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BY E-MAIL

February 24, 2025

Mayor Joan Cox
Vice Mayor Steven Woodside
Councilmembers Ian Patrick Sobieski, Ph.D, Melissa Blaustein, Jill James Hoffman,
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Director Brandon Phipps
Community and Economic Development Director and Zoning Administrator
City of Sausalito
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**RE: Comments on the City Council's February 25, 2025, Meeting Agenda
Items 1.A, 1.B, and 1.C relating to the City of Sausalito's proposed 6th
Cycle Amended Housing Element, Final EIR, and Proposed Ballot
Measure**

Dear Mayor Cox and Members of the City Council and Director Phipps:

I write on behalf of Save Our Sausalito ("SOS"), an organization comprised of numerous active residents of the City of Sausalito. SOS submits these comments on Agenda Items 1.A, 1.B, and 1.C, relating to the City of Sausalito's proposed 6th Cycle Amended Housing Element, to be heard at the City's Council's February 25, 2025, meeting.

SOS requests that the City Council make several changes to the proposed Amended Housing Element, its Final EIR and the Mitigation Monitoring and Reporting Plan. As an initial matter the present EIR and draft Housing Element have specific deficiencies that could render certain provisions unenforceable in areas of great concern to SOS. It is essential that Council and the public have a full and adequate administrative record to support the decisions that are before the Council.

As discussed in section 1, below, Mitigation Measure MM 3.4-1(a) needs to be revised to be enforceable. As discussed in section 2, below, the city should determine whether Site 201 is a historic resource considered individually, distinct from its historic significance as a contributor to the Downtown Historic District.

As discussed in section 5, below, at this late date the "project description" and "item of business" that the City Council is prepared to vote on and for which an EIR was prepared, continues to change in inexplicable ways. This violates CEQA, the Brown Act, and good public policy.

After six months of proposing, in multiple proposed Amended Housing Element, to rezone sites as Housing Opportunity Overlay Zone sites using the zoning classifications MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70, the proposed ballot measure on tomorrow's agenda uses new and different terminology, describing opportunity sites as proposed for "M29," "M49," or "M70" zoning and describes Site 201 as proposed for "M429" zoning. None of the previous multiple proposed Amended Housing Element documents used these terms to describe proposed zoning for any opportunity sites and these terms are not defined anywhere. This sudden change in terminology leaves the public guessing as to their meaning.

If these changes in terminology are merely typographical errors that can be corrected to use the terms MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70, consistent with expectations developed over the last six months, including the expectation that Site 201 is proposed to be classified as MU-29/85%, SOS requests that the City Council direct staff to make these typographical changes in the ballot measure.

If, on the other hand, these changes in terminology represent substantive changes in the proposed Amended Housing Element and ballot measure, SOS requests that the council continue the public hearing on these agenda items for at least a week to give staff time to explain the meaning of these new terms and how they would affect zoning of the proposed Housing Opportunity Overlay Zone sites. As it stands now, the public's ability to comment on these agenda items is severely compromised because the public does not know what is being proposed.

Beyond these basic items, SOS continues to object to including Site 201 as a Housing Opportunity Site in the Amended Housing Element and objects to including Site 201 in the ballot measure for the purpose of exempting it from the requirements of Ordinance 1022.

1. Mitigation Measure MM 3.4-1(a) needs to be revised to be enforceable.

The Final EIR's responses to comments state that "Mitigation Measure MM 3.4-

1(a) is revised as shown in Chapter 2 of this Final EIR to strengthen the requirements of the measure, including ... establishing a performance standard to reduce potential impacts to less than significant." Unfortunately, the way the measure is written is ambiguous and potentially unenforceable.

MM 3.4-1(a) states: "The evaluation shall identify measures implemented to reduce the impact to a less than significant level, including measures that ensure the project is consistent with the Secretary of the Interior's Standards"

While this sentence clearly requires "identifying" measures that would "reduce the impact to a less than significant," it does not clearly require that such measures be "implemented." Since the Final EIR's responses to comments clearly state an intent to establish a performance standard to reduce potential impacts to less than significant, the problem appears to be grammatical, because placement of the word "implemented" is awkward and ambiguous.

