




City Council

Item # 6

**RTC 23-819 General Plan
Amendment: Re-Adoption
of Housing Element with
Revisions**

June 27, 2023

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**City of
Santa Clara**
The Center of What's Possible

Housing Element

Background

- One of required elements of General Plan
- Updated every 8 years. Reviewed by HCD and certified if found to be in substantial compliance
- Prior 5th Cycle Housing Element: adopted December 9, 2014; certified by HCD February 13, 2015; ended January 31, 2023
- City Council Adopted 6th Cycle Housing Element January 31, 2023
- HCD 60-day review
- March 28, 2023, the City received HCD's findings/comment letter

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Housing Element

HCD Findings (March 28, 2023)

HCD identified revisions necessary to receive HCD's certification of compliance in the following areas:

- A. Housing Needs, Resources, and Constraints
- B. Housing Programs
- C. Quantified Objectives
- D. Public Participation
- E. Consistency with General Plan

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Housing Element

Re-Adoption / Certification Process

- April 20, 2023 – staff met with HCD staff to review comments
- April-June – Staff and consultants prepared revised Housing Element
- June 2, 2023 – staff met with HCD staff to review City's response
- June 14, 2023 – Planning Commission hearing
- June 27, 2023 – City Council adoption hearing
- July-August – HCD Review

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Housing Element

Sites to Meet the RHNA (Sites Inventory)

- HCD asked City to respond to public comments received on proposed Sites to meet the City's Regional Housing Needs Assessment (RHNA)
- Public comments focused on likelihood of residential use of properties within Specific Plan areas within Housing Element timeframe
- Staff response includes:
 - additional information (e.g., communication with property owners to verify their willingness to redevelop) and
 - additional possible sites

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Housing Element

Sites to Meet the RHNA (Sites Inventory) Revisions

Site	January 31 Inventory	Revised Inventory
Pending & Approved Projects (Total)	11,946	12,144
Tasman East SP	4,459	4,366
Patrick Henry Drive SP	1,516	1,520
Lawrence Station Area Plan	697	697
Freedom Circle Focus Area	1,075	1,075
Other	4,199	4,486

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Housing Element

Sites to Meet the RHNA (Sites Inventory) Revisions

Site	January 31 Inventory	Revised Inventory
Available Specific Plan Sites (Total)	7,810	5,863
Tasman East Focus Area SP	1,123	1,123
Patrick Henry Drive SP	4,549	4,345
Lawrence Station Area Plan	2,138	395
ADUs (Projection)	340	393
El Camino Real	---	1,242

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Housing Element

Sites to Meet the RHNA (Sites Inventory - Revised)

Site/Credit Type	VLI	LI	Mod.	Above Mod.	Total Capacity
RHNA	2,872	1,653	1,981	5,126	11,632
Pending & Approved Projects	668	746	512	10,218	12,144
ADU Projection	118	118	118	39	393
Available Specific Plan Sites	2,105	1,561	1,883	314	5,863
El Camino Real Rezoning Sites	497	378	366	-	1,242
Total	3,388	2,803	2,879	10,571	19,642
Surplus Units	516	1,150	898	5,445	8,010
Surplus (% Above RHNA)	18%	70%	45%	106%	69%

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Housing Element

Response to HAC Comments on Sites Inventory

- Confirmed sites availability
 - Marriott Center – changed CC&Rs, funded and actively participated in PHD Planning to change site to a residential General Plan
 - 3450 Central Expressway – confirmed availability for residential development
- Methodology to forecast yield (projected units) for Patrick Henry Sites
 - Staff used a conservative yield of 107 DU/AC
 - Projects entitled/under review average more units (Summerhill: 122 DU/AC; Walnut Hill: 101 DU/AC; Sares Regis: 123 DU/AC)
 - HAC suggested methodology would result in higher yield of 143 DU/AC

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Housing Element

Revised Analysis, Policy and Implementation

- Majority of HCD comments directed City to provide additional analysis, policy and implementation items
- Analysis: housing needs specific to various demographic groups
- Policy: more specific and more ambitious outcomes
- Implementation: the new Housing Element will result in several new work programs

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Housing Element

Analysis: Affirmatively Furthering Fair Housing (Examples)

- Additional data, analysis and conclusions related to patterns of segregation and integration, disparities in access to opportunity, disproportionate housing needs, etc.
- Expanded geographic analysis of the location of lower income households throughout the City
 - 82% of housing growth in Highest or High Resources Areas
 - 101% of Very Low Income units in High or Highest Resource Areas
 - 147% of Low Income units in High or Highest Resource Areas

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Housing Element

New Housing Targets (Examples)

- Increase extremely low/very low-income rental housing for persons with developmental disabilities by 35% from 56 in 2023 to 76 units in 2030
- Increase extremely low and very low-income rental housing for elderly persons by 20% from 736 in 2023 to 884 units in 2030
- Increase income restricted three and four bedroom affordable large family rental units by 20% from 107 in 2023 to 129 units in 2030
- Increase access to interim housing units, rapid rehousing, and emergency shelter beds by 30% from 453 in 2023 to 589 units in 2030

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Housing Element

New Implementation Items (Examples)

- Prior to the end of 2024, conduct public outreach and issue a request for proposals to develop mixed income or 100% affordable housing on the vacant former site of the King's Highway Motel on El Camino Real
- By end of 2025 analyze feasibility of setting a rent deposit limit and present findings to the Housing Commission and City Council
- Within six months of certification of the Housing Element, adopt procedures to grant priority for water and sewer service to developments with units affordable to lower-income households, per Government Code, § 65589

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Housing Element

New Implementation Items (Examples)

- Create a database of naturally occurring affordable housing and annually monitor property sales/permit applications to identify conversion trends
- By end of 2024, meet with property owners to facilitate connections between sellers, affordable housing developers, and funding sources
- In 2025, 2027, and 2029, monitor the risk of conversion NOAH by contacting owners of the highest risk properties to determine their intentions and continue to coordinate with qualified entities regarding the conversion of NOAH to income-restricted affordable housing.

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Housing Element

New Implementation Items (Examples)

- By end of 2025, bring forward a proposal for City Council consideration to write an ordinance that requires landlords to provide a City approved multilingual brochure to all tenants with every lease signing that summarizes landlord and tenant rights under state law. If the ordinance is approved, conduct a series of educational workshops with local landlords and tenants.

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Housing Element

New Implementation Items (Examples)

- By end of 2023, adopt a Specific Plan amendment and associated environmental clearance allowing an additional 1,500 dwelling units in the Tasman East plan area. The amendment will include an update to the Tasman East Infrastructure Fee, to ensure that costs are shared equitably between developers.
- Alternative Text: By the end of 2023, City Council to consider whether to adopt the proposed amendment to the Tasman Easement Specific Plan (TESP), with associated environmental clearance, which would potentially allow an additional 1,500 dwelling units in the TESP area.

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Housing Element

Planning Commission Recommendation

Recommend City Council adoption of the updated Housing Element, with the addition of policy language to the Housing Element to encourage:

- Developers and contractors to evaluate hiring local labor;
- Hiring from or contributing to apprenticeship programs;
- Increasing resources for labor compliance; and
- Providing a living wage

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Housing Element

Alternatives

1. Adopt a Resolution to amend the General Plan by re-adopting the Housing Element for the 2023-2031 Cycle (staff recommendation)
2. Incorporate language to encourage developers and contractors to evaluate hiring local labor, hiring from or contributing to apprenticeship programs and providing a living wage (PC recommendation)
3. Incorporate language to engage with developers regarding the benefits of hiring local labor, hiring from or contributing to apprenticeship programs, increasing resources for labor compliance, and providing living wages (alternative for PC recommendation)

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**City of
Santa Clara**
The Center of What's Possible

Housing Element

Recommendation

1. Adopt a Resolution to amend the General Plan by re-adopting the Housing Element for the 2023-2031 Cycle

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Housing Element

California Environmental Quality Act (CEQA)

Addendum to the 2010-2035 General Plan Environmental Impact Report for the 6th Cycle (2023-2031) Housing Element, which concluded:

- no substantial change to the General Plan that would require major revisions to the previous EIR
- no substantial change in circumstances as a result of modifications to the General Plan that would cause new or substantially more severe significant impacts
- no new information of substantial importance that identifies new or more intense significant impacts than those identified in the General Plan EIR

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Housing Element

Sites to Meet the RHNA (Sites Inventory – Revised)

Site	VLI	LI	Mod.	Above Mod.	Total Capacity
Pending & Approved Projects (Total)	668	746	512	10,218	12,144
Tasman East SP	111	234	179	3,842	4,366
Patrick Henry Drive SP	76	75	75	1,294	1,520
Lawrence Station Area Plan	-	5	57	635	697
Freedom Circle Focus Area	54	54	54	913	1,075
Other	427	378	147	3,534	4,486

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Housing Element

Sites to Meet the RHNA (Sites Inventory – Revised)

Site	VLI	LI	Mod.	Above Mod.	Total Capacity
Available Specific Plan Sites (Total)	2,105	1,561	1,883	314	5,863
Tasman East Focus Area SP	214	156	458	295	1,123
Patrick Henry Drive SP	1,747	1,299	1,299	-	4,345
Lawrence Station Area Plan	144	106	126	19	395

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Housing Element

Housing Needs

- Additional data and analysis on:
 - Households experiencing a rent cost-burden
 - Challenges facing special needs populations such as the elderly
 - Services available to the homeless

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Housing Element

Constraints

- Additional data, clarifications and analysis on constraints related to:
 - Infrastructure limitations that could affect new housing development
 - Zoning code sections that will be changed to streamline the development of emergency shelters
 - City's land use entitlement procedures

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Housing Element

Housing Resources

- Additional information to provide:
 - Verification of the City's pipeline housing production data
 - Clarification of the City's methodology to calculate residential capacity

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Housing Element

Housing Plan

- Revised to reflect the additional analysis of data and local knowledge and discussion added to other chapters
- Addition of follow-up monitoring and data collection activities and planned changes to the Zoning Ordinance and other ongoing activities
 - For example: create an inventory and track the condition of Naturally Occurring Affordable Housing (NOAH) housing units
- Housing Plan actions and objectives revised to strengthen City's commitment within more defined timelines

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November 30, 2022

Via E-mail

John Davidson
Principal Planner
E-Mail: JDavidson@SantaClaraCA.gov

Re: City of Santa Clara Draft Housing Element
Comments of Housing Action Coalition

Dear Mr. Davidson:

On behalf of the Housing Action Coalition,¹ we write to comment on the draft 2023-2031 Housing Element for the City of Santa Clara.

The draft Housing Element does not meet the City's obligation to plan and provide for affordable housing. Absent substantial revisions, it may be found in violation of state law.

A. The City Includes Sites That Are Not “Suitable And Available,” Because They Do Not Have A “Realistic And Demonstrated Potential” For Redevelopment During The Planning Period To Meet The Need For Housing.

One of the most concrete aspects of any housing element is the inventory of land “suitable and available” for residential development to meet the city's regional housing need by income level. Government Code § 65583(a)(3); HCD Housing Element Site Inventory Guidebook at p. 1 (HAC Appendix Tab 1). The list is a specific means of evaluating whether the City has adequately planned for development of housing for all income levels, and to identify how much land will need to be rezoned to make it possible to provide for the housing needs of the community as it grows. Where nonvacant sites are listed, there must be a “realistic and demonstrated potential for redevelopment” during the next eight years. Government Code § 65583(a)(3). Where nonvacant sites are not zoned for residential development, the City must rezone them within a specified timeframe. *Id.* § 65583.2(a), 65583(c).

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.

To address past abuses – including cities listing unrealistic sites – the California Legislature created a high standard for listing nonvacant sites, particularly where a city claims that the site is suitable and available for redevelopment as housing affordable to those with below average incomes. Where nonvacant sites are used to address over 50% of the need for affordable housing for those with lower incomes, the City must show the realistic and demonstrated potential for redevelopment by making formal findings that the existing use does not impede residential development “based on substantial evidence that the use is likely to be discontinued” during the planning period. Government Code § 65583.2(g)(2) (final sentence).

The current draft does not meet the requirement that it identify sufficient sites that are realistic, suitable and available. The City relies heavily on the speculative and unlikely assumption that existing uses of buildings in Santa Clara by the technology industry will cease during the next eight years, with research facilities and data centers being torn down to construct affordable housing. It relies on sites too small for practical development by affordable housing developers, and even lists a fire station that it has no plans to move. It also fails to address the fact that many of the sites are being re-listed, because they were not developed or approved for housing during the last eight years, without a commitment to rezone them for “by right” approval.

1. The Six Data Center Sites Are Not Likely To Be Redeveloped As Housing During The Next Eight Years.

(APN 216-33-033, 216-33-045, 216-33-025, 097-46-015, 104-04-076, and 104-04-077)

Several sites on the site inventory– those located at 2960 Corvin, 2970-3000 Corvin, 3030 Corvin, 5101 Lafayette, 4650 Old Ironsides, and 4700 Old Ironsides – are currently used as large-scale data centers.² Santa Clara is a favored location for data centers because its municipal electric utility provides power at less expensive rates than PG&E, and because its location in Silicon Valley reduces signal transmission times between the data center customer and the data center. *See* HAC Appendix Tab 2 (“In particular, Santa Clara has become the valley’s principal data center hub . . . The municipal utility, Silicon Valley Power, offers slightly lower rates in Santa Clara than its competitor, PG&E, and this has attracted numerous data center developers.”); HAC Appendix Tab 3. Santa Clara’s optimal location and utility rates make it

² The sites were listed on the August 22, 2022 draft of the inventory using APN numbers 216-33-033, 216-33-045, 216-33-025, 097-46-015, 104-04-076, and 104-04-077. The current use was not identified, which if not corrected in the final draft would violate Government Code section 65583.2(b)(3). We note that the use of APN numbers throughout the housing inventory, without also stating the address and current use, makes it considerably more difficult for state reviewers and the public to see what the City plans, and to comment on its feasibility. Including both the current use and the evidence of why the current use is expected to be discontinued are required by state law, and we hope that the City will address this issue in the next draft by adding all of the required information.

particularly unlikely that an existing data center will stop operations and sell to an affordable housing developer for construction of low income housing.

