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May 20, 2009

Paul McDougal
Department of Housing and Community Development
1800 Third Street
Sacramento, CA 95811-6942

Re: City of Concord Draft Housing Element

Dear Mr. McDougal:

On behalf of the Community Coalition for a Sustainable Concord, we submit these comments on the City of Concord's March 27, 2009, draft housing element. Representing thousands of Concord residents and a broad array of community interests, the Community Coalition is a groundbreaking collaborative of neighborhood, faith-based, environmental, housing, labor, transportation, and smart-growth organizations that has worked since 2007 to ensure equitable, sustainable, and forward-looking development of the Concord Naval Weapons Station.¹ The Community Coalition has a strong interest in development beyond the Weapons Station, and welcomes the opportunity to comment to HCD on the draft Housing Element.

The Community Coalition feels a particular urgency to comment at this stage because of unfortunate inadequacies in the City's public process. The City submitted this draft to HCD for its review before giving the community any opportunity to provide input on it. Had the Community Coalition been afforded a chance to comment, many of the shortcomings in the draft might well have been avoided.

Those shortcomings are quite serious, extending not only to the development of the Draft without meaningful public participation, but also to the failure of the Draft to:

- Include any discussion of the City's obligation under AB 1233 to rezone sites in the first year of the new planning period to accommodate 470 high-density units that were not accommodated in the prior period. (This rezoning was to have resulted from Program 1.1a, the completion of which

¹ A complete list of the members of CCSC is attached.

was a condition of HCD's conditional approval of the prior element, and which was not implemented.)

- Discuss the fact that its inventory of sites, as currently zoned, leaves a significant shortfall in accommodating its very-low and low-income RHNA need. Among other things, the projected lower-income residential potential relies heavily on very small sites, and overwhelmingly on mixed-use development that, in the prior period, produced only market-rate units.
- Include an appropriate discussion of the accomplishments and shortcomings of its implementation of the prior Element, including its failure to undertake both the promised rezoning and the promised update of its Zoning Code.
- Include an adequate sites program that will make up the difference, and that will do so, for at least 50 percent of the units, on sites that will be zoned for exclusively residential use, as required by AB 2348.
- Discuss detailed assessments of key funding and affordable housing programs, notably the City's 2004 inclusionary housing ordinance and the Redevelopment Agency's low- and moderate-income housing fund expenditures.

Unfortunately, the City's track record in the last planning period is not strong, and it is on track once again to overproduce market-rate housing while falling far short of its goals for lower-income units.

1. Concord has a long history of failing to meet its need for lower income housing while dramatically over-producing above-moderate income housing.

Between 1999 and 2006, Concord produced only 27% of the housing need for moderate, low, and very-low income households. At the same time, it produced 244% of the housing need for above-moderate income residents. During the 1990 Planning Period, the City produced even fewer affordable housing units – just 41 very-low income units towards a RHNA allocation of 785, and 15 low-income units towards an allocation of 628. And the City has approved 270 market rate units since the new planning period began in 2007, but only 1 moderate-income unit and 1 low-income unit. It has not approved *any* very-low income units during this same period. Thus, two years into the housing element planning period, the City has approved 18% of its RHNA allocation for above-moderate income housing, while approving only a single unit towards a lower income housing allocation of 1,065 units.

	Very-Low	Low	Moderate	Above-Moderate
1989-99 RHNA	785	628		
Units and % Met	41 5%	15 2%		
1999-07 RHNA	453	273	606	987
Units and % Met	124 27%	85 31%	76 13%	2,216 225%
2007-14 RHNA	639	426	498	1,480
Units Met to Date	0	1	3	323

Sources: Concord 2003 Housing Element, Ch. 5, pp. 5-79 to 5-80; CNWS Draft EIR, Ch. 13, pp. 13-6 to 13-8; ABAG 1983 Housing Needs Determinations Report: San Francisco Bay Region.

While housing in Concord was becoming more expensive and its housing stock skewed towards high end homes, incomes were declining. From 2000 to 2007, the median household income declined more than \$5,000 from \$71,720 (2008 adjusted) to \$65,809 (2008 adjusted).

