

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 14, 2011

Mr. Brian Dolan, Director
Community Development Department
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566-0802

Dear Mr. Dolan:

RE: Review of the City of Pleasanton's Draft Housing Element

Thank you for submitting Pleasanton's draft housing element received for review on August 16, 2011. The Department is required to review draft housing elements and report the findings to the locality pursuant to Government Code Section 65585(b). A telephone conversation on September 28, 2011 with you, Ms. Janice Stern, Planning Manager, and Mr. Jeffery C. Baird of Baird + Driskell, the City's consultant, facilitated the review. In addition, the Department considered comments from Citizens for a Caring Community and Public Advocates, pursuant to Government Code Section 65585(c).

The Department commends Pleasanton for its achievements and continuing efforts to provide affordable housing for lower-income individuals with developmental disabilities by funding local agencies, including Resources Education Activities Community and Housing (REACH) and Bay Area Community Services (BACS). The Department also recognizes the City's hard work and extensive outreach as part of evaluating candidate sites for rezoning to higher densities to accommodate the regional housing need. The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element must include complete analyses of adequate sites and potential governmental constraints. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

The Department is committed to assist Pleasanton in addressing all statutory requirements of housing element law. If you have any questions or need additional technical assistance, please contact Jess Negrete, of our staff, at (916) 323-3185.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen A. Campora".

Glen A. Campora
Assistant Deputy Director

Enclosures

**APPENDIX
CITY OF PLEASANTON**

The following changes would bring Pleasanton's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on the Department's website at www.hcd.ca.gov/hpd. Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, the Housing Element section contains the Department's latest technical assistance tool *Building Blocks for Effective Housing Elements (Building Blocks)* available at www.hcd.ca.gov/hpd/housing_element2/index.php and the Government Code addressing State housing element law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households (Section 65583(a)(1)).*

The element indicates the total number of existing extremely low income (ELI) households. However, in accordance with Chapter 891, Statutes of 2006 (AB 2634), it must also include an analysis of their housing needs. The analysis of needs could consider tenure and rates of overpayment and overcrowding. This analysis will assist in formulating policies and programs for ELI households. Please see the enclosed data for your assistance. For more information and a sample analysis, see the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/EHN_extremelylowincome.php.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition (Section 65583(a)(2)).*

The element must include an estimate of the number of lower-income households, by tenure, paying more than 30 percent of their income on housing. For your information, CHAS data indicates 1,416 lower-income renter households and 1,178 lower-income owner households paid more than 30 percent of their income on housing (approximately 71 percent of total lower-income households). This information should be incorporated into the element to facilitate policies and programs to assist in the development of housing affordable to lower-income households. For additional information, refer to the overpayment section of the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/EHN_Overpayment.php.

3. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

Pleasanton has a regional housing need allocation (RHNA) of 3,277 housing units, of which 1,804 are for lower-income households. In addition, the element identifies an unaccommodated need of 871 units for lower-income households from the prior planning period. To address these needs, the element relies on constructed and approved units, vacant and underutilized sites, and candidate sites for rezoning to higher density residential uses. To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA and unaccommodated need, the element must include analyses as follows:

Addressing Unaccommodated Need from the Previous Planning Period: The element acknowledges rezoning was not completed to make adequate sites available during the previous planning period and indicates the unaccommodated need of 871 units for lower-income households (page 50). While the element references the Hacienda rezonings (Sites 22, 23 and 24), a complete analysis is needed to demonstrate whether adequate sites were rezoned to accommodate the unaccommodated regional housing need from the prior planning period. Specifically, the element must describe the availability of Sites 22, 23 and 24 to accommodate the unaccommodated need of 871 units for lower-income households from the prior planning period. For example, the element should describe the development status of Sites 22, 23 and 24 such as whether the sites had previously approved or pending projects or other conditions were known that would preclude these sites from being available to accommodate the entire unaccommodated need. This analysis is particularly important since, pursuant to Government Code Sections 65584.09 and 65583(c)(1) (AB 1233), the City must zone or rezone sites to accommodate the unaccommodated need within the first year of the 2009-2014 planning period. As this timeframe has lapsed, the Department cannot find the element in compliance until the required rezoning is complete and the element has been amended to reflect that rezoning.

Sites Inventory: The element aggregates various parcels into candidate sites for rezoning (Table III-2). However, the inventory must also list *each individual parcel* by size, zoning, General Plan designation, existing uses for any non-vacant sites, and include a calculation of realistic capacity (see *Building Blocks*' at http://www.hcd.ca.gov/hpd/housing_element2/SIA_land.php).

Suitability of Non-Vacant Sites: The parcel listing (Table III-2) provides general descriptions of existing uses on non-vacant sites (e.g., shopping center, hotel) and the element includes a snapshot of each site based on criteria such as recommended action, key considerations and proximity to transit. While the approach to provide a snapshot of each site (pages 62 - 78) can be useful and adequate to address statutory requirements, the element still must include an analysis to demonstrate potential for redevelopment of non-vacant sites to residential use. The analysis must consider the extent to which existing uses may impede residential development on the identified sites, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development. For example, one site's existing use is described as a hotel, while another site lists the existing use as a shopping center. The element could describe whether the use is operating, marginal or discontinued, the condition of the structure and any expressed interest in redevelopment of these sites. Also, if the existing use is anticipated to continue, the element should include an evaluation of the potential of adding residential units on these sites such as by describing whether there is interest in redevelopment or

what development trends have occurred on sites with similar circumstances. Refer to the sample analysis in the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#nonvacant.

Realistic Capacity: The element must include an estimate of the number of units that can be accommodated on each site in the inventory. The estimate may rely on minimum density standards or describe the methodology, including adjustments based on land-use controls and site improvement requirements. Based on discussion in the background portion of the element, it appears to rely on minimum density standards. However, Program 11.1 does not include a commitment to establish specific minimum densities. If Program 11.1 is revised to commit to minimum densities, the element may use those minimum densities to estimate residential capacity. Otherwise, the element must include a description of the methodology as described above. For more information, please see the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php.

Sites with Zoning for a Variety of Housing Types:

Emergency Shelters: While the element indicates various zoning districts were considered to accommodate emergency shelters, such as the Service Commercial (C-S) zone (page 46), pursuant to Chapter 633, Statutes of 2007 (SB 2), it must demonstrate sufficient capacity in the proposed zone(s) to accommodate the need for emergency shelters. The element should also consider what other uses are permitted in the proposed zone(s) and whether the zone(s) is suitable and appropriate for emergency shelters. For example, an industrial zone with heavy manufacturing may have environmental conditions rendering it unsuitable for shelter uses. For more information, see the Department's SB 2 technical assistance memo at http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf.

Employee Housing: The element indicates farm employee housing is an allowed use in the Agricultural (A) zone (page 42). However, Health and Safety (H&S) Code Section 17021.5 generally requires housing for six or fewer employees to be treated as a single-family home and permitted by-right. In addition, H&S Code Section 17021.6 generally requires employee housing to be permitted in *zones permitting agricultural uses* and not limited to agricultural zones. The element does not mention which zones in Pleasanton allow agricultural uses or whether zoning is consistent with Sections 17021.5 and 17021.06. The element must demonstrate consistency with these requirements and include programs to amend zoning as appropriate. For more information, see the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/SHN_farmworkers.php.

4. *Analyze potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7) (Section 65583(a)(5)).*

Land-Use Controls: While the element identifies various residential development standards (page 84), it must include a cumulative analysis of their potential impacts on the cost and supply of housing and the ability to achieve maximum densities. For more information, see the *Building Blocks*' at http://www.hcd.ca.gov/hpd/housing_element2/CON_landuse.php.

Growth Management Ordinance (GMO): The element includes a general overview of the GMO and Urban Growth Boundary (UGB) (page 93). However, it must include a specific description and analyses of the GMO and UGB, their requirements and processes for impacts on cost, supply, timing and affordability of housing, including, but not limited to:

- The approval process of the City Council and any other approving or recommending bodies, including the Growth Management Subcommittee that could override the annual housing allocation limitations in order to meet the City's regional housing need and unaccommodated need.
- The apportionment of new residential categories of projects (e.g., affordable projects, major projects, and first-come, first-serve projects).
- The exemption process, if any, for projects with an affordable component, including its effectiveness to-date in accommodating lower- and moderate-income households.
- Whether the GMO allows or prohibits carryover of unused allocations. If there is a prohibition on carryover, the element must analyze the impact on the cost, supply and availability of sufficient allocations to accommodate the City's RHNA throughout the planning period.
- Any limit to the number of allocations which could be received by a project in a single year and the process for obtaining allocations for phased projects (multi-year development), and the effect on financing required for infrastructure.
- Length of time for approval of allocations and how the approval process relates to other entitlements, including evaluating cumulative impacts on timing and costs.
- The impacts of any scoring criteria on costs and timing of development.

- The GMO process, including the Growth Management Subcommittee, on the certainty and predictability of approval of housing development applications.
- The impacts of annual limits on the overall cost and supply of housing. For planning purposes, this analysis should consider the RHNA as the minimum amount of housing need. It does not represent a maximum need or building cap. The analysis should address potential impacts on overall housing supply in addition to accommodating the RHNA.

Please see the enclosed samples for your assistance.

