

PALO ALTO FORWARD

June 14, 2023

Dear California Department of Housing and Community Development (HCD):

CC: Palo Alto City Staff

Palo Alto Forward is a non-profit organization focused on innovating and expanding housing choices and transportation mobility for a vibrant, welcoming, and sustainable Palo Alto. We are a broad coalition with a multi-generational membership that includes students and retirees, renters and homeowners, and residents new and old.

We have been engaged in the Housing Element process at every stage. Our board and membership have written numerous letters, attended nearly all meetings of the Housing Element Working Group, and provided public comments throughout the process. Our perspective on the City's Housing Element was most comprehensively in an [extensive letter](#) shared with the City and HCD in December 2022.

We are grateful to HCD for their letter to the City last March, which detailed important changes that the City must make to ensure compliance. We are also grateful to staff for their hard work on this updated Housing Element. We recognize that this is not easy work, and we understand that staff are operating under many political and operational constraints.

As of May 8th, the City has elected to move forward with adoption of an updated Housing Element, which it believes has satisfied HCD's requests and is compliant with statutory requirements. While we believe that many of the changes are helpful, we strongly believe that more meaningful changes are required to have a compliant and effective Housing Element. In particular urge the City to:

- Align zoning standards with those that are [financially feasible](#) for development
- Address key concerns about the City's new analysis of physical feasibility
- Mitigate other governmental constraints on housing, such as timelines and CEQA
- Update site inventory to solve data errors and other issues with sites

Our detailed comments and findings are set forth below. We believe that it is still possible to have a legally compliant and effective Housing Element, and we look forward to working with the City and HCD to make the necessary changes.

Sincerely,

[Board of Directors](#), Palo Alto Forward

Section 1: Feasibility

a. Financial Feasibility Has Still Not Been Addressed

Our primary concern is that the current Housing Element still does not address the financial feasibility of the City's proposed zoning. As we wrote in our December letter, and in previous letters, our analysis strongly suggests that the Housing Element's proposed development standards (e.g., height, FAR, density, and parking ratios) inhibit financially feasible development in the City and are themselves governmental constraints to housing.

As an example, our December letter collected real project proposals in Palo Alto and studied their proposed height, FAR, density, and parking ratios. These proposals were requested by the City through the Planned Home Zone (PHZ) program. Through the PHZ process, developers are invited to "request changes from the base zoning regulations" in exchange for providing 20% of units as deed-restricted affordable housing (rather than 15%, the City's normal inclusionary zoning requirement). The PHZ proposals are thus excellent indicators of what development standards are necessary for mixed-income housing to pencil out in Palo Alto, which is particularly relevant given the Housing Element's assumption that lower-income units will be located on the same sites as market-rate units.

Our letter compared the development standards proposed by these PHZ projects with those proposed by the City's current Housing Element. The conclusion of our analysis was stark: real housing proposals in Palo Alto consistently require far more density, height, and FAR, as well as lower parking ratios, than the City is proposing in its Housing Element. For example, the typical density required by a real project is ~115 units per acre, but the Housing Element limits housing to 30-50 units per acre, or up to 90 units per acre in the GM / ROLM zone. That's a huge gap, and it strongly suggests that the proposed densities are governmental constraints to housing. We discuss this on pages 19-23 of our [December letter](#) to the City and HCD. For reference, we've included the key table of this analysis in [Appendix Section A](#).

The same analysis holds up when we consider projects that the City Council has actually approved and that have been built in Palo Alto. For example, the Alta Locale development on El Camino Real was approved in 2018 at a density of ~130 du/ac, and the development at 788 San Antonio was approved in 2020 at a density of ~102 du/ac. Neither of these projects, which constitute some of the only recent market-rate development in the City, would be permissible under any of the base zoning of the current Housing Element. This suggests that developers must secure significant, discretionary departures from base zoning to achieve feasibility, confirming the basic picture that comes from the PHZ data. We discuss this analysis on page 24 of our [December letter](#) to the City and HCD.

We are not alone in highlighting this issue. The City has also been told by land owners that the Housing Element's proposed changes to base zoning are insufficient to incentivize the development of housing. For example, Presidio Bay Ventures owns 9.5 acres in the GM/ROLM zone, an area that currently is intended to accommodate about 33% of the City's overall RHNA

allocation, as well as the majority of its lower-income RHNA allocation. Presidio Bay Ventures has informed the City that “[t]he proposed base densities in the current Draft Housing Element are still too low to incentivize redevelopment” because “in most cases, it remains more financially beneficial to maintain a cash-flowing GM/ROLM property than to build a new, exclusively residential building, even at densities much higher than the Draft Housing Element currently contemplates.”¹ The City has not meaningfully responded to this concern.

This gap between the City’s zoning and the financial reality of housing development continues to threaten housing development in the City. For example, consider Acclaim Companies’ latest proposal² to redevelop 3150 El Camino Real (“the Fish Market,”) a rare Palo Alto site with no stated density limit. The developer has submitted a proposal to build 385 units of housing, which would effectively fund at least 57 units of deed-restricted affordable housing as a result of Palo Alto’s 15% inclusionary zoning ordinance.³ That would constitute more affordable housing than Palo Alto produces in an average year.⁴ To make this possible, the project has an overall FAR of 4.1. However, the City has indicated that the project will only qualify for an overall FAR of 1.5.⁵ In other words, the City is proposing to eliminate 63% of the square footage of the development, which is likely to kill the project as a whole.

It is thus no surprise that the City’s latest Annual Progress Report (APR) reveals little to no housing production in the City of Palo Alto. Last year, the City reports that only 128 units of housing were permitted, 120 of which were ADUs. This is even lower than previous years. Even as our housing production has declined, our RHNA allocation has grown. Our 5th cycle RHNA allocation was 1,988 units of housing; our 6th cycle allocation is 6,086 units, or 761 per year of the planning cycle. It is impossible to imagine a 595% increase in the rate of housing development in Palo Alto (from 128 to 761 units per year) without more meaningful reform of our highly-restrictive base zoning than is proposed in the current Housing Element.

