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March 16, 2012

Paul McDougal
Melinda Coy
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1800 Third Street
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Re: City of Sausalito Draft Housing Element

Dear Mr. McDougal:

On behalf of the Non-Profit Housing Association of Northern California, we welcome the opportunity to comment on Sausalito's Draft Housing Element, submitted for your review on February 2, 2012. Adoption of a thorough and legally compliant housing element is particularly important given Sausalito's complete failure to adopt a Housing Element for the prior planning period.

We commend the City for recognizing its obligation to plan for unaccommodated lower-income housing needs from the prior planning period in addition to its fair share of the Regional Housing Need Allocation for the 2007-2014 planning period. Unfortunately, the Draft Housing Element fails to identify suitable sites to accommodate this lower-income housing need. Instead, it claims that the majority of its lower-income housing could be accommodated on small sites that cannot realistically accommodate lower income housing, and through existing accessory dwelling units and live-aboard vessels, which are already occupied and will do nothing to increase the supply of affordable housing in the City.

1. Background

Sausalito has a severe deficit of affordable housing. The vast majority of lower income households in the City pay more than they can afford on housing; 84% of lower income renters and 74% of lower income homeowners spend more than 30% of their income on housing.

The difficulties faced by existing lower income residents of Sausalito tell only part of the story. While the City has 7,000 residents, more than 2,000 very-low income Sausalito workers making less than \$40,000 per year, commute into the City for work from their homes in other places. The high cost of housing and unavailability of sufficient affordable housing options

in the City force these workers into often long commutes by denying them the opportunity to live in the community where they work.

Sausalito would need thousands of new affordable housing units to meet the existing and future needs of its existing residents and workers. Only 22 units of affordable housing – restricted to seniors - have been developed in the City since 1999.

2. Sausalito's Current Housing Need

Unlike all but a handful of jurisdictions in the Bay Area, Sausalito failed to adopt a Housing Element for the 1999-2007 planning period. The City is now nearly three years late in updating its Housing Element for the 2007-2014 period. This means that for a dozen years, Sausalito has lacked an assessment of its housing needs, a plan to facilitate housing development, and adequate sites for the construction of new housing.

As the Draft Housing Element correctly notes, AB 1233, Cal Gov. Code § 65594.09, requires the City to complete all rezoning necessary to accommodate its unmet housing obligations from the 1999-2007 planning period in addition to planning for its current housing need. An overview of the City's AB 1233 rezoning obligation is provided in Attachment A, which includes an excerpt from Public Advocates' 2009 report: *Zoning for Affordable and Sustainable Communities; A Case Study in the Implementation of Housing Elements in Marin County*.¹ In total, the City has the obligation to identify or rezone adequate sites to accommodate 372 new housing units, including 128 affordable to very-low and low income households, between 1999 and 2014.

	Very-Low	Low	Moderate	Above-Moderate
1999-2007 RHNA	36 ²	17	50	104
2007-2014 RHNA	45	30	34	56
Aggregated Housing Need	81	47	84	160

While the Draft Housing Element properly identifies the need for new housing affordable to lower-income households (Table 3.5 on page III-10), however, it fails to demonstrate that there are adequate sites for the development of new housing to meet this need.

The Draft Housing Element relies on six categories of housing to accommodate its fair share of the Bay Area's RHNA from 1999-2014: 1) pre-existing second units; 2) pre-existing liveboard units; 3) new second units; 4) new liveboard units; 5) small infill development sites, most of which are already in-use, and 6) one completed affordable senior housing development of 22 units. As explained below there are substantial problems with counting any but the completed

¹ The full report is available online at <http://www.publicadvocates.org/publication/report-zoning-for-affordable-and-sustainable-communities-a-case-study-in-the-implementation>.

