

EXHIBIT B

HCD Comments (Dec 26, 2013) and Proposed City Responses (Jan 15, 2014)

The HCD Comments are listed in the shaded text boxes. Proposed revisions to the Housing Element are included following each text box:

A.1 (a) Unaccommodated Need: The element generally concludes there was not an unaccommodated need from the 3rd planning period based upon, in part, having adequate sites during the last planning period (page 2-4). As most of the identified sites for the 3rd cycle RHNA are also utilized for the 4th cycle RHNA, the element must include analysis, described below, demonstrating their suitability for development during the last planning period. For more information, see Realistic Capacity and Suitability of Non-Vacant Sites discussion below:

CITY RESPONSE:

Chapter 2 will be revised per ATTACHMENT 2. The attachment responds to HCD's concern by providing further demonstration of the suitability of sites during the 1999-2006 period, specifically as related to "realistic capacity" and "suitability of non-vacant sites."

The City has identified sites that could have accommodated 127 units, when the RHNA was 73 units. The capacity of the sites is 74% higher than the RHNA. The City has researched and documented conditions on each site during the 1999-2006 period to demonstrate that they were realistic housing sites during the 7 year period. Excluding the UC Village reconstruction, almost all development in the City during 1999-2006 took place on sites very similar to the sites listed in the table. This includes the demolition of a former mortuary and its replacement with 25 units, the demolition of a former motel and its replacement with 16 affordable units, the demolition of a former gas station and retail store and its replacement with 12 units, and the demolition of an auto dealership and its replacement with 25 units. All of these projects exceeded the 20 unit per acre "default" density, and all were developed on commercially zoned, commercially developed sites of less than one acre. All of these sites had active businesses in operation until shortly before their reuse with mixed use development.

In addition, the text has been expanded to note that the sites listed represent only *some* of the multi-family housing opportunities that existed in the City during the 1999-2006 time period. In fact, as the revised text now notes, Albany also has 150 older single family homes on lots zoned R-3 (multi-family housing, allowing densities up to 63 units per acre). The entire length of the San Pablo and Solano Avenue commercial corridors are zoned to allow densities which are more than triple the 20 unit per acre default density established by the state for metropolitan area cities of 25,000 or less. The San Pablo corridor in particular is characterized by highway commercial uses, auto services, and other activities that could have been redeveloped with housing (and in some cases that were developed with housing) under the zoning that existed in 1999-2006. There are more than 25 acres of land with SPC zoning. The City has culled through sites on the corridor to identify those which had the greatest potential for reuse during 1999-2006 (see Table 2-4). In some cases, these continue to be opportunity sites today.

Regarding the suitability of the sites listed in Table 2-4, the City has conducted archival research on each site to document the fact that these sites were viable candidates for reuse during the 1999-2006 period. Electronic and paper property records searches were done for each site. The research indicated very little private investment on most of these sites during this period. In one case, there was a citizen-led petition (1999-2000) to discontinue the existing commercial use and in another case, the property records indicated persistent complaints about blight and graffiti on the property through the late 1990s.

A.1 (b) Realistic Capacity: The housing element indicates the sites identified in Table 4-5 are “providing more capacity than is strictly required” to address the City’s regional housing need. However, the element should estimate the number of sites likely to develop with residential uses (e.g., accounting for the likelihood of non-residential uses) in order to determine whether the identified sites provide sufficient sites or additional sites are needed to accommodate the City’s regional housing need. The estimate of sites to be developed with residential uses may identify a need to provide additional incentives to encourage residential development on the identified sites.

ATTACHMENT 4 includes edits which respond to this comment. The attachment clarifies the statement that the sites provide more capacity than required. As noted in the response above, in addition to the sites listed in Chapter 4, there are also 150 R-3 lots developed with single family homes that could potentially redevelop with multi-family housing. Only a few of these have been listed in Chapter 4, because they contain older rental units which may not represent the highest and best use of the properties. However, other R-3 sites could also be developed under existing zoning, yielding many more units at high densities. The City has gone through a filtering exercise to identify the most viable sites among the 150 underutilized parcels zoned R-3.

In terms of the commercial sites, the City’s presumption is that all of the sites are realistic, and may develop with housing. The reference to “realistic capacity” refers to a conservative estimate of the number of units that will develop on each site (based on comparable projects on the corridor, and relative to what is allowed by zoning) rather than the odds that the site will be reused for housing. Even if 50 percent of the mixed use sites were redeveloped with entirely commercial uses, the City could still meet its RHNA.