One last note -- the City’s proposed expansion of the Housing Incentive Program does not alter this issue. The HIP allows the Director of Planning to increase floor-area and maximum-site-coverage ratios for housing projects near the downtowns and on San Antonio. Program 3.4 of the Housing Element promises to study whether the geographic reach of this program should be expanded, and whether the Director should have the discretion to modify additional development standards. Those would be welcome changes, but they are not ones that fix the core problem of financial feasibility. That’s because HIP is a discretionary program⁶

¹ [Presidio Bay Ventures Comment Letter on Draft Housing Element](#)

² [Developer looks to demolish The Fish Market, build 380 apartments. Palo Alto Weekly](#)

³ This is based on the City’s current 15% inclusionary zoning policy. See 16.65.030 and 16.65.040.

⁴ Based on the City’s 2022 APR, the City produced a total of 284 units of deed restricted housing over 8 years, from 2015 to 2022, which is an average of ~36 units per year. (see page 91 of this [link](#))

⁵ [RE: 3128-3150 El Camino Real: SB-330 Pre-Application](#)

⁶ The Director may waive the...”, PAMC 18.16.060(k)(1)

that forbids participating developers from using the state density bonus, which makes it ineligible for treatment as base zoning under both the law⁷ and HCD guidance⁸.

b. City Incorrectly Believes It Does Not Need to Consider Financial Feasibility

Despite the above data, the City has declined to consider financial or economic feasibility at all. On May 9th, when pressed by a member of the Planning Commission about the financial feasibility of the zoning in the Housing Element, the City stated that: “We aren’t under obligation to ensure that the parcel is financially feasible.” Apparently, the City believes it is only obligated to study the *physical* feasibility of development. Under this theory, it doesn’t matter if the City’s zoning makes it impossible for a housing developer to generate enough rent to afford the land, which might otherwise be used for higher-value commercial or retail purposes.

The City’s view on this question is not consistent. Elsewhere in the Housing Element, the City acknowledges economic analysis as an important tool for assessing constraints. For example, consider Program 3.10, which “seeks to shift the economic benefit of redevelopment toward home building” and which is explicitly motivated by a concern that office space may be more lucrative than housing, which serves as a constraint on housing.⁹ While we disagree with aspects of that analysis, its very presence acknowledges the importance of considering financial, and not just physical, constraints on development when analyzing constraints. We simply ask that economic factors be considered consistently throughout the Housing Element.

The City’s reluctance to consistently discuss economic feasibility is not motivated by capacity or resource constraints. The City has already hired consultants to study the economic feasibility of our base zoning, including the development standards proposed by the Housing Element. Unfortunately, these studies have yet to be made public or incorporated into any Housing Element draft, beyond the limited physical feasibility analysis in Chapter 4 of the latest draft. The City appears to want to wait until after the Housing Element is certified to discuss their findings. We believe that is a mistake. The City should publicly release the results of these economic feasibility studies so that they can inform the policies of the draft Housing Element. Otherwise, the state and our community have a very limited ability to hold the City accountable for enacting base zoning policies that are financially feasible and will lead to real production.

The need to consider financial feasibility is clear from the plain text of the Housing Element statutes. Cities must analyze “potential and actual governmental constraints,” including “any locally adopted ordinances that directly impact the *cost and supply* of residential development.” Zoning ordinances which make housing economically infeasible are “*locally adopted ordinances*” that “*impact the cost and supply*” of housing. It is abundantly clear that the Housing Element process is designed to plan for housing that can actually be built, rather than

⁷ [“local government may not ... require a ... locally imposed discretionary permit”](#) 65583.2(h) and (i)

⁸ [Site inventory guidebook, p. 15](#). Bullets 1, 3, and the language around affordability requirements apply to Palo Alto.

⁹ See “Implication of Office Market on Housing Development, p. 4-8.

housing that can merely work on paper. We strongly encourage HCD to clarify this requirement with the City in its next review letter.

c. Physical Feasibility Analysis Has Several Key Issues to Address

Even setting the issue of financial feasibility aside, the City's analysis of physical feasibility raises as many questions as it answers. As we have analyzed the City's physical feasibility models, which were recently added in late April, we have developed several concerns:

- First, the physical feasibility analysis is incomplete; the City does not even analyze the physical feasibility of development in the CC, CS, and CD-N zones, despite the fact that the site inventory relies on these zones for 17% of the site inventory. This is particularly concerning given some of the low densities and FARs on many of these zones. See Appendix Section B for more analysis.
- Second, physical feasibility in the CD(C) and CN zone is only achieved by improper reliance on the Housing Incentive Program (HIP), a discretionary tool that is an alternative to the state density bonus. For example, consider the City's physical feasibility analysis of a hypothetical project in the CD(C) zone. The City acknowledges that the hypothetical project "exceeds the base FAR of 1.0" but argues that it's okay, because the project "is still below the Housing Incentive Program limit of 3.0 FAR."¹⁰ That's a curious argument. The City is claiming that the base zoning is physically feasible -- as long as you secure a discretionary exception from the City and agree to give up your state density bonus!
- Third, the physical feasibility analysis for the CN zone conveniently uses a site located on El Camino Real that benefits from unlimited density. That's misleading because many sites in the CN zone are not located on El Camino Real and have a density limit of only 15-20 du/acre. By our count, eight CN-zoned sites, comprising 136 units, are located off of El Camino and thus subject to these lower-density restrictions.¹¹ Establishing that a CN site with unlimited density can achieve physical feasibility does little to prove that a CN site with a maximum density of 15-20 du/acre can achieve physical feasibility.
- Fourth, the City's physical feasibility models rely on the implementation of SB 478, which requires a minimum FAR of 1.25 for developments with 8-10 units, or 1.0 for 3-7 units. For example, in the RM-20 and RM-30 zones the City's modeled projects have <11 units and are thus entitled to this larger FAR. But the City's physical feasibility analysis doesn't address the looming "FAR cliff" whereby projects of 11 units or more are entitled to a dramatically smaller FAR than projects with 10 or fewer units. Once the 11th unit is added, the FAR drops down

¹⁰ Page 4-38 of the Housing Element

¹¹ 3902 MIDDLEFIELD RD, 3900 MIDDLEFIELD RD, 706 COLORADO AV, 2741 MIDDLEFIELD RD, 708 COLORADO AV, 2801 MIDDLEFIELD RD, 2811 MIDDLEFIELD RD, and 2754 MIDDLEFIELD RD

to 0.5 for RM-20 and 0.60 for RM-30,¹² which could easily render a project infeasible, especially for lower-income sites which require economies of scale to realize. Our analysis suggests that this problem is widespread. Based on our analysis, the City's site inventory includes 4,195 units (69% of RHNA) on sites that lose at least 50% of their square footage allowance once the 11th unit is added. If we exclude the GM/ROLM sites, that figure is 2,082 inventory units (34% of RHNA).¹³ In any event, this FAR cliff must be addressed as a part of the City's feasibility analysis.

