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February 25, 2025

<u>VIA EMAIL</u>

Neal Toft, Principal Planner
City of Sausalito Community & Economic Development Department
420 Litho Street
Sausalito, CA 94965

Re: February 25, 2025 City Council Meeting Agenda Items No. 1.A-1.C Public Hearing on Certification of Amended 2023-2031 Housing Element Environmental Impact Report (EIR); Adoption of CEQA Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program, and Approval of Amended 2023-2031 Housing Element

Dear Mr. Toft:

Thank you for the opportunity to comment on Agenda Items No. 1.A-1.C of the City of Sausalito's ("City") February 25, 2025 City Council meeting. These agenda items concern the City's consideration of certifying its Amended 2023-2031 Housing Element Final Environmental Impact Report ("FEIR"), approving its Amended 2023-2031 Housing Element ("Amendment" or "Housing Element Amendment"), and calling a special election for June 3, 2025 to submit to the City's voters an initiative to amend Ordinances 1022 and 1128, and amending the City's Zoning Map, to authorize development on Site 84 (Martin Luther King, Jr. Park) and various sites in the City.

We are writing on behalf of Willy's LLC ("Willy's"), the owner of Site 201 in the City's Housing Element. We previously wrote the City on (1) January 27, 2025 regarding the Recirculated Draft Environmental Impact Report ("RDEIR"); and (2) October 21, 2024 regarding the Draft Environmental Impact Report ("DEIR"). A copy of these letters, which highlighted the inadequacies of the RDEIR and DEIR, are attached as **Exhibit A** and **B**.

We also wrote the City on three previous occasions regarding the City's Housing Element Amendment and its flaws: (1) on January 14, 2025 before the Planning Commission's January 15th meeting; (2) on October 22, 2024 before the City Council's October 23, 2024 Study Session on the Draft Amended 2023-2031 Housing Element; and (3) on October 1, 2024 before the City Council's October 1, 2024 Study Session. Copies of these letters are attached as **Exhibits C-E**.

Our previous correspondence to the City warned that its proposed Housing Element Amendment and associated environmental documents were legally deficient and violated the Housing

Element Law and the California Environmental Quality Act ("CEQA"). The purpose of this letter is to remind the City that its Housing Element Amendment and FEIR are still legally deficient, but also to alert the City to the fact that it is legally barred from adopting the Housing Element Amendment at its February 25, 2025 meeting because its process for considering the Amendment does not comply with the Housing Element Law, specifically Gov. Code § 65585(b), (f), which requires the City to wait 60 days before adopting an amended Housing Element after submitting the amendment to the Department of Housing and Community Development ("HCD"). Since the City submitted its Housing Element Amendment to HCD on January 23, 2025, it cannot adopt its Housing Element Amendment until March 24, 2025.

I. BACKGROUND

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The Housing Element Amendment being considered at the February 25, 2025 meeting would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is contemplating downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two Alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed for residential use during the 6th Cycle Housing Element.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from HCD notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are suitable for housing.[1]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity with new sites without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

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[1] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

II. HOUSING ELEMENT LAW PROHIBITS THE CITY FROM ADOPTING THE AMENDMENT AT ITS FEBRUARY 25, 2025 MEETING

The City is legally barred from adopting the Housing Element Amendment at its February 25, 2025 meeting by the Housing Element Law (Gov. Code § 65580 et seq.). The Housing Element Law has very detailed requirements for jurisdictions seeking to amend their Housing Elements, which the City has failed to comply with, and therefore the City cannot adopt the Housing Element Amendment at its February 25, 2025 meeting.

Gov. Code § 65585(b)(1)(A) states:

> At least 90 days prior to adoption of a revision of its housing element pursuant to subdivision (e) of Section 65588, or at least 60 days prior to the adoption of a subsequent amendment to this element, the planning agency shall submit a draft element revision or draft amendment to the department. The local government of the planning agency shall make the first draft revision of a housing element available for public comment for at least 30 days and, if any comments are received, the local government shall take at least 10 business days after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to the department. For any subsequent draft revision, the local government shall post the draft revision on its internet website and shall email a link to the draft revision to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting the draft revision to the department.

In short, the law requires amendments to be submitted to HCD 60 days prior to adoption. Although the City submitted a draft of the Amendment to HCD on September 5, 2024, HCD found that the draft failed to comply with the requirements of the Housing Element Law. The City sent a subsequent draft to HCD on January 23, 2025, but 60 days have not elapsed for the City to adopt the draft sent on January 23. Moreover, the City has held multiple meetings and made significant changes to the proposed Amendment since January 23. Just five days ago, the Planning Commission recommended even more changes.

The City failed to comply with provisions of the Housing Element Law, which detail how jurisdictions must proceed with amending their Housing Element after receiving comments from HCD and the timeline that jurisdictions must allow to elapse before adopting a Housing Element amendment.

A. Gov. Code § 65585(f)(1) Gives Jurisdictions Two Pathways to Adopt a Housing Element Amendment

Gov. Code § 65585(f) offers jurisdictions two pathways to adopt revisions to their Housing Elements, neither of which the City can meet at its February 25, 2025 meeting.

Gov. Code § 65585(f) states:

(f) If the department finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall take one of the following actions:

(1) (A) Change the draft element or draft amendment to substantially comply with this article.

(B) Any change to a draft element or draft amendment pursuant to subparagraph (A) shall be completed in accordance with subdivision (b). This subparagraph does not constitute a change in, but is declaratory of, existing law.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings that explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with this article despite the findings of the department.

Gov. Code § 65585(f) gives jurisdictions two options when they have submitted a proposed Housing Element amendment to HCD that does not substantially comply with the Housing Element Law. Jurisdictions can either: (1) revise the proposed amendment in accordance with Gov. Code § 65585(b) which requires the amendment to be submitted back to HCD; or (2) adopt the amendment without any changes but include written findings in its resolution of adoption that the amendment substantially complies with the Housing Element Law despite HCD's findings.

There is no doubt that the City's proposed Amendment is not substantially compliant with Housing Element Law. After receiving the City's September 5, 2024 submission of its proposed Amendment, HCD provided the City with a letter on November 4, 2024, which stated that "while the draft amendment continues to meet many statutory requirements[,] revisions will be necessary to comply with State Housing Element Law (Gov. Code, § 65580 et seq)[.]" A copy of HCD's November 4, 2024 letter is attached as **Exhibit F**. HCD's letter clearly stated that the proposed Amendment did *not* comply with (1) Gov. Code § 65583(a)(3), due to its faulty analysis of its inventory of land suitable and available for residential development; and (2) Gov. Code § 65583(a)(5), due to its inadequate analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels.

Thus, the City has only two options to proceed. As explained below, the City cannot comply with either provision of Gov. Code § 65585(f).

1. *The City Has Not Complied With Gov. Code § 65585(f)(1), Which Requires The City To Wait 60 Days After Submitting the Housing Element Amendment to HCD Before Adopting the Amendment*

The first option under Gov. Code § 65585(f)(1) requires a jurisdiction to do two things in response to HCD's finding that a draft does not comply with the Housing Element Law. First, the jurisdiction must "[c]hange the draft element or draft amendment to substantially comply with this article." (Gov. Code § 65585(f)(1)(A).) Gov. Code § 65585(f)(1)(B) then clearly states that "[a]ny change to a draft element or draft amendment pursuant to subparagraph (A) *shall be* *completed in accordance with subdivision (b).*" (Emphasis added.) Subdivision (b), in turn, requires jurisdictions to submit revisions of their proposed amendments to HCD "*at least 60 days prior* to the adoption of a subsequent amendment to this element[.]" (Emphasis added.)

The City has failed to comply with either provision of Gov. Code § 65585(f)(1). First, the City has not revised the proposed Amendment to substantially comply with Housing Element Law as described below. Regardless, even if the City's proposed Amendment was substantially compliant, the City failed to send the changes to HCD 60 days prior to adoption as required by Gov. Code § 65585(b). While the City did submit a draft to HCD on January 23, 2025, the City has yet to receive feedback or wait 60 days before adoption. Even if the City wanted to adopt the version sent to HCD on January 23, the City is procedurally barred from doing so until March 24 at the earliest. In short, the City Council cannot adopt the proposed Housing Element Amendment at its February 25, 2025 meeting.

2. *The City Has Not Complied With Gov. Code § 65585(f)(2), Which Permits Jurisdictions to Adopt a Housing Element Amendment Without Changes If It Makes Certain Findings*

Gov. Code § 65585(f)(2) permits jurisdictions to adopt a draft Housing Element amendment "without changes" if it "include[s] in its resolution of adoption written findings that explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with this article despite the findings of the department."

The City's resolution of approval does not comply with Gov. Code § 65585(f)(2) because Section 7 of the resolution states that "the City Council **has changed** the Housing Element in response to the findings of the Department to substantially comply with the requirements of State Housing Element Law as interpreted by HCD."[2] (Emphasis added.) Since Gov. Code § 65585(f)(2) only applies to amendments that have *not* been revised, the City's Amendment is not eligible to use Gov. Code § 65585(f)(2) and the City cannot adopt the proposed Amendment at its February 25, 2025 meeting. The only option is for the City to adopt the version of the Amendment sent to HCD on September 5, 2024 explaining why the prior draft complies with the Housing Element Law. The City has also not complied with the second option, Gov. Code § 65585(f)(2), to adopt an amendment that HCD determined does not comply with the Housing Element Law because this is limited to amendments that have not been changed since being submitted to HCD.

B. *The City Should Adopt the Rezoning For its Adopted Housing Element*

The City cannot adopt the proposed Housing Element Amendment at its February 25, 2025 meeting, nor can it adopt the proposed Amendment until March 24 at the earliest – assuming the City wants to adopt the version sent to HCD on January 23, rather than the most recent version, and assuming that HCD finds that the January 23 draft substantially complies with the Housing Element Law. Assembly Bill 2667 was enacted in part to prevent this type of rushed, confusing process where the public and HCD have not had an opportunity to review a draft before it is adopted. This ever moving target makes it impossible to provide meaningful comment.

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[2] This is Attachment 4 of Agenda Item No. 1.A.

The City has already missed its deadline to put the rezoning on the ballot by November 2024 as required by its adopted Housing Element. Due to the City's failure to comply with Gov. Code § 65585(f), the City cannot possibly make the March 14 deadline to put the rezoning on the June ballot if the City insists on moving forward with the proposed Amendment. We urge the City to reconsider its only viable option to avoid falling out of compliance with the Housing Element Law and become subject to the Builder's Remedy, which is to adopt the rezoning as it is required for its *adopted* Housing Element.

III. THE HOUSING ELEMENT AMENDMENT DOES NOT COMPLY WITH THE HOUSING ELEMENT LAW

In addition to the procedural defects that prevent the City from adopting the Housing Element Amendment at its February 25, 2025 meeting, the Amendment is also substantively inadequate. In an effort to avoid repetition, this letter does not comment on the same issues identified in previous letters which the City has not addressed, and instead focuses on changes made by the FEIR which affect the Amendment. Nonetheless, we would still like to draw the City's attention to the fact that its Amendment is inadequate because the Amendment is not an appropriate Housing Element amendment under the Housing Element Law because it is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Additionally, the Amendment's Alternative sites do not provide realistic capacity and are nonvacant sites that are unlikely to be developed—such as Site 84 (Martin Luther King, Jr. Park), Site 401 (2400 Bridgeway Boulevard), and Site 402 (2680 Bridgeway Boulevard). This letter also identifies three new problems with the FEIR. First, that the FEIR's changes to the Modified Project Alternative are unlawfully intended to thwart the development of Site 201. Second, that the City is ignoring evidence that the property owner of Site 303 does not want to redevelop the site as residential housing, which is crucial because the City is relying on Site 303 as a vital part of the Amendment. Third, the City's proposed 29 unit housing overlay decreases the development potential of Site 201.

A. The FEIR's Explanations for Why The Modified Project Alternative Will Provide Sufficient Capacity Are Inadequate and Motivated By An Unlawful Desire to Stop Development of Site 201

The RDEIR added an entirely new alternative—the Modified Project Alternative—that was not included in the Draft EIR. The Modified Project Alternative has three scenarios: (1) decreasing the development potential of Site 84 (Martin Luther King, Jr. Park) from 94 to 80 units; (2) decreasing the development potential of Site 84 from 94 to 50 units; and (3) not developing Site 84, upzoning Site 202 (Alta Mira), and rezoning Site 14 (Spencer Avenue Fire Station) and Site 52 (City Hall parking lot) for residential development. The goal of the Modified Project Alternative is to "reduce development potential in the northern portion of the City to preserve the existing setting."[3]

The City Council purposefully removed Sites 14 and 52 from the Housing Element and allocated

[3] Alternatives to the Amended Housing Element 4-35 and ES-20-27 of the RDEIR.

their development to Site 84, which the City is now trying to backtrack on. The Planning Commission recommended removing Sites 14 and 52 from the Housing Element at its January 25, 2023 meeting.

In our January 27, 2025 letter, we noted various flaws with the Modified Project Alternative, including that the Alternative was not included in the proposed Amendment and that the Amendment must include an analysis on the appropriateness of these sites addressing general plan designations, allowable densities, support for residential capacity assumptions, existing uses and any known conditions that preclude development in the planning period. Since the proposed Amendment does not mention that these sites would have to go through the Surplus Land Act process, this Alternative does not adequately analyze these sites.

We also noted that Site 14 (Spencer Avenue Fire Station) and Site 52 (City Hall parking lot) were unlikely to be developed for multiple reasons. Site 14 is unlikely to be developed because the City has entered into a lease with AT&T for a wireless communications facility at the site through 2040, the site is very susceptible to landslides, located in a high fire hazard severity zone, is the site of the critical outdoor alerting system known as the Long-Range Acoustic Device, and is located far from community facilities and the ferry.

Site 52 is unlikely to be developed because it is currently used as a parking lot for City Hall and the City has not analyzed the impact and feasibility of developing the parcel and its displacement on City workers and residents who currently use the parking lot.

The FEIR responded to these claims by claiming that "[t]he long-term lease for a wireless communications facility and presence of the LRAD ["Long-Range Acoustic Device"] at Site 14 do not make this site infeasible for development. Future development would be designed to avoid the City's existing lease for the wireless communications facility."[4] No explanation is given however for how development of Site 14 can accommodate the wireless communications facility and the LRAD. In fact, the FEIR seems to acknowledge that the LRAD will have to be moved to reduce exposure to potential noise from the LRAD.

The FEIR also contends that Sites 14 and 52 have been analyzed as potential sites during the Housing Element updated process from 2021 through 2023. Nonetheless, this analysis is not included in the FEIR or proposed Amendment and so cannot be relied up on by the City. Moreover, as the staff report notes, at the February 4, 2025 second study session held by the City Council, the Council directed staff to explore removing Sites 14 and 52 from the Modified Sites Alternative. This direction indicates the City's lack of interest in redeveloping these sites.

The alleged purpose of the Modified Sites Alternative is to "relocate anticipated residential units from areas that are far from community services or do not have convenient freeway access, and place them closer to community services such as commercial, employment, and neighborhood services, or freeway access."[5] To effectuate this purpose, the Modified Sites Alternative would rezone different sites for residential and mixed-use development through implementation of the

[4] FEIR 3-431.
[5] FEIR 2-21.

proposed Amendment. In our October 21, 2025 letter we note that this Alternative is ridiculous as Sausalito is a small city with a land area of approximately 1.9 square miles, and that the small nature of the City means that new units will be close to community services and freeway access. Our letter noted that the practical effect of the Modified Sites Alternative would be to concentrate development in the northern portion of the City, in violation of the City's duty to Affirmatively Further Fair Housing.

In response, the FEIR notes that:

> Although Sausalito is small geographically, many streets are circuitous and reflect the topography of the city. Steep slopes, skewed intersections, and limited freeway access create situations where the path to reach a destination in the city is much farther than as the crow flies. Sites with challenging access and that are farther away from community services were identified in Alternative 3 as those that could retain their existing zoning designations.[6]

In other words, the City is claiming that it is not downzoning sites but maintaining their zoning designations because increasing their zoning density would place units away from convenient freeway access and neighborhood services, and on steep slopes that are harder to develop. This claim falls apart under scrutiny. Site 14 (Spencer Avenue Fire Station) is located on the western edge of the City, far from community services, employment, and commercial services, which are located on the eastern edge of the City along Bridgeway. Moreover, Site 14 is located within 150 feet of Highway 101 and development on the site could expose residents to toxic air contaminants and particulate matter emissions.[7] Prioritizing development on Site 14 could expose future residents to harm, which is particularly unnecessary when the City contains more suitable sites for development.

The FEIR also acknowledges that Site 14 is "highly susceptible to landslides."[8] The FEIR argues that the Municipal Code and Draft EIR have procedures for addressing development on landslide prone areas, but this ignores the fact that part of the purpose of the Modified Sites Alternative is to move development *away* from steep slopes and landslide prone areas, not to rationalize development in these areas.

The Modified Project Alternative is an attempt by the City to prevent development of Site 84 (Martin Luther King, Jr. Park), but the sites selected to redevelop—Sites 14 and 52—to make up for the loss of realistic capacity by removing Site 84 from the Sites Inventory are poor choices for redevelopment.

B. The City is Ignoring Evidence That the Property Owner of Site 303 Does Not Want to Redevelop the Site as Residential Housing

The Amendment would upzone Site 303 to increase development on the site from 90 to 129

[6] FEIR 3-123.
[7] FEIR 3-146.
[8] FEIR 3-144.

units. Site 303 is occupied by a commercial building, however, and, as noted in previous letters, the City's Housing Element lacks a Program to address the conversion of nonvacant sites into residential housing. Moreover, in previous letters, we raised the issue that the Modified Sites Alternative was deficient because the owner of Site 303 has explicitly disavowed developing the parcel as housing. In response, the FEIR states that "[t]he members of the City Council Working Group for the Housing Element reached out to the owner of Site 303 and Dennis Fisco, representing Seagate Properties, communicated they are in agreement with the City to include a portion or all of the site in the Housing Element."[9]

This statement is provided without any evidence. The City must provide evidence that the owners of Site 303 are willing to redevelop the property as residential housing after the January 30, 2023 email from the property owner's representative stating that the owner does not want the site included in the Housing Element, attached as **Exhibit G**.

C. The City's Proposed 29 Unit Overlay Decreases Development Potential

The Housing Element proposes two new housing overlay zones of 29 du/acre: (1) 29 du/ac Housing Overlay; and (2) a Mixed Use Overlay to allow 29 du/ac with a minimum of 85% residential required. As we argued in our January 14, 2025 letter, these new "overlays" will not increase existing residential capacity because many of the sites designated within these overlays *already* permit development at 29 du/acre. In fact, the proposed "new" housing overlay will act as a new constraint on the development of housing, as the proposal will now require a certain percentage of units for very-low income and low-income households in order to obtain the 29 du/acre that already exists.

The General Plan *already* allows development of 29 du/ac for the sites that have a General Plan designation of High Density Residential, Mixed Residential and Commercial, Central Commercial, Neighborhood Commercial. The new Housing Overlay zone of 29 du/acre includes Sites 207, 23, 24, 44, and 201, all of which have a General Plan Designation that already allow for 29 units per acre. Moreover, as explained in our previous letter, there is no "economic benefit" to this overlay as the City claims, as the development of affordable housing can negatively impact the viability of new development as demonstrated by the Inclusionary Program and In-Lieu Fee Study conducted by the County of Marin.

The FEIR essentially acknowledges that Site 201 is already zoned for 29 units per acre in its response to Lozeau Drury LLP, on behalf of Save Our Sausalito. The FEIR notes that the "Amended Housing Element project [for Site 201] would maintain a maximum density to 29 units per acre, which is consistent with the maximum density allowed for the site under the existing Mixed Commercial and Residential (CR) zone for the site (i.e., the CR zone allows a density of one unit per 1,500 square feet)."[10] The FEIR is clear that the Housing Overlay zone would not upzone Site 201, as it already allows 29 units per acre.

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[9] FEIR 3-426.
[10] FEIR 3-58.

IV. THE FEIR IS LEGALLY DEFICIENT

The FEIR makes minimal revisions to the RDEIR, which had numerous defects, as pointed out in our January 27, 2025 letter to the City. The lack of serious revisions indicates that the City is attempting to speedily adopt the FEIR, without addressing the underlying issues we have identified. In an effort to avoid repetition, this letter does not comment on the same issues identified in the January 27, 2025 letter which the City did not address, and instead focuses on changes between the RDEIR and FEIR. Nonetheless, we would still like to draw the City's attention to the fact that its FEIR is inadequate because it does not include a reasonable range of Alternatives, does not acknowledge that the No Project/No Rezoning option is not a viable Alternative, the Historic Preservation Alternative fails to adequately explain how the development of Site 201 could unintentionally damage historic resources and improperly downzones the site, the FEIR fails to discuss the Modified Project Alternative, the FEIR will not cure the City's failure to adopt an EIR for its certified Housing Element, and the FEIR's analysis of how the Housing Element Amendment and No Project/Housing Implementation Alternative would impact historical and cultural resources is flawed and misleading.

Instead, this letter focuses on the fact that (1) the FEIR's changes to the Reduced Sites Alternative are a shameless attempt to stop Willy's project; (2) the City's failure to include a global FEIR makes it difficult for the public to understand what the City Council is discussing; (3) the FEIR does not address concerns about segregation; and (4) the City's determination that Site 201 is historic is incorrect.

A. *The FEIR's Changes to the Reduced Sites Alternative Are A Shameless Attempt to Stop Willy's Project*

The City's Reduced Sites Alternative is a shameless attempt to stop development on Site 201 despite the parcel being close to employment and service hubs, located in a low-risk landslide hazard area, and on an evacuation route. In our October 21, 2025 and January 27, 2025 letters, we alerted the City to the fact that the Reduced Sites Alternative was an improper attempt to downzone the City based on phony risks and targeted Site 201 for removal as an Opportunity Site based on erroneous reasons.

Originally, the alleged purpose of the Reduced Sites Alternative was twofold: (1) to remove sites that are far from employment and service hubs; and (2) to remove sites that are in high-risk landslide hazard areas.[11]

After our October 21, 2025 letter alerted the City to fact that Site 201 was located in downtown Sausalito, close to employment and service hubs and was not at risk of landslide, the City added two lines to the RDEIR for the Reduced Sites Alternative explaining why Opportunity Sites were removed from development, including Site 201. First, the RDEIR added a line stating that these sites will not be developed "[d]ue to the lack of direct routes through the city to identified evacuation routes, sites that have high VMT levels would also have longer travel distances and times to those routes in an emergency."[12] Second, the RDEIR added a line explaining that a

[11] Alternatives to the Housing Element Amendment 4-16 and ES-20-27 of the RDEIR.
[12] Alternatives to the Housing Element Amendment 4-16 and ES-20-27 of the RDEIR.

Reduced Sites Alternative would reduce the risk of natural disasters adversely affecting a significant number of housing units as "[s]teep slopes increase the risk of landslides, liquefaction, or slope instability."[13]

In our January 27, 2025 letter, we explained that neither of these reasons were valid reasons for removing Site 201 as an Opportunity Site because Site 201*is* located on an evacuation route and *is not* located in a high-risk landslide hazard area, as the parcel has 5 rating on the California Department of Conservation's CGS Map Sheet 58: Deep-Seated Landslide Susceptibility, meaning it poses little risk of a landslide.[14]

In response, the City now moves the goalposts again in an attempt to stop Site 201 from being included in the Reduced Sites Alternative. The FEIR added in a new requirement that sites in the Reduced Sites Alternative must be removed from the Housing Element Amendment if they "are more than 1.5 miles from the nearest Highway 101 entrance[.]"[15] The alleged purpose behind this move is to reduce the number of housing units far from employment and services hubs, concentrate new housing closer to those uses, and to reduce congestion on local roads in the event of an emergency. This is a transparent attempt to stop Site 201 from being developed. Distance from Highway 101 has no relation to whether a parcel is at risk of a landslide or located near employment and service hubs. As the FEIR acknowledges, "Site 201 is relatively close to some of the services, restaurants, and retail in the City[.]"[16] The City seems to be contending that it does not contain any employment or service hubs and that to access these hubs always requires use of Highway 101, which is blatantly untrue.

The FEIR proffers no evidence that being located further than 1.5 miles from a Highway 101 entrance will affect evacuation routes in the City. Moreover, the FEIR contends that Site 201 is being removed because it is "over 1.5 miles from the Highway 101/Spencer Avenue-Monte Mar Drive entrance to the Highway 101, approximately 1.7 miles from the Highway 101 entrance at Alexander Avenue, and over 2 miles from the Highway 101 entrance from Bridgeway."[17] In comparison, Site 67 is close to the Highway 101 Bridgeway entrance, but further from the Highway 101/Spencer Avenue-Monte Mar Drive and Alexander Avenue entrances. In the event that the Highway 101 Bridgeway entrance is closed, Site 67 will be further from Highway 101 than Site 201, which the FEIR does not account for.

B. *The City's Failure to Include a Global FEIR Makes It Difficult For the City Council and Public To Understand What is Being Considered for Adoption*

The City's FEIR includes four chapters: (1) Introduction and List of Commenters; (2) Revisions to the Draft EIR; (3) Comments and Responses; and (4) Mitigation Monitoring and Reporting Program. What the FEIR does not include is a global document containing the finalized environmental document. Instead, members of the public who wish to understand how the FEIR

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[13] Alternatives to the Housing Element Amendment 4-17 and ES-20-27 of the RDEIR.
[14] The FEIR notes that the Reduced Sites Alternative defined a high-risk landslide hazard area as being rated an 8 or above.
[15] FEIR 2-19.
[16] FEIR 3-122.
[17] *Id*.

revised the RDEIR are forced to toggle between both documents to understand how the FEIR's revisions interact with the RDEIR. The City's lack of a single, global document for the FEIR makes it difficult for the City Council and members of the public to understand what will be discussed for adoption at the February 25, 2025 meeting. The City Council should delay taking action on the FEIR until it has a chance to publish a global document for the FEIR, so that the City Council and public have a chance to read and consider the document.

C. *The FEIR Does Not Address Concerns About Segregation*

The FEIR does not address concerns raised in our January 27, 2025 letter that the Modified Sites Alternative would concentrate development in the northern portion of the City, in violation of the City's duty to Affirmatively Further Fair Housing and avoid segregation of new housing. Due to the past history of segregation and discrimination within Marin County, this is a serious concern that FEIR should have addressed.[18] The FEIR's failure to do so makes it legally deficient.

D. *The City's Determination that Site 201 is Historic is Flawed*

In our January 27, 2025 letter, we noted that the RDEIR added language erroneously describing Site 201 as a designated historic resource and removing it from the Sites Inventory as part of the Historic Preservation Alternative. The RDEIR added the underlined language: "Opportunity Site 201 is within the Downtown Historic District and currently consists of a commercial building with four retail storefronts, and a surface parking lot. Opportunity Site 201 (APN 065-132-16) contains the Marin Fruit Co., a designated historic resource listed on the California Historic Preservation Office state registry and listed on the California State Parks Built Environment Resource Directory[.]"

Our letter pointed out that Site 201 does not meet any of the criteria in Pub. Res. Code § 5024.1(d) for mandatory listing under the California Register, which has three mandatory categories of historic properties: (1) properties formally determined eligible for, or listed in, the National Register of Historic Places; (2) State Historical Landmark No. 770 and all consecutively numbered state historical landmarks following No. 770; and (3) points of historical interest which have been reviewed and recommended for listing by the commission for inclusion in the California Register. There is no evidence that the site has gone through the nomination process for discretionary listing by the State Historical Resources Commission.

The FEIR ignores the actual requirements for a property to be listed in the California Register in Pub. Res. Code § 5024.1, instead focusing on the status codes used in the State Park Built

[18] The Citywide Historic Context Statement noted that "Tension between overwhelmingly White and middle-to-upper-class Sausalito and historically Black and working-class Marin City characterized much of the postwar era. Newspapers from the 1950s and 1960s contain many articles documenting tensions between Blacks and Whites, including discriminatory treatment of African American patrons by some local businesses, bar fights, and the tacit acknowledgement of the de-facto segregation of Black children in under-resourced public schools." More recently, the school district serving the City agreed to desegregate its schools after a two-year state investigation found that the district had "knowingly and intentionally maintained and exacerbated" racial segregation and even established an intentionally segregated school. (Dana Goldstein and Anemona Hartocollis, "*'Separate Programs for Separate Communities': California School District Agrees to Desegregate*," *The New York Times* (August 9, 2019).)

Environment Resource Directory. The FIER states that a Status Code of 2D2 means the site is a "Contributor to a multi-component resource determined eligible for NR by the Keeper. Listed in the CR."[19] In response to our October 21, 2024 letter, which also identified this as an issue, the FEIR noted that "Site 201 contains the Marin Fruit Company building, which is a contributor to a district determined eligible for National Register of Historic Places (NRHP) by consensus through Section 106 process, and is listed in the California Register of Historical Resources (CRHR), as shown in Table 3.4-2 in the Draft EIR."[20]

The State Park Built Environment Resource Directory is simply a directory of information regarding resources that have been processed by State Park's Office of Historic Preservation – an agency that has no authority to determine whether a property is listed on the California Register. Pursuant to Pub. Res. Code § 5024, the State Historic Preservation Officer (who leads the Office of Historic Preservation) is only authorized to create an *inventory* of *potentially* eligible historic resources. And significantly, the officer "shall have *no responsibilities* other than those provided by statute, executive order, and regulation[.]" (Pub. Res. Code § 5024.)

The FEIR's claim that the Built Environment Resource Directory somehow dictates whether a property is listed in the California Register pursuant to Pub. Res. Code § 5024.1 is erroneous. Whether a property has been included in the California Register of Historical Resources by the State Historical Resources Commission is a factual question, not a matter of expert opinion. (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1053.) The FEIR claims that a disagreement amongst experts does not make an EIR inadequate.[21] While that may be true, whether a property has been listed in the California Register is not based on experts, and the FEIR misinforms both decision-makers and the public about the purported impact to historic resources by continuing to claim that Site 201 is listed in the California Register without any evidence that the State Historical Resources Commission has taken such an action. Misinforming the public and decision makers of baseline conditions *does* make an EIR inadequate. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119-121.)

V. **CONCLUSION**

The City cannot adopt the Housing Element Amendment at its February 25, 2025 meeting because it has not complied with the process for adopting Housing Element amendments set out in the Housing Element Law. Moreover, the City's Housing Element Amendment and the Final Environmental Impact Report are substantively deficient. If either or both are adopted by the City, the City will be violating CEQA and the Housing Element Law, which will place the City in legal jeopardy.

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[19] FEIR 3-128.
[20] FEIR 3-124, 125.
[21] FEIR 2-8.

PATTERSON & O'NEILL, PC

Ephraim Margolin
Attorney for Willy's LLC

EXHIBIT A

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January 27, 2025

VIA EMAIL

Neal Toft, Principal Planner
City of Sausalito Community & Economic Development Department
420 Litho Street
Sausalito, CA 94965

Re: December 13, 2024 Recirculated Draft Environmental Impact Report for the Sausalito Amended 6th Cycle Housing Element

Dear Mr. Toft:

Thank you for the opportunity to comment on the Recirculated Draft Environmental Impact Report ("RDEIR") for the proposed 6th Cycle Housing Element amendment ("Amendment") of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's"), the owner of Site 201 in the City's Housing Element.

We previously wrote the City on October 21, 2024 regarding the draft Environmental Impact Report ("DEIR") for the 6th Cycle Amendment and its flaws. A copy of this letter is attached as **Exhibit A**.

We also wrote the City on two previous occasions: (1) on October 1, 2024 before the City Council's October 1, 2024 Study Session on the Draft Amended 2023-2031 Housing Element; and (2) on October 22, 2024 before the City Council's October 23, 2024 Study Session on the Draft Amended 2023-2031 Housing Element. Copies of these letters are attached as **Exhibits B and C**.

While the October 1st and October 22nd letters laid out how the proposed Amendment will violate the Housing Element Law, the purpose of this letter is to continue to highlight how the RDEIR would violate the California Environmental Quality Act ("CEQA") if adopted by the City. The RDEIR makes limited changes to the DEIR, which the City released on September 4, 2024.

I. BACKGROUND

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Amendment would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are suitable for housing.[1]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity with new sites without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

II. THE RDEIR'S ALTERNATIVES ARE STILL INADEQUATE

In the October 21st letter, we pointed out that the DEIR was inadequate because it did not include a reasonable range of alternatives and did not explain why Site 201—the Willy's property—is listed as a historic property but was not previously listed as a historic property in the draft EIR the City prepared in January 2024. Both issues are still present.

A. Like the DEIR, the RDEIR's Alternatives Are Inadequate and Violate the Housing Element Law

The October 21st letter pointed out that the DEIR failed to include an alternative to the Amendment that would implement the certified Housing Element. The DEIR listed four alternatives to the Housing Element Amendment: (1) No Project; (2) Reduced Sites; (3) Modified Sites; and (4) Historic Preservation—all of which are inadequate. In an attempt to remedy this issue, the RDEIR now contains six alternatives: (1) No Project/No Rezoning; (2) No Project/Adopted Housing Element Implementation; (3) Reduced Sites; (4) Modified Sites; (5) Historic Preservation; and (6) Modified Project.

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[1] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

While the RDEIR now includes an alternative—No Project/Adopted Housing Element Implementation—that would implement the Certified Housing Element, its range of alternatives continue to be inadequate.

B. The RDEIR Must Acknowledge that the No Project/No Rezoning is Not a Viable Alternative

The October 21st letter pointed out that the DEIR's No Project Alternative is not an accurate representation of the City's certified Housing Element. Nevertheless, the City continues to include this alternative in its list of alternatives, this time as No Project/No Rezoning.

However, we are glad to see that the RDEIR acknowledges that "if the City does not complete rezoning to comply with Housing Element Program 4 and Government Code Section 65583(c)(1)(A) by Jan. 1, 2026 the City will be out of compliance with state housing element law, and the 'Builder's Remedy' under Government Code Section 65589.5 et seq."[2] The City cannot include the No Project/No Rezoning alternative in its list of alternatives as it mistakenly makes it seem as though the City has the opportunity to escape its planning obligations by not "rezon[ing] any parcels within the city to accommodate very low, low, moderate, or above moderate-income housing, as the rezoning would occur as a separate future action under the adopted 6th Cycle Housing Element."[3] This is a violation of CEQA, which requires the No Project Alternative to discuss current conditions as well as reasonably foreseeable future conditions expected to occur if the project were not approved.[4] In this case, the reasonably foreseeable future conditions include implementation of Programs 4, 8, and 19 as required by the certified Housing Element, and which require rezoning of the City. The CEQA Guidelines make it clear that the analysis of the No Project Alternative is not a comparison of the proposed project to existing conditions, which is the baseline for determining the project's environmental impacts, but to the adopted Housing Element.[5] As the RDEIR admits, "Alternative 1a would not achieve any of the project objectives."

C. The RDEIR's No Project/Adopted Housing Element Implementation Confusingly Describes the Adopted Housing Element's Required Rezoning

The RDEIR confusingly describes the impact the No Project/Adopted Housing Element Implementation would have on Opportunity Sites 23, 24, 39, 44, 47, 201, 207, and 301. The RDEIR states that "Under Alternative 1b, there would an increase in the development potential of Opportunity Sites 23, 24, 39, 44, 47, 201, 207, and 301, which are modified to have overlays that allow up to 29 units per acre under the Project, rather than overlays that accommodate 43-49 units per acre under Alternative 1b."[6]

The RDEIR confusingly compares No Project/Adopted Housing Element Implementation (Alternative 1b) with itself. The No Project/Adopted Housing Element Implementation

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[2] Page 4-7 of the RDEIR.
[3] Page ES-20-27 of the RDEIR.
[4] CEQA Guidelines § 15126.6(e)(2).
[5] CEQA Guidelines § 15126.6(e)(1).
[6] Pages 4-10 and 4-11 of the RDEIR.

alternative will *upzone* Opportunity Sites 23, 24, 39, 44, 47, 201, 207, and 301 from 29 units per acre to 43-49 units per acre. The RDEIR needs to be amended to make this clear.

The RDEIR also acknowledges that "Site 85 is unlikely to develop during the 6th Cycle (2023-2031). While Alternative 1b would create the potential for Site 85 to develop long-term, it is not expected to meet the 6th Cycle RHNA."[7] If the City believes that Site 85 is unlikely to be developed during the 6th Cycle planning period, then it should be removed from the No Project/Adopted Housing Element Implementation alternative and the City must comply with Government Code § 65863 and the No Net Loss Law by making findings that the remaining sites identified in its sites inventory can accommodate the City's remaining unmet RHNA by each income category or identify additional sites so that there is no net loss of residential unit capacity.

