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# San Rafael 'builder's remedy' housing plans rile Dominican neighbors



A gate stands at the border of a 19-acre parcel along Deer Park Avenue in San Rafael on Thursday, June 1, 2023. A developer wants to build dozens of homes at the site, which used to belong to Dominican University of California. (Alan Dep/Marin Independent Journal)

By [RICHARD HALSTEAD](#) | rhalstead@marinij.com | Marin Independent Journal

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New housing applications that fall under the so-called “builder’s remedy” rule have been filed with planners in Marin County and San Rafael.

Developers Martin Coyne and Marcia May have filed three different preliminary applications for projects of different sizes at the same 19-acre parcel adjacent to Dominican University of California. The applications involve Senate Bill 330, the California Housing Accountability Act.

The bill, also referred to as the builder’s remedy, mandates that if a city or county lacks a “substantially compliant” housing element, the jurisdiction is precluded from using its zoning or general plan standards to reject any housing project that meets certain affordability requirements.

To be eligible for the builder’s remedy, at least 20% of the proposed homes must be affordable for low-income residents or 100% of the homes must be affordable for moderate-income residents.

Neither Coyne, May nor Raymond Cassidy, who has served as a spokesperson for the developers at neighborhood meetings, responded to requests for comment.

At a neighborhood meeting last month, Cassidy, who operates a plastering business in San Rafael, told residents that the developer was contemplating 15 to 35 homes on the parcel. Dominican University recently [sold](#) the land and another 5-acre plot in the same area to Coyne and May for about \$3.1 million.

One application calls for 23 single-family homes and six townhomes. Twenty-six of the homes would be market rate while three would be priced to be affordable for low-income buyers. In the application, the developers stated they plan to use a density bonus — permitted by the state because of the inclusion of the low-income homes — to secure approval of 10 of the residences. The proposal calls for 110 parking spaces.

Under another application, the developer is proposing 54 residences, an unspecified mix of single-family, duplexes and townhomes. Forty-seven homes would be market rate and seven would be for low-income households. The developers indicated they planned to use a density bonus to secure approval of 18 of the homes. The plan also would include 110 parking spaces.

The developers’ third application calls for 75 townhomes. Sixty-five would be market rate and the rest for low-income households. The developers state they plan to use a density bonus to secure approval of 25 of the homes, and the project would include 150 parking spaces.

“I’m shocked at the proposed density given the massive issues noted by the city fire department of the ability to evacuate the existing residents let alone hundreds more,” neighborhood resident Drusie Davis wrote in an email.



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According to the website, the parcel, which is wooded, provides habitat for California quail, white-tailed kites, red-shouldered hawks, woodpeckers, songbirds and many other species. A seasonal creek runs along its northwestern side.

“We have about 110 homes. We are still trying to work the neighborhood,” said Tylee Holden, a resident who is leading the opposition. “Every day there is more interest.”

Holden said her group’s primary concern is the impact developments of this size would have on the neighborhood’s ability to evacuate in the event of a wildfire.

“Our infrastructure as currently built has restrictions,” Holden said. “We need to address those restrictions prior to any of these plans being built.”

Jeff Ballantine, a San Rafael planner, said, “I am not aware of any state or local regulation that would limit the number of development applications that can be submitted for a single property.”

Ballantine, however, did not respond to questions regarding whether San Rafael would challenge the developer’s contention that the city’s housing element was out of compliance at the time of the filing.

According to the state Department of Housing and Community Development, San Rafael’s new housing element was certified by the state on June 22, 14 days after the applications were filed.

Marin County, which received its first SB 330 preliminary application on May 16, received a second application dated June 19, the same day that the county’s housing element was approved by the state, according to the housing department.

The initial application was submitted by John Bogdasarian, chief executive of the Promanas Group, a real estate private equity firm in Michigan. The application called for 39 dwellings – 33 market-rate, single-family homes and six junior accessory dwelling units priced to be affordable to very-low-income residents – on a 61-acre parcel at 1501 Lucas Valley Road.

The Promanas Group’s new application proposes building 100 market-rate, single-family homes and 25 very-low-income junior accessory dwelling units at the site. Both applications proposed using state density bonuses.

The initial application was accompanied by a letter from Travis Brooks, an attorney representing the Promanas Group. Brooks wrote that the developer didn’t intend to rely on the builder’s remedy for that project, but nonetheless was reserving its option to rely on its vested rights under SB 330.

Bogdasarian wrote in an email Thursday that he still hopes to build the project he proposed originally.



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Sarah Jones, director of the Marin County Community Development Agency, wrote in an email Friday that “the second pre-app was submitted after we had received certification of our housing element” from the state.

“It would need to go forward using the ‘builder’s remedy’, which isn’t applicable or available since our housing element is substantially compliant,” Jones wrote.

Keith Diggs, a lawyer at YIMBY Law, said, “I’m not so sure about that.”

YIMBY Law, a housing advocacy organization, has sued some Marin municipalities that failed to meet the deadline for getting their housing elements approved by the state in an effort to clear the way for housing developers to take advantage of the builder’s remedy.

“I believe there are some questions as to whether the county has formally adopted that second draft of the housing element as state law requires,” Diggs said.

Marin County’s planning staff made changes to the housing element that were requested by the state housing department prior to getting its approval.

“As I understand it, the Board of Supervisors did not take a vote on that second draft,” Diggs said. “The statute requires that the legislative body adopt the housing element and staff, which did this second draft, are not the legislative body of the county.”

Jones wrote said it is immaterial whether the version of the housing element that the county submitted to the state on May 17 was approved by the housing department.

“Our position,” Jones said, “is that the housing element adopted by the board was substantially compliant with the state’s requirements.”

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## Richard Halstead | Reporter

Richard Halstead covers Marin County news, politics, health care, social services and housing.

[rhalstead@marinij.com](mailto:rhalstead@marinij.com)

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