Indeed, each of these data centers were the subject of relatively recent, high dollar acquisitions. The sites were not acquired by residential developers as would be expected if the property were soon to be developed for housing, but by data center operators, making it unrealistic to conclude that they will be demolished during the next eight years to build affordable housing:

- 4650 Old Ironsides (APN 104-04-077) is a 124,400 square foot, two story data center, and was acquired by Menlo Equities in September 2021 for \$35.8 million. Menlo Equities focuses on acquiring data centers and describes the acquisition on their website as “Property is situated in a strong infill location that is the most desirable data center submarket in Silicon Valley.” HAC Appendix Tab 4.
- The property next door, 4700 Old Ironsides (APN 104-04-076), was also acquired by Menlo Equities in September 2021. It is a 90,100 square foot data center, and was acquired for \$28 million. A partner with Menlo Equities was quoted as explaining that the purpose of the acquisition was “because of the increase in the demand for data.” HAC Appendix Tab 5.³
- The data center at 5101 Lafayette (APN 097-46-015) was acquired in November 2016 for \$12.8 million. HAC Appendix Tab 6. The purchaser bought it to continue its use as a data center; the acquirer was a telecommunications provider, (HAC Appendix Tab 7), and it has been used as a data center in the six years since then, with no proposal for redevelopment as housing. The purchaser described their intention for the property as: “We have long targeted Northern California as an expansion opportunity for our zColo data center business.”; “The quality and high-power density of this facility is perfectly matched to the requirements of our leading-edge, Bay Area customers.” HAC Appendix Tab 6.

Notably, this data center was on Santa Clara’s 2015-2023 Housing Element, and despite the Tasman East Specific Plan, the property was acquired during the last Housing Element period for continued use as a data center, not for redevelopment as housing. Four parcels bordering it were combined for the 2300 Calle De Luna project by housing developer Related, but Related was apparently unable to acquire 5101 Lafayette to square off the project site, as would ordinarily be expected if the site were available for residential development.

³ As recently as September 2022, the Santa Clara building department approved re-roofing 4700 Old Ironsides for its existing commercial use, with a project cost of \$150,000. Santa Clara Building Permit Number BLD22-66735.

- The data centers at 2960 Corvin, 2970 Corvin, 3000 Corvin, and 3030 Corvin (APN 216-33-033, 216-33-045, 216-33-025) were also included in the 2015-2023 Housing Element, and were not redeveloped. They were instead sold in a transaction that continues their existing use, even after the 2016 rezoning of the Lawrence Station area. In May 2017, data center company Equinix acquired them as part of a \$3.6 billion acquisition of a number of data centers. See HAC Appendix Tab 3. The president for the Americas at Equinix explained that the acquisitions in Santa Clara were an attractive part of the package, given the high cost to construct new data centers in Silicon Valley.

The planning department is undoubtedly familiar with the continuing intention to use this site as a data center; there have been a number of planning projects involving installation of additional power systems and energy servers at 2960 Corvin and 2970 Corvin, filed in 2021 and still pending. See Santa Clara Planning Department Record Numbers PLN2021-14844, PLN2021-14845, CEQ2021-01085 and -01086.

Under state housing law, when nonvacant sites are used to meet over 50% of the need for affordable housing – as is the case with Santa Clara’s draft Housing Element – the city must meet a high standard: nonvacant sites are presumed under the law to impede residential development, and the City cannot rely on them without finding, based on substantial evidence, that the property is *likely* to become housing in the next eight years. Government Code § 65583.2(g)(2) (final sentence). Particularly given the recent acquisitions of the data centers by data center companies, and their declared business plans to use them as data centers rather than to re-sell them for development of affordable housing, Santa Clara lacks substantial evidence that these properties will meet the affordable housing needs of the next eight years, and cannot credibly conclude that it is “likely” that the data centers will stop operations. They do not count towards the City’s obligation to plan for very low and low income housing development.

Without these six data center sites, the City’s Housing Element is inadequate because it does not identify sufficient sites to meet the projected regional housing need for very low and low income housing. The draft Housing Element relies heavily on the unsuitable and unavailable data center sites to create the impression that it will meet the housing needs of those who can least afford housing:

APN/Address	Very Low	Low	Moderate
2960 Corvin APN 216-33-033	22	12	12
2970-3000 Corvin APN 216-33-045	79	39	39
3030 Corvin APN 216-33-025	25	13	13
5101 Lafayette APN 097-46-015	71	35	35
4650 Ironsides	390	195	195

APN 104-04-077			
4700 Ironsides APN 104-04-076	326	164	164
Totals:	913	458	458

See Draft Housing Element 8/22/22 at tables 13.6-9, 13.6-10, and 13.6-11. Without these sites, the City's claimed "RHNA Surplus" becomes a deficit:

	Very Low	Low	Moderate
Claimed Inventory ⁴	3,592	1,972	2,781
Data Centers Not Appropriately Included in Inventory	(913)	(458)	(458)
Total Without Data Centers	2,679	1,514	2,323
RHNA Requirement	2,872	1,653	1,981
RHNA (Deficit)/Surplus	(193)	(139)	342 surplus

See draft at Table 13.6-5. The final Housing Element will need to identify additional, realistic sites for very low and low income housing in order to meet the requirements of state law.

2. The Gemini Rosemont Technology Park Is Not Likely To Be Redeveloped As Affordable Housing During The Next Eight Years

(APN 216-34-079, -083, -084, and -085)

Next, we address four other parcels from the inventory in the Lawrence Station area: APN 216-34-079, -083,⁵ -084, and -085. These parcels are currently used as a research and development office park, under long term leases to Affymetrix (a subsidiary of Thermo Fisher), Cloudinary, Nissan North America, and Intuitive Surgical.

⁴ Based on combination of "Approved and Proposed Projects," "Total ADU Projections," and "Total Capacity – Specific Plan Sites" in table 13.6-5.

⁵ To avoid confusion, note that -083 is listed twice on the inventory (second, and ninth, on the Lawrence Station table 13.6-10), with the acreage split between "high density residential" and "very high density residential."

As of the time of the passage of the Lawrence Station Area Plan in November 2016, there had been no proposal by the then-owner of these four parcels, Sobrato Organization, to develop any of them as residential. As the plan itself stated, “To date, this entity has not submitted a proposal for development; therefore, commencement of development of these properties is expected to occur subsequent to the proposals described in phase one.” LSAP at section 11.4.⁶

Indeed, six years later, there still has been no proposal for redevelopment of these sites as housing. To the contrary, until 2019 Sobrato continued to lease out the space as a research and development office park, and spent nearly \$62 million on renovations. HAC Appendix Tab 8. In 2018, Sobrato entered into a new ten year lease with Nissan North America for an expansion of their Northern California technology research, and a six year lease with Clouinary.⁷ In early 2019, shortly before selling the property, Sobrato entered into a long-term lease for 210,000 square feet to Intuitive Surgical. *See* HAC Appendix Tab 8.

In May 2019, three of the parcels – APN 216-34-083, -084, and -085 – were then sold for a whopping \$170.52 million to Gemini Rosemont.⁸ Gemini Rosemont shows no intention of redeveloping the properties as residential housing. To the contrary, in announcing the deal, its CEO explained that this was an office sector acquisition: “We’re entering the next phase of our multi-pronged initiative to acquire Class A assets in the office sector in targeted, tech-centric coastal and gateway markets, and opportunistically in select target markets across the U.S.,” said Ian Brownlow, chief executive officer for Gemini Rosemont at the time of the company’s relocation. “We will leverage our deep market knowledge and our impressive 25-year track record to identify and acquire those office buildings in which we can unlock value, provide superior tenant services and deliver enhanced returns to our investors.”

Meanwhile, tenant improvements continue to be made, even after the Sobrato sale to Gemini Rosemont. *See, e.g.*, BLD21-63262 (building permit for an estimated \$300,000 of tenant improvements on the second floor of a 5,733 square foot space at 3410 Central Expressway). These are not dilapidated properties where the existing use is about to be discontinued; this is a vibrant and modern research and technology park where the tenants plan to remain.

In light of the current owner’s expressed commitment to the office sector, the long-term leases with technology tenants headquartered in Santa Clara, the tens of millions of dollars recently spent on renovations, and the lack of any indication during the last eight years that anyone wants to redevelop the property as residential, the City cannot credibly claim that there is “substantial evidence” that the property is “likely” to be redeveloped for housing. This property is not going to meet the needs of those with very low, low, and moderate incomes for housing over the next eight years, and should not be counted as likely to meet the RHNA need.

The City’s inventory indicates that it expects the technology park to supply 497 very low income, 249 low income, and 249 moderate income affordable units. The City will need to add

⁶ The Lawrence Station Area Plan, as approved, is at HAC Appendix Tab 9.

⁷ *See* HAC Appendix Tab 10, Tab 11.

⁸ *See* HAC Appendix Tab 8; *see also* Assessor Records at HAC Appendix Tab 12, 13, 14.

additional inventory to meet the needs for affordable housing on sites that are realistic, suitable, and available to meet the need in these categories.

3. The Pearlman/Himy Office Buildings At 4633, 4655, 4677, and 4699 Old Ironsides Are Not Likely To Be Redeveloped As Affordable Housing.

(APN 104-04-138, -139, -140, and -141)

The four four-story office buildings between Old Ironsides and Great America Parkway at the addresses 4633, 4655, 4677, and 4699 Old Ironsides – parcels numbered 104-04-138, -139, -140, and -141, owned by Pearlman/Himy– should not be considered “likely” to be redeveloped for affordable housing during the next eight years. During the Patrick Henry Drive Specific Plan planning process, the owner of those sites specifically asked for a zoning designation that would authorize building of completely non-residential uses: taller office buildings. The City acceded to this request by creating a new zoning designation, “High Density Flex.”

By claiming that the properties have been rezoned so that it is theoretically possible to build housing on these four parcels, the City attempts to claim credit for meeting a large portion of its RHNA obligation: together, these parcels are claimed to meet the need for 286 “very low” income units, 144 low income units, and 144 units affordable for those with moderate income. As with other nonvacant sites, the City has the burden of citing substantial evidence that the property is “likely” to be used for housing. Here, the owner expressed a desire for “flexibility” – rejecting the City’s initial proposal of housing-only zoning, and requesting creation of a special zoning designation that would allow the owner to build no housing at all. Indeed, at the owner’s request, the Environmental Impact Report studied an alternative referred to as “Maximum Office.” The City’s study of “Maximum Office” alternative applies only to these parcels, since the other parcels in the Patrick Henry Drive Specific Plan area are zoned for residential with only first floor retail/office allowed. Given the strong signals from Pearlman/Himy that it does not have a current intention of building housing on these four parcels, the City does not meet the requirement of showing that it is “likely” that the property will be redeveloped for affordable housing during the next eight years. Meanwhile, the existing use also includes tenants with long-term leases, but the City has done nothing to analyze or investigate when these leases expire, whether the leases contain renewal rights, or whether the existing use would otherwise be an obstacle to the building of housing during the 2023-2031 period.⁹

Indeed, the City’s draft Housing Element effectively concedes the City’s doubt that the Pearlman/Himy properties will be developed as housing during the 2023-2031 period. If the Pearlman/Himy sites are developed as high density offices – and there is every indication that they will be – the City promises that six months after the approval of the office development, it will *then* identify adequate sites for housing development. This seems to be an ordinary

⁹ In fact, publicly available information shows that the four office buildings continue to be marketed for office leases. HAC Appendix Tab 15. The owner continues to sign new office leases, including during 2022. HAC Appendix Tab 16 and 17.

application of the no net loss rule, but the Planning Department describes it as the plan for this site alone, because it is the expected result. Instead of identifying adequate, available sites, the City includes the Pearlman/Himy sites so it can check the box on affordable housing, and asks those who need housing now to “wait and see.” Affordable housing can’t wait while the City uses the Pearlman/Himy sites as a placeholder.¹⁰

The City should not count the office buildings at 4633, 4655, 4677, and 4699 as meeting the need for suitable and available housing sites. The site inventory lists these sites as meeting the need for 286 very low, 144 low, and 144 moderate units. The City should identify other sites with a realistic and demonstrated potential for housing to meet this need.

4. The City Includes On The Inventory Ten Sites That Are Too Small To Be Suitable For Affordable Housing.

(APN 097-46-003, -004, -005, -006, -007, -008, -009, -010, -025, -026)

Under state law, sites that are smaller than 0.5 acres are considered inadequate for meeting the needs of building housing that is affordable for those with very low and low incomes. Government Code § 65583.2(c)(2)(A). This is because sites need to be above a certain minimum size in order to be financially viable for grant funding. Unfortunately, however, the City has listed a large number of sites that are smaller than 0.5 acres, but erroneously claims in the draft Housing Element that they are 0.5 acres.

For example, in the Tasman East area, on the block bounded by Lafayette, Calle Del Mundo, and Calle De Luna, the draft Housing Element lists APN 097-46-003, -004, -005, -006, -007, -008, -009, -010 as being 0.5 acres, and states that they can each be used for 14 units of housing affordable by those with very low incomes, 7 units of housing affordable by those with low incomes, and 7 units of housing affordable by those with moderate incomes. On the same block, parcels -025 and -026 are also listed, albeit with 15 units each for “very low” income housing, instead of 14. The total effect is to claim 142 units for very low income, 70 units for low income, and 70 units for moderate income, for this group of parcels.

