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**SENT VIA U.S. MAIL AND E-MAIL: [PMcdoug@hcd.ca.gov](mailto:PMcdoug@hcd.ca.gov).**

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## Re: Redwood City 2009 Draft Housing Element

Dear Mr. McDougall:

The following comments on the City of Redwood City's draft housing element are offered by the Public Interest Law Firm (PILF), the California Affordable Housing Law Project, and the Non-Profit Housing Association of Northern California (NPH), on behalf of low-income residents of Redwood City. PILF's mission is to protect the human rights of individuals and groups in Santa Clara and San Mateo Counties who are underrepresented in the civil justice system. PILF accomplishes its mission by leveraging the skills and resources of pro bono attorneys to provide high-quality representation in class action and impact litigation, advocacy in state and local government, and litigation support to local legal services programs. PILF focuses its efforts on behalf of elders, youth, individuals with disabilities, those who are frequent victims of illegal discrimination and those who have low incomes. One of PILF's five litigation and advocacy priorities is to preserve affordable housing. The California Affordable Housing Law Project is a state support center for legal services programs and specializes in affordable housing issues. NPH has been a leader in promoting affordable housing throughout Northern California for over 30 years. NPH develops and advocates policy, builds support through alliances and partnerships, and provides housing advocates with training to increase their effectiveness. We developed these comments with the input and advice from the and Housing Leadership Council of San Mateo County, whose mission is to accelerate the production of new homes in San Mateo County at all affordability levels to create opportunities and a viable quality of life. We offer

the comments below to assist the department's review of Redwood City's draft housing element.<sup>1</sup>

Redwood City's draft housing element for the 2007-2014 planning period is especially important due to Redwood City's complete failure to adopt a housing element during the prior planning period. While the March 2009 draft housing element includes an evaluation of the City's "2001 Housing Element," these provisions are misleading and inaccurate because the City did not adopt any such document. According to HCD's records, during the third housing element revision period, due December 31, 2001, for jurisdictions covered by the Association of Bay Area Governments (ABAG), Redwood City did not submit any adopted housing element for review during this period. Instead, the City provided a draft revised housing element in December 2001, a draft in September 2003, which was rescinded by the City, and a third draft in January 2004. None of these drafts was ever adopted by the City, however.

Our review reveals a number of key areas where the current draft housing element falls short of the requirements of state law. In this letter, we highlight some of the more significant areas. Redwood City's draft element does not identify an adequate number of sites to meet its Regional Housing Needs Assessment ("RHNA") share for this planning period, nor for the prior planning period as required by Assembly Bill 1233. Further, the draft element does not sufficiently identify constraints to development of housing for all income levels or for special needs groups, including people with disabilities and people in need of emergency shelter and transitional housing. Nor does it describe programs to remove these constraints and facilitate housing creation. Finally, the draft element also fails to detail an adequate program for the preservation of assisted units.

### **Failure to Identify Adequate Sites for the Current Planning Period**

The housing element must contain "*An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.*"

(Gov. Code, § 65583, subd. (a)(3).)

Additionally, the element must propose "*actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the*

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<sup>1</sup> All references to the draft element refer to the March 2009 Draft Housing Element of the Redwood City General Plan, available online at < [http://www.redwoodcity.org/cds/planning/generalplan/pdf/DraftHousingElement\\_3-31-09.pdf](http://www.redwoodcity.org/cds/planning/generalplan/pdf/DraftHousingElement_3-31-09.pdf)> (as of June 3, 2009).

*regional housing need for each income level that could not be accommodated on sites identified in the inventory . . . without rezoning.”*

(Gov. Code, § 65583, subd. (c)(1).)

The draft element does contain a detailed inventory of sites for development. (Draft Element, Appendix A.) If all of these sites were actually available and appropriate for housing for a variety of income levels, the number of sites identified would exceed Redwood City’s share of the RHNA. (See Draft Element, p. H-99.) However, the draft element’s site inventory is misleading in that it relies on zoning district and designations that do not exist in Redwood City’s current Zoning Code and in that many of the sites identified will not be available for development in the foreseeable future due to planning constraints or existing uses. As such, the City has not met its legal requirement to identify adequate sites. (See *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1112-13.)

As in other areas of the draft element, the site inventory relies on zoning designations not yet adopted, but planned in a future general plan update. (See Draft Element, Appendix A.) The City cannot rely on such sites as currently available for residential development. The new general plan has not yet been adopted, and adoption of the new zoning designations is neither imminent nor certain.<sup>2</sup> Many of the zoning designations identified in the site inventory do not exist under Redwood City’s current Zoning Code. As such, the inventory fails to indicate whether these sites current zoning designations are amenable to residential development, in turn failing to identify whether these sites are actually available for such development. A review of the draft element’s map of vacant and underutilized sites reveals that none of these sites are in areas currently zoned R-5, and only one fifth acre is vacant or under-utilized in an R-4 zone. (See, Draft Element, Figure H-7 and Appendix A.) As such practically no land is available for large multi-family development—the type of development most likely to be affordable to a range of income groups—exists under the current Zoning Code.