² The draft element notes that 22-unit Rotary project met a portion of the very-low income RHNA share for the 1999 planning period.

units these toward RHNA needs. Pre-existing units, both second units and liveboards, totaling 108 units of lower-income housing, are categorically ineligible to help meet RHNA obligations, as they are not *new* units, but rather units that are already part of the City’s occupied housing stock. For an additional 180 lower-income units, infill, second units, and liveboards, the City has failed to demonstrate that the claimed capacity for housing development is realistic and feasible.

	Very-Low	Low
Pre-Existing Second Units	7	15
Inadequately Justified New Second Units	14	27
Pre-Existing Liveboards	12	64
Inadequately Justified New Liveboard Development	0	55
Tiny, low capacity, mostly occupied sites	42	42
Total problematic units counted toward RHNA fair share	75	203

With few to no new realistic sites identified, the Draft Housing Element fails to meet basic legal standards and fundamental purpose of the Housing Element, “to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.”

3. The Site Inventory Relies Exclusively on Small Sites that Cannot Realistically Accommodate Any Affordable Housing

One of the core obligations of the Housing Element Law is the identification of sufficient sites suitable for residential development to accommodate the jurisdiction’s share of the regional housing need at all income levels. § 65583.2(a). Sites may only be counted if they could realistically accommodate a portion of the jurisdiction’s housing need at a given income level. § 65583.2(c). While the housing element law establishes default densities that are presumptively appropriate to accommodate lower income housing, density alone is not sufficient to make a site feasible for affordable housing development.

Small sites present particular problems for the development of lower-income housing. Official HCD guidance requires additional analysis for sites under one acre. “To utilize small sites to

accommodate the jurisdictions share of the regional housing need for lower-income households, the element must consider the impact of constraints associated with small lot development on the ability of a developer to produce housing affordable to lower-income households.”³

The Housing Element statute imposes additional site requirements if the jurisdiction has a shortfall of available sites to accommodate its full housing need. *See* § 65583.2(h). This includes unaccommodated housing need from a prior planning period for which rezoning is required under AB 1233. Sites relied upon to meet unaccommodated needs must permit multifamily housing by right; have a minimum density of 20 du/acre, and at least 50% of the unit shortfall must be accommodated on sites designated for residential use only. *Id.* In addition, each site must be able to accommodate at least 16 housing units.

The Draft Housing Element’s site inventory includes 29 sites with a claimed capacity of 73 units to meet its carryover need for very-low and low income housing.⁴ *All* of these sites are smaller than 1/2 acre. Most are much smaller – 27 out of 29 affordable sites for affordable housing are under 1/4 acre, and 15 are under 1/8 acre. Not only are these sites extremely small in size, the estimated capacity for new housing on each site is also tiny, with 23 sites listed as available to accommodate only 1 or 2 units. The largest of the affordable housing sites in the inventory is .41 acres with a claimed capacity of 11 units, still below the statutory minimum of 16 units. These sites also appear to lack the minimum density standards required by the Housing Element Law. § 65583.2(h).⁵

Moreover, almost all of the 29 lower-income housing sites have existing uses, are environmentally polluted, or have other constraints that would make the development of any new housing extremely difficult.

The realities of affordable housing construction and finance make development of single units of very-low or low-income housing on tiny sites virtually impossible. The Draft Housing Element provides no examples of affordable housing developed in the City under such circumstances. Nor does it provide any other justification for counting these sites as realistic to meet its housing needs.

The failure to identify adequate sites that could realistically support affordable housing is particularly troubling given that the site inventory does include a number of larger vacant sites that are reserved for high-income single family use. These include a vacant 2 acre parcel, and at least 5 vacant one-half acre parcels. The inclusion of these sites in the inventory demonstrates that Sausalito is not, in fact, “built-out,” or otherwise lacking in vacant land suitable for residential development. Rather, the City has chosen not to make vacant land available for affordable multi-family housing construction.

Whether or not the City may properly count some second units and livaboard units toward its RHNA, the problems with which are discussed below, the failure to identify any viable sites for

³ Building Blocks for Effective Housing Elements, Adequate Sites Inventory and Analysis, Realistic Development Capacity, available at http://www.hcd.ca.gov/hpd/housing_element/screen17_capacity.pdf.

