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TRANSMITTED VIA EMAIL

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The 6th Cycle Housing Element Update process is a unique opportunity to fully assess housing needs in San José and to identify new tools and sites to address these needs and constraints on developing housing. This process is also an opportunity to engage deliberately with the full community, especially those who represent populations that have been historically excluded and are at risk of displacement, to share their housing needs. This unique opportunity is one that is required to adhere to the clear legal guidance as outlined by HCD in multiple documents interpreting state law.

This is not a simple process, and we appreciate the work that San José staff, elected and appointed representatives, and members of the community have done over the last 12-14 months. As you know, the expectations for this process are high, and jurisdictions throughout the state have struggled to generate compliant housing elements for this cycle.

During this comment period on the current Draft, there is still time to receive public input and address concerns prior to submission of the Housing Element Update to the State. Towards that end, SV@Home is submitting the following comments.

***Outreach, Community Input, and targeted AFFH outreach as the foundation of the
Housing Element Update process***

The City's outreach consisted of a broad range of activities including: online surveys, tabling at events, holding public meetings, a movie screening, and reaching out directly or through community partners to key resident groups and stakeholders through multiple channels. Many engagement opportunities were offered in English, Spanish, and Vietnamese, and at multiple times of day. Based on SV@Home's participation in many of these events, and the City's documentation of its efforts, the City did an excellent job of keeping issues of fair housing central to many of the discussions.

The City has provided the Draft Housing Element in English only, creating a barrier for San José's large population of residents who do not read English to provide feedback and continue to engage in the process.

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Although the City has clearly made significant efforts at outreach and engagement, much of the feedback from representatives of vulnerable communities and key stakeholders is not described in the Draft Housing Element. The following describes the shortcomings we see related to the transparency of documented feedback.

- For many public and group meetings, the City has provided excellent documentation of community, and some focus group, feedback over a broad range of issues and needs. However, there is no documentation provided of the agenda or feedback from the City's 44 stakeholder meetings, 11 working groups, or 6 intergovernmental agency meetings. In addition, more than half of the focus groups that are listed as occurring have no documented summary of feedback: formerly incarcerated individuals, nonprofit affordable housing developers, women and domestic violence survivors, Central County, Vietnamese community, South County, Filipino community, schools/ educators, seniors, Latinx community, and affordable housing residents of Kings Crossing. While necessary perspectives may have been captured by the City, the lack of documentation makes that knowledge inaccessible to those who should be able to comment during this process and could learn from the concerns discussed.
- There have been no meetings soliciting stakeholder or public input or feedback on the details of the Sites Inventory.
- Some stakeholder meetings, such as most of those SV@Home engaged in, were focused more on process planning than on housing needs. It is not clear how many other stakeholder meetings were also process planning-focused rather than seeking substantive community input.
- The City's decision to strip out most of the identifying information from Focus Group meetings summary table makes it difficult to assess whether these groups were representative of the population.
- The summary of community engagement efforts and community participation was not included in the Draft Update initially released for the 30-day public comment period, reducing the time available for the public to review and provide feedback to the City below the statutory minimum.

It is clear from the Housing Needs Assessment, Goals and Strategies, and other sections of the Draft Housing Element that the City has received and incorporated an abundance of stakeholder and community input and feedback. However, the failure to include full documentation in the Draft of knowledge shared in the stakeholder and community discussions makes it very difficult to assess how comprehensively the Goals and Strategies reflect the input received. This lack of transparency about the process greatly limits understanding of what appears to be substantive public engagement throughout this process, and weakens the ability of a range of government divisions and partners to learn what is most important to residents.

SV@Home recommends the City of San José fully document input and feedback received from all groups over the course of the housing element process.

Housing Needs Assessment

Overall, the Summary of Housing Needs is concise but substantive, incorporating robust local knowledge and demonstrating a thorough understanding and analysis of both data-driven assessments of resident housing needs and fair housing issues.

Based on community feedback, SV@Home requests that the City analyze and add the following:

- The housing needs of tenants in single family homes and duplexes, given the City's high proportion of lower-income residents renting these home types, many of which are under corporate ownership, and residents of which are not protected by the City's existing rent control ordinance;
- The unique housing needs, challenges of, and protections for families experiencing domestic violence, given that domestic violence occurs primarily in the home and is a common reason for family eviction for public nuisance due to police calls or noise;
- The housing needs and challenges of people with physical or intellectual disabilities, disaggregated by race, as residents of different races are likely to experience different outcomes.

Policies and Programs to address housing needs and risks of displacement under AFFH

Affirmatively Furthering Fair Housing through Anti-Displacement policies

SV@Home has been actively involved in a series of meetings with a coalition of groups representing communities most impacted by housing instability and displacement, to engage in a process of prioritizing anti-displacement policies. This process built upon the extensive public and community-government led discussion and research of displacement risks and effective responses, which has taken place in the last five to six years in San José. The process included meetings of stakeholder organizations, public meetings to discuss priorities, and direct meetings with city staff. SV@Home is proud to have participated in this constructive process, which is outlined in a coalition comment letter on the Draft, which you can view [here](#).

The anti-displacement coalition process generated a number of concrete proposed policies that the group felt have not been adequately addressed in the City's current Anti-Displacement Strategy. Most of these recommendations have been included in the Policies and Programs chapter in the Draft Housing Element, but there were also two recommendations, previously shared with City staff, that the group felt were not fully addressed:

- Develop a process for recognizing organized tenant associations in targeting Apartment Rent Ordinance enforcement and code enforcement as part of the expanded tenant resource center, including the potential of a receivership program for chronic offenders.

The current Draft identifies important steps to increase education about tenant rights and resources and strategies to step up code enforcement (S-1, S-3, S-5, S-6, S-23, S-27, S-28). However it lacks detailed,

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substantive policies to empower renters to organize their community and ensure their rights. We ask that the City adopt a local “right to organize” policy, to augment the State protections with local enforcement. We also believe that a more formal integration of established tenant unions or organizations in building code, and renters rights, enforcement is a critical step to realize the value of these organizations to the tenants themselves and the city as a whole.

