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March 8, 2024

Via E-Mail

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Re: City of Santa Clara Revised Draft Housing Element (March 1, 2024 draft)
Comments of Housing Action Coalition

Dear Mr. Davidson and Ms. Brillot:

On behalf of the Housing Action Coalition,¹ we write to provide comments on the draft of the 2023-2031 Housing Element for the City of Santa Clara that was posted for public comment on March 1, 2024.

The revised draft overstates the site inventory that is realistic and available to meet Santa Clara's fair share of the regional need, particularly for lower income units, in two ways. First, the draft continues to include non-vacant sites without substantial evidence that the existing use is likely to discontinue during the next eight years. Second, the draft overestimates the development potential of its sites, due to Santa Clara's flawed approach to calculating the realistic capacity of sites to meet the regional need for housing. Additionally, as previously noted, Santa Clara failed to implement its Fifth Cycle Housing Element by failing to rezone 158 parcels that it had committed to rezoning, and is therefore required by state law to address the shortfall from that prior period in the lower and moderate income categories.

¹ The Housing Action Coalition is a nonprofit that advocates for building more homes at all levels of affordability to alleviate the Bay Area and California's housing shortage, displacement, and affordability crisis.

1. The Site Inventory Continues To Include Sites Designated For Lower Income Without Evidence That Existing Uses Are Likely To Discontinue During The Period.

As we have done previously, we comment on whether sites on the inventory are realistic and likely to develop during the planning period. *See* Government Code §§ 65583.2(g)(1) and (2). While we appreciate the City’s progress in deleting some of the sites identified in our prior comment letter, other sites remain unlikely and the City should commit to additional rezoning to address the shortfall.

4701 Patrick Henry, “Marriott Center.” We’ve previously commented to you about the largest unrealistic site on the inventory: 4701 Patrick Henry, a 27-parcel site with APN 104-53-001 through -027. Santa Clara calls this the “Marriott Center” site; the parking lot entrance has a sign for “Great America Technology Park.” The parcels are not under common ownership: 26 parcels, each smaller than 0.5 acres (they range from 3,408-4,981 square feet, or 0.09 to 0.11 acres) are owned by 11 separate owners² and used by a variety of businesses. The parking lot/common area parcel – APN 104-53-027 – is owned by the association for the benefit of all of the members.³ The parcels collectively are claimed to meet the need for 681 very-low and low-income units, and 291 moderate.

Six of the eleven owners wanted to explore residential development of their property and voted to have the expenses of exploring it paid by the condo association. However, these six own only some of the small, isolated 0.09-0.11 acre properties; their properties are presumed not to be realistic for lower income housing because they are less than 0.5 acres. The properties can

² The buildings adjoin in pairs, and in a number of cases, even the pairs do not have common ownership:

Building 1	Gu-Guide	Building 13	Snaaz Office
Building 2	IYKP	Building 14	Bedrock Ventures
Building 3	Gu-Guide	Building 15	Benson Yeung
Building 4	IYKP	Building 16	IYKP
Buildings 5 and 6	Gu-Guide	Building 17	Chew Family
Building 7	IYKP	Building 18	IYKP
Building 8	Gu-Guide	Building 19	Arhant
Building 9 and 10	Kenneth Ngai	Building 20	Sai Gundavelli
Building 11	Cityland	Building 21	Mileweb
Building 12	IYKP	Building 22	IYKP
		Buildings 23 and 24, 25 and 26	IYKP

³ The site inventory incorrectly states that the property does not have an assigned APN, and incorrectly states that it is 6.814311 acres. The parcel map, previously provided to HCD and the City in February 2023, shows it as being assigned APN 104-53-027, and comprising 6.787 acres.