⁴ While the site inventory identifies only 73 sites for lower income housing, the summary table on page IV-2 reports a site capacity of 84 units. The source of this discrepancy is unclear and requires further explanation.

⁵ It appears that Sausalito does not even have a zoning designation that includes such a density floor. *See* Attachment A.

multifamily housing development makes it impossible for the City to demonstrate the capacity for a “variety of types of housing for all income levels, including multifamily rental housing” § 65583(c)(1)]

4. The Draft Element Improperly Relies on Existing Occupied Units to Accommodate its Need for *New Housing*

The Draft Housing Element claims that 99 units of its lower-income housing need can be accommodated by counting two categories of housing units that *already exist and are already occupied* – accessory dwelling units and liveaboard boats. The inclusion of these units indicates a fundamental misunderstanding of the central requirements of Housing Element Law – the expansion of housing stock available to meet the city’s housing needs. While the Housing Element law does allow some flexibility to jurisdictions in meeting a portion of their RHNA needs through creative mechanisms, such as *new* second units, this does not reduce the fundamental “responsibility of a city or county to identify, by income category, the total number of sites for residential *development*.” § 65583.1 (emphasis added). There is no sense in which remedying errors in the counting of existing occupied units in the city could be considered development of housing, yet this is precisely how the Draft Housing Element attempts to count a substantial number of units.

Recognizing Existing Second Units Does Not Create New Housing

While the Housing Element law permits accommodating a portion of a jurisdiction’s housing need through the *creation* of new second units under some circumstances, there is no provision permitting claiming credit for pre-existing units. *See* § 65584.1(a); § 65852.2. Instead, the Housing Element statute and related Government Code § 65852.2 recognize that a realistic program to encourage the development of *new* second units can help satisfy RHNA needs.

The Draft Housing Element, however, claims that 22 *existing* accessory dwelling units will be used to help meet its lower-income housing needs. The City goes to great length to justify that these accessory dwelling units offer some affordable housing opportunities. Even if that were demonstrably true, however, it does nothing to explain how existing occupied units will help to meet the need for additional affordable housing units.

Pointing out Existing Legal Live-Aboard Units Does Not Create New Housing

The City’s claiming of 76 pre-existing and occupied liveaboard units is, if anything, even more outside the bounds of proper analysis. These residential boats have apparently been legally occupied since well before the current planning period. *See* Page IV – 8. The City suggests that because some of the existing liveaboard residences were not properly counted by the 2000 Census, they may be counted as “new” units for the current planning period. There is no basis for that conclusion, either in law or in policy.

5. The Draft Element Over-estimates the Capacity for New Second-Units and Liveboards without the Legally Required Analysis

While the Housing Element law does not require that a jurisdiction’s full RHNA share be accommodated on sites that could feasibly support new physical construction, it does place limits

on alternative approaches to meeting housing needs. Most importantly, unit capacity must be reasonably justified based on past trends.

The Housing Element statute establishes specific criteria that must be met for a jurisdiction to rely on second units. Counting new second units *may* be allowed to the extent reasonable “based on the number of second units developed in the prior housing element planning period,” and other factors. Sausalito’s Draft Housing Element contains no analysis of the past rate of second unit production, and indeed it could not offer such analysis as construction of second units has been officially prohibited since 1984. The Draft Housing Element’s assumption that 41 new second-units could be developed in the remaining 2.5 years of the current Planning Period to help meet its lower-income RHNA needs seems far-fetched.

The same logic should be applied to liveaboard units. While there may be some additional capacity for the City to accommodate new liveaboard units, the assumption that 55 new liveaboard units could come online in the next 2.5 years, given that only 146 such units currently exist in the city seems unrealistic. *See* page IV-9.

Moreover, it is not clear that there is even any additional legal capacity for liveaboard units in the City. The Draft reports that there are 1,500 vessels berthed in the City, and that local and regional regulations allow up to 10% of berths in the City to be used as liveaboard units. This suggests a maximum capacity of 150 liveaboards, and there are currently 146 occupied liveaboard units.