The text has been edited to note that there are 152 parcels with SPC zoning in Albany, totaling 25 acres. Densities of 35 to 63 units per acre are permitted on all of these sites. In other words, the theoretical capacity is over 1,000 units. During the 1999-2006 planning period, four projects were developed in this zoning district, adding a total of 74 units. These projects utilized approximately 2.5 acres of land, or about 10 percent of the area of the corridor. During the current planning period, 175 units were approved on 2.2 acres zoned SPC, using about 8 percent of the land on the corridor. It is thus reasonable to assume that the designation of another 3.7 acres (163,000 square feet) of land on the corridor (as shown in the Draft Housing Element) provides sufficient opportunity to build at least 100 additional units.

Moreover, the designation of these sites as “housing opportunity sites” does not diminish the ability of the private or non-profit sectors to develop housing on the other sites along the corridor, all of which are zoned to allow high density housing above ground floor commercial. As noted in Housing Element Chapter 6 (Policies and Programs), the City will pursue a future zoning amendment to allow residential use on the ground floor along this corridor.

Another factor that may be considered is the percentage of recent development along San Pablo Avenue that has been entirely commercial vs mixed use residential. In response to HCD’s letter, the City has reviewed property tax records for the corridor and determined that every building along the corridor developed since the Year 2000 has included multi-family housing except one.¹ The one exception is the Taco Bell project at 635 San Pablo. The situation is different along Solano Avenue, where there no housing has been added to the corridor since 2000, but several medical offices have been added. This reflects the built out nature of the Solano corridor rather than a regulatory constraint.

A.1(c) Suitability of Non-Vacant Sites: While the element provides general descriptions of existing uses on non-vacant sites, it must also demonstrate the potential for redevelopment during the planning period and evaluate the extent to which existing uses may impede residential development. The evaluation must consider development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development. The element appears to assume sites are underutilized based on various factors but most prominently the existing floor area ratio or number of units versus the allowable floor area or number of units. To utilize this approach, the element should provide an analysis to support an appropriate threshold or ratio to demonstrate redevelopment potential in the planning period. The element could use the recent developments in Albany between 2000 and 2010 to assist in this analysis.

See ATTACHMENT 4. Additional text has been added relating to development trends, market conditions, and incentives for residential development. With respect to development trends, the text now notes that 67 percent of the housing units added in Albany between 2000 and 2013 (excluding second units and the UC Village reconstruction) were in mixed use projects on commercially zoned land on the San Pablo Avenue corridor. The trend in Albany is similar to that in Berkeley and El Cerrito, with a growing share of development taking place along the transit-served commercial corridors. The market for this type of development was strong between 1999 and 2006, as is evidenced by the construction of Creekside, Portland Gardens, Villa de Albany, and Albany Gardens during this time period. The market for multi-family housing was very soft between 2007 and 2011. Several multi-family projects were proposed in 2007-2008, but they were not built due to the real estate downturn.

The recent approval of a 175-unit senior housing development indicates signs of recovery. The UC Village Mixed Use development is Albany’s largest private residential project in 20 years, and also serves

¹ This excludes renovations of existing buildings.

a special housing needs group within the community. Its proposed density is *four times* the default density used to determine the adequacy of housing sites under the Government Code.

With respect to incentives, the text notes that the zoning regulations incorporate significant incentives to include residential development on commercially zoned land. The most substantial incentive is a floor area ratio bonus which permits roughly 125 percent more building space for projects that incorporate residential uses above commercial uses (vs those that are 100% commercial). As noted in the Element, the City is considering additional incentives through its ongoing General Plan Update.

As noted in HCD's comment, the City has added information to justify the fact that sites listed in Chapter 4 may be considered underutilized by virtue of their floor area ratios (FAR). Per HCD's suggestion, information has been added on the FARs of the commercial uses that previously existed on the four multi-family mixed use projects built between 1999 and 2006 along the corridor. These uses (mortuary, retail, motel, gas station) all had FARs of less than 0.5. Thus, the City did not consider sites with FARs exceeding 0.5 unless other factors suggesting reuse potential were present. The FARs on the San Pablo corridor housing sites in the 2007-2014 Element are: (a) 433 San Pablo (0.29); (b) 611 San Pablo (0.24); (c) 665 San Pablo (0.20); (d) 805 San Pablo (0.29); (e) 1089 San Pablo (0.46); (f) 398 San Pablo (0.22); (g) 1061 San Pablo (.03), and (h) 934 San Pablo (0). These are all below the 0.5 threshold.

