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September 18, 2013

Jeff Bond, Community Development Director
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

RE: CITY OF ALBANY HOUSING ELEMENT

Dear Mr. Jeff Bond,

Urban Habitat builds power in low-income communities and communities of color by combining education, advocacy, research and coalition building to advance environmental, economic and social justice in the Bay Area. We envision a society where all people live in economically and environmentally healthy neighborhoods. Clean air, land and water are recognized as fundamental human rights. Effective public transportation and land-use planning connect people to the resources, opportunities and services to thrive. And affordable housing provides a healthy and safe home for all.

Urban Habitat would like to commend the City of Albany for committing to the city's current Housing Element process. The Housing Element is a crucial part of the city's General Plan and will help the city plan for future housing needs as new and existing residents move into Albany or as existing Albany households continue to grow. This is especially true in light of recent events surrounding the Albany's need to support homeless residents at the Albany Bulb. As part of the Housing Element process, Albany is required to identify sites for the development of homeless shelters and transitional housing, and hopefully this process can be incorporated with on-going plans to address the homeless encampment at Albany Bulb.

The Needs Assessment should include a careful consideration of the number, demographic characteristics, and need for housing and services for homeless people, including those encamped at the Albany Bulb, and an assessment of whether there is existing capacity to house the homeless in Albany or whether additional deeply affordable housing with supportive services is required. Note that State law requires that cities include in their Housing Element an identification of sites/zones where development of homeless shelters is permitted by right without the need for a conditional use permit, etc. In addition, transitional and supportive housing must be treated as residential uses and not subject to requirements other than those generally placed on



residential development. These are known as the SB 2 requirements (based on the bill that established this requirement).

Sincerely,
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Acting Executive Director
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September 25, 2013
Via Facsimile

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Planning and Zoning Commission
1000 San Pablo Avenue
Albany, CA 94706

Nicole Almageur, City Clerk
City of Albany
Planning and Zoning Commission
1000 San Pablo Avenue
Albany, CA 94706

Re: Comments re Agenda Item 4.A, September 25, 2013 Meeting:
Second Draft Housing Element for 2007-14 Planning Period ("Second
Draft") dated September 18, 2013

Dear Chair, Commissioners, and Ms. Almageur:

Bay Area Legal Aid and The Public Interest Law Project submit these comments regarding the above Second Draft Housing Element on behalf of our clients, Amber Whitson, Betty Stephenson, and the Albany Housing Advocates. We appreciate the opportunity to comment on the Second Draft but are disappointed with the City's extraordinary and ongoing delay in bringing its long overdue Housing Element for the current planning period forward for review. We are particularly disappointed that this draft, which comes more than four years since the July 2009 Draft Housing Element, is incomplete. It lacks an analysis of governmental constraints, non-governmental constraints, an inventory of potential sites for residential development, and an analysis of the availability and suitability of those sites for development. As a result, the draft goals, policies, and programs proposed in Chapter 6 also are incomplete. Yet the staff report for this study session encourages the Commission to focus its review on those *incomplete* revisions to Chapter 6 (goals, policies and actions).

It is premature for the Commission to review an *incomplete* draft and inappropriate to review the revised element in the piecemeal fashion proposed by staff. The goals, policies and action programs must be *informed* by other components of the housing element – some of which have yet to be drafted and

others that have not previously been presented to the Commission and were released for public review only a week ago. The City's first Housing Element since 1992 should not be reviewed by the Commission in a vacuum or at the last minute. We urge the Commission to instruct staff to bring a *complete* Second Draft back to the Commission for its input and to release that draft well in advance of such meeting to permit meaningful review by the public. Obviously, that cannot be done at this meeting or by October 9, 2013 as staff recommends. When the City has taken more than four years to revise its incomplete and inadequate 2009 Draft Housing Element, its release of only a partial Second Draft just one week before this meeting is not reasonable and discourages public participation.

Those portions of the Second Draft that have been revised are incomplete and inadequate to comply with state law for the reasons set forth below.

1. The City's public participation efforts related to the Second Draft have been negligible.

The Second Draft does not adequately describe the City's efforts to encourage public participation during revision of its 2009 Draft Housing Element as required by Government Code §65583(c)(8) and as suggested by HCD's Building Blocks guide. The draft fails to sufficiently state how public participation was encouraged, who was invited to participate, who participated, the general comments individuals raised, and how these comments were addressed and/or incorporated into the revisions. The detail as to how the City tried to reach out to all economic segments of the community is entirely vague. Most striking is the City's foregone conclusion that HCD will find its public participation efforts satisfactory. Second Draft at 1-7.

No amount of editing of the Second Draft can cure the City's failure to make diligent efforts to encourage public participation, because the City simply has not engaged the public. As for the alleged meetings that occurred prior to or earlier this year, no draft or portion of a draft was made available to the public until September 18, 2013. The City claims to have previously solicited public comment at several Planning and Zoning Commission and City Council meetings, but the agendas for those meetings advertised a "*General Plan Update Review and Presentation*," not a revision of the City's long overdue Housing Element. Although the consultant may have mentioned that the City also needs to adopt a revised Housing Element for the 2007-14 planning period during some of those meetings, there was no way for the public to know that the City sought input or comments on revision of its Housing Element for the current planning period, because the Housing Element revision simply was not on those agendas. We also are informed that the City's outreach effort to the Rotary Club was with respect to the General Plan Update, not revision of the City's 2009 Draft Housing Element. Outreach to the Rotary Club also does not demonstrate diligent efforts to engage all economic segments of the community.

Moreover, the City's piecemeal presentation of only parts of a revised Housing Element

effectively eliminates any real opportunity for the public to comment. There is no way for lower income individuals or their representatives to review and provide any substantive input on a draft element that has yet to be completed. It is apparent that the City's primary goal is to rush a draft that has not been vetted with the public, the Commission, or elected officials to HCD in hopes of getting a quick approval. The City cannot circumvent its duties under Government Code § 65583(c)(8) in that process, and its failure to encourage and respond to comments from the public will likely impede approval by HCD.

2. The Second Draft includes a 'foregone' conclusion with respect to the obligation to identify sites that is unsupported by the requisite analysis.