Finally, even if the projections of new second units and liveaboard units could be justified, there is insufficient basis for assuming that any of these units would be affordable to lower-income households. While the City may have conducted surveys of existing second and liveaboard units, the results of these surveys as reported in the Draft Housing Element do not justify the conclusion that such units are a real source of affordable housing. With respect to second units, it is unclear what percentage of second units appear on the open rental market, as opposed to being offered at free or below-market rates to members of the family or household occupying the primary residence. The liveaboard survey is also troubling. While the City reports some of the costs of living on a boat, namely “berth rent, liveaboard fee, parking, storage, pump out, and utilities,” the cost of debt financing on the purchase of the vessel, taxes, insurance, and maintenance were not factored-in. *See* Page IV-10. If all of these components of housing cost were included in monthly housing costs calculations, as they should have been, it is unlikely that most liveaboard units would be affordable to low-income people.

6. The Draft Housing Element Lacks Adequate Programs to Promote Affordable Housing Development

In addition to identifying the capacity to accommodate the development of sufficient new housing, Housing Elements must also include “a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation” with the goal of “mak[ing] adequate provision for the housing needs of all economic segments of the community. § 65583(c). The Draft Housing Element’s implementing programs are inadequate to accomplish this goal, suffering from systematic problems, including a lack of specificity or a concrete implementing timeline.

Given the myriad problems with the site inventory and plan to accommodate the City's RHNA fair share, the Housing Element will need to be amended to include a rezoning program pursuant to Gov. Code § 65583(c)(1). As noted above, the sites to be rezoned under such a program must meet the minimum densities, unit capacities, and other site suitability standards set out in Gov. Code § 65583.2(h). A program to create a multi-family residential zoning classification with an appropriate minimum density floor will likely also be required as part of this rezoning program, as no such zone appears to exist currently. See Attachment A.

In addition, many of the existing programs will need to be revised in order to accomplish their stated objectives. Some problems with the Drat programs as currently structured include:

- Program 5, Condominium Conversion Regulations, recognizes the substantial loss of rental housing stock that has been driven by conversion of smaller buildings, but it contains no firm commitment to close this loophole. Instead, it only suggests that extending condominium conversion restrictions to 3-4 unit buildings should be "evaluated." Without a firmer commitment and action plan, the program is likely to do little to protect rental housing stock.
- Program 17, Inclusionary Housing Regulations, contemplates the adoption of an inclusionary housing program, but the only timeframe committed to is the initiation of a nexus study sometime in 2013. Page II-39.
- Program 13, Local Affordable Housing Fund, fails to identify any reliable sources of funding. Inclusionary in lieu fees are one potential source, but as discussed above Program 17 makes this source of funding very uncertain. The other sources listed also rely on policies that may or may not be adopted, some of which are not even contained as programs in the Housing Element.
- Program 18, Fee Deferrals and/or Waivers for Affordable Housing, contains a vague promise to offer fee reductions as an incentive for affordable housing, but it provides no information about which fees will be reduced or the extent of the reduction offered. The only action step listed is to "provide information to the affordable housing community that fee deferrals, reductions and waivers may be requested for affordable housing projects." Page II-24. The extent of the uncertainty in this program is likely to make it of little use in facilitating affordable housing development.

The issues raised in this letter are not intended to be a comprehensive catalogue of the legal shortcoming of the Draft Housing Element, but rather to highlight some of the most important issues that will need to be addressed if the Element is to become a real plan for meeting the housing needs of the thousands of lower-income residents and workers of Sausalito. The Non-Profit Housing Association of Northern California and other community stakeholders stand ready to assist the City as it revises this Draft Housing Element to meet these needs.

Paul McDougal and Melinda Coy
March 16, 2012

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Sincerely,

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Samuel Tepperman-Gelfant
Staff Attorney

Attachment A: Excerpt from 2009 Marin Housing Element Report