Inclusionary Housing: While the element generally describes the framework of inclusionary requirements and available alternatives (page 94), it should also include a complete analysis of the cost impact of the inclusionary requirements on the cost and supply of housing. For example, the analysis could discuss the extent incentives or regulatory concessions mitigate any cost impacts of the inclusionary requirements. The element should also evaluate the impacts of the discretionary approval process for requesting alternatives and granting incentives, on development timing, predictability, and certainty.

Mid-point Density: The element briefly mentions (page 93) the mid-point density is a density for "...which project amenities are provided to compensate for the added density..." and has minimal impact on the High Density designation. However, the element should include a complete description of the requirement and an evaluation for its impacts on the cost and supply of housing. For example, the evaluation could address what types of amenities are required to exceed the mid-point, how the allowable density above the mid-point is determined and any outcomes of prior development applications.

Density Bonus: The City should also review its density bonus ordinance for compliance with recent statutory amendments (Chapter 1928, Statutes of 2004) to State density bonus law (Government Code Section 65915) and add or revise programs as appropriate. A copy of the current law is available on the Department's website at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65915-65918>.

Fees and Exaction: The element lists some impact fees and aggregates Building Permit and Building Plan Check fees (pages 87-88). However, the element should specifically list all applicable planning and processing fees for residential development. In addition, while the element indicates total impact and building permit and plan check fees, it should analyze the total effect or proportion of planning and impact fees and exactions on development costs for typical single- and multi-family housing developments. For more information, see the *Building Blocks*' website at http://www.hcd.ca.gov/hpd/housing_element2/CON_home.php.

Local Processing and Permit Procedures: While the element generally describes some processing and permit procedures and generally concludes they are not a constraint (page 90), it must specifically describe and analyze the City's permit processing and approval procedures by zone and housing type. For example, see the sample table in the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/CON_permits.php. Also, the element should list and evaluate decision-making criteria such as approval findings for impacts on housing cost and supply and approval certainty.

Planned Unit Development (PUD): The element generally describes the PUD process and indicates most housing developments are processed under the procedure (page 88). However, the element must include a complete analysis of the components of this requirement for impacts on housing cost and supply and approval certainty. Most notably, the element (page 85) states "The Zoning Ordinance does not specify any development standards for PUDs, instead creating standards on a case-by-case basis...". The element should evaluate the lack of specific development standards for the PUD regarding impacts on housing as described above. This analysis should also address the approval process, including approval bodies and decision-making criteria for city-initiated PUDs, or where existing sites have development standards under an approved PUD.

On/Off-Site Improvements: While the element generally describes required on/off-site improvement standards (page 90), it must identify specific subdivision level improvement, such as minimum street widths, and analyze their potential impact on the cost and supply of housing. For more information, see the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/CON_offsite.php.

Constraints on Persons with Disabilities: The element describes the various requirements and the processes for approving accessibility retrofits (page 92). To complete an analysis, it should also identify and describe the reasonable accommodation procedure for providing an exception in zoning and land-use for housing for persons with disabilities and include programs as appropriate. For more information, see a model ordinance on the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/PRO_mitigate.php.

Water Sewer Priority: For your information, Government Code Section 65589.7 requires local governments to immediately deliver the housing element to water and sewer providers. Also, when a city is the water and sewer provider, specific procedures must be established to grant priority water and sewer service to developments with units affordable to lower-income households. The housing element should demonstrate compliance with Government Code Section 65589.7. For more information, see the *Building Blocks'* at http://www.hcd.ca.gov/hpd/housing_element2/OR_water.php.

5. *Analyze any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households, families, person in need of emergency shelter, and persons with developmental disabilities. (Section 65583(a)(7) and e).*

For your information, Chapter 507, Statutes of 2010 (SB 812), amended State housing element law to require an analysis of the special housing needs of persons with developmental disabilities. The term developmental disability refers to a severe and chronic disability attributable to a mental or physical impairment, such as cerebral palsy, epilepsy, or autism, that begins before individuals reach adulthood (Welfare and Institutions Code, Section 4512). The analysis could include the following:

- a quantification of the total number of persons with developmental disabilities, including the number of households and tenure;
 - a description of the types of developmental disabilities;
 - a description of the housing need, including a description of the potential housing problems, and an assessment of unmet housing needs for persons with developmental disabilities; and
 - a discussion of resources, policies and programs including existing housing and services, for persons with developmental disabilities.
6. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions (Sections 65583(a)(8) through 65583(a)(9)(D)).*

While the element identified 40 units at-risk of converting to market-rate rents (page 47), it must also include the following information and analysis:

- Estimated total cost for producing, replacing and preserving the units at-risk.
- Identification of public and private non-profits known to the City to have the legal and managerial capacity to acquire and manage at-risk units. According to information provided to the Department, entities which may be interested within Pleasanton are indicated on a roster on the *Building Blocks'* website at <http://www.hcd.ca.gov/hpd/hrc/tech/presrv/hpd00-01.xls>. The element should reference this or other appropriate resources for this information.
- Identification and consideration of use of federal, State and local financing and subsidy programs.

Additional information and sample analyses are available in the *Building Blocks'* section on Identification and Analysis of Developments At-risk at http://www.hcd.ca.gov/hpd/housing_element2/EHN_atrisk.php. You may wish to contact the California Housing Partnership Corporation for assistance at <http://www.chpc.net>.

B. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame (Section 65583(b)(1 & 2)).

While the element includes quantified objectives by income group for very low-, low-, moderate- and above moderate-income (page 4-5), it must also include objectives for ELI households pursuant to Chapter 891, Statutes of 2006 (AB 2634).

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions (Section 65583(c)).*

Programs should be revised for compliance with Government Code Section 65583 in order to ensure the beneficial impacts of the programs within the planning period. Specifically, some programs should include: (1) a description of the City's specific role in implementation; (2) definitive completion or implementation timelines; and (3) objectives, quantified where appropriate.

For example, Program 6.2 (Affordable Rental 2nd Units) proposes to develop incentives to create affordable second unit rental opportunities and has a timeline of "2011-2014." The Program should have a definite timeline for completion, such as "July 2012." Program 38.3 (RFP for Housing for Lower-Income Households) should include a quantified objective, such as "150 units during the planning period." Additional programs to be revised with definitive timelines and objectives include, but are not limited to the following:

1.1 (Discourage Redesignation of HDR Sites), 6.3 (2nd Unit Administrative Design Review), 9.1 (Review and Revise Growth Management Program), 9.3 (Preserve At-Risk Units), 9.4 (Funds for Lower Income Housing Development), 9.5 (Provide Incentives for Lower Income Housing Development), 11.4 (Encourage Innovative Design, Regulations and Construction), 11.5 (Employee Housing), 17.4 (Use of Lower-Income Housing Fund), 25.1 (Encourage Housing for Lower Income Households on HDR Sites), 25.2 (Support of Non-Profit Housing Providers), 36.1 (Rezone Infill Sites), 36.3 (Incentives and Design Guidelines for Mixed-Uses), 36.5 (Incentives for Relocating Non-Residential Uses), 38.3 (RFP for Housing for Lower Income Households), 41.1 (Special Needs Housing), 41.6 (Group Home Development), and 44.2 (Conservation Programs).

2. *Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, and emergency shelters and transitional housing. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).*

As noted in Finding A-3, the element does not include a complete site inventory or analysis and the adequacy of sites and zoning were not established. Based on the results 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. In addition:

Unaccommodated Need and Shortfall of Sites: The element identifies an unaccommodated need of 871 units for lower-income households from the previous planning period (page 49), along with a current RHNA of 1,804 for lower-income households. To address the unaccommodated need and shortfall, the element identifies several candidate sites (Table III-2) and includes Program 11.1 (Rezone Sites). Pursuant to Government Code Sections 65583(c)(1), 65583.2(h) and (i), and 65584.09, Program 11.1 must commit to:

- permitting owner-occupied and rental multifamily uses by-right, without a conditional use permit (CUP), planned unit development or other discretionary review;
- ensuring at least 50 percent of the lower-income needs to be accommodated on sites designated for residential use only;
- clarifying the rezoned sites will require at least a minimum density of 20 units per acre and permit a minimum of 16 units per site; and
- selecting from the identified candidate sites (Table III-2) for rezoning.

Program 46.1: The Program proposes to amend the City's Municipal Code within one year of adoption of the housing element to permit emergency shelters consistent with SB 2. However, pursuant to SB 2, the program must identify the proposed zone(s) to permit the development of emergency shelters without a CUP or other discretionary approval, commit to establish development standards to encourage and facilitate the use, and only subject shelters to the same development and management standards that apply to other permitted uses within the proposed zone(s).

The Program should also clarify amending zoning to permit transitional housing and supportive housing as a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone. See the Department's SB 2 technical assistance memo at http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf.

Programs 14.6 (Assess Infrastructure Constraints), 14.7 (Assess Infrastructure Needs), and 29.2 (Review and Amend Growth Management Ordinance) should include a discrete timeline (e.g., biennially, every three years) for implementation or completion of the assessments and review, as well as describing specific actions to take once assessments and review are complete.

3. *The housing element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households (Section 65583(c)(2)).*

While the element includes some programs to assist in the development of low-, and moderate-income households, pursuant to AB 2634, existing programs should either be expanded or new programs added to specifically assist in the development of a variety of housing types to meet the housing needs of ELI households. To address this requirement, the element could revise programs, such as Programs 17.5 (Priority Funding), 41.3 (Special Needs Housing) and 41.4 (Housing for Persons with Disabilities), to prioritize some funding for the development of housing affordable to ELI households, and/or offer financial incentives or regulatory concessions to encourage the development of housing types, such as multifamily, and single-room occupancy (SRO) units, which address some of the needs of this income group.