The City acknowledges that the "identification of potential housing sites is one of the most important parts of the Housing Element." Second Draft at 1-4. It further advises that Chapter 4 (site inventory and analysis) is still in the process of being updated. Second Draft at 4-1; *see also* Index to Second Draft. Nonetheless, it concludes that because existing sites are currently zoned for residential or mixed use development, "**no rezoning or increase in allowed density of development is required to meet the City's obligations.**" Second Draft at 6-1 (emphasis in original). That conclusion is premature and unsupported. The City cannot fairly presume that existing sites are available and suitable to accommodate its regional housing need for 276 residential units for this planning period when it has yet to identify and analyze existing sites as required by Government Code §§65583(a)(3) and 65583.2. Moreover, by announcing its 'foregone conclusion' that no rezoning or increase in allowed density is required, the City undermines any notion of meaningful public participation. The implication is that the City has already decided the outcome of an analysis it has yet to perform.

3. Evaluation of the City's "prior housing element" policies and programs is incomplete and demonstrates the need for careful consideration of future goals, policies, and programs.

The Housing Element must evaluate "the effectiveness of the housing element in attainment of the community's housing goals and objectives," and the progress of the jurisdiction "in implementation of the housing element." Govt. C. §65588(a). This evaluation is important because it enables the City to assess its actual progress in contributing to the affordable housing stock for all economic segments of the community and lays the foundation for improving its performance during the new planning period.

Albany's evaluation of its performance, going back to 1992 when it last adopted a housing element, demonstrates dismal results for the lower income community. At best, the Second Draft reflects that 5 very low income units and 15 low income units (located at Villa de Albany and Creekside Apartments) have been constructed since 1999. The Creekside Apartments (totaling 13 units) are the only affordable *rental* units constructed since 1999 (and presumably since 1992). Second Draft at 2-2, Table 2-2; 2-7, Policy

1.4.¹ Between 1988 and 1998, the City reports that 67 rehabilitation loans were made to low income households. *Id.* at 2-6, Program 1.1. After that, the City states that it continued to support the *County's* rehabilitation loan program, but offers no information as to the number of loans actually extended to Albany households, the income level of those households, or whether the affordability levels of those units are deed restricted for lower income households as a result of such loans. *Id.* The City's conclusion that an average of 6 to 7 rehabilitation loans are made each year to low income households also is not supported by any objective data. The City claims that 8 second units have been constructed since 2000 (Second Draft at 2-11, Policy 2.4), but aside from its unsupported assumption that 4 of these second units were affordable rentals (*see* footnote 1 above), there is no indication that the second units have contributed to the affordable housing stock for lower income households. Similarly, the City states that 10 more second units were *approved* between 2007 and 2012, but offers no explanation as to why those units have not apparently been constructed. *Id.* at 2-11, Policy 2.4. The City's evaluation of whether any multifamily rental units have been lost from the housing market is equally vague. In evaluating the effectiveness of the City's condominium conversion program, for example, which would permit the conversion of up to 80 rental units per year, the City states that this "cap" has never been approached. To fairly determine the effectiveness of its condominium conversion ordinance, however, the City should disclose the actual number of applications for conversion received since 1992 and the number of units that were permitted to convert pursuant to those applications.

The City's bleak performance in achieving its goals to promote the development of housing affordable to lower income families or to address the needs of households with special needs should be of little surprise. Its evaluation of policies and programs that purportedly existed since 1992 indicates that many of those programs were only marginally implemented, abandoned altogether due to lack of resources or other reasons, or simply ineffective. For example, the City never amended its condominium conversion ordinance to allow limited equity cooperatives because it now claims that "the intent of the program as worded is unclear." Second Draft at 2-6, Program 1.2. Fiscal constraints and limited staff resulted in only two or three code enforcement cases a year (Program 1.3.1) and the fire inspection program was not expanded beyond multi-family developments with 3 or more units as planned (Program 1.3.2). *Id.* at 2-7. Similarly, although the City committed in 1992 to revise its Zoning Ordinance to require the development of accessible units consistent with state and federal disability laws, it inexplicably decided (without amending its housing element) to pursue other strategies such as adopting a reasonable accommodations ordinance. *Id.* at 2-12, Program 3.2.1. Although the City adopted an inclusionary housing program to encourage development of low and very low income units (Program 2.1.2), the only affordable units attributed to the

¹ The City's assumptions that 4 market-rate "second units" were "affordable by design" (2 for very low and 2 for low income households) during the 1999-2006 planning period are not supported by any credible standard. Second Draft at 2-1. An analysis of 'current' rents posted on Craigslist for second units of purportedly comparable size in 2013 cannot substitute for actual rent data for these units during the prior planning period. *Id.* at n. 1.

ordinance are four owner-occupied condominiums at Villa de Albany. *Id.* at 2-2, 2-8. The evaluation lacks any analysis explaining the ineffectiveness of this program, at the same time that it reports the construction of over 300 moderate and above-moderate income units since 1999. *Id.* Tellingly, the City acknowledges that it has no list of the incentives it purportedly provides “informally” to encourage the development of lower income housing, because it did not develop an incentives program as promised in the 1992 Housing Element. *Id.* at 2-8, Program 2.1.1. Nor has it updated its Housing Element since 1992. Thus, there is no discernible way for developers to identify *any* development opportunities that may exist in Albany, and particularly not opportunities to develop housing for the lower income community. For these reasons, the Commission should very carefully evaluate the City’s actual progress in achieving the community’s past goals, and should instruct staff to devote at least one study session to that evaluation before jumping ahead to a discussion of the policies and programs that will be necessary to significantly improve the City’s performance.

4. The City has a significant carry-over of unmet regional housing needs for the 1999-2006 planning period for which it never adopted an updated housing element.

We strongly object to the City’s determination in Chapter 2 of the Second Draft that it has *no* carry-over of unmet regional housing needs from the 1999-2006 planning period. Second Draft at 2-3, 2-4. Government Code §65584.09 was enacted to promote effective and timely implementation of housing elements. Since the enactment of AB 1233 in 2005, when a jurisdiction fails to adopt an updated housing element for the prior planning period, it must during the first year of its next planning period, zone or rezone adequate sites to address the unaccommodated regional housing need for that planning period. Because Albany did not update its Housing Element for the 1999-2006 planning period, it is presumed to have not made adequate sites available to accommodate regional housing needs for 277 units. Although it can reduce that number by demonstrating that some units meeting these needs were *actually constructed*, it cannot reduce the obligation by claiming that appropriately zoned sites existed during the prior planning period. Even assuming the sites referred to in Table 2-4 were adequately zoned and available, they were not identified in an approved Housing Element and cannot, therefore, be ‘counted’ to reduce the City’s “carry-over” obligation. *See* Govt. C. §65584.09; *see also* HCD Memo of June 20, 2007 regarding application of AB 1233. Thus, the City’s analysis that it has no “carry-over” obligation for this planning period is erroneous.