The consistent under-production of affordable housing has contributed to a severe housing crisis in Concord. By 2007, 46% of homeowners and 51% of renters in the City were spending more than 35% of their income on housing. This represents a dramatic increase in households overpaying for housing from the start of the last housing element planning period, when just 17% of homeowners and 33% of renters were spending more than 35% of their income on housing.

Both owning and renting in Concord remain unaffordable to low and very-low income households. Unemployment in Contra Costa County nearly doubled from April 2008 to February 2009, rising from 5.1% to 9.6%. Unemployment in Concord is even higher than the County average, standing at 10.1% in February 2009. County food stamp applications in January 2009 were up 28% from January 2007, and more than 6,500 people per month are seeking food at Concord's Monument Crisis Center.

Moreover, while the current market crisis is undeniably severe and will likely last for a number of years, Concord's housing trends over the past 25 years suggest that the City will experience a growing need for affordable housing during this and subsequent planning periods. Without stronger affordable housing policies, this need will continue to go unmet, with negative impacts on the regional economy, the achievement of the state's greenhouse gas reduction goals, and the inclusion of lower-income families.

A first step in any housing element update is "[a] thorough review [of the prior element, which] facilitates a comprehensive update and ensures the element can be effectively implemented in the

next planning period.”² Specifically, Section 65588 (a) required Concord to review its prior housing element to evaluate (1) the appropriateness of its housing goals, objectives, and policies, (2) the effectiveness of the housing element policies and programs in attaining those goals and objectives, and (3) the City’s implementation progress.

The Draft falls well short of a meaningful analysis of the successes and failures of the prior element. It includes no explanation of the City’s failure to implement the rezoning required by Program 1.1a as a condition of HCD’s approval, or the long delay in the revision of the Zoning Ordinance; no analysis of the fact that Concord did not achieve a single unit of affordable housing in mixed-use development; no analysis of the reported outcomes of its inclusionary housing ordinance; and no explanation of whether any at-risk subsidized units were lost in the prior planning period. In general, there is no analysis of the disappointing results of half a dozen programs that were included in the prior Housing Element to increase the supply of new affordable housing.

It is a cause for particular concern that, after failing to provide a careful review of what went wrong in the prior period, the Draft goes on to replicate a number of the same programs that failed to deliver in the last Element. (Compare, e.g., former Programs 1.4a and 1.4g with new Programs H-1.5.1 and H-1.5.3.)

2. The draft Housing Element was developed without meaningful public participation.

California law requires each local government to “make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.” (Government Code § 65583(c)(7).) As your Department has explained, an adequate public participation process serves a number of crucial functions: it ensures responsiveness to community priorities, creates community buy-in, minimizes future opposition to affordable housing development, increases the efficiency and relevance of housing programs, and brings together a diverse cross section of the community.³

² http://www.hcd.ca.gov/hpd/housing_element2/GS_reviewandrevise.php.

³ “The public participation requirement of housing element law presents an opportunity to engage constituents in a dialogue – defining problems and creating solutions. The inclusion of community stakeholders in the housing element public participation process helps ensure appropriate housing strategies are more efficiently and effectively evaluated, developed, and implemented. An inadequate public participation process may lead to community conflict or in worse case scenarios, anti-development initiatives, and NIMBYism. Successful public participation is important because a diverse cross section of the population can be engaged in defining the housing problem and in crafting community sensitive solutions. Another benefit of broad participation and true engagement of the public is that when it is time to adopt housing strategies and approve housing developments, a greater portion of the community has been involved and participated in the plan and more frequently will support its implementation. Meaningful participation creates stakeholders in the ultimate outcome of the process.” See http://www.hcd.ca.gov/hpd/housing_element2/GS_publicparticipation.php.

Concord fell short in two critical respects: (1) its absolute failure to provide its Draft to the public before sending it to HCD for review, and (2) its inadequate public outreach.