- Amend the Apartment Rent Ordinance to include duplexes (and possibly single family homes) and amend the Apartment Rent Ordinance to lower allowable rent increases below 5%.

The coalition supports the City’s inclusion of S-29 as a strategy but is concerned that the policy process lacks a clear timeline and clarity on what kind of amendments would be presented to council.

The coalition also supports several proposed Policies and Programs that were not a part of our prioritization process. One such program is S-10: Study on rent increases and burden in affordable housing - Research how rent increases in the City's restricted affordable apartments have been implemented over the last five years, given that area median income continues to increase rapidly in Santa Clara County. Study rent burden and demographics for residents of affordable homes, and use research results to inform proposed state legislation and/or City policy. Present findings and policy recommendations to the City Council.

REAL Coalition

SV@Home is also part of the Race Equity Action Leadership (REAL) Coalition, a broad community of over 125 nonprofit leaders and allies that have been meeting since June 2020 to use their positional power to advocate for a more racially-just and equitable society. We facilitated REAL’s engagement with the Draft Housing Element and collaborated to produce a letter under the Housing Justice Workgroup asking the City of San José to be more bold in advancing housing programs and policies that will recognize historic inequities and advance racial justice and equity in measurable ways. SV@Home is also proud to support the REAL Coalition’s letter, which can be viewed [here](#).

Several important comments from the REAL Coalition are included below.

Affordable Housing Siting Policy (I-18)

The Housing Element and AFFH plan should make explicit that any categorization in the Siting Policy should not be based on or promote discriminatory stereotypes about people who live in affordable housing. It should also make clear that lower-income communities are also deserving of investment that ensures that every neighborhood becomes a “high opportunity area.” Given the continued premise of the “Categories” used to define “higher opportunity area,” the city must reject the current Category designations of the Siting Policy, which continue to redline neighborhoods based on neighborhoods of color, high crime areas, and density of low-income families. San José must find other anti-racist, socially respectful, and economically equitable designations of defining its neighborhoods, and must still invest in affordable housing for the historically ignored neighborhoods that are home primarily to residents that are people of color. (Refer to I-18 of this Housing Element.)

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Updated Inclusionary Housing program fees: Conduct a fees study to ensure the Inclusionary Housing program remains feasible and does not present a barrier to housing construction (P-25)

While we appreciate the importance of not hindering market rate housing construction, the goal of the inclusionary fee program should be to collect fees to build more homes. As such, the language should be more balanced, acknowledging the duty developers have to pay for housing needs they create, and stressing the importance of inclusionary fees to the City's ability to fund affordable housing. The inclusionary policy should require more onsite affordable housing construction or incentivize it with higher fees. The section should read "assess any and all incentives and exemptions to housing impact fees in geographic areas (like downtown San José), and how they negatively impact the intended public benefit of the program and limit funds for affordable housing projects."

The Commercial Linkage Fee (CLF) (P-30)

The CLF is a critical means of ensuring that funds are generated for the ever-increasing need for affordable housing. These funds are created by the outgrowth of jobs from commercial development. When the CLF was approved, the levels were set well below those determined to be feasible by the independent study. The potential of the CLF as a powerful tool to build more affordable housing must be maximized. The CLF can ensure the City is better able to follow through on the affordable housing goals of the Housing Element and effectively expand opportunities for the most vulnerable and racialized members of the San José community. SV@Home recommends the following elements in the strategy be revised in the following ways:

- Updated feasibility study for the Commercial Linkage Fee, *including the geographic analysis from the original study*; and
- Ensure funding for affordable housing is being paid per the City's new Commercial Linkage Fee, *including integrating the fee into any project development agreements*, and periodically update fee levels to market conditions as determined by the feasibility study.

In addition to the priorities of the coalition highlighted above, SV@Home would like to share concerns regarding Strategy N-1, Equitable neighborhoods-based investment strategies.

The equity framework is an important effort to address historic underinvestment and the need for community integration into shaping solutions. However, this strategy needs to acknowledge the differences in equity-focused outcomes for various racial groups and protected classes within any plans. This strategy should make distinctions between place-based and people-based discrimination and include solutions that reflect the hardships of not only the most visible and populous minority groups, but also those groups that exist in much smaller communities. In order to address inequities for Black and Indigenous residents, two constituent groups not bounded by specific neighborhoods in San José, nor solely categorized within a particular income stratus, a broader solution of reparations should be considered that takes into account those groups' geographic placement across the city without regard to neighborhood.

Marginalized, and low-income constituents have already provided significant commentary and feedback on the continual effects of redlining and systemic disinvestment, lack of employment opportunities, low wages,

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and other inequities that could be used along with already collected demographic data indicators to create neighborhood plans for investment and proposed services much sooner than the suggested timeline. Moreover, these communities have been involved in addressing historic displacement and redlining in San José for a long time, and even helped produce the City of San José's Anti-Displacement Strategy. The N-1 strategy should discuss how it will be a continuation of the Anti-Displacement Strategy, and what these proposed investment and anti-displacement plans will resolve under the Anti-Displacement Strategy framework.

There is no direct mention of land use and the need to incorporate the production and preservation of affordable housing in what is presented as a multidimensional response. Creating more affordable housing in these areas is an investment, especially if the city can ensure that these housing opportunities serve current residents in these areas. The anti-displacement tenant preference and the neighborhood tenant preference policies in S-20 will be essential to keeping neighborhoods whole and invested in. As mentioned in the discussion above, empowering tenants also provides the community support to look after each other in these neighborhoods as they face the changes that come with investment.