4. *The housing element shall contain programs which address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing (Section 65583(c)(3)).*

As noted in Finding A-4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs to address and remove or mitigate any identified constraints. In addition:

Program 16.2 (Review of Inclusionary Zoning Ordinance) and Program 29.2 (Review of Growth Management Ordinance) should propose to review the ordinances as a potential constraints to housing and include specific actions (e.g., annual review and amendments as necessary) and discrete timelines (e.g., annually, biannually) to implement or complete the specific actions.

D. Consistency with General Plan

The housing element shall describe the means by which consistency will be achieved with other general plan elements and community goals (Section 65583(c)(7)).

The element must include a discussion of how consistency between the housing element and other General Plan and community goals will be achieved and maintained during the planning period. The program could also propose to conduct an internal consistency review as part of its annual General Plan implementation report required under Government Code Section 65400. This annual report can also assist future updates of the housing element.

The City should also note recent statutory changes to Government Code Section 65302 (Chapter 369, Statutes 207 [AB 162]) which requires amendment of the safety and conservation elements of the General Plan to include analysis and policies regarding flood hazard and management information upon the next revision of the housing element on, or after, January 1, 2009. For additional information, please refer to Department's website at http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_162_stat07.pdf.

Citizens for a Caring Community

P.O. Box 1781 , Pleasanton CA 94566 (925) 462-2152

Ms. Cathy Creswell, *Acting Director*
 Mr. Glen Campora, *Assistant Deputy Director*
Department of Housing and Community Development
 Division of Housing Policy Development
 1800 Third Street, Suite 430 - P.O. Box 952053
 Sacramento, CA 94252-2053

September 16, 2011

Dear Mr. Campora:

Below please find comments by Citizens for a Caring Community (CCC) on Pleasanton's *August 2011 Draft Housing Element* currently under HCD review.

Please note that CCC participated throughout the Housing Element Update process, during which we found Pleasanton's staff accessible, and their level of public outreach exemplary. Consequently, the City has already received many of our comments and concerns noted below.

Concern 1: The draft Housing Element significantly understates the amount of land zoned at 30 units/acre needed to meet its low and very low income housing need. Pleasanton needs to zone 80 acres at 30 units/acre.

In Table III-1 (*City of Pleasanton Draft Housing Element BACKGROUND — August 2011; page 50*) incorrectly subtracts acreage for 435 units of Very Low Income Housing and 435 units of Low Income Housing (in Hacienda Business Park) from the total acreage needed for Very Low and Low Income housing. This error (highlighted) is somewhat clearer in the Table below taken from page 45 of the July 2011 draft of the *BACKGROUND (Exhibit A)*.

Additional Residentially-Designated Land Required to meet the City's Housing Need

	Total	Very Low Income	Low Income	Moderate Income	Above Moderate Income
Remaining Need from 1999-2007	871	0	871	0	0
2007-2014 RHNA	3,277	1,076	728	720	753
Total RHNA	4,148	1,076	1,599	720	753
Permits Finaled 2007 through 2010 ¹	319	0	5	38	276
Units under construction ²	82	0	5	39	38
Approved (zoned) projects with building permit not issued ³	1,321	102	32	312	875
Land designated for residential development with no entitlements ⁴	158	0	0	0	158
Hacienda Rezoning (three sites)	870	435	435	0	0
Additional Residential Zoning Required (in units)	1,992	539	1,122	331	594

NEED IN ACRES = For 1,661 units affordable to low and very low income households, 55 acres at 30 units per acre, for 331 units affordable to moderate income households, 14 acres at 23 units/acre.

This deduction is improper because development of these units is controlled by the *Hacienda TOD Standards and Approved Guidelines* passed by the City Council on March 1, 2011, including the "Core PUD Regulations" which control affordability of the 870 residential units approved for the three Hacienda Business Park sites:

"Affordability: The greater of (a) 15% of all units, or (b) 130 units, will be made available exclusively to very-low income (50% of AMI) households. Through the affordable housing agreements entered into between the City and each developer, these affordable units will be deed-restricted in perpetuity. The affordable housing agreements will be recorded and will run with the land." (*Hacienda TOD Standards and Approved Guidelines*, page 9 - Exhibit B)

Because the City Council has restricted, by law, the amount of affordable housing allowed on these three sites to 130 Very Low Income units, zoning for an additional 305 units should be added back, for a total unmet need of 844 VLI residential units. Likewise, because no Low Income housing can be built on these three parcels, the City needs to zone enough land for an additional 435 units, for a total of 1557 Low Income housing units. All together the City needs to zone an additional 25 acres at 30 units/acre for a total of 80 acres at 30 units/acre. (See suggested changes to Program 11.1 - **Exhibit C**)

The "Core PUD Regulations" governing development on the Hacienda parcels are derived from the August 2010 settlement agreement with Urban Habitat, which successfully sued the City to remove the housing cap from Pleasanton's Housing Element. Wishing to avoid the construction of any nonprofit 100% low and/or very low income housing in Hacienda, the City Council negotiators insisted on the following provision, which subsequently found its way into the "Core PUD Regulations":

"Location of Affordable Units: Affordable units will be dispersed throughout the development." (*Hacienda TOD Standards and Approved Guidelines*, page 9 - **Exhibit B**)

This regulation effectively barred nonprofit development, in spite of strong support from both Hacienda property owners and affordable housing advocates. (See **Exhibit D** -"Minutes, City of Pleasanton, Joint City Council/Planning Commission Workshop, August 27, 2008" pages 17, 18, 10. Also pages 3,4,5.)

In addition, requiring for-profit developers to build at 30 units/acre while providing 15% dispersed, "inclusionary", Very Low Income units made financial feasibility of the project somewhat precarious. (See "Joint Workshop of the City Council, Planning Commission, and the Hacienda Transit Oriented Development Plan Task Force; December 16, 2010 Minutes", page 6 - **Exhibit E**.) During the settlement negotiations with Urban Habitat, the City engaged nonprofit BRIDGE to provide a feasibility analysis. While Urban Habitat had hoped to secure at least 25% VLI and LI housing, BRIDGE concluded that the inclusionary model of development could only support projects with 15% VLI units or less, subsidized by 85% of units renting at Moderate and Above Moderate rates. (See **Exhibit E**, page 10.)

While California's housing law intends 30 unit/acre zoning to encourage development by non-profits and other affordable housing providers, the City severely and unnecessarily constrained affordability on these three properties with regulations designed to exclude non-profit developers and/or dedicated VLI and LI housing.¹ However, the Hacienda approvals might obviate the need to designate 14 acres of land for 331 units of Moderate Income housing (at 23 units/acre), since most market rate Hacienda apartments are generally affordable to moderate income households. (See suggested changes to Program 11.1- **Exhibit C**)

The regulations governing residential development of these three Hacienda properties expressly restrict the number of affordable housing units allowed to be built, as well as limiting the financial feasibility of any amount greater than 15%. Furthermore, the City Council adopted these regulations on March 1, 2011, **before the initiation of the Housing Element update process**. As the public record clearly demonstrates, all attempts by community stakeholders and affordable housing advocates to change these policies have proved futile. Nor does the record reflect a belief by the City that affordability greater than 15% can ever be achieved in spite the adopted policy. To the contrary, Councilmember McGovern contended that any affordable units beyond the inclusionary 15% specified in the Core PUD Regulations would prove financially infeasible. (See **Exhibit E**, page 10). However, if the Council had not intentionally regulated these properties in order to bar nonprofit development, the three sites could have supported at least 350 units of Very Low and Low Income housing, with many of the remaining 520 units accessible to Moderate income households. **Therefore, we urge HCD to require the City to designate an additional 25 acres to be zoned at 30 units/acre.**

¹ You should note that the other designated properties within Hacienda, specifically Sites 1, 9, 10, and 13 are not (yet) covered under the guidelines.

Concern 2: The Housing Element Draft fails to recognize Pleasanton's limited sewer capacity as an emerging and significant Governmental Constraint which the City should address with policies and programs in this planning period. For reasons outlined below, Pleasanton cannot assume the unconstrained availability of wastewater export capacity much beyond fulfillment of its current RHNA. Nor can the City assume its long term ability to secure increased export capacity.

Therefore, within the limits of its current wastewater export capacity, the City should adopt Goals, Policies, and Programs to rapidly address its deficit of Very Low and Low Income housing, consistent with past, and likely future RHNA allocations. Additionally, in order to meet California's mandate for carbon emissions reduction, housing policy should focus on attainment of a jobs/housing balance.

The August 2011 *Draft Housing Element - BACKGROUND* discusses the need to increase sewer infrastructure capacity to convey the increased amounts of sewage generated by high density residential development occurring on land previously planned for commercial use to the sewer treatment plant operated by Dublin-San Ramon Services District (DSRSD). After treatment by DSRSD, Pleasanton's wastewater is then transported to San Francisco Bay by means of a pipeline managed by the Livermore Amador Valley Water Management Agency (LAVWMA). LAVWMA is a Joint Powers Authority (JPA) between the City of Pleasanton, the City of Livermore, and DSRSD. Pleasanton's access to LAVWMA's export pipeline is strictly limited, as is LAVWMA's ability to add capacity.

