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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
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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.

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 receive 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.

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[.]”⁵ 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.

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

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 SMCSDD 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 SMCSDD 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

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 further 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.

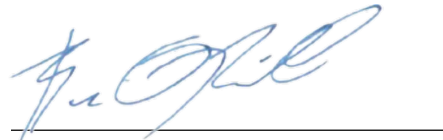
The City's policy of segregating development in the northern portion of the City is even acknowledged in the staff report for the October 1st City Council Study Session, which states that "Staff is working to (1) prepare an Amended Housing Element, which reflects the Council's request for increased height 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



Brian O'Neill
Attorney for Willy's LLC