Although it claims sites are available for development, the draft element is, in reality, describing a program to rezone currently unavailable sites. However, such a program must comply with Government Code, sections 65583 (c)(5) and 65583.2 (h), and Redwood City’s does not. For a program comply with Government Code section 65583.2 (h), “at least 50 percent of the very low-income housing need shall be accommodated on sites designated for residential use and for which non-residential uses or mixed-uses are not permitted.” An examination of

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<sup>2</sup> According to the Redwood City Planning Department website, the draft elements of the new General Plan are yet being drafted, with need for subsequent environmental review, public comment, and hearings on adoption. (City of Redwood City, *Background and Current Status of the Creation of Redwood City's New General Plan*, <[http://www.redwoodcity.org/cds/planning/generalplan/background\\_status.html#status](http://www.redwoodcity.org/cds/planning/generalplan/background_status.html#status)> [as of June 3, 2009].)

Redwood City's site inventory reveals that it proposes to accommodate over 80 percent of its very low-income housing need using mixed-use sites. (*See* Draft Element, p. H-99, Table H-53.) As such, Redwood City's implicit program for rezoning fails to meet state law requirements.

Along the same lines, the inventory relies on sites in the Downtown Precise Plan area for over 2000 units, including over a third of the total potential units identified for low- and very low-income housing. (*See* Draft Element, H-99.) However, the Downtown Precise Plan is the subject of ongoing litigation and is currently undergoing environmental review. Even existing planned projects in this area have been placed on hold indefinitely. (Draft Element, H-93.) Although the City anticipates completing a new draft EIR within the next year, there is no date certain when development in the Downtown Precise Plan area will resume. Since every single site in the Downtown Precise Plan area is effectively tied up in litigation, these sites are not truly available for development; and, given the vagaries and uncertain timelines of litigation, it cannot be said with any certainty that they will be available at any point during the planning period. As such, the City may not rely on these sites to meet its RHNA obligations and should identify alternative sites.

Finally, asserting that Redwood City is largely "built-out", the draft element relies on a number of "opportunity sites" in both the Downtown Precise Plan and proposed Mixed-Use zones to achieve its RHNA obligations. Almost all of these sites contain current structures and uses, such as office buildings, hotels, bowling alleys, and residential units. (*See* Draft Element, Appendix A.) Indeed, of the ten opportunity sites identified in the Downtown Precise Plan area—which account for 1760 units' worth of the inventory—only a single parcel is vacant. Of the ten mixed use opportunity sites identified—with a projected 2612 potential units—none is vacant. These two groups of sites account for approximately 79% of the City's RHNA, and closer to 90% of low- and very-low income housing obligations. However, the City has not properly analyzed the feasibility of redeveloping or recycling these already-in-use sites.

While identification of sites available for redevelopment or recycling is appropriate where a city has limited vacant land, the city must analyze the realistic development potential of these sites. (Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 23-24, answer 23.) This analysis must include: (1) an assessment of "the extent to which existing uses may constitute an impediment to additional residential development;" (2) a description of recent and historical trends in the city with respect to redevelopment and recycling of sites; (3) an analysis of whether market conditions are suitable for redevelopment and reuse of sites; and (4) an enumeration of existing or proposed incentives for redevelopment or reuse of sites. (*Ibid.*)

Although Redwood City's draft element does provide some explanation of how it selected these opportunity sites on pages H-94 to H-96, it does not give any attention to

circumstances that would make development of residential units on these sites more or less likely, as required by state law. It does not analyze the extent to which existing uses may be an impediment to development. It does not provide any discussion of historical context or current trends with respect to redevelopment or recycling of sites in Redwood City; nor does it examine market conditions that would affect such activities. While the draft element briefly mentions the “incentives” of the Downtown Precise Plan on page H-94, it does not describe those incentives. Without the required analysis, Redwood City may not count these non-vacant sites toward its share of the RHNA; it must either complete the analysis or identify alternative developable sites in order to comply with its state law obligations.

### **Failure to Identify Adequate Sites for the Past Planning Period**

*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.*

(Gov. Code, § 65584.09, subd. (a).)

According to state law, a city that did not make adequate sites available to meet its regional housing need allocation (RHNA) during the planning period for its third revision must make such sites available during the first year of the current planning period. (AB 1233 (Jones), Chapter 614, Statutes of 2005.) Redwood City did not identify *any* sites to meet its RHNA during the planning period for the third revision. Indeed, as discussed above, the City failed to adopt any housing element revision for that period.

Government Code section 65584.09 provides that, when a city “failed to identify or make available adequate sites to accommodate” the its RHNA share, the city shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites for the unaccommodated RHNA. Here, Redwood City’s failure to adopt any housing element revision during the last planning period has resulted in the failure to identify sites. HCD guidance further provides that, where a city failed to adopt any housing element revision during a prior planning period, the terms of AB 1233 are applicable. (*See, e.g.*, Cathy Creswell, Department of Housing and Community Development, Memorandum to Planning Directors and Interested Parties Regarding Application of Government Code Section 65584.09 (June 20, 2007.)) While Redwood City’s failure to adopt a housing element revision for its third revision is independently sufficient to require rezoning sites according to the terms of section 65584.09, the particular circumstances

of the inventory proposed in the draft housing element demonstrate that no sites were available during the last planning period.