We acknowledge that if 20 lower income units with the affordability restrictions described in the draft were constructed during the past planning period (Creekside Apartments and Villa de Albany), then 5 very low and 15 low-income units could be deducted from the City’s “carry-over” obligation. The City’s analysis that four ‘market rate’ second units were ‘really’ affordable is not supported, however, with any credible documentation or analysis. Similarly, the City offers no analysis of rent and utilities for the 237 UC Village units it desires to count to reduce its “carry-over” of “moderate-income” housing needs. Accordingly, because the City’s regional housing needs for very

low income was 64, it has a remaining obligation of at least 59 very low income units. Its low income RHNA was 33 units, which might be reduced to 18 units. And, its moderate-income "carry-over" remains at 241 units absent further analysis.

It is critical that the Commission carefully review the City's "carry-over" obligations because of the impact these obligations will have on the City's identification and analysis of adequate sites and requisite rezoning programs.

5. The City's Needs Analysis provides critical information that should inform the City's future goals, policies, and programs.

We appreciate that the Assessment of Housing Needs contained in the Second Draft (Chapter 3) has been updated to describe the community's housing needs and demographics based on current data from the 2010 Census. However, the needs analysis glosses over several aspects of the housing market that demonstrate the effects of a severe shortage of affordable housing in Albany. It also fails to properly address the consequences of the City's planned relocation of Albany Bulb residents.

For example, the City notes that "Albany has been growing more diverse in the past two decades," but does not comment on the declining number of African-American residents (the percentage of African-American residents fell slightly from the 2000 to 2010 census, from 4.1% to 3.5%). Second Draft at 3-4. It correctly notes that approximately half of Albany's residents are renters (51.7%), and because there are more employed residents than jobs, the City serves as a residential community for persons working elsewhere. Second Draft at 3-7. In fact, "only about 15 percent of Albany's employed residents work within the city—[while] 47 percent commute to another city in Alameda County and 37 percent commute to another county." Second Draft at 3-8. Although the City asserts that Albany may serve as a housing "reservoir" for nearby communities such as Berkeley and Emeryville, it does not specifically address any imbalance between "local jobs" in Albany and "local housing." Such an imbalance often increases the need for affordable housing. Although some residents commute out to higher paying jobs elsewhere, others need to commute in for lower paying service jobs that may be found in Albany, and the needs analysis does not consider this issue.

The City also does not adequately address the large increase in the cost of rental housing and homeownership since 2000, or the effects of these increases on persons protected by fair housing laws. For example, according to data from the 2006-2010 American Community Survey, the average income for White households in Albany is much higher (\$81,297) than for African American households (\$46,550), Hispanic households (\$45,403), or Asian households (\$56,461). These facts indicate a need for affordable housing and affirmatively furthering fair housing that is not addressed in the needs analysis. The City further notes that median household income in Albany (\$72,479) is lower than the regional household median (\$92,300), and acknowledges that a significant percentage of Albany households are very low income (18% of households have income below \$25,000, and 17% between \$25,000 and \$50,000). Second Draft at 3-10.

Moreover, 1,267 persons in Albany receive Social Security benefits (averaging \$15,749 annually), 141 senior and/or disabled residents receive Supplemental Security Income (SSI) (averaging \$7,840 annually), and 120 persons receive food stamps (SNAP). Second Draft 3-10. The percentage of Albany's population living below the federal poverty level is 8.5%. Second Draft 3-10.

The lack of affordable housing may be best demonstrated by the overpayment burden experienced by Albany residents ("overpayment" means spending more than 30 percent of income on housing). The City concludes that "almost all renters with incomes under \$35,000 are considered to be overpaying." Second Draft 3-11. Table 3-6 provides these figures in stark detail, and shows that nearly half of the renters in Albany (47.6%) are paying over 35% of their income for housing. Second Draft at 3-12. The problem of "overcrowding" is also most severe for renters in Albany; 3.3% of these households are overcrowded. Second Draft at 3-14.

The City also reports that according to the 2000 Census, 13.3 percent of Albany residents were disabled, but it does not update this information based on the 2010 Census. Second Draft at 3-15. The Assessment also has a section for describing needs of persons with developmental disabilities, but the analysis is incomplete in that certain figures are held by placeholders instead of actual numbers. Second Draft at 3-17. Data showing the age distribution and size of households is also provided. Second Draft at 3-19 to 20.

In accordance with requirements of AB 2634, the City describes the Extremely Low Income households in Albany (those earning less than \$22,750 per year). Second Draft at 3-22 to 3-24. Approximately 15% of Albany's population falls into this category, or about 1,086 households. *Id.* at 3-22. Table 3-17 shows those most affected by Albany's failure to adequately plan for affordable housing because 70% of extremely low income persons are renters, and more than 61% of extremely low income homeowners are seniors. Second Draft at 3-23.

A section concerning "Families and Persons in Need of Emergency Shelter" provides general information on homelessness, and concludes that "[w]ithin the City of Albany, emergency, transitional, and permanent housing options are very limited at this time." HE 3-26. The City also acknowledges that approximately 60-70 of its homeless residents reside at the Albany Bulb, and claims that the planned "relocation" of these residents will include "relocation assistance to transitional and permanent housing." Second Draft at 3-26. Yet, the City acknowledges that it "does not have an emergency shelter, and there is no transitional or supportive housing" in Albany at all. Second Draft at 3-26.

It is evident from the needs analysis, that there is a critical shortage of housing that is affordable to Albany's lower income population and to families and persons with special housing needs, including persons with disabilities, seniors, and homeless persons. Likewise, its renters, workers, and persons of color are negatively impacted by the City's failure to adequately address the need for affordable housing for all economic segments of the community. Accordingly, the City must establish goals, policies, and concrete

programs and promptly implement them to address these needs. As with the City's evaluation of its 1992 Housing Element, the Commission should instruct staff to schedule a study session to review and discuss the Needs Assessment of the Second Draft, so that the Commission can include and prioritize those goals, policies, and programs that will actually serve the community's identified housing needs.