In addition to the above changes, the City has also:

- Added an 18,500 square foot site (comprised of two adjacent parcels) to its housing opportunity site list at 1107 and 1111 San Pablo Avenue.
- Added a "no net loss" program to Chapter 6 which indicates that the City will monitor activity on its housing sites to ensure that it has adequate capacity to meet its RHNA. (See ATTACHMENT 6)
- Moved 423-427 Talbot from the list of "approved" projects (Table 4-1) to the list of Housing Opportunity Sites. Although this 12-unit project was approved in 2009, it was not constructed and its entitlements have now expired. The property has been sold. The new owners could potentially pursue development of the site, so it now appears in the section of Chapter 4 on "underutilized sites zoned for multi-family housing. Tables in Chapter 4 have been adjusted to reflect this change.

A.1(d) Sites with Zoning for a Variety of Housing Types (emergency shelters) : Program 3.G (SB2 Compliance proposes to amend the zoning ordinance to allow emergency shelters by right in the Commercial Mixed Use (CMX) zoning district (p 6-18). While the element indicates the total acreage and number of parcels in the CMX zone, it must also analyze the suitability and appropriateness of the zone. While the CMX zone allows live-work residential use, it does not describe how the CMX Zone is appropriate for the development of emergency shelters. For example, some permitted light industrial and commercial uses may have environmental or other conditions rendering them unsuitable for residential or shelter uses. As a 25 bed limit is proposed for emergency shelters, the element should expand upon the description of the parcel size, to demonstrate their potential to fully accommodate the need for emergency shelters as well as facilitate the development of emergency shelters. If non vacant properties are needed to accommodate the need for emergency shelters, the element should include an estimate of the number of parcels with redevelopment potential and capacity for conversion to emergency shelters.

SEE ATTACHMENT 5. The section of Chapter 5 on emergency shelters has been expanded to demonstrate that the CMX zone has sufficient capacity to meet the identified need. The City has completed a research of the State DTSC Envirostor data base to determine the presence of hazardous materials on sites in the CMX zone. Only one of the identified sites is subject to monitoring requirements, and these requirements do not necessarily preclude use as an emergency shelter. Documentation of flood hazards also has been added to Chapter 5, in response to public comments.

A discussion of parcel size (particularly the availability of smaller parcels which could support shelters) has been added to the Chapter. It is also noted that even on larger parcels, there are multiple buildings with space for lease where shelters could locate—or individual buildings with opportunities for multiple tenants (including shelters). The Element provides further information on the opportunities for reuse of older buildings in this zone for emergency shelter.

At its December meeting, the Albany Planning and Zoning Commission recommended also allowing emergency shelters by right on the San Pablo Avenue corridor (eg in the SPC Zone). Staff has forwarded this recommendation to the City Council, and it will be considered on Jan 21, 2014. This would create additional opportunities for shelters beyond those required by SB 2.

A.2(a) Fees and Exaction: While the Element lists typical housing development fees, it should also identify the total amount of fees and their proportion to the development costs for typical single family and multi-family housing developments.

See ATTACHMENT 5. The City has added information on typical development fees for multi-family housing (as well as single family) and has made an estimate of what percentage of development costs are associated with permitting fees.

A.2(b) Design Review: The housing element indicates there are objective standards, eg Residential Design Guidelines, and subjective standards, e.g., “harmonious,” in the Design Review process. The housing element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria , for their impacts on housing costs, supply, and affordability, as well as development certainty. The element must demonstrate this process is not a constraint or it must include a program to address and remove this permitting requirement, as appropriate.

See ATTACHMENT 5. The City has added further information on the design review process to Chapter 5, indicating that the availability of prescriptive guidelines for residential areas and for the San Pablo Avenue corridor removes uncertainty from the process and aids in defining “harmonious” and other potentially subjective design review criteria.

B.1(a): Several programs should be revised to include specific actions, such as amend, evaluate and revise, and implement, instead of terms such as consider or study as follow: Program 2(a) Minimum densities: indicates the City will “consider amending the zoning ordinance”. The program could be revised to indicate “Will amend the zoning ordinance”

See ATTACHMENT 6. Program 2.A has been amended to strengthen the language and notes that the City has already prepared draft land use categories with minimum densities as part of its General Plan update. The minimum density proposal will be brought to the City Council when the General Plan is adopted, and zoning will be amended as appropriate. The timing of this action is now noted as “underway” since the new land use categories were confirmed at the December 2013 Planning and Zoning Commission meeting.

