setbacks under the San Rafael Zoning Code.



[Attachment E1](#)



[Attachment E2](#)



[Attachment E3](#)

Question 12.a.vi

- vi. **A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code?**

Comment 12a.vi: Applicant's responses and descriptions are inaccurate and incomplete.

For each of the five proposals submitted, the Applicant checked off the box for "Yes," and added this description:

"Natural drainage pattern for the subject site traverses both into intermittent stream to the Sisters Creek, located north site and along the drainage ditch within the Deer Park Avenue R.O.W. [right of way], which drains into Sisters Creek. Additionally, the project site has a shallow swale traversing through an Area which carries seasonal storm drain runoff from upslope to the drainage ditch along Deer Park Avenue."

This response is inaccurate and incomplete because:

- a) It only partially describes the extent of intermittent streams and drainages that traverse the development site. As noted in our comments under Item #2, above, and shown on the U.S. Fish & Wildlife Service's *National Wetlands Inventory* ([ATTACHMENT C](#)), and the California *ECO/Atlas of the California Aquatic Resource Inventory*, the subject property is traversed by no less than six "Riverine Wetlands"/intermittent streams and its tributaries, and
- b) It fails to acknowledge or describe the obvious conflicts created by the locations of the proposed housing and the setbacks required by state law and the San Rafael Zoning Code. Even a cursory review of the SITE PLANS shows that in all schemes there are homes located right on top of and fully obstructing the path of the "riverine wetlands"/intermittent streams and natural drainages that traverse the site, particularly along Gold Hill Grade and Deer Park Avenue. (ATTACHMENTS [E1](#), [E2](#), and [E3](#)).

In addition to our comments to *Question 12.a.ii. Wetlands*, as defined in the *United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)* and the California *ECO/Atlas of the California Aquatic Resource Inventory*, and comments by San Rafael Sr. Civil Engineer, Matthew Pepin, in his letter of June 29, 2023, it is obvious that minimal due diligence by the City of San Rafael should have revealed these violations.

The City's uncritical acceptance of the SB 330 Preliminary Applications as being complete and accurate should be cause for concern by the City Council.

Agency jurisdictions and permitting requirements

It is important to bring to your attention that the Applicant's failure to disclose the impacts of each of the five project proposals on the existing riverine wetlands that traverse the property and the absence of required setbacks are contrary to the permitting requirements from the various agencies that have jurisdiction in the approval of the grading permits needed for the work to proceed, most important of which are the San Francisco Bay Regional Water Quality Control Board (SFRWQCB), whose superior authority is granted under the Porter-Cologne Water Quality Control Act., the Army Corps of Engineers, and Region 9 of the EPA.

The Applicant was clearly forewarned of this in the San Rafael Zoning Code.

Consider *San Rafael Zoning Code: Section 14.13.050 - Application for a use permit*, of the San Rafael Zoning Code, which states;

*B. Agency/Organization Consultations. **The applicant for a use permit is strongly encouraged to consult** with the U.S. Army Corps of Engineers, as well as the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Department of Fish and Game, California Coastal Conservancy, California State Lands Commission, San Francisco Bay conservation and development commission, San Francisco Bay Regional Water Quality Control Board, Marin-Sonoma mosquito abatement district and any other appropriate agencies or organizations early in the planning process. The*

application for a use permit should include a record of the persons consulted in each of the appropriate agencies or organizations. [Emphasis added]

Finally, as noted in our comments regarding “major physical alternations” above, the scope of the development proposed in each of the five schemes submitted will clearly necessitate the destruction of most of the existing trees and canopy cover near the existing riverine wetlands/streams.

Canopy cover provides water protection, water conservation, and cooler water which allows for higher dissolved oxygen, contributes to vital food for insects, microorganisms and aquatic organisms in addition to contributing to their habitats. Canopy cover also offers protected drinking water for migrating birds. As such, its preservation is required to be preserved and is regulated and enforced by federal and state agencies.

Again, we acknowledge that this level of analysis is not required on the SB 330 Preliminary Application Forms, however, the errors and inaccuracies in the Applicant’s responses are so significant that we are compelled to bring them to your attention, now.