All of this is based on the incorrect assumption that the sites are not smaller than 0.5 acres. *See* draft Housing Element 2023-2031 at p. 13.6-6 (stating this assumption). An acre is

¹⁰ The City is already seriously behind in meeting its fair share of the regional need. While it promised in 2014 to rewrite its outdated zoning law by 2016, the process dragged on for years and, eight years later, is still incomplete. Instead, it asked projects to come one by one for project-specific rezoning requests, and then dragged the process out for years to prevent or delay affordable housing from being built, as it did with 1601 Civic Center Drive. The City was supposed to plan for 1,745 low and very low income units during the last eight years; instead, only 535 actually obtained a building permit.

43,560 square feet, and 0.5 acres is 21,780 square feet. County records show that these parcels are in fact smaller than 0.5 acres:¹¹

Address/APN	Recorded Size (Assessor Database)	Computed Size (Santa Clara County GIS)
2346 Calle Del Mundo APN 097-46-003	20,038 sq. ft	20,042 sq. ft.
2338 Calle Del Mundo APN 097-46-004	19,602 sq. ft	19,509 sq. ft
2330 Calle Del Mundo APN 097-46-005	20,038 sq. ft	20,042 sq. ft
2322 Calle Del Mundo APN 097-46-006	20,038 sq. ft	20,046 sq. ft
2301 Calle De Luna APN 097-46-007	20,038 sq. ft	20,002 sq. ft
2309 Calle De Luna APN 097-46-008	20,038 sq. ft	20,003 sq. ft
2317 Calle De Luna APN 097-46-009	20,038 sq. ft	19,706 sq. ft
2325 Calle De Luna APN 097-46-010	20,473 sq. ft	21,662 sq. ft
2272 Calle De Luna APN 097-46-025	21,344 sq. ft	21,064 sq. ft
2262 Calle De Luna APN 097-46-026	21,344 sq. ft	21,880* ¹² sq. ft

Indeed, the City's own 2015-2023 Housing Element, which listed these same sites, described most of them (all but -025 and -026) as either 0.45 acres or 0.46 acres. *See* 2015-2023 Housing Element at table 8.12-6-4.

Parcels like these, which are smaller than 0.5 acres, cannot be used as part of the site inventory to satisfy the "very low" and "low" categories without a concrete showing, based on prior experience, of why it is realistic to expect that it will be developed for low income housing. The City's Housing Element contains no proof that affordable housing has successfully been

¹¹ This information is available on the County of Santa Clara GIS map online, available at <https://ges.sccgov.org/discovergis/sccmap>; the square footage is available by clicking on the individual parcel, then choosing "Show Planning's Property Profile" to obtain this publicly available information from the Santa Clara County Department of Planning and Development.

¹² Note, the GIS Computed Size shows that -026 is slightly larger than 0.5 acres. In order to include it, the city would need to determine, as part of the Housing Element, that the County GIS system is more accurate than the county assessor's official records, which reflect that the property is smaller than 0.5 acres.

developed on sites of this size. The city's RHNA "surplus" is thus overstated by 142 very low, 70 low, and 70 moderate affordable units (and as explained above, is actually a deficit). The City should identify additional sites that are likely to be redeveloped as housing in the next eight years, and which are suitable as sites for affordable housing.

5. The City Has Inappropriately Listed Other Sites As Well.

(1) 3011 Corvin (APN 216-33-021).

Santa Clara City Fire Department Station # 9 serves the Lawrence Station area of the city. It is located at 3011 Corvin Drive. The parcel number is 216-33-021. The City has listed it on its housing inventory, and claims that it will meet part of the RHNA need, because it could be used to build 12 units of affordable housing for those with moderate incomes. However, as far as we are aware, the City has no present intention of selling this property or developing it for affordable housing. Indeed, the Lawrence Station Specific Plan shows that the City intends that the fire station will remain as a public use. The City also listed this parcel on the 2015-2023 Housing Element inventory, and took no steps to make it available for housing. It is not likely to be used for housing in the next eight years, given its existing use. It should be removed, or at least excluded from the totals. This will also help avoid it being used incorrectly as a buffer as part of any "no net loss" analysis during the 2023-2031 period.

(2) 2343 Calle Del Mundo (APN 097-05-111).

Parcel 097-05-111 in the Tasman East area appears to be part of the 2343 Calle Del Mundo project by Summerhill. The rest of the 2343 Calle Del Mundo project site is not listed in the site inventory, presumably because it is already under construction. The City may wish to reevaluate its designation of -111 based on the apparent common ownership with parcel 097-05-110. It should probably be removed, or at least excluded, to avoid being used as part of a "no net loss" analysis during the 2023-2031 period.

B. The Extensive Re-Use Of Sites Requires A New "Use By Right" Zoning Overlay.

In Government Code section 65583.2(c), nonvacant land listed in a prior housing element but not approved for development must be rezoned within three years so that any housing development in which at least 20 percent of the units are affordable to lower income households is entitled to "residential use by right." (i.e., no requirement for conditional use permit, planned development permit, or other discretionary local government review). This would prevent subjective and discretionary permit processes – for example, "architectural review" – from being used to block housing projects that provide affordable housing.

The draft Housing Element for 2023-2031 lists nonvacant land listed in a prior housing element but not approved for development: All of the Tasman East sites on the draft for 2023-2031 were already used on the site inventory for 2015-2023, and all of the Lawrence Station sites on the draft for 2023-2031 were already used on the site inventory for 2015-2023. *Compare*

2015-2023 Housing Element at tables 8.12-6-4 and 8.12-6-5 *with* draft 2023-2031 Housing Element at tables 13.6-9 and 13.6-10. Under section 65583.2(c), the City is therefore required to implement a program to rezone all of these sites by no later than three years from the adoption of the element, to permit “use by right” for housing developments if 20% of the units are affordable to low or very low income residents.

The City is aware of this requirement, but tries to argue around it, at page 13.6-7 of the draft, titled “Re-Use of Sites.” The City argues that because it rezoned the Tasman East and Lawrence Station sites during the 2015-2023 cycle for a higher density to conform to the General Plan, it can count the sites as “new” for purposes of the 2023-2031 cycle, and ignore that they were identified in a prior housing element. The argument will not hold up in court. The statute unambiguously states that if the site is nonvacant, was “identified” in a prior housing element, and was not approved for development, it “shall not be deemed adequate to accommodate a portion of the housing need for lower incomes households . . .” unless rezoned in the new housing element for “use by right.”

Nor does the City’s “rezoning for higher density” argument fit the facts: The sites were rezoned as part of a Government Code section 65583(c) program (albeit late, as explained in the next section). Indeed, if they had not been rezoned, the city otherwise had a shortfall of sites to address the 2015-2023 RHNA. Moreover, some of them are zoned at the exact same density stated in the 2015-2023 Housing Element. *See, e.g.*, APN 216-33-037.

If the City does not wish to implement a “use by right” overlay, it should remove the Tasman East and Lawrence Station sites from the inventory; almost all of them are being (re-)used to satisfy the very low and low income needs that they were designated to meet in the last Housing Element, and in the absence of a “use by right” rezoning, they do not meet the criteria under 65583.2(c) for being re-used.

C. The City Must Address The Unaccommodated Need From The 2015 Regional Housing Needs Allocation.

The City also failed to implement fully its 2015-2023 Housing Element. The consequence of its failure is that it must address both the unaccommodated 2015-2023 need and the new 2023-2031 need.

Where a city fails to implement a housing element, the unaccommodated need must be quickly accommodated during the next period. Government Code § 65584.09(a). Here, Santa Clara failed to timely implement what it promised in its 2015 Housing Element. The unaccommodated need from that period – the failure to provide adequate sites for lower income housing – carries over, and the city cannot use the same sites to meet both the 2015 need and the 2023 need.

We start with a description of the City’s failure to make available adequate sites to accommodate the regional need identified in 2014. In the 2015-2023 Housing Element, the City stated that it believed the housing need could be accommodated on sites in the El Camino Real,

Tasman East, and Lawrence Station “focus areas”: areas that the City’s general plan projected as suitable for rezoning as medium or high density residential, or mixed use, but which were not yet zoned to permit residential development. The Tasman East focus area and Lawrence Station focus area were zoned light industrial. The El Camino Real sites were zoned “thoroughfare commercial” or “community commercial”: zoning that did not permit residential construction. No one could build housing on any of the sites in the inventory without rezoning.

Under 65583.02(a), the inventory can only include sites that are (1) vacant and zoned for residential use, (2) vacant and zoned to allow residential development, (3) residentially zoned and capable of being developed at a higher density, or (4) “zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, to permit residential use . . .” The 2015 inventory was valid, if at all, because of a planned program to rezone all of the sites on the list under 65583.2(a)(4) and 65583(c).

A program to rezone sites to make them available is governed in part by Government Code section 65583(c)(1). That subsection required the City to “identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s . . . share of the regional housing need for each income level that could not be accommodated on sites in the inventory . . . without rezoning . . .” Under 65583(c), the City was required to “set forth a schedule of actions during the planning period, each with a timeline for implementation . . . such that there will be beneficial impacts of the programs within the planning period . . .”

The City’s 2015-2023 Housing Element explained how it would comply with the law: it would engage in a comprehensive rezoning of the entire city to conform with the general plan, “to bring consistency between the Zoning Ordinance and the General Plan, implementing the General Plan goals by facilitating mixed use development and higher density residential development, protecting existing neighborhoods, and incentivizing redevelopment by appropriate development standards and streamlined procedures.” The City stated that it would complete this action by mid-2016. *See* 2015-2023 Housing Element at pp. 8.12-122 – 8.12-123 (“Action 6: Zoning Ordinance”).

The mid-2016 deadline was important; the action needed to be scheduled “such that there will be beneficial impacts of the programs within the planning period,” and also kept the plan for rezoning on track to take place within the required three years. Government Code § 65583(c)(1)(A). Housing could not be constructed unless it were approved; housing would face more hurdles to approval until the rezoning took place; and so removing the obstacle of light industrial or commercial district zoning needed to take place early in the planning period to provide developers the ability to propose and proceed with housing built to meet the needs during the 2015-2023 time period.

By mid-2016, the City still had not completed the comprehensive rezoning that it identified as Action 6. The City blamed problems with its outside consultant for not completing

it in 2016, and promised it would be done in 2017. But even then, it didn't complete it. The draft was finally circulated for public comment in summer 2022 – while the City was working on the 2023 Housing Element – and won't be voted on by the City Council until sometime in 2023. The draft 2023-2031 Housing Element acknowledges that Action 6 is incomplete, and now lists the comprehensive zoning ordinance update as Action 9 in the new plan: “expected to be completed in late 2022/early 2023” *See* 2023-2031 draft Housing Element see p. 13.7-5 (“The City is continuing to work on the comprehensive Zoning Ordinance Update”); and p. 13.2-10 (“Action 9: Zoning Ordinance”); *see also* p. 13.1-1 (“Additionally, the City is nearing completion of a comprehensive Zoning Code update which will further streamline processes with the inclusion of objective standards and new zoning districts that better align with the City's General Plan.”); p. 13.2-4.

The City thus did not implement the 2015 Housing Element, and did not rezone, as promised, the sites listed in its 2015-2023 inventory. While the City listed 158 parcels along El Camino Real in its 2015-2023 plan as having the ability to satisfy the housing needs of the community, it left the commercial district zoning in place for the entire 2014-2022 period. To this day, anyone wanting to build housing on most of those parcels (excluding the few that went through the City's discretionary process for a rezoning) needs to apply for a zoning variance, contrary to state law which required not just an expectation of potential rezoning to match the general plan, but actual implementation of the Housing Element by the City. Meanwhile, the City planning staff proposed a rezoning of these sites repeatedly as part of the El Camino Real Specific Plan, but the City Council still has not taken action, and has deferred further discussion. The program actions in the 2015-2023 Housing Element to rezone or provide adequate sites were thus not fully implemented.

Having failed to implement the rezoning as required by state housing law and promised in the 2015-2023 Housing Element to take place by mid-2016, the City is now subject to section 65584.09, which provides:

[I]f a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

Santa Clara easily accommodated the need for above-moderate income housing during the 2015-2023 period: it issued building permits for 4,606 units. It appears to have accommodated the 2015-2023 need for moderate income housing, at least if project approvals, rather than actually constructed units, are counted. But it fell seriously short for the “very low” and “low” income categories. The City granted building permits for only 289 “very low” income units, 246 low income units, and 125 units affordable to those with moderate incomes. This leaves a substantial shortfall to be addressed from the last period, in addition to the substantial new need for the new period.

Even if the City’s rezoning of adequate sites – albeit ones where no affordable housing has been built, and may never be – is counted,¹³ the City has a substantial shortfall:

	Very Low	Low
2015-2023 RHNA Need	1,050	695
Building Permits (from Table 13.7-2)	289	246
“Adequate” Sites Rezoned in Tasman East ¹⁴	121	61
“Adequate” Sites Rezoned in Lawrence Station ¹⁵	13	7
Approvals of Affordable Housing (from Table 13.6-2) ¹⁶	163	145

¹³ A reasonable interpretation of the term “unaccommodated portion of the regional housing need allocation” would exclude all deductions from the prior RHNA except affordable housing units actually built. After all, no one’s actual needs are accommodated by housing that was never built. Using building permits as a proxy for this, the unaccommodated very low income need would be 761 units, and the unaccommodated low income need would be 449. The distinction might make very little difference to the ultimate math below, however; omitting the rezoned adequate sites in Tasman East and Lawrence Station, and omitting the approved affordable housing elsewhere in the City, would result in a higher number for the “unaccommodated portion,” but these sites could then be counted as meeting the 2023-2031 need if they will result in new housing during the next eight years, as the City argues at p. 13.6-2. The critical point here, as explained in the text, is that the City cannot double-count.