We are also concerned that in the time frame proposed for the N-1 strategy it is unclear which portions of the strategy have begun, still need to be crafted, or are ready to be implemented. The entire strategy is listed as "2023-2031," the entire planning period, which is unacceptably vague. While we imagine some portions would begin to be implemented earlier in the planning cycle and others later in the timeline (perhaps so they can be implemented in the next Housing Element cycle), we strongly recommend including detailed time frames for each strategy line-item.

Finally, there is a concerning lack of specificity in Strategy N-1's implementation, outcomes and decision-making power. Investments and organization changes must be translated to concrete, actionable steps with specific timelines. It is unclear from the City's language what kind of investments they would consider to be equitable or are willing to commit, and what organizational changes need to be made to ensure the strategy's success. We have highlighted below sections of the N-1 strategy to illustrate overall lack of specificity and clarity:

- *Organizational changes*, for example, can be made through internal policies, standard operating procedures, or a City Council Policy, and Strategy N-1 does not specify which would be used to implement changes or who has the power to make such changes.
- The strategy also discusses prioritizing capital project investments and services in racially and ethnically concentrated areas of poverty (RECAP), organizing departmental staffing and community services delivery per neighborhood, and producing investment and anti-displacement plans through public engagement. However, the Sites Inventory does not include any publicly-owned sites that would fall under any City capital project program.
- The services that would be prioritized for RECAP neighborhoods are not listed, so it is difficult to say what services RECAP neighborhoods, including which neighborhoods and groups of people, would exactly benefit from this strategy.

Analysis of Constraints on the Development of Housing

The Analysis of Constraints on housing production generally falls short of the robust analysis required by HCD. Despite the inclusion of strategies in Chapter 3 of the Draft that are likely to help mitigate some constraints, others remain unacknowledged and unaddressed.

Non-Governmental Constraints

We find that while the Draft's analysis of nongovernmental constraints is substantive, there are obvious missing elements, and it lacks the required analysis of their cumulative impact on the supply and affordability of housing, and is subsequently missing a number of opportunities to take actions to mitigate these effects. We would highlight the following:

The analysis fails to address community opposition to residential development, particularly to affordable and higher density development, as a constraint as required by HCD's guidance on Affirmatively Furthering Fair Housing. Higher density affordable housing is at the center of the city's strategies outlined in this draft document, and there is appropriately a very heavy reliance on areas that have not historically included this type of housing, many of which have unfortunate histories of strong opposition to change. This will be a highly significant constraint on affordable housing development including timelines, costs of development, projected densities and general feasibility of such development. **We would recommend, and be available to support, a comprehensive strategy integrating community education on affordable housing development, and solid policy commitments to mitigate neighborhood opposition.**

The Analysis of Constraints also omits any discussion of affordable housing financing, ignoring the ongoing challenges with state and local funding which continue to be a major barrier in the development of affordable housing in San José. There are policy statements in Chapter 3 that call for continued advocacy for additional funding sources, but there is little effort to integrate the Planning Department and the Housing Department together into addressing the crisis we face in being competitive for tax credit and bond commitments.

Understanding of both planning and land-use processes needs to be integrated into this advocacy effort, and there should be an assessment of the ways that city processes may pose additional barriers to accessing these funding sources. For example, we believe additional General Plan Amendment hearings were added to better align local approval timelines with state funding application timelines. It would be valuable to review whether this has been effective, and what additional steps might be taken.

We also feel very strongly that the housing element update should include a more detailed analysis of land costs for parcels zoned for all residential uses, and within the different policy relevant geographies in the city. Land costs are central to the Cost of Development Study, the Inclusionary Housing Ordinance, and the potential additional costs of subsidies for affordable housing developments in high-resource areas being discussed in the context of the Affordable Housing Siting Policy. Explicit acknowledgement of the central

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importance of accurately assessing land costs is a tool that the city can use better to shape the program details and effectiveness of policies and programs that could address this non-governmental constraint.

Similarly, this analysis misses the opportunity to address the impact of labor shortages on rising labor costs. Non-governmental constraints must be assessed for the ways government action might mitigate their impact.

We would recommend that the City continue to explore ways of supporting construction trade apprentice and labor force retention programs.

While the Draft contains the required assessment of constraints on some categories of special needs development, there are clear gaps in this assessment. One example is the lack of an assessment of the barriers to dedicated housing production for San José State University students. We know there are significant efforts underway to respond to this challenge, and that a number of major development projects are in various stages of review, however, an assessment of the magnitude of this problem is necessary to assess the impact and adequacy of the response.

Governmental Constraints

We recognize that there are dozens of policies and programs included in this draft that directly or indirectly address ways of supporting both affordable and market rate housing. We are highly supportive of the proposed expansion of ministerial approval processes and the related city initiated CEQA analysis; the assignment of a dedicated planner to assist affordable developments through the building permit process; ongoing efforts to improve the transparency of fees through an integrated fee structure; the removal of ground floor commercial requirements from affordable developments throughout the city; and the potential for development tax reductions or suspensions for affordable developments. We look forward to the process for developing an SB9 ordinance that focuses on promoting feasibility and broad accessibility. These programs will complement the ongoing efforts to fully implement the Housing Crisis Workplan, and we will address other policies elsewhere in this comment letter.

While these policies are robust, we understand that these policies were responsive in part to developer feedback, but there is little documentation of the specific feedback that was received. We believe there are shortcomings in the analysis of governmental constraints that could be addressed through this process.