D. The Reduced Sites Alternative is an Improper Attempt to Downzone the City

The RDEIR makes minimal changes to the Reduced Sites alternative from the DEIR, despite the fact that the October 21st letter informed the City that the Reduced Sites alternative was an improper attempt to downzone the City based on phony risks.

RDEIR adds two lines to the Reduced Sites alternative to explain why it proposes to remove Opportunity Sites from development, including Site 201. First, the RDEIR adds a line stating that these sites will not be developed "[d]ue to the lack of direct routes through the city to identified evacuation routes, sites that have high VMT levels would also have longer travel distances and times to those routes in an emergency."[8] Second, the RDEIR adds a line explaining that a Reduced Sites Alternative would reduce the risk of natural disasters adversely affecting a significant number of housing units as "[s]teep slopes increase the risk of landslides, liquefaction, or slope instability."[9]

Neither of these additional reasons for explaining why sites are removed as Opportunity Sites in the Reduced Sites Alternative applies to Site 201. Site 201 is located on an identified evacuation route in the City. As the RDEIR states "[t]he routes that would be used in the event of an evacuation include Bridgeway, Spencer Avenue, Alexander Avenue, Highway 101, Donahue Street, and Shoreline Highway."[10] Site 201 is located at 605-613 Bridgeway, on an evacuation route. In the Modified Sites alternative, the RDEIR attempts to justify the inclusion of Site 67 in the Amendment by noting that the site "is adjacent to a main evacuation route, Bridgeway, in the event of an emergency." If Site 67, which is located at 2200 Marinship Way, is adjacent to an evacuation route, then Site 201's presence on an evacuation route is even better.

Site 201 is also *not* located on a steep slope. As Appendix E ("Very Low and Low Income Opportunity Site Details) to the City's Housing Element describes the parcel, the parcel has 5 rating on the California Department of Conservation's CGS Map Sheet 58: Deep-Seated Landslide Susceptibility. CGS Map Sheet 58 creates classes of landslide susceptibility based on a

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[7] Alternatives to the Amended Housing Element 4-16 of the RDEIR.
[8] Alternatives to the Amended Housing Element 4-16 and ES-20-27 of the RDEIR.
[9] Alternatives to the Amended Housing Element 4-17 and ES-20-27 of the RDEIR.
[10] Alternatives to the Amended Housing Element 4-151 of the RDEIR.

0 to 10 scale, with 0 posing the lowest risk of landslide susceptibility and 10 posing the highest. These classes express the generalization that on very low slopes, landslide susceptibility is low even in weak materials, and that landslide susceptibility increases with slope and in weak rocks. Site 201's 5 rating indicates that Site 201 is not at risk of landslide, liquefaction, or slope instability.

Moreover, the alleged purpose of the Reduced Sites Alternative is twofold: (1) to remove sites that are far from employment and service hubs; and (2) to remove sites that are located in high-risk landslide hazard areas.[11] Again, neither of these reasons applies to Site 201 and cannot be justification for removing Site 201 as an Opportunity Site in the Reduced Sites Alternative.

Site 201 is located near employment and service hubs and is not located in a high-risk landslide hazard area. As Appendix E ("Very Low and Low Income Opportunity Site Details) to the City's Housing Element describes the parcel it is located 0.1 mile from a bus stop, 0.2 miles from a ferry stop, contains retail, restaurants, and services on site and is 0.7 miles from community facilities. As explained above, Site 201 is not at risk of landslide, liquefaction, or slope instability as it is rated 5 on CGS Map Sheet 58. Site 201 is, therefore, located near employment and service hubs and is not located in a high-risk landslide hazard area, and the Reduced Sites Alternative improperly proposes to remove it from the Housing Element's list of Opportunity Sites.

Not only would the Reduced Sites Alternative be an improper attempt to stop the Willy's project, but it would also remove other sites from the list of Opportunity Sites, so that the Housing Element Amendment's development buffer of 423 units would be reduced to 350 units. Again, the City seems intent on stopping future development and backing out of the commitments it made in its certified Housing Element to adequately plan for new development across the entire City.

E. *The Modified Sites Alternative is Not a Viable Alternative as the Owner of Opportunity Site 67 Has Not Expressed a Desire to Redevelop the Site*

The October 21st letter noted that the Modified Sites Alternative is an improper attempt to downzone sites that are likely to be redeveloped and add a property to the Housing Element that is unlikely to be redeveloped under the guise of locating new units closer to community services and freeway access. The property that the City is seeking to add to the Housing Element is Opportunity Site 67, a 4.36-acre site, located at 2200 Marinship Way.

The City continues to include Opportunity Site 67 as part of its Modified Sites alternative, even after we alerted the City in our October 21st letter that the owner of this property has not expressed a desire to redevelop the site with housing, and it is unlikely that the property will be redeveloped during the 6th Cycle planning period, due to its proposed late addition to the Housing Element. Moreover, we have received information that the owner of Site 303 has explicitly disavowed developing the parcel as housing. In order to ensure that that the City has properly contacted the owners of parcels it included in its Amendment, we submitted a Public Records Act request as part of the October 22nd letter, which requested the City produce all

[11] Alternatives to the Amended Housing Element 4-16 and ES-20-27 of the RDEIR.

records that the City possessed that it conducted meaningful outreach to the property owners of all the sites the City now proposes to include in its amended Sites Inventory. The City has failed to produce records responsive to this Public Records Act request 70 days after it was submitted to the City in violation of the Public Records Act. Until the City produces records responsive to this request, it is safe to assume that the City has not received indications of interest from *any* property owner whose parcel it plans to include in its amended Sites Inventory.

F. *The Historic Preservation Alternative Fails to Adequately Explain How the Development of Site 201 Could Unintentionally Damage Historic Resources, and Improperly Downzones the Site*

The RDEIR adds language erroneously describing Site 201 as a historic site and removes it from Sites Inventory as part of the Historic Preservation Alternative. The RDEIR added the underlined language: "Opportunity Site 201 is within the Downtown Historic District and currently consists of a commercial building with four retail storefronts, and a surface parking lot. <u>Opportunity Site 201 (APN 065-132-16) contains the Marin Fruit Co., a designated historic resource listed on the California Historic Preservation Office state registry and listed on the California State Parks Built Environment Resource Directory</u>[.]"

Public Resources Code § 5024.1(d) describes the California Register as having three mandatory categories of historic properties: (1) properties formally determined eligible for, or listed in, the National Register of Historic Places; (2) State Historical Landmark No. 770 and all consecutively numbered state historical landmarks following No. 770; and (3) points of historical interest which have been reviewed by the office and recommended for listing by the commission for inclusion in the California Register in accordance with criteria adopted by the commission.

Site 201 does not meet any of the criteria in Public Resources Code § 5024.1(d) for mandatory listing as a historic structure. The Sausalito Historic District is listed on the California Register because the *District* has been formally determined to be eligible for the National Register of Historic Places. The District was certified by the National Park Service as eligible for purposes of the Tax Reform Act of 1986, as substantially meeting all the requirements for listing in the National Register of Historic Places. The federal historic district certification process, however, makes clear that "[c]ertification of statutes and districts *does not constitute certification of significance of individual properties within the district or of rehabilitation projects by the Secretary*."[12] In other words, the individual structures at Site 201 have never been reviewed, or determined to be eligible for, the National Register of Historic Places. Thus, only the Sausalito Historic District, not the properties within the District, are listed in the California Register pursuant to Public Resources Code § 5024.1(d).

The only other properties on the California Register are those that have been "nominated for listing" in accordance with specified nomination procedures and "determined to be significant" by the State Historical Resources Commission.[13] There is no evidence that the structures on Site 201 have been nominated and determined to be significant as to be listed on the California Register. The RDEIR, therefore, improperly indicates that Site 201 is a historic property and

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[12] 36 C.F.R. § 67.9(f).)
[13] Pub. Res. Code § 5024.1(e).

removes it from the Sites Inventory as part of the Historic Preservation Alternative. The Historic Preservation Alternative is clearly an improper attempt to stop the Willy's project as there is no legal or factual basis to stop the proposed project.

G. The Historic Preservation Alternative Must Be Rejected As It Has the Same Impact on Historic Resources as the Amended Housing Element

The RDEIR notes that for the Historic Preservation alternative "[i]t is anticipated that Alternative 4 would result in slightly less levels of ground-disturbance, and generally lesser impacts associated with the potential to encounter previously unidentified historic, archaeological, paleontological, and tribal cultural resources (Impacts 3.4-2, 3.4-3, 3.4-5, 3.4-6, 3.6-6, and 3.67)."[14] Moreover, "[i]mpacts to historic resources would be less as no sites within or adjacent to the Sausalito Downtown Historic District would be rezoned (Impact 3.4-1). **However, Alternative 4 would not eliminate any of the Cultural and Tribal Cultural significant and unavoidable impacts (Impacts 3.4-1 through 3.4-6**) as previously unidentified resources could still be encountered during construction activities." [emphasis added.][15] Based on the bolded language it seems that the Historic Preservation alternative would *not* protect historic resources to a greater extent than the Amended Housing Element and, therefore, should be rejected out of hand as it does not accomplish its intended purpose of protecting historical resources.[16]

H. The Modified Project Alternative is Not Discussed in the Housing Element Amendment

The Modified Project alternative is an improper attempt to downzone the City in the face of public opposition and, therefore, cannot be moved forward.

Government Code § 65588 states when local governments may and are required to revise their Housing Elements. Government Code § 65588(a) is clear that cities may consider amendments only to evaluate and increase the effectiveness of Housing Elements. Government Code § 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code § 65588(a) fit Sausalito's situation or the Modified Projects alternative. The Modified Projects alternative is not intended (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element.

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[14] Alternatives to the Amended Housing Element 4-32 of the RDEIR.
[15] Alternatives to the Amended Housing Element 4-33 of the RDEIR.
[16] Cultural and Tribal Cultural Resources 3.4-39-40 of the DEIR.

Instead, the Modified Projects alternative is an attempt to backtrack on the City's commitment to development Site 84 in the face of public opposition and rezone City-owned land for residential development without any plan to do so.

The RDEIR adds an entirely new alternative—the Modified Project alternative—that was not included in the DEIR. The Modified Project alternative has three scenarios: (1) decreasing the development potential of Site 84 (MLK property) from 94 to 80 units; (2) decreasing the development potential of Site 84 from 94 to 50 units; and (3) not developing Site 84 and upzoning Site 202, and rezoning Site 14 (Spencer Avenue Fire Station) and Site 52 (City Hall parking lot) for residential development. The goal of the Modified Project alternative is to "reduce development potential in the northern portion of the City to preserve the existing setting."[17]

While the RDEIR analyzes the environmental impact of the Modified Project alternative, the proposed Amendment does not. The RDEIR cannot examine the environmental impacts of rezoning if it is not contemplated in the Amendment. The proposed Housing Element Amendment must include an analysis on the appropriateness of these sites addressing general plan designations, allowable densities, support for residential capacity assumptions, existing uses and any known conditions that preclude development in the planning period. The proposed Amendment does not mention that these sites would have to go through the Surplus Land Act process.

The City Council purposefully removed Sites 14 and 52 from the Housing Element and allocated their development to Site 84, which the City is now trying to backtrack on. The Planning Commission recommended removing Sites 14 and 52 from the Housing Element at its January 25, 2023 meeting.[18]

The City Council followed through and removed both sites from the Housing Element at its January 30, 2023 meeting. A copy of the City Council's minutes for the January 30, 2023 meeting is attached as **Exhibit D**. The City Council removed Site 14 based on a recommendation from City staff presented at the January 30, 2023 meeting, which noted that the site had "[d]isproportionate fire risk, Deed restrictions for this cycle, Circulation and Evacuation [concerns.]"

The only mention of Site 52 in the Amendment is on HP-16, where it states "[t]he City has identified sites in the Inventory of Residential Sites and Opportunity Sites that are owned by the City and are planned for development during the Planning Period: Sites 52, 75, 78, 84, and APN 065-062-19. These sites are planned to remain in City ownership and are anticipated to be made available for development through long-term leases. These sites will be made available for affordable housing consistent with the requirements of the Surplus Lands Act."[19] The Planning

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[17] Alternatives to the Amended Housing Element 4-35 and ES-20-27 of the RDEIR.
[18] Minutes from the Planning Commission's January 25, 2023 meeting have not been published, although the City published an update on its website after the meeting summarizing the Planning Commission's actions: https://www.sausalito.gov/Home/Components/News/News/6662/457.
[19] There is also a stray reference to Site 52 on HBR-66 in a section on where the City can accommodate Emergency Shelters.

Commission also recommended removing Site 52 from the Housing Element at its January 25, 2023 meeting and it was removed at the City Council's January 30, 2023 meeting.

The two sites are inadequate for multiple reasons. The City has entered into a long-term lease with AT&T for a wireless communications facility at Site 14 through 2040. Additionally, Site 14 has an 8 on the CGS Map Sheet 58, which means that it is very susceptible to landslides and is located 1 mile from community facilities, 1.4 miles from the ferry, and is in a high fire hazard severity zone according to the City's own scoring criteria for Housing Element sites. Site 14 is also the site of the critical outdoor alerting system known as the Long-Range Acoustic Device ("LRAD"), which the City has permitted the Southern Marin Fire Protection District to install on the site. As the City has noted, the new LRADs "are an improvement over existing sirens in that they can broadcast voice messages such as evacuation instructions over long distances."[20] The City has not evaluated the impact that development on Site 14 will have on the LRAD and on public safety.

Site 52 is also inadequate because it is currently used as a parking lot for City Hall and the City has not analyzed the impact and feasibility of developing the parcel and its displacement on City workers and residents who currently use the parking lot.

The Modified Project alternative is, therefore, not a viable alternative as the sites it analyzes rezoning—Sites 14 and 52—are not properly analyzed and are not viable sites for development during the 6th Cycle planning period.

I. The RDEIR Will Not Cure the City's Failure to Adopt an EIR for its Certified Housing Element

The City failed to adopt an EIR for its certified Housing Element and is now considering adopting a flawed RDEIR for its Amendment to avoid its obligation to carry out its plan for new housing in the City. The City was required to prepare an EIR for its certified Housing Element and purposefully delayed studying the environmental impacts of the certified Housing Element in a successful attempt to gain HCD certification.[21, 22]

As outlined above, the RDEIR that the City is now considering for its Housing Element Amendment is inadequate. If the City decides to move forward with this deficient RDEIR, then it will be susceptible to legal challenges.

J. The RDEIR's Analysis of How the Amended Housing Element Will Impact Historical and Cultural Resources is Confusing and Needs to Be Rectified

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[20] *See* The City's Press Release on July 15, 2022 "Sausalito to Get New Emergency Sirens at Two Locations," https://www.sausalito.gov/Home/Components/News/News/6410/.

[21] A "housing element" is a mandatory element of a city's general plan, and a general plan element is a "project" under CEQA. (CEQA Guidelines § 15378, subd. (a)(1); Gov. Code, § 65302, subd. (c).) A general plan element is a "project" under CEQA. (CEQA Guidelines § 15378, subd. (a)(1).)

[22] For instance, the meeting minutes reflect that for the January 12, 2023 joint meeting of the City Council and Planning Commission, the City abruptly rejected its staff's recommendation to prepare the Housing Element's EIR, and directed staff instead to "decouple" the Housing Element from CEQA review, so as to meet HCD's January 31, 2023 deadline.

The RDEIR's analysis of the level of impact that the Amended Housing Element will have on cultural and historic resources is confusing and misleading. Impacts 3.4-1 through 3.4-6 analyze the physical impacts that projects have on historical and cultural resources. The DEIR lists the Amended Housing Element as having a less than significant impact on historical resources (Impact 3.4-1) and a significant and unavoidable impact on Impacts 3.4-2 through 3.4-6.[23] The RDEIR does not change this analysis, but does note that the Amended Housing Element's impacts on cultural resources and tribal cultural resources are significant and unavoidable and does not break the impacts down individually into Impacts 3.4-1 through 3.4-6.[24] The RDEIR's lack of precision needs to be corrected as it makes it seem that the Amended Housing Element would have significant and unavoidable impact on historical resources for Impact 3.4-1 without offering any detailed analysis as to why the RDEIR differs from the DEIR, which found a less than significant impact on Impact 3.4-1 after mitigation.

K. The RDEIR's Analysis of How the No Project/Housing Implementation Alternative Would Impact Historical and Cultural Resources is Flawed and Misleading

The RDEIR's analysis of the level of impact that the Project/Adopted Housing Element Implementation alternative will have on cultural and historic resources is flawed and misleading.

The RDEIR notes that for the No Project/Housing Implementation alternative the

> [i]mpacts related to historic resources (Impacts 3.4-1 and 3.4-6) would be slightly more under Alternative 1b because there would be greater potential to result in changes to designated historical resources that may alter a resource or its immediate surroundings in a manner that the significance of the resource would be materially impaired . . . **Alternative 1b would not eliminate any of the Cultural and Tribal Cultural significant and unavoidable impacts** (Impacts 3.4-1 through 3.4-6) as previously unidentified resources could still be encountered during construction activities and would have worse impacts associated with the Downtown Historic District and contributing resources.[25] [emphasis added.]

Under CEQA, the level of impacts that a project may have can be: (1) no impacts; (2) less than significant; and (3) potentially significant, either mitigable or not.[26] By noting that the No Project/Housing Implementation alternative would have "slightly more" or "worse" impacts on historical resources than the Amended Housing Element, the RDEIR fails to clarify the level of impacts that the No Project/Housing Implementation alternative has on historical and cultural resources. The RDEIR, therefore, cannot be adopted by the City Council and needs additional modifications. The bolded language also references significant and unavoidable impacts, but as noted above, the Amended Housing Element is not expected to have a significant and unavoidable impact on historical resources (Impact 3.4-1). So this section is incorrect.

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[23] Executive Summary ES-31-42 of the DEIR.
[24] ES-20-27 of the RDEIR.
[25] Alternatives to the Amended Housing Element 4-14, 4-16 of the RDEIR.
[26] *See* 2024 California Environmental Quality Act (CEQA) Statute & Guidelines, p. 347.

III. WILLY'S OCTOBER 1 AND 22, 2024 LETTERS LAY OUT HOW THE CITY'S HOUSING ELEMENT AMENDMENT WOULD VIOLATE THE HOUSING ELEMENT LAW

The October 1st and 22nd letters lay out why the proposed Amendment would violate Government Code § 65588(a)—which sets out when Housing Element amendments are permitted—because it will not (1) aid the City in contributing to its State housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to circumvent HCD by removing Site 201 from the City's Sites Inventory and replacing it with nonvacant sites that are unlikely to be developed and which cannot be counted towards the City's realistic capacity. The Amendment is a disingenuous attempt to stop the Willy's project, which would build more affordable housing than has been built within the City in more than 20 years, and would violate the Housing Element Law's requirement to Affirmatively Further Fair Housing by concentrating development in the lower-resourced northern portion of the City.

IV. CONCLUSION

The City's RDEIR is inadequate. If adopted by the City, it will violate CEQA and the Housing Element Law and place the City in legal jeopardy. While the RDEIR is an improvement on the DEIR, it is still fundamentally flawed as it does not include a reasonable range of alternatives and continues to attempt to remove Site 201 from its Sites Inventory based on illegitimate reasons in an attempt to stop Willy's from developing the site.

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EXHIBIT A

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October 21, 2024

VIA EMAIL

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Re: Draft EIR for Draft Amended Sixth Cycle Housing Element

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft Environmental Impact Report ("EIR") for the City of Sausalito's ("City") 6th Cycle Housing Element of its general plan. We are writing on behalf of Willy's, LLC ("Willy's), the owner of Site 201 in the City's Housing Element. We previously wrote the City on October 1, 2024 before the City Council's Study Session on the proposed Housing Element amendment ("Amendment"). A copy of that letter is attached as Exhibit A. While the October 1st letter lays out how the City's Housing Element Amendment would violate the Housing Element Law, the purpose of this letter is to highlight how the City's draft EIR would violate the California Environmental Quality Act.

I. WILLY'S OCTOBER 1, 2024 LETTER LAYS OUT HOW THE CITY'S HOUSING ELEMENT AMENDMENT WOULD VIOLATE THE HOUSING ELEMENT LAW

The October 1st letter lays out why the proposed Housing Element Amendment would violate Government Code Section 65588(a)—which lays out when Housing Element amendments are permitted—because it will not (1) aid the City in contributing to its State housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to circumvent the Department of Housing and Community Development ("HCD") by removing Site 201 from the City's Sites Inventory and replacing it with nonvacant sites that are unlikely to be developed and which cannot be counted towards the City's realistic capacity. The Amendment is a disingenuous attempt to stop the Willy's project, which would build more affordable housing than has been built within the City in more than 20 years, and would violate the Housing Element Law's requirement to Affirmatively Further Fair Housing by concentrating development in the lower-resourced northern portion of the City.

II. THE DRAFT EIR'S ALTERNATIVES ARE INADEQUATE AND THERE IS NO EXPLANATION FOR WHY THE DRAFT EIR LISTS SITE 201 AS HISTORIC IN THE DRAFT EIR BUT NOT IN THE JANUARY 2024 EIR

The City's draft EIR is inadequate for two reasons. First, its reasonable alternatives do not include an option to implement the Housing Element as certified, and the alternatives considered by the EIR are not a reasonable range of alternatives. Second, the draft EIR does not explain why Site 201—the Willy's property—is listed as a historic property but was not previously listed as a historic property in the draft EIR the City prepared in January 2024.

A. The Draft EIR's Alternatives Are Inadequate and Violate the Housing Element Law

The draft EIR fails to include an alternative to the Housing Element Amendment that would implement the certified Housing Element. The draft EIR lists four alternatives to the Housing Element Amendment: (1) No Project; (2) Reduced Sites; (3) Modified Sites; and (4) Historic Preservation—all of which are inadequate.

One of the purposes of an EIR is to identify alternatives to a proposed project and evaluate the comparative merits of feasible alternatives.[1] By examining a range of alternatives, the lead agency can demonstrate that it has taken a "hard look" at the project objectives to select alternatives that allow for meaningful comparison.[2] In lawsuits challenging the sufficiency of an EIR's project alternatives, courts examine whether the EIR had a "reasonable range" of feasible "build" alternatives.[3] What constitutes a "reasonable range" of alternatives is a very fact-specific inquiry, but the guiding principle that courts rely on is that the EIR must include alternatives which have substantial environmental advantages over the project proposal which may be "feasibly accomplished in a successful manner" considering the economic, environmental, legal, social and technological factors involved.[4]

Courts have overturned many EIRs due to an improper or incomplete analysis of alternatives, which is what a court is likely to do if presented with the City's draft EIR in its current form due to its failure to consider a reasonable range of alternatives.[5]

B. The No Project Alternative is Not An Accurate Representation of the City's Certified Housing Element

The Draft EIR states the No Project Alternative "would allow the 6th Cycle Housing Element to remain in place and would not include the rezoning and Objective Design and Development Standards (ODDS) efforts, including the implementation of Programs 4, 8, and 19, that are being

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[1] CEQA Guidelines § 15126.6(d).
[2] *See Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274.
[3] CEQA Guidelines § 15126.6(e).
[4] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 197 Cal.App.3d 1167 (citing Pub. Res. Code §§ 21002, 21061.1; CEQA Guidelines Section 15364).
[5] *See Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413; *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647; *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277; *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059.

implemented in conjunction with the Amended Housing Element project."[6] That means that the City would "not initiate or conduct an election to rezone specific sites identified as initiative-restricted, specifically Sites 39, 44, 47, 72, 79, 81, 84, 201, 211, 212, 301, 303, 306, 401, and 402, as identified in Appendix D1 of the Amended Housing Element."[7]

As the draft EIR notes, CEQA Guidelines Section 15126.6(e) requires an EIR to evaluate a "'No Project Alternative,' which is defined as what would be reasonably expected to occur in the foreseeable future if the project were not approved." As the draft EIR acknowledges:

> [a]ll sites identified as Inventory Sites, Opportunity Sites, and sites that have approved but not yet constructed units would be developed according to their existing zoning or approved plans, respectively. As a result, approximately 378 units would be constructed, which would be 769 units less than those proposed under the Amended Housing Element project.[8]

The No Project Alternative is, therefore, not a true No Project Alternative because it would not be implementing the certified Housing Element. Instead, the draft EIR mistakenly makes it seem as though the City has the opportunity to escape its planning obligations by not "rezon[ing] any parcels within the city to accommodate very low, low, moderate, or above moderate-income housing, as the rezoning would occur as a separate future action under the adopted 6th Cycle Housing Element."[9] This is a violation of the California Environmental Quality Act ("CEQA"), which requires the No Project Alternative to discuss current conditions as well as reasonably foreseeable future conditions expected to occur if the project were not approved.[10] In this case, the reasonably foreseeable future conditions include implementation of Programs 4, 8, and 19 as required by the certified Housing Element. The CEQA Guidelines make it clear that the analysis of the No Project Alternative is not a comparison of the proposed project to existing conditions, which is the baseline for determining the project's environmental impacts.[11]

Unfortunately, the project analyzed in the draft EIR is the Housing Element Amendment, not the certified Housing Element.[12] The draft EIR, therefore, does not include any environmental analysis of the certified Housing Element and does not include it as an alternative, which is a violation of the CEQA Guidelines. The City is required to analyze a reasonable range of alternatives, taking into account legal factors. By law, the City is required to complete the rezoning as adopted in the certified Housing Element.[13] Not only is the draft EIR legally deficient, it is also faulty planning from the City because if the Housing Element Amendment is not certified by HCD, the City will *still* not have an EIR analyzing the environmental impacts for its certified Housing Element.

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[6] Page 28 of the draft EIR.
[7] Page 29 of the draft EIR.
[8] *Id.*
[9] *Id.*
[10] CEQA Guidelines § 15126.6(e)(2).
[11] CEQA Guidelines § 15126.6(e)(1).
[12] "The proposed project consists of the adoption and implementation of an Amended Housing Element." (Page 10 of the draft EIR).
[13] Gov Code. § 65583(f).

If the City does not include Housing Element rezoning in its draft EIR, the City could lose certification of its Housing Element from HCD because it is not adequately planning for housing as it committed to in its Housing Element. This would allow developers to submit Builder's Remedy projects to the City. Starting January 1, 2025, Assembly Bill 1893 will make it harder for cities to deny or delay Builder's Remedy projects and lowers the percentage of affordable housing that developers have to include in their Builder's Remedy projects, making them more attractive to developers.

C. The Reduced Sites Alternative is an Improper Attempt to Downzone the City

The Reduced Sites Alternative focuses on removing sites from the certified Housing Element that have "challenging" geographic locations. As with the No Project Alternative, Site 201 would be removed from the Housing Element's list of Opportunity Sites. As we noted in our October 1st letter, that would be an attempt to stop the Willy's project. The alleged purpose of the Reduced Sites Alternative is twofold: (1) to remove sites that are far from employment and service hubs; and (2) to remove sites that are located in high-risk landslide hazard areas. Site 201 is located near employment and service hubs and is not located in a high-risk landslide hazard area and, therefore, the Reduced Sites Alternative improperly proposes to remove it from the Housing Element's list of Opportunity Sites.

Not only would the Reduced Sites Alternative be an improper attempt to stop the Willy's project, but it would also remove other sites from the list of Opportunity Sites, so that the Housing Element Amendment's development buffer of 423 units would be reduced to 350 units. Again, the City seems intent on stopping future development and backing out of the commitments it made in the certified Housing Element to adequately plan for new development across the entire City.

D. The Modified Sites Alternative Proposes to Downzone Sites that are Likely to be Redeveloped and Add a Property to the Housing Element that is Unlikely to be Redeveloped

The purpose of the Modified Sites Alternative is to "relocate anticipated residential units from areas that are far from community services or do not have convenient freeway access, and place them closer to community services such as commercial, employment, and neighborhood services, or freeway access."[14] To effectuate this purpose, the Modified Sites Alternative would rezone different sites for residential and mixed-use development through implementation of the Housing Element Amendment.

This is ridiculous. As the draft EIR notes, "Sausalito is a small city with a land area of approximately 1.9 square miles."[15] The small nature of the City means that new units will be close to community services and freeway access. The practical effect of the Modified Sites Alternative would be to concentrate development in the northern portion of the City, in violation of the City's duty to Affirmatively Further Fair Housing and avoid segregation of new housing.

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[14] Page 30 of the draft EIR.
[15] Page 143 of the draft EIR.

While the total number of units proposed by the Modified Sites Alternative is the same as the Housing Element Amendment, the Modified Sites Alternative would accomplish this by adding a new Opportunity Site, Site 67, located at 2200 Marinship, to the Housing Element. The draft EIR contains no indication that the owner of this property has the desire to redevelop the site with housing, and it is unlikely that the property will be redeveloped during the 6th Cycle planning period, due to its proposed late addition to the Housing Element.

E. The Historic Preservation Alternative Fails to Adequately Explain How the Development of Site 201 Could Unintentionally Damage Historic Resources, and Improperly Downzones the Site

The Historic Preservation Alternative is "focus[ed] on preserving properties located within and adjacent to the Sausalito Downtown Historic District. The purpose of this alternative is to ensure that future development would not adversely affect known historic resources or properties, particularly those in the Downtown Historic District."[16] The Historic Preservation Alternative identifies five sites that are within or adjacent to the City's Downtown Historic District, including Site 201. The draft EIR states that "Site 201 is within the Downtown Historic District and currently consists of a commercial building with four retail storefronts, and a surface parking lot[.]" According to the draft EIR:

> The removal of these rezone sites helps preserve the character of the historic area by not inviting redevelopment or densification through rezoning. The historic context of the district can remain intact. There are several buildings in the Downtown Historic District that are potentially eligible historic properties. Demolition of existing buildings, construction of new housing units, vibration from heavy construction equipment, or construction mishaps on an Amended Housing Element site could adversely impact an existing adjacent historic resource. Opportunity Site 201 and the Inventory Site within the Downtown Historic District are the two sites that are most likely to unintentionally damage a potentially eligible historic resource.[17]

The draft EIR contains no evidence that development at any of the five sites that would be removed from the City's list of Opportunity Sites in the Historic Preservation Alternative would help preserve the character of the Downtown Historic District. In fact, while Site 201 and the Inventory Site are within the Downtown Historic District, they are not located adjacent to any listed historic properties.

The Historic Preservation Alternative also would result in a 103-unit reduction to the Housing Element Amendment, lowering the City's Housing Element Amendment buffer to 320 units. The Historic Preservation Alternative is an underhanded way for the City to downzone sites that are suitable for development and evade its obligations to plan for more development. The Historic Preservation Alternative should be rejected by the City Council as an unserious proposal.

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[16] Page 31 of the draft EIR.
[17] *Id.*

F. The Draft EIR Will Not Cure the City's Failure to Adopt an EIR for its Certified Housing Element

The City failed to adopt an EIR for its certified Housing Element and is now considering adopting a flawed EIR for its Housing Element Amendment to avoid its obligation to carry out its plan for new housing in the City. The City was required to prepare an EIR for its certified Housing Element and purposefully delayed studying the environmental impacts of the certified Housing Element in an attempt to gain HCD certification.[18, 19]

As outlined above, the draft EIR that the City is now considering for its Housing Element Amendment contains alternatives that do not meet the requirements of the Housing Element Law because it does not analyze the certified Housing Element. If the City decides to move forward with this deficient draft EIR, then it will be susceptible to legal challenges.

III. THE DRAFT EIR AND THE JANUARY 2024 DRAFT EIR CONTRADICT ONE ANOTHER ABOUT WHETHER SITE 201 IS A HISTORIC RESOURCE

A. The Draft EIR includes Site 201 as within the Historic District, which seems to be an Attempt to Stop the Proposed Project on the Willy's Property

The draft EIR notes that "Site 201 (APN 065-132-16) is located within the Sausalito Historic District and contains the Marin Fruit Co., a designated historic resource listed on the California Historic Preservation Office state registry."[20]

The inclusion of Site 201 within the Downtown Historic District does not make the site itself historic. Site 201 is located *within* the Downtown Historic District, but it is not itself a listed property. The City previously found that properties ***within*** the historic district are ***not*** "listed in the California Register" because the property was not ***individually*** listed in the register. The City made this determination for the 719-725 Bridgeway project, and specifically found that Site 201 (605-613 Bridgeway) is not listed in the California Register.[21] The City has now reversed course and argues that *any* property within the historic district is considered "listed in the California Register." The City has repeatedly stated that Site 201 is not listed in the California Register, including in the staff report for February 14, 2024 Planning Commission study session on the proposed Objective Design and Development Standards or the Sausalito Historic Context Statement adopted by the City Council in September 2022.

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[18] A "housing element" is a mandatory element of a city's general plan, and a general plan element is a "project" under CEQA. (CEQA Guidelines § 15378, subd. (a)(1); Gov. Code, § 65302, subd. (c).)
A general plan element is a "project" under CEQA. (CEQA Guidelines § 15378, subd. (a)(1).)
[19] For instance, the meeting minutes reflect that for the January 12, 2023 joint meeting of the City Council and Planning Commission, the City abruptly rejected its staff's recommendation to prepare the Housing Element's EIR, and directed staff instead to "decouple" the Housing Element from CEQA review, so as to meet HCD's January 31, 2023 deadline. The minutes are attached to this letter.
[20] Pages 241-2 of the draft EIR.
[21] See the 719-725 Bridgeway Historic Resource Technical Memorandum prepared by Page & Turnbull for the Community Development Department on April 9, 2019.

B. The Draft EIR conflicts with the January 2024 EIR Regarding Site 201's Historic Status

The draft EIR notes that Site 201 is on the State's Built Environment Resource Directory as home to (1) Town & County Antiques; and (2) Marin Fruit Company—neither of which is located at Site 201 anymore.[22] Similarly, Table 3.4-2 in the draft EIR lists these businesses as having a California Register Status of 2D2. A 2D2 code means that the property is a "[c]ontributor to a district determined eligible for NRHP by consensus through Section 106 process. Listed in the CRHR." This means that the site is a contributor to a *district* that is listed on the California Register of Historic Resources, not that the site itself is listed on the register.

The January 2024 EIR notes that "Opportunity Site 201 (APN 065-132-16) and Opportunity Site 212 (APN 065-071-21) are located within the Downtown Historic District Overlay in the City of Sausalito and while ***there are no designated historic resources on the opportunity sites***, both sites are adjacent to Potentially Eligible Historic Property."[23, 24] The draft EIR fails to explain the reason for this change, which appears to be an attempt to stop the project submitted by Willy's for development of Site 201. There have been no attempts to designate Site 201 as a historic resource with the State Historical Resources Commission since the January 2024 EIR was published, which is the only method to change a property's historic designation. The City cannot change the site's historic designation by administrative fiat.

C. The Draft EIR conflicts with the January 2024 EIR Regarding Adverse Impacts to Historic Resources

Along those same lines, the January 2024 EIR notes that development facilitated by the Housing Element Programs could result in a substantial adverse change in the significance of a historical resource and that even after the implementation of mitigation measures, the Level of Significance of impacts would be Significant and Unavoidable.[25] In contrast, the draft EIR concludes that the Housing Element Amendment could result in a substantial adverse change in the significance of a historical resource but that Mitigation Measures will reduce the Level of Significance of these impacts to Less than Significant.

The only difference between the January 2024 EIR and the draft EIR on this issue is that the draft EIR includes Mitigation Measure 3.4-1(b), which requires an applicant to hire a qualified historian or architectural historian to conduct a survey of adjacent parcels for potential historic resources before beginning construction within or adjacent to historic resources and to create a Historic Resource Protection Plan based on the survey. The draft EIR explains that this Mitigation Measure "would ensure that potentially significant impacts require additional mitigation measures to ensure that no significant historic resources are inadvertently damaged or destroyed as a result of direct or indirect effects by project implementation in historically sensitive areas. Therefore, the impact would be less than significant."[26] The January 2024 EIR,

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[22] Page 223 of the draft EIR.
[23] Page 207 of the January 2024 EIR.
[24] Page 188 of the January 2024 draft EIR notes both the Marin Fruit Company and Town & Company Antiques of 605 Bridgeway are listed as 2D2 on the City's list of historic buildings.
[25] Impact 3.4-1.
[26] Page 245 of the draft EIR.

however, explained that developing the opportunity sites could nonetheless potentially cause a significant impact "should the implementation of the Housing Element Programs *require* demolition of a historic structure." Mitigation Measure 3.4-1(b) does not explain how the impacts on historic resources from carrying out implementation of the Housing Element Programs would now be mitigated by protecting adjacent structures from inadvertent damage.