First, the evaluation of the last planning period in the March 2009 draft housing element does not describe with particularity what sites were made available during the last planning period. Rather, the only mechanism discussed to make sites available for higher density development, the Downtown Precise Plan, was never implemented since it has been delayed by litigation. No other sites are described, nor can the City point to any other available sites to meet its RHNA for the third revision.

While the draft element is silent as to specific sites that were available during the prior planning period, other City documents affirmatively demonstrate that no sites were available during the last planning period. In 2004, the City considered a 600 unit residential development called “Bayside Gardens.” A Draft Environmental Impact Report (DEIR) for this project was prepared to describe alternatives for the 600 unit Bayside Gardens project. Chapter 17 of the DEIR considered alternatives for purposes of its review, including development of the project on any other available site in the City. The DEIR discusses the City’s inventory of available sites for multifamily housing, and notes that the City’s most authoritative document on the availability of sites was the March 2004 draft housing element, which the City did not adopt. (*See* DEIR, p. 17-29, attached hereto, and available on-line at <http://www.redwoodcity.org/cds/planning/eir/syufy.html>.)<sup>3</sup> The DEIR then goes on to describe land identified in the City’s former draft housing element, and notes it does not identify any particular “sites,” but rather describes “separate, non-contiguous underutilized ownerships which may be concentrated, but are nevertheless spread throughout local areas (“sites”) ranging in size from one to 18 city blocks.” *Id.* According to the report, “None of the ‘sites’ appears to involve a contiguous, underutilized area of sufficient size for development of a consolidated rental apartment complex similar to what is being proposed for the project area.” *Id.* The DEIR also notes that the Downtown Precise Plan at the time did not identify an alternative site opportunity. In other words, no available site existed anywhere in Redwood City that could accommodate a large multi-family housing development. The City’s own documents show that no sites were made available during the last planning period, making it even more imperative that sites be identified now to meet the unaccommodated need.

The requirements of section 65584.09 are independent from the City’s obligation to adopt a revised housing element. However, the City’s inventory must adequately identify sites that are “*in addition to* any zoning or rezoning required to accommodate” the current RHNA. (Gov.

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<sup>3</sup> The Final EIR for the Bayside Gardens project was certified by the Redwood City Planning Commission by unanimous vote on May 3, 2005, which states that the findings of the report reflects the City’s independent judgment and analysis. *See* Planning Commission Minutes, May 3, 2005, attached hereto.

Code, § 65584.09, subd. (b).) The Department’s guidance provides that the City should describe its remaining RHNA from the last planning period according to a chart that tracks the RHNA remaining for each required income category. In order to comply substantially with the requirements of housing element law, the City must include an analysis that includes the progress made during the last planning period towards the City’s 1999 RHNA. The City has not begun its analysis required to identify the unaccommodated need during the last planning period. This information must be included in the element.

### **Constraints to Affordable Housing Development**

The housing element must contain:

*An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels . . . including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need. . . .*

(Gov. Code, § 65583 (a)(5).)

It must also analyze *potential and actual nongovernmental constraints to development.*

(Gov. Code, § 65583 (a)(6).)

Further, the element must contain *programs to “remove governmental constraints to the maintenance, improvement, and preservation of housing, including housing for all income levels and housing for persons with disabilities.”*

(Gov. Code, § 65583 (c)(3).)

Redwood City’s Draft Element fails to address fully a number of significant constraints to the development of housing for people of all income levels. Specifically, the Draft Element does not identify its reliance on not-yet-adopted land use designations as an actual and potential constraint to affordable housing development. It also fails to give adequate attention to its permitting process and parking restrictions as constraints to the development of affordable housing, and it does not identify the current lawsuit regarding the Downtown Precise Plan—and the fallout from that lawsuit—as a constraint to development.

The Draft Element’s analysis of zoning and other land use constraints is misleading because it does not adequately analyze current governmental constraints, but, rather, it considers

the constraints that the city will have if it adopts a new General Plan and implemented that new Plan in the Zoning Code. For example, all of the land use designations listed in Table H-36 on page H-51 of the Draft Element are in the draft General Plan, not in the current Zoning Ordinance. Indeed, although Redwood City has a rough timeline for the anticipated adoption of the new General Plan, the Draft Element contains no program or schedule for amendment of the Zoning Code to reflect these new land use designations. As discussed above, the City relies on this new planned zoning scheme for meeting its affordable housing goals. The Draft Element must identify the potential and actual constraints involved in this reliance, including the possibility that, before the draft General Plan is adopted, it will undergo significant alterations as the result of public comment, environmental review, or the political process. By neither analyzing these constraints nor proposing a program for removing them, the Draft Element has failed to comply with state law requirements. (*See, eg.*, Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 31-32, answer 32)

Redwood City's permitting process represents a significant governmental constraint to housing development. Despite claims to the contrary in its Draft Element, affordable housing developers have reported to our organizations that, their practical experience is that the City's planning department is slow to process permits and is unresponsive to developers, often failing to return phone calls, to respond to inquiries, or to process permits altogether. Such delays create an impediment to development and discourage developers from pursuing projects in Redwood City, in turn reducing the likelihood that Redwood City will be able to meet the housing needs of residents of every income level. (Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 31-32, answer 32.)

