

LAFCO *of Monterey County*

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Kate McKenna, AICP
Executive Officer

MEMORANDUM

DATE: December 5, 2022

TO: Chair and Members of the Formation Commission

FROM: Kate McKenna, AICP, Executive Officer 

SUBJECT: Supplemental memorandum #4 transmitting additional correspondence received regarding December 5, 2022 LAFCO Meeting Agenda Item No. 14 – City of Soledad Miramonte proposal (LAFCO File #20-01)

This memo transmits correspondence received today, December 5, as of 1:00 PM.

PAUL W. MONCRIEF
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December 5, 2022

File No. 6377.039

VIA EMAIL AND U. S. MAIL

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RE: Miramonte Specific Plan Sphere of Influence and Reorganization Application

Dear Commissioners:

This office represents HMBY, LP, owner of the property known as the Miramonte development in Soledad. I have reviewed the letter sent by John Farrow of M.R. Wolfe & Associates on behalf of LandWatch Monterey County. The letter contains many misleading or simply false statements to which my client must respond.

As an initial matter, the points made in LandWatch's letter are inappropriate for consideration by LAFCO as they regard alleged inconsistencies between the Specific Plan and the Soledad General Plan. The General Plan was amended in 2018 to include the Specific Plan, so there is no inconsistency. Further, any comments regarding either the Specific Plan or the Soledad General Plan should be directed to the City of Soledad as part of its approval process, not LAFCO. For that reason alone, the LandWatch letter should be disregarded. That being said, some of the more egregious misstatements in the letter are as follows:

1. **LandWatch letter:** "The affordable housing in the Specific Plan is not integrated because it is segregated in separate neighborhoods, again violating General Plan policies."

Response: The approved Specific Plan is one neighborhood, is an integrated planned community and is considered one area or neighborhood under the Inclusionary Ordinance (IO.) In addition, affordable units are not limited only to the MMSP-R-V medium density areas. The Specific Plan allows smaller than average lots, ADU's, duplexes, duets, triplexes and four-plexes within the MMSP-R-1 single family areas. (see Specific Plan page 2-18.)

The interpretation of the IO related to the Specific Plan area should rely on the Specific Plan analysis included on pages 2-18 thru 2-24. The analysis reviews the entire Specific Plan, places most but not all of the affordable housing to be in the center core area of the Specific Plan and determines the Specific Plan to be consistent with the IO. Therefore, affordable housing locations consistent with the Specific Plan are consistent with the IO.



2. **LandWatch letter:** “And the affordable housing is not concurrent because the phasing plan would build out 9 to 17 years of low density single family housing demand before developing the neighborhoods designated for affordable housing. This too conflicts with the General Plan.”

Response: Affordable housing is required to be built with each phase of development, consistent with SP Land Use Policy LU – C.

The following Condition of Approval must be met by the project:

COA 23: Affordable Housing -

A. The developer(s) shall have prepared, at their expense, and enter into an Affordable Housing Agreement with the City, subject to review, discussion, and revision by City Staff and City Council approval prior to or concurrent with City Council approval of the first final map and improvement plans.

B. The Affordable Housing Agreement shall be subject to the City requirements and include, but not be limited to, affordable housing unit types, numbers, level of affordability, restrictions, financing (if known), and timing/trigger mechanisms for when units are required to be built."

The Master Phasing plan submitted to LAFCO reflects affordable units being built at a minimum in proportion with each phase. Some phases may build surplus affordable units that will be credited to future phases. For example, this would be the case for Phase 2, which includes the affordable site for Seniors. The ability to build affordable units in the MMSP-R-1 such as ADU's is not recognized by LandWatch.

3. **LandWatch letter:** “Affordable housing is not sufficient. The Specific Plan is inconsistent with General Plan policies requiring a housing mix in proportion to RHNA income categories. The Specific Plan is inconsistent with General Plan policies requiring sufficient affordable units because too few lots are zoned at the densities the General Plan requires for affordable units.”

Response: This comment does not acknowledge that within the MMSP-R-1 single family areas, the Specific Plan allows smaller than average lots, ADU's, duplexes, duets, triplexes and fourplexes. The Specific Plan requires the project to comply with affordable requirements. An affordable housing agreement must be finalized and approved by Soledad's City Council prior to the approval of the first final map, as is required in the mitigation measures/conditions of approval. Density zoning is not the only method allowed for providing affordable housing. Housing type and design are also options for providing affordability.