be realistically developed if, and only if, the parking area/common area parcel APN 104-53-027 is also developed. Each of the members/owners has been granted a non-exclusive easement over the entire common area and parking lot, so that customers and employees can visit the businesses. *See* 20-1051 CC&R Staff Report at pdf page 46 of 92 (CC&R document, section 5.1) granting easements to all owners). In addition, the CC&Rs directly state that “residential use of any type” is specifically prohibited. *Id.* at 55 (section 8.2(a)). So as things stand today, unless all eleven owners agree, the property will not be redeveloped, both because it would violate the CC&Rs and because it would violate the easement rights of any objecting owners. Given the express opposition of some owners to paying for exploratory expenses back in 2020, and no more recent information, there is no current evidentiary basis for concluding that all eleven owners will band together and redevelop their common property, and there is no substantial evidence that this is likely to occur during the planning period.

2900 Patrick Henry, New Hope Christian Reformed Church. New Hope Church owns the building at 2900 Patrick Henry, and after an extensive remodel in 2006, holds three regular Sunday services in its sanctuary there. The parcel is claimed to meet the need for 149 lower income, and 63 moderate income units.

The City claims that the church property is a realistic site for redevelopment based on three “factors”: 4, 5, and 8. Factor 4 is that “uses similar to those that have been previously recycled in Santa Clara.” Draft at p. C-5. However, the City identifies no church or religious buildings that have been demolished recently to create housing. Factor 5 is whether the property is located in a specific plan area *or* the property owner participated in the specific plan process. *Id.* Given that the site inventory consists entirely of sites in specific plan areas, this factor does not help distinguish between sites that are likely to redevelop and those that are not. The data centers that Santa Clara listed are all in specific plan areas, yet the draft now acknowledges that they are unlikely to develop because of its existing use. The Santa Clara fire station on Corvin Road is in a specific plan area, yet unlikely to develop because of its existing use. This factor does not provide substantial evidence of whether a site is likely to develop during the planning period. Factor 8 is the year built (*id.*); the draft now claims that if a structure is over 36 years old (built before 1987), then it “may” need substantial improvements based solely on its age. This factor is weak and does not provide substantial evidence of likely redevelopment in the planning period; most of the buildings in Santa Clara are older than 36 years old, yet have many more years of productive use. The City provides no basis for concluding that properties older than 36 years, or even as old as 50 years, are likely to be redeveloped.

Moreover, for this property in particular, the City is aware from its own records that the church has in fact had substantial improvements. While the building was initially built in 1978, the interior was completely remodeled in 2005-2006, at a cost of over \$850,000, when the church built the new sanctuary, offices, restrooms, youth classroom, and kitchen, along with new lighting and a new heating, ventilation and cooling system. *See* Building Permit Record BLD2005-08407. The building was also re-roofed in 2016 at an additional expense of nearly \$100,000. BLD2016-43602. The City’s assumption that the property needs substantial

improvements based on its age is incorrect given the City's records showing that it has indeed had substantial improvements designed for its religious use.

2950 Patrick Henry, Rocket EMS. Claimed as meeting the need for 189 lower income and 81 moderate income units, the light industrial facility at 2950 Patrick Henry has been occupied since 2011 by Rocket EMS [Electronic Manufacturing Services]. Rocket EMS manufactures prototypes, circuit boards, and other electronic equipment, reworks boards, assists with PCB (printed circuit board) layout, and offers other related services for other technology companies. The company has installed full production lines into the space at 2950 Patrick Henry. The facility includes a 36,000 square foot "clean room" for circuit board manufacturing and testing.⁴ In 2014, for example, a building permit with an estimated job value of \$1,000,000 installed custom tool machinery in the facility. BLD2014-34011.



Photo of circuit board manufacturing room at Rocket EMS Santa Clara facility in 2950 Patrick Henry.

See "Rocket Men: Silicon Valley's fastest-growing EMS is taking flight," <https://www.circuitsassembly.com/ca/editorial/menu-features/32661-rocket-men.html> (last visited March 5, 2024).