The Draft Element properly identifies parking restrictions as a governmental constraint to residential development. (Draft Element, p. H-54.) While the Downtown Precise Plan allows for more flexible parking standards to facilitate multi-family and mixed-use development, other zoning districts maintain stringent parking standards. Multi-family developments, which are most likely to meet the housing needs of low- and very low-income families, must have two spaces (one covered) for each unit, as well as one guest space for every four units. (Draft Element, p. H-54.) Especially in light of the fact that, due to litigation, the Downtown Precise Plan area is not currently available for development, the Draft Element should consider the ways in which these parking restrictions might hinder affordable housing development, as well as ways to remove that constraint. The city should analyze the parking requirements when they identify sites where multi-family housing will be allowed and ensure these restrictions are not prohibitive.

Finally, the Draft Element fails to identify the set aside of the Downtown Precise Plan due to litigation as a constraint to development. As mentioned above, the Downtown Precise Plan is the subject of *Carcione v. City of Redwood City* (Super. Ct. San Mateo County, 2009 No. CIV463195), a suit filed in 2007 in San Mateo County Superior Court. Currently, the City is drafting a new EIR in response to a court order; the City has projected that the EIR will be

complete this fall. (See, e.g., City of Redwood City, City Council Decides to Revise Environmental Report for Downtown Precise Plan (Mar. 13, 2009) <[http://www.ci.redwood-city.ca.us/manager/news/2009/pr\\_mgr\\_DPP\\_EIR1.html](http://www.ci.redwood-city.ca.us/manager/news/2009/pr_mgr_DPP_EIR1.html)> (as of June 3, 2009).) In the meantime, the Downtown Precise Plan is not in effect, and all development in that planning area has been suspended. The Downtown Precise Plan covers a very significant geographic area, and the Draft Element relies extensively on this area to meet the City’s RHNA share. Because the litigation makes development in this area impossible for an unspecified period of time, it represents a constraint—both governmental and non-governmental—to development in the City as a whole. Although the City may have limited ability to remove this constraint, the Draft Element must fully evaluate its current and potential negative impact on projected housing development and should explore programs for mitigating that impact.

### **Housing Needs of Persons with Disabilities**

As part of its governmental constraints analysis, a housing element must analyze:

*. . . potential and actual governmental constraints upon the maintenance, improvement, or development of housing for . . . persons with disabilities . . . including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.”*

The element should further “*demonstrate local efforts to remove governmental constraints that hinder the locality from meeting . . . the need for housing for persons with disabilities . . .*”

(Gov. Code, § 65583, subd. (a)(5).)

The element must also forth *a program for removing remaining constraints and providing reasonable accommodations for persons with disabilities.*

(Gov. Code, § 65583, subd. (c)(3).)

Redwood City’s Draft Element properly identifies the City’s lack of a reasonable accommodation policy as a constraint on its ability to meet the housing needs of people with disabilities and sets forth a timeline for the adoption of a reasonable accommodation ordinance. However, the Draft Element fails to analyze fully underlying issues in the Redwood City’s Zoning Code and inconsistencies within the Draft Element itself that would discourage—or even prevent outright—the creation of housing for people with disabilities in Redwood City.

### Treatment of Licensed Care Facilities

Adult residential facilities and other licensed care facilities represent an important housing option for individuals with disabilities. These facilities are often the only affordable

housing choice to meet a disabled individual’s housing and care needs. State law requires that licensed residential care facilities with six or fewer residents be treated as a residential use by local zoning schemes and be allowed as a matter of right in residentially zoned areas. While the Draft Element states on page H-21 that the City “permits residential care and group home facilities in all residential zones (consistent with state law) and most commercial and industrial zoning districts,” the city’s Zoning Code does not reflect this assertion, and statements elsewhere in the element suggest significant planning barriers to the development of residential care facilities in multiple zoning districts. The Draft Element neither identifies these barriers, nor suggests a program for removing them.

Licensed care facilities for individuals with disabilities receive only one mention in Redwood City’s Zoning Code; the Code defines “family care home” as “[a] state-authorized, certified, or licensed family care home, foster home, or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children on a twenty-four (24)-hour basis.” (Redwood City Zoning Code, § 2.36.) However, the Code fails to state where such care homes are or are not permitted. “Single-family dwelling,” the only type of use permitted in all residential districts, is not defined by the Code, and the colloquial definition does not readily include licensed care facilities for people with disabilities. As such, the Code’s failure to mention licensed care facilities could mislead potential facility operators—or even city staff—to conclude that licensed care facilities are not permitted in residential districts. Although the Draft Element does suggest that the City might “consider revising the Zoning Ordinance to specifically identify community care facilities or group homes . . .,” it does not identify residential care facilities’ omission from the Zoning Code as a constraint to the provision of housing for people with disabilities, nor does it set forth a concrete plan for removing this constraint. (Draft Element, p. H-148.)