IV. THE DRAFT EIR FAILS TO ANALYZE THE CUMULATIVE IMPACTS OF THE PROJECT

An EIR must discuss significant cumulative impacts.[27] This requirement flows from CEQA Guidelines Section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts."[28] The individual effects may be changes resulting from a single project or more than one project.[29] A cumulative impact is an impact created by the combination of the project reviewed in the EIR together with other projects causing related impacts.[30] The EIR must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of the cumulative impacts, and examine reasonable mitigation options.[31]

The City is required to study Site 201 as part of its draft EIR because Site 201 was included in the certified Housing Element and the City has received a development application from the owners of Site 201, which utilizes the certified Housing Element's density rather than the reduced density proposed in the Housing Element Amendments. The draft EIR must analyze not only the probable effects of the Amendments, but must also consider the effects of the cumulative impacts of probable future projects like the pending application at Site 201. In particular, because Site 201 is located within the historic district overlay, the draft EIR must study the potential cumulative impacts of the Amendment and the pending application.

In short, the draft EIR's cumulative impacts analysis violates CEQA because it does not analyze the potential cumulative impacts of the submitted housing development project for Site 201.

V. CONCLUSION

The City's draft EIR is inadequate. If adopted by the City, it will violate CEQA and the Housing Element Law and will place the City in legal jeopardy.

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[27] CEQA Guidelines § 15130(a).
[28] CEQA Guidelines § 15355.
[29] CEQA Guidelines § 15355(a).
[30] CEQA Guidelines § 15130(a)(1).
[31] CEQA Guidelines § 15130(b).

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____
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October 1, 2024

VIA EMAIL

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Re: Agenda Item 5A: Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft amendment to the 6th Cycle Housing Element of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's") regarding the City's proposal to amend its adopted Housing Element before the City Council's October 1, 2024 Study Session on the matter.[1] The City's webpage dedicated to the Housing Element update process claims that the intent of these amendments is to prioritize sustainable waterfront development and preserve the City's downtown historic district.[2] Whatever the intent, the *effect* of these changes will be to reduce the potential for future residential development in Sausalito—which would violate the Housing Element Law.

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Housing Element amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

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[1] This is item 5.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) as part of the October 1st meeting.
[2] City of Sausalito, "City of Sausalito Sixth-Cycle (2023-2031) Housing Element," (September 27, 2024) at https://www.sausalito.gov/city-government/hot-topics/housing-element-update-2023-2031.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[3]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

THE AMEDNMENTS ARE NOT AN APPROPRIATE HOUSING ELEMENT AMENDMENT

The Housing Element Law *only* grants cities the authority to amend their adopted Housing Elements under limited circumstances. Government Code Section 65588 states when local government may and are required to revise their Housing Elements. Government Code Section 65588(a) is clear that cities may consider Housing Element amendments to evaluate and increase the effectiveness of Housing Elements. Government Code Section 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code Section 65588(a) fit Sausalito's situation. The City has failed to implement its Housing Element Programs within the deadlines it committed to in its Housing Element. This is a violation of Housing Element Law.

[3] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

The Amendment is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to kick the can down the road, and downzone sites from the City's Sites Inventory that the City only included in its Housing Element to received HCD certification. Specifically, the Amendment is a clear attempt to prevent a specific project—proposed by Willy's—from being built. Willy's has a pending application to build more affordable housing in the City than has been built within the City in more than 20 years. Amending the Housing Element to downzone Site 201 is an attempt to stop a project and is not an "appropriate" Housing Element amendment under Government Code Section 65588(a) and, therefore, not a legally valid proposal. Rather than waste time and resources trying to delay implementation of the Housing Element Programs, the City should be focused on carrying out its existing commitments and processing the pending application as required by law.

THE AMENDMENT'S ALTERNATIVE SITES DO NOT PROVIDE REALISTIC CAPACITY AND ARE NONVACANT SITES THAT ARE UNLIKLEY TO BE DEVELOPED

Government Code Section 66583.2(g)(2) requires a city that is relying on nonvacant sites "to accommodate 50 percent or more of its housing need for lower income households" to include in its Housing Element a "methodology used to determine additional development potential" to demonstrate that existing use "does not constitute an impediment to additional residential development during the period covered by the housing element." Since more than 50% of the City's housing needs for lower income households are planned for nonvacant sites, the City is required to comply with Government Code Section 66583.2(g)(2) and must explain in its Housing Element why each nonvacant site in its Sites Inventory can be converted from its existing use to residential housing.

The City's methodology for determining the likelihood of converting existing nonvacant buildings to residential housing is contained in Appendix D-2 of its Housing Element. Government Code Section 66583.2(g)(1) requires the City's methodology to consider many "factors including the extent to which existing uses may constitute an impediment to additional residential development [and] the city's or county's past experience with converting existing uses to higher density residential development[.]" The Housing Element and Appendix D-2 fails to analyze the City's "past experience with converting existing uses to higher density residential development[.]"[4] This is likely because the City has *no past experience* of nonvacant commercial or industrial buildings into residential development. Since the City has no experience with these projects, the likelihood of Sites 401 and 402 being completed during the planning period are slim and these sites should not be counted towards the City's realistic capacity.

The Amendment's Sites Inventory is overly optimistic about development on the new sites that it proposes to add to the Sites Inventory (while downzoning multiple sites that are suitable for

[4] There is a stray reference to the "past experience" requirement on Page HBR-120 of the adopted Housing Element where the Housing Element enumerates the factors the City is required to analyze, but no actual analysis.

development). The two new Opportunity Sites to be added to the Sites Inventory (Site 401 at 2400 Bridgeway Boulevard and Site 402 at 2680 Bridgeway Boulevard) are already developed with commercial/industrial buildings and cannot easily be converted into residential housing or demolished for residential housing. The Amendment would relocate Site 73 (SMSCSD School Nevada Campus), shifting proposed development from a parking lot to a portion of the parcel with an improved building, green space, and an outdoor sports court. Without specific analysis, the chances of development at Site 73 are unrealistic. The Amendment also proposes to increase the number of potential units at Martin Luther King, Jr. Park, which is subject to voter approval and has received universal opposition to redevelopment by residents. As explained below, the City has failed to analyze the required factors in Government Code Section 66583.2(g) to demonstrate that these sites provide realistic capacity.

1. **Site 401 (2400 Bridgeway Boulevard)**

The Amendment proposes to add Site 401 to the Sites Inventory as an Opportunity Site. Site 401 is a 0.67-acre site located at 2400 Bridgeway Boulevard (APN 063-130-01), zoned Industrial, and is developed with a commercial building that currently contains tenants. The Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. Rather the site seems to be added to the Amendment as the property owner is allegedly interested in "expanding [the] existing office building to incorporate multifamily residential use on the upper floors."

As the Housing Element notes, "State Law allows use of underutilized (nonvacant) sites to accommodate the RHNA [Regional Housing Needs Allocation]."[5] As part of Sausalito's analysis of these sites it is supposed to analyze

> 1) Ownership of the site - City-owned sites were anticipated to have a high potential for development based on City control of the property and ability to effect change 2) Property owner interest in development and economic gain associated with development 3) Current/past uses on the site – site has large underutilized areas, aging non-residential buildings, a high land value to improvement ratio, or a low site utilization.[6]

The City fails to demonstrate that the existing uses would not impede additional development, nor provide an analysis of current leases, nor demonstrate the financial feasibility of development. Site 402, is, therefore, unlikely to be developed during the 6th Cycle planning period and the Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 16 units claimed (2.2% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[7]

[5] *See* HBR-120.
[6] *Id.*
[7] The City has a RHNA of 724.

2. **Site 402 (2680 Bridgeway Boulevard)**

The Amendment proposes to add Site 402 to the Sites Inventory as an Opportunity Site. Site 402 is a 2.3-acre site located at 2680 Bridgeway Boulevard (APN 063-152-01), zoned Industrial, and is developed with an industrial building that currently contains tenants. Similar to the issues raised above for Site 401, the Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. There is also no indication that the owner of the property has indicated an interest in redeveloping the site as residential housing, nor any analysis of existing leases or other contracts that would perpetuate the existing uses.

Moreover, the feasibility of converting the site to residential housing is low due to the numerous issues which may be present on the property from its past industrial use. The City's Housing Element and the Amendment lacks a Program to address these issues, including environmental remediation for an industrial building that is over 45 years old.[8]

Site 402 is not City-owned, the property owner has not expressed an interest in redeveloping the site with residential housing, and the property is and has been used for industrial purposes. The Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 43 units claimed (5.93% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[9]

3. **Relocation of Site 73 (SMSCSD School Nevada Campus) (APN 064-322-01)**

The Amendment is also proposing to move development from the southwest corner of Site 73 to the northwest corner of the parcel. Site 73 is currently the Nevada Campus of the Sausalito Marin City School District. In the adopted Housing Element, development would take place on a 1-acre portion of the 13.15-acre parcel that is currently utilized as a parking lot. The Amendment would shift development to a portion of the parcel that includes an improved building, green space, and an outdoor sports court. The shift from proposed development on a parking lot to a portion of the parcel that is currently developed may result in increased construction costs.

The Amendment does not indicate whether this shift was driven by the Sausalito Marin City School District, which owns the property, nor whether this location is consistent with its Master Plan. Nonetheless, this shift makes development on the site more unlikely and reduces the probability that the City will meet its RHNA.

Program No. 8 (Public Property Conversion to Housing) in the adopted Housing Element required the City to "[m]eet with SMCSD at least quarterly in 2024 to ensure that site plans are being developed and that the site is included in a Master Plan phase for completion as early in the 6th Cycle as possible." Program No. 8 also required the City to "[m]eet with SMCSD quarterly until project is completed to assist with project application materials, financial assistance (grant or loan applications), and identify any methods available to streamline project

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[8] Program No. 5 (Replacement Housing) notes that development on all nonvacant sites designated in the Housing Element which contains existing residential units or units that were rented in the past five years must comply with State law, but does not cover existing commercial or industrial buildings.
[9] The City has a RHNA of 724.

implementation." The City has provided no evidence that it has complied with Program No. 8. The City is, therefore, in violation of the Housing Element Law. The Amendment would compound that violation by proposing to shift the development to other parts of the site without any indication that the District supports the new location – or any housing at all.

4. Proposed Upzoning of Site 84 (Martin Luther King, Jr. Park at 100 Ebbtide Avenue)

The Amendment also proposes to increase the number of potential units that would be able to be built on Site 84 which is the site of Martin Luther King, Jr. Park and a City facilities site. For some unexplained reason, the proposed revision to Appendix D-1 in the Amendment indicates that Site 84 has the potential for 181 units as opposed to 127 units in the adopted Housing Element and the realistic capacity for 94 units as opposed to 80 units in the adopted Housing Element. No explanation for this mysterious gain in density is given although an asterisk is placed next the Site Number column.[10] Until the Amendment explains whether this increase in density is realistic, the City cannot arbitrarily increase the density without supporting information.

Finally, based on the public comments received by the City in advance of its October 1st City Council Study Session, all of which expressed opposition to development on Site 84, it is unlikely that the City will be able to follow through and permit development on this site. Under Ordinance 1022 and Ordinance 1128, any increased density must be approved by the voters. It is wishful thinking to expect that the voters will approve any housing on this park site, especially at an increase in density from the adopted Housing Element. The Amendments do not demonstrate realistic capacity simply by pushing even more of the City's RHNA onto a City-owned site subject to voter approval.

5. Proposed Upzoning of Site 303 (1 & 3 Harbor Drive)

The Amendment would upzone Site 303 to increase development on the site from 90 to 129 units. The site is occupied by a commercial building, however, and, as noted above, the City's Housing Element lacks a Program to address the conversion of nonvacant sites into residential housing. Although we support the increase in allowed density, the City is still required to demonstrate that the capacity is realistic and likely to be developed. The Amendments fail to do so.

6. Decrease in Unit Count at Sites

The Amendment would also downzone eight sites (Sites 23, 24, 39, 44, 47, 201, 207, and 301) potentially removing 36 units from the Sites Inventory. These changes are unexplained and unnecessary, especially as the increase in density from the proposed addition of Sites 401 and 402, and the upzoning of Sites 84 and 303 are unrealistic.

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[10] Both the Housing Element and Amendment have the site zoned as MU-49/85%.

<u>VIOLATION OF THE REQUIREMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING</u>

HCD's Guidance for Affirmatively Furthering Fair Housing for public agencies explains that "to evaluate the site inventory's consistency with the obligation to affirmatively furthering fair housing, the site inventory analysis should address . . . whether the RHNA by income group is concentrated in areas of the community." Similarly, Government Code Section 8899.50(a)(1) defines "Affirmatively furthering fair housing" to include taking meaningful actions to "replacing segregated living patterns with truly integrated and balanced living patterns[.]"

The proposed addition of Sites 401 and 402 to the Housing Element and the proposed upzoning of Sites 84 and 303 at the expense of development throughout the City continues the City's practice of concentrating development and affordable housing in the northern portion of the City in violation of the Housing Element Law's requirement that cities' Housing Elements include policies that address racial and economic segregation and promote more inclusive communities and affirmatively further fair and equal housing access and opportunities.

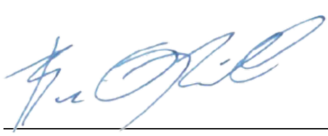
The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height limits in the north part of the City[.]" The City also received multiple public comment letters for its October 1st City Council Study Session objecting to this practice. The Amendment, therefore, fails to affirmatively further fair housing and would violate the Housing Element Law.

<u>CONCLUSION</u>

We continue to have major concerns about the City's adopted Housing Element and its ability to meet its state-mandated RHNA target, which are only exacerbated by the proposed Amendment and its changes to the Sites Inventory.

The Amendment proposes to downzone multiple sites listed in the Sites Inventory. We are worried that the proposed alternative sites will not be able to adequately accommodate the capacity for development lost by this downzoning. For these reasons, we are opposed to the Amendment.

PATTERSON & O'NEILL, PC



____

Brian O'Neill
Attorney for Willy's LLC

EXHIBIT B

CITY OF SAUSALITO
SPECIAL JOINT CITY COUNCIL & PLANNING COMMISSION MEETING MINUTES
JANUARY 12, 2023

1. **CALL TO ORDER**

The special joint meeting of January 12, 2023 was called to order by Mayor Blaustein at 5:31 p.m., with the meeting conducted via in-person and Zoom.

2. **ROLL CALL**

PRESENT: ***CITY COUNCIL***
Melissa Blaustein, Mayor
Ian Sobieski, Vice Mayor
Joan Cox, Councilmember
Jill James Hoffman, Councilmember
Janelle Kellman, Councilmember

PLANNING COMMISSION
Jeffery Luxenberg, Chair
Andrew Junius, Vice Chair
Kristina Feller, Commissioner
Nastassya Saad, Commissioner

ABSENT: **Richard Graef, Commissioner**

3. **CONSENT CALENDAR**

3.A. **Adopting Two Resolutions to implement the changes resulting from the recently approved Measure L and authorizing the City Manager to execute agreements for City's use tax with the California Department of Tax and Fee Administration**

Councilmember Kellman made a motion, seconded by Councilmember Hoffman, and unanimously carried to adopt **Resolution 08-2023** and **Resolution 09-2023** by the following vote:

AYES: **Cox, Hoffman, Kellman, Sobieski, Blaustein**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

4. **BUSINESS ITEMS**
5.

4.A. **6th Cycle Housing Element**

Beth Thompson, Principal, De Novo, made a presentation and responded to questions posed by the City Council.

Chris Zapata, City Manager, and Sergio Rudin, Assistant City Attorney, responded to questions posed by the City Council.

Peter McGuire and Sandra Bushmaker provided public comment.

The City Council received the update on the 6th Cycle Housing Element and directed staff to decouple EIR and zoning from the Housing Element; create a working group comprised of Councilmembers Cox and Kellman to help review comments regarding the Housing Element; directed De Novo and the City Attorney to outline risks around block development grants and bring clarity with the Objective Design & Development Standards; evaluate Plan Bay Area; dismiss the Housing Element Advisory Committee and send them a thank you letter; and have De Novo clarify deadlines from the May 23, 2022 meeting and discrepancies of its contract with the City.

4.B. Status of Objective Design & Development Standards (ODDS)

Bob Brown, Consultant, made a presentation and responded to questions posed by the City Council.

Michael Rex, Vicki Nichols, Jenny Silva, and Sybil Boutilier provided public comment.

The City Council received the update on status of Objective Development & Design Standards and directed staff to agendize the ODDS in the January 24, 2023 meeting; look at gradients and consideration of ADA; and a consideration of SB9 in consideration of the ODDS.

4.C. Presentation on SB 9, Local Implementation Ordinance (Ordinance No. 1288), Interaction with ODDS and Housing Element, and Direction to Staff

Brandon Phipps, Community Development Director, made a presentation and responded to questions posed by the City Council.

Neal Toft, Principal Planner, responded to questions posed by the City Council.

Michael Rex, Vicki Nichols, and Sybil Boutilier provided public comment.

The City Council received the summary presentation regarding SB 9 and the City's local implementation ordinance (Ordinance No. 1288) and how SB 9 interacts with the ODDS as well as the City's Housing Element and directed staff to look at SB9 with an eye to disaster preparedness; and forward a memo from Michael Rex to the Planning Commission.

6. ADJOURNMENT

Mayor Blaustein adjourned the meeting at 8:43 p.m.

Respectfully submitted,

Walfred Solorzano
City Clerk

EXHIBIT B

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Facsimile: (415) 907-7704
www.pattersononeill.com

October 1, 2024

VIA EMAIL

Brandon Phipps, Community and Economic Development Director
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA 94965
bphipps@sausalito.gov

Re: Agenda Item 5A: Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft amendment to the 6th Cycle Housing Element of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's") regarding the City's proposal to amend its adopted Housing Element before the City Council's October 1, 2024 Study Session on the matter.[1] The City's webpage dedicated to the Housing Element update process claims that the intent of these amendments is to prioritize sustainable waterfront development and preserve the City's downtown historic district.[2] Whatever the intent, the *effect* of these changes will be to reduce the potential for future residential development in Sausalito—which would violate the Housing Element Law.

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Housing Element amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

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[1] This is item 5.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) as part of the October 1st meeting.
[2] City of Sausalito, "City of Sausalito Sixth-Cycle (2023-2031) Housing Element," (September 27, 2024) at https://www.sausalito.gov/city-government/hot-topics/housing-element-update-2023-2031.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[3]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

<u>THE AMEDNMENTS ARE NOT AN APPROPRIATE HOUSING ELEMENT AMENDMENT</u>

The Housing Element Law *only* grants cities the authority to amend their adopted Housing Elements under limited circumstances. Government Code Section 65588 states when local government may and are required to revise their Housing Elements. Government Code Section 65588(a) is clear that cities may consider Housing Element amendments to evaluate and increase the effectiveness of Housing Elements. Government Code Section 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code Section 65588(a) fit Sausalito's situation. The City has failed to implement its Housing Element Programs within the deadlines it committed to in its Housing Element. This is a violation of Housing Element Law.

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[3] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

The Amendment is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to kick the can down the road, and downzone sites from the City's Sites Inventory that the City only included in its Housing Element to received HCD certification. Specifically, the Amendment is a clear attempt to prevent a specific project—proposed by Willy's—from being built. Willy's has a pending application to build more affordable housing in the City than has been built within the City in more than 20 years. Amending the Housing Element to downzone Site 201 is an attempt to stop a project and is not an "appropriate" Housing Element amendment under Government Code Section 65588(a) and, therefore, not a legally valid proposal. Rather than waste time and resources trying to delay implementation of the Housing Element Programs, the City should be focused on carrying out its existing commitments and processing the pending application as required by law.

THE AMENDMENT'S ALTERNATIVE SITES DO NOT PROVIDE REALISTIC CAPACITY AND ARE NONVACANT SITES THAT ARE UNLIKLEY TO BE DEVELOPED

Government Code Section 66583.2(g)(2) requires a city that is relying on nonvacant sites "to accommodate 50 percent or more of its housing need for lower income households" to include in its Housing Element a "methodology used to determine additional development potential" to demonstrate that existing use "does not constitute an impediment to additional residential development during the period covered by the housing element." Since more than 50% of the City's housing needs for lower income households are planned for nonvacant sites, the City is required to comply with Government Code Section 66583.2(g)(2) and must explain in its Housing Element why each nonvacant site in its Sites Inventory can be converted from its existing use to residential housing.

The City's methodology for determining the likelihood of converting existing nonvacant buildings to residential housing is contained in Appendix D-2 of its Housing Element. Government Code Section 66583.2(g)(1) requires the City's methodology to consider many "factors including the extent to which existing uses may constitute an impediment to additional residential development [and] the city's or county's past experience with converting existing uses to higher density residential development[.]" The Housing Element and Appendix D-2 fails to analyze the City's "past experience with converting existing uses to higher density residential development[.]"[4] This is likely because the City has *no past experience* of nonvacant commercial or industrial buildings into residential development. Since the City has no experience with these projects, the likelihood of Sites 401 and 402 being completed during the planning period are slim and these sites should not be counted towards the City's realistic capacity.

The Amendment's Sites Inventory is overly optimistic about development on the new sites that it proposes to add to the Sites Inventory (while downzoning multiple sites that are suitable for

[4] There is a stray reference to the "past experience" requirement on Page HBR-120 of the adopted Housing Element where the Housing Element enumerates the factors the City is required to analyze, but no actual analysis.

development). The two new Opportunity Sites to be added to the Sites Inventory (Site 401 at 2400 Bridgeway Boulevard and Site 402 at 2680 Bridgeway Boulevard) are already developed with commercial/industrial buildings and cannot easily be converted into residential housing or demolished for residential housing. The Amendment would relocate Site 73 (SMSCSD School Nevada Campus), shifting proposed development from a parking lot to a portion of the parcel with an improved building, green space, and an outdoor sports court. Without specific analysis, the chances of development at Site 73 are unrealistic. The Amendment also proposes to increase the number of potential units at Martin Luther King, Jr. Park, which is subject to voter approval and has received universal opposition to redevelopment by residents. As explained below, the City has failed to analyze the required factors in Government Code Section 66583.2(g) to demonstrate that these sites provide realistic capacity.

1. **Site 401 (2400 Bridgeway Boulevard)**

The Amendment proposes to add Site 401 to the Sites Inventory as an Opportunity Site. Site 401 is a 0.67-acre site located at 2400 Bridgeway Boulevard (APN 063-130-01), zoned Industrial, and is developed with a commercial building that currently contains tenants. The Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. Rather the site seems to be added to the Amendment as the property owner is allegedly interested in "expanding [the] existing office building to incorporate multifamily residential use on the upper floors."

As the Housing Element notes, "State Law allows use of underutilized (nonvacant) sites to accommodate the RHNA [Regional Housing Needs Allocation]."[5] As part of Sausalito's analysis of these sites it is supposed to analyze

> 1) Ownership of the site - City-owned sites were anticipated to have a high potential for development based on City control of the property and ability to effect change 2) Property owner interest in development and economic gain associated with development 3) Current/past uses on the site – site has large underutilized areas, aging non-residential buildings, a high land value to improvement ratio, or a low site utilization.[6]

The City fails to demonstrate that the existing uses would not impede additional development, nor provide an analysis of current leases, nor demonstrate the financial feasibility of development. Site 402, is, therefore, unlikely to be developed during the 6th Cycle planning period and the Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 16 units claimed (2.2% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[7]

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Moreover, the feasibility of converting the site to residential housing is low due to the numerous issues which may be present on the property from its past industrial use. The City's Housing Element and the Amendment lacks a Program to address these issues, including environmental remediation for an industrial building that is over 45 years old.[8]

Site 402 is not City-owned, the property owner has not expressed an interest in redeveloping the site with residential housing, and the property is and has been used for industrial purposes. The Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 43 units claimed (5.93% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[9]

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The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height limits in the north part of the City[.]" The City also received multiple public comment letters for its October 1st City Council Study Session objecting to this practice. The Amendment, therefore, fails to affirmatively further fair housing and would violate the Housing Element Law.

CONCLUSION

We continue to have major concerns about the City's adopted Housing Element and its ability to meet its state-mandated RHNA target, which are only exacerbated by the proposed Amendment and its changes to the Sites Inventory.

The Amendment proposes to downzone multiple sites listed in the Sites Inventory. We are worried that the proposed alternative sites will not be able to adequately accommodate the capacity for development lost by this downzoning. For these reasons, we are opposed to the Amendment.

PATTERSON & O'NEILL, PC

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Brian O'Neill
Attorney for Willy's LLC

EXHIBIT C

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October 22, 2024

VIA EMAIL

Brandon Phipps, Community and Economic Development Director
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA 94965
bphipps@sausalito.gov

Re: October 23, 2024 Planning Commission Meeting Agenda Item 7A: Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft amendment to the 6th Cycle Housing Element of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's") regarding the City's proposal to amend its adopted Housing Element before the City Council's October 23, 2024 Study Session on the matter.[1] The City's webpage dedicated to the Housing Element update process claims that the intent of these amendments is to prioritize sustainable waterfront development and preserve the City's downtown historic district.[2] Whatever the intent, the *effect* of these changes will be to reduce the potential for future residential development in Sausalito—which would violate the Housing Element Law.

We previously submitted a letter to the City before its City Council meeting on October 1, 2024, where the City conducted a Study Session on this same item. Despite submitting this letter as public comment prior to the hearing, the City failed to include our letter in the list of public comments received for the item. We request that the City immediately remedy this for the record for the October 1 hearing, and immediately distribute this letter for the October 23rd Planning Commission meeting. While this letter includes much of the same information from our prior letter, this letter also contains new information regarding the City improperly including Site 303 as part of its Sites Inventory.

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[1] This is item 7.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) as part of the October 23rd meeting.
[2] City of Sausalito, "City of Sausalito Sixth-Cycle (2023-2031) Housing Element," (October 22, 2024) at https://www.sausalito.gov/city-government/hot-topics/housing-element-update-2023-2031.

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Housing Element amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[3]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

SITE 303 IS IMPROPERLY INCLUDED IN THE HOUSING ELEMENT

We have recently received information that the owner of Site 303 (1 and 3 Harbor Drive) in the Sites Inventory is not interested in developing the site as residential housing and never was. The City received an email from the owner of Site 303 last year to explicitly request that the site be removed from the City's Housing Element.

Despite receiving this email, the City failed to remove Site 303 from its Housing Element. In fact, the City subsequently adopted the Housing Element with Site 303 at a meeting later the same day. The City took no action to remove the site between the date it adopted its Housing Element and when it received HCD certification on April 28, 2023. The certified Housing Element relies on Site 303 for 90 units of realistic capacity, 18 of which would be affordable. The Housing Element Amendment not only continues to include Site 303 but proposes to upzone Site 303 to increase capacity from 90 to 129 units in order to allow the downzoning of other sites

[3] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

in the City, such as Site 201. Site 303 needs to be removed from the Housing Element Amendment as the owner has explicitly disavowed developing the parcel as housing.

This failure indicates that the City—at the very least—did not conduct meaningful outreach to property owners before listing sites in its Sites Inventory or—at worst—intentionally deceived HCD and the public by including sites where owners had already informed the City that their property would not be redeveloped for housing. We demand that the City produce evidence that the City has conducted meaningful outreach to the property owners of all the sites the City now proposes to include in its amended Sites Inventory.[4]

<u>THE AMEDNMENTS ARE NOT AN APPROPRIATE HOUSING ELEMENT AMENDMENT</u>

The Housing Element Law *only* grants cities the authority to amend their adopted Housing Elements under limited circumstances. Government Code Section 65588 states when local government may and are required to revise their Housing Elements. Government Code Section 65588(a) is clear that cities may consider Housing Element amendments to evaluate and increase the effectiveness of Housing Elements. Government Code Section 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code Section 65588(a) fit Sausalito's situation. The City has failed to implement its Housing Element Programs within the deadlines it committed to in its Housing Element. This is a violation of Housing Element Law.

The Amendment is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to kick the can down the road, and downzone sites from the City's Sites Inventory that the City only included in its Housing Element to received HCD certification. Specifically, the Amendment is a clear attempt to prevent a specific project—proposed by Willy's—from being built. Willy's has a pending application to build more affordable housing in the City than has been built within the City in more than 20 years. Amending the Housing Element to downzone Site 201 is an attempt to stop a project and is not an "appropriate" Housing Element amendment under Government Code Section 65588(a) and, therefore, not a legally valid proposal. Rather than waste time and resources trying to delay implementation of the Housing Element Programs, the City should be

[4] This can be considered a California Public Records Act request under Gov. Code § 7920 et seq.

focused on carrying out its existing commitments and processing the pending application as required by law.

<u>THE AMENDMENT'S ALTERNATIVE SITES DO NOT PROVIDE REALISTIC CAPACITY AND ARE NONVACANT SITES THAT ARE UNLIKLEY TO BE DEVELOPED</u>

Government Code Section 66583.2(g)(2) requires a city that is relying on nonvacant sites "to accommodate 50 percent or more of its housing need for lower income households" to include in its Housing Element a "methodology used to determine additional development potential" to demonstrate that existing use "does not constitute an impediment to additional residential development during the period covered by the housing element." Since more than 50% of the City's housing needs for lower income households are planned for nonvacant sites, the City is required to comply with Government Code Section 66583.2(g)(2) and must explain in its Housing Element why each nonvacant site in its Sites Inventory can be converted from its existing use to residential housing.

The City's methodology for determining the likelihood of converting existing nonvacant buildings to residential housing is contained in Appendix D-2 of its Housing Element. Government Code Section 66583.2(g)(1) requires the City's methodology to consider many "factors including the extent to which existing uses may constitute an impediment to additional residential development [and] the city's or county's past experience with converting existing uses to higher density residential development[.]" The Housing Element and Appendix D-2 fails to analyze the City's "past experience with converting existing uses to higher density residential development[.]"[5] This is likely because the City has *no past experience* of nonvacant commercial or industrial buildings into residential development. Since the City has no experience with these projects, the likelihood of Sites 401 and 402 being completed during the planning period are slim and these sites should not be counted towards the City's realistic capacity.

The Amendment's Sites Inventory is overly optimistic about development on the new sites that it proposes to add to the Sites Inventory (while downzoning multiple sites that are suitable for development). The two new Opportunity Sites to be added to the Sites Inventory (Site 401 at 2400 Bridgeway Boulevard and Site 402 at 2680 Bridgeway Boulevard) are already developed with commercial/industrial buildings and cannot easily be converted into residential housing or demolished for residential housing. The Amendment would relocate Site 73 (SMSCSD School Nevada Campus), shifting proposed development from a parking lot to a portion of the parcel with an improved building, green space, and an outdoor sports court. Without specific analysis, the chances of development at Site 73 are unrealistic. The Amendment also proposes to increase the number of potential units at Martin Luther King, Jr. Park, which is subject to voter approval and has received universal opposition to redevelopment by residents. As explained below, the City has failed to analyze the required factors in Government Code Section 66583.2(g) to demonstrate that these sites provide realistic capacity.

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[5] There is a stray reference to the "past experience" requirement on Page HBR-120 of the adopted Housing Element where the Housing Element enumerates the factors the City is required to analyze, but no actual analysis.

1. **Site 401 (2400 Bridgeway Boulevard)**

The Amendment proposes to add Site 401 to the Sites Inventory as an Opportunity Site. Site 401 is a 0.67-acre site located at 2400 Bridgeway Boulevard (APN 063-130-01), zoned Industrial, and is developed with a commercial building that currently contains tenants. The Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. Rather the site seems to be added to the Amendment as the property owner is allegedly interested in "expanding [the] existing office building to incorporate multifamily residential use on the upper floors."

As the Housing Element notes, "State Law allows use of underutilized (nonvacant) sites to accommodate the RHNA [Regional Housing Needs Allocation]."[6] As part of Sausalito's analysis of these sites it is supposed to analyze

> 1) Ownership of the site - City-owned sites were anticipated to have a high potential for development based on City control of the property and ability to effect change 2) Property owner interest in development and economic gain associated with development 3) Current/past uses on the site – site has large underutilized areas, aging non-residential buildings, a high land value to improvement ratio, or a low site utilization.[7]

The City fails to demonstrate that the existing uses would not impede additional development, nor provide an analysis of current leases, nor demonstrate the financial feasibility of development. Site 402, is, therefore, unlikely to be developed during the 6th Cycle planning period and the Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 16 units claimed (2.2% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[8]

2. **Site 402 (2680 Bridgeway Boulevard)**

The Amendment proposes to add Site 402 to the Sites Inventory as an Opportunity Site. Site 402 is a 2.3-acre site located at 2680 Bridgeway Boulevard (APN 063-152-01), zoned Industrial, and is developed with an industrial building that currently contains tenants. Similar to the issues raised above for Site 401, the Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. There is also no indication that the owner of the property has indicated an interest in redeveloping the site as residential housing, nor any analysis of existing leases or other contracts that would perpetuate the existing uses.

Moreover, the feasibility of converting the site to residential housing is low due to the numerous issues which may be present on the property from its past industrial use. The City's Housing

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[6] *See* HBR-120.
[7] *Id.*
[8] The City has a RHNA of 724.

Element and the Amendment lacks a Program to address these issues, including environmental remediation for an industrial building that is over 45 years old.[9]

Site 402 is not City-owned, the property owner has not expressed an interest in redeveloping the site with residential housing, and the property is and has been used for industrial purposes. The Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 43 units claimed (5.93% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[10]

3. Relocation of Site 73 (SMSCSD School Nevada Campus) (APN 064-322-01)

The Amendment is also proposing to move development from the southwest corner of Site 73 to the northwest corner of the parcel. Site 73 is currently the Nevada Campus of the Sausalito Marin City School District. In the adopted Housing Element, development would take place on a 1-acre portion of the 13.15-acre parcel that is currently utilized as a parking lot. The Amendment would shift development to a portion of the parcel that includes an improved building, green space, and an outdoor sports court. The shift from proposed development on a parking lot to a portion of the parcel that is currently developed may result in increased construction costs.

The Amendment does not indicate whether this shift was driven by the Sausalito Marin City School District, which owns the property, nor whether this location is consistent with its Master Plan. Nonetheless, this shift makes development on the site more unlikely and reduces the probability that the City will meet its RHNA.

Program No. 8 (Public Property Conversion to Housing) in the adopted Housing Element required the City to "[m]eet with SMCSD at least quarterly in 2024 to ensure that site plans are being developed and that the site is included in a Master Plan phase for completion as early in the 6th Cycle as possible." Program No. 8 also required the City to "[m]eet with SMCSD quarterly until project is completed to assist with project application materials, financial assistance (grant or loan applications), and identify any methods available to streamline project implementation." The City has provided no evidence that it has complied with Program No. 8. The City is, therefore, in violation of the Housing Element Law. The Amendment would compound that violation by proposing to shift the development to other parts of the site without any indication that the District supports the new location – or any housing at all.

4. Proposed Upzoning of Site 84 (Martin Luther King, Jr. Park at 100 Ebbtide Avenue)

The Amendment also proposes to increase the number of potential units that would be able to be built on Site 84 which is the site of Martin Luther King, Jr. Park and a City facilities site. For some unexplained reason, the proposed revision to Appendix D-1 in the Amendment indicates that Site 84 has the potential for 181 units as opposed to 127 units in the adopted Housing

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[9] Program No. 5 (Replacement Housing) notes that development on all nonvacant sites designated in the Housing Element which contains existing residential units or units that were rented in the past five years must comply with State law, but does not cover existing commercial or industrial buildings.
[10] The City has a RHNA of 724.

Element and the realistic capacity for 94 units as opposed to 80 units in the adopted Housing Element. No explanation for this mysterious gain in density is given although an asterisk is placed next the Site Number column.[11] Until the Amendment explains whether this increase in density is realistic, the City cannot arbitrarily increase the density without supporting information.

Finally, based on the public comments received by the City in advance of its October 1st City Council Study Session, all of which expressed opposition to development on Site 84, it is unlikely that the City will be able to follow through and permit development on this site. Under Ordinance 1022 and Ordinance 1128, any increased density must be approved by the voters. It is wishful thinking to expect that the voters will approve any housing on this park site, especially at an increase in density from the adopted Housing Element. The Amendments do not demonstrate realistic capacity simply by pushing even more of the City's RHNA onto a City-owned site subject to voter approval.

5. Proposed Upzoning of Site 303 (1 & 3 Harbor Drive)

The Amendment would upzone Site 303 to increase development on the site from 90 to 129 units. The site is occupied by a commercial building, however, and, as noted above, the property owner has specifically informed the City that the site will not be redeveloped. Moreover, the City's Housing Element lacks a Program to address the conversion of nonvacant sites into residential housing. Although we support the increase in allowed density, the City is still required to demonstrate that the capacity is realistic and likely to be developed. The Amendments fail to do so.

6. Decrease in Unit Count at Sites

The Amendment would also downzone eight sites (Sites 23, 24, 39, 44, 47, 201, 207, and 301) potentially removing 36 units from the Sites Inventory. These changes are unexplained and unnecessary, especially as the increase in density from the proposed addition of Sites 401 and 402, and the upzoning of Sites 84 and 303 are unrealistic.