The Santa Clara facility employs 230 employees, and includes a custom-built robotics booth for PCB imaging. As of an article published in late 2019, demand was strong: the company reportedly had \$60 million in annual sales, and the Santa Clara facility was running 2.5 shifts per day.

Given the heavy capital investments in the site, and the continuing demand for high tech services in Santa Clara, Rocket EMS is unlikely to move during the next seven years. The City's site inventory makes clear that it lacks substantial evidence that the existing use will discontinue. The inventory lists factors 4, 5, 7, and 8. As with the church, factor 4 is unconvincing: while some light industrial uses have been discontinued, none are described as having the level of capital investment and specialization that Rocket EMS has. Factor 5 – location in a specific plan area – does not distinguish Rocket EMS from other businesses that are unlikely to discontinue. Factor 8 is inapplicable given the substantial improvements since initial construction in 1977, including an extension of the exterior walls and the roof in 1994. See, e.g., BLD1994-099898, -

⁴ See description at <https://www.rocketems.com/facilities/>; <https://www.us-tech.com/RelId/2231963/ISvars/default/It-Actually-%3CI%3Eis%3C-I.htm>; and <https://www.circuitsassembly.com/ca/editorial/menu-features/32661-rocket-men.html>. (All sites visited as of March 5, 2024).

099585. Factor 7, claiming that there is “substantial underinvestment” at the site, is likewise inapplicable to this specific site, regardless of the calculated ratio, including because the City did not take into account the extension of the building footprint shown in its own records.

3100 (also known as 3118) Patrick Henry, O₂Micro Global. This property is the headquarters for O₂ Micro Global, which leases a portion of its space to other technology industry tenants. O₂Micro owns the property; it does not lease it. O₂Micro Global was founded in Silicon Valley in 1995, and is a fabless semiconductor company: it designs, develops, and markets integrated semiconductor chips, primarily to manage power usage/flows for the computer, consumer, automotive, and industrial markets. It is thus part of the core industry that powers Santa Clara’s economy. *See* Draft at 13.1-1 (“The historic agricultural nature of Santa Clara was forever changed with the invention of the semiconductor chip in the 1950’s. Since then, the growth of the technology industry has fueled job growth and propelled Santa Clara to the current population of about 127,000 residents.”). Before going private in 2022, SEC filings reported income of roughly \$100 million per year.

The draft Housing Element does not suggest that O₂Micro has shown any interest in developing its headquarters as an apartment complex, which would be a substantial departure from its business, or in selling the property to someone who would do so. This existing use is presumed to be an obstacle to residential use, and absent substantial evidence that O₂Micro will discontinue its decades-long occupancy and use of its building, the site is not appropriately listed as meeting the need for 189 lower income and 89 moderate income units.

Consolidated site “R” (2322, 2330, and 2338 Calle Del Mundo), added back to the inventory in this draft (previously removed because each of the parcels was less than 0.5 acres) is three parcels owned by Leopold Pivk. His custom glass manufacturing business has made fine semiconductor quartzware products for the technology industry in Silicon Valley for 33 years from the same building. While some of his neighbors in the Tasman East industrial park sold their properties to developers, Mr. Pivk has so far consistently declined: he continues to run his longstanding business here with his family, and has not sold any of his three parcels. The City’s site inventory, which claims that the three parcels meet the need for 124 lower income and 53 moderate income units, implicitly acknowledges that he has expressed no interest in redevelopment. General economic conditions are no substitute for site-specific analysis of whether the existing use will likely discontinue during the planning period. *See* HCD Site Inventory Guidebook at p. 28 (“[N]onvacant sites with differing existing uses and lacking in common ownership, whether contiguous or located in the same general area, may not rely on a generalized analysis. While the sites may be located in an area with common economic issues, individual owners may not wish to sell their property or redevelop their site with residential uses.”). In the case of Mr. Pivk’s properties, the City does exactly what HCD said not to: relying too heavily on a generalized approach (old buildings with fewer improvements in specific plan areas may develop) and has not attempted to figure out whether the Pivk family is likely to discontinue its glass business in the next seven years and redevelop.