We do not think the City can fairly consider the Patrick Henry rezoning as having accommodated any portion of the need from the prior Housing Element, even for those sites that might be considered adequate in the 2023-2031 cycle, given that it was rezoned so late in the period.

¹⁴ We do not include the data center or the sites that are smaller than 0.5 acres, because these sites are not adequate. See above at sections A.1, A.4. We also put “adequate” in quotes here because we have not analyzed whether the other sites are in fact adequate for lower income housing sites (e.g., suitable, available, realistic); the City should do so as part of its analysis.

¹⁵ We do not include the Gemini Rosemont Technology Park, or the data centers on Corvin, because these sites are not adequate. See above at sections A.1, A.2. We also put “adequate” in quotes here because we have not analyzed whether the other sites are in fact adequate for lower income housing sites (e.g., suitable, available, realistic); the City should do so as part of its analysis.

¹⁶ In calculating this number, we attempted to count those projects listed as “approved” (since proposed projects did not meet the need for affordable housing in 2015-2023), and to avoid double-counting those projects that were counted towards building permit goals on table 13.7-2. We believe that 3905 Freedom, Gateway, and Agrihood were not counted towards building permits, but that Clara Gardens, The Meridian, and 2330 Monroe each had building permits issued and were counted in table 13.7-2. The City planning department should perform

Approvals of Affordable Housing: 1601 Civic Center	106	
Unaccommodated Portion Of 2015-2023 RHNA:	358	236

In determining the affordable housing requirements for its 2023-2031 Housing Element, the City is not allowed to use the same sites or projects to count toward both the 2015-2023 need and the 2023-2031 need. It must instead plan for both the unaccommodated need and the newly allocated need. *See* Government Code § 65584.09(b). This means that the City's analysis at page 13.6-2 is flawed because it engages in double-counting: the City is claiming that the building permits and approvals from 2015-2023 accommodated a portion of the housing need for that period *and* that the same building permits and approvals from 2015-2023 address the newly allocated need for 2023-2031.

Again, the City's failure to follow through on its 2015 Housing Element has a consequence: the City is now obliged to meet the unaccommodated need from the 2015-2022 period as well as the regional need identified for the 2023-2031 period. Adequate sites must be rezoned within one year to address this unaccommodated portion of the 2015-2023 RHNA need.

the calculation itself using the information available to it; this calculation should be viewed as illustrative.

D. Conclusion: The City's Site Inventory Needs A Program To Rezone Many More Suitable And Available Sites To Accommodate Its Share Of The Regional Need.

A recap of the issues above, in chart form:

	Very Low	Low	Moderate
Draft Inventory ¹⁷	3,592	1,972	2,781
Data Centers	-913	-458	-458
Gemini Rosemont Technology Park	-497	-249	-249
Sites Smaller Than 0.5 Acres	-142	-70	
4633, 4655, 4677, 4699 Old Ironsides	-286	-144	-144
Fire Station # 9 and Tasman Parcel -011			-35
Total Inventory Without Invalid Sites	1,754	1,051	1,895
RHNA Need for Affordable Housing	2,872	1,653	1,981
+ Unaccommodated Need from 2015-2023	+ 358	+ 236	
= Required Need For Affordable Housing In 2023-2031 Housing Element	= 3,230	= 1,889	1,981
Additional Rezoning Required	1,476	838	86

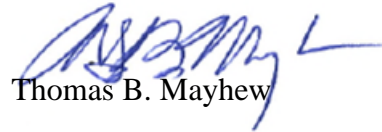
In addition, the City needs to add a plan to rezone the remaining Tasman East and Lawrence Station properties for residential “use by right” for any housing development proposing 20% affordable units, or find additional sites to cover an additional shortfall.

The City is not without potential solutions: the Planning Department has already prepared a specific plan for El Camino Real that would rezone a large number of sites that may be suitable for housing (this would have included, for example, the 100% affordable housing project at 1601 Civic Center Drive, which would not have then required rezoning after a contentious and years-long process).

¹⁷ Based on combination of “Approved and Proposed Projects,” “Total ADU Projections,” and “Total Capacity – Specific Plan Sites” in table 13.6-5.

Looking at sites elsewhere in the City would also help address the requirement, noted in SV@Home's comment, to affirmatively further fair housing. The City's concentration of site inventory in the industrial parks on the furthest boundaries of the city, far away from the better resourced schools and parks of residential Santa Clara south of El Camino Real, appears to violate this obligation, and we hope that the next draft of the site inventory will show a greater dispersal of proposed housing sites.

Respectfully submitted,


Thomas B. Mayhew

TBM:tb

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January 22, 2023

Via E-mail

Santa Clara City Council and
Santa Clara Planning Commission
1500 Warburton Avenue
Santa Clara CA 95050

MayorAndCouncil@santacalaraca.gov
PlanningCommission@santacalaraca.gov

Re: City of Santa Clara Draft Housing Element
Comments of Housing Action Coalition

Dear Mayor, Vice Mayor, Members of the City Council, and Planning Commissioners:

On behalf of the Housing Action Coalition,¹ we write to provide comments on the most recent draft of the 2023-2031 Housing Element for the City of Santa Clara.

The current draft does not comply with state law. Among other problems, it overstates the inventory of realistic and available sites to meet Santa Clara's fair share of the regional need, particularly for lower income units, in two significant ways. First, the draft continues to include sites that are not vacant without proof that the existing use is likely to discontinue during the next eight years. Second, the draft overestimates the development potential, by selective use of data and a miscalculation of the average densities developed. The draft also fails to take constraints into account such as the rezoning of portions of certain parcels as open space/parks or public right-of-way, which would preclude developing housing on that portion. For these and other reasons described below and in our earlier letter, the draft does not comply with state law. The Planning Commission should not recommend it to the City Council, and the City Council should not adopt it. The Council should instead direct staff to revise it by identifying additional realistic and available sites to include on the inventory, geographically dispersed throughout the City, comply with the site inventory requirements and the legal duty to affirmatively further fair housing.

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.

These comments supplement the earlier comment letter on behalf of Housing Action Coalition dated November 30, 2022.

A. The City Includes Sites That Are Not “Suitable And Available,” And Do Not Have A “Realistic And Demonstrated Potential” For Redevelopment During The Planning Period To Meet The Need For Housing.

The City Council is called upon to make a special finding before adopting the Housing Element, and to do so based on evidence. Where, as here, the City claims that lower-income housing will be accommodated by sites that are currently used for other purposes, the City must “demonstrate that the existing use . . . does not constitute an impediment to additional residential development *during the period covered by the housing element.*” And most significantly, state law requires a specific set of findings:

An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.

Government Code § 65583.2(g)(2). The Council should therefore ask itself, for each and every site on the inventory: What is the existing use? And what is the evidence that the use is likely to be discontinued during the next eight years?

HCD has provided helpful guidance of what kinds of evidence the City Council should look for:

Examples of substantial evidence that an existing use will likely be discontinued in the current planning period include, but are not limited to:

- The lease for the existing use expires early within the planning period,
- The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses,
- There is a development agreement that exists to develop the site within the planning period,
- The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
- The property owner provides a letter stating its intention to develop the property with residences during the planning period.”

HCD further explained:

[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 addition, each site’s existing use,

e.g., grocery store, retail shop, parking lot, and offices, may have lease agreements of different lengths of time or the owner may not wish to relocate or redevelop the site with a more intensive residential use. In this type of situation, use of the same findings for the multiple sites would not be appropriate.

HCD Site Inventory Guidebook (May 2020) at pp. 27-28.

Unfortunately, the current draft of the Housing Element does not meet any of the standards explained by HCD for the sites on the inventory:

- There are leases that extend well into the planning period.
- There are buildings that are not dilapidated, and in fact, some of them have been significantly remodeled and improved within the last ten or even five years.
- There are no demolition permits for existing uses.
- There are no development agreements for any site on the inventory.
- None of the existing uses have agreed to move to other locations early enough within the planning period to allow residential development within the planning period.
- The draft does not indicate that property owners have provided letters stating their intention to develop the property with residences during the planning period.
- The only analysis provided is generalized: that all of the properties are in areas that have been rezoned – in the case of Lawrence Station and Tasman East, many years ago – and others have chosen to develop their properties because of market demand.
- There are different owners and different uses; there are lease agreements with different lengths of time.
- There is no evidence presented that the owners wish to relocate or redevelop the sites with a more intensive residential use.

The lack of evidence or analysis on a site-by-site basis dooms the draft Housing Element; it does not comply with the law because the City Council lacks proof that existing uses are likely to discontinue at each of the sites on the inventory.

To illustrate this point further, we describe four specific examples to show that the City has failed to comply with its obligations under Government Code section 65583.2(c) and (g)(1) and (2) to analyze the evidence and determine which sites are realistic and likely to redevelop. The City Council should not sign off on findings that are not based on substantial evidence.

1. The Gemini Rosemont Technology Park Is Not Likely To Be Redeveloped As Affordable Housing During The Next Eight Years

(APN 216-34-079, -083, -084, and -085)

In the heart of the Lawrence Station Area Plan is a set of parcels – APN 216-34-079, -083,² -084, and -085 – currently used as a research and development office park, under long term leases to Affymetrix (a subsidiary of Thermo Fisher), Cloudinary, Nissan North America, and Intuitive Surgical. Under Government Code section 65583.2(g)(1), the Housing Element is required to engage in an “analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site . . .” Despite this legal requirement, the draft does not mention, much less analyze, the existing leases.

As of the time of the passage of the Lawrence Station Area Plan in November 2016, there had been no proposal by the then-owner of these four parcels, Sobrato Organization, to develop any of them as residential. As the plan itself stated, “To date, this entity has not submitted a proposal for development; therefore, commencement of development of these properties is expected to occur subsequent to the proposals described in phase one.” LSAP at section 11.4.³

Indeed, over six years later, there still has been no plan for redevelopment of these sites as housing. To the contrary, until 2019 Sobrato continued to lease out the space as a research and development office park, and spent nearly \$62 million on renovations shortly before the sale. HAC Appendix Tab 8. In 2018, Sobrato entered into a new ten-year lease with Nissan North America for an expansion of their Northern California technology research, and a six-year lease with Cloudinary.⁴ In early 2019, shortly before selling the property, Sobrato entered into a long-term lease for 210,000 square feet with Intuitive Surgical. *See* HAC Appendix Tab 8.

In May 2019, three of the parcels – APN 216-34-083, -084, and -085 – were then sold for a whopping \$170.52 million to Gemini Rosemont.⁵ Gemini Rosemont shows no intention of redeveloping the properties as residential housing, and its tenants Nissan, Cloudinary, Intuitive Surgical, and Affymetrix show no signs of relocating. To the contrary, in announcing the deal, Gemini Rosemont’s CEO explained that this was an office sector acquisition: “We’re entering the next phase of our multi-pronged initiative to acquire Class A assets in the office sector in targeted, tech-centric coastal and gateway markets, and opportunistically in select target markets across the U.S.,” said Ian Brownlow, chief executive officer for Gemini Rosemont at the time of the company’s relocation. “We will leverage our deep market knowledge and our impressive 25-

² To avoid confusion, note that -083 was listed twice on the inventory submitted to HCD (second, and ninth, on the Lawrence Station table 13.6-10), with the acreage split between “high density residential” and “very high density residential.”

³ The Lawrence Station Area Plan, as approved, is at HAC Appendix Tab 9.

⁴ *See* HAC Appendix Tab 10, Tab 11.

⁵ *See* HAC Appendix Tab 8; *see also* Assessor Records at HAC Appendix Tab 12, 13, 14.

year track record to identify and acquire those office buildings in which we can unlock value, provide superior tenant services and deliver enhanced returns to our investors.”

Meanwhile, tenant improvements continue to be made, even after the Sobrato sale to Gemini Rosemont. *See, e.g.*, BLD21-63262 (building permit for an estimated \$300,000 of tenant improvements on the second floor of a 5,733 square foot space at 3410 Central Expressway). These are not dilapidated properties where the existing use is about to be discontinued; this is a vibrant and modern research and technology park where the tenants plan to remain. The assertion at page 13.6-18 of the Adoption Draft that “No recent, significant enhancements have been made to these sites” is simply not true of the Gemini Rosemont Technology Office Park, where \$62+ million in renovations has taken place during the last five years. Site-by-site analysis, rather than blanket assertions, is required to comply with Government Code section 65583.2(g)(2), but the City does not show that it has done so here.

In light of the current owner’s expressed commitment to the office sector rather than redevelopment, the long-term leases with technology tenants headquartered in Santa Clara, the tens of millions of dollars recently spent on renovations, the lack of any indication during the last eight years that the owner wants to redevelop the property as residential, and the lack of any current information showing that the owner intends to evict the tenants before the end of the housing cycle and build housing on these parcels, the City Council cannot make a finding based on “substantial evidence” that the existing use is “likely” to discontinue. This property is not likely to meet the needs for 1,743 units of housing affordable to those with very low, low, and moderate incomes for housing over the next eight years, and should not be counted as such on the site inventory.

2. The Pearlman/Himy Office Buildings At 4633, 4655, 4677, and 4699 Old Ironsides Are Not Likely To Be Redeveloped As Affordable Housing.