6. It is premature to evaluate the goals, policies, and programs contained in the incomplete Second Draft.

State law requires that a Housing Element contain: "A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing." Gov't. Code §65583(b). There should be a corresponding goal and policy in the Housing Element for each housing need, resource inadequacy and constraint identified in the Housing Element. In addition, there must be a quantified objective for each housing need identified. Because the Second Draft fails to include an analysis of the City's resources and constraints, it also fails at this point to contain a complete statement of goals, quantified objectives and policies. The Housing Element also must include a schedule of actions the City will take during the planning period, each with a timeline for implementation, such that there will be beneficial impacts of the programs within the planning period to implement the policies and achieve the goals and objectives of the housing element. Certain programs also are mandated when a City fails to demonstrate in its inventory and analysis of sites that it has sufficient sites to accommodate units to meet all of its outstanding regional housing needs. These programs may include rezoning, the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of federal, state and local financing to encourage the development of affordable housing and housing for persons with special needs. *See* Govt. Code § 65583(c). Because the Second Draft also lacks an inventory and analysis of adequate sites, it also fails to contain a complete statement of goals, quantified objectives, policies and programs.

Accordingly, it is premature to consider the goals, policies and programs included in the Second Draft. They are inherently inadequate to comply with state law because they are not *informed* by a complete analysis of all necessary information. We urge the Commission to postpone any serious consideration of Chapter 6 of the Second Draft until a complete revised Housing Element is presented and made available to the public for meaningful review.

We thank you for the opportunity to comment on the 'partial' Second Draft, but will reserve our comments and suggestions regarding particular goals, policies and programs until the City completes and discloses the analyses necessary to inform its suggested goals, policies and programs. We also look forward to the City's responses to our comments.

Thank you for your consideration.

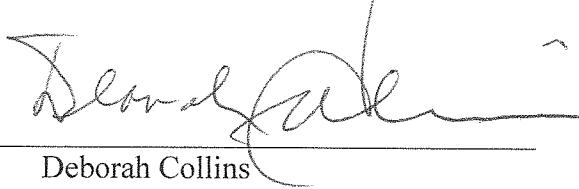
City of Albany, Planning and Zoning Commission
September 25, 2013
Page 9

Very truly yours,

Naomi Young
David Levin
BAY AREA LEGAL AID

Deborah Collins
Lauren Hansen
PUBLIC INTEREST LAW PROJECT

BY: _____



Deborah Collins

cc (by e-mail):

Patrick O'Keeffe, City Manager
Jeff Bond, Planning and Zoning Department
Anne Hersch, City Planner
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PUBLIC INTEREST LAW PROJECT

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October 9, 2013

Via electronic mail

Chairperson Stacy Eisenmann
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Re: Comments re Agenda Item 7.A, October 9, 2013 Meeting:
Second Draft Housing Element, 2007-14 Planning Period,
Chapter 4, released October 4, 2013

Dear Chair, Commissioners, and Ms. Almaguer:

Bay Area Legal Aid and The Public Interest Law Project submit these supplemental comments regarding Chapter 4 of the Second Draft Housing Element on behalf of our clients, Amber Whitson, Betty Stephenson, and the Albany Housing Advocates. We appreciate the opportunity to comment on the site inventory and analysis (Chapter 4) but continue to object to the City's process for updating the Housing Element. Prior to and at the September 25th meeting of this Commission, staff advised that Chapters 4 and 5 (Analysis of Constraints) would be available for review and comment prior to the October 9th Commission meeting. Our clients have actively participated in the City's belated and hasty attempt to comply with California Housing Element law, but obviously they cannot address important aspects of a draft plan that have not yet been released to the public. Moreover, the City's site inventory and analysis released on Friday, October 4th is inadequate to comply with state law. For these reasons and the reasons set forth in our September 25th comments, we respectfully object to staff's recommendation that the incomplete draft should be forwarded to the City Council with this Commission's recommendation that it should be sent to the Department of Housing and Community Development (HCD) for review.

1. The process for updating the housing element is deficient and conflicts with state and local laws.

It is premature for the Planning and Zoning Commission to recommend that the City Council forward the draft to HCD for review. A complete draft of an updated Housing Element has not been offered for public comment or reviewed by the Commission. California law requires that prior to adopting or amending any portion of its general plan, the planning commission and legislative body of the local government must hold properly noticed public hearings. This requirement means that any proposed Housing Element Draft must be made available in advance of any meeting(s) in order for all interested persons to adequately review and prepare comments on such proposals. *See Govt. C. §65583(c)(8)* (housing element development process must "[i]nclude a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element and the program shall describe this effort.>").

Furthermore, section 3.16 of the Albany City Charter provides that the Planning and Zoning Commission is responsible for making full and complete recommendations to the City Council regarding land use policies in the General Plan, such as the Draft Housing Element:

The Planning and Zoning Commission shall have the power and be required to (a) recommend to the Council the adoption, amendment or repeal of the master plan or any part thereof for the physical development of the City and (b) exercise such functions with respect to land subdivision, planning and zoning as may be presented by ordinance or resolution.

The City's failure to release important sections of a draft housing element, including Chapter 5 ("Potential Constraints to Housing Production") prevents adequate public review and violates California law. In addition, as discussed in the comments we submitted on September 25th, the draft goals, policies, and programs proposed in Chapter 6 are inherently incomplete because they were drafted without benefit of a site inventory or constraints analysis. We urge the Planning and Zoning Commission to refrain from making any recommendation to the City Council until a full and complete Draft Housing Element has been reviewed by the Commission and released to the public for meaningful review and input. This is an important and valuable process, and any effort to short-circuit these requirements is likely only to result in additional delay before a compliant housing element can be drafted and adopted by Albany with the necessary public participation.

2. The site inventory fails to identify adequate sites to accommodate the City's unmet regional housing needs for the prior planning period.