The Urban Village strategy is central to the General Plan's approach to residential growth in the City. Much of this framework is now in conflict with various State laws that prohibit residential development caps and phasing. Prior to these new state prohibitions, some of the Urban Villages with adopted plans struggled to attract development while others seemed to thrive, but there have been ongoing concerns about the barriers inherent to overlapping policy goals in these areas of incentivising job growth and high-density housing production in "walkable and bike-friendly" neighborhoods. As noted above, the proposed ministerial review process, city sponsored CEQA analysis, and the removal of ground floor commercial requirements are important responses to some of these challenges. **We believe, however, that a more comprehensive assessment of the success and challenges of the Urban Village strategy is warranted.**

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The analysis of governmental constraints does not present a full assessment of the cumulative impact of these constraints, and then clearly identify which proposed policies are intended to mitigate these impacts. Throughout the discussion processes, standards, and fees are listed sequentially and described as having limited impact as evidenced by comparison with neighboring jurisdictions. This is particularly unfortunate because we know that significant work has been and is being done to address constraints systematically – including policies listed in this document.

At this moment we believe that there is a shared understanding that residential development processes are not working well, and that being no worse than others is not an adequate assessment of constraints. This cumulative analysis, and connection to proposed mitigation policies, is a required part of the Housing Element Update process, should be central to the Housing Element as an adopted section of the General Plan, and is intended to enable ongoing evaluation of effectiveness.

A number of aspects of the development process that we believe are not fully assessed for their impact on cumulative constraints are:

- Staff shortages;
- Preliminary review process that comes before the official development process begins to be measured;
- Challenges in meeting statutory deadlines for SB 35 and other streamlining program projects;
- Various program requirements related to residential development in unplanned Urban Villages including 5.12 and Signature Project processes; and
- Various potential legal barriers to development in areas such as North San José.

Preservation of Affordable Homes At-Risk of Conversion to Market-Rate

Loss of deed restricted affordable homes to market rate conversion leads to an overall constraint on available affordable units, at a time when we are struggling to produce new ones. The analysis of the relative costs of preserving these units versus constructing new ones is clear. The proposed policy responses are important, but are presented in the Policy and Programs chapter in language that is ambiguous about how they are a part of or separate from important efforts to preserve non-deed restricted, more-affordable units in the private market.

SV@Home believes a comprehensive program must be developed to address the significant procedural and resource challenges inherent to this threat to our existing stock of affordable homes.

Additional important Policies and Programs supporting mitigation of governmental and non-governmental constraints

P-12 Cost of Residential Development Study update - Conduct analysis every 2 to 3 years, or as market conditions warrant, and present to the City Council on the Cost of Residential Development that uses prototypical models of common types of multifamily residential construction in different submarkets

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within San José. The report will help ~~determine~~ on an ongoing basis governmental and nongovernmental constraints on the production of market-rate and affordable housing in San José.

We would request that the language in P-12 be changed from “determine” to “help inform.” This study is an important, but inherently limited tool that should be used in combination with other assessment tools and policy priority discussions.

P-8 General Plan Amendment to remove commercial requirements for affordable housing - Amend the General Plan to remove ground floor commercial requirements for all 100% affordable housing developments throughout the City to improve project feasibility and enable more developments to proceed.

P-9 Diridon affordable housing production goal - Actively subsidize and effectuate production of affordable housing in the Diridon Station Area to achieve the City’s goal of at least 25% of housing in this area being restricted affordable by the time of full Station Area build-out.

P-22 Transit-oriented affordable housing near Diridon Station - • To integrate restricted affordable housing around the City’s main transit station and maximize competitiveness for State affordable housing funding sources, prioritize sites within a one-half mile walkshed of Diridon Station for affordable housing. • Implement prioritization by land use tool such as an overlay zone in the area surrounding Diridon and/or set Notice of Funding Availability priorities for City affordable housing subsidies

P-11 Explore Allowing “SB 9” Type Housing on Additional Properties Examine allowing SB 9-type projects on properties zoned R-2 Two Family and properties listed on the Historic Resources Inventory. Create design standards to maximize acceptance of SB 9 developments in single family neighborhoods.

P-24 School district housing (YOSL) - Complete and implement YOSL (Yes on School Lands) ordinance, allowing both affordable and market-rate housing to proceed on sites with Public/Quasi Public designation on lands that are owned by public school districts, to create more opportunities for school district employees to live close to where they work and give greater financial stability to public school districts.

P-34 Affordable housing funding advocacy - • Support bond funding initiatives at the County and regional levels to increase the supply of affordable housing production and preservation. • Sustain advocacy for State and federal funding programs and advocate for more resources so that they meet the affordable housing production and preservation needs of San José. • For homelessness response, advocate for both operating and capital subsidies.

Meeting RHNA levels and Housing Opportunity Sites Inventory

Despite all of the public outreach and engagement efforts conducted for this Housing Element Update, there were no meetings to discuss the details of the Sites Inventory, including how pipeline projects and accessory dwelling units (ADUs) would be addressed, details of the sites selection methodology, or consideration of the tools used to calculate realistic capacities. SV@Home was among those who requested more detailed briefings and discussions, but these were not provided. Despite these efforts, there ultimately were no focus groups, or meetings held with developers or other stakeholders about the Sites Inventory. Beyond very high-level discussions of focus area categories, the first time this process and maps were available for discussion was when the complete Draft Housing Element Update was released. The importance of this inventory stretches beyond just accounting for capacity in San José; it is central to many of the major affordable housing policies in place or being developed.

That said, city planning staff have made efforts to be responsive to our efforts since the release of the draft. Upon request, the sites inventory was uploaded in the City's Housing Sites Explorer, which provided an invaluable visual and analytic tool to interface with the tremendous amount of additional information on that platform. City planning staff were also responsive to requests for clarification about a number of other land-use policy items contained in the draft.

The housing opportunity sites "map" shows a serious commitment to the AFFH requirements, and local priorities. Affordable sites are distributed throughout the city: they have been identified in areas described as higher-resourced where they have not traditionally been built, they support the development strategy of the General Plan, and they take advantage of major priority growth areas including North San José. However, the assumptions embedded in the map will determine whether this becomes an actual tool to enable development.