¹² See page 4-25 of Housing Element.

¹³ All zones in the inventory are subject to the FAR cliff, but RM-40 and CD-C have a smaller one because they allow residential FAR of 1.0 for projects of any size. For these zones, only 20% of FAR is lost with the 11th unit. All other zones drop to a FAR of .6 or less, so the 11th unit removes at least 52% of their square footage.

Section 2: Governmental Constraints

a. Permitting & Entitlement Timelines Have Not Been Adequately Addressed

The Housing Element does not adequately address our lengthy permitting and entitlement times, which are significant governmental constraints on housing. The Housing Element suggests that these lengthy timelines will be shortened by the new Streamlined Review process, which grants Streamlined Review to developments that meet the City's new set of objective development standards. This is also known as the Expedited Project Review process. The City argues that this process, which was adopted a year ago, has fixed this constraint, but that it is too early to tell if it is working.

We respectfully disagree. In general, new housing applications take 30-90 days to produce, and developers are always free to pull an existing proposal and resubmit it as a Streamlined Review project. If the constraint were satisfactorily removed, we should have seen robust interest in the Expedited Review program in the months after adoption. We have seen none of this. The Streamlined Review process's key flaw is that projects only qualify for Streamlined Review if they meet Palo Alto's existing zoning requirements. The Streamlined Review process will therefore expedite little, as long as housing projects require departures from our base zoning in order to pencil out.

To our knowledge, the only project that has met base zoning and taken advantage of Streamlined Review is 525 East Charleston, a 100% affordable housing project that benefits from significantly relaxed development standards under the City's Affordable Housing Incentive Program (e.g., unlimited density and greater FAR). No project with any market-rate units can qualify for these concessions. While 525 East Charleston is a success story, and we laud the City's work facilitating 100%-affordable projects, this story will be difficult to repeat. Even with the new business tax, the City does not have enough affordable housing funding to meet its RHNA through 100%-affordable housing projects alone, and it therefore must also address how it intends to shorten permitting and entitlement times for projects that are not 100% affordable. To date, the Housing Element has not done this¹⁴.

b. Tree Ordinance Has Not Been Adequately Addressed

Our previous letters to the City and HCD highlighted the City's recently expanded tree ordinance as a government constraint on housing. The City now includes some discussion of the tree ordinance in the constraints section of the Housing Element. We encourage you to review the points in our [December letter](#) on pages 31-33 and 57-60 to get more context on the ordinance and especially the scope of the expansion in 2022.

The current Housing Element acknowledges that the tree ordinance "*may* represent an undue constraint on ADU production" and that the City "are clarifying through a City ordinance

¹⁴ Program 2.1 estimates that the business tax will fund about 55 units of affordable housing throughout the entirety of the 6th cycle. This is ~2.2% of our combined low / very-low income RHNA of 2,452 units.

that it does not apply to state-mandated ADUs.” That is helpful, although we believe the language should be strengthened. The City has an obligation to determine whether the tree ordinance “is” or “is not” a constraint on housing, not whether something “may” be a constraint on housing.

We are much more concerned about the City’s refusal to study and mitigate the tree ordinance’s impact on multifamily housing. The City argues that it is “too early” to evaluate the impact of the tree ordinance on multifamily housing, even though the City appears to believe they can evaluate its impact on ADUs. The City also notes that the ordinance allows for “relief in the event retention of a protected tree [is] not cost effective.” Such relief can be granted when “retention would result in costs exceeding twice the replacement value of the tree.”

This relief mechanism does little to mitigate the ordinance’s impact on housing, since “twice replacement value” is an exceptionally high bar for relief. This calculation uses the replacement cost for a comparable *mature* tree, not merely planting a fresh sapling. To estimate these costs, we pulled records of court cases in which trees were wrongfully destroyed and where the judge based damages on the replacement value of the tree. We could find no awards under this standard below \$85k for a mature tree in today’s dollars, as seen in the table below.

Case ¹⁵	Year	Tree	Judgment for 2x Replacement	<u>Inflation Adjusted</u>
<u>Kallis v. Sones</u>	2012	70 ft Pine	\$107,256	\$143,589
<u>Russell v. Mann</u>	2020	85 ft Jeffrey Pine	\$73,256	\$85,256

With relief standards this high, we believe the City is too quick to dismiss the possibility that the tree ordinance is a constraint, and we encourage HCD to require that the City appropriately study and mitigate the impact of the tree ordinance on multi-family housing.

Finally, as noted in our earlier letter, we remain concerned that the tree ordinance mandates arborist reports that can require access to adjacent properties to produce arborist reports. This can give neighbors a “silent veto” which can prevent arborists from even making the necessary reports.

c. CEQA Exemption Timelines Have Not Been Adequately Addressed

CEQA generally imposes significant review requirements on any City decision that requires an “exercise of judgment or deliberation” -- in other words, a discretionary action. This is a problem in Palo Alto because virtually all multi-family housing development requires

¹⁵ There are many standards courts in California use and elsewhere, and it was difficult to find ones that clearly used the replacement value standard. Cases with smaller judgments that we found were tied to pruning damages short of replacement, diminution of value, or awards where no standard was identified as a basis.

discretionary action by the City. As previously established, it is typically impossible for new multi-family housing to pencil out without discretionary waivers from the City or a complicated rezoning process -- which inevitably trigger the burdensome requirements of CEQA review by making it impossible to use standard infill categorical exemptions for residential projects. In this way, the interaction between the City's base zoning and CEQA creates a governmental constraint on housing.

