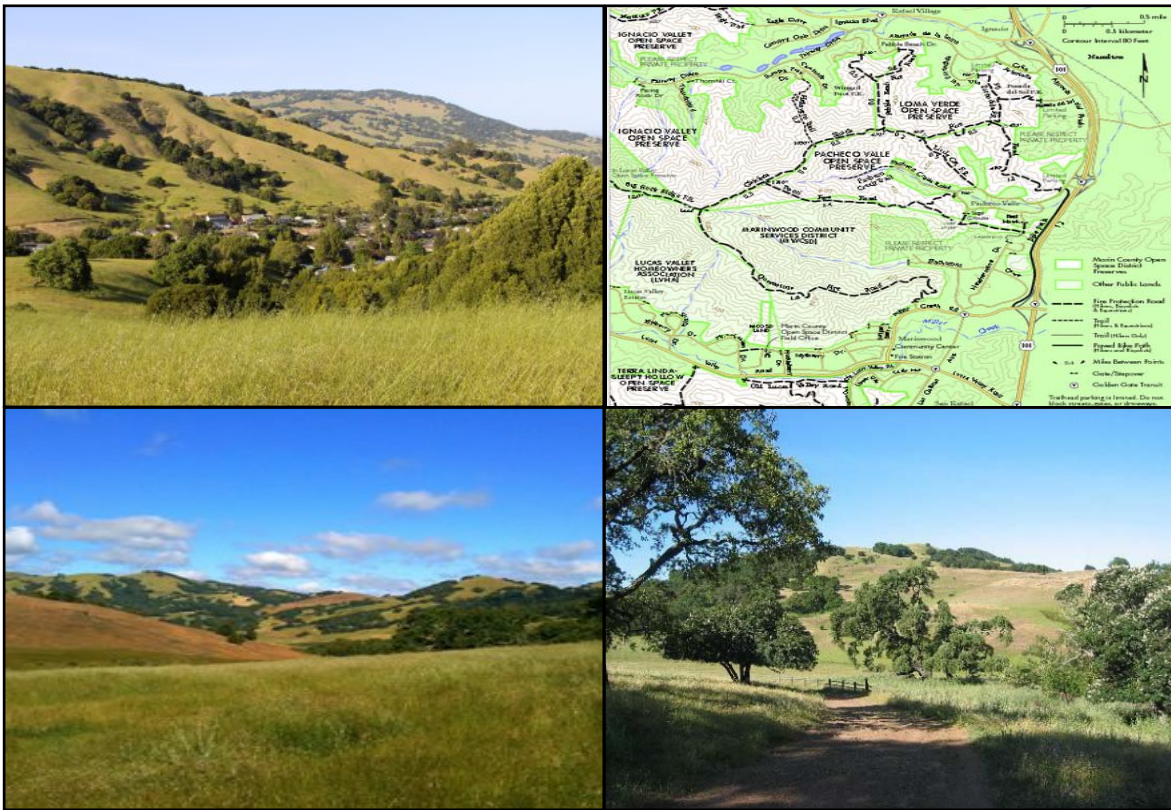


# City of Novato General Plan 2035 Policy White Paper



## URBAN GROWTH BOUNDARY

April 14, 2014



## **The Issue**

In 1997 the voters of Novato adopted an Urban Growth Boundary to constrain the expansion of “urban” development (e.g., that which required sewer and water utilities) into the rural areas surrounding the incorporated City limits. This voter approved initiative will expire in 2017 unless extended or amended. This White Paper describes the adopted policies and regulations, how they have been implemented, some administrative challenges and options for extension or amendment of the UGB.

## **White Paper Purpose**

The purpose of the General Plan White Papers is to provide initial direction on certain policy questions to aid staff in the preparation of the Draft General Plan, which will then be evaluated in the environmental impact report (EIR) prepared for the General Plan. As such, the Commission recommendations and Council direction are preliminary, and will be reconsidered upon review of the Draft General Plan and EIR.