Based on our initial analysis we have a number of significant concerns, including:

- **Potential double-counting of reported 5th cycle projects in the 6th cycle pipeline inventory;**
- **Overstatement of ADU production expectations;**
- **Problems with the site selection methodology;**
- **Problems with the reasonable capacity assumptions;**
- **Concerns with the integration of the Affordable Housing Siting Policy; and**
- **Incomplete work on the North San José affordable housing requirements.**

Potential double-counting reported 5th cycle projects in the 6th cycle pipeline inventory.

In the Draft Housing Element, *Chapter 5: Adequate Sites for Housing* states in section 5.3.1 that the City may take credit towards their RHNA for units "that have been approved, under review, or received a certificate of occupancy" during the 6th Cycle RHNA projection period from June 30, 2022 to December 31st, 2030. We

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appreciate the recognition that not all pipeline projects count as progress, and that in the analysis, significant adjustments were made to how pipeline units are applied to the RHNA obligations.

However, SV@Home has reviewed a more detailed list of pipeline projects produced by the City of San José, which identifies a number of sites as “Under Construction” and others as post entitlement, which may have received building permits prior to the end of June, 2022. According to the 5th Cycle Housing Element APR rules, projects that acquired building permits within the planning period would count as progress towards a jurisdiction’s 5th Cycle RHNA,¹ and would therefore not qualify to be included in the 6th Cycle Housing Element sites inventory. SV@Home did an initial review of the “Under Construction” pipeline projects listed in the spreadsheet against the City’s sjpermits.org, a publicly accessible online permitting record database. Of this small sample, we believe that at least three projects may have already received building permits, including:

- 1710 Moorpark Avenue (APN: 282-44-027), Permit No. H19-054;
- 3090 S. Bascom (APN: 414-14-092), Permit No. H20-013; and
- 5647 Gallup/1171 Mesa Drive (APN: 567-52-029), Permit No. H19-023.

We understand that there is some confusion among cities about when housing units may be counted toward the RHNA allocation due to seemingly contradictory information in HCD’s Housing Element Site Inventory Guidebook. However, developments that receive building permits prior to June 30, 2022 will be counted toward the 5th Cycle RHNA, and should not also be counted toward the 6th Cycle RHNA.

SV@Home recommends that the City of San José remove these and any other sites from the inventory that received building permits prior to June 30, 2022.

Overstatement of ADU Production Expectations

San José has been a regional and state-wide leader of advocacy to embrace the opportunities that ADUs offer for adding critical residential capacity, and intensify the use of the residential land in the city. This proactive and deliberate effort has produced results, and ADU production is now a consequential percentage of annual production. Section 5.3.2 estimates that 3,553 new ADUs will be built during the RHNA cycle, and that 60% of these (2,132) will count towards the City’s lower-income obligations. This amounts to 9% of the total combined very-low and low-income units, and over 12% of the total low-income category alone.

These forecasts are based on the ADU calculation methodology provided to Bay Area cities by the Association of Bay Area Governments (ABAG). While we understand why cities are using this guidance in their Housing Element planning process, we believe that this methodology is flawed in two ways: 1) it assumes significantly lower rents than unpublished local studies have shown, and we have found in our analysis that the ABAG methodology subsequently credits far more units to affordable goals than is warranted, and 2) it assumes that all ADUs are used as primary residences, rather than home offices, guest rooms, or play spaces for children. Together, these failings lead to a significant overstatement of ADU impact.

¹ [HCD, Housing Element Annual Progress Report Instructions \(pg 91\)](#)

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SV@Home recommends that San José, as a regional leader, coordinate a county-wide ADU rent-level and use study in 2026 to assess the assumptions of this portion of the Housing Element update, and make the necessary adjustments to the Sites Inventory to ensure that the existing capacity continues to meet RHNA obligations.

Housing Opportunity Sites Methodology

There is a general lack of transparency as to the methodology used for housing opportunity sites, which hampers the ability to fully assess the sites selection process, likelihood of redevelopment, and the realistic capacity calculations methodology used for the Sites Inventory. Because the City chose to use alternative methods to those outlined in HCD's Housing Element Site Inventory Guidebook ([the Guidebook] [per Government Code section 65583.2(c)(2)]), it is difficult to unpack whether these processes and methodologies meet the basic standards required to assess the reasonable likelihood of development within the planning period, or the realistic capacity.

Site Selection

Although HCD guidance includes some flexibility on how each city can approach this process, the standard is high, and we believe the intention is that the methodology employed will produce similar results to a full analysis of each specific site. Within the limits of the procedural description provided in the Draft, we will address some concerns about what appear to be the key screening assumptions for selecting feasible sites. We will then turn to specific categorical and site-specific analysis to argue that the methodology employed generally fails to meet HCD's standards.

In describing the opportunity sites, the Draft holds that these sites are generally "vacant or underutilized." The screening tools, as described, included: "filtering out properties that already had multifamily uses, were on the Major Development Projects list, had Planning permits issued within the last four years, had new construction Building permits in the last eight years, and were smaller than 0.5 acres." We do not believe these filters were adequate to identify viable sites as required. The construction of properties more than eight years ago, or improvement more than four years ago, are not obvious indicators of underutilization or likely redevelopment. The assertion that recent development projects show that non-vacant sites do not pose a barrier to redevelopment is not fully supported by the project list in Appendix K (titled Appendix F). This list shows that many of the developed sites were on vacant land or parking lots, and the majority of those built on land with existing uses were built in very active growth areas such as Downtown, proximate to Diridon Station, or in the San Carlos Urban Village just west of Downtown. This framework does not appear to meet the site selection standards set by HCD, which is significantly higher for assessing non-vacant lower-income sites, as outlined in the Guidebook.