First, the City needs to ensure that more housing proposals are approved ministerially so that CEQA no longer applies. This requires adjusting the underlying zoning so that no discretionary waivers are needed for most projects. The City's new Streamlined Review process is a good start on this front, but its fatal flaw is that the base zoning is still too restrictive for any meaningful number of projects to qualify. That's why we urge the City to reform its underlying zoning (e.g., height, FAR, density, parking) so that projects can both pencil out and be approved ministerially.

Second, when housing projects are ineligible for a fully ministerial approval, the City should help those projects secure exemptions from CEQA. This again requires revisiting the underlying zoning, because the use of CEQA exemptions (except for 100% affordable and some transit-oriented developments) almost always requires consistency with underlying zoning.¹⁶ Unless there are real commitments to changing the zoning so that projects are consistent, use of any CEQA streamlining provision will be difficult if not impossible for most projects.

Indeed, many critical housing developments are being delayed right now because of the City's insistence on lengthy CEQA reviews. For instance, the City chose to conduct a full Environmental Impact Review for 660 University, despite having the option to use a more expeditious CEQA process (e.g., initial study/mitigated negative declaration) or use a shorter "focused EIR."¹⁷ As a result, that development has now been engaged in the EIR process for nine months. Elsewhere, 788 San Antonio has been engaged in an exceptionally complicated and lengthy EIR because it requires such significant departures from the City's base zoning in order to pencil out. These unnecessary and extensive CEQA studies are routine in Palo Alto.

We are also concerned that the City's timelines for CEQA review are excessively long and themselves create a governmental constraint on housing. The Housing Element notes that "[f]or projects subject to CEQA, the City must approve, deny, or conditionally approve the application within 60-180 days of completion of the applicable level of environmental review." This review period, which could take between two and six months, occurs *after* a project has already (1) been deemed complete and (2) engaged in a months-long CEQA review. We believe that the City can and must complete these reviews with more urgency.

d. City's Constraint Determinations Are Often Ambiguous

¹⁶ [CEQA Review of Housing Projects: Technical Advisory](#)

¹⁷ [660 University Ave.](#)

There are many places in the Housing Element where the City hedges and states that something “may” be a constraint, rather than stating that something “is” or “is not” a constraint. For example, consider the City’s following assertions:

- “The Architectural Review process – particularly Major Architectural Review – **may** operate as a constraint ...” (p.238)
- Certain zones in the city (the GM and ROLM Zones) allow office or residential uses, which **could be** a constraint to the development of residential uses in these zones. (p. 238)
- “In the case of the Tree Ordinance, the City has already identified that it **may** represent an undue constraint on ADU production” (p.229)

We do not believe that the City should employ ambiguous language, which could later be used to argue that it never found a constraint at all. The City must make an actual determination, as they do elsewhere in the Housing Element. For example, the City’s new section on physical constraints generally makes unambiguous findings (e.g., on page 262 where the City states that “the ground-level landscaping requirement [...] represents a constraint to housing production”). The City should make similarly clear findings throughout the Housing Element..

e. Community Opposition to Housing Remains a Constraint

We continue to believe community opposition, including from our elected leaders, represents a constraint to housing production in Palo Alto. For example, Mayor Kou’s recent [State of the City address](#) advanced many conspiracy theories attacking the RHNA and Housing Element processes as bad-faith, destructive, and anti-democratic projects:

“The [RHNA] methodology ... was enacted to ensure that with [these] kinds of RHNA numbers that cities fail. The state’s narrative is that supply needs to increase so [as] to decrease the cost of housing. That’s the trickle down theory, right? ... How many more years’ money, disruption, destructiveness can we continue with this kind of law, legislation?” ...

SB 35 streamlining of approvals was rarely invoked, so the developer-friendly legislators needed to jack up the RHNA targets to unrealistic levels, guaranteeing that most cities would fail to meet the targets.”...

“State laws, such as SB330, SB9, SB10, AB2097, SB35, SB 828, and so many others do nothing for genuine affordable housing. What it does do is take away the authority of local governments to make local planning decisions about the built environment, and it does not give opportunities to residents or neighbors to provide comments or input. That goes against the whole meaning of democracy.”

The Mayor is more outspoken than many of her City Council colleagues who voted for her as Mayor, but her overall perspective is hardly a fringe position in Palo Alto. Indeed, when

she recently announced a bid for State Assembly, the reader comments on the story were overwhelmingly positive, including one from a sitting Planning Commissioner¹⁸.

We raise this point to illustrate the temperature on housing issues as decisions are being made about individual projects. We believe that the strident anti-housing rhetoric from the community is itself a constraint on housing and should be recognized as such. We suggest that it should be mitigated by shifting focus from *discretionary* programs (e.g., Housing Incentive Program, Architectural Review Board, reliance on rezoning requests) to *ministerial* programs, while also reforming base development standards to expand applicability of existing streamlining programs (e.g., the Streamlined / Expedited Review process, which only applies to projects that comply with base zoning)

¹⁸ Palo Alto Weekly: [A longtime critic of Sacramento, Lydia Kou announces run for state Assembly.](#)

Section 3: Site Inventory

a. Numerous Specific Issues with Sites Remain Unaddressed

We continue to have serious concerns about the City's site inventory. As we detailed on pages 8-15 of our [December letter](#), our volunteers have identified many serious potential issues with sites listed in the inventory. Our analysis of the list of sites in Appendix D, Site Inventory, for the Housing Element published on May 30 shows few changes since our comments on December 6, 2022. Specifically, we find only three changes in the list of opportunity sites.

- 3350 W. Bayshore (APN 127-36-040) has been removed
- 3500 W. Bayshore (APN 127-36-031) has been removed
- 800 San Antonio Road (APN) has been moved from an opportunity site in Appendix D, Table B to one of the Entitled and Proposed Developments ("pipeline sites") in Table 3-2.

Given the fact that the site inventory remains largely the same, most of our comments from that letter still stand. However, we have also identified new concerns as we. We have summarized our outstanding site inventory concerns below.

i. Data errors

We thank staff for investigating the data errors that we have previously flagged and making appropriate changes. However, we are concerned that data errors may still exist in the site inventory. Two of these data errors were highlighted in our [December letter](#) on pg. 11.