This sentence in MM 3.4-1(a) should be revised to eliminate this ambiguity, as follows:

"The evaluation shall identify measures that would reduce the impact to a less than significant level, including measures that ensure the project is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and all such measures that are necessary to reduce the impact to a less than significant level shall be implemented."

Leaving MM 3.4-1(a) as it is currently written renders the measure unenforceable, which would violate CEQA and prevents the city from legally making the finding specified in CEQA section 21081(a)(1) that the impact is reduced to less than significant.¹ Therefore, SOS objects to approval of this project without making this requested change.

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¹Mitigation measures must be fully enforceable. (14 CCR § 15126.4(a)(2); *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 730 (project proponent's agreement to a mitigation by itself is insufficient; mitigation measure must be an enforceable requirement); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App.4th 173, 195-96.)

2. The city must determine whether Site 201 is a historic resource considered individually.

The Final EIR concludes that Site 201 is historically significant as a contributor to the Downtown Historic District. (Final EIR, pp. 2-8; 2-27 to 2-28; 3-58 to 3-62.) SOS has submitted substantial evidence that Site 201 is historically significant considered individually, in its own right, entirely apart from its role as a "contributor" to the historical significance of the district. In addition to the property's listing in the California Register of Historic Resources as a contributing resource to the Downtown Historic District, the June 17, 2024, HRE prepared by Connor Turnbull Preservation Consulting and referenced in the Final EIR concludes that the property is "individually significant" pursuant to criteria 1 and 2 of Public Resources Code section 5024.1(c), paragraphs (1) and (2).

Lead agencies have a mandatory duty to exercise their discretion to determine if a resource is historic. (Guidelines, §§ 15064.5(a)(3), (4) ["Generally, a resource shall be considered by the lead agency to be 'historically significant' if the resource meets the criteria for listing on the California Register of Historical Resources...."]; 15005(a); *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1060, 1063.) Therefore, the city must determine if Site 201 is a historic resource considered individually.

The city should make this determination tomorrow by making the following finding in its CEQA Findings resolution:

"Pursuant to CEQA Guideline, § 15064.5(a)(3), (4), the City Council finds, based on substantial evidence in the record of these proceedings, including the information relating to Site 201 discussed in (1) Chapter 3.4 of the Draft Amended Housing Element EIR issued in September of 2024, (2) in relation to Alternative 5's potential impacts on cultural resources in the Recirculated Draft Amended Housing Element EIR issued in December of 2024, and (3) in Chapters 2 and 3 of the Final Amended Housing Element EIR issued in January of 2025, that Site 201 is historically significant and a historic resource individually and in its own right, separate and apart from its historic significance as a contributing resource to the Downtown Sausalito Historic District."

3. Site 201 should be removed from the city's "inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 of the Government Code."

The proposed Amended Housing Element identifies Site 201 as a Housing Opportunity Site, which means it is in the city's "inventory of land suitable for residential development" that the city is required to adopt pursuant to Government Code section 65583(a)(3). One legal consequence of including Site 201 in this inventory is that under

Government Code section 65583.2(h), Site 201 would be required to have a minimum entitlement to 16 units. This directly conflicts with the proposed Amended Housing Element's finding that the "realistic capacity" of Site 201 is 11 units. (See Amended Housing Element, Appendix D-1.)

Also, City Planning Staff have made contradictory assertions about whether Government Code section 65583.2(h) actually requires a minimum entitlement to 16 units on Site 201. The Draft Amendments to the City of Sausalito 6th Cycle Housing Element Housing Plan Background Report ("Draft Amendments") and the September 2024 Draft EIR for the Amended Housing Element make several shifting, inconsistent assertions regarding the "realistic capacity" of sites to be zoned Opportunity-MU-29/85%, including Site 201.²

The Draft Amendments state that:

The rezoning to address the City's lower income RHNA shortfall shall meet the requirements of Government Code Section 65583.2(h,i) [sic], including the following requirements: ...

- *Allow a minimum of 16 units per site.*³

(See Draft Amendments, p. 4 (italics added).)

In contrast, the September 2024 Draft EIR for the Amended Housing Element describes "Mixed Use-29%" as allowing "a minimum of 16 units per site on sites identified to accommodate the very low and low income RHNA." (See September 2024 Draft EIR, pp. 2-6 to 2-7.)