VIOLATION OF THE REQUIREMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING

HCD's Guidance for Affirmatively Furthering Fair Housing for public agencies explains that "to evaluate the site inventory's consistency with the obligation to affirmatively furthering fair housing, the site inventory analysis should address . . . whether the RHNA by income group is concentrated in areas of the community." Similarly, Government Code Section 8899.50(a)(1) defines "Affirmatively furthering fair housing" to include taking meaningful actions to "replacing segregated living patterns with truly integrated and balanced living patterns[.]"

The proposed addition of Sites 401 and 402 to the Housing Element and the proposed upzoning of Sites 84 and 303 at the expense of development throughout the City continues the City's practice of concentrating development and affordable housing in the northern portion of the City

[11] Both the Housing Element and Amendment have the site zoned as MU-49/85%.

in violation of the Housing Element Law's requirement that cities' Housing Elements include policies that address racial and economic segregation and promote more inclusive communities and affirmatively further fair and equal housing access and opportunities.

The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height limits in the north part of the City[.]" The City also received multiple public comment letters for its October 1st City Council Study Session objecting to this practice. The Amendment, therefore, fails to affirmatively further fair housing and would violate the Housing Element Law.

CONCLUSION

We continue to have major concerns about the City's adopted Housing Element and its ability to meet its state-mandated RHNA target, which are only exacerbated by the proposed Amendment, its changes to the Sites Inventory, and the seeming inclusion of Site 303 which the owner explicitly asked the City not to include in its Housing Element.

The Amendment proposes to downzone multiple sites listed in the Sites Inventory. We are worried that the proposed alternative sites will not be able to adequately accommodate the capacity for development lost by this downzoning. For these reasons, we are opposed to the Amendment.

PATTERSON & O'NEILL, PC

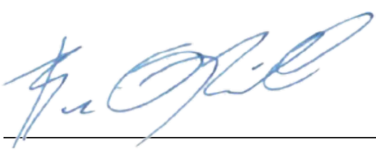

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EXHIBIT B

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October 21, 2024

VIA EMAIL

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Re: Draft EIR for Draft Amended Sixth Cycle Housing Element

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft Environmental Impact Report ("EIR") for the City of Sausalito's ("City") 6th Cycle Housing Element of its general plan. We are writing on behalf of Willy's, LLC ("Willy's), the owner of Site 201 in the City's Housing Element. We previously wrote the City on October 1, 2024 before the City Council's Study Session on the proposed Housing Element amendment ("Amendment"). A copy of that letter is attached as Exhibit A. While the October 1st letter lays out how the City's Housing Element Amendment would violate the Housing Element Law, the purpose of this letter is to highlight how the City's draft EIR would violate the California Environmental Quality Act.

I. WILLY'S OCTOBER 1, 2024 LETTER LAYS OUT HOW THE CITY'S HOUSING ELEMENT AMENDMENT WOULD VIOLATE THE HOUSING ELEMENT LAW

The October 1st letter lays out why the proposed Housing Element Amendment would violate Government Code Section 65588(a)—which lays out when Housing Element amendments are permitted—because it will not (1) aid the City in contributing to its State housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to circumvent the Department of Housing and Community Development ("HCD") by removing Site 201 from the City's Sites Inventory and replacing it with nonvacant sites that are unlikely to be developed and which cannot be counted towards the City's realistic capacity. The Amendment is a disingenuous attempt to stop the Willy's project, which would build more affordable housing than has been built within the City in more than 20 years, and would violate the Housing Element Law's requirement to Affirmatively Further Fair Housing by concentrating development in the lower-resourced northern portion of the City.

II. THE DRAFT EIR'S ALTERNATIVES ARE INADEQUATE AND THERE IS NO EXPLANATION FOR WHY THE DRAFT EIR LISTS SITE 201 AS HISTORIC IN THE DRAFT EIR BUT NOT IN THE JANUARY 2024 EIR

The City's draft EIR is inadequate for two reasons. First, its reasonable alternatives do not include an option to implement the Housing Element as certified, and the alternatives considered by the EIR are not a reasonable range of alternatives. Second, the draft EIR does not explain why Site 201—the Willy's property—is listed as a historic property but was not previously listed as a historic property in the draft EIR the City prepared in January 2024.

A. The Draft EIR's Alternatives Are Inadequate and Violate the Housing Element Law

The draft EIR fails to include an alternative to the Housing Element Amendment that would implement the certified Housing Element. The draft EIR lists four alternatives to the Housing Element Amendment: (1) No Project; (2) Reduced Sites; (3) Modified Sites; and (4) Historic Preservation—all of which are inadequate.

One of the purposes of an EIR is to identify alternatives to a proposed project and evaluate the comparative merits of feasible alternatives.[1] By examining a range of alternatives, the lead agency can demonstrate that it has taken a "hard look" at the project objectives to select alternatives that allow for meaningful comparison.[2] In lawsuits challenging the sufficiency of an EIR's project alternatives, courts examine whether the EIR had a "reasonable range" of feasible "build" alternatives.[3] What constitutes a "reasonable range" of alternatives is a very fact-specific inquiry, but the guiding principle that courts rely on is that the EIR must include alternatives which have substantial environmental advantages over the project proposal which may be "feasibly accomplished in a successful manner" considering the economic, environmental, legal, social and technological factors involved.[4]

Courts have overturned many EIRs due to an improper or incomplete analysis of alternatives, which is what a court is likely to do if presented with the City's draft EIR in its current form due to its failure to consider a reasonable range of alternatives.[5]

B. The No Project Alternative is Not An Accurate Representation of the City's Certified Housing Element

The Draft EIR states the No Project Alternative "would allow the 6th Cycle Housing Element to remain in place and would not include the rezoning and Objective Design and Development Standards (ODDS) efforts, including the implementation of Programs 4, 8, and 19, that are being

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[1] CEQA Guidelines § 15126.6(d).
[2] *See Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274.
[3] CEQA Guidelines § 15126.6(e).
[4] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 197 Cal.App.3d 1167 (citing Pub. Res. Code §§ 21002, 21061.1; CEQA Guidelines Section 15364).
[5] *See Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413; *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647; *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277; *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059.

implemented in conjunction with the Amended Housing Element project."[6] That means that the City would "not initiate or conduct an election to rezone specific sites identified as initiative-restricted, specifically Sites 39, 44, 47, 72, 79, 81, 84, 201, 211, 212, 301, 303, 306, 401, and 402, as identified in Appendix D1 of the Amended Housing Element."[7]

As the draft EIR notes, CEQA Guidelines Section 15126.6(e) requires an EIR to evaluate a "'No Project Alternative,' which is defined as what would be reasonably expected to occur in the foreseeable future if the project were not approved." As the draft EIR acknowledges:

> [a]ll sites identified as Inventory Sites, Opportunity Sites, and sites that have approved but not yet constructed units would be developed according to their existing zoning or approved plans, respectively. As a result, approximately 378 units would be constructed, which would be 769 units less than those proposed under the Amended Housing Element project.[8]

The No Project Alternative is, therefore, not a true No Project Alternative because it would not be implementing the certified Housing Element. Instead, the draft EIR mistakenly makes it seem as though the City has the opportunity to escape its planning obligations by not "rezon[ing] any parcels within the city to accommodate very low, low, moderate, or above moderate-income housing, as the rezoning would occur as a separate future action under the adopted 6th Cycle Housing Element."[9] This is a violation of the California Environmental Quality Act ("CEQA"), which requires the No Project Alternative to discuss current conditions as well as reasonably foreseeable future conditions expected to occur if the project were not approved.[10] In this case, the reasonably foreseeable future conditions include implementation of Programs 4, 8, and 19 as required by the certified Housing Element. The CEQA Guidelines make it clear that the analysis of the No Project Alternative is not a comparison of the proposed project to existing conditions, which is the baseline for determining the project's environmental impacts.[11]

Unfortunately, the project analyzed in the draft EIR is the Housing Element Amendment, not the certified Housing Element.[12] The draft EIR, therefore, does not include any environmental analysis of the certified Housing Element and does not include it as an alternative, which is a violation of the CEQA Guidelines. The City is required to analyze a reasonable range of alternatives, taking into account legal factors. By law, the City is required to complete the rezoning as adopted in the certified Housing Element.[13] Not only is the draft EIR legally deficient, it is also faulty planning from the City because if the Housing Element Amendment is not certified by HCD, the City will *still* not have an EIR analyzing the environmental impacts for its certified Housing Element.

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[6] Page 28 of the draft EIR.
[7] Page 29 of the draft EIR.
[8] *Id.*
[9] *Id.*
[10] CEQA Guidelines § 15126.6(e)(2).
[11] CEQA Guidelines § 15126.6(e)(1).
[12] "The proposed project consists of the adoption and implementation of an Amended Housing Element." (Page 10 of the draft EIR).
[13] Gov Code. § 65583(f).

If the City does not include Housing Element rezoning in its draft EIR, the City could lose certification of its Housing Element from HCD because it is not adequately planning for housing as it committed to in its Housing Element. This would allow developers to submit Builder's Remedy projects to the City. Starting January 1, 2025, Assembly Bill 1893 will make it harder for cities to deny or delay Builder's Remedy projects and lowers the percentage of affordable housing that developers have to include in their Builder's Remedy projects, making them more attractive to developers.

C. The Reduced Sites Alternative is an Improper Attempt to Downzone the City

The Reduced Sites Alternative focuses on removing sites from the certified Housing Element that have "challenging" geographic locations. As with the No Project Alternative, Site 201 would be removed from the Housing Element's list of Opportunity Sites. As we noted in our October 1st letter, that would be an attempt to stop the Willy's project. The alleged purpose of the Reduced Sites Alternative is twofold: (1) to remove sites that are far from employment and service hubs; and (2) to remove sites that are located in high-risk landslide hazard areas. Site 201 is located near employment and service hubs and is not located in a high-risk landslide hazard area and, therefore, the Reduced Sites Alternative improperly proposes to remove it from the Housing Element's list of Opportunity Sites.

Not only would the Reduced Sites Alternative be an improper attempt to stop the Willy's project, but it would also remove other sites from the list of Opportunity Sites, so that the Housing Element Amendment's development buffer of 423 units would be reduced to 350 units. Again, the City seems intent on stopping future development and backing out of the commitments it made in the certified Housing Element to adequately plan for new development across the entire City.

D. The Modified Sites Alternative Proposes to Downzone Sites that are Likely to be Redeveloped and Add a Property to the Housing Element that is Unlikely to be Redeveloped

The purpose of the Modified Sites Alternative is to "relocate anticipated residential units from areas that are far from community services or do not have convenient freeway access, and place them closer to community services such as commercial, employment, and neighborhood services, or freeway access."[14] To effectuate this purpose, the Modified Sites Alternative would rezone different sites for residential and mixed-use development through implementation of the Housing Element Amendment.

This is ridiculous. As the draft EIR notes, "Sausalito is a small city with a land area of approximately 1.9 square miles."[15] The small nature of the City means that new units will be close to community services and freeway access. The practical effect of the Modified Sites Alternative would be to concentrate development in the northern portion of the City, in violation of the City's duty to Affirmatively Further Fair Housing and avoid segregation of new housing.

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[14] Page 30 of the draft EIR.
[15] Page 143 of the draft EIR.

While the total number of units proposed by the Modified Sites Alternative is the same as the Housing Element Amendment, the Modified Sites Alternative would accomplish this by adding a new Opportunity Site, Site 67, located at 2200 Marinship, to the Housing Element. The draft EIR contains no indication that the owner of this property has the desire to redevelop the site with housing, and it is unlikely that the property will be redeveloped during the 6th Cycle planning period, due to its proposed late addition to the Housing Element.

E. *The Historic Preservation Alternative Fails to Adequately Explain How the Development of Site 201 Could Unintentionally Damage Historic Resources, and Improperly Downzones the Site*

The Historic Preservation Alternative is "focus[ed] on preserving properties located within and adjacent to the Sausalito Downtown Historic District. The purpose of this alternative is to ensure that future development would not adversely affect known historic resources or properties, particularly those in the Downtown Historic District."[16] The Historic Preservation Alternative identifies five sites that are within or adjacent to the City's Downtown Historic District, including Site 201. The draft EIR states that "Site 201 is within the Downtown Historic District and currently consists of a commercial building with four retail storefronts, and a surface parking lot[.]" According to the draft EIR:

> The removal of these rezone sites helps preserve the character of the historic area by not inviting redevelopment or densification through rezoning. The historic context of the district can remain intact. There are several buildings in the Downtown Historic District that are potentially eligible historic properties. Demolition of existing buildings, construction of new housing units, vibration from heavy construction equipment, or construction mishaps on an Amended Housing Element site could adversely impact an existing adjacent historic resource. Opportunity Site 201 and the Inventory Site within the Downtown Historic District are the two sites that are most likely to unintentionally damage a potentially eligible historic resource.[17]

The draft EIR contains no evidence that development at any of the five sites that would be removed from the City's list of Opportunity Sites in the Historic Preservation Alternative would help preserve the character of the Downtown Historic District. In fact, while Site 201 and the Inventory Site are within the Downtown Historic District, they are not located adjacent to any listed historic properties.

The Historic Preservation Alternative also would result in a 103-unit reduction to the Housing Element Amendment, lowering the City's Housing Element Amendment buffer to 320 units. The Historic Preservation Alternative is an underhanded way for the City to downzone sites that are suitable for development and evade its obligations to plan for more development. The Historic Preservation Alternative should be rejected by the City Council as an unserious proposal.

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[16] Page 31 of the draft EIR.
[17] *Id.*

F. The Draft EIR Will Not Cure the City's Failure to Adopt an EIR for its Certified Housing Element

The City failed to adopt an EIR for its certified Housing Element and is now considering adopting a flawed EIR for its Housing Element Amendment to avoid its obligation to carry out its plan for new housing in the City. The City was required to prepare an EIR for its certified Housing Element and purposefully delayed studying the environmental impacts of the certified Housing Element in an attempt to gain HCD certification.[18, 19]

As outlined above, the draft EIR that the City is now considering for its Housing Element Amendment contains alternatives that do not meet the requirements of the Housing Element Law because it does not analyze the certified Housing Element. If the City decides to move forward with this deficient draft EIR, then it will be susceptible to legal challenges.

III. THE DRAFT EIR AND THE JANUARY 2024 DRAFT EIR CONTRADICT ONE ANOTHER ABOUT WHETHER SITE 201 IS A HISTORIC RESOURCE

A. The Draft EIR includes Site 201 as within the Historic District, which seems to be an Attempt to Stop the Proposed Project on the Willy's Property

The draft EIR notes that "Site 201 (APN 065-132-16) is located within the Sausalito Historic District and contains the Marin Fruit Co., a designated historic resource listed on the California Historic Preservation Office state registry."[20]

The inclusion of Site 201 within the Downtown Historic District does not make the site itself historic. Site 201 is located *within* the Downtown Historic District, but it is not itself a listed property. The City previously found that properties ***within*** the historic district are ***not*** "listed in the California Register" because the property was not ***individually*** listed in the register. The City made this determination for the 719-725 Bridgeway project, and specifically found that Site 201 (605-613 Bridgeway) is not listed in the California Register.[21] The City has now reversed course and argues that *any* property within the historic district is considered "listed in the California Register." The City has repeatedly stated that Site 201 is not listed in the California Register, including in the staff report for February 14, 2024 Planning Commission study session on the proposed Objective Design and Development Standards or the Sausalito Historic Context Statement adopted by the City Council in September 2022.

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[18] A "housing element" is a mandatory element of a city's general plan, and a general plan element is a "project" under CEQA. (CEQA Guidelines § 15378, subd. (a)(1); Gov. Code, § 65302, subd. (c).)
A general plan element is a "project" under CEQA. (CEQA Guidelines § 15378, subd. (a)(1).)
[19] For instance, the meeting minutes reflect that for the January 12, 2023 joint meeting of the City Council and Planning Commission, the City abruptly rejected its staff's recommendation to prepare the Housing Element's EIR, and directed staff instead to "decouple" the Housing Element from CEQA review, so as to meet HCD's January 31, 2023 deadline. The minutes are attached to this letter.
[20] Pages 241-2 of the draft EIR.
[21] See the 719-725 Bridgeway Historic Resource Technical Memorandum prepared by Page & Turnbull for the Community Development Department on April 9, 2019.

B. The Draft EIR conflicts with the January 2024 EIR Regarding Site 201's Historic Status

The draft EIR notes that Site 201 is on the State's Built Environment Resource Directory as home to (1) Town & County Antiques; and (2) Marin Fruit Company—neither of which is located at Site 201 anymore.[22] Similarly, Table 3.4-2 in the draft EIR lists these businesses as having a California Register Status of 2D2. A 2D2 code means that the property is a "[c]ontributor to a district determined eligible for NRHP by consensus through Section 106 process. Listed in the CRHR." This means that the site is a contributor to a *district* that is listed on the California Register of Historic Resources, not that the site itself is listed on the register.

The January 2024 EIR notes that "Opportunity Site 201 (APN 065-132-16) and Opportunity Site 212 (APN 065-071-21) are located within the Downtown Historic District Overlay in the City of Sausalito and while ***there are no designated historic resources on the opportunity sites***, both sites are adjacent to Potentially Eligible Historic Property."[23, 24] The draft EIR fails to explain the reason for this change, which appears to be an attempt to stop the project submitted by Willy's for development of Site 201. There have been no attempts to designate Site 201 as a historic resource with the State Historical Resources Commission since the January 2024 EIR was published, which is the only method to change a property's historic designation. The City cannot change the site's historic designation by administrative fiat.

C. The Draft EIR conflicts with the January 2024 EIR Regarding Adverse Impacts to Historic Resources

Along those same lines, the January 2024 EIR notes that development facilitated by the Housing Element Programs could result in a substantial adverse change in the significance of a historical resource and that even after the implementation of mitigation measures, the Level of Significance of impacts would be Significant and Unavoidable.[25] In contrast, the draft EIR concludes that the Housing Element Amendment could result in a substantial adverse change in the significance of a historical resource but that Mitigation Measures will reduce the Level of Significance of these impacts to Less than Significant.

The only difference between the January 2024 EIR and the draft EIR on this issue is that the draft EIR includes Mitigation Measure 3.4-1(b), which requires an applicant to hire a qualified historian or architectural historian to conduct a survey of adjacent parcels for potential historic resources before beginning construction within or adjacent to historic resources and to create a Historic Resource Protection Plan based on the survey. The draft EIR explains that this Mitigation Measure "would ensure that potentially significant impacts require additional mitigation measures to ensure that no significant historic resources are inadvertently damaged or destroyed as a result of direct or indirect effects by project implementation in historically sensitive areas. Therefore, the impact would be less than significant."[26] The January 2024 EIR,

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[22] Page 223 of the draft EIR.
[23] Page 207 of the January 2024 EIR.
[24] Page 188 of the January 2024 draft EIR notes both the Marin Fruit Company and Town & Company Antiques of 605 Bridgeway are listed as 2D2 on the City's list of historic buildings.
[25] Impact 3.4-1.
[26] Page 245 of the draft EIR.

however, explained that developing the opportunity sites could nonetheless potentially cause a significant impact "should the implementation of the Housing Element Programs *require* demolition of a historic structure." Mitigation Measure 3.4-1(b) does not explain how the impacts on historic resources from carrying out implementation of the Housing Element Programs would now be mitigated by protecting adjacent structures from inadvertent damage.

IV. THE DRAFT EIR FAILS TO ANALYZE THE CUMULATIVE IMPACTS OF THE PROJECT

An EIR must discuss significant cumulative impacts.[27] This requirement flows from CEQA Guidelines Section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts."[28] The individual effects may be changes resulting from a single project or more than one project.[29] A cumulative impact is an impact created by the combination of the project reviewed in the EIR together with other projects causing related impacts.[30] The EIR must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of the cumulative impacts, and examine reasonable mitigation options.[31]

The City is required to study Site 201 as part of its draft EIR because Site 201 was included in the certified Housing Element and the City has received a development application from the owners of Site 201, which utilizes the certified Housing Element's density rather than the reduced density proposed in the Housing Element Amendments. The draft EIR must analyze not only the probable effects of the Amendments, but must also consider the effects of the cumulative impacts of probable future projects like the pending application at Site 201. In particular, because Site 201 is located within the historic district overlay, the draft EIR must study the potential cumulative impacts of the Amendment and the pending application.

In short, the draft EIR's cumulative impacts analysis violates CEQA because it does not analyze the potential cumulative impacts of the submitted housing development project for Site 201.

V. CONCLUSION

The City's draft EIR is inadequate. If adopted by the City, it will violate CEQA and the Housing Element Law and will place the City in legal jeopardy.

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[27] CEQA Guidelines § 15130(a).
[28] CEQA Guidelines § 15355.
[29] CEQA Guidelines § 15355(a).
[30] CEQA Guidelines § 15130(a)(1).
[31] CEQA Guidelines § 15130(b).

PATTERSON & O'NEILL, PC

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Brian O'Neill
Attorney's for Willy's, LLC

EXHIBIT A

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October 1, 2024

VIA EMAIL

Brandon Phipps, Community and Economic Development Director
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA 94965
bphipps@sausalito.gov

Re: Agenda Item 5A: Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft amendment to the 6th Cycle Housing Element of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's") regarding the City's proposal to amend its adopted Housing Element before the City Council's October 1, 2024 Study Session on the matter.[1] The City's webpage dedicated to the Housing Element update process claims that the intent of these amendments is to prioritize sustainable waterfront development and preserve the City's downtown historic district.[2] Whatever the intent, the *effect* of these changes will be to reduce the potential for future residential development in Sausalito—which would violate the Housing Element Law.

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Housing Element amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

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[1] This is item 5.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) as part of the October 1st meeting.
[2] City of Sausalito, "City of Sausalito Sixth-Cycle (2023-2031) Housing Element," (September 27, 2024) at https://www.sausalito.gov/city-government/hot-topics/housing-element-update-2023-2031.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[3]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

<u>THE AMEDNMENTS ARE NOT AN APPROPRIATE HOUSING ELEMENT AMENDMENT</u>

The Housing Element Law *only* grants cities the authority to amend their adopted Housing Elements under limited circumstances. Government Code Section 65588 states when local government may and are required to revise their Housing Elements. Government Code Section 65588(a) is clear that cities may consider Housing Element amendments to evaluate and increase the effectiveness of Housing Elements. Government Code Section 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code Section 65588(a) fit Sausalito's situation. The City has failed to implement its Housing Element Programs within the deadlines it committed to in its Housing Element. This is a violation of Housing Element Law.

[3] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

The Amendment is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to kick the can down the road, and downzone sites from the City's Sites Inventory that the City only included in its Housing Element to received HCD certification. Specifically, the Amendment is a clear attempt to prevent a specific project—proposed by Willy's—from being built. Willy's has a pending application to build more affordable housing in the City than has been built within the City in more than 20 years. Amending the Housing Element to downzone Site 201 is an attempt to stop a project and is not an "appropriate" Housing Element amendment under Government Code Section 65588(a) and, therefore, not a legally valid proposal. Rather than waste time and resources trying to delay implementation of the Housing Element Programs, the City should be focused on carrying out its existing commitments and processing the pending application as required by law.

THE AMENDMENT'S ALTERNATIVE SITES DO NOT PROVIDE REALISTIC CAPACITY AND ARE NONVACANT SITES THAT ARE UNLIKLEY TO BE DEVELOPED

Government Code Section 66583.2(g)(2) requires a city that is relying on nonvacant sites "to accommodate 50 percent or more of its housing need for lower income households" to include in its Housing Element a "methodology used to determine additional development potential" to demonstrate that existing use "does not constitute an impediment to additional residential development during the period covered by the housing element." Since more than 50% of the City's housing needs for lower income households are planned for nonvacant sites, the City is required to comply with Government Code Section 66583.2(g)(2) and must explain in its Housing Element why each nonvacant site in its Sites Inventory can be converted from its existing use to residential housing.

The City's methodology for determining the likelihood of converting existing nonvacant buildings to residential housing is contained in Appendix D-2 of its Housing Element. Government Code Section 66583.2(g)(1) requires the City's methodology to consider many "factors including the extent to which existing uses may constitute an impediment to additional residential development [and] the city's or county's past experience with converting existing uses to higher density residential development[.]" The Housing Element and Appendix D-2 fails to analyze the City's "past experience with converting existing uses to higher density residential development[.]"[4] This is likely because the City has *no past experience* of nonvacant commercial or industrial buildings into residential development. Since the City has no experience with these projects, the likelihood of Sites 401 and 402 being completed during the planning period are slim and these sites should not be counted towards the City's realistic capacity.

The Amendment's Sites Inventory is overly optimistic about development on the new sites that it proposes to add to the Sites Inventory (while downzoning multiple sites that are suitable for

[4] There is a stray reference to the "past experience" requirement on Page HBR-120 of the adopted Housing Element where the Housing Element enumerates the factors the City is required to analyze, but no actual analysis.

development). The two new Opportunity Sites to be added to the Sites Inventory (Site 401 at 2400 Bridgeway Boulevard and Site 402 at 2680 Bridgeway Boulevard) are already developed with commercial/industrial buildings and cannot easily be converted into residential housing or demolished for residential housing. The Amendment would relocate Site 73 (SMSCSD School Nevada Campus), shifting proposed development from a parking lot to a portion of the parcel with an improved building, green space, and an outdoor sports court. Without specific analysis, the chances of development at Site 73 are unrealistic. The Amendment also proposes to increase the number of potential units at Martin Luther King, Jr. Park, which is subject to voter approval and has received universal opposition to redevelopment by residents. As explained below, the City has failed to analyze the required factors in Government Code Section 66583.2(g) to demonstrate that these sites provide realistic capacity.

1. **Site 401 (2400 Bridgeway Boulevard)**

The Amendment proposes to add Site 401 to the Sites Inventory as an Opportunity Site. Site 401 is a 0.67-acre site located at 2400 Bridgeway Boulevard (APN 063-130-01), zoned Industrial, and is developed with a commercial building that currently contains tenants. The Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. Rather the site seems to be added to the Amendment as the property owner is allegedly interested in "expanding [the] existing office building to incorporate multifamily residential use on the upper floors."

As the Housing Element notes, "State Law allows use of underutilized (nonvacant) sites to accommodate the RHNA [Regional Housing Needs Allocation]."[5] As part of Sausalito's analysis of these sites it is supposed to analyze

> 1) Ownership of the site - City-owned sites were anticipated to have a high potential for development based on City control of the property and ability to effect change 2) Property owner interest in development and economic gain associated with development 3) Current/past uses on the site – site has large underutilized areas, aging non-residential buildings, a high land value to improvement ratio, or a low site utilization.[6]

The City fails to demonstrate that the existing uses would not impede additional development, nor provide an analysis of current leases, nor demonstrate the financial feasibility of development. Site 402, is, therefore, unlikely to be developed during the 6th Cycle planning period and the Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 16 units claimed (2.2% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[7]

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[5] *See* HBR-120.
[6] *Id.*
[7] The City has a RHNA of 724.

2. **Site 402 (2680 Bridgeway Boulevard)**

The Amendment proposes to add Site 402 to the Sites Inventory as an Opportunity Site. Site 402 is a 2.3-acre site located at 2680 Bridgeway Boulevard (APN 063-152-01), zoned Industrial, and is developed with an industrial building that currently contains tenants. Similar to the issues raised above for Site 401, the Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. There is also no indication that the owner of the property has indicated an interest in redeveloping the site as residential housing, nor any analysis of existing leases or other contracts that would perpetuate the existing uses.

Moreover, the feasibility of converting the site to residential housing is low due to the numerous issues which may be present on the property from its past industrial use. The City's Housing Element and the Amendment lacks a Program to address these issues, including environmental remediation for an industrial building that is over 45 years old.[8]

Site 402 is not City-owned, the property owner has not expressed an interest in redeveloping the site with residential housing, and the property is and has been used for industrial purposes. The Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 43 units claimed (5.93% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[9]

3. **Relocation of Site 73 (SMSCSD School Nevada Campus) (APN 064-322-01)**

The Amendment is also proposing to move development from the southwest corner of Site 73 to the northwest corner of the parcel. Site 73 is currently the Nevada Campus of the Sausalito Marin City School District. In the adopted Housing Element, development would take place on a 1-acre portion of the 13.15-acre parcel that is currently utilized as a parking lot. The Amendment would shift development to a portion of the parcel that includes an improved building, green space, and an outdoor sports court. The shift from proposed development on a parking lot to a portion of the parcel that is currently developed may result in increased construction costs.

The Amendment does not indicate whether this shift was driven by the Sausalito Marin City School District, which owns the property, nor whether this location is consistent with its Master Plan. Nonetheless, this shift makes development on the site more unlikely and reduces the probability that the City will meet its RHNA.

Program No. 8 (Public Property Conversion to Housing) in the adopted Housing Element required the City to "[m]eet with SMCSD at least quarterly in 2024 to ensure that site plans are being developed and that the site is included in a Master Plan phase for completion as early in the 6th Cycle as possible." Program No. 8 also required the City to "[m]eet with SMCSD quarterly until project is completed to assist with project application materials, financial assistance (grant or loan applications), and identify any methods available to streamline project

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[8] Program No. 5 (Replacement Housing) notes that development on all nonvacant sites designated in the Housing Element which contains existing residential units or units that were rented in the past five years must comply with State law, but does not cover existing commercial or industrial buildings.
[9] The City has a RHNA of 724.

implementation." The City has provided no evidence that it has complied with Program No. 8. The City is, therefore, in violation of the Housing Element Law. The Amendment would compound that violation by proposing to shift the development to other parts of the site without any indication that the District supports the new location – or any housing at all.

4. Proposed Upzoning of Site 84 (Martin Luther King, Jr. Park at 100 Ebbtide Avenue)

The Amendment also proposes to increase the number of potential units that would be able to be built on Site 84 which is the site of Martin Luther King, Jr. Park and a City facilities site. For some unexplained reason, the proposed revision to Appendix D-1 in the Amendment indicates that Site 84 has the potential for 181 units as opposed to 127 units in the adopted Housing Element and the realistic capacity for 94 units as opposed to 80 units in the adopted Housing Element. No explanation for this mysterious gain in density is given although an asterisk is placed next the Site Number column.[10] Until the Amendment explains whether this increase in density is realistic, the City cannot arbitrarily increase the density without supporting information.

Finally, based on the public comments received by the City in advance of its October 1st City Council Study Session, all of which expressed opposition to development on Site 84, it is unlikely that the City will be able to follow through and permit development on this site. Under Ordinance 1022 and Ordinance 1128, any increased density must be approved by the voters. It is wishful thinking to expect that the voters will approve any housing on this park site, especially at an increase in density from the adopted Housing Element. The Amendments do not demonstrate realistic capacity simply by pushing even more of the City's RHNA onto a City-owned site subject to voter approval.

5. Proposed Upzoning of Site 303 (1 & 3 Harbor Drive)

The Amendment would upzone Site 303 to increase development on the site from 90 to 129 units. The site is occupied by a commercial building, however, and, as noted above, the City's Housing Element lacks a Program to address the conversion of nonvacant sites into residential housing. Although we support the increase in allowed density, the City is still required to demonstrate that the capacity is realistic and likely to be developed. The Amendments fail to do so.

6. Decrease in Unit Count at Sites

The Amendment would also downzone eight sites (Sites 23, 24, 39, 44, 47, 201, 207, and 301) potentially removing 36 units from the Sites Inventory. These changes are unexplained and unnecessary, especially as the increase in density from the proposed addition of Sites 401 and 402, and the upzoning of Sites 84 and 303 are unrealistic.

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[10] Both the Housing Element and Amendment have the site zoned as MU-49/85%.

VIOLATION OF THE REQUIREMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING

HCD's Guidance for Affirmatively Furthering Fair Housing for public agencies explains that "to evaluate the site inventory's consistency with the obligation to affirmatively furthering fair housing, the site inventory analysis should address . . . whether the RHNA by income group is concentrated in areas of the community." Similarly, Government Code Section 8899.50(a)(1) defines "Affirmatively furthering fair housing" to include taking meaningful actions to "replacing segregated living patterns with truly integrated and balanced living patterns[.]"

The proposed addition of Sites 401 and 402 to the Housing Element and the proposed upzoning of Sites 84 and 303 at the expense of development throughout the City continues the City's practice of concentrating development and affordable housing in the northern portion of the City in violation of the Housing Element Law's requirement that cities' Housing Elements include policies that address racial and economic segregation and promote more inclusive communities and affirmatively further fair and equal housing access and opportunities.

The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height limits in the north part of the City[.]" The City also received multiple public comment letters for its October 1st City Council Study Session objecting to this practice. The Amendment, therefore, fails to affirmatively further fair housing and would violate the Housing Element Law.

CONCLUSION

We continue to have major concerns about the City's adopted Housing Element and its ability to meet its state-mandated RHNA target, which are only exacerbated by the proposed Amendment and its changes to the Sites Inventory.

The Amendment proposes to downzone multiple sites listed in the Sites Inventory. We are worried that the proposed alternative sites will not be able to adequately accommodate the capacity for development lost by this downzoning. For these reasons, we are opposed to the Amendment.

PATTERSON & O'NEILL, PC

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Brian O'Neill
Attorney for Willy's LLC

EXHIBIT B

CITY OF SAUSALITO
SPECIAL JOINT CITY COUNCIL & PLANNING COMMISSION MEETING MINUTES
JANUARY 12, 2023

1. CALL TO ORDER

The special joint meeting of January 12, 2023 was called to order by Mayor Blaustein at 5:31 p.m., with the meeting conducted via in-person and Zoom.

2. ROLL CALL

PRESENT: ***CITY COUNCIL***
Melissa Blaustein, Mayor
Ian Sobieski, Vice Mayor
Joan Cox, Councilmember
Jill James Hoffman, Councilmember
Janelle Kellman, Councilmember

PLANNING COMMISSION
Jeffery Luxenberg, Chair
Andrew Junius, Vice Chair
Kristina Feller, Commissioner
Nastassya Saad, Commissioner

ABSENT: **Richard Graef, Commissioner**

3. CONSENT CALENDAR

3.A. **Adopting Two Resolutions to implement the changes resulting from the recently approved Measure L and authorizing the City Manager to execute agreements for City's use tax with the California Department of Tax and Fee Administration**

Councilmember Kellman made a motion, seconded by Councilmember Hoffman, and unanimously carried to adopt **Resolution 08-2023** and **Resolution 09-2023** by the following vote:

AYES: **Cox, Hoffman, Kellman, Sobieski, Blaustein**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

4. BUSINESS ITEMS
5.

4.A. **6th Cycle Housing Element**

Beth Thompson, Principal, De Novo, made a presentation and responded to questions posed by the City Council.

Chris Zapata, City Manager, and Sergio Rudin, Assistant City Attorney, responded to questions posed by the City Council.

Peter McGuire and Sandra Bushmaker provided public comment.

The City Council received the update on the 6th Cycle Housing Element and directed staff to decouple EIR and zoning from the Housing Element; create a working group comprised of Councilmembers Cox and Kellman to help review comments regarding the Housing Element; directed De Novo and the City Attorney to outline risks around block development grants and bring clarity with the Objective Design & Development Standards; evaluate Plan Bay Area; dismiss the Housing Element Advisory Committee and send them a thank you letter; and have De Novo clarify deadlines from the May 23, 2022 meeting and discrepancies of its contract with the City.

4.B. Status of Objective Design & Development Standards (ODDS)

Bob Brown, Consultant, made a presentation and responded to questions posed by the City Council.

Michael Rex, Vicki Nichols, Jenny Silva, and Sybil Boutilier provided public comment.

The City Council received the update on status of Objective Development & Design Standards and directed staff to agendize the ODDS in the January 24, 2023 meeting; look at gradients and consideration of ADA; and a consideration of SB9 in consideration of the ODDS.

4.C. Presentation on SB 9, Local Implementation Ordinance (Ordinance No. 1288), Interaction with ODDS and Housing Element, and Direction to Staff

Brandon Phipps, Community Development Director, made a presentation and responded to questions posed by the City Council.

Neal Toft, Principal Planner, responded to questions posed by the City Council.

Michael Rex, Vicki Nichols, and Sybil Boutilier provided public comment.

The City Council received the summary presentation regarding SB 9 and the City's local implementation ordinance (Ordinance No. 1288) and how SB 9 interacts with the ODDS as well as the City's Housing Element and directed staff to look at SB9 with an eye to disaster preparedness; and forward a memo from Michael Rex to the Planning Commission.

6. ADJOURNMENT

Mayor Blaustein adjourned the meeting at 8:43 p.m.