Unfortunately, the City's *BACKGROUND* analysis ignores the factors which make it difficult, if not impossible, for Pleasanton to export additional wastewater beyond its current limit. Citizens for a Caring Community has raised this concern on many occasions. (See **Exhibit H** pages 4, 5, 6, and **Exhibit I** pages 6,7,8,9.) We have asked the City to adopt Policies and Programs that reserve adequate capacity for future RHNA obligations until Pleasanton reaches its current wastewater export limit set forth in the *1997 LAVWMA Principles of Agreement* and the *Amended and Restated Joint Exercise of Powers of Agreement for LAVWMA*. (**Exhibit F**)

The LAVWMA agreements were written specifically to constrain residential growth by limiting wastewater export service.

LAVWMA member agencies signed these agreements one year after Pleasanton voters approved the (now defunct) Housing Cap in 1996. To make an extremely long story short, the concerns of two LAVWMA members, Pleasanton and Livermore, over the potential growth inducing impacts of any increase in wastewater export capacity, led to approval of an expansion project with only enough capacity to serve the anticipated build-out of the Pleasanton, Livermore, and Dublin General Plans within their adopted (as of 1998) urban growth boundaries. (See **Exhibit F** pages 1, 2, 3.)

The LAVWMA project agreement limits Pleasanton's wastewater export to 10.3 million gallons/day. Pleasanton's Council and the City's voters deemed this more than sufficient to serve a projected build-out of 29,000 residential units (set by the Housing Cap) plus significant commercial and office development, consistent with Pleasanton's plans to become a "jobs center" with a big in-commute. Livermore's share, and Dublin's share (through DSRSD), was only slightly more. The *Amended and Restated Joint Exercise of Powers of Agreement for LAVWMA* (**Exhibit F**) also specifies that:

"Without this Amended and Restated Joint Exercise of Powers Agreement and the mutual agreements and limitations contained herein the parties would be unwilling and unable to undertake the proposed expansion project." (**Exhibit F**, page 12)

Among the mutual agreements and limitations are (**Exhibit F**, page 17):

- An influent limit fixed in perpetuity unless modified by unanimous agreement of the member agencies.
- When an individual member agency reaches 75% of its allocated capacity, member agencies agree to cooperate implementing additional facilities such as additional wet weather storage stream or chain of lakes discharge. However, if proposed facilities include any additional export pipeline capacity, unanimous Board approval is required.
- Member agencies may require their voters to approve support for expansion.

As acknowledged on page 56 of the *BACKGROUND*, a project to expand wastewater export capacity for residential development could be "extremely expensive". Final costs for the current project were originally estimated at between \$192 and \$218 million. The expansion project's bonds will not be paid off until 2031. However, the *BACKGROUND* analysis neglects the other obstacles to expansion. The history of LAVWMA (See February 17, 2004 Staff Report "*Discussion Concerning the Future of the Livermore-Amador Valley Water Management Agency (LAVWMA)*..." **Exhibit F1**, pages 1-5) shows that securing agreement between the member agencies for expansion could prove even more difficult than securing the financing.

Negotiations for the last expansion project began in 1985. Because of Alameda County's wish to plan for its future service needs for development in unincorporated areas of East County, and because of Pleasanton's and Livermore's resistance to this possibility, LAVWMA could not study the possibility of expansion.

Then, in the early 1990's, the lining of the old export pipe began to fail. The need to avoid liability for sewage spills caused LAVWMA members to weigh their options. Based on public fears of growth, LAVWMA members considered simply repairing the pipe without increasing the capacity at all. In spite of the growing urgency, the LAVWMA members still took until 1997 to agree on the size and operating rules for added capacity. Project construction began in 1998, but was not completed until January 2011. Clearly, resistance to additional residential growth greatly slowed progress on creating the infrastructure necessary to support it!

Therefore, we conclude that this planning period is the best time to implement programs that assure Pleasanton can meet its RHNA obligations, at least within the limits of current capacity. Consider that the next planning period will begin in 2015, forty years after the initiation of the last export expansion project.

ANALYSIS - How near is the end of sewer capacity?

Using information from LAVWMA and the latest Pleasanton General Plan, we looked at the City's estimates of the growth in annual wastewater discharge in gallons per day (GPD) from 2005 (6,250,000 GPD) to 2025 (8,261,706 GPD). (**Exhibit G**)

Because Pleasanton had a Housing Cap in 2005, we recalculated the impact on export capacity of fulfilling the City's RHNA obligations of 4148 dwelling units (du), plus the additional Above Moderate Income housing approved (594 du), for a total of 4742 du. In calculating service need, LAVWMA has allotted 180 GPD per residential du. Therefore we conservatively estimate the impact of housing development during this planning period as requiring export service for an additional 853,560 GPD. This assumes no additional approvals for Above Moderate Income housing.

Adding this 853,560 GPD to the 2005 discharge rate of 6,250,000 GPD brings the total up to 7,103,560 GPD (excluding any uses other than residential). Subtract this amount from Pleasanton's capacity allotment in the LAVWMA pipeline of 10,300,000 GPD. This leaves Pleasanton with a remaining capacity of 3,196,440 GPD at the end of 2014. Again, this assumes no service requirements from other new uses.

Recall that the LAVWMA agreements require that, when an individual member agency reaches 75% of its allotted capacity, other member agencies must cooperate in implementing additional facilities to assist that agency in meeting its wastewater needs. (**Exhibit F**, page 17) Expanding export capacity requires unanimous approval of LAVWMA's member agencies, who are also permitted to take the question of expansion (and its cost) to their voters. Pleasanton will reach the 75% mark when it uses 7,725,000 GPD of its allotted capacity. Therefore, by the end of the planning period in 2014, Pleasanton will have a margin of only 621,440 GPD (realistically probably far less), before reaching 75% of its capacity. At that time, the ability and political will to assure export capacity for affordable housing could become an issue.

CONCLUSION

To protect the capacity needed to service Pleasanton's future RHNA obligations, Citizens for a Caring Community made a number of suggestions to modify the Goals and Policies section of the Housing Element. (See Exhibit C, Policy 9, Program 9.1, Program 14.6, Goal 11, and Program 28.1). Staff recommended to the Housing and Planning Commissions, and to the City Council that these changes be referred to the Growth Management Subcommittee of the Council for consideration "as needed" until the end of the 2007-2014 Planning period. (See Exhibit H pages 4, 5, 6; Exhibit I pages 3 - 10; Exhibit J, page 6;) However, the Growth Management Subcommittee is inaccessible to the public until it makes its recommendations to the full Council. Therefore, we ask the HCD to require consideration of these policies and programs to be part of the Housing Element update process for the current planning period. This will help to ensure that Pleasanton can provide balanced housing for all income levels even if the overall growth of the City becomes stalled due to a lack of wastewater export capacity.

Concern 3: The Housing Element Draft fails to recognize Pleasanton's Inclusionary Zoning Ordinance (IZO) as a significant Governmental Constraint which the City should address with replacement policies and programs in this planning period.

If Pleasanton is to fulfill its RHNA obligations to within the limits of its sewer infrastructure, it should immediately adopt Policies and Programs that support a much higher proportion of Very Low and Low Income housing per project approval. Using RHNA assignments from the three last Planning Periods yields the average affordability assignments for Pleasanton.

RHNA for Pleasanton Through the Years

(Source, ABAG)

TOTAL UNITS ASSIGNED		Very Low	Low	Moderate	Above Moderate
1989	3547	745 21%	497 14%	709 19%	1596 46%
1999 -2006	5059	729 14.4%	455 8.9%	1239 24.5%	2636 52.2%
2007 -2014	3277	1076 32.8%	728 22.2%	720 22%	753 23%
1989 -2014	11883	2550 21.4%	1680 14.1%	2668 22.4%	4985 41.9%
AVERAGE % ASSIGNED RHNA					
3 PLANNING PERIODS		23%	15%	22%	40%

Page 32 of the *BACKGROUND* shows that the distribution of housing for Pleasanton's senior citizens most nearly achieves RHNA distribution objectives. Why? Because it is the one area of the City's affordable housing program that relies on nonprofit 100% affordable development rather than inclusionary zoning.

Even if Pleasanton's IZO required 12.5% Very Low and 12.5% Low Income housing for all future developments, it cannot generate sufficient affordability for RHNA compliance. As in the Hacienda example, application of the IZO in developments of 30 units/acre may only support 15% affordability. Furthermore, the cumulative effect of approving high density 30 unit/acre development with only 15% -25% affordability will result in the misallocation of Pleasanton's limited sewer capacity towards predominantly Moderate and Above Moderate Income housing until that capacity is gone.

During meetings of the Housing Element Update Task Force, it became evident that Pleasanton is blessed with an abundance of large parcels which could easily accommodate an architecturally integrated mix of non-profit and for-profit development. By partnering the two, non-profits could provide 20% Very Low, 20% Low Income housing while the for-profits could provide the 20% moderate component along with 40% Above Moderate Income housing. On the other hand, application of the IZO in these larger areas, particularly at 30 units/acre, would consume limited sewer capacity without providing optimal affordability. Even if Pleasanton reserves sewer capacity for Very Low and Low Income housing (as we hope they will), allowing 30 unit/acre developments to use the IZO may at some future point leave the City without the ability to approve residential development in a mixed income format.