Question 12.e: “Does the project site contain a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code?”

Provide an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

If “YES,” please describe and depict in attached site map:”

Comment 12e: The Applicant’s data and mapping is inaccurate.

For each of the five proposals submitted, the Applicant checked off the box for “Yes,” and added this description:

“Natural drainage pattern for the subject site traverses both into intermittent stream to the Sisters Creek, located north site and along the drainage ditch within the Deer Park Avenue R.O.W. [right of way], which drains into Sisters Creek. Additionally, the project

site has a shallow swale traversing through an Area which carries seasonal storm drain runoff from upslope to the drainage ditch along Deer Park Avenue.”

This response is clearly incomplete and incorrect.

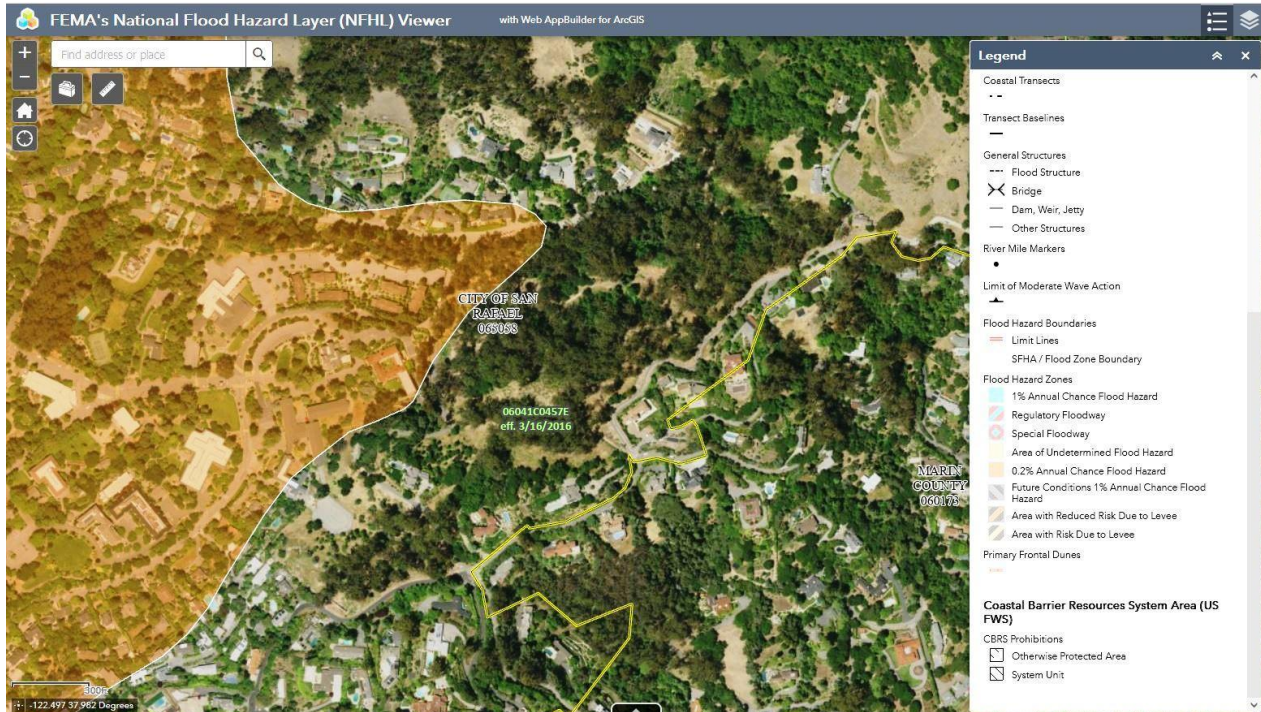
The “Aerial Map” provided by the Applicant (Applicant’s Exhibit, “Roads and Hydrology 20230606c-2, by Sunset Ecological Solutions”) is deficient because its data does not correspond to any recognized authority, including but not limited to the *U.S. Fish & Wildlife National Wetlands Inventory* ([ATTACHMENT C](#)), the *California ECO/Atlas of the California Aquatic Resource Inventory* ([ATTACHMENT C2](#)), or *California Fish & Game*.