First, the City did not offer any opportunity whatsoever for the public to review or comment on its Draft before sending it to HCD for compliance review. This is a fundamental failing, and is especially troubling in a community that has demonstrated its strong interest in long-range planning discussions, as we discuss below.

Second, while the City produced educational materials (documented extensively in Appendix C of the Draft), it succeeded in attracting only eight people to single workshop for the general public, a “community workshop” held for Concord residents on September 27, 2008. There is no indication that any of these residents were lower-income or non-English-speaking.

The City did not notify the Community Coalition of this sole workshop, but only of a “focus group” meeting for housing and planning professionals that it held on September 29, 2008.⁴ (Two members of the Community Coalition were among the seven professionals in attendance at this focus group.) The City’s failure to engage the Community Coalition in the development of a housing element participation process, or even notify the Coalition of that single public workshop, is surprising. The Coalition is certainly well known to the City after two years of active engagement in the Weapons Station planning process.

These extraordinarily low public participation numbers cannot be explained by lack of community interest or understanding, as might be the case in some communities. Over the past three years, hundreds of Concord community members have participated in dozens of meetings on the Concord Naval Weapons Station reuse planning process. Thousands more have followed the process and many of them have engaged through written comments and community meetings. Through this process, these residents have expressed their interest in, and developed a working knowledge of, long-term planning relating to housing, homelessness, employment, and land-use. This educated and engaged population is a remarkable community resource, yet the City made little effort to tap into that resource in updating its housing element. Any diligent effort on the part of the City to achieve public participation in the development of the housing element would have yielded an order of magnitude more than the number who actually participated.

The Community Coalition’s broad membership base would have provided an easily accessible resource for the City to turn to in organizing the housing element public participation process and mobilizing actual participation by all segments of the community. Its thousands of grassroots members represent a wide spectrum of economic and social groups. Coalition member Contra Costa Interfaith Supporting Community Organization (CCISCO) has a strong interfaith base in Concord, including many lower income and Spanish language speaking residents. The CNWS Neighborhood Alliance includes nearly 2,000 members. The Contra

⁴ While the 400-person telephone survey conducted in early 2008 provided some information to the City about the housing priorities of Concord residents, it did not provide the space for community dialogue, in-depth community input, or specific housing element buy-in that lie at the heart the statutory public participation requirement.

Costa Central Labor Council and Carpenters Local Union 152 represent thousands of workers in Concord and the County. Members of East Bay Housing Organizations provide housing and services to hundreds of low-income people in Concord, and thousands in Contra Costa County. The Community Coalition has routinely turned out large numbers of residents, including residents of Concord's low-income communities of color, such as the Monument Corridor, for Weapons Station planning meetings.⁵

In addition to the lack of a meaningful public process, the draft housing element is wholly inadequate for a number of reasons as follows:

3. Concord is subject to immediate rezoning under AB 1233.

Concord's prior Element was granted a conditional approval in 2003. The condition of HCD's finding of compliance was "the City's successful implementation of Program 1.1a to rezone 26 acres at densities up to 24 units per acre" by 2004. (HCD Letter of Mar. 7, 2003.)

On January 3, 2006, HCD responded to the City's request for an extension of that deadline to June 2006. HCD granted a "one-time" extension based on a pledge on which the City did not deliver:

The early availability of sites with appropriate zoning is critically important to meeting Concord's housing needs. However, *the City has pledged an aggressive General Plan Update schedule that will result in concurrent zoning and increased residential capacity with higher density by June 2006.* For these reasons, the Department approves a one-time extension of the conditional compliance deadline until June 2006.

(HCD letter to P Woods, Jan. 3, 2006 (emphasis added).) Three years later, the promised Zoning Ordinance Update has not yet been adopted. (See Draft, page 4-6, n.24 ("The City has not adopted the Zoning Ordinance as of this writing. Hence the General Plan Land Use designations are used in place of zoning.")) Nor has city-initiated rezoning of 26 acres, to accommodate 470 high-density units, taken place.⁶ In fact, the Draft programs do not even include a date by which the new Zoning Ordinance will be adopted, but simply state that "the comprehensive Zoning Ordinance Update . . . is currently underway." (See Draft Programs on pages 7-4, 7-5, 7-7, 7-14, 7-15, 7-21, 7-24.)