As already discussed in our September 25, 2013 comments, Albany did not make

adequate sites available to accommodate regional housing needs for 277 units for the 1999-2006 planning period and has not rezoned sites during this planning period to accommodate those needs. At best, Albany may be able to reduce its RHNA obligations for the prior planning period by the number of units that were *actually constructed* for *each* income category during the past planning period. Chapter 2 of the Second Draft identifies five specific developments that were reportedly constructed between 1999 and 2006 – Portland Gardens, Albany Gardens, Villa de Albany, Creekside Apartments, and UC Village.¹ See Second Draft, Table 2-2. Only 20 of these units are reported as affordable to lower income households (15 low-income and 5 very low-income at Villa de Albany and Creekside); 237 for moderate-income; and 54 for above moderate-income. The City cannot rely on unidentified “other infill homes” and “second units” to further reduce its outstanding RHNA for the prior planning period. *Id.* Because no information is provided as to the location of these units (by development name, address, parcel number or otherwise), production of the units cannot be verified. Likewise, there is no indication whether the second units the City attempts to count are actually rented out to other households, and the affordability levels attributed to them is purely speculative.² Moreover, the City cannot count sites that it claims were appropriately zoned and

¹ UC Village has been redeveloped in phases and consists of different size units and affordability levels. The draft element should specify which development (e.g., East Village, West Village, etc.) was completed when, together with the number, size, and affordability levels of the units. The element also should acknowledge that UC Village is exclusively restricted to house students, graduate students, and/or faculty of the University of California and analyze whether these ‘restricted’ units are eligible to address the community’s housing needs.

² The assumption in the draft element that some of the second units that have been produced in Albany during the prior planning period and this planning period are affordable to lower-income households is flawed. First, the element offers no analysis as to whether the second units developed in the City are actually rented to a separate household at all versus units used for guests or vacation rentals, additional living space, or any other use other than for occupancy by a separate household at an affordable rent. Second, the assumption is not premised on an actual survey of rents actually charged for second units. Rather, it is premised on the notion that even if market rents are charged for second units, a smaller size unit (charging a market rent of \$2.50/sq. foot) would be affordable to very low income households. That analysis seems to be factually flawed. Current rents listed on Craigslist in the East Bay range from \$1799 for a one-bedroom, 710 sq. foot unit to \$2700 for a 3-bedroom unit. Notably, no smaller units are currently listed on Craigslist at any rent level. But even assuming that a 350 sq. foot “second unit” were available, a comparison to actual current rents, would mean that the rent would likely be in the range of \$900 (approximately one-half of the rent charged for a 710 sq. foot unit). A market rent of \$900 is not affordable to a household small enough to fit in a 350 sq. foot unit. An extremely low income household of one cannot afford rent and utilities over \$491 a month, and a very low income household should not spend more than \$818 for rent and utilities.

available during 1999-2006 to accommodate its unmet RHNA. None of those sites were *identified* in its housing element since the City failed to update its housing element for the prior planning period.

Therefore, assuming the information for specifically identified developments is accurate and that the ‘restricted’ UC Village units can be counted towards the community’s moderate-income housing needs, the City’s unmet RHNA for the prior planning period includes at least 59 very low-income and 18 low-income units. The City failed to rezone sites to accommodate this deficit by June 30, 2010, and fails to include any program in the current draft to do so. Therefore, its conclusion that it has no “carry-over” obligation for the prior planning period is not supported, and the Second Draft Element does not comply with state law.

3. The site inventory fails to identify adequate sites to accommodate the City’s regional housing needs for the current planning period.

a. The Second Draft does not sufficiently support the City’s proposed reduction of its RHNA for the current planning period.

The City’s RHNA for the *current* planning period is 276 units (64 very low, 43 low, 52 moderate, and 117 above moderate-income). In Chapter 4 of the Second Draft, the City attempts to reduce its RHNA by pointing to units that have been constructed or approved going back to 2007. *See* Table 4-1. It acknowledges that no units have been constructed or approved for very low-income units. The City claims, however, that 7 units have been constructed or approved for low-income households; 176 moderate-income units have been constructed (including 173 “net” units at UC Village); and 29 above moderate-income homes were produced.

The draft does not provide sufficient information to support that 7 low-income units were produced. It does not specify *when* the 1 low-income unit (and 9 “net” above moderate-income units) were ‘approved’ at 423-427 Talbot; it also acknowledges that these units have not been constructed. The draft should specify when the development was approved, explain the status of the project, including when the units will actually be produced during the planning period, and explain whether the unit attributed to the inclusionary zoning ordinance is or will be deed restricted for low-income. The location (by address or parcel number) of the 6 second units also must be provided, together with the dates of approval or construction, the status of construction, and an analysis as to whether the second units are available on the rental market, and/or restricted for rental to low-income households. It is impossible from the current draft to determine whether the City is “double-counting” second units to reduce its RHNA for both the prior planning period and the current planning period. Likewise, the specific ‘phase’ of University Village units that are claimed for the prior planning period versus the current planning period must be explained given that these developments have occurred in phases (East or West Village). In addition, an analysis of the availability of these units to meet the community’s moderate-income housing needs should be included in light of their restricted use for University students, graduate students and faculty. Finally, the draft

element points to 11 “various” single-family homes that were produced to count towards the City’s above moderate-income housing needs. The specific identification of units the City desires to count, together with information as to when they were approved or constructed, must be included in the draft before the City can use these homes to reduce its RHNA.

In the absence of a complete analysis as to units the City attempts to count towards its RHNA, it must identify sufficient sites to accommodate a RHNA of 276 units, including 64 for very low-income and 43 for low-income households.

b. The site inventory relies predominantly on small, non-vacant sites to accommodate the City’s RHNA for lower-income housing -- sites that cannot realistically accommodate the City’s lower income housing needs.

A major obligation of the Housing Element law is the identification of sufficient sites suitable for residential development to accommodate the jurisdiction’s share of the regional housing need at all income levels. Govt. C. §65583.2(a). Sites can only be counted if they can realistically accommodate a portion of the jurisdiction’s housing need at a given income level during the planning period. Govt. C. §65583.2(c). Although the housing element law establishes default densities that are presumptively appropriate to accommodate lower income housing, density alone is not sufficient to make a site feasible for affordable housing development, and particularly not when applied to smaller sites.

Albany’s unmet lower income housing needs for the prior and current planning period totals 184 units, 77 for the prior planning period (including 59 very low and 18 low-income units), and 107 for the current planning period (including 64 very low and 43 low-income units). In Chapter 4, the City identifies sites that could accommodate a maximum of 151 units towards the City’s lower-income housing needs. Thus, its identification of sites, on its face, falls short of meeting the City’s outstanding RHNA for lower-income units. Further, the sites identified are not realistically available for development during the current planning period, in part due to the City’s long delay in revising its element to make those sites available.