## **Background**

### The Urban Growth Boundary Concept

In the mid to late 1990s, citizens in cities across the state and in Marin were concerned about the rapid pace of development and the increase in “urban sprawl”. “Urban Sprawl” is essentially the spreading of urban development, such as residential subdivisions and commercial developments, into unincorporated rural areas surrounding a city.

Specifically, the citizens in Marin were concerned with protecting the unincorporated area of Marin from development, maintaining agricultural uses, and maintaining the distinct open space separators between cities in the County. In addition, there was concern that cities were bearing the cost of maintaining infrastructure that was used, but not being paid for by development in the unincorporated areas of Marin.

Based upon these concerns, citizen groups formed in many of the Marin cities to propose ballot measures to address these issues. The predominate thinking at the time centered on the establishment of urban growth boundaries. The concept of urban growth boundaries was to set a line of demarcation surrounding a city, outside of which development would be restricted to rural development not requiring the provision of urban services, such as sewer and water.

The Urban Growth Boundary Committee ("Committee") was formed in Novato to look at the possible establishment of an Urban Growth Boundary. The Committee held meetings and discussed the issue for several months, ultimately proposing a draft of an urban growth boundary measure which the Committee requested that the City put on the November 1997 ballot for consideration by the Novato voters.

## The Original Committee Drafted Measure

The Committee proposed measure was drafted in a manner which both prohibited the annexation<sup>1</sup> of property outside the proposed urban growth boundary to the City and which also prohibited the extension of urban services (sewer and water) to areas outside the urban growth boundary. The original measure proposed by the Committee was determined to be unlawful as it was pre-empted by state law, which exclusively grants the authority to annex lands to local cities and special districts to local agency formation commissions<sup>2</sup>. Thus neither a local agency, nor its electorate can control annexations. The originally proposed measure was also determined to be impossible to enforce as written because the City itself does not directly control the extension of sewer and water service. Accordingly, a revised measure was drafted to attempt to address the issues that concerned the Committee.

## Adopted Urban Growth Boundary Measure

The City of Novato's Urban Growth Boundary ("City UGB") is a measure adopted by the voters in 1997, which amended the City's General Plan by establishing a land use objective, policies, and programs aimed at limiting development outside the City limits. A full and complete copy of the voter approved City UGB measure is attached as Exhibit A.

The City UGB was initially established as being coterminous with the 1997 city limit line of Novato. However, there have been four subsequent amendments of the City UGB and city limit line since 1997; these amendments are discussed below. A map of the current City UGB and city limit line is attached for reference as Exhibit B.

The following are key provisions of the City's UGB initiative that form the basis of all City actions that could allow or otherwise support the intensification of development in the unincorporated territory around Novato, including the extension of urban services:

"LU Policy 10A Urban Growth Boundary...For the 20-year duration of the Urban Growth Boundary, development outside the Urban Growth Boundary shall be limited to nonurban uses such as agricultural, conservation, parkland, and open space uses except as provided herein. The City, its departments, boards, commissions, officers and employees, shall not grant or approve any general plan amendment, rezoning, or zoning ordinance amendment, specific plan, master plan, precise development plan, tentative or final subdivision map, conditional use permit, building permit or any other discretionary or ministerial land use or development approval or entitlement for urban land uses outside the Urban Growth Boundary except as provided in this policy [emphasis added].

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<sup>1</sup> Annexation is a process by which new territory is incorporated into a given city or special service district area. Annexations are conducted pursuant to the legal and public process requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

<sup>2</sup> Local agency formation commissions (LAFCOs) were created in each county in California by the State Legislature in 1963 to discourage urban sprawl, preserve agricultural land resources, and encourage the orderly formation and development of local government agencies. LAFCO's have three areas of primary responsibility: a) planning of local government boundaries, including cities and special service districts; b) approving or disapproving proposals for changes in local government boundaries or organization; and c) special studies of local government to improve the delivery of services, such as those provided by special district (e.g., sewer district).