(APN 104-04-138, -139, -140, and -141)

The four four-story office buildings between Old Ironsides and Great America Parkway at the addresses 4633, 4655, 4677, and 4699 Old Ironsides—parcels numbered 104-04-138, -139, -140, and -141, owned by Pearlman/Himy—should not be considered “likely” to be redeveloped for affordable housing during the next eight years. During the Patrick Henry Drive Specific Plan planning process, unlike the other owners responding to the Specific Plan proposal, the owner of those sites specifically asked for a zoning designation that would authorize building of completely non-residential uses: taller office buildings. The City acceded to this request by creating a new zoning designation, “High Density Flex.”

By claiming that the properties have been rezoned so that it is theoretically possible to build housing on these four parcels, the City attempts to claim credit for meeting a large portion of its RHNA obligation: Together, these parcels are claimed to meet the need for 1,025 units affordable to those in the very low-, low-, and moderate-income categories. As with other

nonvacant sites, the City has the burden of citing substantial evidence that the property is “likely” to be used for housing.

Here, the owner expressed a desire for “flexibility” – rejecting the City’s initial proposal of housing-only zoning, and requesting creation of a special zoning designation that would allow the owner to build no housing at all. Indeed, at the owner’s request, the Environmental Impact Report then studied an alternative referred to as “Maximum Office.” The City’s study of “Maximum Office” alternative applies only to these parcels, since the other parcels in the Patrick Henry Drive Specific Plan area are zoned for residential development with only first floor retail/office allowed. Given the strong signals from Pearlman/Himy that it does not have a current commitment to building housing on these four parcels, the City does not meet the requirement of showing that it is “likely” that the property will be redeveloped for affordable housing during the next eight years. Claiming that redevelopment is likely to occur simply because the property has been rezoned to permit residential development, in the face of an owner request to rezone to permit a higher density office use, lacks substantial evidence.

Meanwhile, the existing use also includes tenants with long-term leases, but the City has done nothing to analyze or investigate when these leases expire, whether the leases contain renewal rights, or whether the existing use would otherwise be an obstacle to the building of housing during the 2023-2031 period.⁶ This fails to meet the City’s obligation under Government Code section 65583.2(g)(1).

Indeed, the City’s draft Housing Element effectively concedes the City’s doubt that the Pearlman/Himy properties will be developed as housing during the 2023-2031 period. If the Pearlman/Himy sites are developed as high-density offices – and there is every indication that they will be – the City promises that six months after the approval of the office development, it will *then* identify adequate sites for housing development. This seems to be an ordinary application of the no net loss rule, but the Planning Department describes it as the plan for this set of parcels alone. Instead of identifying adequate, available sites, the City includes the Pearlman/Himy sites despite the owner’s uncertain intention so it can check the box on affordable housing, and asks those who need housing now to “wait and see.” Affordable housing can’t wait while the City uses the Pearlman/Himy sites as a placeholder.⁷ The City cannot make

⁶ In fact, publicly available information shows that the four office buildings continue to be marketed for office leases, and new tenants continue to move in. *See* HAC Appendix Tabs 15-18. Indeed, in the less-than-two months since our November comment letter, it appears that four office spaces in these buildings that were on the market have recently been leased. *Compare* HAC Appendix Tab 15 with new HAC Appendix Tab 18 (attached) (Suites 230 and 355 in 4655 Old Ironsides, and Suites 304 and 438 in 4699 Old Ironsides, marketed for lease in November 2022 but not in January 2023).

⁷ The City is already seriously behind in meeting its fair share of the regional need. While it promised in 2014 to rewrite its outdated zoning law by 2016, the process dragged on for years

the required findings and should not count the office buildings at 4633, 4655, 4677, and 4699 as meeting the need for suitable and available housing sites.

3. National Instruments Silicon Valley Headquarters Is Not Likely To Be Redeveloped As Affordable Housing In The Next Eight Years.

(APN 104-04-122)

In May 2013, Drawbridge Realty acquired 4600 Patrick Henry Drive, a 50,000 square foot Class A office building on 3.2 acres, at APN 104-04-122. Based on its website, Drawbridge Realty specializes exclusively in commercial and office leases, and does not develop residential projects. HAC Appendix Tab 19.

The long-term occupant at 4600 Patrick Henry was already in place when Drawbridge bought the property: The site is the Silicon Valley headquarters of National Instruments. National Instruments was formerly known as Texas Instruments (which acquired long-time Santa Clara semiconductor company National Semiconductor). The property was fully remodeled, inside and out, less than ten years ago. *See* HAC Appendix Tab 20 (showing photos; describing “Complete interior, exterior, and site renovations completed in May 2013”).



The draft Housing Element does not contain any information about the lease between National Instruments and Drawbridge, or about whether National Instruments intends to continue occupancy on Patrick Henry. This is not a dilapidated building; it was completely renovated less than ten years ago. Rezoning and hoping for redevelopment does not satisfy Government Code section 65583.2(g)(1) or (g)(2). Pointing to redevelopment of other sites by residential developers doesn't show that this particular site's existing use is “likely to discontinue” during the next eight years. Absent substantial evidence that the existing use is likely to discontinue, the National Instruments facility should not be listed as meeting the need for very low- and low-income housing.

and, eight years later, is still incomplete. The City was supposed to plan for 1,745 low and very low income units during the last eight years; instead, only 535 actually obtained a building permit.

4. Great America Technology Park.

(APN 104-53-1, -2, -3, -4, -5, -6, -7, -8, -9, -10, -11, -12, -13, -14, -15, -16, -17, -18, -19, -20, -21, -22, -23, -24, -25, -26, and -27)

At 4701 Patrick Henry Drive is a large office park that has been subdivided into 27 separate parcels, known as the Great America Technology Park. Separate buildings include a range of uses from technology companies to law firms to non-profit organizations. The City does not analyze each parcel, or the uses on each, as required by Government Code section 65583.2(g)(1).

The earlier draft submitted to HCD correctly showed, at Figure 13.6-7, that there was a large number of smaller parcels, as a result of earlier subdivision. We have included the parcel map from the Santa Clara County Assessor's Office, which shows that there are 27 parcels: 26 individual buildings, each with its own parcel number, plus a 27th parcel consisting of the Swiss-cheese common area surface parking lot that surrounds parcels APN 104-53-1 through -26. *See* HAC Appendix Tab 21.

In the Adoption Draft at Figure 13.6-5, parcel 104-53-016 is shown as a very large, single parcel. This is incorrect. As the parcel map shows, 104-53-016 is Parcel 24 in the sequence, and consists of just 3,408 square feet. By listing a single 3,408 square foot building parcel as covering 9+ acres, the draft seriously errs in providing information for the City Council to make an informed decision about the likelihood that the 26 buildings, each with their own business occupants, owners, and uses, will somehow coordinate and jointly develop their properties, and the common area, during the next eight years. It can be difficult for two adjacent owners to work together to combine parcels and pursue a joint development. Absent substantial evidence that the 27 parcels here have been united under common ownership and/or have a joint plan to cease all office/commercial uses in favor of residential development during the next eight years, this set of parcels should not be included in the site inventory, because the existing uses are presumed to continue and are an impediment to residential use. Government Code § 65583.2(g)(2).

B. The Density Calculations Overstate The Extent To Which The Existing Site Inventory Satisfies The RHNA Need.

Government Code section 65583.2(c) regulates how the number of housing units accommodated on each site is determined:

The inventory shall specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower-income housing, moderate-income housing, or above moderate-income housing. . . . The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulation requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. . . .

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.

(ii) For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 10 units per acre.

(iii) For a suburban jurisdiction: sites allowing at least 20 units per acre.

(iv) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.

Government Code § 65583.2(c)(1), (2) and (3). The draft fails to comply with this statute.

1. The Site Inventory Is Insufficient Based On Minimum Densities.

In the draft presented to and reviewed by HCD, the City relied on minimum densities as showing the capacity for each site. However, a number of large sites have now been removed from the inventory in response to earlier comments by HCD and others, including Housing Action Coalition. The total capacity of the inventory calculated at minimum density is 4,860, rather than the 7,810 claimed.

Notably, the statute arguably requires use of the minimum densities for cities that have them. Under section 65583.2(c)(1), “If local law or regulations require the development of a site at a minimum density, [HCD] shall accept the planning agency’s calculation . . . based on the established minimum density.” HCD is not given discretion to accept an alternative calculation. The remainder of section 65583.2(c)(1) explains that “If the city or county *does not* adopt a law or regulation requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.” (emphasis added). Because Santa Clara law *does* require minimum densities, the calculation is governed by the first sentence, not the second. While HCD appears to interpret the statute as if it presents two options, the statutory text requires use of the minimum densities based on the zoning laws in effect in Santa Clara. If the statutory text is applied as written, the draft Housing Element fails to list sufficient inventory to meet the regional need.

2. The Site Inventory Is Insufficient Based On Santa Clara’s Own Methodology.

The draft Housing Element discusses the “realistic capacity” calculation – the methodology the City uses to estimate the number of units that each parcel will accommodate for purposes of meeting the RHNA requirements – at pages 13.6-7 through 13.6-10. The draft says it calculates the “realistic capacity” by multiplying the parcel size by the minimum zoned density, and then multiplying by the “average,” for existing and approved projects, of the percent by which each project in a particular Specific Plan exceeded minimum density. The “average” for Lawrence Station Area is claimed to be 191%; the “average” for Tasman East Focus Area Specific Plan is claimed to be 215%; the “average” for the Patrick Henry Focus Area Specific Plan is claimed to be 119%.

A major problem with the draft is that in calculating the “average,” the draft excluded nearly half of the sites that should have been on the list. An average requires looking at all the data; only by listing all of the projects in each Specific Plan area can a true average be calculated. Here’s a complete list of “very high density” projects developed in the Lawrence

Station Area, indicating in ***bold and italics*** the ones that were missing from Table 13.6-3:

Project Name	Min. density [du/ac]	Acres	Units	Actual density [du/ac]	% of minimum density [column 5 divided by column 2]
2904 Corvin	51 du/ac	1.08	145	134 du/ac	134/51 = 263%
<i>2961 Corvin</i>	<i>51 du/ac</i>	<i>1.69</i>	<i>38</i>	<i>22.49</i>	<i>22.49/51 = 44%</i>
<i>3305 Kifer</i>	<i>51 du/ac</i>	<i>0.94</i>	<i>45</i>	<i>47.87</i>	<i>47.87/51 = 94%</i>
3560 Rambla	51 du/ac	2.49	251	100 du/ac	100/51 = 196%
3578 Rambla	51 du/ac	1.72	126	73 du/ac	73/51 = 143%
<i>3580 Rambla</i>	<i>51 du/ac</i>	<i>2.58</i>	<i>286</i>	<i>110.85</i>	<i>110.85/51 = 217%</i>
3517 Ryder	51 du/ac	3.92	328	83 du/ac	83/51 = 163%
				ACTUAL AVERAGE:	160%

The same error of omission was made in calculating the Tasman East “average”; by ignoring half of the data for the Specific Plan area, the draft makes the average appear higher than it actually is:

Project Name	Min./max. density [du/ac]	Acres	Units	Units/Acres	% of minimum density [column 5 divided by column 2]
2233 Calle Del Mundo	100-350	1.22	196	160	160%
2200 Calle Del Mundo	100-350	2.44	580	237	237%
2300 Calle De Luna	100-350	<i>5.52⁸</i>	700	<i>127</i>	<i>127%</i>
2343 Calle Del Mundo	100-350	2.63	347	131	131%
2302/2310 Calle Del Mundo	60-350	0.77	151	196	327%
<i>2354 Calle Del Mundo</i>	<i>60-350</i>	<i>0.50</i>	<i>89</i>	<i>178</i>	<i>297%</i>
<i>5123 Calle Del Sol</i>	<i>100-350</i>	<i>2.62</i>	<i>503</i>	<i>192</i>	<i>192%</i>
<i>5185 Lafayette</i>	<i>100 to 350</i>	<i>1.12</i>	<i>271</i>	<i>242</i>	<i>242%</i>
<i>2263 Calle Del Mundo</i>	<i>100 to 350</i>	<i>1.95</i>	<i>301</i>	<i>154</i>	<i>154%</i>

⁸ On the City’s chart, this is listed as 5.02, which appears to be a typo. The City Planning Department project listing lists it as 5.52, as does the County Assessor’s parcel map. We have corrected the other calculations accordingly.

<i>2101 Tasman Dr.</i>	<i>100 to 350</i>	<i>9.03</i>	<i>950</i>	<i>105</i>	<i>105%</i>
<i>2354 Calle Del Mundo</i>	<i>60 to 350</i>	<i>0.46</i>	<i>89</i>	<i>193</i>	<i>322%</i>
<i>2225 Calle De Luna & 2232 Calle Del Mundo</i>	<i>100 to 350</i>	<i>2.1</i>	<i>371</i>	<i>183</i>	<i>183%</i>
				ACTUAL AVERAGE:	206%

If applying the “average” by Specific Plan area is indeed the proper way to calculate density as the draft argues, then for Lawrence Station the average is 160% of the minimum density, not 191%; for Tasman East, the average is 206%, not 215%.⁹ For Tasman East, the difference reduces the unit count by 43 units; for Lawrence Station, where the average was more skewed and more acreage is on the inventory, it has a bigger impact: 448 units.