QUESTION 12.a.iv: “A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency?”

Comment 12iv: Applicant’s response is technically correct but special circumstances are ignored.

In each of the five proposals submitted, the Applicant checked off the box for “No” indicating that the development site is not within the boundaries of a designated 100-year floodplain, per FEMA.

Although this response is technically correct, the City needs to consider that the western most portion of the subject property and access to it along Deer Park Avenue and Gold Hill Grade are located in a “.2% Annual Flood Hazard Zone” and that regardless of the FEMA designation, during heavy rains in the winter or 2022/2023 residents claim that ingress and egress access roads were at times impassible for days. ([ATTACHMENT D](#))



[Attachment D](#)

QUESTION 12.c: “Does the project site contain any species of special concern?”

Comment 12c: The Applicant’s responses are without merit.

For each of the five proposals submitted, the Applicant checked off the box for “No.”

Acknowledging, again, that the level of analysis included in these comments is not required at this stage of the application process, we find the Applicant’s responses to be unsupported and challengeable considering the evidence that exists and important enough to bring to your attention at this time.

Since no environmental impact report or endangered species assessment of the potential environmental impacts of any of the five development proposals exists in the record, any assertions that the site does not contain any protected or listed species of plants or animals of special concern are unsubstantiated. In fact, there is evidence, expert commentary, and identification of protected species in close proximity to the subject property ([ATTACHMENT K](#)) that indicates such species may exist on the development site.

Evidence of protected species on adjacent land

Although the 1998 EIR performed for the Dominican College Development Plan did not directly assess the subject parcel (APN 15-165-03), it did include information on the areas immediately adjacent to the subject property and regarding habitat and wildlife in the general area.

For example, in *Section 4.3-6* of the EIR certified in 1998, it notes:

“The forest plant community provides perhaps the most important habitat type for native wildlife species. Mature trees provide cover and the complex vertical distribution of canopy and understory vegetation provides for a great diversity of wildlife. Wildlife commonly associated with forest habitat include dusky-footed woodrat, deer mouse, western flycatcher, chestnut-backed chickadee, plain titmouse, Hutton vireo, Wilson warbler, orange-crowned kinglet, rufous-sided towhee, fox sparrow, bushtit ringneck snake, California newt, and California slender salamander. Dead limbs and cavities in older trees often are used for nesting or dining. The abundant seed crops produced by oak, bay, poison oak, and toyon are an important food source for black-tailed deer, scrub and Steller jays, woodpeckers, and other species of wildlife.”

The Applicant’s SB 330 Preliminary App statements conflict with federal and state regulations

After a cursory review of the various development schemes submitted, wetlands ecology and biology expert Chris Rogers, in a memo to Save Dominican Valley, on July 12, 2023, ([ATTACHMENT C1](#)) noted the following:

“The Applications incorrectly state that no species of special concern are present on the project site. This is not supported by any recent or relevant documentation, such as a biological resources assessment conducted by a qualified biologist and supported by a review of background information and database queries, consistent with standard professional practice for projects requiring evaluation pursuant to the guidelines of CEQA. Procedures for conducting surveys for special status species are provided by USFWS, CDFW³ and CNPS. At a minimum, the applicant should be required to provide evidence that special-status species, or suitable habitat for special status species, or sensitive natural communities, are not present, including any species from the following categories:”

“Special-status plants listed as endangered, threatened, or rare or candidates for listing by the USFWS (CFR Title 50, Part 17) and/or the CDFW^{4,5}, as well as those with California Rare Plant Rank of 1B and 2, as listed in the California Native Plant Society Rare Plant inventory (CNPS 2023). Additional definitions are given in Section 15380 of the CEQA Guidelines.”

“Special-status animal species listed as endangered, threatened, or rare or candidates for listing by the USFWS (CFR Title 50, Part 17) and/or CDFW⁶. Other species having special status include the “special animals” listed in by CDFW⁷, and avian species protected under the Bald Eagle Protection Act (16 USC 668, et seq.) and the Migratory Bird Treaty Act (16 USC 703-711). The California Fish and Game Code provides protection for “fully protected birds” (§3511), “fully protected mammals” (§4700), “fully protected reptiles and amphibians” (§5050), and “fully protected fish” (§5515). Title 14 of the California Code of Regulations prohibits the take of amphibians (Chapter 5 §41), reptiles (Chapter 5 §42), and furbearers (Chapter 5 §460) that are listed under CESA, MBTA, or are “fully protected.” Additional definitions are given in Section 15380 of the CEQA Guidelines.”