Rather than identifying the above inadequacy of the Zoning Code as a potential constraint, the Draft Element is internally inconsistent with respect to residential care facilities and seems to add further constraints to the establishment of such facilities in Redwood City. For example, while the chart on page H-60 of the Draft Element indicates that residential care facilities of six or fewer persons are permitted in zoning districts RH, R-1, R-2, R-3, R-4, R-5, and MH, this chart also states that family care homes, which, according to the Zoning Code, are inclusive of residential care facilities, are not permitted by right in any district and are permitted conditionally in zones R-4 and R-5 only. To add to this confusion, the Draft Element describes residential care facilities for six or fewer persons as a “quasi-public use,” not a residential use, on page 74, going on to say that such uses are permitted conditionally, not by right, in residential zones R-3, R-4, and R-5. . This designation is clearly contrary to the law and HCD’s guidance. (See, e.g., Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 40, answer 41 [defining “by right” as not requiring a CUP]; *id.*, p. 32, answer 32 [citing Heath and Saf. Code, §§ 1267.8, 1566.3, 1568.08 for proposition that “[l]ocal agencies must allow these licensed residential care facilities in any area zoned for

residential use, and they may not require licensed residential care facilities for six or less to obtain conditional use permits or variances that are not required of other family dwellings”].)

Likewise, the Draft Element fails to identify the city’s conditional use and variance processes as governmental constraints to the development of housing for persons with disabilities. Residential care facilities for more than six individuals are not permitted by right in any district and, as such, must obtain a conditional use permit to operate. The conditional use permit process allows for a public hearing at the discretion of the Zoning Administrator, meaning that residents who are resistant to having such facilities in their neighborhoods due to stereotypes about people with disabilities or misconceptions regarding the impact of such facilities on nearby property values could take steps to block the permit.<sup>4</sup> Along the same lines, the variance process, which the Draft Element suggests as a means for people with disabilities to obtain exceptions to zoning requirements such as minimum lot size, lot coverage, setbacks, and parking, provides for mandatory public notice via newspaper publication and public hearing. (Redwood City Zoning Code, art. 43.) Such a procedure could result in the release to the public of confidential disability-related information about the person requesting the variance, as well as in public opposition to the variance.

#### An Adequate Ordinance for Reasonable Accommodation Needed

While the adoption of a reasonable accommodation ordinance could resolve some of the issues posed by the conditional use permit and variance processes, the Draft Element fails to describe the interaction between the envisioned ordinance and the existing policies. Will the reasonable accommodation ordinance replace the conditional use permit and variance processes when the permit or exception needed relates to a disability? Or will the new policy exist side-by-side with these existing ones? The element should highlight these existing policies—not only the absence of a reasonable accommodation policy—as governmental constraints to meeting the housing needs of people with disabilities and describe how these constraints will be removed, either through the reasonable accommodation policy or through other efforts.

#### Downtown Precise Plan Must Address Housing for People With Disabilities

Finally, the Draft Element fails to address the wholesale exclusion of residential care facilities from Redwood City’s Downtown Precise Plan districts as a governmental constraint to the development of housing for people with disabilities. The chart on page 60 of the Draft

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<sup>4</sup> It should be noted that the Draft Element does indicate that the city will “[f]acilitate discussions with neighborhoods and adjacent uses so that good neighbor relationships are fostered and the impacts to adjacent uses are mitigated,” suggesting that the city recognizes community resistance to residential care facilities as an impediment to these facilities’ development. However, the Draft Element fails to recognize the ways in which city policies might encourage such resistance and further fails to set out a concrete plan for correction. (See Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 34, answer 34.)

Element indicates that residential care facilities of any size will not be permitted—conditionally or by right—in the districts comprising the Downtown Precise Plan. Although the Downtown Precise Plan is not currently operational, the Draft Element relies heavily on this Plan to meet its current and future housing needs. The geographic areas covered by the Downtown Precise Plan are some of the most accessible to public transportation, retail establishments, food, and other services in Redwood City. Both single-family and multi-family housing will be permitted in these districts, so the prohibition of residential uses specific to people with disabilities appears to be, not only a governmental constraint to the development of housing for people with disabilities, but also an active and likely illegal attempt to exclude individuals with disabilities from the Downtown Precise Plan area.

### **Emergency Shelters and Transitional Housing**

As part of its analysis of special housing needs, the housing element must *assess the need for emergency shelter on both an annual and seasonal basis.*

(Gov. Code, § 65583, subd. (a)(7).)

The housing element must also *identify “a zone or zones where emergency shelters are allowed as a permitted use without a conditional use permit or other discretionary permit.” This zone or zones should be sufficient to meet the emergency shelter needs of the community, including at least one year-round emergency shelter. Where the city cannot identify such a zone, it must include a program to amend its zoning ordinance to meet these requirements within one year of adoption of the element.*

(Gov. Code, § 65583, subd. (a)(4).)