This leaves the Patrick Henry area, where we cannot create a chart, because there is no valid data at all. The single proposed project (Pactron/Summerhill) listed on table 13.6-3 for the Patrick Henry area does not show an average or typical density of an existing or approved project. It does not show what even a single builder has succeeded in building at the listed percentage-of-minimum density. The statute directs that “typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction” is the relevant data set; a single proposed but-not-yet-approved project, and a market-rate one at that, doesn’t meet the minimum test for consideration, because it is neither “typical” nor “existing or approved.” Government Code § 65583.2(c)(2). This rule makes good sense: A proposed project may not be approved or ever built, and so has not been tested by the real world to determine if it reflects the “realistic” capacity¹⁰; City staff may not even have reviewed it for compliance with Santa Clara zoning laws. Meanwhile, “typical” requires more than a handful, and certainly more than one. Because no housing has been built in the Patrick Henry area at all, the City lacks data on which to argue that the statutory directive of applying minimum density based on densities should be ignored or adjusted based on real-world experience. Meanwhile, the City’s calculations fail to account for the possibility that future projects may include commercial or office uses, even though several of the Patrick Henry zoning categories provide

⁹ We also note that at Tasman East, many of the projects included in the average were approved or built before the change in the zoning to allow nonresidential uses on the second and third floors. This increase in the ability to have nonresidential uses may substantially impact the construction mix going forward, which the City has failed to account for.

¹⁰ See Government Code § 65583(a)(3) (requiring a site inventory to show the “realistic and demonstrated potential for redevelopment”); § 65583.2(c) (“The inventory shall specify for each site the number of units that can realistically be accommodated . . .”); § 65583.2(c)(2)(C) (“A site may be presumed to be realistic for development to accommodate lower income housing if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed *and approved* for development on that site.”) (emphasis added).

this potential. The City should use the minimum densities as the fail-safe for this area of the City, where no housing has yet been built at all.¹¹

3. The Site Inventory Is Insufficient Based On Typical Densities For Highly Affordable Housing Projects.

If a city uses the minimum density under section 65583.2(c)(1), it can also treat the site as appropriate to develop at that minimum density for lower income housing under section 65583.2(c)(3), which provides that sites with a zoned density of at least 30 units/acre are considered adequate for lower income housing. But if the city does not use the minimum density, as the latest draft now proposes, it must differentiate between market-rate and affordable housing projects in developing a realistic estimate. Here, the City's draft is seriously flawed, because it relies almost exclusively on market-rate, rather than affordable, housing projects in calculating the capacity of the inventory.

Section 65583.2(c)(2) was amended in 2017 (AB 1397) to emphasize that “typical densities” are not sufficient; the relevant evidence from which to make a capacity calculation higher than minimum is by comparison to “typical densities of existing or approved residential developments *at a similar affordability level in that jurisdiction.*” *See also* Government Code § 65583(a)(3) (requiring that sites have a “realistic and demonstrated potential for redevelopment during the planning period to meet the locality’s housing need for a designated income level.”).

A market-rate developer may be able to afford to build 300 units on 2.51 acres, or even 800 units on 6.5 acres, as Sares Regis proposes to do at Patrick Henry. But it is well-recognized that a 100% affordable income development generally cannot afford a project of this magnitude. As the HCD Site Inventory Guidebook explains:

To achieve financial feasibility, many assisted housing developments using state or federal resources are between 50 to 150 units. Parcels that are too small may not support the number of units necessary to be competitive and to access scarce

¹¹ The drafters also made a last-minute change in the creation of Appendix B (the site inventory), claiming that the Patrick Henry area densities should be calculated based on a 72% “percentage of maximum” instead of a 119% “percentage of minimum.” This seemingly minor change makes a big difference – about 728 units – but the current draft of the Housing Element does not “demonstrate” why it is valid or realistic, as required. Government Code § 65583.2(c). The draft of the Housing Element had said that a 119% “percentage of minimum” should be used. Only the Appendix B site inventory, which was not circulated until after 5 p.m. on Friday January 20, 2023 – the last business day before the Planning Commission hearing – shows the new methodology. Note also that in the Tasman East area, with arguably the most similar zoning rules to Patrick Henry, the average “percentage of maximum” based on built and approved market-rate projects is only 50%, further casting doubt on the “72% of maximum” claim for Patrick Henry.

funding resources. Parcels that are large may require very large projects, which may lead to an over concentration of affordable housing in one location, or may add cost to a project by requiring a developer to purchase more land than is needed, or render a project ineligible for funding.

HCD Site Inventory Guidebook (May 2020) at p. 15. These limitations are why the Legislature provided in AB 1397 that sites smaller than 0.5 acres, or larger than 10 acres, are usually ineligible, absent a specific evidentiary showing, to accommodate the need for lower income housing. *Id.*; Government Code § 65583.2(c)(2)(A) and (B). Indeed, the same law that added section 65583.2(c)(2)(A) and (B) also added the “similar affordability level” language to subsection (c)(2); the Legislature simultaneously added several provisions to ensure that site inventories realistically evaluate whether affordable housing will be produced. AB 1397 (Stats. 2017 ch. 375).

In order to depart from the minimum density, the draft would therefore need to show not just that market-rate projects can achieve higher-than-minimum densities like the 160% average in Lawrence Station, or 206% average in Tasman East, but that “typical densities” for a 100% affordable housing project do so as well, including at the very high densities projected for these sites.

Santa Clara’s draft fails to make this required showing. Of the projects on Table 13.6-3, or even the longer list discussed in the previous section, there is only one project that can be described as having a “similar” level of affordable housing (i.e., 100% affordable): the 1.08 acre project at 2904 Corvin. That project fits the general range of size for affordable housing – at 163 affordable units, it is close to the 50-150 unit range discussed by HCD. But it is one-of-a-kind: the first supportive housing in the City, heavily subsidized, and the only affordable housing project built in any of the three Specific Plan areas. One-of-a-kind is not “typical.”

The remaining site inventory in Tasman East, Lawrence Station, and Patrick Henry is projected to meet the needs for very low-, low-, and moderate-incomes (*see* p. 13.6-10, splitting the capacity 33.33 percent each to very low-, low- and moderate-incomes). Yet the data to support the claimed densities is based exclusively on market-rate projects that did not have this mix of affordability. In the Tasman East area, table 13.6-2 shows that of eleven projects, building 4,459 units of housing, the number of units of very low- and low-income housing accommodated is: zero. This shows that there are not “typical densities of existing or approved residential developments at a similar level of affordability” for this area. As stated above, there has been no housing built or approved in the Patrick Henry area at all; there is no “typical” market-rate project there, much less a typical density for a project with the level of affordability calculated by the inventory.

If Santa Clara wants to estimate a realistic production of affordable housing in the Tasman East, Lawrence Station, and Patrick Henry areas, where large, high density market-rate projects are being built, then it should estimate how much lower-income housing will be built

there based on the actual data.¹² That data shows that housing affordable to those in the very low-, low-, and moderate-income categories is produced at a rate somewhat less than the 12% inclusionary housing mandate under city law. (Which, notably, leads mostly to inclusion of moderate units and no very low- or low-income units for a large number of projects, *see* Table 13.6-2 (Pending and Approved Projects)). The draft fails to make a showing sufficient to satisfy section 65583.2(c), as amended by AB 1397. The real data shows that the current site inventory will never achieve the claimed production of affordable housing that Santa Clara presents in the Housing Element, or that is necessary to accommodate the needs of the community.

The solution is to determine the realistic capacity of the new high-density neighborhoods by projecting market-rate projects with their typical complement of affordable units, and then to supplement it with smaller, geographically dispersed sites to accommodate the remainder of the very low-, low-, and moderate-income need on sites that are realistic in scale and density for affordable housing projects. The City's experience shows that affordable housing developers build within a half-mile of grocery stores and that they build projects in the range of 50-150 units. Building in the Patrick Henry area, for example, satisfies neither of these – the area is currently a food desert (more than one mile to a grocery store) – and the parcel size and minimum density exceeds anything that is realistic and demonstrated for a project with 100% affordable housing.¹³ The City has numerous other opportunities for places where affordable housing developers could realistically build housing, e.g., along El Camino Real, or Stevens Creek Boulevard – if only the City would commit to rezoning to allow housing to be built there. Affordable housing developers should not have to run a years-long gauntlet of seeking special permission to build housing on realistic, underutilized sites, as was done with the Catholic Charities project at 1601 Civic Center. Adequate, available, realistic sites should be rezoned throughout the city to make it possible to realistically build the required amount of housing affordable to all income levels during the next eight years.

¹² If the City instead wants to rely on statutory presumptions like the “deemed adequate” statutory rule of section 65583.2(c)(3) to claim that these sites can be used for lower income housing, it should limit itself to the minimum densities that state law compels HCD to accept. The City's planners may know that even the minimum densities are not realistic for the largest sites (given that the size of the projects substantially exceeds what affordable developers actually build), but they would be able to rely on the statutory presumption, rather than speculative and unrealistic math.

¹³ For example, the projections that the need for 972 units of housing affordable to those with very low, low, or moderate incomes will be met by a project at 4701 Patrick Henry Drive, a 687-unit 100% affordable housing project at 3055 Patrick Henry, or a 664-unit 100% affordable housing project at 3350 Central Expressway, is simply not realistic. The City's experience with affordable projects matches well the HCD guidance about projects of 50-150 units.

C. Land Zoned As Parks And Roads Is Not Available For Housing, And Should Be Removed From The Site Inventory.

Santa Clara's Specific Plan process has had significant success in beginning to create new vibrant neighborhoods for housing in the city. As part of the Specific Plan process, industrial parks were rezoned as high-density residential. However, portions of each Specific Plan area were not zoned as residential, but instead were zoned as either public right of way or for open space/parks. These portions cannot be included on the site inventory, and the portions of the parcels that are zoned non-residential should not be counted towards the realistic capacity. *See Government Code § 65583.2(a); 65583.2(c).*¹⁴

The Lawrence Station Area Plan zoned a strip of land running east-west across the district for parkland, running along what is now named Feliz Road. Part of that park has been built on the portion of the area that has developed as housing: a basketball court between La Rambla and Copper, and the Nuevo Community Garden between Copper and Pancoast. At Pancoast – the edge of the office/R&D park owned by Gemini/Rosemont (see below) – the park and Feliz Road end. Under the zoning laws of Santa Clara, however, if the Gemini/Rosemont owned parcels do end up being developed, the portion zoned as a public right of way (the continuation of Feliz Road) and parkland will not be housing. By failing to deduct the portion of the site that has been zoned as a new public right of way, and as open space/park, Santa Clara overstates the acreage available for development. While the City may have better information on this, based on our rough measurement, it would appear that approximately 2.33 acres of parcels 216-34-084 and -085 are zoned for “public right of way” or “Parks/Open Space” based on the Lawrence Station Area Plan.

The Patrick Henry Specific Plan likewise has zoned a substantial amount of open space/parkland, and new public roadways, to support the development of this neighborhood. While some of these plans may not come to fruition – the two data centers on parcels APN 104-04-076 and -077 will likely not be developed as housing in the next eight years, and the City is unlikely to “take” the land from the data center parcels for a park as shown on the Specific Plan – but other parcels on the inventory do include portions that were zoned “Open Space” (shown in

¹⁴ Under Government Code section 65583.2(a), site inventory can include only (1) vacant sites zoned residential, (2) vacant sites zoned for nonresidential but where residential development is permitted, (3) residentially zoned sites that are capable of being developed at a higher density, or (4) sites that can be redeveloped as residential where there is a plan to rezone the site for residential use. Land zoned as open space, or as a public right-of-way, does not fall under any of these categories because under residential construction is not allowed.

A different way of reaching the same result is that the land not zoned as residential is not properly included in the buildable area of the parcel, affecting the realistic capacity calculation. *See Government Code § 65583.2(c)(2)* (requiring adjustment of the number of units based on “land use controls”).

green on page 13.6-26). It thus appears that the following parcels should be adjusted on the inventory based on the portion zoned for residential use, as opposed to the portion zoned “Open Space” or where a new public roadway is indicated. While the City has better and more precise information, and is required to perform this analysis under section 65583.2(c)(2) as part of developing a realistic capacity estimate considering site constraints such as zoning laws, we offer the following estimate based on examination of Figure 13.6-4, and the provided scale, to illustrate that this issue materially affects the acreage available for residential housing:

APN	Gross Acreage	Open Space and Right of Way Zoning	Estimated Net Acreage Zoned Residential
104-04-124	4.7 ac	2.32 acres open space	2.38
104-04-128	2.5 ac	0.36 acres open space	2.14
104-04-094, -095	2.0 2.5	1.12 acres open space	3.38
104-04-131	3.8	0.96 acres public right-of-way	3.14
104-53-016	9.06 ¹⁵	2.17 acres open space and public right-of-way	5.12
104-04-136	3.8	1.42 acres open space and public right-of-way	2.6
104-04-138	1.7	1.12 acres open space ¹⁶	0.58
TOTALS	30.06	9.47 acres open space or public right of way	20.59

For the Tasman East Specific Plan, the zoning situation is the murkiest. No zoning map was drawn showing where the open space/parks will go. Instead, the Specific Plan shows circles with the desired acreage of parkland, 5 acres in all, and describes that each zone of the Specific

¹⁵ For purposes of this argument, we will analyze the 27 parcels of the Great America Technology Park as if they were a single parcel with APN 104-53-016, as shown on Figure 13.6-5. As stated above, there are in fact 27 different parcels, and parcel APN 104-53-016 is only 3,800 square feet. *See* section A.4 above.

¹⁶ The 1.12 acres of open space on this parcel are contingently zoned. If this parcel, zoned “High Density Flex” is developed for nonresidential use (i.e., a higher density office site), then the open space zoning does not apply. The zoning map indicates that the open space requirement only applies if the parcel is developed as high density residential. *See* * on figure 13.6-4 (“*Public parkland only required with residential development.”). Because this argument assumes that the site is properly included on the inventory (*but see* section A.2 above, explaining why it should not be), the parkland requirement would need to be taken into account in evaluating the acreage available for residential development.