Thus, there is a discrepancy in the project description in the Draft Amendments and regarding the state law requiring a minimum number of units per RHNA inventory site, with one reference indicating the minimum is 20 units and the other indicating the minimum is 16 units.

There is also a discrepancy in the project description between the Draft Amendments and the September 2024 Draft EIR. The Draft Amendments state that the 16 unit minimum applies without qualification by income level while the Draft EIR states

²The September 2024 Draft EIR for the Amended HE includes numerous figures showing Site 201 to be zoned as MU-29/85%. (See Figures 2-4, 2-5, 2-7, 4-3, 4-4, 4-5.)

³The Draft Amendments citation to Government Code section "65583.2(h,i)" should read "65583.2(h)(1), (2)"

that the 16 unit minimum applies "on sites identified to accommodate the very low and low income RHNA."

Thus, at a minimum, the EIR suffers from presenting an uncertain, shifting project description, which violates CEQA. And this legal defect is prejudicial because Government Code section 65583.2(h) does not limit application of the 16 units per site minimum to units identified to meet lower income RHNA unit requirements. In other words, any site identified in the city's RHNA inventory to meet its RHNA obligations must be zoned to a minimum of 16 units per site regardless of income level. Since Site 201 is not identified to meet the city's RHNA obligation to provide very low- or low-income housing.⁴ Therefore, the Draft EIR misleadingly indicates that Site 201 would not be subject to the 16 unit per site minimum when, in fact, it would be subject to this minimum.

As a result, if the city retains Site 201 as a Housing Opportunity Site, the city would give the landowner an argument that the realistic capacity of 11 units as stated in the Amended Housing Element is irrelevant and the owner is entitled to at least 16 units, regardless of any development constraints such as height limits, FAR, view impacts, historic resource impacts, etc., that would otherwise constrain development on the site.

The city can easily avoid this result, without impacting its ability to meet its RHNA obligations, by removing Site 201 as a Housing Opportunity Site.

4. Removing Site 201 from the Housing Opportunity Sites overlay district would optimize reducing potentially significant impacts and achieving project objectives.

SOS commented that the Draft EIR and Recirculated Draft EIR should analyze an alternative that removes Site 201 (605-613 Bridgeway) and Site 212 (721-729 Bridgeway) from Housing Opportunity Sites overlay district, because these sites are in the Downtown Historic District and reducing their development potential would reduce significant effects on the historic significance of the district. (See October 21, 2024, letter from Lozeau Drury, p. 12; January 27, 2025, letter from Lozeau Drury, p. 3.)

⁴See Draft Amendments, Appendix D-1; Attachment 7 to February 25, 2025, Staff Report. Appendix D-1 shows Site 201 as MU-29/85%, with

- "Potential Units (Density Bonus)" = 28 units;
- "Potential Units (Realistic Capacity)" = 11 units;
- "Very Low Income" = 0 units
- "Low Income" = 0 units
- "Moderate Income" = 3 units
- Above "Moderate Income" = 8 units

SOS also commented that the Draft EIR and Recirculated Draft EIR created a straw man alternative in Alternative 4 because Alternative 4 would also remove three additional properties from the Housing Opportunity Sites overlay district, and therefore, it has a larger effect on the alternative's consistency with project objectives than would simply removing Sites 201 and 212.

The Final EIR's response to this comment states that Alternative 4 "would fully remove the buffer for the very low-income units, and thus would not achieve Objective 2, which includes providing an appropriate buffer for the RHNA." (Final EIR, p. 3-247.)

This response actually confirms why removing Site 201 from the Housing Opportunity Sites overlay district would optimize reducing potentially significant impacts and achieving project objectives because, as noted above, Site 201 is not identified to meet the city's RHNA obligation to provide very low- or low-income housing. (See Draft Amendments, Appendix D-1; Attachment 7 to February 25, 2025, Staff Report, Appendix D-1.) In short, nothing about removing Site 201 from the Housing Opportunity Sites overlay district is inconsistent with project objectives.

5. The "project description" and "item of business" continues to shift and change without explanation, in violation of CEQA, the Brown Act, and good public policy.