This brings the anticipated number of affordable units to 800, solely by virtue of layout/design, so the project is approximately 33.5% affordable. Of these, Specific Plan Policy LU-C requires affordable units to meet the following minimums consistent with the City's inclusionary ordinance:

- 6% to low income (46 units);
- 8% very low income (64 units); and
 - 6% to moderate income (46 units).

Compliance with policy LU-C results in 156 very low, low, and moderate units and up to 644 above moderate income units. This is consistent with the RHNA and ratios identified in the 2007-2014 Housing Element in effect at the time of the General Plan amendment and also consistent with the RHNA and ratios identified in the 2014-2023 Housing Element adopted in 2019 after the general plan amendment and prezone were approved.

Further, there is additional opportunity in recent state mandates and legislation for affordable housing regarding the use of ADUs, and the City may consider ADUs to be counted as affordable as well. The specific mix of very low, low, moderate and above moderate affordable units would be negotiated in an affordable housing agreement as part of the Development Agreement between the developer and City, which requires approval by the City Council.

In summary, the LandWatch letter identifies issues that are not appropriate for consideration by LAFCO and in any event are addressed in the Specific Plan. Thank you for your attention to this matter.

Very truly yours,

MONCRIEF & HART, PC

A handwritten signature in blue ink that reads "Paul W. Moncrief". The signature is written in a cursive, flowing style.

Paul W. Moncrief

PWM/sld

From: [John Farrow](#)
To: [100-District 1 \(831\) 647-7991](#); salinasmayor@ci.salinas.ca.us; [Lopez, Christopher M.; 100-District 3 \(831\) 385-8333](#); info@weddingphotographercarmel.com; mcrfdboard@gmail.com; mgourley@sbcglobal.net; mleffel@montereyairport.com; joglesby@ci.seaside.ca.us
Cc: [McKenna, Kate x5016](#); [McBain, Darren J. x5302](#); [Michael DeLapa](#)
Subject: Soledad Miramonte Specific Plan Annexation
Date: Monday, December 5, 2022 12:50:03 PM
Attachments: [LandWatch to LAFCO Commissioners responding to Montcrief re General Plan.pdf](#)

Dear LAFCO Commissioners,

Attached please find a letter on behalf of LandWatch Monterey County regarding the inconsistency of the Miramonte Specific Plan with the affordable housing provisions of the Soledad General Plan.

The letter responds to the letter provided to LAFCO today from Paul Montcrief, attorney for the Specific Plan landowner.

Mr. Montcrief's letter fails to address the project's inconsistencies with Soledad General Plan policies and programs that mandate a specific proportion of affordable units (54%, not the 33% provided) and mandate that these units be constructed at specified densities (12 units per acre for moderate income units; 20 units per acre for lower income units).

Thank you for your consideration.

John Farrow

M. R. Wolfe & Associates, P.C. | Attorneys

Land Use | Environmental Law | Elections

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December 5, 2022

Via E-mail

LAFCO of Monterey County
132 W. Gabilan Street # 102
Salinas, CA 93901

Re: Miramonte Specific Plan Area Sphere of Influence and Reorganization Application

Dear Commissioners:

On behalf of LandWatch Monterey County (LandWatch), I write to respond to the December 5, 2022 letter from attorney Paul Montcrief offered today on behalf of his client HMBY, LP, owner of the Miramonte Specific Plan site.

1. Affordable units are not in proportion to the RHNA affordability mix as required by the General Plan.

It is simply not true that the project meets the General Plan mandates for affordable units.

Mr. Montcrief argues that the project would be approximately 33.5% affordable units. However, the General Plan Policy H-3 and its implementing Program 4-2 mandate that at least 54% of housing be affordable: 15% very low, 14% low, and 25% moderate, as follows:

Policy H-3

The City of Soledad shall require new residential areas to contain a mix of housing types targeted to very low, low, moderate, and above moderate households in approximately the proportion that each of these income categories represent in the AMBAG Fair Share Housing Allocation.