All City departments, boards, commissions, officers and employees shall act on applications for land use approvals or entitlements outside the Urban Growth Boundary consistent with state law in a manner that avoids any approval of such applications by operation of state or other law. . . "

The UGB initiative goes on to establish the circumstances under which the UGB may be amended by the City Council. The following is a summary of these circumstances:

- a) Under limited circumstances, up to 10 total acres annually of land immediately adjacent to existing comparable developed areas for the provision of housing to serve all economic segments of the community.
- b) To avoid an unconstitutional taking of property.
- c) For development of a public park, public school, public facility, or public open space project.
- d) To address a significant threat to public health, safety, and welfare (e.g., a failed septic system), provided that, there is no other feasible method to address the threat (e.g., no way to repair or replace the septic system), the property is already developed, and the amendment would provide for no new development.
- e) For previously approved vested projects.

The City UGB also specifically requires that annexations to the Sanitary District be supported by the City only when they meet the qualifications for amendment of the UGB (as outlined above) and requests coordination, referral, and action by Marin LAFCO on annexations to the Sanitary District, consistent with the City UGB and the City's recommendations relating thereto. These policies are captured in General Plan Land Use Chapter Policy 11 and Program 11.1.

Since 1997 the City UGB has been amended four times, which resulted in dual annexation procedures to add new territory to Novato. These City UGB amendments and concurrent annexations involved:

- A portion of the Marin Valley Mobile Country Club, a city owned affordable senior mobile home park (1999)
- Lands of Lock-Hodge (2000): allow sewer connection for a single family home to abandon a failing septic system.
- Novato Heights – 8 residential parcels (2002): allow sewer connections to abandon failing septic systems.
- Lands of the House of Daniels (2002): allow sewer connection for a commercial warehouse and office to abandon a failing septic system.

The Marin Valley Mobile Country Club was purchased by the City in 1997. As part of the purchase, it was noted that a small sliver of the mobilehome park was located outside the City limits and outside the UGB. The 1999 amendment brought this sliver of land into the City UGB and city limits under the UGB criteria addressing the provision of housing to serve all economic segments of the community. The other three amendments and dual annexations were based on threats to public health, safety, and welfare stemming from failing septic systems that could not be repaired or replaced.

## Novato UGB Implementation

While the concept and purpose of an urban growth boundary are fairly straightforward, the City's UGB is a fairly complicated piece of legislation since its implementation depends upon the cooperation of the City of Novato, the Marin County Local Agency Formation Commission (Marin LAFCO), the Novato Sanitary District (Sanitary District) and the North Marin Water District (Water District). This coordination is necessary since the City does not directly control annexations by Marin LAFCO or the decisions of the Sanitary and Water District's relative to where and when sewer and water service are provide to unincorporated lands.

Recognizing the City doesn't have direct control over sewer and water services, the City UGB was drafted in a manner largely dependent on Marin LAFCO's then effective countywide Dual Annexation Policy. That policy required that where an unincorporated area or property contiguous to a city limit sought annexation to a special district(s) for urban service connections it must also concurrently annex to the abutting city. Marin LAFCO's dual annexation policy reinforced the notion that urban services should only be provided to lands attached to an incorporated city, which was consistent with the aim of the City's UGB. The dual annexation process also gave the City an opportunity to provide comments to Marin LAFCO, influencing the LAFCO board's decisions.

The City has largely been able to effectuate the intent of the City UGB by commenting negatively on proposed single-district annexations to the Sanitary District which would extend urban services in a manner inconsistent with the UGB or requesting Marin LAFCO require concurrent annexation to Novato where such a proposal would meet the criteria to amend the UGB. The City has also implemented the UGB by rejecting requests for permits to extend sewer infrastructure to unincorporated land through city territory. For example, the City has periodically received requests to grant encroachment permits or easements to extend sewer mains and laterals through city streets to unincorporated property. These requests have been denied on the basis of the City UGB policies, with guidance provided to the property owner regarding the UGB amendment procedures and dual annexation provisions.