- 4224 El Camino Real (APN 167-08-037) has an incorrect count of existing units because it is missing two houses in the back lot.
- 4505 Transport St (APN 147-01-070) reflects an inaccurate parcel size and is not eligible for treatment as a lower-income site. Its realistic capacity should also be revised downward in light of that fact.

We also have several additional potential data errors to flag, based on recent changes to the site inventory. For context, five sites with proposed developments have been added to Table 3-2 ("Entitled and Proposed Developments") and thus credited towards meeting the City's RHNA. However, three of these new sites have errors we would like to flag.

- 800 and 808/814 San Antonio Rd: This site consists of two parcels with APNs 147-03-038 and 147-03-043.¹⁹ But only the first parcel has been removed from Appendix D ("Site Inventory"). The second parcel is listed on *both* the site inventory and Table 3-2, and it thus appears to be double counted. Unless the City can explain this discrepancy, we believe it should be removed from the site inventory.

¹⁹ [800/808 San Antonio Road](#)

- 420 Acacia Ave: The figure of 12 new units with no below-market-rate units conflicts with the City’s Planning Division site, which shows 16 new units, two of which are designated as affordable housing.²⁰ The City should clarify which figure is correct.
- 702 Clara Drive: This project replaces a fourplex with three condos.²¹ Accordingly, we believe there is one unit of net loss from this project, rather than three net new units. The City should be asked to clarify the existing number of units on the site.

A similar concern regards 200 Portage Ave, a site that is similarly listed on Table 3-2 (“Entitled and Proposed Developments”) and thus credited towards meeting the City’s RHNA. Despite the inclusion of 200 Portage Ave on Table 3-2, the site inventory separately lists three parcels that are *part* of the proposed 200 Portage Ave development. Specifically, the site inventory includes 3040 Park Blvd (APN 132-32-036), Park Blvd (APNs 132-32-042 and 132-32-043), and 340 Portage Ave (APN 132-38-071).²² We believe that these three parcels should be removed from the site inventory so they are not double-counted towards the RHNA.

We also would like to flag two categories of potential errors related to the list of pipeline projects listed in Table 3-2. First, in the course of this research, we found that one pipeline project (564-571 Hamilton Ave) is not accounting for the demolition of existing units.²³ This project replaces 9 existing units with 19 new units, for a total of 10 new units (rather than 19). Second, we also note that many of the pipeline projects that the City proposes counting towards the 6th cycle RHNA may have *already* been submitted to HCD in previous years through 5th cycle RHNA APR reports. We have identified at least 10 sites like this. See [Appendix Section C](#) for more detail. We urge HCD to clarify with the City how to ensure that projects are not double-counted across the 5th and 6th cycles.

ii. Substantive challenges

First, we are concerned that the site inventory includes several sites where the owner has already submitted a project to redevelop the site for a non-residential purpose. As such, there is virtually no chance that these sites end up converting to residential housing. We discuss these concerns on pgs. 11-12 of our [December letter](#). Both of the sites we discussed in that letter are still in the inventory, and we have found at least one additional site to add. The City should check its data sources for other examples of this problem, but the noted ones are below:

- 3300 El Camino Real (APN 142-20-046): This site is owned by the Sand Hill Property Group, which intends to develop this location into offices.²⁴ The proposed project may have had a residential component at one time, but does not any more.²⁵

²⁰ [Acacia Ave. Review](#)

²¹ [702 Clara Drive Subdivision](#)

²² [200 Portage Ave. Townhomes](#); the development appears to be using parcels 132-32-036, 132-32-042, and 132-32-043 for a community park, which likely also serves as a buffer zone between the new buildings and existing detached homes, a requirement discussed at page 4-12 of the Housing Element.

²³ [565 Hamilton Ave](#)

²⁴ [3300 El Camino Real](#)

²⁵ [Offices Approved At 3300 El Camino Real In Palo Alto, Santa Clara County; Staff Report 10/20/22](#)

- 2799/2801 Middlefield Rd (APN 127-34-052): This site is entitled as a day care center.²⁶
- [NEW] 1066 E. Meadow Circle (APN 127-10-050): This site was recently sold to the Silicon Valley International School, which is planning a new campus there.

Second, we are concerned that the City is including sites that we have previously termed “stranded parcels.” For example, the Nita Ave site (APN 147-09-056) is part of the parking lot for the offices of X Development (aka Google X) at the adjacent 100 Mayfield Ave property in Mountain View. The Nita Ave parcel forms a single, cohesive use with the Google X offices, and it’s difficult to imagine the Nita Ave parcel being developed without the adjoining parcels being developed as well. Another example: the Maybell Ave parcel (APN 137-24-045) is owned by the same owner as the car sales office and service center next door and used to store cars from its neighboring dealerships, but those dealerships are not in the site inventory. Converting this site to housing would leave the dealership with their showroom and sales office intact, but little room for the cars. We do not believe the owner would agree to redevelop the parcel if it meant losing this parking. These uses are entangled and should be addressed jointly. We discuss similar other sites on pgs. 9-10 of our [December letter](#). All the sites that we discussed in that letter are still in the site inventory.

Third, we have concerns about several sites where businesses have recently invested significantly in their property, which strongly suggests that the owner does not intend to redevelop the property as housing. The City has not met or discussed with these businesses to discuss their intent to redevelop as housing. We discuss these concerns on pg. 14 of our [December letter](#) to HCD and the City.

Fourth, we have similar concerns about sites that are currently available for lease, or where a tenant has recently occupied a property, indicating that they have recently signed a lease. Again, the City has not attempted to meet with these site owners or tenants to discuss their intent to redevelop as housing. We discuss these concerns on pg. 14 of our [December letter](#) to HCD and the City.

Fifth, we welcome the City considering faith-based institutions for housing, but nevertheless find their realistic capacity assumptions over-optimistic for the sites they suggest. For example, our volunteers have observed that the parking at 3505 Middlefield is fully utilized by church attendees on Sunday. Similarly, the parking lot at 2890 Middlefield is fully utilized by school attendees on weekdays. We discuss these concerns on pgs. 10-11 of our [December letter](#) to HCD and the City. All of the sites that we discussed in that letter are still in the site inventory. As a final note, any improvements that these faith-based institutions are making to their property (such as the two recent ones at 3505 Middlefield Rd that greatly reduce the developable area) do not show up in the City’s improvement-to-land-value ratios because these institutions do not pay property taxes. Yet the basic point about improvements still applies: owners that make such improvements are continuing to support and expand their existing use and are therefore less likely to redevelop for another purpose.