“Special-status natural communities known to have limited distribution in the region, support special-status plant or wildlife species, or receive regulatory protection (*i.e.*, waters of the United States, covered under Section 404 of the Clean Water Act [CWA] and/or waters of the State,⁸ covered under Section 1600, et seq., of the California Fish and Game Code and the Porter-Cologne Water

⁴³ California Department of Fish and Wildlife (CDFW). 2018. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. March 20. Available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

⁴ CDFW. 2023. *State and Federally Listed Endangered, Threatened, and Rare Plants of California*. Biogeographic Data Branch, Natural Diversity Database. Quarterly publication. July. 26 pp. Available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109390&inline>

⁵ CDFW. 2023. *Special Vascular Plants, Bryophytes, and Lichens List*. Biogeographic Data Branch, Natural Diversity Database. Quarterly publication. July. 175 pp. Available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>

⁶ CDFW. 2023. *State and Federally Listed Endangered and Threatened Animals of California*. Biogeographic Data Branch, Natural Diversity Database. July. 37 pp. Available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline>

⁷ CDFW. 2023. *Special Animals List*. Natural Diversity Database. July. 137pp. Available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406&inline>

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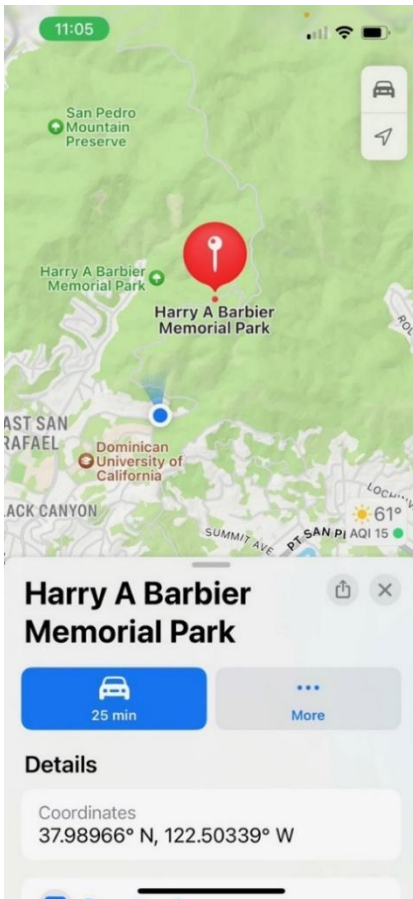
⁷

⁸⁸ Waters of the State are defined as “any surface water or groundwater, including saline waters, within the boundaries of the state” California Water Code Section 13050(e). These include nearly every surface or ground water in California, or tributaries thereto, and include drainage features outside USACE jurisdiction (e.g., dry and ephemeral/seasonal stream beds and channels, etc.), isolated wetlands (e.g., vernal pools, seeps, springs and other groundwater-supplied wetlands, etc.), and storm drains and flood control channels.

⁹ CDFW. 2023. *California Sensitive Natural Communities*. Biogeographic Data Branch, Natural Diversity Database. June 1. 63 pp. Available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

Quality Control Act [Water Code Sections 13000–14920]). The California Natural Diversity Data Base (CNDDDB) ranks a number of natural communities in terms of their significance and rarity⁹ (CDFW 2023).”

Northern Spotted Owl Nesting in close proximity



In June of 2023, an active nesting site of Northern Spotted Owls, which are listed as a “threatened” species by the U.S. Fish & Wildlife Service, was geo-located in the Harry A. Barbier Memorial Park just off of Gold Hill Grade, less than .43 miles from the development site (ATTACHMENTS [G](#) and [H](#) maps).