⁵ In addition to the Community Coalition, the City could have utilized its distribution list for the Naval Weapons Station planning process to engage the public in the housing element update. The large and engaged group of community members and experts participating in the reuse planning process have a natural interest in the housing element update, and should have been invited to participate in its development.

⁶ Program 1.1a rezoning was to be accomplished at the *City's* initiative on "key housing opportunity sites" (see HCD letter of Sep. 30, 2002) to accommodate unmet *lower-income* RHNA need. Instead, the City claims as accomplishments under this Program that it conducted *developer*-initiated rezoning on nine sites that "were not identified in the prior Housing Element," producing 976 units, of which 944 (97 percent) were market-rate units. Draft, page 6-5. The simple fact is that Program 1.1a was not implemented.

AB 1233 provides that

For housing elements due pursuant to Section 65588 on or after January 1, 2006, if 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.

(Government Code § 65584.09.) As HCD has noted, this Section “will apply to local governments that . . . adopted a housing element found out of compliance by HCD due to their failure to substantially comply with the adequate sites requirement [or] failed to implement the adequate sites programs to make sites available within the planning period”⁷

As a result of its failure to meet the conditions of HCD’s approval, and its failure to implement its adequate sites program to make sites available during the prior planning period to accommodate 470 high-density units, the City is subject to AB 1233. It must accommodate those units on sites that are rezoned within the first year of the new planning period, in addition to accommodating its new lower-income RHNA share of 1,065 units, for a total of over 1,500 very-low and low-income units.

4. Concord’s site inventory falls short of providing currently zoned sites to accommodate its current and past RHNA shares of affordable housing.

Section 65583.2 (c) requires the Element’s inventory “determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period” and “to determine the number of housing units that can be accommodated on each site.” The inventory does not include a breakdown of projected units by income level for any site (see App. A), and the Draft does not include the required analysis. We address the inventoried sites for high and medium density housing by zoning district, and conclude that they realistically accommodate only a small fraction of the City’s lower-income housing need.

Mixed-Use Sites: The Draft assumes that the lion’s share of lower-income units will be accommodated on sites zoned for mixed-use. (Draft at page 4-5, Table 4.1-2.) In fact, it projects that 2,130 mixed-use units may be developed by 2014, and makes the implausible assumption that every one of those units will be affordable, most at the very-low and low-income levels.⁸

⁷ Memo of June 20, 2007, from Cathy Creswell re: Application of Government Code Section 65584.09, available at http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_1233_final_dt.pdf.

⁸ Specifically, it assumes that “[t]he Very Low and Low-Income group include sites in Downtown Mixed Use, Downtown Pedestrian District, and High Density Residential General Plan Land Use areas with average expected densities ranging from 50 to 65 du/acre.” (Draft at page 4-5, Table 4.1-2, n.2.)

(*Id.*) Concord's past experience with mixed-use development, on the contrary, is that it has not produced a single affordable unit. The only accomplishment under Program 1.4e (Mixed-Use Development) that the Draft cites is a 100 percent market rate condominium project, Renaissance Square. (Draft, page 6-14.)

At most, the City can reasonably anticipate a share of affordable units in mixed-use developments based on the share its inclusionary zoning ordinance requires. The inclusionary ordinance, as described below, is not reasonably likely to yield more than a maximum of 10 percent very-low and low-income units. Since it calls for *either* 10 percent at low-income *or* 6 percent at very-low, and since it provides a right to opt out by paying a very low in-lieu fee, it is likely to yield far less. Of the projected 2,130 mixed-use units, this amounts to a likely total of no more than **213** lower-income units (assuming 10 percent and no in-lieu fee paid), and a realistic probability of under **128** (assuming 6 percent).