Plan is required to dedicate a certain acreage to parkland. *See* Draft Housing Element at Figure 13.6-2 (page 13.6-23); Tasman East Specific Plan at section 03.7 (p. 34).¹⁷ It also shows two public rights-of-way being added, one going north in the vicinity of APN 097-05-058,¹⁸ and the other going south to Tasman Drive across APN 097-05-056. The City does not explain (1) how much of the acreage on the inventory will be devoted to open space and park uses, instead of residential, or (2) how much a 100% affordable housing developer would need to pay the City to avoid this requirement. Assuming that the parkland constraint is in-kind, as the Specific Plan contemplates, then the remaining acreage would need to contribute approximately one acre,¹⁹ instead of developing them for residential use.

In total, the open space/park zoning and public right-of-way zoning reduces considerably the inventory of (nonvacant) land available for residential development, and sharply reduces the number of units.

¹⁷ The Tasman East Specific Plan, as amended through 12/22/20, is available here:
<https://www.santaclaraca.gov/home/showpublisheddocument/72208/637503896853000000>

¹⁸ Here, Figure 13.6-2 would appear to imply that approved project 097-05-059 has dedicated land providing half of the roadway, and that 097-05-058 will be expected to contribute the other half, since the gap between them is approximately half the width of the other streets shown.

¹⁹ This is a very rough estimate: It essentially takes the 1-acre parkland obligation of the “Center District” and treats it as the joint responsibility of all remaining sites. It assumes that the proposed projects have correctly accounted for their share of the parkland dedication obligation, such that their projects comply with City law, even though they have not yet been approved. If this assumption is incorrect, it would show a further problem with the Housing Element: an uncritical acceptance of a project proposal as reflecting a realistic estimate of capacity. The point here remains that it is the City’s obligation to analyze these constraints, not the public’s. Government Code § 65583.2(c)(2). The estimates we provide here are only to illustrate the significance of the issue to the Housing Element as a whole.

Summarizing the impact of the above discussion by using the same methodology applied in Appendix B:

Specific Plan	Acreage reduction for Parks/Right-of-Ways (Nonresidential Zoning)	Estimate of Units To Be Removed From Site Inventory Due To Non-Residential Zoning ²⁰
Lawrence Station	2.33 acres	227 units
Tasman East	~1 acre	215 units
Patrick Henry	9.47 acres	1,084 units
TOTAL		1,526 units to be removed in very low-, low-, and moderate-income categories

There are two solutions, one good and one awful. The good solution is to take the portion of the parcels zoned for parkland/open space or public rights-of-way off the inventory by reducing the acreage claimed on the inventory, to re-do the capacity math, and then to identify other places in the City that can realistically be redeveloped as affordable housing either based on existing zoning or on a plan to rezone. The awful one is amend the Specific Plans, rezone the open space and the street of these parcels as residential housing, and thwart all of the good land use planning work that the City did in adopting the Specific Plans to create livable neighborhoods from industrial parks. We urge the City to remove from the site inventory the claim that residential uses will be built on the open space and public right-of-way portions of the Tasman East, Lawrence Station, and Patrick Henry Specific Plans.

D. The Extensive Re-Use Of Sites Requires A New “Use By Right” Zoning Overlay.

In Government Code section 65583.2(c), nonvacant land listed in a prior housing element but not approved for development must be rezoned within three years so that any housing development in which at least 20 percent of the units are affordable to lower income households is entitled to “residential use by right.” (i.e., no requirement for conditional use permit, planned development permit, or other discretionary local government review). This would prevent subjective and discretionary permit processes – for example, subjective standards for “architectural review” – from being used to block housing projects that provide affordable housing.

The draft Housing Element for 2023-2031 lists nonvacant land listed in a prior housing element but not approved for development: All of the Tasman East sites on the draft for 2023-

²⁰ For purposes of this chart, we assume that the City’s projected densities – at 191% of the minimum for Lawrence Station, 215% of the minimum for Tasman East, or 72% of the maximum for Patrick Henry – are valid. *But see* section B above.

2031 were already used on the site inventory for 2015-2023, and all of the Lawrence Station sites on the draft for 2023-2031 were already used on the site inventory for 2015-2023. *Compare* 2015-2023 Housing Element at tables 8.12-6-4 and 8.12-6-5 *with* draft 2023-2031 Housing Element at tables 13.6-9 and 13.6-10. Under section 65583.2(c), the City is therefore required to implement a program to rezone all of these sites by no later than three years from the adoption of the element, to permit “use by right” for housing developments if 20% of the units are affordable to low or very low income residents.

The City is aware of this requirement, but tries to argue around it, at page 13.6-12 to 13.6-13 of the draft, titled “Re-Use of Sites.” The City argues that because it rezoned the Tasman East and Lawrence Station sites during the 2015-2023 cycle for a higher density to conform to the General Plan, it can count the sites as “new” for purposes of the 2023-2031 cycle, and ignore that they were identified in a prior housing element. The argument will not hold up in court. The statute unambiguously states that if the site is nonvacant, was “identified” in a prior housing element, and was not approved for development, it “shall not be deemed adequate to accommodate a portion of the housing need for lower incomes households . . .” unless rezoned in the new housing element for “use by right.”

Nor does the City’s “rezoning for higher density” argument fit the facts: The sites were rezoned as part of a Government Code section 65583(c) program (albeit late, as explained in the next section). Indeed, if they had not been rezoned, the city would have had a shortfall of sites to address the 2015-2023 RHNA. Moreover, some of them are zoned at the exact same density stated in the 2015-2023 Housing Element. *See, e.g.*, APN 216-33-037.

If the City does not wish to implement a “use by right” overlay, it should remove the Tasman East and Lawrence Station sites from the inventory; almost all of them are being (re-)used to satisfy the very low and low income needs that they were designated to meet in the last Housing Element, and in the absence of a “use by right” rezoning, they do not meet the criteria under 65583.2(c) for being re-used.

E. The City Must Address The Unaccommodated Need From The 2015 Regional Housing Needs Allocation.

The City also failed to implement fully its 2015-2023 Housing Element. The consequence of its failure is that it must address both the unaccommodated 2015-2023 need and the new 2023-2031 need.

Where a city fails to implement a housing element, the unaccommodated need must be quickly accommodated during the next period. Government Code § 65584.09(a). Here, Santa Clara failed to timely implement what it promised in its 2015 Housing Element. The unaccommodated need from that period – the failure to provide adequate sites for lower income housing – carries over, and the city cannot use the same sites to meet both the 2015 need and the 2023 need.

We start with a description of the City’s failure to make available adequate sites to accommodate the regional need identified in 2014. In the 2015-2023 Housing Element, the City stated that it believed the housing need could be accommodated on sites in the El Camino Real, Tasman East, and Lawrence Station “focus areas”: areas that the City’s general plan projected as suitable for rezoning as medium or high density residential, or mixed use, but which were not yet zoned to permit residential development. The Tasman East focus area and Lawrence Station focus area were zoned light industrial. The El Camino Real sites were zoned “thoroughfare commercial” or “community commercial”: zoning that did not permit residential construction. No one could build housing on any of the sites in the inventory without rezoning.

Under section 65583.02(a), the inventory can only include sites that are (1) vacant and zoned for residential use, (2) vacant and zoned to allow residential development, (3) residentially zoned and capable of being developed at a higher density, or (4) “zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, to permit residential use” The 2015 inventory was valid, if at all, because of the planned program to rezone all of the sites on the list under sections 65583.2(a)(4) and 65583(c).

A program to rezone sites to make them available is governed in part by Government Code section 65583(c)(1). That subsection required the City to “identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s . . . share of the regional housing need for each income level that could not be accommodated on sites in the inventory . . . without rezoning” Under section 65583(c), the City was required to “set forth a schedule of actions during the planning period, each with a timeline for implementation . . . such that there will be beneficial impacts of the programs within the planning period”

The City’s 2015-2023 Housing Element explained how it would comply with the law: It would engage in a comprehensive rezoning of the entire city to conform with the general plan, “to bring consistency between the Zoning Ordinance and the General Plan, implementing the General Plan goals by facilitating mixed use development and higher density residential development, protecting existing neighborhoods, and incentivizing redevelopment by appropriate development standards and streamlined procedures.” The City stated that it would complete this action by mid-2016. *See* 2015-2023 Housing Element at pp. 8.12-122 – 8.12-123 (“Action 6: Zoning Ordinance”).

The mid-2016 deadline was important; the action needed to be scheduled “such that there will be beneficial impacts of the programs within the planning period,” and also kept the plan for rezoning on track to take place within the required three years. Government Code § 65583(c)(1)(A). Housing could not be constructed unless it were approved; housing would face more hurdles to approval until the rezoning took place; and so removing the obstacle of light industrial or commercial district zoning needed to take place early in the planning period to

provide developers the ability to propose and proceed with housing built to meet the needs during the 2015-2023 time period.

By mid-2016, the City still had not completed the comprehensive rezoning that it identified as Action 6. The City blamed problems with its outside consultant for not completing it in by the deadline of 2016, and promised it would be done in 2017. But even then, the City didn't complete it. The draft was finally circulated for public comment in summer 2022 – while the City was working on the 2023 Housing Element – and won't be voted on by the City Council until sometime in 2023. The draft 2023-2031 Housing Element acknowledges that Action 6 is incomplete, and now lists the comprehensive zoning ordinance update as Action 9 in the new plan: "Complete the comprehensive update to the Zoning Ordinance by early 2023." (p. 13.2-13).

The City thus did not implement the 2015 Housing Element, and did not rezone, as promised, the sites listed in its 2015-2023 inventory. While the City listed 158 parcels along El Camino Real in its 2015-2023 plan as having the ability to satisfy the housing needs of the community, it left the commercial district zoning in place for the entire 2014-2022 period. To this day, anyone wanting to build housing on most of those parcels (excluding the few that went through the City's discretionary process for a rezoning) needs to apply for a zoning variance, contrary to state law, which required not just an expectation of potential rezoning to match the general plan, but actual implementation of the Housing Element by the City. Meanwhile, the City planning staff proposed a rezoning of these sites repeatedly as part of the El Camino Real Specific Plan, but the City Council still has not taken action, and has deferred further discussion. The program actions in the 2015-2023 Housing Element to rezone or provide adequate sites were thus not fully implemented.

Having failed to implement the rezoning as required by state housing law and promised in the 2015-2023 Housing Element to take place by mid-2016, the City is now subject to section 65584.09, which provides:

[I]f a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

Santa Clara easily accommodated the need for above-moderate income housing during the 2015-2023 period: It issued building permits for 4,606 units. It appears to have accommodated the 2015-2023 need for moderate income housing, at least if project approvals, rather than actually constructed units, are counted. But it fell seriously short for the "very low" and "low" income categories. The City granted building permits for only 289 very-low-income units, 246 low-income units, and 125 units affordable to those with moderate incomes. This leaves a substantial

shortfall to be addressed from the last period, in addition to the substantial new need for the new period.

Even if the City’s rezoning of adequate sites – albeit ones where no affordable housing has been built, and may never be – is counted,²¹ the City has a substantial shortfall:

	Very Low	Low
2015-2023 RHNA Need	1,050	695
Building Permits (from Table 13.7-2)	289	246
“Adequate” Sites Rezoned in Tasman East ²²	121	61
“Adequate” Sites Rezoned in Lawrence Station ²³	13	7
Approvals of Affordable Housing (from Table 13.6-2) ²⁴	163	145

²¹ A reasonable interpretation of the term “unaccommodated portion of the regional housing need allocation” would exclude all deductions from the prior RHNA except affordable housing units actually built. After all, no one’s actual needs are accommodated by housing that was never built. Using building permits as a proxy for this, the unaccommodated very-low-income need would be 761 units, and the unaccommodated low-income need would be 449. However, the distinction might make very little difference to the ultimate math below: Omitting the rezoned adequate sites in Tasman East and Lawrence Station, and omitting the approved affordable housing elsewhere in the City, would result in a higher number for the “unaccommodated portion,” but these sites could then be counted as meeting the 2023-2031 need if they will result in new housing during the next eight years, as the City argues at p. 13.6-2. The critical point here, as explained in the text, is that the City cannot double-count.

We do not think the City can fairly consider the Patrick Henry rezoning as having accommodated any portion of the need from the prior Housing Element, even for those sites that might be considered adequate in the 2023-2031 cycle, given that it was rezoned so late in the period.

²² We do not include the data center or the sites that are smaller than 0.5 acres, because these sites are not adequate, as the City has recognized by removing them from the inventory of sites adequate for lower income housing. We also put “adequate” in quotes here because we have not analyzed whether the other sites are in fact adequate for lower income housing sites (e.g., suitable, available, realistic); the City should do so as part of its analysis.

²³ We do not include the Gemini Rosemont Technology Park, or the data centers on Corvin that were included in the 2015 site inventory but have been deleted from the 2023 site inventory, because these sites are not adequate. We also put “adequate” in quotes here because we have not analyzed whether the other sites are in fact adequate for lower income housing sites (e.g., suitable, available, realistic); the City should do so as part of its analysis.

²⁴ In calculating this number, we attempted to count those projects listed as “approved” (since proposed projects did not meet the need for affordable housing in 2015-2023), and to

Approvals of Affordable Housing: 1601 Civic Center ²⁵	106	
Unaccommodated Portion Of 2015-2023 RHNA:	358	236

In determining the affordable housing requirements for its 2023-2031 Housing Element, the City is not allowed to use the same sites or projects to count toward both the 2015-2023 need and the 2023-2031 need. It must instead plan for both the unaccommodated need and the newly allocated need. *See* Government Code § 65584.09(b). This means that the City's analysis at page 13.6-2 is flawed because it engages in double-counting: The City is claiming that the building permits and approvals from 2015-2023 accommodated a portion of the housing need for that period *and* that the same building permits and approvals from 2015-2023 address the newly allocated need for 2023-2031.