Renée Cormier, a Senior Avian Ecologist at Point Blue Conservation Science Palomar Field Station in Bolinas, California noted, “There are 3 fledglings and one mature Northern Spotted Owl in the photo” ([ATTACHMENT I](#))

The Applicant should be advised that due to the evidence of NSO nesting in close proximity to the development parcel, a thorough environmental impact report (EIR) assessment of potentially significant, unmitigated impacts from the development in Dominican Valley will need to be conducted as part of the final application review process.

Ms. Cormier suggests that the Applicant and the City consult the *Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California* for regulatory guidance about noise/disturbance restrictions and the buffer areas required at different times of the year.

[Phone image geo-location distance from development site](#)

This is significant because pursuant to the [2011 Northern Spotted Owl Survey Protocol](#), ([ATTACHMENT J](#)) a survey *must* be performed. This protocol requires one full year of surveys.

The Protocol notes,

“The U.S. Fish and Wildlife Service (Service) developed this 2011 NSO Survey Protocol (2011 Protocol) to promote consistent and scientifically rigorous procedures to survey for northern spotted owls (*Strix occidentalis caurina*; spotted owl) in areas where management activities may remove or modify spotted owl nesting, roosting or foraging habitat (excluding areas defined as dispersal habitat). This protocol should also be applied to activities that disrupt essential breeding activities and to activities that may

injure or otherwise harm spotted owl other than through habitat modification (e.g., noise disturbance, smoke from prescribed fire).”

This would suggest that during the CEQA phase of the project’s processing, the presence of other birds “of concern” will need to be evaluated in accordance with all federal, state, and local regulations *prior to any excavation, clearing, or any predevelopment work is performed on the subject property.*

Some examples of bird species that are likely to be present and nesting on the development site include, the Olive-Sided Flycatcher, which is on the California Department of Fish & Wildlife list of *California Birds of Special Concern*, is a summer resident and migrant from mid-April through early October. Its breeding season in California extends from early May to late August. It generally resides in conifer forests and eucalyptus trees, as are found on the development site.

Other birds “of concern” included in the appendices under the “Special Status Animals” under the “Birds” subsection, include Cooper’s hawk, Sharp-shinned Hawk, Golden Eagle, Burrowing Owl Black-shouldered Kite, California Horned Lark, Prairie Falcon, Peregrine Falcon, and the Loggerhead Shrike. More information can be found on the CDFW website at <https://wildlife.ca.gov/Conservation/SSC/Birds>

Similarly, listed/protected plants and botanical resources will need to be evaluated in accordance with all federal, state, and local regulations *prior to any excavation, clearing, or any work is performed on the subject property.* ([ATTACHMENT L](#))

According to Shelly Benson, a plant ecologist at Benson Bio Consulting, the subject property will need a thorough study in addition to a survey in the spring in order to comply with the California Environmental Quality Act. She notes:

“While trees and shrubs were identifiable at the time of the survey, many herbs had senesced and were either unidentifiable or difficult to detect in the survey. In order to fully comply with survey requirements under the California Environmental Quality Act, a full review of special status plant species and sensitive natural communities with the potential to occur at the site would need to be conducted. Additional surveys in the spring would likely be needed in order to confidently determine whether any special status plant species occur at the site.”

“One to two surveys will occur in spring, likely in April or May, and one will occur in summer, likely in late July or August. Species with moderate or high potential to occur at the project site are: Mt. Diablo cottonweed (*Micropus amphibolus*), California Rare Plant Rank 3.2, Gairdner’s yampah (*Perideridia gairdneri* ssp. *gairdneri*), and California Rank Plant Rank 4.2” – July 24, 2023.

The 1998 EIR for–the Dominican College Development Plan also suggests that protected/threatened plant species may exist on the development site. However, seasonal evaluations would need to be done to determine the extent of such botanical resources before the excavation and clearing of the site.

According to the Watershed Alliance of Marin (July 11, 2023),

“In the eastern Marin watersheds, some perennial and intermittent creeks still have steelhead.”

Other species of concern are listed by the state as *Special Status Animals Invertebrates & Reptiles* that are known to inhabit the general area of the development site include California Freshwater Shrimp, California Tiger Salamander, Western Pond Turtle, California red-legged frog, and the Foothill yellow-legged frog.