Respectfully submitted,

Walfred Solorzano
City Clerk

EXHIBIT C

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January 14, 2025

VIA EMAIL

Neal Toft, Principal Planner
City of Sausalito Community & Economic Development Department
420 Litho Street
Sausalito, CA 94965

Re: January 15, 2024 Planning Commission Meeting Agenda Items 6.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) and 6.B (Study Session for Municipal Code Amendment: Adoption of More Comprehensive Objective Design and Development Standards (ODDS) and Form-Based Code)

Dear Mr. Toft:

Thank you for the opportunity to comment on Items 6.A Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) and 6.B (Study Session for Municipal Code Amendment: Adoption of More Comprehensive Objective Design and Development Standards (ODDS) and Form-Based Code) of the City of Sausalito's ("City") January 15, 2025 Planning Commission meeting agenda. We are writing on behalf of Willy's LLC ("Willy's"), the owner of Site 201 in the City's Housing Element.

We previously submitted comments to the City: (1) on October 1, 2024 before the City Council's October 1, 2024 Study Session on the Draft Amended 2023-2031 Housing Element; and (2) on October 22, 2024 before the City Council's October 23, 2024 Study Session on the Draft Amended 2023-2031 Housing Element.[1] This letter incorporates the prior October 1 and October 22 letters by reference, and further highlights the shortcomings in the City's proposed draft Housing Element Amendment.

As explained below, the City's proposed amendments fail to comply with the Housing Element Law, do not increase the effectiveness of the City's Housing Element, and do not contribute to

[1] In addition, our office submitted comments on October 21, 2024 regarding the draft Environmental Impact Report for the 6th Cycle Housing Element Amendment and intend to provide additional comments on the Recirculated draft Environmental Impact Report seperately.

the attainment of the City's housing goals. In short, the proposed amendments do not constitute a legally valid amendment. (See Gov. Code § 65588(a).)

I. BACKGROUND

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted multiple housing development project applications to bring much needed housing, including affordable housing, to the City. The draft Housing Element Amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard). These sites are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[2]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project.

A. The Proposed Upzoning of Site 84 (Martin Luther King, Jr. Park) Does Not Provide Realistic Capacity

The City proposes to upzone Site 84 (Martin Luther King, Jr. Park) from 80 units to 94 units to balance out the units lost from the removal of Site 85 (CalTrans) and the downzoning of Site 201 and other opportunity sites in the City. The public has repeatedly voiced its strong opposition to development on this site and *any* development on Site 84 is likely to be rejected by voters. The fact that the City is trying to cram *even more* development into MLK Park does not provide realistic development capacity to offset the proposed downzoning. Should the voters reject the proposed upzoning of the MLK Park site, this would constitute a violation of the No Net Loss Law, which prohibits a City from reducing residential capacity by "administrative, quasi-judicial, legislative, *or other action*" without simultaneously upzoning elsewhere. (Gov. Code § 65863.) The City's insistence on upzoning a site that the public will undoubtedly reject will simply lead to state law violations.

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[2] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

B. The Modified Amended Housing Element's Addition of Sites 14 (Spencer Avenue Fire Station) and Site 52 (City Hall Parking Lot) to the Sites Inventory of the Housing Element Amendment Do Not Provide Realistic Capacity

The City acknowledges that the voters may reject a ballot measure to upzone Site 84 (Martin Luther King, Jr. Park) and proposes an alternative—the Modified Amended Housing Element—where Site 84 is not developed and two City-owned sites, Site 14 (Spencer Avenue Fire Station) and Site 52 (City Hall Parking Lot) are rezoned to accommodate up to 20-25 units each. (Gov. Code § 65863.) This is problematic for multiple reasons, but most prominently the fact that development on Site 14 (Spencer Avenue Fire Station) could endanger future inhabitants.

First, Sites 14 (Spencer Avenue Fire Station) and Site 52 (City Hall Parking Lot) are not sites that are realistic for development this planning cycle. The City Council specifically already considered and rejected Sites 14 and 52 as unrealistic sites for housing. The City Council removed Site 14 because the site had "[d]isproportionate fire risk, Deed restrictions for this cycle, Circulation and Evacuation [concerns.]" Site 14 is encumbered by long-term lease with AT&T for a wireless communications facility through 2040; is very susceptible to landslides based on the CGS Map Sheet 58, is in a high fire hazard severity zone, and is also the site of the critical outdoor alerting system known as the Long-Range Acoustic Device ("LRAD"), which the City has permitted the Southern Marin Fire Protection District to install on the site.[3] The City Council also rejected Site 52 as inadequate, as it is currently used as a parking for City Hall and City workers, and the City has no plan to replace this necessary use. The City has provided no evidence to contradict the City's own prior findings that Sites 14 and 52 do not provide realistic capacity.

The Modified Amended Housing Element is, therefore, not a viable alternative as the sites it analyzes rezoning—Sites 14 and 52—are not properly analyzed and are not viable sites for development during the 6th Cycle planning period.

II. THE CITY'S PROPOSED 29 UNIT OVERLAY DECREASES DEVELOPMENT POTENTIAL

The draft Housing Element Amendment proposes to adopt two new housing overlay zones of 29 du/acre: (1) 29 du/ac Housing Overlay; and (2) a Mixed Use Overlay to allow 29 du/ac with a minimum of 85% residential required. This "new" overlay does not constitute a rezoning and will not increase existing residential capacity because many of the sites designated with this overlay *already* permit development at 29 du/acre. In fact, the proposed "new" housing overlay will act as a new constraint on the development of housing, as the proposal will now require a certain percentage of units for very-low income and low-income households in order to obtain the 29 du/acre that already exists.

The General Plan *already* allows development of 29 du/ac for the sites that have a General Plan designation of High Density Residential, Mixed Residential and Commercial, Central Commercial, Neighborhood Commercial. The new Housing Overlay zone of 29 du/acre includes

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[3] *See* The City's Press Release on July 15, 2022 "Sausalito to Get New Emergency Sirens at Two Locations," https://www.sausalito.gov/Home/Components/News/News/6410/.

Sites 207, 23, 24, 44, and 201, all of which have a General Plan Designation that already allow for 29 units per acre, are *not* being "upzoned" as the City claims.

The City contends that there is an "economic benefit" to proposed "new" housing overlay, and therefore relies on these sites toward meeting its very low and low-income RHNA requirements. That it is contradicted by the Inclusionary Program and In-Lieu Fee Study conducted by the County of Marin, which concluded that affordable housing requirements "can be a secondary factor impacting the viability of new development," and that each new affordable unit costs a developer between $400,000 and $500,00 more to construct than the expected return. In other words, the City's proposed housing overlay will *increase* the cost of developing these sites and make it *less* likely that any of these sites will be developed at all. A copy of this study is attached to this letter as **Exhibit A**.

In short, there is no valid basis for the City to count any of the purported capacity from the "new" 29 du/ac overlay from the sites with that already allow for 29 du/ac.

III. THE CITY HAS NOT PROVIDED EVIDENCE OF PROPERTY OWNER INTEREST IN REDEVELOPING HOUSING INVENTORY SITES

In the October 21st letter, we informed the City that we had received information that the owner of Site 303 (1 & 3 Harbor Drive) has explicitly disavowed developing the parcel as housing. Despite submitting a Public Records Act request to the City requesting correspondence with all property owners of sites the City proposes to include in the Sites Inventory of its Housing Element Amendment, the City continues to violate the Public Records Act and avoid its responsibilities to produce these records, and is continuing to add sites to the Housing Element Amendment where the property owner has not expressed an interest in redeveloping their property as residential housing.

A. The City Has Failed to Respond to Willy's October 22, 2024 Public Record Act Request in Violation of the Public Records Act

In order to ensure that that the City has properly contacted the owners of parcels it is including in its Amendment, we submitted a Public Records Act request as part of the October 22nd letter, which requested the City produce all records that the City possessed that it conducted meaningful outreach to the property owners of all the sites the City now proposes to include in its amended Sites Inventory. We submitted a Public Records Act request through the City's NextRequest portal on October 24, 2024, and after not receiving responsive records from the City after 83 days, sent the City a letter on January 13, 2025 demanding an explanation for why we still have not received any responsive records, nor a satisfactory explanation for why the City has failed to comply with the Public Records Act.

Until the City produces records responsive to this request, it is safe to assume that the City has not received indications of interest from *any* property owner whose parcel it plans to include in its amended Sites Inventory.

B. The City Continues to Include Sites in Sites Inventory Where the Property Owner Has Not Expressed an Interest in Residential Redevelopment

In addition to Site 303, we note that the City is proposing to add Site 402 to the Sites Inventory of the Housing Element Amendment. As the City's Appendix acknowledges, the property owner of Site 402 has *not* expressed an interest in redeveloping the site for residential use. Site 402 is a 2.3-acre site at 2680 Bridgeway that is zoned industrial, has a General Plan designation of industrial, and is improved with a building on the site. The Housing Element Amendment uses the site to count 43 units towards its Regional Housing Needs Allocation ("RHNA"), including 24 very-low income units and 12 of which are low-income units, representing approximately 12% of the City's total low income RHNA requirements.

C. The City Failed to Address the Suitability of Sites

In HCD's review of the proposed amendment, HCD made clear that the City must provide a full analysis that addressed "the extent that existing uses impede additional residential development, including analyzing existing leases; contracts or other conditions; current market demand for the existing uses; development trends; market conditions; and regulatory or other incentives or standards to encourage additional residential development on these sites." The City's response is that the Site Selection Criteria discussion was revised, yet the only revision was an attempt to justify the downzoning of Site 201 and elimination of other sites to purportedly protect historic resources, without providing any of the analysis that HCD requested to justify the inclusion of sites where the owners have not expressed any interest in redevelopment. The proposed amendment fails to address HCD's comments and fails to address the statutory requirements for nonvacant sites.

IV. THE DRAFT AMENDED HOUSING ELEMENT FAILS TO ADEQUATELY EXPLAIN HOW THE DEVELOPMENT OF SITE 201 COULD UNINTENTIONALLY DAMAGE HISTORIC RESOURCES, AND IMPROPERLY DOWNZONES THE SITE

The City contends that it did not identify that Site 201 contained a historic resource on the California Historic Register until after the City adopted the Housing Element. This strains credulity and is simply a post hoc argument to attempt to justify the City's attempt to disapprove the proposed housing development project on the site through a downzoning. The City was well aware that the site was within the downtown historic district and specifically reviewed the City's July 2021 Historic Context Statement, which describes historic resources within the City in detail, as it prepared the City's Housing Element.

Moreover, the City continues to repeat the erroneous argument that Site 201 includes a property listed on the California Register. Public Resources Code § 5024.1(d) describes the California Register as having three mandatory categories of historic properties: (1) properties formally determined eligible for, or listed in, the National Register of Historic Places; (2) State Historical Landmark No. 770 and all consecutively numbered state historical landmarks following No. 770; and (3) points of historical interest which have been reviewed by the office and recommended for listing by the commission for inclusion in the California Register in accordance with criteria adopted by the commission.

Site 201 does not meet any of the criteria in Public Resources Code § 5024.1(d) for mandatory listing as a historic structure. While we acknowledge that the Sausalito Historic District is listed on the California Register because the *District* has been formally determined to be eligible for the National Register of Historic Places, this determination does not extend to individual properties. The District was certified by the National Park Service as eligible for purposes of the Tax Reform Act of 1986, as substantially meeting all the requirements for listing in the National Register of Historic Places. The federal historic district certification process, however, makes clear that "[c]ertification of statutes and districts *does not constitute certification of significance of individual properties within the district or of rehabilitation projects by the Secretary*."[4] In other words, the individual structures at Site 201 have never been reviewed, or determined to be eligible for, the National Register of Historic Places. Thus, only the Sausalito Historic District, not the properties within the District, are listed in the California Register pursuant to Public Resources Code § 5024.1(d).

The only other properties on the California Register are those that have been "nominated for listing" in accordance with specified nomination procedures and "determined to be significant" by the State Historical Resources Commission.[5] There is no evidence that the structures on Site 201 have been nominated and determined to be significant as to be listed on the California Register. The City, therefore, improperly indicates that Site 201 is a historic property as a justification to proposed downzoning. This downzoning is clearly an improper attempt to stop the Willy's project as there is no legal or factual basis to stop the proposed project.

V. <u>THE CITY HAS NOT ADEQUATELY ADDRESSED CALHDF'S COMMENTS</u>

The City's long overdue Objective Design and Development Standards ("ODDS"), Item 6.B, has been transformed from a program that was meant to encourage more housing to a set of standards that will discourage it. We have similar concerns to those raised by the California Housing Defense Fund ("CalHDF") in its October 23, 2024 letter to the City. Namely that the proposed Objective Design and Development Standards ("ODDS"), specifically the viewshed and historic preservation sections, would result in an impermissible downzoning of the City in violation of the Senate Bill 330 and the Housing Element Law.

The City's recognition that its proposed ODDS do not comply with Senate Bill 478's floor area ratio requirements is a good first step but fails to address the heart of CalHDF's letter. We note that SB 330 prohibits not just reductions in floor area, but broadly prohibits any "reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, *or any other action that would individually or cumulatively reduce the site's residential development capacity.*" (Gov. Code § 66300.) Courts have confirmed that the Legislature's "intent to broadly prohibit any local policies that lessen housing intensity." (*Yes In My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103.) While the proposed "fail safe"

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[4] 36 C.F.R. § 67.9(f).)
[5] Pub. Res. Code § 5024.1(e).

measure that would allow projects to meet the FAR minimums is helpful, this does not address the fundamental flaw that new private view protections would reduce residential development capacity in violation of the law.

If the City continues to pursue adoption of these flawed ODDS that act as a new constraint on the development of housing, this will demonstrate the City is not serious about meeting its requirements to adequately plan for new housing under state law.

VI. **CONCLUSION**

The City's draft Housing Element Amendment is deeply flawed and a waste of City resources. Rather than spending time on a plan that will likely be rejected by the voters and HCD, the City should instead be focused on carrying out its obligations under the current housing element and delivering desperately needed housing by approving the first major housing project application the City has received in years.

PATTERSON & O'NEILL, PC

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Brian O'Neill
Attorney for Willy's LLC

EXHIBIT A

MEMORANDUM

To: Leelee Thomas and Molly Kron, County of Marin

From: Strategic Economics and Vernazza Wolfe Associates

Date: February 10, 2023

Project: Marin Inclusionary Study

Subject: Inclusionary Program and In-Lieu Fee Study

Purpose and Background

The County of Marin, along with six of the jurisdictions within the County, are collaborating on a regional effort to implement or update existing affordable housing policy tools, namely inclusionary zoning and commercial linkage fees. Some of the jurisdictions currently have inclusionary zoning and/or commercial linkage fee programs they intend to review and update as necessary, while others are establishing new programs. Together, the seven jurisdictions have retained Strategic Economics and Vernazza Wolfe Associates (the Consultant Team) to study and offer recommendations for both these policies.

This memo report provides an assessment of the existing inclusionary housing programs, summarizes best practices for setting inclusionary housing requirements, including on-site affordable units and fees in-lieu of providing affordable units on-site. The report provides an updated calculation of in-lieu fees for all the jurisdictions participating in this study. The maximum in-lieu fees were calculated for three different housing product types – single-family subdivisions, townhomes/condominiums, and rental apartments.

This report also includes an analysis of key policy considerations and recommendations to guide decision-makers on potential changes to the inclusionary housing requirements and associated in-lieu fees.

The memo is organized into the following sections:

I. Analysis of Existing Inclusionary Policies
II. Best Practices for Inclusionary Policies
III. Affordability Gap/In-lieu Fee Calculation
IV. Policy Considerations and Recommendations

I. Analysis of Existing Inclusionary Policies

Some of the communities in Marin County have a relatively long history with inclusionary zoning. Of the seven jurisdictions participating in this study, five already have inclusionary policies, some of which have existed in some form since the 1980s. Sausalito adopted its policy in 2019, while the communities of San Anselmo and Fairfax have not yet adopted a policy. Concurrent to the preparation of this memo, San Rafael adopted a significantly modified inclusionary policy; both the current policy and the newly adopted versions are shown in Figures 1 and 2.

Inclusionary programs typically have a specific onsite requirement to designate a portion of the project for affordable units (see Figure 1 for a comparison of onsite requirements for the seven jurisdictions) as well as alternative means of compliance with the policy, such as the payment of in-lieu fees or land dedication (Figure 2). Below are some key observations of the policy elements across the jurisdictions:

- **All jurisdictions apply an inclusionary requirement to both rental and for-sale projects.** Fairfax and San Anselmo do not have existing inclusionary housing ordinances.
- **The policies for rental projects tend to target lower income households (very low- and low-income households) while the policies for for-sale projects tend to target a combination of low- and moderate-income households.** Exceptions to this include Corte Madera and San Rafael, which have identical affordability targets for both rental and for-sale projects, and Unincorporated Marin County, which has unusually low-income targets: 60 percent of area median income (AMI) for for-sale and 50 percent of AMI for rental developments.
- **The percentage affordable requirement ranges from ten percent to 25 percent.** Some jurisdictions require smaller percentages for smaller projects: Larkspur has a lower requirement for projects less than twenty units in size, while both San Rafael's current and newly adopted policies include a modified requirement for larger projects. Sausalito requires a higher percentage (with deeper affordability) for projects in commercial districts.
- **The inclusionary policies generally have a relatively low unit threshold.** The unit thresholds (minimum number of units in a project for the policy to be applicable) range from 1 or more units in Corte Madera to 5 or more units in Larkspur. The relatively low unit thresholds reflect the smaller multifamily and subdivision developments characteristic of Marin.
- **San Rafael recently modified its policy by relaxing the onsite inclusionary requirement, adding flexibility, and shifting the targeted income groups slightly higher**.
- **The jurisdictions take a mix of approaches to alternative means of compliance, but, overall, the alternatives are structured to encourage developers to build units onsite.** Jurisdictions either disallow the payment of in-lieu fees in all circumstances (Sausalito), or disallow them in some circumstances (Corte Madera, Larkspur, San Rafael), or allow the payment of in-lieu fees on fractional units (Larkspur, Unincorporated Marin County). Land dedication or the provision of offsite units is generally allowed under special circumstances.

FIGURE 1: ONSITE INCLUSIONARY REQUIREMENTS BY JURISDICTION

	Percentage Affordable by Project Size	Minimum Size Threshold	Affordability Target	
			Rental	For-Sale
Corte Madera	All projects: 25%	1 unit	5% Very Low-Income; 10% Low-Income; 10% Moderate-Income	
Sausalito				
Commercial Districts	1-5 units: 1 unit; 6+ units: 20%	1 unit	Low-income	Moderate-income
Other Areas	15%	4 units	Moderate-income	
Larkspur	5-19 units: 15% 20+ units: 20%	5 units	50% Very Low-Income; 50% Low-Income	50% Low-Income; 50% Moderate-Income
Unincorporated Marin County	2+ units or lots: 20%	2 units or lots	Very Low-Income (50% AMI)	Low-Income (60% AMI)
San Rafael				
Current Policy	2-10 units: 10% 11-20 units: 15% 21+ units: 20%	2 units	50% Very Low-Income; 50% Low-Income	50% Low-Income; 50% Moderate-Income
New Policy (Approved by City Council 2/21/2021)				
Primary Requirement	2-15 units: 10% 16+ units: 5%	2 units	Low-Income	
Secondary Requirement (in addition to the primary requirement for 16+ unit projects)	16+ units: Additional 5% or 10%	16 units	5% additional set-aside: Low-Income; 10% additional set-aside: Moderate-Income	
Fairfax			No Policy	
San Anselmo			No Policy	

Source: Staff from Jurisdictions, 2020; Strategic Economics, 2021.

FIGURE 2: INCLUSIONARY REQUIREMENT ALTERNATIVE MEANS OF COMPLIANCE BY JURISDICTION

	Alternative Means of Compliance
Corte Madera	1-9 unit projects can pay in lieu fee. 10+ unit projects must incorporate units on-site.
Sausalito	
Commercial Districts	Applicants can propose land dedication or off-site units if on-site units are not possible, though there is no in-lieu fee option.
Other Areas	Applicants can propose land dedication or off-site units if on-site units are not possible, though there is no in-lieu fee option.
Larkspur	Land donation, transfer of inclusionary credits, second dwelling units; In-lieu fee available for 5-14 unit projects and for fractional units (Rental: $298,784, For-Sale: $473,784).
Unincorporated Marin County	2+ unit projects and subdivisions: In-lieu fee available for fractional units ($329,485 per unit).
San Rafael	
Former Policy	In-lieu fee for fractional units ($343,969 per unit).
New Policy (Approved by City Council 2/21/2021)	
Primary Requirement	None (must be on-site)
Secondary Requirement	In-lieu fee, off-site units located within 1/2 mile of project, or land donation.
Fairfax	No Policy
San Anselmo	No Policy

EFFECTIVENESS OF INCLUSIONARY POLICIES

The Consultant Team surveyed the five participating jurisdictions that currently have policies, including questions about the units produced by their policy, the means of production, and fee revenues collected. The Team also held meetings with market-rate developers, affordable housing providers, and other stakeholders (see Appendix A) to gain their perspective regarding the policies.

To summarize the results of the inclusionary policies, the Consultant Team summarized the number of units produced and the revenues generated from 2016 to 2020, shown in Figure 3. To provide more context on housing product, a summary of allocated and permitted units in the 2015-2023 Regional Housing Needs Assessment (RHNA) cycle is shown in Figure 4. The effectiveness of the inclusionary policies as a tool for affordable housing production is discussed below.

The jurisdictions in this study produced 58 affordable units through their inclusionary programs over a five-year period. In the last five years, the five jurisdictions with inclusionary policies produced a total of 41 affordable rental units, 17 affordable for-sale units, and approximately $4 million for affordable housing development. San Rafael constituted most of the activity, with all 41 rental units produced there, 13 for-sale units produced, and $3.6 million generated from a single development, the 81-unit Village at Loch Lomond Marina project.[1]

Inclusionary programs accounted for about 14 percent of affordable housing production in the seven participating jurisdictions. According to the RHNA progress report shown in Figure 4, the participating jurisdictions permitted a total 414 affordable units and 700 market-rate units from 2015 to 2020. This indicates that the majority of below-market rate housing development has been implemented through 100 percent affordable projects. The jurisdictions are on track to meet their market-rate (over 120% AMI) and low-income (80% AMI) housing allocations. However, they are less likely to meet the target for producing very-low income (50% AMI) and moderate-income (120%) units.

The inclusionary programs have not resulted in significant production of new affordable units in part because of the complexity of residential development in the county. Residential developers participating in this study cited many factors contributing to the complexity of housing development in Marin, including long and unpredictable approvals processes, opposition from some community members, lack of available sites, especially those that are zoned for multi-family housing, high land and construction costs, and inadequate or expensive infrastructure.

Inclusionary requirements can be a secondary factor impacting the viability of new development in Marin, mainly in instances where the requirement is poorly matched to market conditions. Market rate developers participating this study believed that new development projects can support inclusionary requirements for lower income households. However, some noted that the percentage requirement had been increased over time in many cities, without consideration of the relative market strengths of different locations in the county. For example, some jurisdictions have targeted very low-income households for for-sale projects, which requires a deeper subsidy than low- and moderate-income households.

The conversion of off-site units as an alternative means of compliance with the inclusionary requirement can fall short of the communities' goals for affordable housing. Allowing developers to convert existing units to deed-restricted affordable units can be problematic. First, unlike the

[1] The $3.6 million generated from the Loch Lomond Marina project were not from in-lieu fees but rather a "buyout" of a portion of the BMR requirement.

construction of new units, the conversion of existing units fails to expand the overall supply of housing in the county, trading a market rate unit for one below market rate unit rather than expanding the overall supply. Second, converted units are often of lower quality than new units, and may come with hidden costs, such as additional maintenance costs.

In Marin County, the current inclusionary requirement appears to encourage developers to reduce the scale of projects to allow for the payment of in-lieu fees rather than providing on-site units. The County's policy targets very low-income households: 50 percent of Area Median Income for rental developments and 60 percent for for-sale. These income targets are lower than other jurisdictions in the Bay Area. Projects with two units or more must provide units onsite, with the payment of in-lieu fees allowed only on fractional units. According to County staff, some development projects have reduced the scale of their projects to enable the payment of in-lieu fees rather than providing units on-site.

The variation in inclusionary requirements from jurisdiction to jurisdiction can create confusion and unnecessary complexity for developers. Because each jurisdiction in Marin County has set its inclusionary requirements in an uncoordinated way, the finer details of the many different policies can be difficult for developers to navigate. A more standardized approach that is closely tied to market conditions, rather than jurisdictional boundaries, would help to rationalize the process for developers.

FIGURE 3: AFFORDABLE UNITS PRODUCED AND FEE REVENUES COLLECTED, BY JURISDICTION, 2016-2020.

Jurisdiction	Rental Units	For-sale Units	Fee Revenues
Corte Madera	0	3	$379,478
Fairfax [a]	n/a	n/a	n/a
Larkspur	0	0	0
Unincorporated Marin County	0	1 [d]	$213,603
San Anselmo [b]	n/a	n/a	n/a
San Rafael	41	13	$3,600,000 [e]
Sausalito [c]	0	0	0
Total	**41**	**17**	**$4,193,081**

[a] Fairfax does not currently have an inclusionary program.
[b] San Anselmo does not currently have an inclusionary program.
[c] Sausalito adopted an inclusionary program in 2019.
[d] Produced through a shared agreement with Mill Valley.
[e] Revenues collected from a buy-out of six Below Market Rate units.
Source: Reported by each jurisdiction, 2016-2020.

FIGURE 4. RHNA FIFTH CYCLE ALLOCATION AND PERMITTED UNITS BY AFFORDABILITY LEVEL ACROSS JURISDICTIONS, AS OF 2020

	Corte Madera	Fairfax	Larkspur	San Anselmo	San Rafael	Sausalito	Unincorporated Marin County	Total
Very Low Income (50% AMI)								
RHNA	22	16	40	33	240	26	55	432
Permitted Units	16	13	6	15	5	12	26	93
% Complete	73%	81%	15%	45%	2%	46%	47%	22%
Low Income (80% AMI)								
RHNA	13	11	20	17	148	14	32	255
Permitted Units	13	60	11	21	79	20	27	231
% Complete	100%	545%	55%	124%	53%	143%	84%	91%
Moderate Income (120% AMI)								
RHNA	13	11	21	19	181	16	37	298
Permitted Units	8	4	9	23	12	6	28	90
% Complete	62%	36%	43%	121%	7%	38%	76%	30%
Market-Rate (>120% AMI)								
RHNA	24	23	51	37	438	23	61	657
Permitted Units	179	10	90	39	201	7	174	700
% Complete	746%	43%	176%	105%	46%	30%	285%	107%
Permitted Units Summary								
Total Affordable Units (<120% AMI)	37	77	26	59	96	38	81	414
Total Market Rate Units (>120% AMI)	179	10	90	39	201	7	174	700
Affordable Units as Share of Total	17%	89%	22%	60%	32%	84%	32%	37%

Source: HCD, 2020; Strategic Economics, 2021.

II. Best Practices for Inclusionary Policies

This section provides a discussion of key policy issues for jurisdictions to consider as they introduce a new inclusionary program or modify an existing program, and provides recommendations based on best practices. To identify best practices, the Consultant Team reviewed reports from the UC Berkeley Terner Center for Housing Innovation, Grounded Solutions Network, and the Lincoln Institute of Land Policy. To guide the recommendations for best practices, the Consultant Team first designated market area zones. Following that, the policy elements discussed in this section include:

- Considering market factors when setting inclusionary requirements
- The income groups targeted in inclusionary requirements
- The minimum applicable development size
- Setting in-lieu fees as an alternative to on-site or off-site units, and
- Other alternative means of compliance.

MARKET CONDITIONS

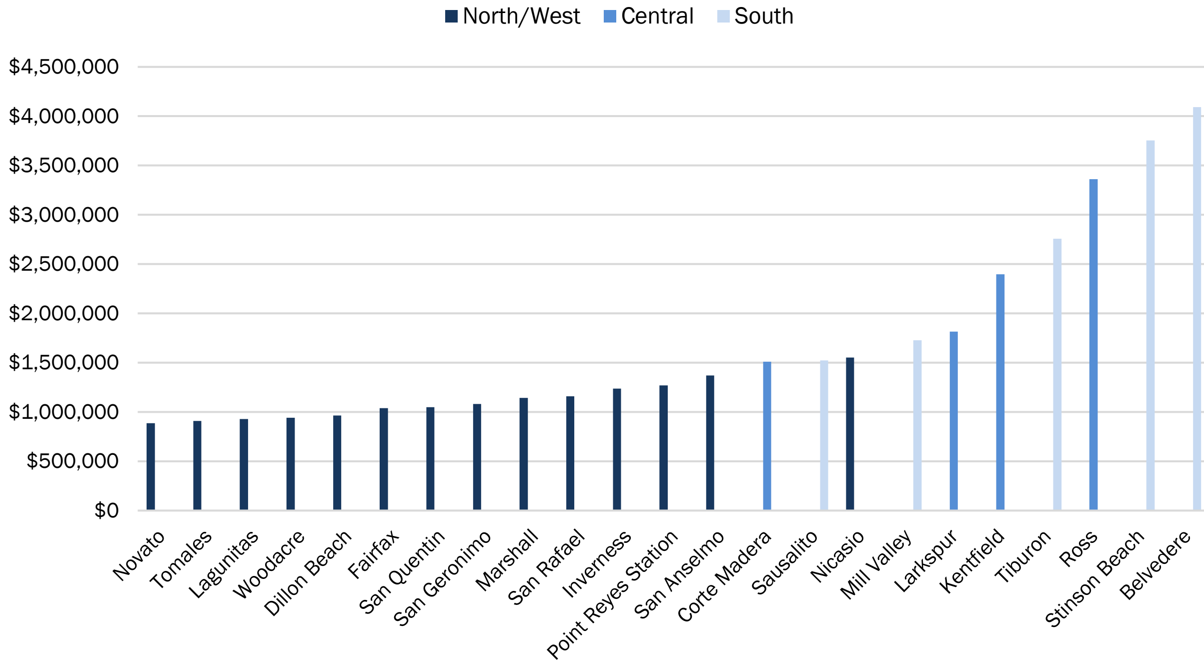
It is important to consider market conditions when setting an inclusionary housing requirement to ensure that the policy can be tailored to the unique context of each jurisdiction, and that the policy does not constrain the development of new housing. Jurisdictions that have stronger housing markets can establish higher inclusionary requirements than those with less established or weaker markets.

Based on Zillow home sale data and interviews with residential developers with experience working in Marin County (see Appendix A), the Consultant Team identified three market areas for for-sale housing across the participating jurisdictions in the County. Figures 5 and 6 show Zillow home value indices for both overall home sales and condominium sales.

As shown in Figure 5 , home values are highest in South Marin, which offer the best access to San Francisco via the Golden Gate Bridge and ferries. Home values are slightly lower in Central Marin, and drop in North/ West Marin areas, which are comparatively less accessible.

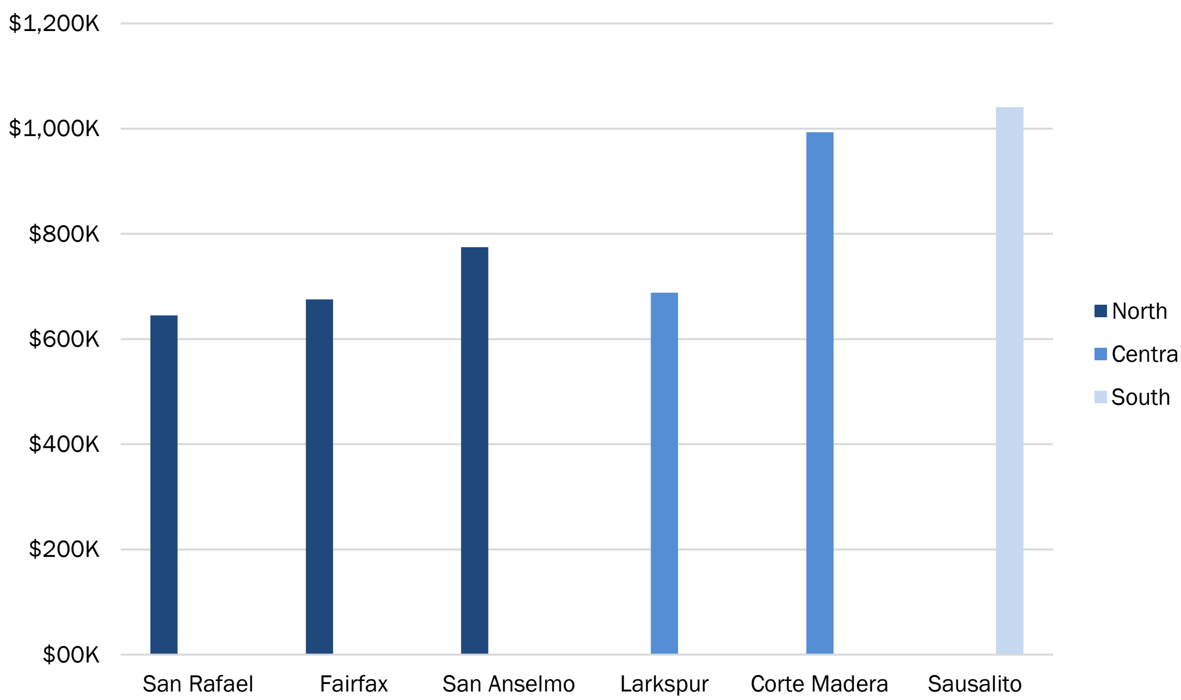
The market for rental housing is different from for-sale housing in Marin County. The rental housing market is strongest in the more urbanized areas that offer access to transportation infrastructure, jobs, and amenities. Most of the recent market-rate rental development activity has occurred in urban San Rafael. Tam Ridge is another significant rental project which was completed in Corte Madera in 2017.

FIGURE 5: ZILLOW HOME VALUE INDEX FOR MARIN COMMUNITIES



Source: Zillow, 2020; Strategic Economics, 2021.

FIGURE 6: ZILLOW HOME VALUE INDEX FOR CONDO/COOPS IN MARIN COMMUNITIES



Source: Zillow, 2020; Strategic Economics, 2021.

PERCENTAGE REQUIREMENTS

Figure 7 and Figure 8 illustrate the income targets and percentage requirements for the jurisdictions that currently have inclusionary programs. Figure 7 plots the current onsite requirements for rental units, with the percent set-aside on the x-axis and average Area Median Income[2] targeted by the policy on the y-axis. Figure 8 shows the same information for for-sale units. Policies that appear toward the lower right of the plots have a higher percentage requirement and deeper affordability, while those toward the upper left have a relatively lower percentage requirement and less affordability.

Five of the seven participating jurisdictions already have inclusionary policies in place requiring affordable units onsite. The percentage of units varies by jurisdiction, ranging from 10 percent (San Rafael) to 25 percent (Corte Madera). Most of the jurisdictions have similar percentage requirements for for-sale and rental development, but the income targeted is typically lower for rental than for for-sale housing.

The percentage of affordable housing required in a project should be set at an economically feasible level so that the inclusionary requirement does not create an impediment to housing development.[3] According to market-rate housing developers, the market context for inclusionary requirements is particularly important in Marin. Development projects in the southern and central portions of the county, such as Corte Madera, Larkspur, Sausalito and parts of Unincorporated Marin, can more feasibly accommodate a higher percentage of inclusionary and/or a deeper level of affordability, compared to communities located in northern and western portions of the county.

Setting a high inclusionary requirement could be prohibitive for new rental projects in Marin County. San Rafael recently relaxed its inclusionary requirement to encourage new development, despite being the most active rental market in the county. Because rental developments tend to serve a lower income market segment than for-sale developments, the inclusionary requirement for rentals is sometimes slightly lower than that for for-sale developments. Local jurisdictions can make up that gap by providing zoning incentives to reduce development costs for rental projects.