Consolidated site “P” (3705/3735 El Camino Real), Lucky Grocery Store/Big Lots.

This site, claimed to meet the need for 163 lower income and 71 moderate income units, is occupied by two national retailers: Lucky’s and Big Lots.

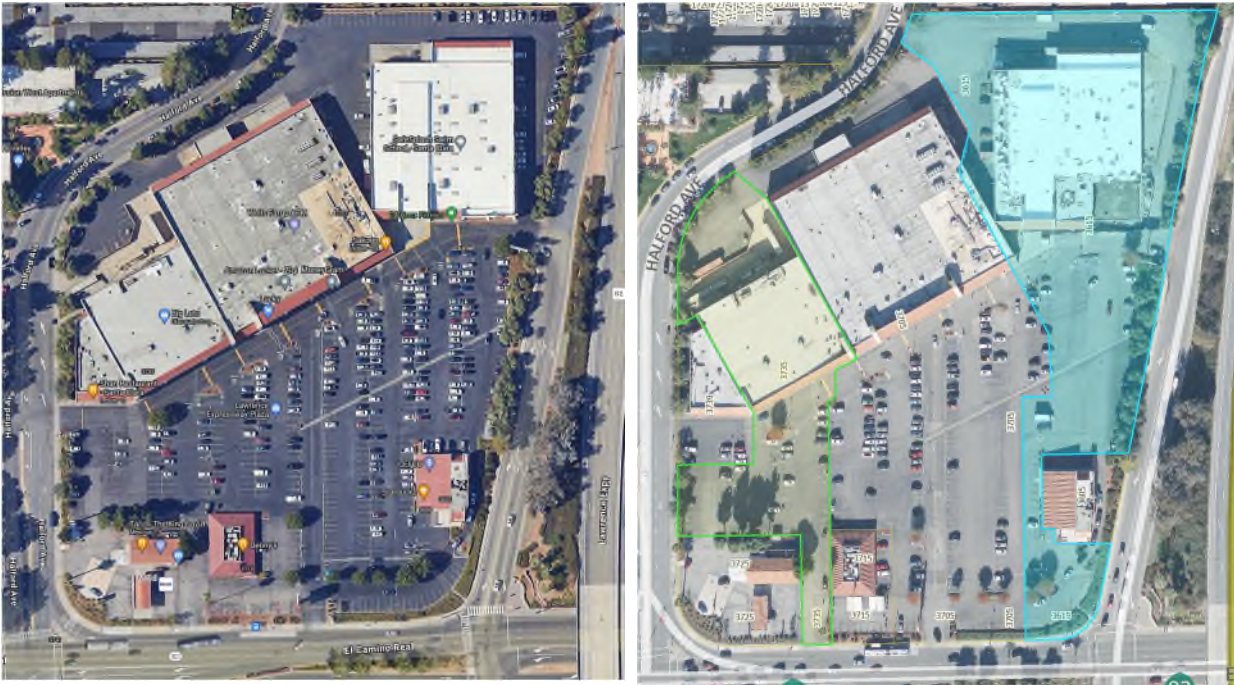
The City does not analyze whether the existing uses on Consolidated Site P – two national retailers, including the only mainstream grocery in this part of the city, and some smaller businesses – are likely to discontinue. Instead it applies simplistic assertions that do not provide substantial evidence that the existing use will discontinue. The City makes a simplistic assertion that because the buildings’ exterior walls were constructed in 1972, and that a grocery store has a large parking lot (and therefore low FAR and improvement ratio), housing might be built here. Draft at C-40. However, most grocery stores and discount retailers have large surface parking lots, and yet most grocery stores and discount retailers are unlikely to close or relocate during the next seven years so that housing can be built. As we noted in our June 2023 letter to HCD, the Lucky grocery store is also particularly well located, both in its convenience to a major crossroads within the city, and relative to other grocery stores.