In consideration of the longstanding preference of our community for affordable housing provided in a mixed income context, Citizens for a Caring Community, East Bay Housing Organizations (EBHO), and others advocated for the partnership concept with some success. However, we believe that the City can, and should, add additional modifications to its Housing Element Goals, Policies, and Programs to show a clearer intention to require developers to provide 60% affordability on land zoned for high density residential development, and provide exclusive incentives to encourage nonprofit-for profit partnership proposals. Because the use of the IZO cannot provide affordability in proportion to Pleasanton's average RHNA, it should probably apply only to "for sale" residential development, and smaller parcels zoned at 23 units/acre or less. Please see our recommendations for changes: Policy 4, Program 4.1, Goal 6, Policy 9, Program 9.1, Program 9.5, Policy 11, Program 11.1, Program 13.5, Goal 10, Policy 14, Policy 16, Program 16.1, Policy 25, Program 25.1, Policy 26. (Exhibit C)

Concern 4: The Housing Element Draft lacks policy and programmatic links between jobs and housing.

While the RHNA process makes broad connections between the need for housing and jurisdictions' plans for job creation, Pleasanton's Housing Element contains no Goals, Policies, or Programs to link planned commercial approvals with subsequently needed residential development. Pleasanton should have a planning process designed to bring the City into jobs/housing balance in the near term, and to achieve that balance by the 75% build-out of its wastewater export capacity. We suggest changes to the following Goals, Policies, and Programs to address this deficiency: Policy 9, Program 9.1, Goal 9, Program 17.1, Goal 11, Program 28.1, Goal 18A, Policy 24A, and 24B. (Exhibit C)

Concern 5: Many core policy matters proposed to assure Pleasanton's near and long term ability to provide its "fair share" of housing for those with incomes below 80% of the median have been referred to the Growth Management Subcommittee of the City Council. This Subcommittee does not hold public meetings, post agendas, or publish its minutes. The public has no access to the deliberations of this Subcommittee until they make their recommendations to the full Council.

In the past, the Growth Management Subcommittee, after receiving general direction from the full Council, worked out the details of how particular residential development projects would come on line through application of the existing Growth Management ordinance. In contrast, it appears that the Subcommittee will now develop new "post Housing Cap" Growth Management policy recommendations for the full Council without the advice of the Housing or Planning Commissions and without public input. We believe that Pleasanton's new Growth Management policies and ordinances should be shaped in the public process. (Exhibit I pages 9 and 10) Therefore, we ask that HCD require the Growth Management Subcommittee and the Council to take public input from the Housing Commission, Planning Commission, and the community on the following matters pertaining to the Goals, Policies, and Programs section of the Housing Element.:

- Should the City adopt a policy of apportioning limited wastewater capacity between commercial and residential uses to assure adequate workforce housing to serve commercial development, and to assure adequate service for Pleasanton's RHNA (all income levels)?
- Should the City have a program to reserve sewer capacity for future workforce housing development when approving commercial and/or institutional development?
- Should the City grant the highest priority for approval to partnerships of non-profit and for-profit developers with proposals for projects providing 20% Very Low, 20% Low, and 20% moderate income housing?

In order that the process doesn't lose momentum, we also recommend that these updated Growth Management policies be incorporated into the draft Housing Element for this planning period, and submitted to HCD for review.

Citizens for a Caring Community appreciates your attention to our concerns and suggestions. Please feel free to call if you have any questions.

Very sincerely,

Pat Belding

Pat Belding
Chair

Citizens for a Caring Community

Becky Dennis

Becky Dennis
Citizens for a Caring Community
925-426-1525

Attachments:

- Exhibit A - *City of Pleasanton Draft Housing Element BACKGROUND - July 2011*, Table, page 45.
- Exhibit B - *Hacienda TOD Standards and Approved Guidelines*, "Core PUD Regulations, page 9
- Exhibit C - Suggested changes to the *Preliminary Draft Housing Element (August 2011)*
- Exhibit D - "Minutes, City of Pleasanton, Joint City Council/Planning Commission Workshop, August 27, 2008"
- Exhibit E - "Joint Workshop of the City Council, Planning Commission, and the Hacienda Transit Oriented Development Plan Task Force; December 16, 2010 Minutes"
- Exhibit F - *The 1997 LAVWMA Principles of Agreement* and
The Amended and Restated Joint Exercise of Powers of Agreement for LAVWMA
- Exhibit F1 - "*Discussion Concerning the Future of the Livermore-Amador Valley Water Management Agency (LAVWMA)...*" February 17, 2004 Staff Report
- Exhibit G - *Pleasanton General Plan 2005 - 2025: Water Element*, Page 8-21
- Exhibit H - Housing Commission Minutes, June 15, 2011
- Exhibit I - Planning Commission Minutes, June 22, 2011
- Exhibit J - City Council Agenda Report , July 19, 2011 "Authorization to Submit the Draft Housing Element Including a List of Potential Sites to Rezone for Multifamily Housing to the California Department of Housing and Community Development (HCD)"



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September 27, 2011

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Re: City of Pleasanton Draft Housing Element

Dear Mr. Negrete:

Thank you for the opportunity to submit comments on behalf of Urban Habitat and Sandra de Gregorio in connection with your review of the City of Pleasanton's draft Housing Element update.

While we are obliged to review past history to put the Draft in context, we wish to begin by emphasizing our view that the Draft is a positive starting point and a significant improvement over the City's Housing Element from the previous planning period. We commend the City on its many successes, both in developing this Draft, and more generally in implementing the requirements of the Settlement Agreement entered into in *Urban Habitat Program, et al. v. City of Pleasanton*.

Some important shortcomings, however, do remain. Following a brief background discussion, we focus our comments on three major areas of concern: (1) the extent to which the recent rezoning of three sites in the Hacienda Business Park met the requirements of AB 1233; (2) inadequacies in the Draft's rezoning program; and (3) the inadequacy of programs to promote development of housing to meet the needs of extremely-low income households, including programs to promote non-profit development.

A. Background

1. The City's 2003 Housing Element

The City's current housing element, adopted on April 15, 2003, included a rezoning program, Program 19.1, which provided as follows:

"Within one year of adoption of the Housing Element, complete land use studies to identify for conversion as many of the sites identified in Table

IV-6 from non-residential to high density residential use as are necessary at appropriate densities (for example, approximately 30 acres at 30 units per acre or 40 acres at 20 units per acre) to meet the City's regional housing needs goal. Follow through with appropriate modifications to the Land Use Element and rezonings as soon as possible, but no later than June 2004, so that implementation can occur within the planning period."

HCD's review letter of April 3, 2003, noted that the rezonings promised in Program 19.1 were "critical to Pleasanton in addressing both its adequate sites requirement and meeting its regional share need for lower-income households," and conditioned its finding of compliance "on the effective and timely implementation (June 2004) of the general plan amendment and rezone strategy as described in Program 19.1."

On March 7, 2005, nearly a year after the due date had passed with no rezoning action, HCD revoked its finding of compliance. Noting that the "time specific completion of Program 19.1 was a key factor in the Department's original finding" of conditional compliance, HCD wrote:

"The City's failure to comply with the June 2004 rezone commitment significantly impedes its ability to establish realistic opportunities for the development of housing affordable to the local workforce and lower-income households during the remainder of the current planning period. In addition, continuing to delay the rezone completion date will further exacerbate the City's ability to take additional actions to identify other suitable and available high density zoned sites. Therefore, the Department regrets to find Pleasanton's housing element does not satisfy the 'adequate sites' statutory requirement."

2. The *Urban Habitat* Lawsuit and Court-Ordered Settlement

Urban Habitat and Ms. De Gregorio filed their suit against the City on October 17, 2006. Among other things, they asked the Superior Court to strike down the City's Housing Cap and Growth Management Ordinance, and to require the City to carry out the rezonings required by Program 19.1. After significant litigation, and a ruling in Plaintiffs' favor in the Court of Appeal, the Superior Court struck down the Housing Cap, and granted a writ of mandate ordering rezoning. The Court wrote that:

"The City has still not accommodated the RHNA allocated to it in 2001. The City's enactment of Ordinance 1998 a month and a half before the hearing on this petition may start a process to cure the City's failure in this matter, but is wholly inadequate to be considered a cure. Its requirement of further necessary acts before any development plan can be approved vitiates any actual remedial effect of the Ordinance. Moreover, the 'good cause' exception in the Ordinance is illusory because it is not defined and because it is an obvious disincentive to developers..." (Order of Mar. 12, 2010, p. 8)

The Court went on to order the City to adopt "non-illusory zoning changes sufficient to accommodate the unmet RHNA for the 1999-2007 Planning Period. . . . without condition or need of future discretionary approval." (Order of Mar. 12, 2010, pp. 8-9.)