Moreover, the only sites identified for lower-income housing are so small that they cannot realistically be developed for affordable housing. Chapter 4 reports that there are no vacant R-3 or R-4 sites available to accommodate multi-family, higher density developments. Accordingly, it relies on 2 vacant “mixed use” sites, 4 under-utilized “R-3” sites, and 11 “mixed use” under-utilized sites to accommodate its regional housing needs for lower-income households. The purportedly available vacant “mixed use” sites identified on Table 4-4 are both less than 1/5-acre sites (1245 Solano and 505 Adams) which the City claims now could accommodate a combined maximum of 11 units.³ The

³ In the July 2009 draft element, the City stated that the 1245 Solano site could accommodate a maximum of 4 units. Inexplicably, it now claims the site can accommodate 5 units.

four under-utilized R-3 sites (Cornell, Stannage, Evelyn and Adams) are all less than ¼-acre. *See* Table 4-3. The City claims now that these sites could accommodate 26 units total, but in its July 2009 draft, it said these same sites could accommodate 22 units. Finally, the City identifies 9 under-utilized “mixed use” sites to accommodate a total of 104 or 114 units, depending on the accuracy of the information in the revised Chapter 4 or the July 2009 draft element.⁴ All of these sites are less than one acre. Only three of them are more than ½ acre – the Goodyear, Sizzler parking lot, and Kaady Car Wash/Norge Cleaners parcels. Three sites are between ¼ and ½ acre (California Bank & Trust, Hertz rental car, and Mechanics Bank). The remainder are less than 1/5 acre sites. *See* Table 4-5.

Small sites present particular problems for the development of lower-income housing. Official HCD guidance requires additional analysis for sites under one acre. “To utilize small sites to accommodate the jurisdiction’s share of the regional housing need for lower-income households, the element must consider the impact of constraints associated with small lot development on the ability of a developer to produce housing affordable to lower-income households.” *See* HCD Building Blocks for Effective Housing Elements, Adequate Sites Inventory and Analysis, Realistic Development Capacity.

The City claims in Chapter 2 of the Second Draft that many of these “under-utilized” sites also were available for residential development during the prior planning period, including a portion of the Albany Bowl site; an underutilized parking lot on San Pablo; the Hertz rental car site; the Goodyear automotive site; and the Sizzler Restaurant parking lot. *See* Second Draft, Table 2-4. Tellingly, *none* of these sites were developed or redeveloped for residential use during the prior planning period or the first four years of this planning period. Indeed, the site connected to the Albany Bowl (505 Adams referred to in Table 4-4) has not been ‘redeveloped’ to accommodate any regional housing needs since it was identified as a potential site in the 1992 Housing Element. Thus, there are clearly constraints to the development or redevelopment of these sites, whether they are zoned for residential or mixed use. One obvious constraint is the size of the sites. This should be analyzed as a constraint to development of lower-income units and programs must be developed to eliminate or mitigate the constraint.

Further, the City’s analysis is lacking as to whether under-utilized sites can realistically be made available for lower income housing development during the planning period in light of the current businesses operating on those sites. For example, two of the sites have housed ‘banks’ for decades -- California Bank & Trust since 1981 and Mechanic’s Bank since 1966. The City’s ‘observation’ that some banks have or may merge in light of the electronic banking era does not appear relevant to these two banks. Both banks

⁴ Again, although a number of the sites identified on Table 4-5 are the same sites the City identified in its July 2009 draft, it attributes a greater number of units to the sites without explanation. For example, a parking lot located at 934 San Pablo Avenue could ‘now’ accommodate 11 units, but in July 2009, it could only accommodate 5 units; the Sizzler parking lot site could accommodate 18 units now, but only 16 in July 2009.

remain fully operational, and the City offers no objective information indicating that *these* bank sites are likely to be made available for housing at any time in the near future. Similarly, although some part of the parking lot for the Sizzler Restaurant could conceivably be developed for housing, the City offers no analysis as to parking requirements applicable to the existing restaurant business should its parking lot convert to residential development. A new site, added since the July 2009 draft, houses the Kaady Car Wash and Norge Cleaners). The car wash was very recently rehabbed, and there is no indication that it or the neighboring cleaners on an adjoining parcel are going out of business. Finally, even assuming unrealistically that *all* of these sites could be developed during the planning period to accommodate the City's outstanding RHNA for lower-income units, they would be insufficient to accommodate the actual need.

c. The City must address the shortfall of available sites.

The Housing Element statute imposes additional site requirements if a jurisdiction has a shortfall of available sites to accommodate its full housing need. Govt. C. §65583.2(h). This includes unaccommodated housing need from a prior planning period for which rezoning is required under AB 1233. Sites relied upon to meet unaccommodated needs must permit multifamily housing by right; have a minimum density of 20 du/acre that permits development of at least 16 units, and at least 50% of the unit shortfall must be accommodated on sites designated *for residential use only*. *Id.* Under the City's own analysis, only three sites identified for lower income housing could accommodate 16 or more units. Further, the City's "mixed use" designation will not suffice because it permits commercial development *or* a combination of commercial and residential as opposed to residential only.

We thank you for the opportunity to comment on Chapter 4 and reserve our comments and suggestions regarding particular goals, policies and programs until the City makes a complete draft element available for review. We look forward to the City's responses to our comments.

Thank you for your consideration.

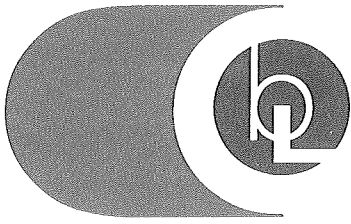
Very truly yours,

Naomi Young
David Levin
BAY AREA LEGAL AID

Deborah Collins
Lauren Hansen
PUBLIC INTEREST LAW PROJECT

BY: 

Deborah Collins



BAY AREA LEGAL AID
WORKING TOGETHER FOR JUSTICE

October 15, 2013

Via electronic mail

Chairperson Stacy Eisenmann
Commissioners David Arkin, Doug Donaldson,
Phillip Moss, and Nick Pilch
City of Albany
Planning and Zoning Commission
1000 San Pablo Avenue
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City of Albany
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Re: Comments re October 15, 2013 Meeting: Second Draft Housing Element, 2007-14 Planning Period, Chapter 5, released October 11, 2013.