Another reason why Consolidated P is not likely to develop during the next seven years is that it is only a portion of the Lawrence Expressway Plaza shopping center. The City now acknowledges that the recently remodeled 24 Hour Fitness in the same shopping center is not likely to redevelop. *See* Draft at C-54 to 55 (“the following sites have been excluded from the Sites Inventory since they are unlikely to redevelop with residential uses during the timeframe of the Housing Element: . . . 3615 El Camino Real (24 Hour Fitness).”

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The 24 Hour Fitness building is immediately next door to the Lucky grocery store building, and uses the same parking lot:



The photo on the left has labels from Google Maps: the Lucky store is the large square building in the upper center; Big Lots is the smaller square to the left of it; 24 Hour Fitness is the building in the upper left hand corner. The photo on the right, with blue shading, shows the parcel that 24 Hour Fitness is on; Consolidated Site P is the rest of the shopping center to the left of the blue shading.

The physical relationship between the admittedly unlikely 24 Hour Fitness site and Consolidated Site P reinforces why Site P, with Lucky and Big Lots is unlikely to develop during the planning period. The street access for the 24 Hour Fitness is on Site P; indeed, the entrance on El Camino Real could not be moved closer to a freeway offramp for safety reasons. Much of the parking for the gym is also on Consolidated Site P. The site inventory does not claim that the owners have indicated an interest in redeveloping Site P during the planning period, and the City does not say that it has analyzed whether the 24 Hour Fitness lease assures that 24 Hour Fitness customers and employees will be able to use the parking lot exit and portion of the parking lot that are on Site P. Similarly, the City has not analyzed whether Starbucks – located at 3605 El Camino Real, on the small parcel surrounded by the blue shading and adjacent to the freeway off-ramp, likewise has parking or ingress/egress rights over the parcels that comprise Site P.

The City continues not to engage in the required analysis for this site to assert that the existing use is not an obstacle to residential development, as required by 65583.2(g)(1) and (2).

2. The City's Realistic Capacity Calculations Are Flawed

The draft's methodology for estimating the RHNA capacity of eleven sites in the Patrick Henry Drive Specific Plan Area is flawed. Unlike its approach with other sites on the site inventory (which uses a percentage-of-minimum approach), for the twelve sites in the Patrick Henry Drive Focus Area, the draft estimates the realistic capacity to meet the RHNA by multiplying the maximum zoned density by 72%.

The 72% of maximum approach violates Government Code section 65583.2(c) concerning estimating realistic capacity. Because we have previously commented on this issue and the City has not substantively addressed this point, we will keep this short:

- The 72% number is not based on any of the statutory factors. It does not take into account what the statute says “shall” be used in determining the capacity of the sites to accommodate the RHNA: typical densities of approved or constructed projects with a similar level of affordability, the realistic development capacity of each site, site improvement requirements, or anything other than the “land use control” of maximum zoned density.
- The 72% is instead an estimate based on an estimate about the expected pace of development of the entire area: the “buildout” projections made when the Patrick Henry plan was adopted. The projections estimated that 72% of the units for the area as a whole would be built from 2025-2034. *See* Draft at 13.6-15 (calculating the 72% by dividing the total of phases 1 and 2 (2025-2029 and 20230-2034) by the total approved capacity for the area. The draft does not explain why Santa Clara now projects that the sites on the inventory will result in 72% of the total three years earlier than previously estimated, or why an estimate about the timing of development (how many units per year) provides useful information to estimate the density of development (number of units per acre).⁵
- Even if the 72% was a useful statistic, it is miscalculated in two ways. First, the numerator is wrong because it includes units that will be built outside the planning period: from 2031-2034. Adjusting the number downward to take this into account, the 2025-2030 projection is only 6,286. (*See* HAC's earlier comment letters). The denominator is also wrong. It was based on dividing the 2025-2034 total by 11,150 units, the midpoint between an estimate if the Pearlman office buildings pursued office construction (10,300) or residential