Residentially-zoned Sites: The Draft does not dispute that the AB 2348 default density of at least 30 units per acre will be necessary to accommodate the City's lower-income RHNA. Concord's current Zoning Code provides for only one high-density multi-family residential district, the M-1 district, that allows that density. It permits a density of *up to* 43 units per acre (1,000 sq. ft. per unit), though it includes no density floor. (Mun. Code, § 122-392.) The Draft inventory of high and medium density housing sites (App. A, Tables A-1 and A-2), however, includes only four very small sites with M-1 zoning: Site Nos. 67 (0.14 acres), 68 (0.24 acres), 100 (0.27 acres) and 198 (0.23 acres). Leaving aside the infeasibility of lower-income development on these tiny sites, and adding in the medium-density sites that do not permit more than 24 units per acre,⁹ the gross acreage that is zoned for multi-family residential use at even close to the required minimum density is less than 7.5 acres (0.88 acres at high-density and 6.54 at medium-density).

While the inventory claims that with rezoning the City will be able to accommodate up to 65 units per acre on the M-1 sites, and up to 36 on the M-1.8 sites, at current densities these sites cannot, even in theory, accommodate more than 38 high-density units (assuming the maximum density of 43 units per acre can be achieved) and 157 medium density units (assuming the maximum density of 24 units per acre), for a total upper limit of **195** units. Setting aside the sites under half an acre, that upper limit drops to only **98** units (4.1 acres at 24 units per acre).

Inconsistently, the Draft asserts that the shortfall of sites to accommodate above-moderate income RHNA units will be made up on mixed-use sites. (Draft, page 4-6 ("The above moderate-income units do not necessarily have to be developed in areas zoned for Low Density Residential, they may also be developed in Medium Density Residential or other land use areas."))

⁹ The current M-1.8 district allows a density up to 24 units per acre, not enough to meet Concord's minimum AB 2348 density. The inventory provides only twelve M-1.8 sites (Site nos. 158 (0.89 acres), 159 (0.85), 181 (0.77), 182 (0.45), 191 (0.75), 192 (0.30), 193 (0.27), 194 (0.22), 195 (0.39), 196 (0.45), 197 (0.36), and 199 (0.84). Only one of these sites is not subject to an existing use (193). (See App. A, Table A-2 (Medium Density Housing Sites).)

Planned District Sites: Apart from sites with commercial and multi-family residential zoning, the inventory of high-density sites relies primarily on sites zoned Planned District (PD). Many of these PD sites are expected to develop at low densities in the range of 12 units per acre (Site Nos. 165-174). The others are generally tiny sites projected to develop at densities of 65 units per acre (Site Nos. 81 (0.19 acre), 82 (0.21), 102 (0.15), 103 (0.36) and 104 (0.14)) and three larger sites, totaling 9.3 acres, projected to develop at 36 units per acre (Site Nos. 160-162). The maximum realistic multi-family potential for these larger sites is 334 units, but it is unlikely that more than a small fraction will be affordable. On the generous assumption of a 10 percent inclusionary component at the lower-income level, the City can expect no more than **34** lower-income units. More likely, that total will be less than 6 percent, or **21** units.

In fact, PD sites in Concord did not produce any appreciable amount of affordable housing in the past period. In the prior period, PD sites yielded 420 units in three projects: the Detroit Avenue Apartments, Legacy Apartments, and Oakmont Senior Living. (Draft, Table 4.1-4, page 4-7.) Of these 420 PD units, Legacy was apparently 100 percent market rate, while the other two yielded 29 very-low and 2 low-income units. (Draft, page 6-12.)

In summary, on the most generous assumptions, the sites in the inventory, as currently zoned, can accommodate no more than **442** lower-income units. More realistically, that total is only **247** units, as shown in the chart below:

	Lower-Income Unit Potential: Maximum By Zoning District	
	Realistic	Generous
Residentially-zoned sites	98	195
Mixed-Use sites	128	213
PD sites	21	34
TOTAL	247	442

5. The Draft Element’s “adequate sites program” does not comply with AB 2348.

As noted in the previous section, the inventoried sites, with their current zoning, have a maximum realistic potential for achieving 442 very-low and low-income units, well short of the current RHNA need of 1,065. In fact, that residential potential represents **a shortfall of 1,093 lower-income units** when measured against the total lower-income need of 1,535 that results when the AB 1233 units from the prior planning period are taken into account.