While the City's administration of the UGB has largely been successful, it has been met with some implementation challenges, including:

- 1) The public in the unincorporated areas surrounding the City tends to be both unaware of the UGB, its effect on the City's ability to support the extension of urban services, and the possible imposition of dual annexation proceedings. This circumstance has left some property owners objecting to being annexed to the City in order to obtain a sewer extension, being frustrated by the UGB amendment and dual annexation processes, and reluctantly accepting the imposition of restrictions (e.g., no future subdivision) on future development that are sometimes applied as conditions of approval to UGB amendments. These circumstances have made administering the UGB amendment process and dual annexation somewhat contentious in many instances.
- 2) As noted earlier, the UGB has been amended a total of four times, three of which occurred under the UGB policy provisions addressing threats to public, health, safety, and welfare. These particular amendments were based on reports indicating the septic systems serving several unincorporated properties were failing and could not be repaired or replaced on-site. As the City considered amending the UGB to support the

extension of sewer service to these properties there were questions raised about the criteria used to determine when a septic system is failing and whether its repair or replacement is infeasible.

The UGB does not provide explicit guidance as to what procedures or information the City must rely upon in determining when a significant threat to public health, safety, and welfare exists and that corrective measures are infeasible. Given this circumstance, the City has relied upon the report and professional opinion of the applicant's consulting civil engineer or other professional with expertise in the design and function of on-site wastewater disposal systems. Some proponents of the UGB have questioned the objectivity of relying on the professional representative of a property owner seeking a connection to the public sewer system. This has led to some rather contentious debate at public hearings.

- 3) In 2001 and 2002 Marin LAFCO made changes to its countywide dual annexation policy and the Novato Sphere of Influence<sup>3</sup>, the combined effect of which lead to the presumably unintended effect of partially undermining implementation of the UGB.

In October 2001 Marin LAFCO amended its countywide Dual Annexation Policy to only apply to lands located within a given city's sphere of influence. As mentioned earlier, the prior countywide Dual Annexation Policy applied to any property that was contiguous to a city's limit line. Under the 2001 Dual Annexation Policy, a property seeking a single-district annexation that is located outside of a city's sphere of influence, regardless of whether the property is contiguous to a city limit line, would not be required to concurrently annex to the adjacent city. This change alone did not impair implementation of the City's UGB, but subsequent changes to the City's Sphere of Influence did.

In 2002 Marin LAFCO reduced Novato's Sphere of Influence. The amended Sphere of Influence is currently set to be generally coterminous with the city limit line and UGB, with exception of unincorporated areas along Atherton Avenue between U.S. 101 and Bugeia Lane, portions of the St. Vincent's properties abutting Novato to the south, and territory west of Novato along Vineyard Road. The effect of this change coupled with the amendment to the Marin LAFCO's Dual Annexation Policy means that much of the unincorporated land bordering Novato's city limit and UGB are not required to concurrently annex to the City if seeking annexation to the Sanitary and/or Water Districts. Accordingly, Marin LAFCO does not request City comment on single-district annexation requests for properties outside of the City's Sphere of Influence to the City for comment, nor does it consider the policies of Novato's UGB when making decisions on such requests. Novato's currently adopted Sphere of Influence is shown on Exhibit B.

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<sup>3</sup> A sphere of influence is a boundary defining the probable physical boundaries and service area of a local agency as determined by a local agency formation commission. Adopted spheres of influence are a key factor used by local agency formation commissions in consideration of boundary proposals and the provision of public services. Local agency formation commissions may only approve proposals that are consistent with adopted spheres of influence. Marin LAFCO sets and administers Novato's Sphere of Influence, as well as those of the cities and special districts in Marin.

- 4) The Sanitary and Water District's focus on providing service to properties in their respective service areas as adopted by Marin LAFCO. As such, the Districts look to Marin LAFCO to determine where urban services should be provided and do not comment on or otherwise consider the City UGB. Given this circumstance, the City cannot rely upon either of the District's to enforce the provisions of the City UGB. Maps describing the current service boundaries of each District are provided as Exhibits C and D.