Program 4-2

The City shall require that specific plans developed for areas annexed after July 1, 2003 and project plans for the Miravale II project area prescribe the proportion of very low, low, and moderate income housing to be built in the area. **At a minimum, 15 percent of the housing in a specific plan area and in the Miravale II project area must be affordable to very low income households, 14 percent must be affordable to low income households, and 25 percent must be affordable to moderate income households.** In all specific plan areas and the Miravale II project area, development must be organized into functioning

neighborhoods that contain very low, low, and moderate income housing that is fully integrated with marketrate single family housing.

Even if the City were to revise its General Plan to rely on the 6th Cycle RHNA affordability mix, it would still have to provide 48% affordable units.¹

2. The site is not zoned at the densities required by the General Plan to support affordable housing.

Mr. Montcrief argues that “[d]ensity zoning is not the only method allowed for providing affordable housing.” This mischaracterizes the General Plan. Density zoning may not be sufficient, but it is necessary under the General Plan.

Housing Element Program 2.1.1 is clear that the Specific Plan must be zoned at specified densities to attain affordability:

In drafting development or housing agreements per Program 1.2.1, **the City shall link housing affordability to housing type, design, and development density to ensure available housing for all income categories.** Housing affordable to very low- and low-income persons or families shall achieve a **minimum density of 20 dwelling units per net acre**, and housing types shall consist of multi-family, housing above commercial use, and single-room occupancy (SRO) units. For the moderate-income category, new development shall achieve, at minimum, a **density of 12 dwelling units per net acre**, and housing types shall be limited to small-lot single-family dwellings, attached single-family dwellings, detached second units, and multi-family dwellings such as townhouses.

There may be other factors that affect affordability, but the General Plan is clear that the project must in fact zone sufficient sites at specified densities to attain affordability.

3. The Phasing Plan does not ensure concurrent provision of affordable units.

Mr. Montcrief argues that the “Master Phasing Plan submitted to LAFCO reflects affordable units being built at a minimum in proportion with each phase.” Not so.

In the phasing plan described in the most recent annexation submittal, only 134 of the first 771 units would be developed in areas zoned for affordable units. (Third Submittal, Figure 5-1 and Appendix I [134 senior units].) **At the current absorption rate of 60 units per year, that means that only 17% of the units would be affordable in the first thirteen years of development.** This is a far cry from providing the needed proportion

¹ AMBAG, Final Regional Housing Needs Allocation Plan: 2023 – 2031, Oct. 2022, p. 29, available at https://www.ambag.org/sites/default/files/2022-10/AMBAG_RHNA_2023-2031_Final%20Plan_091522_PDF-A.pdf.) The 5th Cycle RHNA requires an even higher proportion of affordable units. (AMBAG, Regional Housing Needs Allocation Plan: 2014-2023, available at https://www.ambag.org/sites/default/files/2019-12/RHNP%202014-2023_Final_revised_PDF_A_2.pdf.)

of affordable units from year to year, whether that is the 54% affordable required by the current General Plan or the 48% required by the 6th Cycle RHNA.

4. The Project does not integrate affordable units into “the majority of blocks” as required by the General Plan.

Mr. Montcrief argues that since the Specific Plan is “one neighborhood” it is acceptable to segregate the affordable units in three subareas. However, each of the 16 “subareas” is identified as a “neighborhood” in the City’s submittals. (Third Submittal, Figure 3-2.) Furthermore, Housing Element Program 2.1.2 requires integration of affordable housing into the “majority of blocks:”

Program 2.1.2: The City will ensure that new residential developments provide for adequate housing diversity and affordability by requiring that an integrated mix of complementary but varied housing types be provided **within the majority of blocks.**

In effect, the Specific Plan would segregate the affordable units in separate neighborhoods.

5. The Specific Plan is inconsistent with the General Plan or the General Plan is internally inconsistent. Either way, future approval are at risk.

As LandWatch has pointed out, LAFCO is required to consider General Plan inconsistency in its annexation decision. (Gov. Code, § 56668(h).) Mr. Montcrief argues that since the General Plan was amended in 2018 to include the Specific Plan “there is no inconsistency.” Not so.