Under AB 2348, the Element must accommodate at least half of this shortfall, or 546 units, on sites that will permit solely residential use. AB 2348 requires that, where adequate sites are not presently zoned to meet the entire RHNA need at all income levels, “[a]t least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and *for which nonresidential uses or mixed-uses are not permitted.*” (Gov. Code § 65583.2 (h) (emphasis added).)

The Draft does not include any programs designed to meet at least half of its lower-income shortfall on residentially zoned sites. To the contrary, the Draft and the inventory both make it clear that of the purported “residential potential” for very-low and low-income units, 1,184 of the total units are projected to be developed in mixed-use zones. (Draft at p. 4-5, Table 4.1-2; App. A, Tables A-1 and A-2.)

Even apart from AB 1233, the Draft includes no meaningful adequate sites program whatsoever. The closest it comes is in Programs H-1.1.1 and H-1.1.2. In their entirety, these Programs promise to “[i]dentify potential sites for reuse or rezoning to ensure an adequate supply of land for residential development” and to “[c]ontinue to rezone vacant/underutilized land as deemed appropriate for mixed- use or residential/higher residential use, consistent with the General Plan,” respectively. Neither Program sets any definite action, much less any quantification of the rezoning to be accomplished, neither sets a due date for action, and neither promises city-initiated rezoning. Regretably, both Programs are even weaker than the unimplemented sites program (1.1a) of the prior Element.

The Draft must be revised to include concrete, definite and enforceable program actions that will result in the rezoning of adequate sites to accommodate at least 1,093 lower-income units early in the planning period. It must ensure that no more than 50 percent of the units are accommodated on sites that permit non-residential uses, and that rezoning to accommodate the 470 AB 1233 units is accomplished immediately.

6. Extremely-Low Income Households.

The Draft fails to appropriately reflect the City’s housing need at the extremely-low income level. By law, the City is required to analyze the housing need of extremely-low income households, either by “us[ing] available census data to calculate the percentage of very low income households that qualify as extremely low income households or [by] presum[ing] that 50 percent of the very low income households qualify as extremely low income households.” (Gov. Code § 65583 (a) (1).)

The Draft notes that more than half of very-low income households in Concord qualify as extremely-low income. (Draft, page 2-8, Table 2.3-2.) Despite that fact, it asserts in connection with its statement of quantified objectives that “[t]he extremely low-income objective is based on the targeted need being 10 percent of all very low-income (between 30-50% of AMI) RHNA for 2007-2014, which reflects the proportion of households belonging to the extremely low income group, and poverty rate of those individuals.” (Draft, page 7-25.)

7. Rehabilitation and Preservation Units.

The Draft quantifies an objective of meeting 253 units of its lower-income RHNA of 1,065 through rehabilitation of existing units, and another 152 through “conservation/preservation.” (Draft, page 7-26, Table 7.2-1.)

HCD may allow a jurisdiction to substitute rehabilitation units for up to 25 percent of its RHNA need in each income category, “where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs,” provided that the program meets the detailed requirements of Section 65583.1 (c).

None of the program actions in the Draft meet those requirements. The programs relating to rehabilitation in the Draft, in fact, are extremely vague:

- Program H-1.6.3 states simply “[p]rovide low-interest loans to qualifying households to support the rehabilitation of mobile home units in the City,” setting an objective of “20 rehabilitated manufactured housing and mobile homes.” (Draft, page 7-8.)
- Program H-1.6.4 provides in full: “[a]llow the use of the City’s rehabilitation funds for the setting up of mobile home foundations, the paving of carports, and other construction assistance in mobile home park areas,” with an objective of assisting 10 mobile homes.
- Program H-2.1.1 states: “Utilize public funds to provide assistance in the rehabilitation and conservation of deteriorated single-family homes, multi-family developments and mobile homes. *This program provide [sic] assistance in the form of low-interest, deferred-payment loans or where appropriate, grants to elderly or disabled home owners.*” The objective is “325 single and multifamily housing units (without income limits) rehabilitated; and 152 units conserved as affordable housing for extremely low, very low, and low income households through long-term rent restrictions or resale agreements with property owners (see Program H-2.1.2).” (Draft, pages 7-11 to 7-12.)