The clearest guidance for identifying lower-income sites is that the parcels must be at least 0.5 acres and not more than 10 acres in size. However, in the Draft Sites Inventory, 484 lower-income units are planned for parcels smaller than 0.5 acres (two percent of the total lower-income units in the inventory), and 2,967 lower-

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income units are planned for parcels larger than 10 acres (12.6 percent of the total lower-income units in the inventory). These units combined account for nearly 15 percent of the total lower-income inventory. There is no specific discussion of how or why these sites were chosen for inclusion, despite not meeting HCD requirements for lower-income housing.

For lower-income sites, HCD also states the City must: 1) provide substantial evidence that indicates existing non-residential use will be discontinued or will not be an impediment to future residential development, 2) demonstrate that there is clear developer interest in redeveloping each site within the planning period, **and** 3) incorporate potential constraints (e.g. environmental, parking, open space, etc.) into the inventory's realistic capacity calculations consistent with the Guidebook. This evidence, or comparable analysis has not been included in the Draft.

Site specific analysis of a sample of sites indicates that the methodology employed by the City resulted in the inclusion of parcels in the Sites Inventory that are unlikely to be redeveloped with housing during the 6th planning cycle – an issue of particular concern for sites planned to hold lower-income units in higher-resource areas. These sites are required to meet a higher bar to ensure they can be realistically developed within the planning period and to meet AFFH standards of spreading lower-income sites throughout the city.

Approximately 34 percent of lower-income units in the Sites Inventory are planned for parcels in higher-resource areas. SV@Home analyzed some of these sites and identified multiple parcels that are unlikely to meet the HCD Guidebook's standards. The following are examples:

- **Walmart Neighborhood Market, 4080 Stevens Creek Boulevard** (APN: 294-41-005): It is very unlikely that a bustling Walmart grocery store opened in 2014 and generating nearly 100 jobs will redevelop to accommodate 313 lower-income residential units, given that nothing about this newer, profitable store or the company's long-range plans to expand the small-footprint format indicates a future closure;
- **West Valley Center of the Palo Alto Medical Foundation, 7225 Rainbow Drive** (APN: 372-23-022): This site is currently occupied by a prominent medical building and provides "a full range of primary care medicine-family practice, internal medicine and pediatrics and a full service lab and X-ray for patient convenience." It does not seem financially feasible for this active use to be redeveloped to 101 units of lower-income housing;
- **The Willow Glen Bevmo, Aqui, and parking behind shops east of Willow at Lincoln, 1133 Lincoln Avenue, San José, CA** (APN: 429-07-041): This site is planned to become 45 units of lower-income housing despite the popularity of these small businesses and the thriving Willow Glen business district there; and
- **Holder's Country Inn restaurant, 998 S. De Anza Boulevard** (APN 372-26-019): Before July 27, 2022, when this highly successful business burned in the night, the owner of the property had not expressed intent to redevelop to any other use, even as the City had planned 104 units of lower-income housing for the site. Now owner Efren Flores is [quoted in the Mercury News](#) as saying he intends to rebuild the restaurant in the same location.

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Other examples of sites in highest/high resourced areas, where redevelopment seems unlikely in the absence of the required robust site-specific analysis, include:

- An active Bank of the West on an outlot in the parking lot of an active Home Depot, 1.15-acre site proposed for 87 lower-income units (965 S. De Anza Boulevard, APN: 359-27-026);
- A large office building fully leased to high-end business in the Willow Glen business district, 0.64-acre site slated for 52 lower-income units (1122 Willow Street, APN: 429-07-045);
- Occupied business offices on a 2.15-acre site, projected to have 169 lower-income units (1175 Saratoga Avenue, APN: 381-17-149)
- A bustling shopping center on a 3.39-acre site, proposed for 238 lower-income units (1741 Berryessa Road 95133, APN: 245-42-029); and
- A 0.78-acre site abutting a riparian corridor – an environmental constraint – planned to have 96 lower-income units (1081 Foxworthy Avenue, APN: 439-48-044).

SV@Home’s analysis also identified problematic sites in low-resourced areas that require further site-specific analysis. For example, the odd-shaped sites provided below are unlikely to produce the proposed market-rate and moderate residential capacity that could also be representative of lower-income sites throughout the Sites Inventory. We also found a church site that would require lot-splitting and is compressed by active small businesses and occupied residential areas, which can severely limit church operations:

- Long and narrow 1-acre site occupied by an active Hertz Car Rental/Penske Truck Rental. This site is planned to have 25 market-rate units (APN: 484-03-049);
- Long and narrow, oddly shaped 0.82-acre vacant site with very limited access near Muirfield Drive and East Capitol Expressway, located between the backs of existing single-family homes and the Highway 680 onramp. This site is proposed to have five moderate-income units (APN: 484-41-154); and
- True Vine Baptist Church, 505 S. White Road (APN: 484-26-081 is planned to hold 106 low-income units on 1.34 acres.

SV@Home would recommend a thorough review of the sites selected for the Sites Inventory, and the inclusion of additional factors known to be constraints on likely development including existing uses on non-residential sites. If a site-by-site assessment is beyond current capacity, a sample of consequential low-income sites should be reviewed in detail to ensure that the reasonable expectation of redevelopment for residential uses is met as required by State law.

Realistic Capacity

We are deeply concerned about the transparency of the process used to determine realistic capacity, including the barriers this poses for evaluating this process. In the draft, the process is described as using a complex algorithm deployed via the BuildingBlocks platform from Tolemi, a three-step process to estimate density of the sites based on historic trends by calculating the allowable density, estimate historic production trends for realistic capacity using five “Comparables” from the previous Housing Element, and apply a calculation of the dwelling unit per acre to the selected sites. There is no discussion of how this process actually works, how the

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comparables are identified given the significant variability of the sites identified, and what the “historic trend” assumptions are that are applied to individual sites.