²⁶ [2799 Middlefield Rd.](#)

Sixth, we are concerned that the City includes sites where developers have previously proposed housing projects that have been rejected by the City Council and where there is currently no indication of renewed developer interest. We discuss these concerns on pgs. 12-14 of our [December letter](#) to HCD and the City.

Seventh, we are concerned that the City's site inventory includes some of Palo Alto's most prominent businesses, such as the Safeway on Middlefield, which are successful and thriving businesses that serve a significant portion of Palo Alto with critical services. We think it is highly unlikely that these businesses will convert to housing during the planning period. We discuss this concern on pgs. 14-15 of our [December letter](#) to HCD and the City.

Eighth, we are concerned that the City has included four lower-income sites that Google currently owns and almost certainly intends to use for its Palo Alto operations. The City has produced no evidence that the existing use will discontinue or that Google intends to develop the sites as housing. The City is also including a number of sites in the East Meadow Circle area that do not appear to be currently owned by Google, but are almost certainly the target of future acquisition by the company as it continues to expand its campus in the coming years. We discuss the specific sites and issues on pgs. 8-9 of our [December letter](#) to HCD and the City. All of the sites that we discussed in that letter are still in the site inventory.

b. Site Capacities are Unsupportable

The City's new physical feasibility analyses provide new reasons to believe that the City's capacity claims are far too aggressive. For example, the City finds that the maximum *physically* achievable density in the ROLM zone is 16 du/acre.²⁷ Yet, the proposed inventory counts its ROLM sites in the 40-70 units/acre range for RHNA purposes without changing *any development standard* other than density. Until the City commits to specific changes to the development standards necessary to accommodate higher density (e.g., greater FAR, height), we do not believe it is appropriate for the City to get RHNA credit for capacity in excess of what is physically possible under current zoning.

Unfortunately, there are many places in the site inventory where the City assumes a capacity in excess of what development standards support. For example, 230 Emerson is currently zoned RM-20 (20 du/acre). This zone has a model in Chapter 4 demonstrating that development is physically feasible at a mere 18 du/acre,²⁸ yet the density for 230 Emerson is changed to 50 du/acre *without changing the zoning designation, which means no other changes in development standards.*²⁹ After the realistic capacity offset is applied, the City assumes 5 total units will go on this .13 acre site³⁰, leading to 38.4 units/acre toward RHNA – more than twice

²⁷ Page 4-33, Figure 4-7

²⁸ Page 4-30, Figure 4-4. Note this is also for a small site with about 2x the FAR allowance available to the 7 RM-20 sites in the inventory with 11 or more units.

²⁹ Note that RM-30 and RM-40 zones exist, but the City is not generally proposing to change RM-20 designations to these higher designations where appropriate based on capacity increases..

³⁰ One unit to replace baseline existing use, and 4 units of net-new capacity.

what the City shows is *physically* possible given the FAR, height, and other limitations of RM-20's base zoning. Moreover, listing "RM-20" as the proposed zone for this site ought to be considered a commitment *not* to address zoning standards beyond density, given how trivial it would be to propose RM-40 for the new zone.

Using a high density with a lower realistic capacity offset should not be allowed to exceed physical constraints in the zoning standards, when both are considered together.³¹ If cities can do this, what's the limiting principle? Could one upzone to 10,000 du/acre with a 10% realistic capacity in a zone that only allows one-story construction, and then count 1,000 units/acre? The RHNA process would be meaningless if cities can do what Palo Alto is doing.

This pattern affects most sites in the inventory. See [Appendix Section D](#) for summary information.

c. City Has Not Met Evidentiary Requirements for Nonvacant Sites

Unfortunately, despite our letters and requests, the City has done little to proactively engage with the property owners and tenants of nonvacant sites in its site inventory. The staff has given property owners a chance to remove their properties from the site inventory, but that is quite different from soliciting feedback on whether they plan to convert their existing uses or what it would take to incentivize such a move.

The lack of engagement with owners is particularly troubling because the current Housing Element relies on nonvacant sites to accommodate 50% or more of its lower-income housing allocation. This fact triggers a statutory presumption that "the nonvacant site's existing use is presumed to impede additional residential development." The City can only designate such lots as appropriate for lower-income housing if it makes "findings based on substantial evidence that the use will likely be discontinued during the planning process."

To clear the "substantial evidence" threshold, HCD is clear that cities must make rigorous, site-specific findings related to the intent of the current tenant, the intent of the property owner, or the physical disrepair of the building. To date, we do not see evidence that the City has met this threshold. With the exception of a handful of landowners in the GM / ROLM area, it has not systematically asked site owners whether they have any interest in developing housing, or what it would take for them to redevelop as such.

Moreover, last year, our volunteers contacted property owners at many of these nonvacant sites and almost all of them said their parcels would not convert to housing during the planning period; every one of these sites remains in the Housing Element. This work has since been validated by two property owners who have written to the City and suggested that higher densities and greater mixed-use opportunities are needed to unlock housing development.³² The City has not meaningfully responded to these concerns. We do not believe

³¹ Or even economic constraints, but we await the City's analysis on this point.

³² See e.g., Presidio Bay Ventures

that the City's approach to substantial evidence -- which ignores the interest of site owners in developing housing -- complies with the letter or spirit of the law, or of HCD's guidance.

Section 4: Affirmatively Furthering Fair Housing

As a reminder, we have significant concerns about AFFH, especially regarding the GM/ROLM area where the City is concentrating the majority of its lower-income housing allocation. Please review our [December letter](#) at pages 40-44 for detail regarding those concerns. We support the new SB 9 expansion program, but that speaks only to HCD's concerns about RCAAs. We do not believe the City has made many substantive changes that would address broader AFFH concerns. Rather, the City is trying to analyze its way out of AFFH concerns without addressing AFFH concerns.