#### Expiration of Novato's UGB

The current UGB expires by its own terms in 2017. Thus, prior to the expiration of the UGB, the City Council will need to make a policy determination as to whether to extend the current UGB, amend and extend the UGB, or permit the UGB to expire without action. In addition, if the City Council determines to extend the UGB as it exists or in an amended form, the City Council will need to determine whether the extension of the UGB should be placed on the ballot to be adopted by the voters, or if the City Council should itself adopt any extension or amendments to the UGB.

#### **UGB POLICY OPTIONS**

There are several policy options for the Planning Commission and City Council's consideration. These policy options and staff's analysis of the pros and cons of each option are discussed below.

#### UGB Measure Policy Options

1. ***Allow the current UGB to expire and take no action.***
2. ***Continue the current UGB as written with no changes.***
3. ***Amend the policies and criteria of the current UGB.***
4. ***Extend the UGB boundary to include additional properties.***

#### Analysis of UGB Measure Policy Options

1. ***Allow the current UGB to expire and take no action.***

##### Pros:

- a. Avoids staff time and costs to continue implementation of the UGB.
- b. Avoids the need to coordinate with and potential policy conflicts with Marin LAFCO and Special Districts.
- c. Avoids controversy surrounding the City's opposition to single-district annexations.
- d. Avoids conflict over the criteria used to determine when it is appropriate to amend the UGB to address threats to public health, safety, and welfare.

##### Cons:

- a. May allow intensification of development in unincorporated areas due to access to urban services.

- b. May increase development pressure on agricultural and open space lands surrounding the City (greenbelts).
- c. May increase City costs associated with intensified development outside the City limits due to expanded use and costs for City park and recreation facilities, street maintenance, and police mutual aid services, or by annexing lower density development on the edges of the City requiring extension and maintenance of additional infrastructure.

**2. Continue the current UGB as written with no changes.**

Pros:

- a. Avoids costs associated with amending the UGB.
- b. Provides some protection against intensification of development in unincorporated areas.
- c. Provides some protection against the loss of agricultural and open space land uses surrounding the City (greenbelts).

Cons:

- a. Continues controversy surrounding applications for sewer or water connections for properties outside the UGB.
- b. Provides possibility for continued conflict with the policies of Marin LAFCO, the Sanitary District, and Water District.

**3. Amend the policies and/or criteria of the current UGB.**

The option to amend the City UGB is slightly more complicated and does not lend itself to a clear pro/con list, but more of a general discussion. The following are possible amendments that might be considered to improve and reduce some of the controversies affecting implementation of the City's UGB.

- a. Expand or reduce the circumstances under which the City Council may amend the UGB;  
 It might be appropriate to consider eliminating the provision allowing the City Council to amend the UGB in instances of a threat to public health, safety, and welfare due to a failing septic system. Such a change would remove the City from the controversy associated with confirming when such a circumstance exists and that no other feasible options are available to abate the threat. The downside of this change is that it would limit the City Council's ability to address a situation where a septic system at an unincorporated property threatened Novato residents, land, or improvements.
- b. Establish clear procedural requirements to confirm when a threat to public health, safety, and welfare exists when such circumstances are being claimed to request amendment of the UGB;

This amendment would likely eliminate some of the controversy associated with determining when a threat to public health, safety, and welfare exists. In addition, clear criteria would provide certainty to applicants in terms of the information required by the City to consider a request to amend the UGB.



- c. Clarify the findings to amend the UGB on the basis of a threat to public health, safety, and welfare to clearly define and describe when a property is considered to be "developed" or "substantially developed."

Clarifying the terms "developed" and "substantially developed" would assist residents, decision makers, applicants, and staff in determining when an unincorporated property meets the findings necessary to support a UGB amendment requested on the basis of a threat to public health, safety, and welfare. This clarification might also define "development" in terms of whether it only applies to the subdivision of land and/or the expansion of or construction of new structures on a single parcel.

- d. Include policy language requesting Marin LAFCO evaluate the spheres of influence of the City and the Sanitary District to consider better coordinating these boundaries in a manner supporting the effective implementation of the UGB. For example, if the City's Sphere of Influence were adjusted to be coterminous with that of the Sanitary District then the City would be in the position of being able to comment on and influence decisions regarding proposed annexations to the District.