Following the Court's ruling, the parties (including the California Attorney General, who had intervened on Plaintiffs' side) worked in good faith to reach a settlement of the issues. As relevant here, the Settlement Agreement (copy attached) required actions of three kinds:

- (1) Hacienda Rezonings: The City agreed to adopt zoning changes and core development standards allowing high-density residential development on three sites at the Hacienda Business Park (the “Hacienda sites”). Specifically, the City agreed, by January 4, 2011, to approve a set of “core development standards” for the three Hacienda sites, including a density floor of 30 units per acre, with no fewer than 130 units to be affordable to very-low income households.
- (2) Housing Element Adoption: The City agreed to submit a draft updated Housing Element to HCD for statutory compliance review no later than August 16, 2011, and to adopt an updated Housing Element for the current Planning Period within 90 days after receiving HCD’s comments on its Draft. The City further agreed to complete any and all rezonings and General Plan amendments necessary to accommodate in full its RHNA at each income level prior to or concurrent with its adoption of the updated Housing Element.
- (3) Actions to Promote Non-Profit Affordable Housing for Families: The City agreed to adopt and implement a Resolution (Attachment C to the Settlement Agreement), with the intent of updating “its Housing Element goals and programs through study and consideration of adoption of additional goals and programs related to eliminating discrimination in the areas of affordable housing for families with children and senior citizens. . . .” (Resolution No. 10-390, copy attached.) Specifically, in order to eliminate any discrimination against non-profit affordable housing development, the City agreed to conduct an analysis to determine which sites were most competitive for Low-Income Housing Tax Credits,¹ and to “adopt and implement one or more programs to attract non-profit affordable housing development for families for the identified sites.”

The Settlement Agreement was approved by the City Council, and entered as an order of the Court on August 19, 2010.

Since then – while some significant issues remain, as discussed below – we have generally been impressed with the City’s good-faith implementation of the terms of the Settlement Agreement.

B. Analysis of the 2011 Draft Housing Element

1. AB 1233.

Due to the prolonged delay in implementing Program 19.1, the issue of the City’s carry-over rezoning obligation from the prior planning period is an important one. Two issues require closer examination than the Draft provides: first, whether the City has justified its conclusion that the carry-over lower-income rezoning need from the prior period comprises 0 very-low income units and 871 low-income units, and second, whether the actions to rezone the three Hacienda sites accommodate that carry-over need in full.

¹ The City did, in fact, conduct that analysis (copy attached), though it is not reflected in the Housing Element.

Table III-1 (Background Rep, p. 50) adds the “remaining need from 1999-2007” into the 2007-2014 RHNA. That Table indicates that the total remaining need comprises 871 units, and that all of those units are in the low-income category. To begin with the issue of income level, the entire low-income RHNA allocation for the prior period was only 455 units. Thus, even if none of these units was accommodated in the prior period, the carry-over low-income need would not exceed 455, barely half of the 871 counted in Table III-1. Some significant portion of the remaining need must be attributed to the very-low income category.

The basis for the calculation of the remaining need as 871 units, moreover, is not spelled out in the Draft.

Table III-1 goes on to attribute the development of the three Hacienda sites, expected to yield 870 total units, entirely to the lower-income need, with half at very-low and half at low-income. Again, the Draft does not adequately support this assumption. The owners of these sites have long been requesting rezoning that would permit them to pursue residential development. As to two of them (identified in the Draft as sites 22 and 23), a staff report to the City Council in 2008 noted that

“major new development proposals have recently been submitted to the City as preliminary applications. Two of these are for residential developments on the former Shaklee site and include a 130-unit townhouse development and an 80-unit affordable housing development proposed on the W.P. Carey property directly across Owens Drive from the BART station, and a 240-unit apartment development by BRE on the other side of the Shaklee office building at the corner of Gibraltar Drive and Hacienda Drive.”
(Staff Report on Hacienda Planning Process, Aug. 27, 2008, p. 2.)

Thus, while these long-delayed rezonings were, in the end, technically initiated by the City, the owners and developers had been requesting that rezoning for quite some time, in connection with an owner-initiated Specific Plan process.

As this 2008 staff report indicates, the City has also long been aware that the intention of the owners of those sites was to develop them primarily for *market-rate* housing. While the owners planned to meet the City’s inclusionary requirements by means of an 80-unit affordable housing project (accounting for just under 18 percent of the total proposed unit count on the two sites), at no time to our knowledge have they expressed any intention of developing them *exclusively* with lower-income housing. The City never had any expectation that more than 130 units of the units developed on these sites would be affordable to lower-income households.

Given these facts, while the development standards the City adopted in rezoning the sites do not place a ceiling, but only a floor, on lower-income units, there has never been any question that the bulk of the units would be market-rate. Indeed, we are not aware that the City even *solicited* a 100 percent affordable project for any of these sites. Unless the City can provide information of which we are not aware that supports a reasonable expectation that the owners of the rezoned sites would be willing to develop them *exclusively* as lower-income housing, we believe that only the minimum number of affordable units required by the Settlement Agreement – 130 of the expected 870 units – should be counted toward the prior unmet RHNA for very-low and low-income households.

2. Site Inventory and Rezoning Program.

The Draft's site rezoning program, Program 11.1, is inadequate in a number of important respects. The program provides that the City will:

“Complete any and all rezoning and General Plan amendments necessary to accommodate the City's full RHNA allocation for the fourth housing element revision planning period, as assigned to City by ABAG in or about May 2008. Of the total RHNA (comprising 3,277 total units, including 1,076 very-low-income units, 728 low-income units, 720 moderate-income units, and 753 above-moderate-income units) the unaccommodated portion consists of 539 very-low-income units, 1,122 low-income units, and 331 moderate-income units, requiring rezoning of 55 acres at 30 units/acre, and 14 acres at 23 units/acre.”

In addition to the unjustified assumption, discussed above, that the RHNA allocation for the *third* planning period has been accommodated in full, this Program is flawed because the Draft does not address two important questions: first, the Program does not specify that the rezoning will allow “by right” multi-family use at densities of 30 or more units per acre; and second, the Draft does not justify its calculation of the unaccommodated portion of the lower-income RHNA need, and hence of the acreage to be rezoned.

Under California law, “by right” means “that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a ‘project’ for purposes of [CEQA]. . . .” (Gov. Code § 65583.2(i).)² Under this new definition, Pleasanton's traditional reliance on PUD zoning is not sufficient.

Currently, the City's Zoning Code establishes no residential district that permits – much less sets a floor at – 30 units per acre. The only sites for which the City has set such a density floor are the three Hacienda sites. There is some discrepancy regarding the highest-density residential zoning district, RM-1,500. According to the Draft, that district permits one dwelling unit per 1,500 square feet (approximately 29 units per acre maximum). (Background Rep., p. 84.) By contrast, the Zoning Code establishes a far less-dense district as follows: “RM-1,500 multi-family residential district, 10,500 [sic] square feet site area per dwelling unit.” (Zoning Code, § 18.24.010.)

Assuming the latter is a typographical error, it should be corrected; even so, the assumption that this zone could accommodate a *minimum* of 30 units per acre (the assumption made in the site inventory in calculating unit counts, Background Rep. pp. 59-60), is unjustified.

The Draft site inventory creates particular confusion on this point, as it indicates that the “Future General Plan / Zoning” of the sites will be “High Density Residential PUD-HDR” or “Mixed Use PUD-MU.” (Background Rep., pp. 59-78.) Neither is a zoning district established in the

² All statutory citations are to the California Government Code unless otherwise noted.

Pleasanton Municipal Code.³ More importantly, PUD zoning does not comply with the statutory “by right” requirement of § 65583.2 (i), and no more than 50 percent of the need may be accommodated in mixed-use districts, under § 65583.2 (h).

There are two consequences. First, the Draft must include a program to establish a multi-family by-right zone that allows only residential uses and sets a density floor of 30 units per acre.

Second, the number of acres that must be rezoned at 30 units per acre may well exceed the 55 acres assumed in Program 11.1. That is so not only because of the AB 1233 issue discussed above, but also because there is some question whether the very-low income units attributed to the Windstar project are realistically capable of being developed during this planning period. While this project was approved in 2009, it appears that the developer has still not sought a building permit two years later. (Background Rep., pp. 48, 50.) The Draft should substantiate whether or not the developer has indicated an intention to build these units before June 2014.

Greater transparency in the calculation of remaining need will also dispel any concern that units may have been inadvertently double-counted toward meeting both the prior and the current RHNA.

3. Actions to Promote Extremely-Low Income Housing and Non-Profit Development.

The Housing Element Law requires the Element’s program of actions to “[a]ssist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households” (Gov. Code § 65583(c)(2)), yet the Draft includes no programs to promote the development of extremely-low income housing. An overlapping requirement of the Settlement Agreement requires the City to take specific actions to promote “non-profit affordable housing development for families for the identified sites” (i.e., those found to be competitive for tax-credit projects), as reflected in Resolution 10-390.

The five programs under Policy 45 (“Implement Resolution 10-390, requiring enhancements to existing non-discrimination housing policies”), are inadequate to meet either the statutory requirement or the Court-ordered Settlement provision. Of the five, Program 45.3 comes closest, but still falls short. It provides that:

“The City will coordinate a workshop with non-profit housing developers and owners of sites rezoned to accommodate housing affordable to low- and very-low-income households for the purpose of facilitating discussion regarding potential opportunities, programs, financial support, etc. The City will utilize its Lower-Income Housing Fund, Federal funds, and/or other funds/financial support to assist with the acquisition of a site or to assist with development of a project with three bedroom units affordable to large low- and very-low-income households by a non-profit housing developer.”

³ The Code establishes only one PUD district. Muni. Code, § 18.68.010. Apparently “PUD-HDR” and “PUD-MU” refer to the limits that the underlying General Plan land-use designation (HDR or MU) place on PUD development.