We think the City's AFFH analysis is flawed and incomplete. For example, on page C-81 and C-82, the City has conducted an analysis of census tracts in the GM/ROLM area, and it argues that census tract 510801 is ideal for lower-income housing because of the tract's high resource level. However, the City's AFFH issues are not visible at the census-tract level. While this tract has many single-family homes (e.g., in the Palo Verde neighborhood), this fact ignores the fact that the City is not locating the new lower-income housing within those neighborhoods. Rather, the housing is going into newly-created neighborhoods around the eastern border of the tract, leaving the single-family neighborhoods untouched by lower-income housing. As we have previously noted (e.g., in our December letter at pages 41-43), the new lower-income housing would be located not in residential areas, but in many previously-industrial, low-amenity sites close to the pollution and noise of the 101 Freeway. When this local knowledge is considered, the fair housing picture does not look as favorable as the tract-level analysis suggests.

Section 5: Programs and Policies

The Programs section still uses vague words in lieu of firm commitments. In the May 9 meeting, staff explained that the Housing Element now features "greater commitment language -- no more 'explore', no more 'consider'; but it's more 'research' and 'implement' or 'establish'." We disagree that these are material improvements. The verb "research" is not a better program commitment than "explore" or "consider"; they are functionally synonyms in this context. In its letter to the City, HCD listed 21 programs that need more specific commitments, yet the City seems to believe they can meet this requirement by swapping out verbs.

The program commitment language needs to be specific enough that the public and HCD can hold the City accountable. The language should be structured so that if the City makes no material change by the end of the planning period, they have broken the program commitment. Here is a non-exhaustive list of Programs that fail this basic test:

Passage	Problem
<i>"To the extent that density presents a constraint on development of alternative housing types, identify sites where elimination of maximum dwelling units per acre is appropriate. To the extent that impact fees assessed per unit inordinately impact alternative housing types, adjust fees to apply to square footage."</i>	The phrase "to the extent" avoids making the determination that would create a commitment. The City is leaving the door open to later deciding there was never a constraint or impact at all. We believe that the City should make a determination, and propose any necessary mitigation, within the Housing Element.
<i>Time Frame: Initiate study of alternative models in 2024 and present initial findings in 2025 to Commission, public, and stakeholders. Adopt ordinance revisions conclude as appropriate before December 31, 2026.</i>	The phrase "as appropriate" opens the door to later determining that the appropriate action is no action at all.
A. Expand geographic and service areas of the City's Safe Parking Program. Utilize Consider using <u>Research the feasibility and extend the safe parking program to</u> City parks, parking lots and commercial lots for the program . Expand program services to include case management and explore opportunities to provide supervised access to City facilities.	The phrase "research the feasibility" leaves the option of deciding that extending the safe parking program is not feasible. Again, this work should be done within the Housing Element.
<i>A. Research and implement incentives to encourage larger units, such as FAR exemptions for three or more bedroom units, and creation of family friendly design standards. Meet with housing stakeholders and conduct public hearings before the</i>	The phrase "as directed" allows for the City to fail to direct any action at all, which would make all of the preceding verbs (e.g., "research and implement") effectively synonyms for "explore" and "consider."

<p><i>Planning and Transportation Commission to receive public and commissioner input on ways to achieve stated objective. Make recommendations to Council and follow up with an ordinance to effect a change in local zoning regulations as directed.</i></p>	
<p><i>The City intends to supplement its Residential and Commercial Housing Fund by dedicating approximately one-third of the recently passed business tax proceeds toward homelessness and affordable housing initiatives.</i></p>	<p>The phrase “intends to” allows the City to simply change its mind at a later date. If it never does dedicate these funds, it will still have fulfilled its commitment of <i>intending</i> to do so.</p>
<p><i>Implement recommendations of the recent building permit audit to improve application processing and streamlining.</i></p>	<p>This language is stronger than some others, but it is still unclear what is being promised. The City should make firm commitments to the most essential, specific audit recommendations.</p>
<p><i>If pre-approved standards are likely to facilitate ADU construction, provide standards by January 2025.</i></p>	<p>The City is leaving itself discretion to determine that pre-approved standards would not facilitate ADU construction. Again, this work needs to be done in the context of the Housing Element.</p>
<p><i>Investigate waiver of development impact fees for ADUs larger than 750 sq. ft. under certain conditions.</i></p>	<p>The deliverable is an investigation, not waivers, and the City provides no hint as to what the “conditions” would be.</p>
<p><i>Based on the findings of a feasibility study, modify the local Housing Incentive Program...</i></p>	<p>The City is (in our view, inappropriately) relying on HIP to mitigate many constraints. Given this strong reliance on HIP, the City has a high burden to specify how it is fixing this program’s existing flaws. Without the findings of the City’s feasibility study in hand, no specific commitments are being made. It is therefore impossible to analyze whether HIP will actually mitigate any of the identified constraints. The City needs to complete the feasibility analysis within the context of the Housing Element.</p>
<p><i>The Housing Incentive Program development standards shall be amended to increase height and floor area allowances for housing projects; reduce parking requirements, and adjustment to</i></p>	<p>Under this language, a single additional foot of height would meet this commitment. Of course, that would obviously not do anything to mitigate constraints. The City should commit to a specific minimum increase in height under HIP. Similarly, a ceiling on parking</p>

<i>other development standards to enable greater housing production.</i>	requirements should be specified, and the City should do the same for “other development standards.” The City could later go beyond commitments made here, but we should be able to tell what the minimum is we can expect.
<i>Examples of possible changes include...</i>	This is still merely a commitment to study which changes to make. We believe that the City needs to make much firmer commitments.

We do not think every program that defers essential decisions is useless, and we do not believe the City needs to drop any programs. However, the City does need to prove it is meeting its duty to mitigate constraints, as well as prove it is capable of meeting RHNA within the confines of its Housing Element. All programs essential to meeting these burdens must specify concrete minimum commitments that can be reviewed to assess if they are meeting their burdens under state law. If the City wants flexibility to incorporate findings from future studies, they can say “at least.” This would allow them to go beyond what is specified in the Housing Element.