Again, the City's failure to follow through on its 2015 Housing Element has a consequence: the City is now obliged to meet the unaccommodated need from the 2015-2022 period as well as the regional need identified for the 2023-2031 period. Adequate sites must be rezoned within one year to address this unaccommodated portion of the 2015-2023 RHNA need.

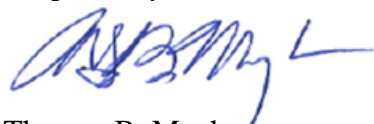
avoid double-counting those projects that were counted towards building permit goals on Table 13.6-2. We believe that 3905 Freedom, Gateway, and Agrihood were not counted towards building permits, but that Clara Gardens, The Meridian, and 2330 Monroe each had building permits issued and were counted in Table 13.6-2. The City planning department should perform the calculation itself using the information available to it; this calculation should be viewed as illustrative.

²⁵ We note that this site is not included in the Housing Element. If the City has information that it will not be developed, or that the approval is not final, then it would be removed from this calculation.

F. Conclusion: The Draft Housing Element Cannot Be Certified.

The issues identified in this letter show that the “Adoption Draft” is not yet ready for adoption at all. It contains unrealistic sites, unsupported projections, claims that lower income housing can be built on sites zoned as open space or even public right-of-ways, and other violations of state law. The City cannot make the required findings to support it, because it lacks the evidence to support the claims it makes about whether the existing inventory is sufficient to meet the considerable and pressing need for housing at all levels of affordability. While meeting the deadline is important, passing a valid Housing Element is even more so. It is better to be late than to be wrong, and the City should not want to see its Housing Element invalidated by the State or a court.

Respectfully submitted,



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June 23, 2023

Via E-Mail

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Re: City of Santa Clara Revised Draft Housing Element
Comments of Housing Action Coalition

Dear Mayor, Vice Mayor, Members of the City Counsel, and Planning Commissioners:

On behalf of the Housing Action Coalition,¹ we write to provide comments on the most recent draft of the 2023-2031 Housing Element for the City of Santa Clara in advance of the City Council meeting scheduled for June 27, 2023.

The revised draft overstates the site inventory 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 sites that are not vacant without proof 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.

A. The City Includes Sites That Are Not "Suitable And Available," And Do Not Have A "Realistic And Demonstrated Potential" For Redevelopment During The Planning Period To Meet The Need For Housing.

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.

As we have previously commented, sites may not be included as addressing the need for housing affordable to lower income households unless there is substantial evidence that the existing nonresidential use will discontinue during the sixth cycle (i.e., before January 31, 2023). Unfortunately, the revised draft again fails to analyze the evidence on a site-by-site basis with respect to this requirement, and instead makes broad and unsupported statements about the likelihood of redevelopment. Below, we provide two examples of continued failures with respect to this requirement. However, we note that it is the City's obligation not to include sites without evidence, not the community's obligation to uncover why a site is unlikely to redevelop. The repeated inclusion of completely unrealistic sites—including a city fire station, six data centers worth tens of millions of dollars each, and most recently in the draft adopted in January, the very large Gemini Rosemont site that city staff knew was unlikely to redevelop but included anyway, even while having meetings with the owner about building more research and development facilities on the property—should cause significant concern that the City's newest version will also fail to comply with this requirement. The lack of site-specific evidence for most of the sites, including all of the newly added sites along El Camino Real, does not comply with Government Code section 66683.2(g)(1) and (2).

1. Patrick Henry Drive Specific Plan – Marriott Center

The City's inclusion of the Marriott Center sites (also known as the Great America Technology Park) continues its pattern of including unrealistic properties in its site inventory for which it has done little due diligence about developable potential.² As the Marriott Center property is not under common ownership, the City has not adequately shown that all of the owners are on board with redevelopment. The Marriott Center is subdivided into 27 separate parcels owned by 11 different property owners.

The City points to the amendment of the Covenants, Conditions, and Restrictions for Marriott Center Owners Association as showing likely redevelopment. The amendment to the CC&R's allows the Marriott Center to cover costs related to preparing the properties for sale, including costs related to surveys, engineering, and environmental evaluations. However, this amendment was signed by only 77 percent of the ownership, meaning that 23 percent of owners did not endorse the idea of spending money to sell the Marriott Center properties. For example, one such owner, Benson Yeung, owner of APN 104-53-019, even informed the City of his objection to the amendment. Mr. Yeung also noted that the Marriott Center Owners did not have a joint agreement for the sale or planned sale of their properties. Therefore, despite the passage of the CC&R amendment providing funding to prepare the properties for sale, there is no consensus among the Marriott Center Owners that they will jointly sell their parcels for redevelopment. Without such an agreement among the owners, the City has not shown that the Marriott Center property is "suitable and available with a "realistic and demonstrated potential"

² In our January comment letter to the Santa Clara City Council we discuss at length that the Gemini Rosemont Technology Park was included in the site inventory despite \$62+ million recent renovations to the buildings and long-term leases with technology tenants in place.

for redevelopment, and there is not substantial evidence that the existing use is likely to cease in favor of residential housing before January 31, 2031.

Because all of the Marriott Center Owners have not endorsed a redevelopment plan, the City should remove the 27 parcels from the site inventory in their entirety. The parcels cannot be included in the City's site inventory based on their endorsement of the CC&R amendment as 26 of the 27 parcels are under 0.5 acres in size and would need to be excluded from the site inventory because the City has not shown that there is evidence that sites this small will redevelop for lower income affordable housing.³ The one parcel that is greater than 0.5 acres is the common area parcel that includes parking, driveways, and access for the other 26 parcels. Per section 7.5 of the CC&Rs any lot's interest in the common area cannot be transferred independently nor may the common area be partitioned. Until there is a joint agreement between the Marriott Center Owners showing an intent to sell or redevelop all properties, the nine acres at 4701 Patrick Henry Drive should be excluded from Site Inventory.

2. Lawrence Area Station Plan – 3450 Central Expressway

The draft continues to include 3450 Central Expressway, claiming it is likely to redevelop based on an undocumented phone conversation, including an assertion that the lease of the existing technology company tenant could be bought out. This is legally sufficient.

While it is *possible* the owner of 3450 Central Expressway is genuinely interested in redeveloping the site for housing, the evidence the City relies on in reaching this conclusion is lacking. In addition to this stated interest, Santa Clara cites the mere existence of a lease buy-out provision as an indication that the 3450 Central Expressway is likely to be redeveloped within the RHNA planning cycle and should, therefore, remain on the Sites Inventory. To reach this conclusion, some basic analysis of the feasibility of exercising the buy-out is required. How much would it cost the owner to buy-out the tenant? Is it realistic (and not just theoretical) that they would do so? Without additional information regarding the terms of the buy-out *and* some analysis of the feasibility of development in light of the additional costs associated with the buy-out, Santa Clara cannot realistically claim it is likely a site that is occupied by an operating industrial tenant whose lease extends beyond the planning period will be redeveloped for residential use during the planning period.

B. The City's Realistic Capacity Calculations Are Flawed

On behalf of HAC, we submitted comments to HCD explaining flaws with Santa Clara's approach to calculating the realistic capacity of sites on the inventory to accommodate the need for housing at all levels of affordability. We encourage the Council to review our February 23, 2023, comments, which staff have attached to the revised draft Housing Element at pages A-120 through A-134.

³ See 65583.2(c)(2)(A).

Here, we wish to focus the Council's attention on the draft's methodology for estimating the RHNA capacity of twelve sites in the Patrick Henry Drive Specific Plan Area, which is claimed to meet over 60% of the RHNA for very-low income households, and almost 79% of the RHNA for low income households. Unlike its approach with other sites on the site inventory, for the twelve sites in the Patrick Henry Drive Focus Area, Santa Clara in the June 2023 revisions estimates the realistic capacity to meet the RHNA by multiplying the maximum zoned density by 72%.

First, we note that the "percentage of maximum" approach is an unreasoned approach to estimating realistic capacity. 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.

Second, the latest revision proposes a new rationale: that the 72% is "[b]ased on Specific Plan assumptions about buildout phasing." Revised Housing Element Draft – Redlined, Page 13.6-12. The Patrick Henry Specific Plan estimated that 8,073 units would be constructed during "Phase 1" and "Phase 2"; dividing 8,073 by 11,150 (a midpoint between two assumptions about the total yield, one assuming zero units in the 4633, 4655, 4677, and 4699 Patrick Henry Drive Specific Plan parcels along Old Ironsides Drive owned by Pearlman Properties, a real estate investment company, and the other assuming that the owner there would develop 1,700 units) is 72% when rounded off. But this method does not comply with the requirements of 65583.2(c). It does not take into account what the statute says "shall" be used in determining the capacity number: 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.

Third, while a "percentage of maximum" approach is invalid and does not provide useful indicators of the likely capacity of a site, the June 2023 revision ignores even the limited "percentage of maximum" data that it has, in violation of the statute. AB 1397, as codified in section 65583.2(c)(2), requires jurisdictions to consider "typical densities of existing or approved residential developments at a similar level of affordability in that jurisdiction." The June 2023 draft does not comply with this requirement. Because the twelve Patrick Henry sites are claimed to meet the very-low, low, and moderate income RHNA need – 100% affordable housing – a realistic capacity estimate would need to examine yields of 100% affordable projects in Specific Plan areas that are comparable. Here, the Tasman East Specific Plan area has the most similar land use controls to Patrick Henry, and there are two 100% affordable projects: 2233 Calle Del Mundo and 2302/2310 Calle Del Mundo. (See Table 13.6-3, Note 1). There were only 347 units approved on those 1.99 acres of land, for an average density of 174 du/ac. 174 du/ac is only 49.8% of the "maximum" density of 350 for those two sites, much less than the 72% percentage of maximum approach used by the June 2023 draft.

Fourth, even a 50% “percentage of maximum” statistic would overestimate the realistic capacity of the Patrick Henry sites to meet the lower and moderate income RHNA need, however, because the Patrick Henry sites are so much larger than the two ~1 acre 100% affordable projects in the Tasman East area. The Legislature recognized in section 65583.2(c) that 100% affordable housing projects rarely exceed 50-150 units, and therefore required jurisdictions to justify including sites larger than 10 acres as realistic for lower income affordable developments. Here, by using a percentage of maximum approach on relatively large sites with the very high maximum densities of the Patrick Henry Specific Plan, the result is to project that these sites will yield 500-1,000 units of affordable housing on a single site. This is simply not realistic.

Fifth, as noted in our letter to HCD on February 23, 2023, about the inappropriateness of the 72% of maximum approach, the methodology fails to account for the fact that some of the Patrick Henry sites have a significant portion zoned as parkland or right-of-ways (for one of the parcels, almost half), which would require an affordable developer to develop the remainder of the parcel at an even higher density, which is unrealistic. Projecting that 500+ units of affordable housing will be built on a 4.7 acre parcel is unreasonable; claiming that an affordable housing developer will build twice as high to fit the same number of units on half the land, given parkland dedication requirements, is absurd.

Sixth, the June 2023 draft’s rationale – Patrick Henry Phase 1 and 2 buildout estimates divided by the total –does not address the goal of estimating the realistic capacity to satisfy the RHNA need *during the sixth cycle planning period*. While Phase 1 is from 2025-2029, most of Phase 2 is outside the sixth cycle: it extends from 2030-2034. Even if one accepts the questionable logic behind the draft’s rationale, only a small portion of Phase 2 buildout should be used, because only a small portion of Phase 2 takes place before January 31, 2031 (the end of the sixth cycle). If a prorated portion of Phase 2 were used – 20% because only one of the five years of Phase 2 is in the sixth cycle – then the calculation would justify a percentage of only 56%, not 72% ($5,839 + (2,234 \times 0.2) = 6,286$, and $6,286$ divided by $11,150$ is 56%).

Finally, the draft ignores its own statement about what the truly realistic capacity of these twelve sites is to address the lower and moderate income RHNA need. As the draft says at page 13.6-21, “Developments will provide 15 percent affordable units split equally between three affordability levels of 50 percent, 80 percent, and 120 percent of Area Median Income.” A truly realistic analysis would be that these very large sites, to the extent that the existing uses are discontinued in favor of redevelopment, will be developed as market rate projects, and will yield only 15% affordable units. (Indeed, each of the three projects proposed in Patrick Henry so far has proposed only 15% affordable units; there is no reason to expect that other developers will go further.) Under that analysis, of the 4,345 units projected for the Patrick Henry sites, only 15% of them will address the need for affordable housing: 651 units total for the very low, low, and moderate income categories. We suspect that Santa Clara would rather claim the safe harbor of minimum density, rather than using this truly realistic estimate.

In summary, this analysis shows that Santa Clara is not yet ready to adopt a legally compliant Housing Element. By using a 72% percentage of maximum methodology for Patrick

Henry capacities, the revised draft dramatically overstates the degree to which affordable housing will be built during the 2023-2031 planning period. If the number in the draft is properly adjusted downward – to the truly realistic capacity of 651 units, or even the minimum density safe harbor, the City would see that it needs to rezone a significant number of additional realistic sites to meet its legal obligations to legalize the building of affordable housing.

C. 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 did not rezone a large number of sites on the El Camino Real, leaving the need for lower income housing unaccommodated. While rezoning some of those sites now will help, 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, under Government Code section 65584.09(a), as explained at greater length in our November 30, 2022 letter.


D. Conclusion: The Draft Housing Element Should be Revised

The issues identified in this letter show that the Revised Draft is not yet ready for adoption. It contains unrealistic sites and unsupported projections and so does not comply with state law. The City Council should direct staff to revise this draft by identifying additional realistic and available sites to include on 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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CJH:gdg

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