Question 12.d: “Does the project site contain any recorded public easement, such as easements for storm drains, water lines, and other public rights of way?”

Comment 12d: The Applicant’s response is technically correct but misleading.

For each of the five proposals submitted, the Applicant checked off the box for “No.” In the description, they note,

“Stream on site. Drainage ditch along road. Explained on Page 5, Aerial Map provided with all detail to reference.”

Technically, the site does not contain any “public easement, such as easements for storm drains, water lines or other public rights of way.” However, this response fails to acknowledge significant restrictions that will affect development.

Not only is Sister’s Creek not a “ditch” but, as noted in this comment letter, it is a federally protected riverine wetland that requires a 25 foot wide natural buffer on both sides. Furthermore, there are arguable *prescriptive public access rights of way* along Gold Hill Grade and through the center of the property for the entire length of the property. See our comments under Question 12.a.ii. *Wetlands*, as defined in the *United States Fish and Wildlife Service Manual, Part 660 FW 2*, above, and the *California ECOAtlas California Aquatic Resource Inventory* ([ATTACHMENT C2](#)), and comments by attorney Len Rifkin comment under “Question 2. *Existing Uses*.”

Section 13: COMMENTS ON ISSUES THAT MAY MATERIALLY IMPACT THE ACCURACY AND COMPLETENESS OF THE APPLICANT’S SB 330 PRELIMINARY APPLICATION FORMS.”

13a. ROADWAY WIDENING IMPACTS AND FEASIBILITY

Comment 13a: Although SB 330 does not require this level of assessment at this phase, the Applicant should be made aware of the need to widen existing public roads to meet city standards because it may significantly impact the project’s financial feasibility.

Deer Park Avenue, Gold Hill Grade, and Margarita Avenue are all public roads of substandard width and in most instances without any shoulders or other emergency turn-outs or passing features. As such, these roadways already represent a public safety hazard for all residents and are not compliant with current city and state regulations.

The dramatic increase in traffic that will result from any of the five Preliminary Application plans submitted will exacerbate these hazards. None of the Applicant's proposals acknowledge the need for road widening in any locations (cut, fill, retaining walls, abutments, etc.) or the costs, which may impact the financial feasibility of the development. Road widening may also affect the Site Plans, housing unit sizes and locations, and setbacks in developable areas.

13b. Location and sizes of proposed housing units

Comment 13b: The locations, unit count, and designs of the proposed housing units are illegal under the City of San Rafael Zoning Code and various state and federal regulations, (see all comments under Questions 3, 4, 12.a.i, 12.a.ii, 12.a.vi, and 12.e, above) and will create un-mitigatable negative environmental impacts.

Acknowledging, again, that environmental impacts assessment comes at a later phase of the project review process, we are compelled to comment on this now because it relates to the fundamental site planning, housing locations, and housing density of the proposals submitted with the SB 330 Preliminary Application Forms.

In addition to our comments to *Question 2. Existing Uses; 3. Site Plans, 4. Elevations, 12.a.ii Additional Site Conditions, and 12.a.vi*, the Applicant has failed to consider the dramatic increases in impermeable surface area on the development site. Increased impermeability decreases water absorption into natural habitat and increases flow of runoff and occupant-related pollutants into the streams.

As noted by Senior City Planner, Matthew Pepin, in his June 29, 2023 memo ([ATTACHMENT A](#)):

“This project appears to create or replace more than 5,000 square feet of impervious area and therefore will be considered a regulated project. The following documents are required to be provided in accordance with Marin County Stormwater Pollution Prevention Program (MCSTOPPP) requirements:”

- i) “Stormwater Control Plan – A short written document to accompany the plan set used primarily for municipal review to verify compliance with stormwater treatment requirements. (Needed to obtain planning permit.)
- ii) “Stormwater Facilities Operations and Maintenance (O&M) Plan – A short written document and exhibit outlining facilities on-site and maintenance activities and responsibilities for property owners. The maintenance plan shall include the manufactures recommended maintenance practices, designated parties

of responsible for upkeep, specify funding source for ongoing maintenance with provisions for full replacement when necessary and provide a site-specific inspection checklist. (Provide prior to occupancy)

- iii) “Operations and Maintenance Agreement – A formal agreement between the property owner and the city that shall be recorded with the property deed prior to occupancy. (Provide prior to occupancy)”

Compliance with these requirements will certainly result in revisions to the Site Plans, housing locations, and housing designs/typologies.