Dear Chair, Commissioners, and Ms. Almaguer:

Bay Area Legal Aid and The Public Interest Law Project submit these preliminary comments regarding Chapter 5 of the Second Draft Housing Element on behalf of our clients, Amber Whitson, Betty Stephenson, and Albany Housing Advocates (AHA). We appreciate the opportunity to comment on the constraints to the production of affordable housing, and we appreciate the Commission's decision to review all of the chapters before passing the draft Housing Element to the City Council. We ask that the City spend more time addressing the thoughtful comments and suggestions from the Commission and members of the public.

1. The pending litigation in *AHA v. City of Albany* does not require the Planning and Zoning Commission to rush to approve an inadequate Housing Element.

At the October 9, Planning and Zoning Commission meeting, staff cited the pending litigation as the reason for the City Council's desire to consider the draft Housing Element at its October 21 meeting and forward it to HCD for review. Before the lawsuit was filed, staff announced at the September 25 Planning and Zoning Commission meeting and earlier meetings that the City intended to present the draft Housing Element to the City Council on October 21. At the last Commission meeting on October 9, 2013,

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Petitioners' attorneys, Lauren Hansen and David Levin encouraged the Commission to continue its careful review instead of hastily adopting an inadequate Element. The litigation does not require a rushed process that will likely lead to further delay in securing HCD approval. Petitioners are amenable to working with the City to create a strong Housing Element that will pass HCD scrutiny, address the needs of Albany residents, and inform the next Housing Element planning process. Adopting an inadequate Housing Element without sufficient input from the public, and this Commission, will only lengthen the HCD review process and deter the City from finally adopting an element that substantially complies with state law.

2. The City fails to adequately address important governmental and nongovernmental constraints.

The Housing Element shall contain "an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, [...] and for persons with disabilities [...], including land use controls, building codes and their enforcement, site improvements, fees and other exactions required, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the RHNA. Govt. Code § 65583(a)(5). The Element also must include an analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction. Govt. Code § 65583(a)(6). While the City's draft addresses some of these constraints, it falls short of the requirements of state law.

A. The chapter cites very few constraints and does not reflect the City's poor history in encouraging the development of affordable housing.

Despite its length, the draft chapter actually describes very few constraints, which is surprising, given Albany's well-established difficulty in producing affordable housing. The sections indicating that there is *no constraint* include: general plan, single-family Floor Area Ratio (FAR) limits, R-3 multifamily FAR, lot-width requirements, lot-coverage, height limits, front setbacks, overlay zones, open space requirements, mobile homes/manufactured homes, SROs, housing for persons with disabilities, group homes, family housing, design review requirements, green building standards, code enforcement, processing and permit procedures,¹ art in public places program, infrastructure,² and landslide and flooding hazards.³

In several other instances, the draft describes an aspect of housing development, but does not provide any constraints analysis. These sections include, but are not limited to: multifamily FAR in R-2 zones, commercial and mixed use zoning, side setbacks, emergency shelters, fire protection ordinances, and fees and exactions.

¹ But see Table 5-5, which shows that processing timelines are considerably longer for multifamily and subdivision units. This information is also the same as the information in the 2009 draft indicating that the City's permit processing times have not changed in the last four years.

² But compare pages 5-25 and 5-29 for contradictory statements regarding infrastructure constraints. On p. 5-25, "sewer replacement could be required" as well as sidewalk improvement and planting trees. On p. 5-29, "the availability of water and sewer services is not considered a constraint to housing production."

³ Noted as constraints, but specifically stating that no potential sites are located in these zones.

Although Albany does not have a large farm worker population, the Element fails to consider any constraints regarding farm worker housing development, and fails to consider any potential historic preservation constraints.

Additionally, for many of the constraints actually listed, there is only a vague reference to ameliorating these through a General Plan update which will not be completed during the current planning period.⁴

The City does not appropriately analyze its past and current attempts to eliminate constraints. In fact, the few constraints that were mentioned are long-standing. For example, during the September 25 Commission meeting, the City's consultant, Mr. Miller, acknowledged that Measure D has existed as a constraint since at least 1992. Although several Commissioners and the public voiced strong support for eliminating this constraint, the constraints analysis promises only to "begin developing a ballot measure."⁵

B. The City failed to incorporate constraints identified by Commissioners.

On September 25, several Commissioners identified various constraints the City has encountered during the course of their tenure on the Commission. Many of these suggestions were simply ignored in the draft released on October 11. These suggestions include but are not limited to: raising maximum building heights, allowing four-story developments, increasing commercial nodes, parking partially below grade limitations, difficulties in renting rooms in accessory buildings, lot subdivision standards, lack of incentives for development on small sites, multifamily lot-coverage, restraints on second unit production, community opposition, and finally, a long history of very little affordable housing production. Failure to analyze and address constraints identified by the City's own Planning Commission serves to underscore the City's resistance to adopting meaningful policies and programs to eliminate actual constraints to the development of affordable housing.

C. Constraints posed by small sites and non-vacant sites must be addressed.

The City's inventory of sites focuses exclusively on the development of small sites that are saddled with existing uses to achieve its RHNA for lower-income housing. These very small sites are particularly problematic for the development of lower-income housing. HCD guidance requires additional analysis for sites under one acre.⁶ Moreover, none of the smaller sites listed in the inventory of sites were developed during the prior planning period, or during the first part of the current period. There are clearly constraints to development of these sites, most notably the size and existing uses. The Commissioners noted the problem at the October 9, 2013 meeting, and a significant portion of time was spent discussing the problem. The Commissioners also offered several suggestions regarding this constraint, but very few of these suggestions were

⁴ See draft Housing Element, Chapter 5 sections on rear setbacks (p. 5-6), minimum density (p. 5-12), standards for mixed use development (p. 5-12 to p. 5-13), and "additional modifications" to second units (p. 5-14).

⁵ See draft Housing Element, Chapter 5, p. 5-10 to 5-12.

⁶ See HCD Building Blocks for Effective Housing Elements, Adequate Sites Inventory and Analysis, Realistic Development Capacity.

incorporated into the draft constraints analysis. Additionally, constraints as to the non-vacant sites listed in the inventory need to be addressed, as there are unique challenges to developing housing on a site that has an existing structure.