⁵ The approach doesn't even work as applied to specific properties. The buildout estimate projected 1700 units to be built on the four Pearlman sites: 10,300 units for the area if Pearlman built offices, but 12,000 units if Pearlman built residential. But using the 72% estimate as a capacity number, Santa Clara now projects that the Pearlman sites (4633, 4655, 4677, and 4699 Old Ironsides) will accommodate only 1,045 units. An estimate about time can't be transplanted to an estimate about space.

(12,000). *See* Draft at 13.6-15. But the draft now assumes that the Pearlman properties (4633, 4655, 4577, and 4699 Old Ironsides) will all develop as residential. The larger total should thus be used: 12,000 not 11,150. Each of these mistakes means that 72% is higher than it should be, even if Santa Clara's logic is accepted.

- A “percentage of maximum” is not a rational approach. When a developer does not build to the maximum density permitted, it is because of other constraints on development (economic, structural), rather than a decision related to the maximum density permitted. The maximum density could be set at any arbitrary number – e.g., 3,500 instead of 350 units/acre – but the developer is unlikely to scale up the project in proportion to the maximum just because the maximum is higher. A methodology based on percentage of maximum fails to address the statutory requirements of realistic development capacity, typical densities, or accessibility of utilities.
- The 72% of maximum approach overestimates the capacity to accommodate below market rate (lower and moderate income) housing. By multiplying the very high density maximums of the Patrick Henry area times the very large acreages of the parcels there, the inventory projects that subsidized housing projects of 500-1,000 units could be built.
 - The City ignores this, claiming that “default” density rules require HCD to accept the sites for lower income without considering affordability in setting the capacity estimate, as long as the site is zoned for more than 30 units/acre. Draft at p. 13.6-17. This approach to realistic capacity is contrary to AB 1397 which directs the City to analyze typical densities at similar levels of affordability, and the data confirming that no 100% affordable development has ever been built at the scale projected for the Patrick Henry sites.
- The City also fails to take into account the land use controls that require parkland on a portion of certain sites. While the City Attorney's office has argued that the gross acreage of the site can be used in calculating the minimum/maximum density (ignoring that a portion is to be dedicated to parks), a realistic capacity analysis requires that the city analyze how the parkland dedication requirement would make it much more expensive to achieve the same density (because more units would have to be built on a more limited footprint), particularly for a 100% affordable project. In continuing to ignore this issue and pointing only to the “default density” rule, the City violates Government Code section 65583.2(c), which requires this analysis.

3. The City Must Address the Unaccommodated Need from the 2015 Regional Housing Needs Allocation

We have previously explained why the City is required to address a shortfall from the fifth cycle: the City promised in its Fifth Cycle Housing Element to rezone 158 sites on the El Camino Real, but then delayed – and still hasn't rezoned most of them – leaving the need for lower income housing unaccommodated during 2015-2022. Housing Element promises to rezone are supposed to matter, under Government Code section 65584.09(a).

While rezoning some of those sites now will help, under 65584.09 the City is required to meet not just the sixth cycle RHNA numbers, but also calculate and address the unaccommodated need from the prior planning period, as explained at greater length in our November 30, 2022 letter.

4. Conclusion: The Draft Housing Element Should be Revised

The issues identified in this letter show that the Revised Draft does not substantially comply with state law. It contains unrealistic sites and unsupported projections, and does not address the unaccommodated need from the City's failure to implement its 2015-2022 rezoning promises. The City should revise this draft by identifying additional realistic and available sites to include in the inventory, rezoning additional properties geographically dispersed throughout the City, and using a reasoned approach to calculate the realistic capacity of its proposed sites in a manner consistent with state law.

Respectfully submitted,



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