**4. *Adjust the UGB boundary to encompass additional lands beyond the existing UGB and city limit line.***

Expanding the reach of the UGB might be considered if there is unincorporated territory the City believes is desirable to possibly annex in the future, such as areas already receiving urban services and utilizing city infrastructure or developed at urban densities. This would allow the City to better control development in such areas and receive the benefit of property tax revenue to support city provided services and infrastructure. Conversely, expanding the UGB to capture unincorporated lands may not be an acceptable policy option when viewed in light of the intent and delineation of the existing UGB. It is notable that expanding the UGB, but not annexing the additional territory within such a changed boundary, would eliminate the City's ability to control the extension of urban services beyond the City limit line.

UGB Extension Options

- 1. *Place any amended or continued UGB measure on the Ballot.***
- 2. *Adopt any amended or continued UGB measure by Council action.***

Analysis of UGB Extension Options

- 1. *Place any amended or continued UGB measure on the Ballot.***

Pros:

- a. Results in a UGB supported by a majority of the residents of the City
- b. Takes the City Council out of the position of adopting the measure and receiving any pressure to amend same.

Cons:

- a. Costs associated with election.

- b. Eliminates the option for the Council to amend the measure in the future in response to changing conditions.

**2. *Adopt any amended or continued UGB measure by Council action.***

Pros:

- a. Avoids costs associated with election.
- b. Provides option for the Council to amend the measure in response to changing conditions.

Cons:

- a. May not be perceived as having widespread community support.
- b. Exposes the City Council to pressure to amend measure by development or other interests.

**CONCLUSION**

Staff requested the Planning Commission consider the issues presented and provide a policy recommendation to the City Council regarding continuation/amendment of the UGB and the methodology for accomplishing same, and subsequently that the Council provide policy direction to staff on provisions related to the UGB to include in the Draft General Plan document.

**PLANNING COMMISSION INPUT**

On April 21, 2014, the Planning Commission conducted a meeting to receive public comment and consider providing a recommendation to the City Council regarding the policy options and extension methods discussed in the UGB White Paper.

The Planning Commission passed the following motions representing its recommendations to the City Council regarding the UGB:

1. Extend the effective date of the UGB.
2. Extend the effective date of UGB by City Council action unless a substantial adjustment of the UGB line is proposed which should then be placed on a ballot for voter consideration.
3. Consider: a) making minor changes to the policies of the UGB to improve administration of the UGB regarding health and safety based amendment requests; and b) adding policy language encouraging coordination between the City, Marin LAFCO, and the Novato Sanitary District to better support the UGB.

4. Recommend revisiting an agreement with the County of Marin regarding the referral of project proposals affecting Novato and requesting county decisions respect Novato's UGB.

### **CITY COUNCIL DIRECTION**

At its meeting of May 13, 2014, the City Council made a series of motions providing direction to staff regarding future policies relevant to the UGB. The following is a summary of these motions and the corresponding vote by the City Council:

1. Support extending the effective date of the UGB for 20-years. The motion was approved unanimously.
2. Support extending the effective date of the UGB by Council action. The motion was carried 4-1-0, with Councilmember Eklund voting no. Councilmember Eklund held the position that extension of the effective date of the UGB and any amendments to the UGB policy should be placed as a ballot measure for consideration by Novato voters.
3. Direct staff to prepare the following for Council consideration: a) minor amendments to the policies of the UGB to improve administration regarding health and safety based amendments requests; b) policy language encouraging better coordination between the City, Marin LAFCO, and the Novato Sanitary District to better support the UGB; and, c) a staff recommendation where policy changes should be addressed, either through the UGB policy itself or an implementing ordinance. The motion was carried 4-1-0, with Councilmember Eklund voting no.

Councilmember Eklund held the position that the language of the existing UGB policy should not be revised and that an implementing ordinance was the appropriate method to consider changes to the procedures for health and safety based UGB amendment requests.