

TOLLING AGREEMENT

This Tolling Agreement (“Agreement”) is entered into on the Effective Date (defined below), by and among POES 1-50, individuals to be named upon filing suit, and the County of Marin and the Marin County Board of Supervisors. The named entities are hereinafter collectively referred to as the “Parties.”

RECITALS

A. The County of Marin (“County”) is a political subdivision of the State of California, and is governed by the Marin County Board of Supervisors.

B. POES 1-50 allege that, to date, the County has not timely adopted a legally compliant Housing Element for the 2007-2014 planning period, as required by Cal. Gov. Code § 65588. The County alleges to the contrary.

C. This Agreement relates specifically to any claim (“Claim”) that may be asserted arising out of the County’s alleged failure to timely adopt a Housing Element for the 2007-2014 planning period.

D. The Parties to this Agreement have agreed that any litigation to assert the Claim should be deferred for a period of time in order to seek non-judicial resolution of the issues through the public process and/or negotiation instead of through litigation. The Parties wish to toll any statute of limitations that may expire from and after the Effective Date of this Agreement until termination of this Agreement.

TERMS

Now, therefore, in consideration of the terms and conditions of this Agreement, the Parties hereby agree to the following:

A. Effective Date

The Effective Date is the date upon which all Parties have executed the Agreement.

B. Relevant Claim

The Parties recognize and agree that, as used in this Agreement, the term “Claim” refers to any claim that could be brought on the basis of the County’s failure to adopt an updated Housing Element of its General Plan for the 2007-2014 planning period, including but not limited to writ, declaratory, injunctive and monetary relief.

C. Applicable Tolling Period

The statute of limitations for filing litigation concerning the Claim shall be tolled for a period (the “Tolling Period”) beginning on the Effective Date and ending on June 30, 2014 (the

“Expiration Date”). The Parties agree that the Tolling Period shall not be asserted or used in computing the running of time under the statute of limitations for the Claim. Notwithstanding anything stated herein to the contrary, any statute of limitations or statute of repose applicable to any Claim that has expired prior to the Effective Date shall not be resurrected or tolled by this Agreement, and any Claim that is governed by a statute of limitations or statute of repose that has expired prior to the Effective Date shall be conclusively deemed barred and incapable of being asserted as against the County for any reason or purpose.

D. Applicability

This Agreement applies only between the Parties, and shall not inure to the benefit of any other person, entity, or claim.

E. Authority

Each signatory to this Agreement represents that he/she has the authority to execute this Agreement on behalf of his/her respective Party and bind that Party to the terms of this Agreement.

F. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all such counterparts when taken together shall constitute but one Agreement. This Agreement may be delivered by facsimile transmission or electronic transmission in portable document format of signed counterparts.

G. No Admissions

The parties recognize and understand that the execution of this Agreement is not and shall not be deemed to constitute evidence of, or an admission of liability for, or otherwise to affect the merits of any claim, cause of action, or defense, except with respect to the statute of limitations applicable to the Claim, and agree that this Agreement shall not be submitted as evidence for any other purpose.

H. Termination

This Agreement shall terminate automatically as of the Expiration Date as provided in Section C, above, unless extended in writing, signed by all the Parties to be bound. This Agreement may be terminated at any time before the Expiration Date (or any new Expiration Date agreed to hereafter in writing) by any Party for any reason by providing thirty-days advance written notice of the intent to terminate to all other Parties. Upon termination of this Agreement by such written notice (“Termination Notice”), the Tolling Period shall begin on the Effective Date and end at midnight on the termination date specified in the Termination Notice. Notice shall be delivered by mail, fax and email as follows:

Jack Govi
Acting County Counsel
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903
(415) 473-6117
(415) 473-3796 (Fax)

Paul S. Cohen
Executive Director
Legal Aid of Marin
30 N. San Pedro Road, Suite 220
San Rafael, CA 94903
(415) 492-0230 ext. 310
(415) 492-0947 (Fax)
pcohen@legalaidmarin.org

I. Entire Agreement

The provisions of this Agreement comprise all of the terms, conditions, agreements and representations of the Parties respecting the tolling of statute of limitations for the Claim. This Agreement may not be altered or amended, and no provision hereof may be waived, except by written agreement executed by the Parties, or their representative if notice of counsel is given, to be bound. The Parties hereby agree that terms of this Agreement have not been changed, modified, or expanded by any oral agreements or representations entered into or made prior to or at the execution of this Agreement.

J. Governing Law

This Agreement shall be governed by and construed under the laws of the State of California, and is entered into and to be performed entirely within California.

K. Recitals

The Recitals hereto form a material part of this Agreement, are true and correct, and are incorporated herein by this reference and made a part hereof.

L. Acceptance of Facsimile Signatures

The Parties agree that this Agreement will be considered signed when the signature of a Party is delivered by facsimile or e-mail transmission. Such facsimile or e-mail signature will be treated in all respects as having the same effect as an original signature.

IN WITNESS THEREOF, the Parties hereto each have executed this Agreement as of the Effective Date.

Dated: June __, 2012

COUNTY OF MARIN, CALIFORNIA, AND
MARIN COUNTY BOARD OF SUPERVISORS,

BY:



Matthew H. Hymel, County Administrator

Dated: June __, 2012

LEGAL AID OF MARIN on behalf of all Poe
Plaintiffs

BY:

Paul S. Cohen, Executive Director

APPROVED AS TO FORM:

Jack Govi, Acting County Counsel