Again, because the city chose to use alternative methods than those outlined in the Guidebook it is difficult to unpack whether the realistic capacity of these processes meet the basic standards required. Although HCD guidance includes some flexibility on how each city can approach this process, the standard is very high, and we believe the intention is that the methodology employed will produce similar results to a full analysis of each specific site. Below are our concerns with the City’s alternative realistic capacity methodology:

- **Environmental constraints** - it is not clear that the comparables in the model accounted for constraints from the environment;
- **Adjustment factors including design standards** - it is not clear that the comparables fully accounted for the range of factors outlined in the table at the top of page 22 of the Guidebook. These include:
 - required setbacks
 - emergency vehicle access areas
 - easements
 - required parking
 - height restrictions
 - other design standards, ex. shadow planes

Note: The constraints stemming from some of these factors may be mitigated through concessions allowed under the state Density Bonus law, but the HCD guidance explicitly forbids integrating this law into the assumptions used to identify feasible sites and realistic capacities.

- **Rezoning and Densities** - it is not clear how the comparables accounted for sites which will require rezoning or discretionary approval, including the zoning designation that these sites would be rezoned to, nor the density that would be allowed at these rezoned sites.

These factors are vital to understanding the realistic capacity calculations, and central to determining the realistic capacity of each site.

An initial review of the realistic capacity assigned to the sites in the inventory indicates that there may be significant problems in the BuildingBlocks process. Excluding the highest density core areas, Downtown and the Diridon Station Area, the realistic capacity estimates assume that sites will be developed at an average of 90 dwelling units per acre. (The Downtown and Diridon Station lower-income sites in the inventory, have a combined capacity of 370 units.) This average density is almost exactly the same for lower-income sites. This is unaccountably high as an average density across most geographies in San Jose, and it would indicate that the comparable developments used in the BuildingBlocks process may not have accounted for critical distinctions between sites in the inventory.

For example, the average project realistic density is higher, over 100 units per acre, in Urban Villages with adopted plans. Currently, adopted plans with active development are concentrated in transit intensive areas connected to downtown by core arterial streets. These are either Tier I Regional Transit Urban Villages, or Tier

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II Local Transit Urban Villages. The exceptions to these core arterial connectors are the Berryessa BART Tier I Urban Village, and the lower tiered Santana Row Commercial Corridor & Center Urban Village which has been dominated by site, often mixed-use, development. The Urban Village land use designations in these high priority areas are spurring development very differently than the same land use designations in other regions of the city, and in lower tiered Urban Villages. This is actually by design. These Urban Villages with the first adopted plans were intended to build out more densely and quickly than others, which is why they were planned first. The Santana Row Urban Village was pushed up the priority list when the demand increased dramatically, and somewhat unexpectedly.

For this reason, selecting five comparable recent developments for use in the BuildingBlocks algorithm is difficult and highly consequential, as the majority of sites in the inventory are not similar to recent developments. Nonetheless, the algorithm assumes an average density of over 90 units per acre even in unplanned lower tiered Urban Villages. Of the unplanned Urban Villages included in the inventory, 11 percent are in Tier II Local Transit Urban Villages, 70 percent are in lower tiered Commercial Corridor and Center Urban Villages, and 19 percent are in the lowest tiered Neighborhood Urban Villages.

These will be challenging areas to develop high density affordable housing. In recent months, three mixed-income, mixed-use, developments have been approved in Urban Villages without plans: Blossom Hill Light Rail Station, Cambrian Village, and El Paseo de Saratoga. Each of these projects is in a great site, and on a large and flexible parcel, but arguably none of them reached residential densities of 90 units per acre. Each took years, confronted major challenges, and the two largest encountered massive community backlash.

This poses an even greater challenge for sites included in the inventory under policy H-2.9, the "1.5 Acre Rule," which account for 5 percent of the total sites in the inventory, but nearly 10 percent of the lower-income sites, and an even higher proportion of the affordable sites located in high resource areas. There are very few developments to date that have used this almost decade-old policy, which was recently rewritten to make it more accessible and objective. A review of these sites showed the majority were in residential areas, abutting single family homes more often than multifamily apartments. (The rule requires that any existing structures have an FAR of .2 or less, or have been vacant for five years, and it is not clear that this filter was integrated into the selection of these sites.) Despite a clear lack of comparables, BuildingBlocks calculated a realistic capacity of just under 80 units per acre for these sites. Some of these sites offer excellent opportunities - my favorite is a .84 acre parcel across from the YMCA on the Alameda, a major transit corridor - but very few are likely to develop at these densities in the next eight years. We have similar concerns about the capacity and development assumptions applied to the brand new Neighborhood Business Districts.

SV@Home recommends that the City of San José provide more disclosure about its realistic capacity calculation methodology used in BuildingBlocks to facilitate public review.

SV@Home recommends that the ability of the BuildingBlocks tool to meet the requirements in the HCD Housing Element Site Inventory Guidebook be reassessed and that additional points of data detailed above be integrated into the model. The new output should then be assessed, and the City

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should move to a site-by-site analysis of a sample of sites to determine appropriate additional adjustments.

SV@Home recommends updating projected densities of lower-income sites located in higher-resourced areas to more closely reflect the reality that, despite new programs, realistic sites and capacities need to more closely reflect historic development trends at these locations.

Concerns with the integration of the Affordable Housing Siting Policy

As we noted above, the “maps” of lower-income opportunity sites included in Chapter 5 display a substantive commitment to the AFFH requirements that affordable housing be planned throughout the city. The accompanying Table 5-12, Site Inventory Units by TCAC Resource Level, shows that 45.4 percent of lower-income units have been planned for either High- or Highest-Resource Areas. This is also a substantive commitment. These are areas that have disproportionately fewer existing affordable housing developments, will be more competitive for State and Federal resources to build affordable housing, and have historically been more resistant to integrating higher density affordable housing into their neighborhoods.