B.1(b): Program 2.B (Incentives) indicates the City will “evaluate potential incentives” by Spring 2014. However, the program should also indicate what action it will take subsequent to evaluating the potential incentives. For example, the program could indicate it will “adopt incentives by 2015”

See ATTACHMENT 6. The City has revised the language for Program 2.B to indicate that in the event the City identifies viable incentives to facilitate production, it will initiate adoption of these incentives by December 2014. It further acknowledges that additional incentives may be explored in the 2015-2022 Housing Element, which will be adopted by January 31, 2015 and implemented in subsequent years.

B.1(c): Program 2.H (Land Assembly and Lot Consolidation) indicates the City will “work with interested property owners to encourage lot consolidation.” However, the program should describe how the City will “work” with property owners. For example, the City could offer a lot consolidation program with expedited processing and fee waivers or offer other incentives. The program should also include specific timelines for implementation or offer other incentives.

See ATTACHMENT 6. Program 2.H has been expanded to note the City's past support for the consolidation of lots to facilitate the Villa de Albany and Albany Gardens projects. The text also has been edited to reference the City's existing lot consolidation incentives (e.g., allowing higher densities on larger lots) and to create provisions for reduction of lot merger fees for projects which include affordable units.

B.1(d): Program 3.A (Units for Persons with Disabilities) indicates the City will "encourage the inclusion of units for persons with disabilities". It should indicate how it will encourage the inclusion of units. For example, incentives, financial or regulatory, could be established to encourage the development of housing for persons with disabilities, including those with developmental disabilities.

SEE ATTACHMENT 6. Program 3.A has been modified to note the requirements for projects receiving federal funding (5 percent of the units --or at least one unit, whichever is greater-- must be accessible to persons with disabilities, while 2 percent of the units must be designed for persons with sight or hearing impairments), as well as the accessibility requirements for private multi-family units under ADA. It also expresses the City's commitment to use its CBDG allocation for access improvements for persons with disabilities, and to direct information on funding through the County Minor Rehab Program to residents with mobility impairments and others seeking to "age in place".

B.1(e): Other programs which should be revised include, but are not limited to, Program 4.A (Use Permit Requirements for Multi-family in R-4); 4.B (second units); 4.D (Evaluation of Mixed Use standards); and 4.H (Fee incentives for affordable housing).

SEE ATTACHMENT 6.

Program 4A has been amended to express the City's commitment to bringing this action to the Planning and Zoning Commission by the end of the planning period.

Program 4B has been revised to express the City's commitment to initiating an amendment to its second unit regulations by the end of the planning period. The revised text breaks this action into two parts, including the initial step of allowing second units in R-2 and clarifying the parking standards, and a subsequent step of revising second unit development standards. It should also be noted that the City has modified this program in response to comments from affordable housing advocates that the prohibition on second units in the R-3 zoning district should be retained so that these sites are retained for future multi-family uses.

Program 4.D has been revised to note that the evaluation described here is being completed as part of the General Plan update. The sentence has been modified to note that the City will revise development standards as appropriate. The program now also incorporates input from the Planning and Zoning Commission and the public to relax the ground floor commercial requirement in the SPC zone.

Program 4.H has been revised to note that the City will develop a fee reduction program for affordable housing projects. While certain fees are unlikely to be reduced (for example, school fees for family housing), flexibility may be provided in the application of others (such as public art). The program will include criteria for evaluating fee reduction requests, including project affordability.

B.2: As noted in Finding A1, the element does not include a complete site analysis and therefore, the adequacy of sites and zoning were not established. Based on the result of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

The edits annotated in our earlier responses address this comment and confirm the adequacy of sites.

B3(a): As noted in Finding A2, the element requires a complete analysis of potential governmental constraints. Depending on the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

The edits annotated in our earlier responses address this comment and confirm the adequacy of programs to address constraints.

B3(b): In addition, the housing element indicates Measure D parking requirements may make it difficult to modify existing buildings in the multi-family zones to add new housing units (5-11) which would affect the identified multi-family sites' (ability) to accommodate a portion of the City's regional housing need. While Program 4.G (Measure D ballot initiative) proposes to commence the preparation of a ballot initiative to revise Measure D, the element should also include programs to mitigate these requirements until Measure D is revised.

SEE ATTACHMENT 6. The City has revised Program 4.G to provide more clarity on its approach to developing a ballot measure, including the recent formation of a working group tasked with developing a strategy by May 2014 for placing Measure D on the ballot. The working group includes members of the City's Sustainability Committee, Traffic and Safety Commission, and Planning and Zoning Commission. It should be noted that while Measure D may be a disincentive to very high density *market rate* multi-family projects, it does not impede the City from achieving the 20 unit per acre default density or impede the City from achieving its RHNA in any way. In fact, the current parking requirements indirectly create an incentive for affordable housing since affordable units are subject to the lower parking standards established by state density bonus law.