In each case, the amount of funding needed is not specified, nor is any commitment to provide funding in that amount made, other than to state that source of funding is one or both of “CDBG Fund; and RDA Housing Set-Aside Fund.” In all, 16 programs are pledged unspecified support of the same RDA Housing Set-Aside Fund.

These programs meet none of the detailed statutory requirements of Government Code § 65583.1 (c). Not least, they do not commit the City to “provide ‘committed assistance’ through a legally enforceable agreement within the first 2 years of the planning period,” much less in a “dollar amount . . . substantial enough to make the targeted units available for occupancy within two

years of the execution date of the agreement.”

http://www.hcd.ca.gov/hpd/housing_element2/SIA_adeqsites.php.¹⁰

8. Inclusionary Housing Ordinance.

The Community Coalition applauds the City for adopting an Inclusionary Housing ordinance in 2004. It notes, however, that the ordinance is weak, relative to the ambitious production of lower-income units that the Draft projects. It offers developers “the option to choose a target income level in a project,” as follows: For rental projects, “either 10% at low income, or 6% at very low income,” and for ownership projects, “either 10% at moderate income, or 6% at low income.” (Mun. Code, § 122-1053.) It also allows developers the option to pay an in-lieu fee for all projects under 20 acres. (Mun. Code, § 122-1054.) As of August 2007, the in-lieu fee was “\$4,903 per unit for rental projects and \$17,660 per unit for ownership projects.” (See attached City summary of its ordinance, dated Aug. 23, 2007.)

Based on these parameters, it is unreasonable to project that market developments will produce, on average, more than 10 percent very-low and low-income units combined; in fact, in all likelihood, the maximum will be 6 percent or less.

While the Draft does not provide details or analysis of the success of the inclusionary ordinance, the cursory information it does provide is consistent with what one would expect from an inclusionary ordinance of this kind:

The City adopted an Inclusionary Housing Ordinance in 2004. . . . After the adoption of this Ordinance, four projects (Willow Walk, Concordia, Hidden Grove, and Silverleaf) created a total of 12 inclusionary housing units and one project (Sendera) paid an in-lieu fee.

(Draft, page 6-8.) Given the low in-lieu fee and the permissive nature of the ordinance, one would expect that some developers will continue to opt to pay the fee than to produce the units. Notably, the Draft provides no information about how much money was generated in in-lieu fees, or what has been done with the money that was collected.¹¹

¹⁰ Assuming a correct allocation of half of the very-low income RHNA need to the extremely-low income category, moreover, Concord’s proposed rehabilitation units exceed the 25 percent limit in the very-low income category, as follows:

Income Level	RHNA	Rehabilitation Objective	Rehab as % of RHNA
Extremely Low	319.5	17	5%
Very Low	319.5	142	44%
Combined ELI/VLI	639	159	25%

¹¹ For example, in reporting progress towards meeting its 2007-2014 RHNA allocation, the City claims 224 units of above-moderate income housing from the “Palmero” project. (Draft, page 3-4.) Given the apparent size of this development, and an approval date of 2007 or later,

The Community Coalition is particularly concerned with the lack of a full analysis of the City's Inclusionary Housing ordinance because the City has relied on the ordinance as a cornerstone of affordable housing in the Weapons Station planning process. While the Weapons Station re-use will not produce housing during the 2007-2014 planning period, the omission of information about application of the ordinance since 2004 hinders the ability of the community to evaluate both the success of Concord's last housing element and to engage in discussions about what affordable housing policies will be needed in the City to meet future housing needs.