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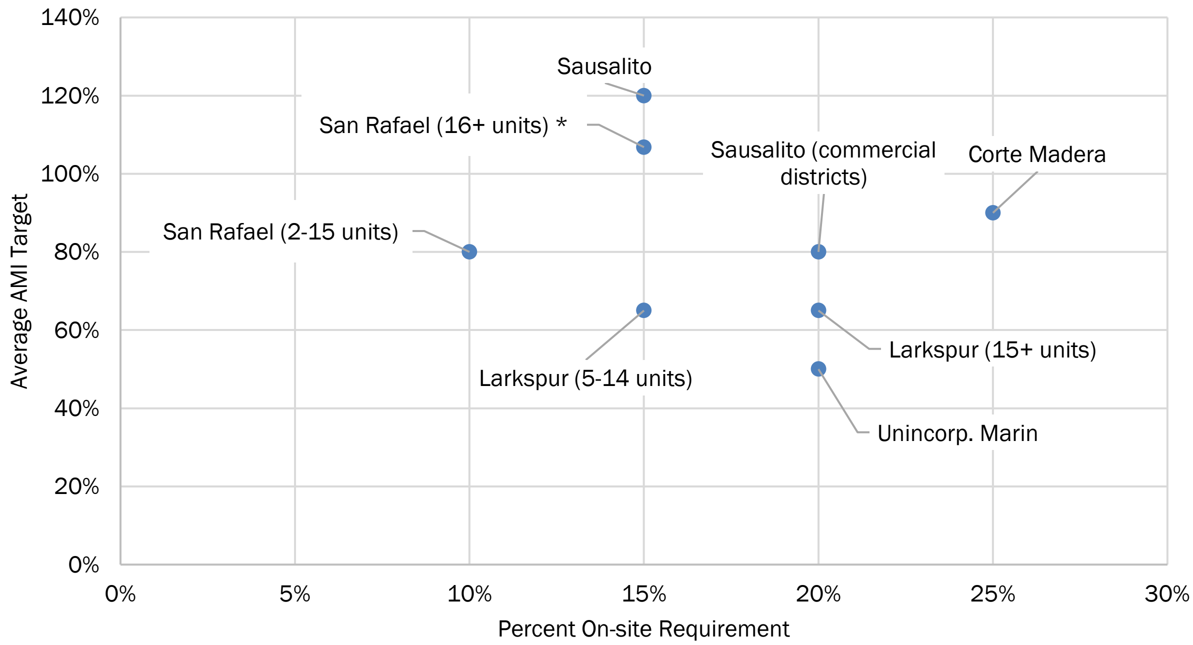
[2] For example, San Rafael requires at least 50 percent of its BMR units to be targeted to very low-income households (maximum income: 50 percent of AMI) and the remainder to be targeted to low-income households (maximum income: 80 percent of AMI). Therefore, the average AMI target for San Rafael is .50*.50 + .50*.80 = 65 percent of AMI.

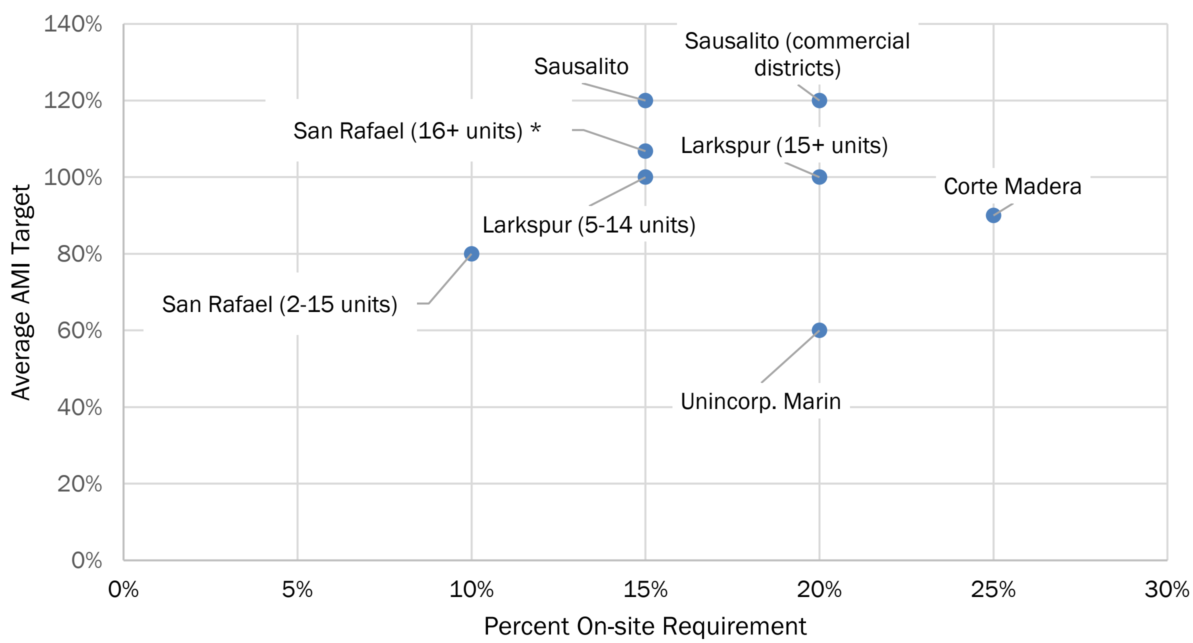
[3] AB1505, also known as the "Palmer Fix" permits California Department of Housing and Community Development (HCD) to review inclusionary zoning ordinances adopted or amended after September 15, 2017 if it requires more than 15% of the units to be affordable to lower income households and if the locality has failed to meet 75% of its share of the above moderate RHNA. HCD can request localities to provide an "economic feasibility study" to demonstrate that the higher inclusionary requirement will not impede development activity.

FIGURE 7: AVERAGE AMI TARGETS AND PERCENT ONSITE REQUIREMENT FOR RENTAL DEVELOPMENTS



* Assumes the developer selects the 10% / moderate-income option for the secondary requirement.
Source: Participating jurisdictions, 2020; Strategic Economics, 2021.

FIGURE 8: AVERAGE AMI TARGETS AND PERCENT SET-ASIDE FOR FOR-SALE DEVELOPMENTS



* Assumes the developer selects the 10% / moderate-income option for the secondary requirement.
Source: Participating jurisdictions, 2020; Strategic Economics, 2021.

INCOME TARGETS

There is a wide range in the income targets for inclusionary programs among the participating jurisdictions, as shown in Figures 7 and 8. It is common practice for jurisdictions to target lower-income households for renter housing than for ownership housing. This is because it is generally easier for low- and moderate-income households to meet typical lending requirements.

Larkspur, Sausalito, and Unincorporated Marin County target lower-income households for rental units compared to for-sale units. San Rafael and Corte Madera target moderate-income for both rental and for-sale housing.

RENTAL

The income targets for rental units among the jurisdictions vary widely (Figure 7). Unincorporated Marin targets very low-income households, while Larkspur targets a mix of very low- and low-income households. The other jurisdictions have higher income targets overall, including targeting to some moderate-income households.

Currently, the most active rental market in Marin is San Rafael, which, of the jurisdictions in this study, produced the only affordable rental units in the last five years (Figure 3). These units were produced under the city's previous policy, which targeted low- and very low-income households. San Rafael has relaxed this requirement with its new ordinance, which is designed to further promote new development. Among other changes, the new ordinance eliminates targeting for very low-income households.

FOR-SALE

In comparison to rentals, the income targets for for-sale development are overall more uniform across jurisdictions. The targeted income groups tend to consist of a mix of low- and moderate-income households.

The exception to this pattern is Unincorporated Marin County, which requires a significantly deeper level of affordability (60 percent of AMI) on for-sale projects. This policy can pose a challenge in two ways. First, it can make the County uncompetitive for development with its neighbors. Further, the lower-then-average income targets in Marin County's policy was identified by developers as being a financial burden on projects such that many are not finally feasible. As mentioned in Section I, County staff reports that developers tend to reduce the size of their projects in order to build fewer onsite BMR units than otherwise would have been required, preferring to pay the in-lieu fee on fractional units to the greatest extent possible.

UNIT THRESHOLDS

One important element of an inclusionary policy is the minimum size of development (the threshold number of dwelling units) for which the policy will apply. Because smaller scale projects are often more complex and less efficient than larger projects, many inclusionary programs around the country have exemptions or lower requirements on small projects. According to Grounded Solutions Network, California jurisdictions typically set the minimum threshold for an inclusionary requirement at between two to five units.[4] This is consistent with the policies of the jurisdictions in this study, where the the minimum threshold ranges between one unit and five units.

Because a significant share of new development projects in Marin County's jurisdictions are quite small, it is it is important that all projects be required to provide affordable units. However, for smaller projects that have more challenging development feasibility, the percentage set-aside required could be lower, or the income group targeted could be set higher. In San Rafael projects with 5 to 15 units have a set-aside requirement of 10 percent, compared to 15 percent for larger projects. Similarly, Larkspur's ordinance requires 15 percent affordable units for projects with less than 15 units, compared to 20 percent for larger projects. San Francisco has a lower percentage requirement on projects between 10 to 24 units of 12 percent, compared to approximately 21 percent for larger projects.

SETTING IN-LIEU FEES

A jurisdiction's approach to setting in-lieu fees should consider a number of factors. The first consideration is to compare the in-lieu fee option with the provision of onsite units – which of these options does the jurisdiction wish to encourage? In many California communities, collecting in-lieu fees and leveraging funding from other sources can allow them to build 100 percent affordable housing projects for extremely-low, very-low, and low-income households. However, this approach requires administrative capacity on behalf of city and county staff, capacity from local affordable housing developers, and access to other funding sources. It can also take a significant amount of time to acquire sites and secure funding to build 100 percent affordable projects.

For many of the above reasons, most of the jurisdictions participating in this study would prefer to incentivize on-site production rather than off-site units. Inclusionary housing is an important tool to promote mixed-income housing and to help correct historical patterns of economic and racial segregation. Setting the in-lieu fee at the maximum level can encourage more developers to provide units onsite. When the in-lieu fee option is available, developers are more likely to pay the fee when constructing high value or luxury units, because the revenue sacrificed from building units onsite is higher. (The potential value of luxury units is high, which means the developer must forgo more revenue for each unit that is designated affordable.)

Another consideration for in-lieu fees is the basis of the fee. Is the fee charged on the basis of dwelling units or square feet of residential area? While communities in Marin generally charge on a per unit basis, charging on the fee on a per-square-foot basis can encourage the development of smaller units, like studios and one-bedrooms. As an example, San Francisco's affordable housing in-lieu fee is charged on a per-square-foot basis.

It is recommended that fees be implemented with a schedule for annual adjustments. As economic factors, such as construction costs, change over time, the affordability gap will also change. Fees should be adjusted based on a regularly published cost index.

Further considerations for setting in-lieu fees on the basis of the affordability gap analysis are examined in Section IV.

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[4] Jacobus, Rick. "Inclusionary Housing: Creating and Maintaining Equitable Communities," Lincoln Institute of Land Policy, 2015.

ALTERNATIVE MEANS OF COMPLIANCE

Because circumstances surrounding each project are different, it is important for an inclusionary program to provide alternative ways of meeting the inclusionary requirement other than with the provision of onsite units. Marin County has successfully used alternative means to produce new affordable units and raise revenue for housing; these alternative means include the provision of offsite units, land dedication, and partnerships with affordable housing developers. The option to construct units offsite is typically met with a higher percentage than what would be required onsite.

Market rate developers stress that flexibility in the inclusionary policy is a key determinant of the production of new housing. For some projects, the dedication of land to a jurisdiction or an affordable developer can result in the construction of a greater number of units for lower income households than the provision of on-site inclusionary units.

As mentioned in Section I, some developers may propose to fulfill an inclusionary requirement, not through the construction of new units offsite, but through the conversion of offsite market rate units to deed-restricted affordable units. However, this approach has some disadvantages. First, it does not result in net new housing units. Second, the off-site unit does not create a mixed-income development project. Finally, the conversion of units can sometimes result in affordable housing units that are of lower quality than new construction. If the off-site provision of units is offered as a means of compliance, it is important for the jurisdiction to ensure that the offsite units are of equivalent quality and within close proximity to the market-rate development project. Other best practices are to require that the value of the off-site contribution is equivalent or greater than the value of the in-lieu fees.

BEST PRACTICES FOR SMALL LOT SUBDIVISIONS

Recent state legislation (AB 1315 [2019-2020]) sets forth rules for small lot subdivisions to encourage affordable housing in areas zoned for multifamily development. The law allows developers to subdivide parcels into smaller lots for the construction of small, individual units with limited parking. For the purposes of applying an inclusionary policy, it is advisable to treat a small lot subdivision as if it were a new construction project of the same number of units.

As there may be a significant period of time between the subdivision and when new construction occurs, jurisdictions should clarify for developers the point in time when the inclusionary policy is applied and, for example, any applicable in-lieu fees are paid. Ordinarily, it is the developer entitling the construction of the residential units, and not the developer performing the land division, who will be responsible for fulfilling whatever inclusionary policy is in effect at that time, and paying any applicable fees.

III. Calculation of In-Lieu Fee

Inclusionary zoning requires that new developments provide affordable housing along with market-rate housing units, either on-site or off-site, or comply with alternative measures such as payment of fees “in-lieu” of providing affordable units. The in-lieu fee is calculated based on the housing affordability gap – the difference between what households at various income levels can pay for housing and the cost of developing market rate housing. If this is for-sale housing, then the gap is based on the difference between annual mortgage costs and affordable monthly housing payments, and for rental housing, it is the difference between market rate rents and affordable rents. Once the total gap is calculated, the actual fee that is adopted depends on financial feasibility of the costs of the fee on prototypical residential developments.

For the purposes of this study, the in-lieu fees were calculated for Marin County and participating jurisdictions for three development types:

- For-sale single-family subdivisions
- For-sale condominium townhomes
- Rental apartments

While the study presents the total affordability gap, the actual fee that is adopted in each jurisdiction depends on policy considerations, which are outlined in Section IV of this report.

METHODOLOGY

The affordability gap is defined as the difference between what very low-, low- and moderate-income households can afford to pay for housing and the cost of developing new housing. Because it measures this shortfall that must be made up by a developer offering Below Market Rate units, the affordability gap is useful for setting in-lieu fees as an alternative to producing units directly through the inclusionary program.

The following steps illustrate the methodology used for calculating the affordability gap:

1. Estimate affordable rents and housing prices for households in target groups;
2. Estimate development costs of building new housing units, based on current cost and market data;
3. Calculate the difference between what renters and homeowners can afford to pay for housing, and the cost of developing those rental and for-sale units

Because California Department of Housing and Community Development (HCD) and the U.S. Department of Housing and Urban Development (HUD) define the ability to pay for housing at the county level, the affordability gap is calculated on the same income categories for the entire county. The calculated in-lieu fees are valid for all of the jurisdictions participating in this study.

RESIDENTIAL PROTOTYPES

The Consultant Team established three housing prototypes that represent the types of development likely to occur in Marin County. The prototypes are informed by recently built and proposed development projects in Marin as well as conversations with developers with experience in Marin County. Example projects that represent the types of development likely to occur in Marin County are shown in Figures 9 and 10. All five projects are in either San Rafael or Corte Madera, which have attracted most of the recent development activity among the participating jurisdictions.

FIGURE 9. MARIN PROJECTS THAT INFORMED PROTOTYPES 1 AND 2 (FOR-SALE PROTOTYPES)

Project	The Strand	Enclave	350 Merrydale Rd.
Building Type	Detached single-family and townhomes	Townhomes	Townhomes, plus flats
Jurisdiction	San Rafael	Corte Madera	San Rafael
Status	Built in 2015	Built in 2019	Proposed
Units	34 detached, 42 townhomes	16 townhomes	41 townhomes, 4 flats
Site Size (acres)	8.5 (approximate)	1.3	2.28
Units Per Acre	9	12	20
Unit Size Sq. Ft. (Approximate)	Townhome: 1,650-1,900 Sq. Ft; Detached: 1,950-3,300 Sq. Ft.	2,020 Sq. Ft.	Townhome: 1,450-2,100 Sq. Ft.; Flat: 800 Sq. Ft.
Parking	2 car garage per unit plus visitor surface parking	2 car garage per unit plus visitor surface parking	2 car garage per townhome unit; 1 car garage per flat unit; Surface visitor parking.

Source: Costar, 2021; Various marketing materials for, and articles about projects; Interviews with developers; Strategic Economics, 2021.

FIGURE 10. MARIN PROJECTS THAT INFORMED PROTOTYPE 3 (RENTAL PROTOTYPE)

Project	Tam Ridge	703 Third St.
Building Type	Wood-frame apartment flats over podium, plus townhomes	Wood-frame apartment flats over podium, using density bonus, near SMART station
Jurisdiction	Corte Madera	San Rafael
Status	Built in 2017	Proposed
Units	154 flats, 25 townhomes	120 flats
Site Size (acres)	4.5	0.63
Unit Density	40	190
Unit Size Sq. Ft. Range (Approximate)	Flats: 750-1,100 Sq. Ft.; Townhome: 1,300 Sq. Ft.	450-900 Sq. Ft.
Parking	1.6 spaces per unit (tenant parking in podium garage plus visitor surface parking)	1 space per unit in podium (incorporates mechanical lifts)

Source: Costar, 2021; Various marketing materials for, and articles about projects; Interviews with developers; Strategic Economics, 2021.

The prototypes are generally based on developments built recently or proposed. Some communities in Marin typically see much smaller projects and are unlikely to see new projects of this scale. However, the per-unit cost of development is unlikely to be significantly different even for smaller and lower density projects, because the reductions in construction costs would be counterbalanced with the higher cost of land per unit.

The prototypes developed for the analysis are summarized below and further details are shown in Figure 11.

Prototype 1: Single-Family Subdivision

The single-family subdivision prototype has 14 detached for-sale units at a density of seven units per acre, making it typical for a "small-lot" subdivision. The units, which are two stories, are a mix of three and four-bedrooms and average 2,200 square feet.

Prototype 2: Condominium Townhome

The condominium townhome prototype includes 30 attached for-sale units at a density of 15 units per acre. Two-thirds of the units have three bedrooms while one-third have four bedrooms. The units are three stories with tuck-under garages on the ground level, and the average unit size is 1,800 square feet.

Prototype 3: Rental Apartments

The rental apartment prototype is a 100-unit apartment building. It has a density of 50 units per acre and is five stories. The building is a "Five-over-one" construction type, which means the first floor is a "Type I" concrete podium to accommodate parking, with four stories of "Type V" wood-frame construction for the residential area above. Typical of rental projects, the units in this prototype are a mix of studios, one-bedrooms, and two-bedrooms. The average unit size is 800 square feet.

FIGURE 11. SUMMARY OF PROTOTYPES

	Prototype 1: Single-Family Subdivision	Prototype 2: Condominium Townhome	Prototype 3: Rental Apartments
Tenure	For-Sale	For-Sale	Rental
Unit Mix	3, 4 bedrooms	3, 4 bedrooms	Studios, 1, 2 bedrooms
Construction Type	Wood-frame	Wood-frame	Type V over 1
Residential Stories	2	3	5
Number of Units	14	30	100
Parcel Size (Acres)	2	2	2
Parcel Size (Sq. Ft.)	87,120	87,120	87,120
Dwelling Units Per Acre	7	15	50
Unit Mix	7 3-Bedrooms; 7 4-Bedrooms	20 3-Bedrooms; 10 4-Bedrooms	10 Studios; 50 1-Bedrooms; 40 2-Bedrooms
Average Unit Size	2,200	1,800	800
Net Residential Sq. Ft.	30,800	54,000	80,000
Efficiency Ratio (a)	100%	100%	90%
Gross Residential Sq. Ft.	30,800	54,000	88,889
Parking Type	2-car garage plus surface	2-car garage plus surface	Podium
Parking Ratio (Per Unit) (b)	2.50	2.25	1.25
Total Parking Spaces	35	68	125
Garage Parking Sq. Ft. (c)	9,800	21,000	43,750
Floor-Area Ratio (Residential Only)	0.35	0.62	1.02
Floor-Area Ratio (Including Structured Parking)	0.47	0.86	1.52

Source: Strategic Economics, 2021.

Notes:
(a) Sq. Ft. associated with residential units divided by total interior square feet of building, (excludes space associated with parking).
(b) The urban design specifications of these three prototypes, such as their parking ratios, may vary from the building typologies suggested in Opticos' Objective Design and Development Standards study, currently in process. The parking ratios, as well as other metrics displayed here, are market-based, informed by conversation with residential developers familiar with Marin.
(c) Based on "350 sq. ft. per parking space" standard industry assumption, which incorporates circulation.

ESTIMATING AFFORDABLE RENTS AND HOUSING PRICES

Affordable rents and housing prices were identified based on resources from public agencies, such as HUD and HCD, which set income levels and maximum housing costs for federal and state-funded affordable housing programs. The Marin Housing Authority provided the specific approach for calculating affordable sales prices, which currently vary across jurisdictions because of the different income levels that jurisdictions target as a part of their inclusionary programs.

The Consultant Team identified the affordability targets that would be tested in collaboration with the County of Marin, set at a level typical of existing inclusionary policies among participating jurisdictions. The affordable targets are shown below in Figure 12. Consistent with best practices from other inclusionary housing programs, the affordability gap for both rental and for-sale units was calculated for very low-, low-, and moderate-income households,.[5] In consultation with the client, the Consultant Team identified specific AMI levels to reflect the average incomes of households that these units would serve, with for-sale units typically targeting households with incomes that are slightly higher than rental units within the income categories. The income levels tested for the for-sale prototypes are generally higher than for the rental prototypes because for-sale affordable housing programs tend to serve households at the higher end of the income target ranges.

FIGURE 12. HOUSEHOLD INCOME TARGETS FOR AFFORDABLE UNITS BY TENURE

	For-sale Housing	Rental Housing
Very Low-income	50% AMI	50% AMI
Low-income	70% AMI	65% AMI
Moderate Income	110% AMI	90% AMI

Source: County of Marin; Strategic Economics, 2021.

Figure 13 below shows the maximum affordable monthly rents for rental housing. The household sizes shown are for one, two, and three persons per household, reflecting the typical occupancy of studio, one-bedroom, and two-bedroom units, respectively, in Prototype 3.

Based on HCD guidelines, the affordable rent is calculated as 30 percent of a household’s gross monthly income, minus a deduction for utilities. The utility deduction includes costs that are usually passed onto the tenant, such as heating, water heating, cooking, and electricity. Natural gas is assumed for heating and water heating. (Water, sewer, and trash removal costs are typically covered by the property owner and excluded from the utility deduction.)

[5] Households that fall between 30-50% AMI are considered very low-income; households that fall within 50-80% AMI are considered Low-income; households that fall between 80-120% AMI are considered moderate income.

FIGURE 13. MAXIMUM AFFORDABLE RENT ASSUMPTIONS FOR VERY LOW, LOW, AND MODERATE INCOME HOUSEHOLDS

Very Low-income (50%)	Household Size		
	1	2	3
Maximum Annual Household Income	$50,075	$57,250	$64,400
Maximum Monthly Housing Cost (a)	$1,252	$1,431	$1,610
	Unit Type		
	Studio	1-BR	2-BR
Maximum Monthly Housing Cost (a)	$1,252	$1,431	$1,610
Utility Allowance (b)	$43	$52	$71
Maximum Rent	$1,209	$1,379	$1,539

Low-income (65%)	Household Size		
	1	2	3
Maximum Annual Household Income	$65,098	$74,425	$83,720
Maximum Monthly Housing Cost (a)	$1,627	$1,861	$2,093
	Unit Type		
	Studio	1-BR	2-BR
Maximum Monthly Housing Cost (b)	$1,627	$1,861	$2,093
Utility Allowance (c)	$43	$52	$71
Maximum Rent	$1,584	$1,809	$2,022

Moderate Income (90%)	Household Size		
	1	2	3
Maximum Annual Household Income	$90,135	$103,050	$115,920
Maximum Monthly Housing Cost (c)	$2,253	$2,576	$2,898
	Unit Type		
	Studio	1-BR	2-BR
Maximum Monthly Housing Cost (a)	$2,253	$2,576	$2,898
Utility Allowance (b)	$43	$52	$71
Maximum Rent	$2,210	$2,524	$2,827

Sources: Marin Housing Authority, 2020; U.S. Department of Housing and Urban Development, 2020; Strategic Economics, 2020.

Notes:

(a) 30 percent of maximum monthly household income.

(b) The maximum monthly cost for each unit type is associated with households that have one more person than bedroom. (Ex: Maximum costs for studios are associated with affordability for one-person households; One-bedroom costs are associated with 2-person households; Two-bedroom costs are associated with 3-person households).

(c) Utilities for rentals include an allowance for cooking (natural gas), heating (natural gas), water heating (natural gas), and "other electric" utility usage. Assumes water, sewer, and trash charges are included in the rent.

Figures 14 and 15 shows the calculations of affordable sales prices for for-sale housing. The calculations are based on the following assumptions:

- Based on the anticipated households that would occupy the 3- and 4-bedroom units in the two for-sale prototypes (prototypes 1 and 2), it is assumed that, on average, 6-person households would occupy 4-bedroom units, while an even mix of 4- and 5-person households would occupy 3-bedroom units.

- Based on the Marin Housing Authority's approach for calculating affordable sales prices, homeowners were assumed to pay no more than 33 percent of their gross monthly income on housing costs.
- The maximum affordable sales price is determined by the total monthly mortgage payment that a homeowner could afford, which incorporates standard assumptions related to the mortgage terms and other monthly housing costs associated with homeownership.
  - The mortgage is assumed to be 30-year fixed rate, with an interest rate of 3.8 percent, which is a typical rate at the time of research (December 2020). The owner is assumed to put down a 5 percent down payment, which is standard for conventional and CalFHA loans.
  - Other monthly housing costs include homeowners' association dues, property taxes, homeowners' insurance, interior property insurance, and premiums for private mortgage insurance required on home purchases with a down payment of less than 20 percent. Note there is no utility deduction, in accordance with MHA's approach.
- Other monthly housing costs overall are assumed to be slightly greater for condominium housing types than for single-family detached housing types, which is driven by different assumptions on monthly homeowner's association costs. The homeowner's association costs are expected to be higher on a per-unit basis for condominium units than for detached single-family units, which decreases the household budget available for a mortgage. (On the other hand, detached single-family homeowners are responsible for more costs that are not included in Figure 14.)

FIGURE 14. MAXIMUM AFFORDABLE SALES PRICES FOR SINGLE-FAMILY DETACHED SUBDIVISION (PROTOTYPE 1)

Household Size (Persons per HH)	4.5	6
Very Low Income (50% AMI)		
Annual Household Income at 50% AMI	$74,413	$83,000
Maximum Monthly Housing Cost (a)	$2,046	$2,283
Monthly Deductions (b)	$1,074	$1,218
HOA Dues (c)	$500	$600
Property Taxes and Insurance (d)	$574	$618
Monthly Income Available for Mortgage Payment (e)	$973	$1,064
Maximum Mortgage Amount (f)	$208,728	$228,378
Maximum Affordable Sales Price (g)	$219,714	$240,398
Low Income (70%)		
Annual Household Income at 70% AMI	$104,178	$116,200
Maximum Monthly Housing Cost (a)	$2,865	$3,196
Monthly Deductions (b)	$1,342	$1,518
HOA Dues (c)	$500	$600
Property Taxes and Insurance (d)	$842	$918
Monthly Income Available for Mortgage Payment (e)	$1,523	$1,678
Maximum Mortgage Amount (f)	$326,872	$360,209
Maximum Affordable Sales Price (g)	$344,076	$379,167
Moderate Income (110%)		
Annual Household Income at 110% AMI	$163,708	$182,600
Maximum Monthly Housing Cost (a)	$4,502	$5,022
Monthly Deductions (b)	$1,892	$2,131
HOA Dues (c)	$500	$600
Property Taxes and Insurance (d)	$1,392	$1,531
Monthly Income Available for Mortgage Payment (e)	$2,610	$2,891
Maximum Mortgage Amount (f)	$560,102	$620,390
Maximum Affordable Sales Price (g)	$589,581	$653,042

Source: Strategic Economics, 2021.

Notes:

(a) 33 percent of maximum monthly household income.

(b) Unlike for rentals, monthly deductions for for-sale units do not include utility costs.

(c) Homeowners Association dues are assuming to average $0.25 per square foot.

(d) Assumes annual effective property tax rate of 1.50% percent of sales price, after exemptions; annual private mortgage insurance premium rate of 0.85 percent of mortgage amount.

(e) Maximum monthly housing cost minus deductions.

(f) Assumes 3.8 percent interest rate and 30-year loan term. Interest rate is based on correspondence with Marin Housing Authority.

(g) Assumes 5 percent down payment (95 percent loan-to-value ratio).

FIGURE 15. MAXIMUM AFFORDABLE SALES PRICES FOR CONDOMINIUM TOWNHOME (PROTOTYPE 2)

Household Size (Persons per HH)	4.5	6
Very Low Income (50% AMI)		
Annual Household Income at 50% AMI	$74,413	$83,000
Maximum Monthly Housing Cost (a)	$2,046	$2,283
Monthly Deductions (b)		
HOA Dues (c)	$613	$665
Property Taxes and Insurance (d)	$537	$597
Monthly Income Available for Mortgage Payment (e)	$897	$1,020
Maximum Mortgage Amount (f)	$192,493	$218,997
Maximum Affordable Sales Price (g)	$202,624	$230,523
Low Income (70%)		
Annual Household Income at 70% AMI	$104,178	$116,200
Maximum Monthly Housing Cost (a)	$2,865	$3,196
Monthly Deductions (b)	$1,418	$1,561
HOA Dues (c)	$613	$665
Property Taxes and Insurance (d)	$805	$896
Monthly Income Available for Mortgage Payment (e)	$1,447	$1,635
Maximum Mortgage Amount (f)	$310,637	$350,829
Maximum Affordable Sales Price (g)	$326,986	$369,293
Moderate Income (110%)		
Annual Household Income at 110% AMI	$163,708	$182,600
Maximum Monthly Housing Cost (a)	$4,502	$5,022
Monthly Deductions (b)	$1,967	$2,175
HOA Dues (c)	$613	$665
Property Taxes and Insurance (d)	$1,355	$1,510
Monthly Income Available for Mortgage Payment (e)	$2,535	$2,847
Maximum Mortgage Amount (f)	$543,953	$611,059
Maximum Affordable Sales Price (g)	$572,582	$643,220

Source: Strategic Economics, 2020.

Notes:

(a) 33 percent of maximum monthly household income.

(b) Unlike for rentals, monthly deductions for for-sale units do not include utility costs.

(c) Homeowners Association dues are assuming to average $0.35 per square foot.

(d) Assumes annual effective property tax rate of 1.50% percent of sales price, after exemptions; annual private mortgage insurance premium rate of 0.85 percent of mortgage amount.

(e) Maximum monthly housing cost minus deductions.

(f) Assumes 3.8 percent interest rate and 30-year loan term. Interest rate is based on correspondence with Marin Housing Authority.

(g) Assumes 5 percent down payment (95 percent loan-to-value ratio).

MAXIMUM AFFORDABLE RENTS AND SALES PRICES

Figures 16 and 17 provide summaries for the maximum affordable rents and sales prices respectively for the various prototypes that were tested.

FIGURE 16. SUMMARY OF MAXIMUM AFFORDABLE RENTS

Income Level	Studio	1-BR	2-BR
Very Low-income (50%)	$1,209	$1,379	$1,539
Low-income (65%)	$1,584	$1,809	$2,022
Moderate Income (90%)	$2,210	$2,524	$2,827

Source: Strategic Economics, 2021.

FIGURE 17. SUMMARY OF MAXIMUM AFFORDABLE SALES PRICES

	Single-Family Subdivision		Condominium Townhome	
	3-BR	4-BR	3-BR	4-BR
Very Low Income (50% AMI)	$219,714	$240,398	$202,624	$230,523
Low Income (70%)	$344,076	$379,167	$326,986	$369,293
Moderate Income (110%)	$589,581	$653,042	$572,582	$643,220

Source: Strategic Economics, 2021.

ESTIMATING DEVELOPMENT COSTS

The second step in the affordability gap analysis is to estimate development costs for the three prototypes. Development costs include land costs, direct or "hard" construction costs, indirect or "soft" costs, as well as financing costs, a developer fee, and a contingency for overruns.

Because multi-unit residential projects are relatively rare in Marin, the Consultant Team collected available data on the few recent comparable development projects and land sales, and supplemented the data with feedback from local developers (see Appendix A), other available studies of costs in the Bay Area, and past experience with pro forma studies.

The development cost assumptions are shown below in Figure 18, and a chart that summarizes the breakdown of overall development costs for the prototypes is shown in Figure 19.

The development costs for for-sale housing are based on interviews with developers and homebuilders experienced with single-family and townhome development projects in Marin. This analysis estimated that total development costs for the single-family subdivision were $355 per net residential square foot while the costs for the condominium townhome were $373 per net residential square foot.

Because there are limited examples of recent multifamily development in Marin, the Consultant Team relied on a variety of sources to identify the multifamily cost assumptions. They are partly based on a pro forma for a proposed Type V development in Marin, as well as an interview with a multifamily developer. The team also relied on cost data and recently completed feasibility studies for similar rental apartment developments in the Bay Area. The analysis estimated that the total development cost for Prototype 3 was $705 per net square foot.

The remainder of this section explains the costs assumptions in more detail.

FIGURE 18. SUMMARY OF DEVELOPMENT COST ASSUMPTIONS

	Single Family Subdivision	Condominium Townhome	Rental Apartments
Land Cost (a)			
Per Land Sq. Ft.	$56	$69	$86
Per Unit	$350,000	$200,000	$75,000
Hard Costs			
Site Costs per Land Sq. Ft. (b)	$15	$35	$35
Construction Costs per Sq. Ft. of Residential Area	$110	$150	$350
Parking Cost per Space (c)	n/a	n/a	$32,500
Other Costs (Displayed as % of Hard Cost)			
Soft Costs (d)	12%	12%	12%
Contingency	5%	5%	5%
Developer Overhead	4%	4%	4%
Financing Costs			
Amount Financed (% of Hard and Soft Costs)	65%	65%	70%
Construction Loan Fee	1.5%	1.5%	1.5%
Term (Months)	18	18	24
Construction Interest Rate	4.5%	4.5%	5.0%

Source: Developer Interviews, 2021; Project Pro Formas, 2021; Strategic Economics, 2021.
Notes:
(a) Entitled land
(b) Assumes relatively flat site

(c) Parking costs for for-sale prototypes are incorporated into the construction cost. Cost for rental prototype refers to one level of podium
(d) Includes architectural, engineering, and consulting fees, as well as taxes, legal, insurance, accounting, and other costs.

FIGURE 19. TOTAL DEVELOPMENT COSTS BY PROTOTYPE

Cost Category	Single Family Subdivision	Condominium Townhome	Rental Apartments
Total Project			
Land Cost	$4,900,000	$6,000,000	$7,500,000
Hard Costs	$4,694,800	$11,149,200	$38,222,811
Soft Costs	$1,344,396	$3,001,696	$10,660,521
Development Costs	**$10,939,196**	**$20,150,896**	**$56,383,332**
Per Unit			
Land Cost	$350,000	$200,000	$75,000
Hard Costs	$335,343	$371,640	$382,228
Soft Costs	$96,028	$100,057	$106,605
Development Costs	**$781,371**	**$671,697**	**$563,833**
Per Net Residential Sq. Ft.			
Land Cost	$159	$111	$94
Hard Cost	$152	$206	$478
Soft Costs	$44	$56	$133
Development Costs	**$355**	**$373**	**$705**

Source: Strategic Economics, 2021.

The following subsections provide further details on how the cost assumptions were identified.

LAND COST

Land costs typically vary widely, depending on factors such as location, zoning, and the amount of site work required to prepare the land for development. Because the price of land is so strongly tied to what can be built upon it, land costs are characterized in this study as the cost per dwelling unit of development. Recent comparable sales that informed land cost for the three prototypes are shown below in Figures 20-22.

- There is only one relevant recent sale for an entitled single-family subdivision. The site is in Mill Valley, which reportedly has higher land costs than most other Marin jurisdictions.
- A range of $180,000 per unit to approximately $300,000 per unit was identified for the condominium townhome prototype based on two recent sales, which reflect the high end (Mill Valley) and the low end (Novato) of the Marin County market.
- For the rental apartment prototype, two sales for sites entitled for multifamily development had land costs of $75,000 per unit, a number that was corroborated by a developer with experienced in multifamily development in Marin.

Based on these comparable examples and feedback from developers, the land cost assumptions were set at $350,000 per unit for Prototype 1, $200,000 per unit for Prototype 2, and $75,000 per unit for Prototype 3.

FIGURE 20. RECENT LAND SALE FOR SITE ZONED FOR SINGLE-FAMILY SUBDIVISION

Site Address	548 Miller Ave., Mill Valley
Description	Single-family subdivision (13 fee simple lots, three of which include ADUs)
Site Acres	1.58
Site Sq. Ft.	68,825
Units Per Acre	10
Sale Date	September 2019
Sale Price	$8,500,000
Price Per Unit	$531,250

Source: Costar, 2021; Strategic Economics, 2021.

FIGURE 21. RECENT LAND SALES FOR CONDOMINIUM TOWNHOMES

Site Address	500 Miller Ave., Mill Valley	7533-7537 Redwood Blvd., Novato
Description	Nine condominium townhomes with underground parking and corner retail space	50 condominium townhomes (Atherton Place)
Site Acres	1.2	3.7
Site Sq. Ft.	52,272	161,172
Units Per Acre	7.5	13.5
Sale Date	June 2017	July 2018
Sale Price	$2,900,000	$9,000,000
Price Per Unit	$322,222	$180,000

Source: Costar, 2021; Strategic Economics, 2021.