D. The City fails to meaningfully address community sentiments in Albany that oppose affordable housing development.

Many community members and Commissioners have acknowledged community resistance to affordable housing, a constraint which the City has not adequately addressed in Chapter 5. The President of AHA, Julie Winkelstein, highlighted the problem at a public meeting, noting that Albany needs to change this troubling “Not-In-My-Backyard” (NIMBY) attitude to YIMBY, or “Yes-In-My-Backyard.” At the September 25 Commission meeting, one Commissioner noted a problem with the Safeway site, stating that Safeway approached neighbors in the surrounding area, and received feedback that they absolutely did not want affordable housing. Thus, by the time Safeway approached the City, it had abandoned any plans for affordable housing.

The City’s only discussion of community opposition is under the public opinion section.⁷ The analysis is largely speculation about the causes of NIMBYism, and describes allegedly legitimate reasons why people oppose affordable housing. These reasons are not substantiated, and tend to validate and thereby promote opposition to the development of affordable housing. The section does acknowledge that these concerns may be based on misinformation and misconceptions. However, the only suggestion for removing this constraint is vague at best—the draft recommends that “acceptance can be improved by increasing public awareness of the many excellent examples of affordable housing that have been built...” This section is deficient.⁸

E. The draft fails to properly analyze limited affordable housing funds as a constraint and neglects to consider viable alternatives for affordable housing funds.

The draft lists limited availability of affordable housing funds as a constraint, but fails to give appropriate attention to this enormous dilemma. In particular, the City notes that the abolition of redevelopment agencies in 2011 removed a potential funding source. Notably, the City had an affordable housing fund of nearly \$700,000 that was generated from property tax revenues. Because those funds had not been used for, and were not committed to affordable housing development, they were ‘swept’ to other taxing entities when redevelopment agencies were dissolved in 2012. The draft Element should consider an important alternative that several jurisdictions have adopted around the State to ensure that money is allocated for the production of affordable housing. First, the City needs to commit local sources of funding for affordable housing to meet the housing needs of its residents by creating and funding a housing trust fund. Another opportunity has presented itself with the demise of redevelopment agencies. The increased property tax revenue (“tax increment”) that previously was allocated to a

⁷ Draft Housing Element, Chapter 5, p. 5-32.

⁸ Community opposition can be a profound non-governmental constraint on affordable housing; HCD has identified several effects, including making it “[d]ifficult to develop much needed housing...creat[ing] division in the community...[i]ncreas[ing] time for project completion...[p]rojects becom[ing] economically infeasible for developers...[and] [c]ommunity housing goals and household needs go[ing] unmet. HCD, from NIMBY to YIMBY: Strategies and Techniques to Garner Community Support for Affordable Housing Development, p. 14 (Dec. 2006).

redevelopment agency and that is not needed to pay off existing debt of the former redevelopment agency is now distributed to other taxing entities, including the city or county that sponsored the redevelopment agency. Although the City will receive only a share of this 'increased' property tax revenue (referred to as "Boomerang" funds), the funds should increase over time as redevelopment debt is paid off. Previously, the City's redevelopment agency was required to set aside 20% of its tax increment for affordable housing. That was the source of the \$700,000 fund that was lost by the City for lack of use. There is no restriction on the amount of Boomerang funds that can be allocated for affordable housing, and the Boomerang funds should be viewed as a new, though smaller, source of local funds. Accordingly, the City should commit 100% of its ongoing Boomerang funds to a housing trust fund.

Other cities and counties across the State have committed up to 100% of their Boomerang funds for the development of affordable housing. Examples of cities and counties in California that have already dedicated Boomerang funds for affordable housing include Santa Clara County, San Mateo County (dedicating 100% of Boomerang funds which translates into \$13.4 million for affordable housing), Los Angeles (dedicating 20% which amounts to \$9.4 million), County of Los Angeles (dedicating 20% of Boomerang funds totaling \$15 million plus committing another \$101 million), Fremont (100% of last year's Boomerang funds which included moneys swept from its Low and Moderate Income Housing Fund and 20% of ongoing Boomerang funds for affordable housing), Redwood City, Foster City (\$3 million), and the City and County of San Francisco.

In its next budget process, Albany should commit 100% of its Boomerang funds to the development of affordable housing for lower income residents to make up for the loss of \$700,000, and to ensure an ongoing permanent source of funding for a housing trust fund.

F. The draft fails to address often-cited constraints to preparing a Housing Element.

The City's repeated failure to timely update its Housing Element should be analyzed as a constraint to the development of affordable housing. At a community meeting on October 1, City staff pointed to lack of resources, fiscal problems, and a failure to prioritize the development of affordable housing as reasons for its long delay in completing a draft Housing Element. The production and preservation of affordable housing starts with a timely, complete Housing Element that complies with state law. Given that the City has not adopted a Housing Element since 1992, some attention to the reasons it did not do so and a concrete policy and program to ameliorate those obstacles should be addressed in this Housing Element to make sure that this unacceptable lapse in time does not happen in the future.

3. The City's process still lacks the required meaningful public participation in revising its Housing Element.

Again, as we have noted consistently in other comment letters, the opportunity for meaningful public participation has been flawed throughout this process. The public received a copy of this final chapter, close to 3:00 p.m. on Friday, to be considered at a meeting less than one business day after a federal holiday. It is doubtful that the public is aware of the special meeting or had the opportunity to review the latest chapter. The Commission meeting continuation was hardly

advertised, nor was any additional outreach done to inform the public. We very much appreciate the Commission's willingness to fully consider a complete draft element before determining whether to recommend it to the City Council. However, as noted above and in earlier comment letters, the Element is still deficient and should not be forwarded to the Council until serious corrections are made.

We have refrained from commenting on the goals, programs, and policies chapter as Mr. Miller correctly acknowledged at the September 25 Commission meeting that the constraints chapter also informs the goals, policies, and programs chapter. By completing these in reverse order, neither the public, nor the Commission has really had the chance to thoroughly evaluate the draft Housing Element. We will provide additional comments in advance of the October 21 City Council meeting or before a regularly scheduled Planning Commission meeting should the Commission elect to proceed in a less hasty fashion.

Thank you for your attention and consideration of our comments.

Very truly yours,

Naomi Young
David Levin
BAY AREA LEGAL AID

Deborah Collins
Lauren Hansen
PUBLIC INTEREST LAW PROJECT

By: _____

Naomi Young