CONCLUSIONS:

Having reviewed the documents submitted by the Applicant and the requirements under local regulations, state law, federal law, and SB 330 Preliminary Application submission requirements we find that both the Applicant and the City of San Rafael made significant errors in submitting and responding to the Applicant’s SB 330 Preliminary Applications.

For the reasons enumerated in this comment letter, in our opinion, the City should inform the Applicant that the five *SB 330 Preliminary Applications* filed by the Applicant for the Project(s) known as PLAN 23-075, 23-077, 23-080, 23-081, and 23-086 are not eligible for processing under SB 330 because,

- (1) they contain incorrect and misleading information,**
- (2) they are not “consistent” with the City of San Rafael’s *General Plan and Zoning Code*, making them categorically ineligible for “streamlining” processing under *SB 330, The Permit Streamlining Act, and The Housing Accountability Act*,**
- (3) they violate local, state, and federal regulations regarding wetlands, fire safety, and WUI development requirements, and**
- (4) they are categorically ineligible for “streamlining” processing under *SB 330, The Permit Streamlining Act, and The Housing Accountability Act* because the San Rafael *General Plan* specifically requires that any application for the development of the subject parcel will require a Master Use Permit Amendment and Zoning Code Amendment, under the *Neighborhood Element, Program NH-2.14B*.**

Respectfully submitted,

Save Dominican Valley

P.O. Box 4135

San Rafael, CA 94913

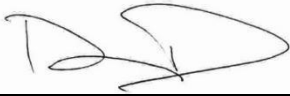
415-448-6292

Email: info@savedominicanvalley.com

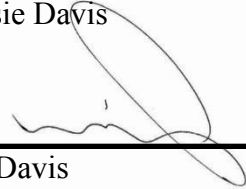
By the Save Dominican Valley Steering Committee:



Jean-Pierre Guittard



Drusie Davis



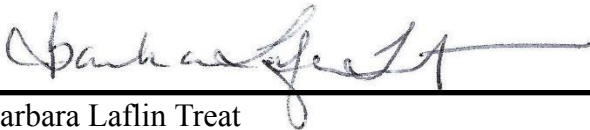
Jim Davis



Oliver Ralph



Claudia Moeller



Barbara Laflin Treat

cc: Alicia Giudice, Community Development Director
(community.development@cityofsanrafael.org)

cc: Robert Epstein, City Attorney (rob.epstein@cityofsanrafael.org)

LIST OF ATTACHMENTS:

[ATTACHMENT A - 06.29.23 Matthew Pepin Memo](#)

[ATTACHMENT B - San Rafael Fire WUI Map](#)

[ATTACHMENT C - NATIONAL WETLANDS INVENTORY MAP](#)

[ATTACHMENT C1 - C. Rogers - Dominican Valley Comment Memo](#)

[ATTACHMENT C2 - ECOAtlas California Aquatic Resource Inventory](#)

[ATTACHMENT D - FEMA National Flood Hazard Viewer APN 015-163-03](#)

[ATTACHMENT E1 - Intermittent streams riverine wetlands with setbacks](#)

[ATTACHMENT E2 - Intermittent streams riverine wetlands with setbacks](#)

[ATTACHMENT E3 - Intermittent streams riverine wetlands with setbacks](#)

[ATTACHMENT G - Mobile Phone Image 2023-07-19 at 11.05.21 AM-1](#)

[ATTACHMENT H - NSO Nesting Distance to DV LLC Site](#)

[ATTACHMENT I - NSO Nesting - Adult + 2 Fledglings](#)

[ATTACHMENT J - NSO Protocols](#)

[ATTACHMENT K - CNDDDB LISTED ENDANGERED AND THREATENED ANIMALS OF CALIFORNIA 1](#)

[ATTACHMENT L - CNDDDB LISTED ENDANGERED THREATENED AND RARE PLANTS LIST](#)