This program, while it seemingly commits the City to devote funds to assist a non-profit development, does not specify the amount of those funds. Nor does it specify that the site will be one of those found to be competitive for tax-credit financing for non-profit development.⁴

Apart from the Draft's failure to include specific and concrete program actions that will affirmatively promote non-profit development on these sites, the Draft includes a Policy 37 that imposes "dispersal" requirements that would severely constrain, if not render outright infeasible, non-profit affordable development. Policy 37 provides, in relevant part:

"Disperse housing units affordable to low- and very-low-income households throughout new residential developments."

On its face, this Policy would prohibit any stand-alone non-profit affordable housing development. This is of special concern to the Plaintiffs, not only because it contradicts an express requirement of the Settlement Agreement to take actions to *affirmatively promote* non-profit development, but also because suspicions have surfaced in the past that the City might be hostile to non-profit development for families. Whether or not that hostility actually has been expressed by City officials, even the rumor can be enough to discourage non-profit developers. This Policy, if it is not removed altogether, should be expressly limited to lower-income units provided as inclusionary units within a market-rate development.

⁴ The remaining programs add no concrete actions that would accomplish the goals of the statute and the Settlement Agreement:

- Program 45.1 ("Identify the level of need for special needs housing...") reflects an analysis that is required to be completed in the Housing Element itself.
- Program 45.2 ("consider utilizing the City's Lower-Income Housing Fund, Federal funds, and/or other funds to provide low-interest loans to retrofit existing residential units" to create three bedroom rental units) is potentially helpful, but even with the removal of the weak action verb "consider," this program will not promote new ELI *development*.
- Program 45.4 ("present a report regarding the City's efforts to fulfill Resolution 10-390...") is an appropriate program insofar as it reflects the City's commitment to monitoring the actions it takes to fulfill its commitments, but adds no substance to the actions that will be taken.
- Program 45.5 ("The City is committed to work in good faith with non-profit and for-profit developers in the East Pleasanton Specific Plan area during the specific plan process to secure property for the development of family housing affordable to low- and very-low-income households") is a helpful expression of intent, but falls short on including any specific actions the City will take to carry out that intent.

4. Other Issues.

Growth Management Program (GMP): Pleasanton’s Growth Management Ordinance restricts the issuance of residential building permits to no more than 350 per year:

“A. Except as provided herein, building permits issued for new residential units subject to this chapter shall not exceed the following aggregate totals for calendar years as follows:

Calendar Year	Maximum Building Permits
2009 - build-out	350 units

“Except as provided in subsections B and C of this section and except when necessary to increase the annual housing allocations in order to grant approvals to projects so that the city is able to meet its total regional housing needs goals, the maximum limitations established in this section are nondiscretionary and shall not be modified by the city council in implementing this chapter.” (Muni. Code § 17.36.060(A).)

Under subsection (C) of the Ordinance, moreover, the City Council “shall exercise its discretion [to reduce the maximum below 350 units] if the planned, phased infrastructure expansions which form the basis for establishing the managed growth to build-out of the general plan are not completed in a timely manner.”

The Draft notes that

“The City has maintained its GMP in order to continue to phase residential growth according to the availability of infrastructure, to ensure environmental sensitivity, to manage the supply of buildable residential sites to meet continued future demand, and to encourage affordable housing.” (Background Rep. p. 24.)

While the GMP remains in effect, however, it is not analyzed as a constraint to meeting the lower-income RHNA share. In addition, while the Draft indicates, in Program 29.2, that the City plans to “[r]eview and amend the Growth Management Ordinance to reflect current housing and infrastructure conditions and current housing needs,” it offers no details on how the amendment will address constraints, e.g., by exempting affordable housing from its limitations.

Community Opposition: It appears that, in finalizing its list of potential sites for rezoning, the City may have inappropriately bowed to community opposition based on stereotypes about affordable housing. That list originally included two sites that were removed or scaled back in response to community opposition: Site #7 (Pleasanton Gateway) and Site #15 (Valley Trails Church). (Appendix D, p. 3.) Pleasanton Gateway was originally listed for 13 acres of multi-family, high-density development. The site garnered some 225 pages of comments, in which the most frequently-mentioned concerns were “negative impact on property values” and “increases in crime as a result of additional multifamily (or affordable) housing.” (Appx. D, p. 8.) In response to this public opposition, the Housing Element Task Force reduced the allowable

Jess Negrete, HCD
September 27, 2011

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acreage for rezoning to ten acres (Minutes of City Council Meeting, May 3, 2011, p. 5, copy attached), of which the City designated only seven for high-density zoning at 30 units per acre. (Background Rep., p. 59.)

The Valley Trails Church site was originally designated for 3 acres of high-density residential zoning. In over 100 pages of written comments, the most frequently-mentioned factors against the rezoning of the site were “negative impact on property values,” “increased crime,” and “inappropriate development to put in an established residential neighborhood.” (Appx. D, pp. 10, 12.) These comments prompted the Housing Element Past Force, with City Council approval, to remove the site entirely from consideration for rezoning. (Minutes of City Council Meeting, May 3, 2011, p. 7.)

The strong actions that the City has taken over the past year to implement the Settlement Agreement and develop its new Housing Element hold out promise for planning and development that will benefit the entire Pleasanton community while bringing economic, environmental and social equity benefits to the Bay Area region. By addressing the key outstanding issues described above, we believe the City will be well on its way to fulfilling that promise.

Very truly yours,

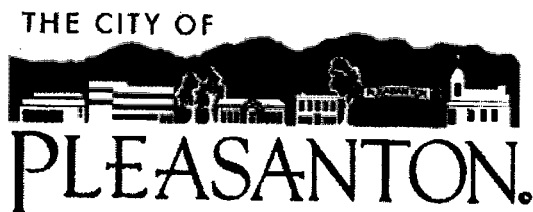


Richard A. Marcantonio

Enclosures:

Order of Mar. 12, 2010, in *Urban Habitat v. City of Pleasanton*
Settlement Agreement (without attachments)
Resolution No. 10-390 (Exhibit C to the Settlement Agreement)
Staff Report on Hacienda Planning Process, Aug. 27, 2008
Minutes of City Council Meeting, May 3, 2011
Tax credit scoring of sites

Cc: Jonathan Lowell, City Attorney, City of Pleasanton (by email)



Housing Commission Agenda Report

November 17, 2011

Item 8A

- SUBJECT:** PGPA-17, City of Pleasanton: Housing Element Update
- STAFF RECOMMENDATION:** Consider the Draft Housing Element and Comments from the Department of Housing and Community Development (HCD); recommend the Draft Housing Element with amendments as appropriate to the City Council
- ATTACHMENTS:**
1. Draft Housing Element as submitted to the California Department of Housing and Community Development, consisting of:
 - Draft Housing Element (Goals, Policies and Programs)
 - Background
 - Appendices, A through G
 2. Letter dated October 14, 2011, from HCD
 3. Letter dated September 16, 2011 from Pat Belding and Becky Dennis, Citizens for a Caring Community
 4. Letter dated September 27, 2011, from Richard Marcantonio, Public Advocates, Inc.
 5. Proposed additional text regarding Units At-Risk of converting to market rate

BACKGROUND

In October 2010, the City Council confirmed an 11-member Housing Element Task Force with the mission to oversee the update of the City's Housing Element. After nine Task Force meetings, four community workshops, input from housing experts, and extensive community input at Task Force and community meetings, the Task Force completed its work. A preliminary Draft Housing Element was considered by the Housing Commission, the Planning Commission and the City Council before it was submitted to the State Department of Housing

and Community Development (HCD) for its 60-day review. The Draft Housing Element submitted to HCD is provided in Attachment 1.

HCD provided the City with comments on the Draft Housing Element in a letter dated October 14, 2011 (Attachment 2). In preparing the letter, HCD considered comments from Citizens for a Caring Community (Attachment 3) and Public Advocates (Attachment 4).

City staff is in the process of preparing responses to the comments made by HCD, including inserts to the Background report and amendments and additions to policies and programs where appropriate. The purpose of this Housing Commission item is to provide information to the Commission regarding the status of the HCD review and to seek input from the Commission regarding the City's response to HCD comments.

DISCUSSION

HCD's letter and appendix of October 14, 2011, is an exhaustive analysis from the State's perspective of the adequacy of the City's Draft Housing Element. It is organized around the major requirements of Housing Element law, as follows:

- Housing Needs, Resources and Constraints;
- Quantified Objectives;
- Housing Programs; and
- Consistency with the General Plan

HCD's comments range from requests for additional information documenting housing need for extremely low income households and ability to pay for housing, to requests for additional analysis related to the constraints to housing imposed by land use controls, and the feasibility and capacity for residential development on some of the sites selected for rezoning.

Bearing in mind the Housing Commission's purview regarding the development and retention of affordable housing and its expertise in matters related to inclusionary zoning, assisted units, and the use of the Lower Income Housing Fund, staff is seeking the Commission's input on several specific areas addressed in the HCD letter. The following table summarizes several comments from the HCD Appendix and outlines staff's approach for addressing these items:

- Inclusionary Housing (p.5): provide a complete analysis of the cost impact of the inclusionary requirements on the cost and supply of housing.
Staff Response: The Background report (p. 94) includes a description of the inclusionary ordinance, compares it to requirements in other Bay Area cities, and describes in general the types of incentives that are provided to developers who include affordable units in development. Staff intends to supplement this with specific information regarding fee waivers, loans and land write-downs and other incentives provided to developers,

including the information that the City subsidy for inclusionary unit development since 1992 has averaged \$33,364 per affordable unit.