To this end, we recommend adding Program 1.1 to the list of programs requiring increased specificity. At a minimum, this program should specify the minimum FAR and other development standards which will allow them to meet RHNA for the revised GM/ROLM zone. It should also include the development standards necessary to mitigate physical constraints and economic constraints³³ in other zones. Finally, as noted earlier, HIP is legally ineligible for consideration as base zoning for RHNA purposes, so Program 1.1 may also need to specify base zoning changes throughout the city in order to meet RHNA

³³ Ie: financial feasibility

Appendix Section A

Actual Projects Proposed through PHZ Process³⁴ (replicated from pg. 21 of our [December Letter](#))

Address	660 Univ. Ave	955 Alma St.	2951 El Camino Real	3997 Fabian Way	3150 El Camino Real	3400 El Camino Real	70 Encina Ave	800 San Antonio Road	Average	Base Zoning in City's Housing Element (from Table 1)
FAR	2.3	2.7	2.5	2.8	3.0	2.5	2.4	3.0	2.7	Typically residential FAR of 0.5 to 0.6 in commercial areas; 0.5 to 1.0 in residential areas
Res. FAR	1.9	2.1	2.4	2.8	2.9	2.5	2.4	3.0	2.5	
Com. FAR	0.4	0.6	0.1	0.0	0.1	0.0	0.0	0.0	0.2	
Height	45'	50'	54'	67'	55'	61'	55'	60'	56'	Typically 30' to 40' in residential areas; 35' to 50' in commercial areas
Density	142 units per acre	150 units per acre	103 units per acre	135 units per acre	123 units per acre	106 units per acre	72 units per acre	86 units per acre	115 units per acre	Typically 30-50 units per acre; almost always <90 units per acre
Parking	0.9 spaces per unit ³⁵	0.7 spaces per unit ³⁶	1.2 space per unit ³⁷	1.3 spaces per unit	1.3 spaces per unit ³⁸	1.3 spaces per unit	1.4 spaces per unit	1.9 spaces per unit	1.25 spaces per unit	Typically 1 space per 1-bedroom and 2 spaces per 2-bedroom

³⁴ We exclude the project 2241 Wellesley St. for the sake of comparability, as it is the only PHZ project proposed in an R-1 neighborhood.

³⁵ Excludes commercial parking. The project did not detail exactly how many spaces would be allocated between the residential and office use. To isolate residential parking, we have assumed that the project provides 1 commercial parking space per 250 square feet, or 37 commercial spaces. The total parking is 103 spaces, so this leaves 66 spaces for residents, or 0.94 spaces per residential unit.

³⁶ Excludes commercial parking

³⁷ Excludes commercial parking

³⁸ Excludes commercial parking

Appendix Section B

The new draft includes models exploring physical feasibility starting on page 4-36, “Analysis of Land Use Controls.” This is in response to HCD stating that “[t]he element must identify and analyze the impact of all relevant land use controls as potential constraints on a variety of housing types in all zones that allow residential uses.” The CC, CS, and CD-N zones all have sites in the inventory but are not included in the physical analysis. The table below details the number of sites and units that are affected by this issue. We also share commentary about why we believe it is important to study the physical feasibility of these zones.

Zones without physical feasibility model: site and RHNA counts			
Zone	Sites	RHNA	Notes
CC	8	55	We are particularly concerned about 2455 El Camino Real (12 units) because the site has very low FAR of 0.15 (for sites with 11+ units)
CS	55	994	We are concerned about the CS zone because it only allows for 30 du/acre and a FAR of 0.6 FAR off El Camino Real (for sites with 11+ units)
CD-N	3	16	We are concerned about the CD-N zone because it only allows for 30 du/acre and 35 ft of height
Total	66	1065	

Appendix Section C

5th Cycle APR Sites in 6th Cycle Pipeline		
Address	Master APN	Net units
2775 El Camino Real	132-36-084	57
564-571 Hamilton	120-03-062	19
3225 El Camino Real	132-38-042	8
3705–3709 El Camino Real	132-35-045	59
3265 El Camino Real	132-38-020	3
4115 El Camino Real	132-46-100	7
788–796 San Antonio Road	147-03-041	102
3877 El Camino Real	132-41-091	17
567–595 Maybell	137-25-134	12
429 University	120-15-110	3
Total		287

We also note that three of these sites were also counted as pipeline sites in the 5th Cycle Housing Element (3225 El Camino Real, 3877 El Camino Real, and 429 University Av).

Appendix Section D

As we have stated previously, the site inventory often makes more aggressive assumptions about density than are assumed in the physical feasibility analysis. For example, the City has demonstrated that it is physically possible to build housing at 18 du/acre with small developments (i.e., <11 units) in the RM-20 zone. However, for the purposes of calculating realistic capacity, the City assumes that many of the inventory sites in RM-20 will be developed at a density significantly *higher* than the modeled 18 du/acre! This comes from committing to update site density in the inventory, without also changing the proposed zone to bring other development standards in-line with the new density.

For example, 4146 El Camino Real is an RM-20 site with 18 units of capacity on a 0.77 acre lot, for a density of 23.3. units/acre. This is 30% more units than the City's physical feasibility models in Chapter 4 support (18 du/acre). The City should not be allowed to include units in the inventory above the capacities proved out in Chapter 4 without changes in base zoning that make them physically feasible. Moreover, the City should be demonstrating financial feasibility which would surely increase the required changes above what the physical models demonstrate.

Zones with physical feasibility models: site counts above modeled/allowed density.					
Zone	Allowed Density	Modeled Physical Density	Total Sites	Sites Above Modeled Density	Sites Above Zoned Dev Standards
RM-20	20 du/acre	18 du/acre	33	30 (90%)	29 (87%)
RM-30	30 du/acre	27 du/acre	26	25 (96%)	24 (92%)
RM-40	40 du/acre	35 du/acre	5	4 (80%)	1 (20%)
CD-C	N/A ³⁹	33 du/acre	22	4 (18%)	0
CN	See text below.				
ROLM	65 du/acre	16 du/acre	9	9 (100%)	9 ⁴⁰ (20%)
GM ⁴¹	65 du/acre	16 du/acre	36	36 (100%)	35 (97%)

³⁹ No limit

⁴⁰ ROLM in existing zoning code uses RM-30 development standards.

⁴¹ Assumes same treatment as ROLM.