9. Low- and Moderate-Income Housing Fund.

The Draft fails to discuss how its programs will be achieved through "the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code)." (Government Code § 65583(c).) The Element "must include an estimate of the amount of funds expected to accrue to the Low and Moderate Income Housing Fund (LMIHF) and describe the planned uses for those housing funds over the current planning period." See http://www.hcd.ca.gov/hpd/housing_element2/OR_lowmod.php.

Concord's Draft does not include an adequate accounting of projected low- and moderate-income housing fund revenues and expenditures. Instead, it provides only spot examples of how such funds were spent during the previous planning period, and potential programs which might draw unspecified amounts from the housing fund in the future. In order to meet the Housing Element Law requirements and provide the public sufficient information to evaluate the use of the housing fund, the housing element should include an accounting of funds currently available, the projected receipts during the term of the new Housing Element, current fund commitments, and plans for the utilization of uncommitted funds during the period.

the City's inclusionary housing requirement presumably applies to the project. The Draft is silent, however, on whether it applied the inclusionary requirement to this project, and if so, how many affordable units or how much in in-lieu fees will be generated by it.

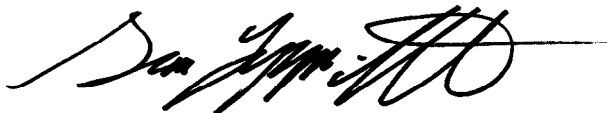
10. Programs to Remove Significant Constraints.

Exacerbating the over-reliance on mixed-use zones to accommodate the lower-income housing need is a series of significant constraints that the Draft fails adequately to analyze or address. Among these constraints are:

- Downtown mixed-use zoning permits residential use only above the first floor, and requires commercial or office uses on the first floor.
- There is no requirement for development in mixed-use districts to include any housing whatsoever. Many or all of the sites that develop in mixed-use districts are likely to be developed with purely commercial and office uses. That this is likely is suggested by the fact that Draft can point to only one mixed-use development in the prior period, the 100 percent market-rate Renaissance Square project. (Draft, page 6-14.)
- The minimum lot size in the Downtown Business District is 25,000 square feet, with very limited exceptions. This eliminates at least a third of the Downtown Business sites listed for high-density in the site inventory.
- While the revised land-use designations in the General Plan now provide minimum residential densities in some cases, only one designation, "High Density Residential," has a floor of at least 30 units per acre. (Draft, page 4-3, Table 4-1.1.) Moreover, the zoning does not provide density floors; in fact, the former Element's program to set minimum density standards (Program 1.4d) has evidently been dropped from the Draft. There is no requirement that housing in mixed-use zones be developed at high densities.
- Parking requirements for multi-family housing are excessive, with a base requirement plus a guest parking allotment per unit that requires, for instance, 2.33 spaces for a two-bedroom units, and 2.83 for a three-bedroom.

In summary, Concord's Draft Housing Element was developed without full public participation, and that lack of openness shows in the resulting inadequacies in the critical areas of sites, zoning, analysis and programs. The Community Coalition deeply desires the opportunity to participate in the development of a new Concord Housing Element that will be a model for all of Contra Costa County and the Bay Area.

Very truly yours,



Sam Tepperman-Gelfant
Attorney and Equal Justice Works Fellow



Richard A. Marcantonio
Managing Attorney

Encl.: Aug 2007 Summary of Inclusionary Housing Ordinance

Cc: Concord City Council
Concord City Manager
Concord Planning Director
Coalition for a Sustainable Concord

**Community Coalition for a Sustainable Concord
Member Organizations**

Arc Ecology
Carpenters Local Union 152
Central Labor Council of Contra Costa County
Contra Costa Interfaith Supporting Community Organization
CNWS Neighborhood Alliance
East Bay Alliance for a Sustainable Economy
East Bay Housing Organizations
Friends of Mt. Diablo Creek
Greenbelt Alliance
Habitat for Humanity East Bay
Lutheran Social Services
Mount Diablo Audubon Society
Public Advocates Inc.
Resources for Community Development
Save Mount Diablo
Sierra Club
TransForm