*Transitional and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.*

(Gov. Code, § 65583, subd. (a)(5).)

Although Redwood City’s Draft Element discusses the housing needs of San Mateo County’s homeless population, as well as programs to meet those needs, the Draft Element’s treatment of these topics is far from complete. The Draft Element refers to the number of homeless persons based on the previous two homeless censuses, and it contains an inventory of existing shelters in Redwood City and elsewhere in San Mateo County. (Draft Element, p. H-23-24). However, the Draft Element does not assess the unmet homeless needs on both a seasonal and annual basis. The Draft Element notes on page H-23 that the City intends to revise the element after results from the 2009 Homeless Census become available. We encourage the Department to direct the City to include an assessment of both annual and seasonal shelter

needs—and to ensure that the adopted element includes sufficient programs to meet those needs—when it undertakes that revision.

The Draft Element acknowledges that Redwood City’s current zoning scheme does not allow emergency shelters by right in any district and proposes rezoning of the light-industrial and mixed-use live-work zones to accommodate this need. These zones are not included in the current Zoning Code, although they will exist in the new General Plan, should that plan be adopted. If adoption of the General Plan is delayed, so will rezoning to make sites available. Since adoption of the new General Plan within one year is in no way guaranteed, the City should develop an alternative program for rezoning under the current Zoning Code to ensure that sites are properly rezoned within one year in accordance with state law requirements

Additionally, while the Draft Element devotes some discussion of the capacity of the light industrial and live-work zones for the development of emergency shelters, it does not assess the realistic potential for development. Similarly, it does not assess whether these zones will be sufficient to address Redwood City’s unmet homeless needs, in particular the need for at least one year-round emergency shelter, as required by state law.

The Draft Element identifies transitional and supportive housing as effective means of meeting a variety of special housing needs, including the needs of homeless individual, seniors, and persons with disabilities. (*See, e.g.*, Draft Element, pp. H-62, H-64, H-143.) However, the Draft Element’s program to “facilitate” these types of housing may actually serve as a constraint to their development. Transitional and supportive housing are residential uses, and cities may subject them only to those restrictions to which other residential uses of the same type are subject. (*See* Cathy Creswell, Department of Housing and Community Development, Memorandum to Planning Directors and Interested Parties regarding Senate Bill 2 (May 7, 2008), p. 13-14.) However, while the Draft Element in some places seems to acknowledge this mandate, it includes a program to “[establish] definitions, performance standards, and siting regulations” for such housing, suggesting that the City intends to implement restrictions beyond those placed on other types of residential development. Rather than facilitating housing for these special needs groups, the Draft Element creates additional barriers to the development of such housing.

### **Other Special Housing Needs**

The element shall contain: “[a]n analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.”

(Gov. Code, § 65583, subd. (a)(7).)

In addition to analyzing the special housing needs of individuals with disabilities and those in need of emergency shelter, as discussed above, the housing element must also consider the special housing needs of other groups, including the elderly, large families, farmworkers, and families with female heads of household. For the most part, the Draft Element contains thorough descriptions—both quantitative and qualitative—of these groups and their special housing needs. However, according to HCD guidance, this analysis must contain, not only identification of these groups’ housing needs, but also programs, policies, and resources to meet those needs. (Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 9, answers 9 and 10.) Here, the Draft Element falls short of the legal requirements.

The Draft Element aptly identifies the special housing needs of the elderly, low-income elderly households in particular. It notes senior renters’ need for affordable housing—over half of senior renters in Redwood City are extremely low- or very low-income. (Draft Element, p. H-16.) However, the Draft Element’s program for meeting the housing needs of this particularly vulnerable and growing segment of the city’s population is vague and confusing. Apart from general statements that the City will “support” housing for seniors, the primary action suggested by the Draft Element for senior housing is to “revise the Zoning Ordinance to specifically identify assisted living facilities [and to develop] objective standards of approval and identify appropriate zones where assisted living facilities should be permitted.” (Draft Element, p. H-143-144.) “Assisted living,” though not a licensing category unto itself, often refers to residential care facilities for the elderly, which are state-licensed. While we agree that the Zoning Ordinance should specifically identify residential care facilities for the elderly, the Draft Element’s program suggests that the City will impose specific standards on such facilities and only allow them in certain zones. State law mandates that cities treat residential care facilities for the elderly with six or fewer residents as any other residential use and allow such facilities by right in residentially zoned areas. (Health & Saf. Code, §§ 1569.82 et seq.) By suggesting that the City will establish special requirements for or limitations on the development of residential care facilities, the Draft Element creates a potential constraint on housing for seniors rather than promoting the development of housing for that population.

Along the same lines, the Draft Element outlines the housing needs of large families and families with female heads of household in some detail. (Draft Element, p. H-22-H-23.) The Draft Element’s discussion of overcrowding confirms that the needs of these families are not fully met by existing housing stock. Over 14 percent of all housing units in Redwood City are overcrowded; many of these units are inhabited by large families who cannot afford appropriately sized units. (Draft Element, pp. H-22-H-23, H-30.) However, the Draft Element does not identify programs, policies, or resources to meet the housing needs of these groups.