FIGURE 22. RECENT LAND SALES FOR MULTIFAMILY HOUSING

Site Address	703 Third St., San Rafael (a)	1203-1211 Lincoln Ave., San Rafael (b)
Description	Proposed apartment project with 61 units and underground, automated parking and incorporating density bonus	36 condominium flats Type V over I construction
Site Acres	0.63	0.74
Site Sq. Ft.	27,395	32,234
Units Per Acre	97	49
Sale Date	August 2014	March 2017
Sale Price	$4,650,000	$2,700,000
Price Per Unit	$76,230	$75,000

Source: Costar, 2021; Developer Pro Formas, 2021; Strategic Economics, 2021.

Notes:

(a) Reflects the site's "base case scenario" which is more comparable to Prototype 3

(b) Site is now associated with pipeline assisted living proposal but at time of sale, it had been planned for condominiums

HARD COSTS

Hard costs refer to both horizontal site costs and vertical construction costs, including the residential area construction and parking construction.

According to developers active in Marin County, construction costs for the county are higher than other locations in the Bay Area because it is less accessible to construction workers. Subcontractors often charge a premium that is equivalent to prevailing wage. The construction cost estimates for residential buildings incorporate these cost factors specific to Marin County.

The construction costs also include horizontal/site costs that include demolition, grading, utility connection installation, paving, and landscaping. For the purposes of this analysis, it is assumed that the hypothetical sites are relatively flat, with horizontal costs of $15 per land square foot for the single-family subdivision, and $35 per land square foot for the condominium townhomes and apartments.

The construction costs for the single-family subdivision and the condominium townhome, which are based on feedback from Marin developers and homebuilders, are $110 and $150 per gross residential square foot respectively. Note that the cost of garage parking is incorporated into the residential hard cost, while the cost of any surface parking is incorporated into the site cost for these prototypes.

For the rental prototype, the construction cost of the residential area is estimated to be $350 per gross residential square foot. Because there are very few examples of recent and under construction apartments over podium in Marin, the Consultant Team also reviewed pro formas for planned affordable and market-rate projects in San Rafael and other Bay Area cities to estimate costs.

Based on this broad review of costs, the Consultant Team estimated that residential construction costs for Prototype 3 were approximately $350 per gross residential square foot, which translates to per unit costs of $564,000. A review of financial data from affordable housing projects in the San Francisco Bay Area supported these cost estimates, which show that affordable housing per unit costs are in the range of $530,000 to $678,000.

SOFT COSTS

Soft costs refer to necessary costs of development that are not directly related to the physical construction of the building. They include architecture, engineering costs and other professional services fees, as well as other costs associated with doing business, such as insurance and taxes. Finally, soft costs include city permits and fees, and other miscellaneous costs. It is estimated that soft costs are 12 percent of hard costs for all three prototypes, a standard assumption that was confirmed by developer interviewees. The developer's contingency and overhead, also account for an additional five and four percent of hard costs, respectively.[6]

FINANCING COSTS

Financing assumptions are consistent for both for-sale prototypes because the two hypothetical projects would have similar loan terms and construction timelines. Based on input from developers that specialize in owner-occupied single-family and townhome developments, 65 percent of the project cost would be financed with debt, with a typical interest rate of approximately 4.5 percent. The development period for the for-sale prototypes is assumed to be 18 months.

The rental apartment prototype incorporates a slightly higher interest rate at 5 percent, to account for a higher level of risk, with a 24-month development period. The amount financed is also tends to be slightly higher at 70 percent of project cost, according to a multifamily developer.

All three prototypes incorporate a 1.5 percent construction loan fee, which is a standard industry assumption.

[6] Developer profit is not included in the consideration of costs.

AFFORDABILITY GAP

The final step is to calculate the housing affordability gap, which is the difference between what very low-, low-, and moderate-income households can afford to pay and the cost of developing those units. The gap helps determine the in-lieu fee amount that would be required to cover the cost associated with developing affordable housing units.

FOR-SALE HOUSING

Figures 23 and 24 shows the affordability gap calculation for the for-sale housing prototypes. For each unit type, the gap is calculated as the difference between the per-unit cost of development and the affordable sales price for each income level. The average housing affordability gap is weighted based on the unit mix in the prototypes.

FIGURE 23. AFFORDABILITY GAP FOR SINGLE-FAMILY SUBDIVISION

Income Level and Unit Type	Unit Size (Sq. Ft.)	Affordable Sales Price (a)	Development Costs (b)	Affordability Gap (c)
Very Low Income (50%)				
3 Bedroom	2,000	$219,714	$710,337	$490,623
4 Bedroom	2,400	$240,398	$852,405	$612,007
Weighted Average		**$230,056**	**$781,371**	**$551,315**
Low Income (70%)				
3 Bedroom	2,000	$344,076	$710,337	$366,261
4 Bedroom	2,400	$379,167	$852,405	$473,237
Weighted Average		**$361,622**	**$781,371**	**$419,749**
Moderate Income (110%)				
3 Bedroom	2,000	$589,581	$710,337	$120,757
4 Bedroom	2,400	$653,042	$852,405	$199,363
Weighted Average		**$621,311**	**$781,371**	**$160,060**

Source: Strategic Economics, 2021.
Notes:
(a) See calculation in Figure 14, above.
(b) Assumes $349 per SF for development costs
(c) Calculated as the difference between affordable sales price and development cost
(d) Includes 50% three-bedrooms and 50% four-bedrooms.

FIGURE 24. AFFORDABILITY GAP FOR CONDOMINIUM TOWNHOME

Income Level and Unit Type	Unit Size (Sq. Ft.)	Affordable Sales Price (a)	Development Costs (b)	Affordability Gap (c)
Very Low Income (50%)				
3 Bedroom	1,750	$202,624	$653,038	$450,414
4 Bedroom	1,900	$230,523	$709,013	$478,490
Weighted Average		**$211,924**	**$671,697**	**$459,773**
Low Income (70%)				
3 Bedroom	1,750	$326,986	$653,038	$326,052
4 Bedroom	1,900	$369,293	$709,013	$339,720
Weighted Average		**$341,089**	**$671,697**	**$330,608**
Moderate Income (110%)				
3 Bedroom	1,750	$572,582	$653,038	$80,456
4 Bedroom	1,900	$643,220	$709,013	$65,793
Weighted Average		**$596,128**	**$671,697**	**$75,568**

Source: Strategic Economics, 2021.

Notes

(a) See calculation in Figure 15, above.

(b) Assumes $393 per square foot for development costs

(c) Calculated as the difference between affordable sales price and development cost
(d)Includes two-thirds three-bedrooms and one-third four-bedrooms.

RENTAL HOUSING

Figure 25 shows the affordability gap calculation for the rental prototype. For each rental unit type and income level, the gap is defined as the difference between the per-unit cost of development and the supportable debt per unit. The supportable debt is calculated based on the net operating income generated from the monthly rent from the affordable unit, and incorporates assumptions about operating expenses (including property taxes, insurance, maintenance, etc.), reserves, and vacancy. It also incorporates financing assumptions related to the permanent loan on the property. Assumptions on operating costs are informed by data on Victory Village, which is a recent affordable housing development built in Marin. The average housing affordability gap is also weighted based on the unit mix of the prototype.

FIGURE 25. HOUSING AFFORDABILITY GAP FOR RENTAL APARTMENTS

Income Level and Unit Type	Unit Size (Sq. Ft.)	Maximum Monthly Rent (a)	Annual Income	Net Operating Income (b)	Available for Debt Service (c)	Supportable Debt (d)	Development Costs (e)	Affordability Gap (f)
Very Low-income (50%)								
Studio	650	$1,209	$14,507	$2,781	$2,418	$39,393	$458,250	$418,857
1 Bedroom	750	$1,379	$16,551	$4,723	$4,107	$66,904	$528,750	$461,846
2 Bedroom	900	$1,539	$18,468	$6,545	$5,691	$92,699	$634,500	$541,801
Weighted Average (g)						**$74,471**	**$564,000**	**$489,529**
Low-income (65%)								
Studio	650	$1,584	$19,013	$7,063	$6,141	$100,036	$458,250	$358,214
1 Bedroom	750	$1,809	$21,704	$9,618	$8,364	$136,236	$528,750	$392,514
2 Bedroom	900	$2,022	$24,264	$12,051	$10,479	$170,691	$634,500	$463,809
Weighted Average (g)						**$146,398**	**$564,000**	**$417,602**
Moderate Income (90%)								
Studio	650	$2,210	$26,525	$14,198	$12,346	$153,206	$458,250	$305,044
1 Bedroom	750	$2,524	$30,291	$17,776	$15,458	$191,816	$528,750	$336,934
2 Bedroom	900	$2,827	$33,924	$21,228	$18,459	$229,058	$634,500	$405,442
Weighted Average (g)						**$202,852**	**$564,000**	**$361,148**

Notes:

(a) Affordable rent levels based on 2020 income limits
(b) Amount available for debt. Assumes 5% vacancy and collection loss and $11,000 per unit for operating expenses and reserves, based on operating pro formas for recent affordable projects in Marin County.

(c) Assumes 1.15 Debt Coverage Ratio.

(d) Assumes 4.5% permanent financing interest rate and 30 year loan.

(e) Assumes development cost of $705 per net square foot on rental units.
(f) Calculated as the difference between development costs and supportable debt.
(g) Incorporates 10% studios, 50% one-bedrooms, and 40% two-bedrooms.

SUMMARY OF MAXIMUM IN-LIEU FEE BY HOUSING TYPE

A summary of the affordability gaps by tenure and income level is displayed in Figure 26. The affordability gap is the basis for setting the maximum in-lieu fee. As shown, the maximum in-lieu fee per required affordable unit (rounded) is approximately $377,000 for single-family subdivisions, $289,000 for condominium townhomes, and $423,000 for rental apartments.

The maximum in-lieu fee is highest for rental apartments because the average targeted income is lower (68 percent of AMI, compared to 78 percent AMI for for-sale housing), resulting in a wider affordability gap.

The calculated in-lieu fee is lower for condominium townhomes than single-family subdivisions because the construction cost for townhomes is slightly lower, while the targeted income groups remain the same.

It is important to note that the County of Marin can choose to adopt lower fees than the maximum calculated in-lieu fees shown in Figure 26.

FIGURE 26. SUMMARY OF MAXIMUM IN-LIEU FEES

Income Level	For-sale Gap: Single-Family Subdivision	For-sale Gap: Condominium Townhome	Rental Gap
Very Low-income (50% AMI)	$551,315	$459,773	$489,529
Low-income (65% AMI Rental/ 70% Owner)	$419,749	$330,608	$417,602
Moderate Income (90% AMI Rental)/ 110% AMI Owner)	$160,060	$75,568	$361,148
Average Affordability Gap/ Maximum In-Lieu Fee	**$377,042**	**$ 288,650**	**$422,760**

Source: Strategic Economics, 2021.

IV. Policy Considerations and Recommendations

This section summarizes key policy issues for the County of Marin to consider when updating its inclusionary housing ordinance and in-lieu fee. The following questions are addressed:

- How do the calculated in-lieu fees compare with the County's existing fees?
- How do the calculated fees compare with in-lieu fees in other jurisdictions?
- How much do the calculated in-lieu fees raise development costs in Marin County and impact financial feasibility?
- How do the calculated fees compare with existing municipal fees, such as building permit and other impact fees?

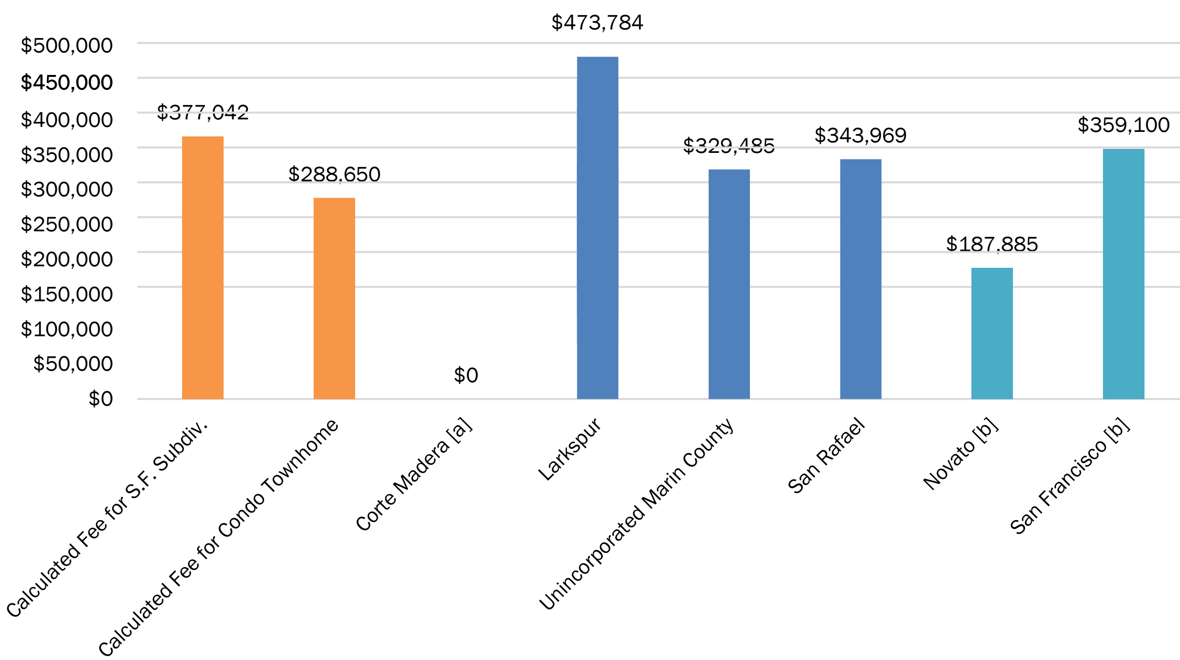
Each of these questions is addressed in the sections below, followed by a set of recommendations.

COMPARISON OF IN-LIEU FEES IN MARIN COUNTY AND NEIGHBORING JURISDICTIONS

The newly calculated in-lieu fees from the previous section are shown along with the existing in-lieu fees for for-sale housing for the County and other nearby jurisdictions for comparison in Figure 27. As shown, the County currently has an in-lieu fee of $329,485 per unit for all for-sale housing. The newly calculated maximum in-lieu fee for single-family subdivisions is higher than the existing fee in all the other jurisdictions. However, the calculated fee for for-sale townhomes is lower than the County's existing fee but higher than the current in-lieu fee for for-sale housing in Novato.

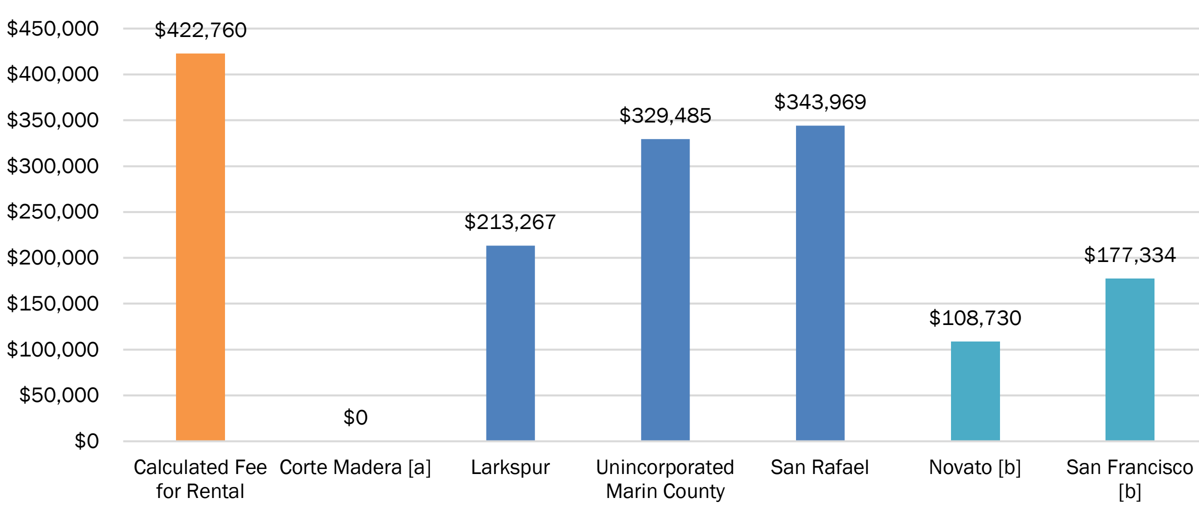
The same information is shown for rental housing in Figure 28. As shown, the calculated maximum in-lieu fee for rental projects is higher than the existing fees in Marin County and all the neighboring cities. Larkspur, Novato, and San Francisco charge lower in-lieu fees for rental projects, even though the affordability gap may be higher than for-sale housing.

FIGURE 27: COMPARISON OF CALCULATED IN-LIEU FEES WITH EXISTING IN-LIEU FEES, FOR-SALE DEVELOPMENTS



[a] Corte Madera has an in-lieu fee that is calculated based on construction costs and area median incomes. Because the assumptions in the calculation have not been updated for several years, the fee currently evaluates to zero.
[b] In-lieu fees for San Francisco and Novato vary by the number of units in the project. Both fee amounts assume the 30-unit condo townhome prototype.
Sources: Available documents from jurisdictions, 2020; Strategic Economics, 2021.

FIGURE 28: COMPARISON OF CALCULATED IN-LIEU FEES WITH EXISTING IN-LIEU FEES, RENTAL DEVELOPMENTS



[a] Corte Madera has an in-lieu fee that is calculated based on construction costs and area median incomes. Because the assumptions in the calculation have not been updated for several years, the fee currently evaluates to zero.
[b] In-lieu fees for San Francisco and Novato vary by the number of units in the project. Both fee amounts assume the 100-unit rental apartment prototype.
Sources: Available documents from jurisdictions, 2020; Strategic Economics, 2021.in-Lieu Fee in Relation to Development costs

Using the development cost estimates from the previous section, the Consultant Team calculated the increase in costs that would be experienced when charging the fee in-lieu of an onsite requirement at a level of 10 percent, 15 percent, 20 percent, and 25 percent. As shown in Figure 29, the cost of the fee for would range from five to 12 percent for the single-family subdivision prototype, four to 11 percent for the condo townhome prototype, and seven to 19 percent for the apartment prototype.

FIGURE 29: IMPACT OF IN-LIEU FEE ON TOTAL DEVELOPMENT COSTS BY PROTOTYPE

	Single Family Subdivision	Condo Townhome	Rental Apartment
Total Development Costs per Unit	$781,371	$671,697	$563,833
In lieu Fees per Affordable Unit	$289,905	$203,088	$422,760
Increase in Total Development Costs			
@ 10% Onsite Requirement	5%	4%	7%
@ 15% Onsite Requirement	7%	6%	11%
@ 20% Onsite Requirement	10%	9%	15%
@ 25% Onsite Requirement	12%	11%	19%

Source: Strategic Economics, 2021.

The calculated in-lieu fee for the apartment prototype has the largest impact on development costs, due to the much higher affordability gap for apartments. Although rental apartments are the least expensive of the three prototypes to build per unit, the smaller households expected to occupy these units, which translates to lower tenant incomes, and the high operating costs of apartments mean that the affordability gap for rentals is higher in this case. This analysis suggests that for-sale developments will be able to accommodate a substantially higher percentage onsite requirement than will rental projects.

BURDEN OF IN-LIEU COMBINED WITH OTHER MUNICIPAL FEES

The Consultant Team reviewed the total burden of the calculated in-lieu fees in the context of other municipal fees charged by the cities, including fees such as building permits as well as any impact fees each jurisdiction might have in place.[7] A table of these costs for each jurisdiction is given in Figure 30 below, including the total fees that would be paid on each prototype in-lieu of hypothetical inclusionary requirements ranging from ten to 25 percent.

Because each jurisdiction has its own schedule of fees for new development, the cost of development in each community varies. For example, municipal fees for the prototypes in Sausalito range from one to two percent of development costs, while fees in Corte Madera are higher, ranging from four to five percent of development costs. Jurisdictions will need to take into account these baseline costs when setting an in-lieu fee and/or inclusionary percentage.

[7] Connection fees charged by a local sanitary sewer and water district were also estimated; they would be expected to represent an additional three to four percent of development costs above what is shown in the Figure 30.

FIGURE 30: IN-LIEU FEES AND OTHER MUNICIPAL FEES* BY JURISDICTION

Current level of onsite requirement for each jurisdiction in bold.

	Per Unit			As % of Development Costs		
	S.F. Subdiv.	Condo	Apt.	S.F. Subdiv.	Condo	Apt.
Corte Madera						
Municipal Fees	$35,776	$27,116	$23,339	5%	4%	4%
Tot. Fees @10% Rqmt.	$64,767	$47,424	$65,615	8%	7%	12%
Tot. Fees @15% Rqmt.	$79,262	$57,579	$86,753	10%	9%	15%
Tot. Fees @20% Rqmt.	$93,757	$67,733	$107,891	12%	10%	19%
Tot. Fees @25% Rqmt.	**$108,253**	**$77,888**	**$129,029**	**14%**	**12%**	**23%**
Fairfax						
Municipal Fees	$13,231	$11,258	$8,104	2%	2%	1%
Tot. Fees @10% Rqmt.	$42,221	$31,567	$50,380	5%	5%	9%
Tot. Fees @15% Rqmt.	$56,717	$41,722	$71,518	7%	6%	13%
Tot. Fees @20% Rqmt.	$71,212	$51,876	$92,656	9%	8%	16%
Tot. Fees @25% Rqmt.	$85,707	$62,030	$113,794	11%	9%	20%
Larkspur						
Municipal Fees	$39,839	$25,951	$19,449	5%	4%	3%
Tot. Fees @10% Rqmt.	$68,830	$46,260	$61,725	9%	7%	11%
Tot. Fees @15% Rqmt.	**$83,325**	**$56,414**	**$82,863**	**11%**	**8%**	**15%**
Tot. Fees @20% Rqmt.	**$97,820**	**$66,569**	**$104,001**	**13%**	**10%**	**18%**
Tot. Fees @25% Rqmt.	$112,316	$76,723	$125,139	14%	11%	22%
Unincorporated Marin County						
County Fees	$25,397	$23,656	$5,470	3%	4%	1%
Tot. Fees @10% Rqmt.	$63,101	$52,521	$47,746	8%	8%	8%
Tot. Fees @15% Rqmt.	$81,953	$66,954	$68,884	10%	10%	12%
Tot. Fees @20% Rqmt.	**$100,806**	**$81,386**	**$90,022**	**15%**	**12%**	**18%**
Tot. Fees @25% Rqmt.	$119,658	$95,819	$111,160	17%	15%	22%
San Anselmo						
Municipal Fees	$12,821	$13,837	$14,034	2%	2%	2%
Tot. Fees @10% Rqmt.	$41,811	$34,146	$56,310	5%	5%	10%
Tot. Fees @15% Rqmt.	$56,306	$44,300	$77,448	7%	7%	14%
Tot. Fees @20% Rqmt.	$70,802	$54,455	$98,586	9%	8%	17%
Tot. Fees @25% Rqmt.	$85,297	$64,609	$119,724	11%	10%	21%
San Rafael						
Municipal Fees	$27,044	$23,545	$15,113	3%	4%	3%
Tot. Fees @10% Rqmt.	**$56,034**	**$43,854**	**$57,389**	**7%**	**7%**	**10%**
Tot. Fees @15% Rqmt.	**$70,530**	**$54,009**	**$78,527**	**9%**	**8%**	**14%**
Tot. Fees @20% Rqmt.	$85,025	$64,163	$99,665	11%	10%	18%
Tot. Fees @25% Rqmt.	$99,520	$74,317	$120,803	13%	11%	21%

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Sausalito						
Municipal Fees	$7,448	$7,694	$9,987	1%	1%	2%
Tot. Fees @10% Rqmt.	$36,438	$28,003	$52,263	5%	4%	9%
Tot. Fees @15% Rqmt.	**$50,934**	**$38,157**	**$73,401**	**7%**	**6%**	**13%**
Tot. Fees @20% Rqmt.	**$65,429**	**$48,311**	**$94,539**	**8%**	**7%**	**17%**
Tot. Fees @25% Rqmt.	$79,924	$58,466	$115,677	10%	9%	21%

* Municipal fees include all applicable permits and impact fees charged by the jurisdiction. Water and sanitary sewer connection fees are not included. Based on estimates from Marin Municipal Water District and Ross Valley Sanitary District, water and sewer fees represent and additional four percent to development costs of the single family subdivision and three percent to condo townhomes and apartments.

Source: Strategic Economics, 2021.

CONVERSION TO PER SQUARE FOOT FEE

Jurisdictions can opt to implement the in-lieu fee as a per square foot fee, rather than a per unit fee, in order to incentivize development projects with smaller units. This may be useful for jurisdictions that primarily see developments with large, luxury units. The per square foot fees are calculated by dividing the per-unit in lieu fee by the weighted average unit square feet for each prototype. This calculation is shown below in Figure 31.

FIGURE 31. EQUIVALENT IN LIEU FEES PER UNIT SQUARE FOOT FOR PROTOTYPES

	Multifamily Rental	Condominium Townhome	Single Family Subdivision
Weighted Average Unit Sq. Ft.	800	1800	2,200
Affordability Gap per Unit			
Very Low Income (50% AMI Rental and Owner)	$489,529	$459,773	$551,315
Low Income (65% AMI Rental/ 70% AMI Owner)	$417,602	$330,608	$419,749
Moderate Income (90% AMI Rental)/ 110% AMI Owner)	$361,148	$75,568	$160,060
Affordability Gap per Sq. Ft.			
Very Low Income (50% AMI)	$612	$255	$251
Low Income (65% AMI Rental/ 70% AMI Owner)	$522	$184	$191
Moderate Income (90% AMI Rental)/ 110% AMI Owner)	$451	$42	$73

Source: Strategic Economics, 2021.

COMPARISON OF INCLUSIONARY REQUIREMENTS IN SELECTED BAY AREA CITIES

Figure 32 summarizes the inclusionary requirements for selected Bay Area cities outside of Marin County for the purposes of comparison. As shown, the cities all have inclusionary requirements on for-sale development projects ranging from a minimum of 5 percent in Oakland to 22 percent in San Francisco. The income targets for for-sale housing are typically low-income and moderate-income households.

For rental housing, the percentage requirement ranges from 5 percent in Oakland to 20 percent in San Francisco. Most of the jurisdictions require some proportion of very low-income units, along with low-income and moderate-income units.

San Francisco, San Jose, and Cupertino have lower requirements for small projects.

FIGURE 32. INCLUSIONARY POLICIES FOR SELECT BAY AREA JURISDICTIONS

Jurisdiction	For-Sale Housing	Rental Housing	Fee Option	Year Adopted/Updated
Berkeley	20% affordable at or below 80% AMI.	20% must be affordable (10% at 80% AMI and 10% at 50% AMI).	For sale: In-lieu fee option (62.5% of difference between affordable and market price). Rental: Affordable housing impact fee $39,716 per market-rate unit.	2020
Oakland	5% at 50% AMI or 10% at 80% AMI or 10% at 120% AMI.	5% at 50% AMI or 10% at 80% AMI or 10% at 120% AMI.	Fee permitted.	2016
San Francisco	Projects with 25+ units: 22% must be affordable to 80%-110% AMI. Projects with 10-24 units: 13% must be affordable.	Projects with 25+ units: 20% must be affordable to 55%-110% AMI. Projects with 10-24 units: 13% must be affordable to 55% AMI.	Fee permitted but with a higher percentage requirement than building on-site. Smaller projects pay a lower fee.	2017
San Jose	Projects with 20+ units must meet 15% affordable set-aside at or below 120% AMI. Smaller projects have lower percentage requirements.	5% at 100% AMI, 5% at 60% AMI, and 5% at 50% AMI, or 10% at 30% AMI. Smaller projects have lower percentage requirements.	Fee permitted.	2021
Santa Cruz	20% must be affordable to households at or 80% - 100% AMI.	20% must be affordable to households at or below 80% AMI.	On-site units encouraged.	2019
Palo Alto	15% must be affordable to households at 120% AMI or below.	No on-site requirement for rental.	For sale: Fee permitted but developer must demonstrate infeasibility of on-site units. Rental: Affordable housing impact fee charged.	2012
Cupertino	15% must be affordable to 120% or 100% AMI.	15% must be affordable to 120% or 80% AMI.	Projects with 1-6 units may provide a unit or pay a fee. For projects with 7 or more units, requires City Council approval.	2012

Source: Urban Displacement Project, 2021; City of Berkeley, 2021; Strategic Economics, 2021.

Recommendations

A number of considerations inform the decision to update the inclusionary requirements and the in-lieu fees, including market and feasibility factors, comparative policies in other jurisdictions, and the pros and cons of alternative means of compliance. Below is a summary of recommendations tailored for the County of Marin:

Maintain inclusionary percentage requirement of 20 percent for for-sale development projects. The Consultant Team recommends that the County maintain the inclusionary requirement of 20 percent for for-sale development projects, including single-family subdivisions and townhomes. This percentage requirement is consistent with many other jurisdictions in the Bay Area.

Adjust income targets for for-sale and rental housing to be more consistent with other jurisdictions. Currently, the County's inclusionary policy targets very low-income and low-income households (60% AMI) for for-sale projects These targets are significantly lower than other jurisdictions in the County and in the Bay Area overall.

The Consultant Team recommends that the for-sale inclusionary policy be adjusted to include a greater proportion of low-income and moderate-income households, for an average target AMI of 75 to 80 percent.

Consider reducing the inclusionary percentage requirement and income target for rental housing. Rental development is often more challenging to develop than for-sale development because it commands a lower value relative to ownership housing, while facing higher construction costs. Many Bay Area jurisdictions have lower percentage requirements for rental housing for this reason. The County may wish to consider reducing the inclusionary percentage requirement on rental development projects to 15 percent to make this type of development more financially feasible and to encourage affordable housing production on-site.

Currently, the County's inclusionary policy requires units that are affordable to 50% AMI in rental housing projects, which is far lower than other communities in the region. The Consultant Team also recommends that the rental inclusionary policy be adjusted to include low-income (65% AMI) and moderate-income (90% AMI) households for an average target AMI of between 65 and 70 percent.

Establish different requirements for housing projects containing six or fewer units. According to the site analysis conducted by Opticos for the Objective Development Design Standards project, a large share of potential housing sites are small, infill lots that could only accommodate small projects. These types of projects are more challenging to build than larger projects. To ensure they are financially feasible, the Consultant Team recommends that the County establish more flexible requirements for these types of projects, which could include:

- Setting a 15 percentage requirement for small projects rather than 20 percent.
- Allowing for a higher average income target, with a higher proportion of moderate income units.
- Providing more flexibility on providing a combination of on-site units and payment of in-lieu fees.

For ownership housing, designate a separate fee for single-family versus townhome condominium developments, and set the fee amount at the maximum level for each. This study establishes a maximum in-lieu fee of $377,042 for single-family subdivisions and a fee of $288,650 for condominium townhomes. Establishing a lower fee on townhome condominiums relative to single-family subdivisions recognizes that higher density ownership housing can be relatively more challenging to build in the unincorporated County.

For rental housing, maintain the existing in-lieu fee amount rather than increasing it to the newly calculated fee. The maximum calculated fees of $422,760 are considerably higher than the existing fee of $329,345. However, the higher fee would be a significant cost burden on rental projects, which do not command the same values as for-sale housing in Marin County. For this reason, the Consultant Team recommends that Marin County maintain its current in-lieu fee on rental development.

Modify the policy to discourage the provision of off-site converted units as an alternative means of compliance. Currently, the County allows for developers to comply with the inclusionary policy by providing off-site units that are acquired and converted to deed-restricted housing. However, this can result in the provision of units that are not comparable in quality or location to the market-rate development projects. Furthermore, it does not add to the overall supply of housing and burdens the County with the cost of monitoring and compliance. The Consultant Team recommends that the policy be modified to either remove this option for compliance, or to tighten the requirements to ensure that the units of a similar quality and located within close proximity to the principal project.

Require for-sale development projects with on-site units to submit a plan for the ongoing maintenance of below-market rate units. According to Marin Housing, some for-sale condominium and townhome projects have not been able to adequately fund the maintenance and repair of below-market rate units. The Consultant Team recommends that the County require developers to provide a realistic plan for collecting sufficient reserves for the repair and maintenance of below-market rate units without compromising the affordability of those units.

Appendix A

The Consultant Team spoke with a range of stakeholders for this report, including market-rate housing developers, affordable housing developers, affordable housing advocates, Marin housing authority staff, and local community land trusts. Stakeholders that participated in either one-on-one interviews with the Consultant Team, or in developer forums, both of which helped inform this report, are listed below in Figure 33.

FIGURE 33. LIST OF STAKEHOLDERS INTERVIEWED FOR STUDY

Name	Organization/ Affiliation
Judith Bloomberg	Marin Organizing Committee
Arianne Dar	Bolinas Community Land Trust
Todd David	Housing Action Committee
Justin Derby	Meritage Homes
Bruce Dorfman	Thompson Dorfman
Aaron Eckhouse	California YIMBY
Michael Hooper	Campus Property Group
Larry Kennings	Marin Environmental Housing Collaborative
Stacey Laumann	Community Land Trust of West Marin
Marianne Lim	EAH Housing
Stephanie Lovette	Marin Housing Authority
Linda Mandolini	Eden Housing
Tom Monahan	Monahan Parker Development
Wick Polite	Seagate Properties
Kiki La Porta	Coalition for a Livable Marin
Phil Richardson	Individual developer
Suzanne Sadowsky	San Geronimo Valley Affordable Housing Association
Carmen Soruco	Marin Housing Authority
Mary Kay Sweeney	Homeward Bound
Joanne Webster	Housing Crisis Action Group, San Rafael Chamber of Commerce

Source: Strategic Economics, 2021.

EXHIBIT D

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October 22, 2024

VIA EMAIL

Brandon Phipps, Community and Economic Development Director
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA 94965
bphipps@sausalito.gov

Re: October 23, 2024 Planning Commission Meeting Agenda Item 7A: Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft amendment to the 6th Cycle Housing Element of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's") regarding the City's proposal to amend its adopted Housing Element before the City Council's October 23, 2024 Study Session on the matter.[1] The City's webpage dedicated to the Housing Element update process claims that the intent of these amendments is to prioritize sustainable waterfront development and preserve the City's downtown historic district.[2] Whatever the intent, the *effect* of these changes will be to reduce the potential for future residential development in Sausalito—which would violate the Housing Element Law.

We previously submitted a letter to the City before its City Council meeting on October 1, 2024, where the City conducted a Study Session on this same item. Despite submitting this letter as public comment prior to the hearing, the City failed to include our letter in the list of public comments received for the item. We request that the City immediately remedy this for the record for the October 1 hearing, and immediately distribute this letter for the October 23rd Planning Commission meeting. While this letter includes much of the same information from our prior letter, this letter also contains new information regarding the City improperly including Site 303 as part of its Sites Inventory.

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[1] This is item 7.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) as part of the October 23rd meeting.
[2] City of Sausalito, "City of Sausalito Sixth-Cycle (2023-2031) Housing Element," (October 22, 2024) at https://www.sausalito.gov/city-government/hot-topics/housing-element-update-2023-2031.

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Housing Element amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[3]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

SITE 303 IS IMPROPERLY INCLUDED IN THE HOUSING ELEMENT

We have recently received information that the owner of Site 303 (1 and 3 Harbor Drive) in the Sites Inventory is not interested in developing the site as residential housing and never was. The City received an email from the owner of Site 303 last year to explicitly request that the site be removed from the City's Housing Element.

Despite receiving this email, the City failed to remove Site 303 from its Housing Element. In fact, the City subsequently adopted the Housing Element with Site 303 at a meeting later the same day. The City took no action to remove the site between the date it adopted its Housing Element and when it received HCD certification on April 28, 2023. The certified Housing Element relies on Site 303 for 90 units of realistic capacity, 18 of which would be affordable. The Housing Element Amendment not only continues to include Site 303 but proposes to upzone Site 303 to increase capacity from 90 to 129 units in order to allow the downzoning of other sites

[3] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

in the City, such as Site 201. Site 303 needs to be removed from the Housing Element Amendment as the owner has explicitly disavowed developing the parcel as housing.