Since August of 2024, the city has issued a changing sequence of proposals to rezone sites as Housing Opportunity Overlay Zone sites. This sequence includes a recent, sudden change in terminology for proposed zoning classifications that can only leave the public guessing as to their meaning. In legal parlance, the project description continues to shift and change in inexplicable ways, in violation of CEQA, the Brown Act, and good public policy.

The Draft Amendments to the City of Sausalito 6th Cycle Housing Element Housing Plan Background Report issued on August 15, 2024, and revised on August 22, 2024 (August 2024 Draft Amendments) proposes to zone Site 201 as MU-29/85% and many other proposed opportunity sites as either MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70. (See e.g., Figures 1A, 1B, 2A, 2B, 3, 4.)

One version of a proposed Modified Amended Housing Element, entitled Amended Sites Alternative 5, issued in January of 2025, includes a figure that again proposes to zone Site 201 as MU-29/85% and many other proposed opportunity sites as either MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70, but in its attached Table 10.28.1, omits Site 201 entirely.

Another version of a proposed Modified Amended Housing Element, entitled Amended Sites Alternative, also apparently issued in January of 2025, includes a figure

that removes Site 201 from the proposed Housing Opportunity Overlay Zone sites and proposes to zone many other opportunity sites as either MU-29/85%, Housing-29, Housing-49, or Housing-70, but does not classify any sites as MU-49/85% or MU-70/85%.

The Project Alternative: Modified Draft Amendment to the City of Sausalito 6th Cycle Housing Element Housing Plan Background Report issued on January 28, 2025, does not include any figures showing the proposed zoning of proposed Housing Opportunity Overlay Zone sites, but it does include an Appendix D-1, which proposes to zone Site 201 as MU-29/85% and many other proposed opportunity sites as either MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70; however, it does not provide a full list of all opportunity sites.

The Revised Draft Amendment to the City of Sausalito 6th Cycle Housing Element Housing Plan Background Report, Draft Amendments: August 15, 2024, Revised August 22, 2024, Revised February 13, 2025 ("February 13, 2025 Draft Amendments"), as did the original August 2024 Draft Amendments, proposes to zone Site 201 as MU-29/85% and many other proposed opportunity sites as either MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing 49, or Housing-70. (See e.g., Figures 1A, 1B, 2A, 2B, 3, 4.)

Most recently, Attachments 7, 9 and 10 to the February 25, 2025, City Council Staff Report also propose to zone Site 201 as MU-29/85% and many other proposed opportunity sites as either MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70.

However, the proposed ballot measure, for the first time, describes a number of proposed opportunity sites as proposed for either "M29," "M49," or "M70" zoning and describes Site 201 as proposed for "M429" zoning. None of the previous documents discussed above in this section ever used the terms "M29," "M49," "M70," or "M429" to describe the proposed zoning for any opportunity sites. These terms are not defined anywhere. Where did these terms come from? What does "M29" even mean in terms of zoning limits? Why is Site 201 the only one designated "M429."

For a matter of such importance, this degree of incomprehensibility is unacceptable to the public and risky for the City Council as it provides an inadequate basis for decision making. As discussed above, if these changes in terminology are merely typographical errors that can be corrected to use the terms MU-29/85%, MU-49/85%, MU-70/85%, Housing-29, Housing-49, or Housing-70, consistent with expectations developed over the last six months, including the expectation that Site 201 is proposed to be classified as MU-29/85%, SOS requests that the City Council direct staff to make these typographical changes in the ballot measure.

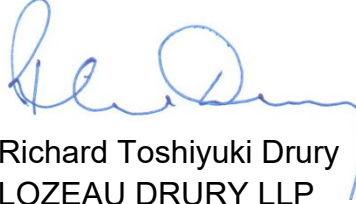
If, on the other hand, these changes in terminology represent substantive changes in the proposed Amended Housing Element and ballot measure, SOS requests that the

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council continue the public hearing on these agenda items for at least a week to give staff
time to explain the meaning of these new terms and how they would affect zoning of the
proposed Housing Opportunity Overlay Zone sites.

Thank you for your attention to this matter.

Sincerely,



Richard Toshiyuki Drury
LOZEAU DRURY LLP