In assessing the housing needs of farm workers, the Draft Element relies on 2000 census data, as well as anecdote, to conclude that the housing needs of farm workers in Redwood City are trivial to non-existent. (Draft Element, pp. H-25, H-63-H64.) However, because farm workers often reside in a particular area on a temporary or seasonal basis, their numbers and needs may not be captured by census data. A 2000 study found that over 3000 farm workers work in San Mateo County. (Alice C. Larson, *Migrant and Seasonal Farmworker Enumeration*

*Profiles Study: California* (Sept. 2000)

<<http://www.co.monterey.ca.us/health/Publications/pdf/HPpdfs/Farmworker.pdf>> [as of Jun. 2, 2009], 16.) While it may be that all of these farmworkers live elsewhere in San Mateo County, Redwood City—the county’s largest city and seat, as well as the recipient of some share of other local jurisdictions’ RHNA—should seek out additional information about these farmworkers’ numbers and locations before coming to the conclusion that it has no duty to analyze and plan for their housing needs.

### **Preservation of At-Risk Assisted Housing Developments**

The element shall include:

*An analysis of existing assisted housing developments that are eligible to change from low-income uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restriction on use. ...*

*The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.*

(Gov. Code, § 65583, subd. (a)(9).)

Preservation of at-risk assisted housing is a critical means of achieving the Legislature’s affordable housing goals, and it is especially important in places like Redwood City which have such a small supply of affordable housing. While the City’s analysis is adequate in some respects, it also falls short in other important areas as detailed below.

First, it appears that the City has not adequately inventoried the units that are at risk. (See Gov. Code, § 65583, subd. (a)(9)(A); Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 13, *Answer 14.A.*) Even a cursory look at the developments that should be considered “at risk” (performed with the help of the California Housing Partnership Corporation) revealed an entire development—Alameda House, for which funding must be reauthorized by 2010—omitted from the list. To comply with the statute the City must ensure that all at-risk housing is included in its analysis.

Additionally, the City’s analysis is too narrowly focused on subsidy expiration. To assess accurately which developments are at risk, the City should also consider Real Estate Assessment Center (REAC) scores for the properties in the City. Since November 1, 2002, HUD-funded properties that receive REAC inspection scores between 31 and 59 are immediately

referred to the HUD's Departmental Enforcement Center (DEC or EC), and could potentially lose HUD funding if the owner is not able to improve the property. Therefore, the City should be proactive with any assisted property with a REAC score of 75 or less and help the property owner develop a maintenance plan that will preserve HUD funding. Again, Alameda House is a pertinent example; its REAC score is a dangerously low 71. Therefore, even though it is owned by a non-profit, it may lose funding in 2010 if its REAC score goes down significantly.

While the inventory of at-risk units is an important component of the preservation component of the housing element, the city's programs to preserve the identified properties is even more so. Unfortunately, Redwood City's record of preservation can only be described as dismal, since—as the Draft Element demonstrates—it has been successful in preserving only 24 percent of at-risk developments over the last seven years. (*See* Draft Element, p. H-126.) This record of failure may well be, at least in part, a function of the City's lackluster approach to preservation as set out in its “accomplishments” section. There, the City effectively throws its hands up at the loss of 84 critically needed affordable units, stating that because “[o]wnership was not transferred at the time of expiring contracts . . . Redwood City had little recourse when property owners were not interested in maintaining affordable units.” (*Ibid.*) This statement seems to indicate that the City did not, consistent with housing element law, “identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.” (Gov. Code, § 65583, subd. (a)(9)(C).)

In the current Draft Element, the City does commit to “[e]stablish a list of qualified, community-based organizations, such as Mid-Peninsula Housing Coalition, to contact regarding possible ownership and management of the units at Redwood City Commons if they are in imminent risk of conversion.” (*See* Draft Element, p. H-137.) However, Mid-Peninsula Housing Coalition is an experienced developer who needs the concrete resources the City could provide to support a preservation purchase. HCD provides a wealth of resources to this end (*See* HCD Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), *Answer* 14.), which the City should acknowledge in its current housing element programs and commit to utilize for at-risk properties. It is clear that other more proactive programs are needed to ensure the preservation of at-risk units in the upcoming cycle. Such programs include:

*1. Requiring owners who want to opt-out or prepay to provide additional notice to tenants, and hold meaningful hearings.*

Federal and state laws require that owners provide notice to tenants of their desire to opt-out or prepay. Federal law requires that notice be provided from 5-9 months for prepayments and 12 months for opt-outs; state law requires 12 months' notice for all situations. This notice must be provided to tenants, local jurisdictions, HCD, and HUD. (*See* Gov. Code, § 65863.10; Quality Housing and Work Responsibility Act of 1998, H.R. 4194-59, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess. (1998), § 219 (b), Pub. L. No. 105-276, 112 Stat. 2461, 2487 (Oct. 21, 1998).) In its Draft Element, the City states that it ensured compliance with state-law notice requirements as to properties that converted during the last cycle. (Draft Element, p. H-126.) We would encourage the City to do so in the current cycle as well should the need arise; however, these requirements

are insufficient in many instances, especially when long-tenured tenants for whom relocating from their homes will create severe hardships are being displaced.