This failure indicates that the City—at the very least—did not conduct meaningful outreach to property owners before listing sites in its Sites Inventory or—at worst—intentionally deceived HCD and the public by including sites where owners had already informed the City that their property would not be redeveloped for housing. We demand that the City produce evidence that the City has conducted meaningful outreach to the property owners of all the sites the City now proposes to include in its amended Sites Inventory.[4]

THE AMEDNMENTS ARE NOT AN APPROPRIATE HOUSING ELEMENT AMENDMENT

The Housing Element Law *only* grants cities the authority to amend their adopted Housing Elements under limited circumstances. Government Code Section 65588 states when local government may and are required to revise their Housing Elements. Government Code Section 65588(a) is clear that cities may consider Housing Element amendments to evaluate and increase the effectiveness of Housing Elements. Government Code Section 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code Section 65588(a) fit Sausalito's situation. The City has failed to implement its Housing Element Programs within the deadlines it committed to in its Housing Element. This is a violation of Housing Element Law.

The Amendment is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to kick the can down the road, and downzone sites from the City's Sites Inventory that the City only included in its Housing Element to received HCD certification. Specifically, the Amendment is a clear attempt to prevent a specific project—proposed by Willy's—from being built. Willy's has a pending application to build more affordable housing in the City than has been built within the City in more than 20 years. Amending the Housing Element to downzone Site 201 is an attempt to stop a project and is not an "appropriate" Housing Element amendment under Government Code Section 65588(a) and, therefore, not a legally valid proposal. Rather than waste time and resources trying to delay implementation of the Housing Element Programs, the City should be

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[4] This can be considered a California Public Records Act request under Gov. Code § 7920 et seq.

focused on carrying out its existing commitments and processing the pending application as required by law.

<u>THE AMENDMENT'S ALTERNATIVE SITES DO NOT PROVIDE REALISTIC CAPACITY AND ARE NONVACANT SITES THAT ARE UNLIKLEY TO BE DEVELOPED</u>

Government Code Section 66583.2(g)(2) requires a city that is relying on nonvacant sites "to accommodate 50 percent or more of its housing need for lower income households" to include in its Housing Element a "methodology used to determine additional development potential" to demonstrate that existing use "does not constitute an impediment to additional residential development during the period covered by the housing element." Since more than 50% of the City's housing needs for lower income households are planned for nonvacant sites, the City is required to comply with Government Code Section 66583.2(g)(2) and must explain in its Housing Element why each nonvacant site in its Sites Inventory can be converted from its existing use to residential housing.

The City's methodology for determining the likelihood of converting existing nonvacant buildings to residential housing is contained in Appendix D-2 of its Housing Element. Government Code Section 66583.2(g)(1) requires the City's methodology to consider many "factors including the extent to which existing uses may constitute an impediment to additional residential development [and] the city's or county's past experience with converting existing uses to higher density residential development[.]" The Housing Element and Appendix D-2 fails to analyze the City's "past experience with converting existing uses to higher density residential development[.]"[5] This is likely because the City has *no past experience* of nonvacant commercial or industrial buildings into residential development. Since the City has no experience with these projects, the likelihood of Sites 401 and 402 being completed during the planning period are slim and these sites should not be counted towards the City's realistic capacity.

The Amendment's Sites Inventory is overly optimistic about development on the new sites that it proposes to add to the Sites Inventory (while downzoning multiple sites that are suitable for development). The two new Opportunity Sites to be added to the Sites Inventory (Site 401 at 2400 Bridgeway Boulevard and Site 402 at 2680 Bridgeway Boulevard) are already developed with commercial/industrial buildings and cannot easily be converted into residential housing or demolished for residential housing. The Amendment would relocate Site 73 (SMSCSD School Nevada Campus), shifting proposed development from a parking lot to a portion of the parcel with an improved building, green space, and an outdoor sports court. Without specific analysis, the chances of development at Site 73 are unrealistic. The Amendment also proposes to increase the number of potential units at Martin Luther King, Jr. Park, which is subject to voter approval and has received universal opposition to redevelopment by residents. As explained below, the City has failed to analyze the required factors in Government Code Section 66583.2(g) to demonstrate that these sites provide realistic capacity.

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[5] There is a stray reference to the "past experience" requirement on Page HBR-120 of the adopted Housing Element where the Housing Element enumerates the factors the City is required to analyze, but no actual analysis.

1. **Site 401 (2400 Bridgeway Boulevard)**

The Amendment proposes to add Site 401 to the Sites Inventory as an Opportunity Site. Site 401 is a 0.67-acre site located at 2400 Bridgeway Boulevard (APN 063-130-01), zoned Industrial, and is developed with a commercial building that currently contains tenants. The Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. Rather the site seems to be added to the Amendment as the property owner is allegedly interested in "expanding [the] existing office building to incorporate multifamily residential use on the upper floors."

As the Housing Element notes, "State Law allows use of underutilized (nonvacant) sites to accommodate the RHNA [Regional Housing Needs Allocation]."[6] As part of Sausalito's analysis of these sites it is supposed to analyze

> 1) Ownership of the site - City-owned sites were anticipated to have a high potential for development based on City control of the property and ability to effect change 2) Property owner interest in development and economic gain associated with development 3) Current/past uses on the site – site has large underutilized areas, aging non-residential buildings, a high land value to improvement ratio, or a low site utilization.[7]

The City fails to demonstrate that the existing uses would not impede additional development, nor provide an analysis of current leases, nor demonstrate the financial feasibility of development. Site 402, is, therefore, unlikely to be developed during the 6th Cycle planning period and the Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 16 units claimed (2.2% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[8]

2. **Site 402 (2680 Bridgeway Boulevard)**

The Amendment proposes to add Site 402 to the Sites Inventory as an Opportunity Site. Site 402 is a 2.3-acre site located at 2680 Bridgeway Boulevard (APN 063-152-01), zoned Industrial, and is developed with an industrial building that currently contains tenants. Similar to the issues raised above for Site 401, the Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. There is also no indication that the owner of the property has indicated an interest in redeveloping the site as residential housing, nor any analysis of existing leases or other contracts that would perpetuate the existing uses.

Moreover, the feasibility of converting the site to residential housing is low due to the numerous issues which may be present on the property from its past industrial use. The City's Housing

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[6] *See* HBR-120.
[7] *Id.*
[8] The City has a RHNA of 724.

Element and the Amendment lacks a Program to address these issues, including environmental remediation for an industrial building that is over 45 years old.[9]

Site 402 is not City-owned, the property owner has not expressed an interest in redeveloping the site with residential housing, and the property is and has been used for industrial purposes. The Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 43 units claimed (5.93% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[10]

3. Relocation of Site 73 (SMSCSD School Nevada Campus) (APN 064-322-01)

The Amendment is also proposing to move development from the southwest corner of Site 73 to the northwest corner of the parcel. Site 73 is currently the Nevada Campus of the Sausalito Marin City School District. In the adopted Housing Element, development would take place on a 1-acre portion of the 13.15-acre parcel that is currently utilized as a parking lot. The Amendment would shift development to a portion of the parcel that includes an improved building, green space, and an outdoor sports court. The shift from proposed development on a parking lot to a portion of the parcel that is currently developed may result in increased construction costs.

The Amendment does not indicate whether this shift was driven by the Sausalito Marin City School District, which owns the property, nor whether this location is consistent with its Master Plan. Nonetheless, this shift makes development on the site more unlikely and reduces the probability that the City will meet its RHNA.

Program No. 8 (Public Property Conversion to Housing) in the adopted Housing Element required the City to "[m]eet with SMCSD at least quarterly in 2024 to ensure that site plans are being developed and that the site is included in a Master Plan phase for completion as early in the 6th Cycle as possible." Program No. 8 also required the City to "[m]eet with SMCSD quarterly until project is completed to assist with project application materials, financial assistance (grant or loan applications), and identify any methods available to streamline project implementation." The City has provided no evidence that it has complied with Program No. 8. The City is, therefore, in violation of the Housing Element Law. The Amendment would compound that violation by proposing to shift the development to other parts of the site without any indication that the District supports the new location – or any housing at all.

4. Proposed Upzoning of Site 84 (Martin Luther King, Jr. Park at 100 Ebbtide Avenue)

The Amendment also proposes to increase the number of potential units that would be able to be built on Site 84 which is the site of Martin Luther King, Jr. Park and a City facilities site. For some unexplained reason, the proposed revision to Appendix D-1 in the Amendment indicates that Site 84 has the potential for 181 units as opposed to 127 units in the adopted Housing

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[9] Program No. 5 (Replacement Housing) notes that development on all nonvacant sites designated in the Housing Element which contains existing residential units or units that were rented in the past five years must comply with State law, but does not cover existing commercial or industrial buildings.
[10] The City has a RHNA of 724.

Element and the realistic capacity for 94 units as opposed to 80 units in the adopted Housing Element. No explanation for this mysterious gain in density is given although an asterisk is placed next the Site Number column.[11] Until the Amendment explains whether this increase in density is realistic, the City cannot arbitrarily increase the density without supporting information.

Finally, based on the public comments received by the City in advance of its October 1st City Council Study Session, all of which expressed opposition to development on Site 84, it is unlikely that the City will be able to follow through and permit development on this site. Under Ordinance 1022 and Ordinance 1128, any increased density must be approved by the voters. It is wishful thinking to expect that the voters will approve any housing on this park site, especially at an increase in density from the adopted Housing Element. The Amendments do not demonstrate realistic capacity simply by pushing even more of the City's RHNA onto a City-owned site subject to voter approval.

5. Proposed Upzoning of Site 303 (1 & 3 Harbor Drive)

The Amendment would upzone Site 303 to increase development on the site from 90 to 129 units. The site is occupied by a commercial building, however, and, as noted above, the property owner has specifically informed the City that the site will not be redeveloped. Moreover, the City's Housing Element lacks a Program to address the conversion of nonvacant sites into residential housing. Although we support the increase in allowed density, the City is still required to demonstrate that the capacity is realistic and likely to be developed. The Amendments fail to do so.

6. Decrease in Unit Count at Sites

The Amendment would also downzone eight sites (Sites 23, 24, 39, 44, 47, 201, 207, and 301) potentially removing 36 units from the Sites Inventory. These changes are unexplained and unnecessary, especially as the increase in density from the proposed addition of Sites 401 and 402, and the upzoning of Sites 84 and 303 are unrealistic.

VIOLATION OF THE REQUIREMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING

HCD's Guidance for Affirmatively Furthering Fair Housing for public agencies explains that "to evaluate the site inventory's consistency with the obligation to affirmatively furthering fair housing, the site inventory analysis should address . . . whether the RHNA by income group is concentrated in areas of the community." Similarly, Government Code Section 8899.50(a)(1) defines "Affirmatively furthering fair housing" to include taking meaningful actions to "replacing segregated living patterns with truly integrated and balanced living patterns[.]"

The proposed addition of Sites 401 and 402 to the Housing Element and the proposed upzoning of Sites 84 and 303 at the expense of development throughout the City continues the City's practice of concentrating development and affordable housing in the northern portion of the City

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[11] Both the Housing Element and Amendment have the site zoned as MU-49/85%.

in violation of the Housing Element Law's requirement that cities' Housing Elements include policies that address racial and economic segregation and promote more inclusive communities and affirmatively further fair and equal housing access and opportunities.

The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height limits in the north part of the City[.]" The City also received multiple public comment letters for its October 1st City Council Study Session objecting to this practice. The Amendment, therefore, fails to affirmatively further fair housing and would violate the Housing Element Law.

CONCLUSION

We continue to have major concerns about the City's adopted Housing Element and its ability to meet its state-mandated RHNA target, which are only exacerbated by the proposed Amendment, its changes to the Sites Inventory, and the seeming inclusion of Site 303 which the owner explicitly asked the City not to include in its Housing Element.

The Amendment proposes to downzone multiple sites listed in the Sites Inventory. We are worried that the proposed alternative sites will not be able to adequately accommodate the capacity for development lost by this downzoning. For these reasons, we are opposed to the Amendment.

PATTERSON & O'NEILL, PC

Brian O'Neill
Attorney for Willy's LLC

EXHIBIT E

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October 1, 2024

VIA EMAIL

Brandon Phipps, Community and Economic Development Director
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA 94965
bphipps@sausalito.gov

Re: Agenda Item 5A: Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites

Dear Mr. Phipps:

Thank you for the opportunity to comment on the draft amendment to the 6th Cycle Housing Element of the City of Sausalito's ("City") general plan. We are writing on behalf of Willy's LLC ("Willy's") regarding the City's proposal to amend its adopted Housing Element before the City Council's October 1, 2024 Study Session on the matter.[1] The City's webpage dedicated to the Housing Element update process claims that the intent of these amendments is to prioritize sustainable waterfront development and preserve the City's downtown historic district.[2] Whatever the intent, the *effect* of these changes will be to reduce the potential for future residential development in Sausalito—which would violate the Housing Element Law.

Willy's is the owner of Site 201 in the City's Sites Inventory and has submitted plans to the City to develop the site to bring 47 units, including 6 affordable units, to the City. The draft Housing Element amendment ("Amendment") would downzone the site from allowing 49 units per acre to 29 units per acre, reducing residential capacity from 20 units on the parcel to 11 units. While the City is downzoning Site 201 and thwarting a concrete plan for development, the Amendment attempts to make up for the planned loss of those units by adding two alternative sites, Sites 401 (2400 Bridgeway Boulevard) and 402 (2680 Bridgeway Boulevard), which are *already* developed with commercial and industrial buildings respectively and are not likely to be developed during the 6th Cycle Housing Element.

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[1] This is item 5.A (Study Session and Presentation Regarding Draft Amended 2023-2031 Housing Element, Including Modifications to Housing Element Programs and Proposed Opportunity Sites) as part of the October 1st meeting.
[2] City of Sausalito, "City of Sausalito Sixth-Cycle (2023-2031) Housing Element," (September 27, 2024) at https://www.sausalito.gov/city-government/hot-topics/housing-element-update-2023-2031.

As you are aware, the City adopted its Housing Element on January 30, 2023, only four days after it received a letter from the Department of Housing and Community Development ("HCD") notifying the City that its draft Housing Element was inadequate and required revisions. Although the City received a letter of Substantial Compliance from HCD on April 28, 2023, which was past the City's January 31, 2023 deadline, the adopted Housing Element reflects the City's rushed process to gain HCD approval. The Amendment also proposes to remove Site 85, a former CalTrans right-of-way, from the City's Sites Inventory. The removal of Site 85 from the Housing Element – less than a year after its adoption – indicates how the City cut corners to adopt its Housing Element without conducting the required analysis to ensure that sites it listed in its Housing Element are available for housing.[3]

The Amendment compounds these past errors by proposing to downzone sites that *are* suitable for development, such as Site 201 where there is a pending application, and replace the reduced residential capacity without conducting the required statutory analysis to demonstrate that the replacement sites will provide realistic capacity. The proposed changes are clearly not intended to encourage the development of housing, but rather intended to put up roadblocks for a specific project, and therefore do not constitute legally valid amendments.

THE AMEDNMENTS ARE NOT AN APPROPRIATE HOUSING ELEMENT AMENDMENT

The Housing Element Law *only* grants cities the authority to amend their adopted Housing Elements under limited circumstances. Government Code Section 65588 states when local government may and are required to revise their Housing Elements. Government Code Section 65588(a) is clear that cities may consider Housing Element amendments to evaluate and increase the effectiveness of Housing Elements. Government Code Section 65588(e) states when cities may amend their Housing Elements:

> [e]ach local government shall review its Housing Element as frequently as appropriate to evaluate all of the following:
>
> (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
> (2) The effectiveness of the Housing Element in attainment of the community's housing goals and objectives.
> (3) The progress of the city, county, or city and county in implementation of the Housing Element

None of the three situations in Government Code Section 65588(a) fit Sausalito's situation. The City has failed to implement its Housing Element Programs within the deadlines it committed to in its Housing Element. This is a violation of Housing Element Law.

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[3] The City seems to have violated Program No. 8 (Public Property Conversion to Housing) of its Housing Element, which required the City to meet with CalTrans to ensure the site could be developed for housing and continue to meet with CalTrans after the site was included in the Sites Inventory to ensure the site would be developed.

The Amendment is not intended to (1) aid the City in contributing to its state housing goal; (2) increase the effectiveness of the Housing Element in attaining the City's housing goals and objectives; or (3) implement the Housing Element. Instead, the Amendment attempts to kick the can down the road, and downzone sites from the City's Sites Inventory that the City only included in its Housing Element to received HCD certification. Specifically, the Amendment is a clear attempt to prevent a specific project—proposed by Willy's—from being built. Willy's has a pending application to build more affordable housing in the City than has been built within the City in more than 20 years. Amending the Housing Element to downzone Site 201 is an attempt to stop a project and is not an "appropriate" Housing Element amendment under Government Code Section 65588(a) and, therefore, not a legally valid proposal. Rather than waste time and resources trying to delay implementation of the Housing Element Programs, the City should be focused on carrying out its existing commitments and processing the pending application as required by law.

THE AMENDMENT'S ALTERNATIVE SITES DO NOT PROVIDE REALISTIC CAPACITY AND ARE NONVACANT SITES THAT ARE UNLIKLEY TO BE DEVELOPED

Government Code Section 66583.2(g)(2) requires a city that is relying on nonvacant sites "to accommodate 50 percent or more of its housing need for lower income households" to include in its Housing Element a "methodology used to determine additional development potential" to demonstrate that existing use "does not constitute an impediment to additional residential development during the period covered by the housing element." Since more than 50% of the City's housing needs for lower income households are planned for nonvacant sites, the City is required to comply with Government Code Section 66583.2(g)(2) and must explain in its Housing Element why each nonvacant site in its Sites Inventory can be converted from its existing use to residential housing.

The City's methodology for determining the likelihood of converting existing nonvacant buildings to residential housing is contained in Appendix D-2 of its Housing Element. Government Code Section 66583.2(g)(1) requires the City's methodology to consider many "factors including the extent to which existing uses may constitute an impediment to additional residential development [and] the city's or county's past experience with converting existing uses to higher density residential development[.]" The Housing Element and Appendix D-2 fails to analyze the City's "past experience with converting existing uses to higher density residential development[.]"[4] This is likely because the City has *no past experience* of nonvacant commercial or industrial buildings into residential development. Since the City has no experience with these projects, the likelihood of Sites 401 and 402 being completed during the planning period are slim and these sites should not be counted towards the City's realistic capacity.

The Amendment's Sites Inventory is overly optimistic about development on the new sites that it proposes to add to the Sites Inventory (while downzoning multiple sites that are suitable for

[4] There is a stray reference to the "past experience" requirement on Page HBR-120 of the adopted Housing Element where the Housing Element enumerates the factors the City is required to analyze, but no actual analysis.

development). The two new Opportunity Sites to be added to the Sites Inventory (Site 401 at 2400 Bridgeway Boulevard and Site 402 at 2680 Bridgeway Boulevard) are already developed with commercial/industrial buildings and cannot easily be converted into residential housing or demolished for residential housing. The Amendment would relocate Site 73 (SMSCSD School Nevada Campus), shifting proposed development from a parking lot to a portion of the parcel with an improved building, green space, and an outdoor sports court. Without specific analysis, the chances of development at Site 73 are unrealistic. The Amendment also proposes to increase the number of potential units at Martin Luther King, Jr. Park, which is subject to voter approval and has received universal opposition to redevelopment by residents. As explained below, the City has failed to analyze the required factors in Government Code Section 66583.2(g) to demonstrate that these sites provide realistic capacity.

1. Site 401 (2400 Bridgeway Boulevard)

The Amendment proposes to add Site 401 to the Sites Inventory as an Opportunity Site. Site 401 is a 0.67-acre site located at 2400 Bridgeway Boulevard (APN 063-130-01), zoned Industrial, and is developed with a commercial building that currently contains tenants. The Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. Rather the site seems to be added to the Amendment as the property owner is allegedly interested in "expanding [the] existing office building to incorporate multifamily residential use on the upper floors."

As the Housing Element notes, "State Law allows use of underutilized (nonvacant) sites to accommodate the RHNA [Regional Housing Needs Allocation]."[5] As part of Sausalito's analysis of these sites it is supposed to analyze

> 1) Ownership of the site - City-owned sites were anticipated to have a high potential for development based on City control of the property and ability to effect change 2) Property owner interest in development and economic gain associated with development 3) Current/past uses on the site – site has large underutilized areas, aging non-residential buildings, a high land value to improvement ratio, or a low site utilization.[6]

The City fails to demonstrate that the existing uses would not impede additional development, nor provide an analysis of current leases, nor demonstrate the financial feasibility of development. Site 402, is, therefore, unlikely to be developed during the 6th Cycle planning period and the Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 16 units claimed (2.2% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[7]

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[5] *See* HBR-120.
[6] *Id.*
[7] The City has a RHNA of 724.

2. **Site 402 (2680 Bridgeway Boulevard)**

The Amendment proposes to add Site 402 to the Sites Inventory as an Opportunity Site. Site 402 is a 2.3-acre site located at 2680 Bridgeway Boulevard (APN 063-152-01), zoned Industrial, and is developed with an industrial building that currently contains tenants. Similar to the issues raised above for Site 401, the Amendment does not contain any analysis of the likelihood of the site being redeveloped during the 6th Cycle planning period. There is also no indication that the owner of the property has indicated an interest in redeveloping the site as residential housing, nor any analysis of existing leases or other contracts that would perpetuate the existing uses.

Moreover, the feasibility of converting the site to residential housing is low due to the numerous issues which may be present on the property from its past industrial use. The City's Housing Element and the Amendment lacks a Program to address these issues, including environmental remediation for an industrial building that is over 45 years old.[8]

Site 402 is not City-owned, the property owner has not expressed an interest in redeveloping the site with residential housing, and the property is and has been used for industrial purposes. The Amendment lacks any analysis of the likelihood of redevelopment or any attempt to discount the 43 units claimed (5.93% of RHNA) to account for the very likely possibility that no such redevelopment will occur during the planning period.[9]

3. **Relocation of Site 73 (SMSCSD School Nevada Campus) (APN 064-322-01)**

The Amendment is also proposing to move development from the southwest corner of Site 73 to the northwest corner of the parcel. Site 73 is currently the Nevada Campus of the Sausalito Marin City School District. In the adopted Housing Element, development would take place on a 1-acre portion of the 13.15-acre parcel that is currently utilized as a parking lot. The Amendment would shift development to a portion of the parcel that includes an improved building, green space, and an outdoor sports court. The shift from proposed development on a parking lot to a portion of the parcel that is currently developed may result in increased construction costs.

The Amendment does not indicate whether this shift was driven by the Sausalito Marin City School District, which owns the property, nor whether this location is consistent with its Master Plan. Nonetheless, this shift makes development on the site more unlikely and reduces the probability that the City will meet its RHNA.

Program No. 8 (Public Property Conversion to Housing) in the adopted Housing Element required the City to "[m]eet with SMCSD at least quarterly in 2024 to ensure that site plans are being developed and that the site is included in a Master Plan phase for completion as early in the 6th Cycle as possible." Program No. 8 also required the City to "[m]eet with SMCSD quarterly until project is completed to assist with project application materials, financial assistance (grant or loan applications), and identify any methods available to streamline project

[8] Program No. 5 (Replacement Housing) notes that development on all nonvacant sites designated in the Housing Element which contains existing residential units or units that were rented in the past five years must comply with State law, but does not cover existing commercial or industrial buildings.
[9] The City has a RHNA of 724.

implementation." The City has provided no evidence that it has complied with Program No. 8. The City is, therefore, in violation of the Housing Element Law. The Amendment would compound that violation by proposing to shift the development to other parts of the site without any indication that the District supports the new location – or any housing at all.

4. **Proposed Upzoning of Site 84 (Martin Luther King, Jr. Park at 100 Ebbtide Avenue)**

The Amendment also proposes to increase the number of potential units that would be able to be built on Site 84 which is the site of Martin Luther King, Jr. Park and a City facilities site. For some unexplained reason, the proposed revision to Appendix D-1 in the Amendment indicates that Site 84 has the potential for 181 units as opposed to 127 units in the adopted Housing Element and the realistic capacity for 94 units as opposed to 80 units in the adopted Housing Element. No explanation for this mysterious gain in density is given although an asterisk is placed next the Site Number column.[10] Until the Amendment explains whether this increase in density is realistic, the City cannot arbitrarily increase the density without supporting information.

Finally, based on the public comments received by the City in advance of its October 1st City Council Study Session, all of which expressed opposition to development on Site 84, it is unlikely that the City will be able to follow through and permit development on this site. Under Ordinance 1022 and Ordinance 1128, any increased density must be approved by the voters. It is wishful thinking to expect that the voters will approve any housing on this park site, especially at an increase in density from the adopted Housing Element. The Amendments do not demonstrate realistic capacity simply by pushing even more of the City's RHNA onto a City-owned site subject to voter approval.

5. **Proposed Upzoning of Site 303 (1 & 3 Harbor Drive)**

The Amendment would upzone Site 303 to increase development on the site from 90 to 129 units. The site is occupied by a commercial building, however, and, as noted above, the City's Housing Element lacks a Program to address the conversion of nonvacant sites into residential housing. Although we support the increase in allowed density, the City is still required to demonstrate that the capacity is realistic and likely to be developed. The Amendments fail to do so.

6. **Decrease in Unit Count at Sites**

The Amendment would also downzone eight sites (Sites 23, 24, 39, 44, 47, 201, 207, and 301) potentially removing 36 units from the Sites Inventory. These changes are unexplained and unnecessary, especially as the increase in density from the proposed addition of Sites 401 and 402, and the upzoning of Sites 84 and 303 are unrealistic.

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[10] Both the Housing Element and Amendment have the site zoned as MU-49/85%.

VIOLATION OF THE REQUIREMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING

HCD's Guidance for Affirmatively Furthering Fair Housing for public agencies explains that "to evaluate the site inventory's consistency with the obligation to affirmatively furthering fair housing, the site inventory analysis should address . . . whether the RHNA by income group is concentrated in areas of the community." Similarly, Government Code Section 8899.50(a)(1) defines "Affirmatively furthering fair housing" to include taking meaningful actions to "replacing segregated living patterns with truly integrated and balanced living patterns[.]"

The proposed addition of Sites 401 and 402 to the Housing Element and the proposed upzoning of Sites 84 and 303 at the expense of development throughout the City continues the City's practice of concentrating development and affordable housing in the northern portion of the City in violation of the Housing Element Law's requirement that cities' Housing Elements include policies that address racial and economic segregation and promote more inclusive communities and affirmatively further fair and equal housing access and opportunities.

The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height limits in the north part of the City[.]" The City also received multiple public comment letters for its October 1st City Council Study Session objecting to this practice. The Amendment, therefore, fails to affirmatively further fair housing and would violate the Housing Element Law.

CONCLUSION

We continue to have major concerns about the City's adopted Housing Element and its ability to meet its state-mandated RHNA target, which are only exacerbated by the proposed Amendment and its changes to the Sites Inventory.

The Amendment proposes to downzone multiple sites listed in the Sites Inventory. We are worried that the proposed alternative sites will not be able to adequately accommodate the capacity for development lost by this downzoning. For these reasons, we are opposed to the Amendment.

PATTERSON & O'NEILL, PC

____

Brian O'Neill
Attorney for Willy's LLC

EXHIBIT F

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Ste. 400
Sacramento, CA 95811
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www.hcd.ca.gov

November 4, 2024

Brandon Phipps, Community and Economic Development Director
Community Development Department
City of Sausalito
420 Litho Street
Sausalito, CA 94965

Dear Brandon Phipps:

RE: City of Sausalito's 6th Cycle (2023-2031) Draft Amendment to the Housing Element

Thank you for submitting the City of Sausalito's (City) draft amendment to the housing element received for review on September 5, 2024. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on October 15, 2024, with city staff and your consultant. In addition, HCD considered public comments from several individuals, pursuant to Government Code Section 65585, subdivision (c). Please see Attachment A.

On April 28, 2023, HCD found the City's housing element in substantial compliance with State Housing Element Law (Gov. Code, § 5580 et seq) and as of this writing, the adopted element continues to comply with State Housing Element Law. However, while the draft amendment continues to meet many statutory requirements revisions will be necessary to comply with State Housing Element Law (Gov. Code, § 65580 et seq), as follows:

1. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, Subd. (a)(3).)*

   Suitability of Nonvacant Sites: Modifications have been made to the sites inventory to identify additional nonvacant sites needed to accommodate the City's Regional Housing Needs Allocation (RHNA). Sites 401 and 402 were added and others eliminated from the sites inventory with several other sites either increasing or decreasing in capacity (e.g., 23, 79, 81, 303). While the element provided a brief overview of these site changes; a full analysis must address the extent that existing uses impede additional residential development, including analyzing existing leases; contracts or other conditions; current market demand for the existing uses; development trends; market conditions; and regulatory or other incentives or standards to encourage additional residential development on these sites.

Site 201 (Bridgeway Boulevard): HCD has received public comments regarding the reduction in capacity for Site 201 and concerns with potential downzoning from the existing housing element. It is also HCD's understanding that there are active project proposals in review for this site. The City should consider and discuss how these actions are consistent with efforts to facilitate the development of a variety of housing types in the City including the provision of housing affordable to low- and moderate-income households as these changes may render the proposed project infeasible.

Electronic Site Inventory: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory and submit an electronic version of the sites inventory. While the City has submitted an electronic version of the sites inventory, since changes will occur, future re-adopted versions of the element must also submit the electronic version of the sites inventory.

2. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures… (Gov. Code, § 65583, subd. (a)(5).)*

   Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)

   Housing Overlays: The element introduces additional overlays in order to facilitate residential development on new sites, particularly Sites 401 and 402. These overlays also include a component requiring a minimum of 85 percent residential. However, the element must be revised to include a discussion of the overlays. Specifically, the analysis should discuss the overlays' appropriateness and compatibility with the City's development standards and address any impacts on cost, supply, housing choice, and affordability. For example, the element indicates that some sites have existing commercial components which will remain part of a new development. It is unclear whether the proposed overlays could accommodate the existing commercial. Programs may need to be modified based on a complete analysis.

Program 19 (Development Procedures Review): The element includes revisions to program timeframes and to account for ongoing implementation of the City's Objective Design and Development Standards (ODDS) framework. Please be advised, HCD is actively monitoring the progress of Program 19 and reminds the City that the ODDS should be reviewed and analyzed for their impacts as potential constraints on housing supply and affordability. Currently, the proposed timeline for adoption of the ODDS is May 2025. The revised element now proposes a staggered timeline based on the implementation of the rezones. Please note, rezones must be completed by January 31, 2026, including for sites subject to restrictions on existing voter initiatives. As you are aware, HCD has received public comments expressing concern over the feasibility of the proposed ODDS to facilitate development within the City. The City must demonstrate the ODDS process is not a constraint to the developmental and financial feasibility of development projects and that any required approval findings and decision-making criteria will improve development certainty and mitigate cost impacts during the planning period. When analyzing the ODDS, the City should consider impacts on both affordable and market rate projects and could consider typical projects that have been recently proposed in Marin County.

Please note, pursuant to the Housing Accountability Act, Government Code section 65589.5, subdivision (f)(1) states that while a local agency is not prohibited from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

In addition, it appears as if the City is no longer developing objective standards for the development of single-family housing. As many of the development proposals in the City are for this housing type, the element should include analysis to demonstrate the existing project approval processes are not a constraint on development or include additional programs to address development certainty.

Lastly, the housing element includes program language to review decision timelines for all applications, including remodels, since 2015 within one year of housing element adoption and to revise its permitting procedures within three months to ensure compliance with state law. As the revisions propose to delete this language, the element should include information on how this action has been accomplished and what amendments to the permitting procedures have been made.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. As noted in HCD's prior review, the City should employ additional methods for public outreach efforts in the future, particularly for lower-income and special needs households. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Affordable Housing and Sustainable Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

HCD appreciates the hard work and diligence the City provided in the housing element update and welcomes the opportunity to discuss this review and assist with the remaining statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Judith Hinh, of our staff, at Judith.Hinh@hcd.ca.gov.

Sincerely,

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

ATTACHMENT A:

Austin Arensberg

Adriana Gil Bentley

Nils Bunger

Kevin Burke

Maria Chanley

Linda Fotsch

Jennifer Nimmo

Stacy Nimmo

Brian O’Neill

Helen Park

Joel Paul

Jennifer Silva

Rafa Sonnenfeld

EXHIBIT G

Outlook

DRAFT Housing Element - 1 & 3 Harbor Drive, Sausalito

From Dennis Fisco <fisco@seagateprop.com>
Date Mon 1/30/2023 11:12 AM
To HousingElements@hcd.ca.gov <HousingElements@hcd.ca.gov>; City Clerk <CityClerk@sausalito.gov>
Cc Wick Polite <wick@seagateprop.com>; Dennis Fisco <fisco@seagateprop.com>

To Whom it Concerns:

I represent the owners of 1 & 3 Harbor Drive in Sausalito. I note that my proeprty was included in the DRAFT Housing Element. When I last spoke to City representatives they were to further the discussion with me before including my site. I did not have those subsequent discussions. There are issues with regard to parking ratios and non-conforming uses that need to be addressed prior to us considering housing on this site.

Therefore, please withdraw my property from the DRAFT Housing Element.

Thank you for your cooperation.

https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1763260/Attachment_7_-_Inventory-OpportunitySites-RecommendedChanges.pdf

Appendix D1A: Revisions to Appendix D1 from HCD Housing Element Draft. Appendix D1 will be updated to reflect final adopted inventory and this appendix will be deleted following adoption; backup sites will be retained.

Site Number	PC Rec. 1/25	CWG Rec	APN	Acres	Assessor Use Description	General Plan	Zoning	CPAD/CCED/ HISTORIC	Voter Constraints	Address	LAND VALUE	IMPROV-MENT VALUE	OTHER VALUE	TOTAL VALUE	Year Built	Existing Building S.F.
Marinship																
72	Opportunity		063-140-21	0.93	Commercial - Improved	Industrial	I		Ord. 1022 - FTI	2656 Bridgeway	1647758	2717952	0	4365710	1970	24984
66	Opportunity	CWG-Remove														
211	Opportunity	CWG-Opportunity	063-140-20	0.24	Commercial - Improved	Industrial	I		Ord. 1022 - FTI	2660 Bridgeway						
303		CWG-Opportunity	063-140-15	6.29	Commercial - Impro	Industrial	I		Ord. 1022 - FTI	1 & 3 Harbor Dr						115264
305		CWG-Opportunity	063-140-18	0.39		Industrial	I		Ord. 1022 - FTI	2650 Bridgeway						
306		CWG-Opportunity	063-162-04	0.33		Industrial	I		Ord. 1022 - FTI	3000 Bridgeway						
305		CWG-Opportunity	063-152-01	2.27	Industrial - Improved	Industrial	I		Ord. 1022 - FTI	2700 Bridgeway						35200
Monte Mar Vista/Toyon Terraces																
	Inventory	Inventory	064-204-35	0.14	Single-Resid. - Unimproved	Medium Low Density Residential	R-1-6			177 CAZNEAU AVE	678050	0	0	678050	0	0
	Inventory	Inventory	064-243-22	0.12	Single-Resid. - Unimproved	Medium Low Density Residential	R-1-6			61 GEORGE LN	34528	0	0	34528	0	0
	Inventory	Inventory	064-251-29	0.03	Single-Resid. - Unimproved	Low Density Residential	R-1-8			CRECIENTA DR	22905	0	0	22905	0	0

Site Number	Existing Units	Existing Density	Land Area	City-Owned	Property Owner Interest	Economic Gain from Rezoning	Age of Buidling (<45 Years)	Opportunity Site Overlay	Draft HE Inventory	VL/L Site 0.5+ acres	Ballot	Notes	Potential Units (Realistic Capacity)	VL	L	M	AM
Marinship																	
72	0	0	0.93		Y	Y	Y	MU-49/85%	Opportunity Site	Yes		Property owner interest.	34	14	4	3	13
66								Housing-49					19	11	5	3	-
211	0				Y	Y	Y	MU-49/85%				Property owner interest. For sale.	9			4	5
303	0				Y	Y	Y	MU-49/50%				Property owner interested in developing 90 units of housing in a portion parking area (approx. 2.5 acres) and anticipates 20% very low/low units..	90	9	5	4	72
305					Y	Y	Y	MU-50/85%				Property owner interest.	22	-	-	11	11
306					Y	Y	Y	MU-70/85%				Property owner interest. For sale.	20	-	-	10	10
305	0				Y	Y	Y	MU-49/50%				Determining property owner interest. Assuming 50% of site redeveloped with overlay.	41	17	5	4	15
Monte Mar Vista/Toyon Terraces																	
	0	0	0.14				Y	Existing-Project	Inventory			Vacant	2	-	-	1	1
	0	0	0.12				Y	Existing-SB9V	Inventory			Vacant	4	-	-	2	2
	0	0	0.03				Y	Existing-SB9V	Inventory			Vacant	4	-	-	2	2

D.

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