This commitment to identifying lower-income sites in High- or Higher-Resource areas is also an integral part of assessing the viability and the tools necessary to implement the Affordable Housing Siting Policy, which is underdevelopment after receiving initial approval from the City Council last year. This policy is listed as two related programs in Chapter 3:

- *N-5 Increase affordable housing production in higher-resource areas - Allocate a greater share of affordable housing subsidy awards to Tier 1 higher-resource neighborhoods to provide more lower-income and protected class residents greater choices of where they can live.*
- *P-17 Affordable Housing Siting Policy - Fully implement and evaluate effectiveness of the City’s new Affordable Housing Siting Policy in generating new affordable housing developments in higher opportunity areas. Report on the outcomes, focusing on fair housing implications of development patterns.*

The “Tier(s)” referred to above align very closely to the TCAC/CDLAC maps, with San Jose’s Tier 1 including both “High” and “Highest” resource areas. The policy, if fully adopted, would allocate up to 60 percent of the City’s affordable housing production and preservation subsidies exclusively to Tier I communities. During the council action, direction was given to staff to integrate the proposed Siting Policy into the Housing Element sites inventory process, to assess the realistic current development opportunities to support the policy, to identify barriers to its implementation, and to propose additional actions that would mitigate those barriers.

This would explicitly require coordination between the Planning and Housing Departments in this process, and an especially careful analysis of both site selection and site capacity. We are not confident that this work has been done as intended.

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We noted above that the assumptions embedded in the map are what determines how this part of the process becomes an actual tool to enable development, and we discussed significant concerns about the site selection and realistic capacity calculation process and assumptions.

Underlying much of this analysis is the reality that identifying sites in High Resource Areas was appropriately central to the process. Unfortunately, the concerns we have expressed are highly correlated with the tools used to promote this part of the AFFH mandate. Unplanned Urban Villages and H-2.9 sites account for nearly 70% of the sites identified in High or Highest-Resourced areas. All but one of the Neighborhood Business District sites are located along Lincoln in Willow Glen, where five properties are projected to redevelop at high density to produce 310 new affordable homes, in the next eight years.

We examined a sample of these High and Highest-Resourced lower-income sites. There are seven properties with “realistic capacity” of over 100 units in Highest-Resource areas, and 16 in High-Resourced areas; we counted these because they seemed large enough to overcome our skepticism about the realistic capacity calculations. Given that larger projects are often more competitive for funding, we looked more closely at the seven sites in the inventory in these higher resourced areas that had been identified as likely to redevelop, and where BuildingBlocks had determined had a realistic capacity of over 150 units. These included a Goodwill store, an active Flames cafe, the recently opened Walmart discussed earlier, a strip mall without vacancies, a vacant lot, a VTA Park-and-Ride, and an interesting “L” shaped property that wrapped around a gas station (separate parcel) and abutted a single family neighborhood.

There are multiple programs listed in Chapter 3 that could support the implementation of the siting policy, including: P-32, Higher subsidies for affordable units where land costs are higher, or developments need to be smaller; P-7, Ministerial approval for infill development; P-33 and P-24 YIGBY and YOSL for worship assembly and school sites. However, without careful coordination between the Planning and Housing Departments, and a much more robust analysis of actual sites that could redevelop, we believe it would be a mistake to adopt a policy that may lack the tools and conditions to be effective.

SV@Home recommends that, following the reanalysis of sites that are feasible for redevelopment and recalculation of realistic capacity, a specific analysis be conducted on sites in higher-resourced areas to develop a more complete understanding of the potential success or failure of the proposed Affordable Housing Siting Policy. Neither programs N-5 or P-17 should be adopted until this analysis has been completed.

SV@Home recommends that a more direct discussion of the connection between the Sites Inventory and the proposed Policies and Programs that will remove barriers to development and increase feasibility of affordable housing be included in this Housing Element Update prior to certification.

Ensure success in building lower-income units in North San José.

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In the San José General Plan, residential development in North San José was planned to reach 32,000 units by 2040 - over a quarter of the total residential growth in the City. Under the recently retired North San Jose Development Plan, 20 percent of this new housing was required to be affordable to low and moderate income households. In the first phase of this plan 8,000 units were built, but only a fraction of them were affordable. Roughly 24,000 units remain to be built. When the NSDP was retired, the City Council directed staff to develop a number of policies and land-use tools to ensure North San Jose fully develops, and that 20 percent of the homes in the area, up to 6,400, are affordable.

These are plans that stretch beyond the 6th Cycle, but this Housing Element Update will play a critical role in establishing the policies and programs to move development forward as planned.

The current Draft does not reflect the final land-use plan for the area. As noted in Chapter 5;

Staff is currently developing a housing and affordable housing overlay for sites in North San José that currently have a land use designation that does not allow residential uses. This work will be completed prior to or concurrent with the adoption of the Housing Element by the City Council in 2023.

This work is listed as P-3: NSJ Affordable Housing Overlay Zones; and is supported by P-4: Affordable Housing Tools for NSJ, and P-5: Affordable Housing Investments in NSJ. It is our understanding that the details of the overlay zones are scheduled to be reviewed separately by the City Council for integration into the Housing Element prior to final submission. Together we believe the combination of land-use tools and deliberate policy levelers will be essential to the future of NSJ as a truly integrated, vibrant, transit and jobs rich community in the city.

It is important to note our strong support for the significant commitment to making more land available for residential development in North San Jose. In combination with the increase in the minimum densities required in the TERO areas, the identification of nearly 120 additional acres in the TEC core is an important step toward the next 24,000 new homes. We share the confidence that we can grow jobs and housing, and that we need both.

SV@Home values its partnership with the City of San José and is pleased to have been invited to provide feedback on the Draft Housing Element. We welcome the opportunity to engage in an ongoing dialogue as the Draft Housing Element moves through cycles of review and revision, with the shared goal of addressing the City's urgent housing need by boosting production of homes at all income levels, preserving existing affordable homes, and protecting the families in them.

Sincerely,



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