To help ameliorate this situation, some cities have passed their own notice requirements, which have extended this time period even further and also require a public hearing about the impact on the tenants. (*See e.g.* San Francisco Admin. Code § 60.4, *et seq.*) It is encouraging that Redwood City has among its Actions a commitment to hold public hearings if it receives notice of an impending conversion (*See* Draft Element, p. H-137), but it is unclear whether these hearings will be focused on the impact on tenants and what, if any, actions the City might take as a result of information brought to light at these hearings. It appears that the hearings conducted during the last cycle were of limited impact given the low rate of preservation. (*See* Draft Element, p. H-126.)

*2. Requiring a right of first refusal for affordable housing providers.*

A right of first refusal provides an opportunity for the local jurisdiction or a qualified entity (typically a nonprofit organization) to purchase the assisted property. (*See* Gov. Code, § 65863.11.) The Department can assist the City in connecting with qualified entities. (Department of Housing and Community Development, *Housing Element Questions and Answers* (Oct. 2006), p. 14, answer 14.D.) In its housing element, the City should commit to requiring owners seeking to sell assisted projects subject to a right of first refusal. This may well help the City comply with its obligations under Government Code, section 65583, subdivision (a)(9)(C). Given the City's statement that it had "little recourse" when the owners of developments with affordable units decided to sell their properties during the last cycle, resulting in the loss of dozens of affordable units, a right of first refusal could be particularly important tool for Redwood City.

*3. Requiring owners to provide moving assistance for tenants displaced by prepayment or opt-out.*

Some cities have enacted ordinances requiring owners to provide relocation assistance to tenants who are displaced due to a prepayment or opt-out.

*4. Prohibiting discrimination against voucher-holders.*

Owners opting out or prepaying have sometimes refused to accept Section 8 conversion vouchers or other tenant-based housing subsidies. A local ordinance prohibiting such discrimination would help to keep the units available to low- and very-low income tenants, and would help to keep these tenants out of homelessness.

*4. Providing financial assistance to buyers of affordable developments.*

A key to preservation is the availability of City funds for the purchase of at-risk affordable developments by buyers who will preserve the housing at affordable rents for an extended period of time. (*See* Gov. Code, § 65583(a)(8)(d) requiring jurisdictions to "identify and consider the use of all federal, state, and local financing and subsidy programs which can be

used to preserve, for lower income households . . . assisted housing developments.”) Many cities have set-aside a portion of their HOME, CDBG or local Housing Trust Fund dollars for preservation, or established a priority for preservation in the allocation of such funds. (See HCD Questions and Answers, p. 15, answer 14.E.) The City should follow these examples.

Further, when allocating these funds to the purchase of an at-risk project, the City should require restrictions in return to insure that the project is truly “preserved” as affordable. Under these restrictions, purchasers should be required to:

- Accept all renewals of any project-based subsidy;
- Accept tenants who receive vouchers;
- Agree to an extension of the period of affordability for an additional 55 years;
- Set up a reserve to subsidize tenant payments if Congress stops renewing Section 8 or stops appropriating funds for vouchers. A reserve of 2-3 years of operating expenses is reasonable;
- Agree not to increase rents paid by tenants, particularly in Section 236 projects without Section 8, as a result of the acquisition; and
- Agree to use a majority (50-80 percent) of the cash flow to repay the local loan. The purchaser may be receiving substantially higher rents than the pro forma indicates if they continue to receive Section 8 payments. This is because the pro forma shows the “underwriting rents,” i.e. what will be restricted locally or by TCAC or CDLAC. As Section 8 rents are often substantially higher, the actual cash flow may be very large. The local jurisdiction should share in that cash flow if it is providing funds to the project.

If it enacts the above or other concrete affirmative programs to keep units affordable, the City can meet its state law obligations with respect to preserving assisted units. At this time, however, it has not done so, and its Draft Element is out of compliance.

## **Conclusion**

Redwood City’s 2009 Draft Housing Element, while it contains many laudable goals and objectives, does not sufficiently analyze the community’s housing needs, the available resources, nor does it establish adequate programs that will provide for the needs of the community’s members. It has failed to comply with California housing element law in many respects, at times creating constraints to housing development in lieu of removing them. We fear that the practical implications of the adoption of such an element would be to stifle the creation of housing for low-income families, people with disabilities, seniors, and other vulnerable populations. As such, we hope that the Department will find this Draft Element out of compliance with state law and direct Redwood City to revise its Draft Element to address the concerns we have named here.

Thank you for considering our comments. If you have any questions, please feel free to contact James Zahradka at (408) 280-2423 or Craig Castellanet at (510) 891-9794 x 132.

Sincerely,



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