- Units at Risk of Converting to Market Rate Units (p.7): provide additional information and analyses related to: total cost of producing, replacing and preserving the units at risk; identification of public and private non-profit entities that could acquire or manage these units; identification of financing and subsidy programs.

Staff Response: Housing Division staff has prepared a response (see Attachment 5) which addresses the items identified in HCD's letter.

- Housing Programs (p.8): provide a description of the City's specific role in implementation, definitive timelines, and quantified objectives where applicable. The housing programs discussed include:

Housing Program:	Staff Response:
6.2 Affordable rental second units	<i>The City's role would be to develop the program materials including information, criteria for qualification, and incentives, and to monitor the success of the program. Timeline: Initiate program by the end of 2012. Quantified objective: 5 units/year.</i>
9.1 Review and revise Growth Management Program	<i>The objective of this program is to assure that the City growth management program is consistent with State law and that there is a procedure for assuring that the construction of approved residential developments is consistent with available infrastructure. The program is scheduled to be completed by the end of 2012.</i>
9.4 Funds for lower income housing development	<i>The objective of this program is to secure available funding required to finance new affordable housing development. A timeline would be developed on a project by project basis as affordable development inquires/applications are submitted to the City.</i>
9.5 Provide incentives for lower income housing development	<i>The objective of this program is to assure the City has incentives appropriate to meet affordable housing needs and to assure that they are made available to the development community. The City will develop an</i>

	<i>enhanced promotional effort by June 2012.</i>
17.4 Use of Lower Income Housing Fund	<i>The objective of this program is to utilize the Lower Income Housing Fund in a manner consistent with City ordinance and to support affordable housing, particularly developments proposed by non-profit developers that include units for large families at very low incomes. This effort is ongoing with no specific timeline.</i>
25.1 Encourage housing for lower income households on HDR sites	<i>The objective of this program is to assure that owners of HDR properties are informed of City affordable housing programs. The City will notify all property owners of HDR sites being rezoned as part of the Housing Element Update of available City services within 180 days after the effective date of the rezoning.</i>
25.2 Support of non-profit housing providers	<i>The objective of this program is to assure that the City maintains a full range of incentives that are beneficial to assisting non-profit housing developers. This is an ongoing program with no specific timeline.</i>
38.3 RFP for housing for lower income households	<i>This objective of this program is to assure appropriate outreach to non-profit housing developers interested in developing affordable housing on a specific site. There is no specific timeline as this program would be implemented as sites become available.</i>

- Meeting the housing needs of extremely low-, very low-, low- and moderate-income households (p.9): revise housing programs 17.5, 41.3, and 41.4 to prioritize some funding for ELI households, and/or offer financial incentives or regulatory concessions to encourage development of multifamily and single room occupancy (SRO) units.
Staff Response: Staff recommends adding "and ELI individuals and households" to Policy 41 and Program 41.1., to address the special housing needs of this group.
- Review of Inclusionary Zoning Ordinance (p.10) Program 16.2: review should address any constraints identified in the previously required analysis.
Staff Response: Staff will include "as a potential constraint to affordable housing" as a bullet point in this program, and will complete the review by the end of 2013.

NEXT STEPS

The Draft Housing Element supplemented by responses to the HCD comments will be considered by the Planning Commission and City Council in December, 2011, with adoption of the Housing Element anticipated in January 2012.

STAFF RECOMMENDATION

The Housing Commission is being asked to provide input and to make a recommendation to the City Council regarding responses to HCD's letter of October 14, 2011.

City Council Chambers, 200 Old Bernal Ave., Pleasanton, CA

**November 17, 2011
7:00 p.m.**

8. **PUBLIC HEARINGS AND OTHER MATTERS**

A. **Recommendation to the City Council to Approve the Draft Housing Element**

Janice Stern, Planning Manager, provided some background information regarding the Housing Element requirements, advising that in October 2010, the City Council had confirmed an 11-member Housing Element Task Force to oversee the update of the City's Housing Element. After numerous meetings, community workshops, and input from housing experts, the Task Force completed its work, and a preliminary Draft Housing Element was considered by the Housing and Planning Commissions and City Council before it was submitted to the State Department of Housing and Community Development (HCD) for its 60-day review by the August 16 deadline.

In a letter dated October 14, 2011, HCD provided the City with comments on the Draft Housing Element, which also addressed the comments submitted by Citizens for a Caring Community and Public Advocates.

City staff is now preparing responses to the HCD comments, including inserts to the background report and amendments and additions to policies and programs where appropriate. Ms. Stern reviewed with the Commission a table summarizing comments from the HCD Appendix and an outline of staff's approach for addressing the items, which included:

- Inclusionary housing (p.5)
- Units at risk of converting to market rate (p.7)
- Housing programs (p.8)
 - a. Affordable rental second units
 - b. Review and revise the Growth Management Program
 - c. Funds for lower income housing development
 - d. Providing incentives for lower income housing development

- e. Use of the Lower Income Housing Fund
- f. Encouraging housing for lower income households on high density sites
- g. Support of non-profit housing providers
- h. RFP for housing for lower income households
- Meeting the housing needs of extremely low-, very low-, low-, and moderate income households (p.9), and
- Review of the Inclusionary Zoning Ordinance (p.10)

Mr. Bocian provided an update on the Housing Element and the initial review that had been completed by HCD.

The Commission was advised that staff had tried to answer all of HCD's questions and concerns and was now seeking comments from the Housing and Planning Commissions and City Council, with the goal of adopting the Housing Element in January 2012. Ms. Stern asked Commissioners to focus on specific issues relating to housing and provide their comments and feedback.

Commissioner Casey confirmed with Ms. Stern this item would not be brought back to this Commission for additional review.

Commissioner Hempill asked about secondary units and whether the obstacle of permit costs had been considered. She also asked about monitoring of the program and determining whether or not secondary units are being used as rentals. Ms. Stern advised that secondary units have generally been found not to be used as rentals. Mr. Erickson provided additional related information on a survey that was done within the past couple of years that indicated secondary units were largely not being rented out.

Ms. Stern provided Commissioner Mermelstein with information about designated sites that have not yet gone through the approval process. Commissioner Probert asked about the recent approval of a skilled nursing facility on Site 20 at Sunol and Sycamore.

Chairperson Lopez opened the meeting for public comment at 7:25 p.m.

Dolores Bengtson, 568 Hamilton Way – had questions about: 1) the counting of new housing units in Hacienda Business Park; 2) the status of secondary units; and 3) the analysis in Attachment 5 that shows Pleasanton Gardens as being at risk.

Ms. Stern providing information on how Hacienda units had been counted according to State law. Mr. Erickson advised that Pleasanton Gardens had been considered at risk because of its mortgage payoff and the potential release of rent and income restrictions. He further noted that the analysis provided in the response to HCD was based specifically on direction provided by HCD.

Chairperson Lopez closed the meeting for public comment at 7:30 p.m.

Commissioner Hempill questioned whether an analysis of jobs had been done by the City. Ms. Stern advised that it had not been done for this Housing Element. Commissioner Hempill felt the work force should be analyzed and their needs addressed.

Commissioner Casey asked about Hacienda rezoning and how staff would respond to HCD. He was concerned that the numbers may not be what is required.

Mr. Bocian commented on additional rezoning that would help meet HCD requirements. He further noted that the City Council's process of identifying sites would likely identify additional acreage when the list is reviewed. Ms. Stern also advised that a couple of high density sites have been identified at the Stoneridge Mall.

Commissioner Hempill asked about comments made in Becky Dennis' email dated November 16, 2011. Mr. Bocian advised that some preliminary analysis has been done and needs are adequate for sometime in the future, but staff will address these in the Growth Management Program. Commissioner Casey confirmed that it would be another year before the Growth Management Program was amended and queried whether this would put certification of the Housing Element at risk.

Commissioner Hempill thought Policy 22 was vague and thought the word "encouraged" should be replaced with something stronger and that policy incentives should be provided. Ms. Stern agreed and advised that staff would revise the language accordingly.

Chairperson Lopez commented on HCD's highlights and wanted to be sure all of their items were being addressed. She felt that HCD was looking for stronger language on how the City intended to implement the various programs. Commissioner Probert agreed and also thought that HCD had strong opinions about inclusionary zoning.

Commissioner Casey was concerned about amending the Growth Management Program by the end of 2012. Ms. Stern provided information about deadline dates that need to be met but indicated that staff would try to do complete things faster.

Chairperson Lopez suggested that specific percentages be included as targets for the provision of "extremely low income" housing units.

Commissioner Casey asked that staff identify the specific comments that have been made by this Commission. He commended staff and the Housing Element Task Force for their hard work. He felt that there were still some gaps and cautioned staff to proceed with caution when responding to HCD to ensure that everything is clear and no doors are left open for additional concerns.

A motion was made by Commissioner Casey, seconded by Commissioner Hempill, to approve the Draft Housing Element Update as amended with comments from the Housing Commission.

ROLL CALL VOTE:

AYES: Commissioners Casey, Hempill, Mermelstein, Probert, and Chairperson Lopez.

NOES: None

ABSENT: None

ABSTAIN: None