A Specific Plan must be consistent with the General Plan. (Gov. Code, § 65454.) Since the Specific Plan directly conflicts with a number of General Plan policies and programs, it is not consistent with the General Plan. Treating the Specific Plan as part of the General Plan would not cure the problem because a General Plan must be internally consistent. (Gov. Code, § 65300.5.)

In light of these inconsistencies, future development approvals, including development agreements, are at risk, because each must be consistent with a valid, internally consistent General Plan. (Gov. Code, § 65866.)

6. Conclusion

Since 2020, LandWatch has repeatedly sought discussion with the City about the General Plan inconsistencies implicating affordable housing for the Miramonte Project. However, the City has chosen not to respond until the very day of the annexation hearing. And the response is inadequate because Mr. Montcrief’s 11th hour letter simply fails to address the General Plan policies and programs with which the Miramonte project is inconsistent.

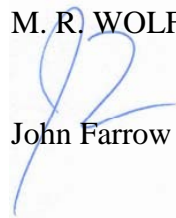
December 5, 2022

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Accordingly, LandWatch again urges the Commissioners to follow staff's recommendation to ask the applicant to revise the annexation proposal to address the General Plan provisions regarding the sufficiency, concurrency, and integration of affordable housing.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

cc: Kate McKenna
Darren McBain
Michael DeLapa

From: mjdelpiero@aol.com
To: [McKenna, Kate x5016](#); [McBain, Darren J. x5302](#); marc@aglandtrust.org; accounting@aglandtrust.org
Subject: Proposed Soledad Annexation
Date: Monday, December 5, 2022 12:56:01 PM

TO: LAFCO Board of Directors

On behalf of the Ag Land Trust of Monterey County, please accept the following comments regarding this matter.

- 1. Annexations to the City of Soledad are supposedly subject to the executed cooperative "AGREEMENT between the City of Soledad and the County of Monterey" (collectively the "Parties"). The AGREEMENT requires that annexations proponents provide identified mitigation sites equivalent in size, agricultural productivity values, and soil types. Additionally, dedications of those mitigations to a recipient entity are required to legally comply and satisfy the mitigation requirements of CEQA, The California Government Code (Sec. 65041.1 and Sec. 51220), and the AGREEMENT.**
- 2. During the negotiation discussions that led to that executed Agreement, the "Parties" both requested that the Ag Land Trust act to facilitate and act as the recipient entity for the required farmlands that would mitigate the unmitigated loss of prime farmlands that the annexations would cause. The Ag Land Trust has not been contacted by the City in years. Alternatively, the Trust met with a developer's representative nearly a year ago. The Trust extensively researched and clearly identified mitigation sites that the developer could secure/purchase to meet the mandates of the AGREEMENT. The Ag Land Trust has not received any offers of acceptable, mitigation sites that are equivalent to the value, size, and productivity of the prime farmlands that will be permanently lost as a result of the developer's project.**
- 3. The Ag Land Trust hereby incorporates by reference our prior letter to LAFCO indicating the unacceptability and inappropriateness the developers/City of Soledad's consultant's proposed "giving developers mitigation credits resultant from our Trust's independantly received grants from the CA. Dept. of Conservation to permanently preserve the WIMER Ranch". Moreover, the mitigation requirements for the proposed conversion must consist of prime farmlands with reliable, long-term irrigation water supplies and groundwater rights, unlike one proposed Eastside property which has already been identified by the SVGMA as suffering from long-term water shortages and limited agricultural production values because of the water shortages. The California Department of Conservation has been notified of this inappropriate proposed mitigation scheme by the developer's consultants.**
- 4. It appears that the pending application is incomplete and will fail to satisfy the mitigation requirements of CEQA, the Government Code, and the AGREEMENT. CEQA (and a multitude of court cases) require mitigations to be identified and enforceably mandated prior to the granting of discretionary approvals.**

Assuming that this matter is appropriately continued, The Ag Land Trust stands ready and willing to work cooperatively with the City, LAFCO, and the developers to address the pre-existing legal requirements and unaddressed mitigation mandates that must be clearly and enforceably identified and guaranteed before the development project can move forward.

Most Respectfully,

Marc Del Piero, CEO

Marc Del Piero
Executive Director
Ag Land Trust
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