B3(c): The housing element indicates that development standards may preclude the maximum density allowed by zoning and it is difficult to attain the allowed FAR of 2.25 in the San Pablo Avenue zone. In regard to the sites identified on Solano Avenue, the element indicates there are challenges in developing these sites due to high existing floor area ratios and complying with on-site parking requirements. As the element has identified all of these as potential constraints to residential development, the element should include programs to address and remove or modify these requirements.

SEE ATTACHMENT 5. The above-referenced issue (related to FAR) does not impede the City's ability to meet its RHNA or achieve the default density of 20 units per acre established by the Government Code. The "challenges" referenced above relate to achievement of a 63 unit per acre density, which is more than triple what is required by the Government Code. Projects on San Pablo Avenue have generally been in the 30-40 unit/acre range (although an 80 unit/acre senior project was recently approved). The one "affordable" project (Creekside) is actually the least dense of the developments built in the last 10 years.

On Solano Avenue, the high existing floor area ratio on most parcels does not constitute a "constraint" but is rather an observation of existing conditions and the limited opportunities for high density housing on the corridor relative to the San Pablo Avenue corridor. The corridor is considered a model of a sustainable, walkable neighborhood shopping street, with a mix of retail, office, service and multi-family residential uses. Of the two housing opportunity sites on the Avenue (1245 Solano and California Bank and Trust), one is vacant and the other is mostly parking, so high FAR is not an issue. These two housing opportunity sites have been selected in part because the on-site parking requirements would be easier to achieve here than on other sites on the corridor.

C: While the element includes a general summary of public participation, it does not demonstrate how the City has or will make a diligent effort to achieve the involvement of all economic segments of the community through the adoption process. The element should be revised to specifically describe the City's efforts to circulate the housing element among low and moderate income households and organizations that represent them and to involve such groups and persons in the development of the element. For example, the element could describe examples of outreach efforts, and describe how the element incorporated public input. During the period between this draft element and the adoption of the final housing element, the City should continue efforts to achieve public participation including from low and moderate income households.

SEE ATTACHMENT 1. The City has expanded the text to demonstrate how it engaged all segments of the community in the process, with an emphasis on low and moderate income households. Information has been added on the City's email lists (for meeting notification), its Town Hall meeting sign-in lists (for meeting attendance), the speakers addressing the Commission and Council at various study sessions and meetings, and the supplemental outreach that has occurred since the Element was submitted in October. This outreach includes a tour of key housing opportunity sites with non-profit developers and

affordable housing advocates/attorneys, and participation in a community dialogue on housing issues. It also includes an upcoming community meeting on housing scheduled for January 28, 2014.

D: The element must describe how consistency will be achieved and maintained during the planning period. The element could include a program to conduct an internal consistency review as part of the annual general plan implementation report required under Government Code Sec 65400. The annual report can also assist future updates of the housing element.

SEE ATTACHMENT 6. Program 4J has been added to conduct internal consistency review as part of any future General Plan Amendment. The review would specifically address the potential effects of any amendment on housing opportunities.

Additional Changes to the Element in Response to Public Comment

Chapter 3:

- The City has added information on the expiration date for affordability restrictions at Creekside apartments (Year 2057) and Villa de Albany (no expiration).
- The text has been amended to note the placement of a temporary emergency shelter at the Albany bulb, and the need for longer-term solutions.
- The City has clarified discrepancies between the 2000 and 2010 Census data on housing units by structure type shown on P 3-31.

Chapter 6:

- The City has added a program to create an Affordable Housing Trust Fund by the end of the planning period. The Fund would be supported by in-lieu fees through the City's Inclusionary Zoning Program, boomerang funds from the former Redevelopment Agency, grants, and other sources. The funds would be prioritized to benefit very low and extremely low income households.
- The City has identified which specific housing policies are implemented by each housing program. (*)
- The City has assigned more specific dates to some of the programs and has clarified which programs are "ongoing", "annual," etc. (*)
- Program 2.E has been expanded to specifically address the need for public education on emergency shelter needs, and to further emphasize the importance of education on affordable housing in general
- Program 3.C has been clarified to define "shared housing" and ensure no conflicts between the definition of "family" in the Municipal Code and any efforts to promote shared housing in the future.
- Program 4.D has been amended to add consideration of allowing ground floor residential uses (with a use permit) in the SPC zoning district.

() Not in the current attachments. Will be in the February Planning Commission Draft.*