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TRANSMITTED VIA EMAIL

December 23, 2022

Community Development Department
Attn: Luke Connolly, Acting Community Development Director
10300 Torre Avenue
Cupertino, CA 95014

Mr. Connolly:

The 6th Cycle Housing Element Update process is a unique opportunity to more fully assess the breadth of housing needs in Cupertino and to identify new tools to address these needs and constraints on developing housing. This process is also an opportunity to engage deliberately with the full community across income levels, especially those representative of populations that have been historically excluded and are at risk of displacement, to share their housing needs.

This unique opportunity is qualitatively and quantitatively different from previous cycles, and is required to adhere to clear legal guidance outlined by the California Department of Housing & Community Development (HCD) in multiple documents interpreting state law. This is not a simple process, and we appreciate the effort that the City of Cupertino staff and members of the community have invested over the last year. As you know, however, the expectations for this process are high, and jurisdictions throughout the state have struggled to generate compliant housing elements for this cycle.

Unfortunately, the initial "Administrative Draft" Housing Element released on November 18, 2022 is incomplete, and fails to meet most of the state standards and statutory requirements of a housing element. We look forward to a completed draft to provide more detailed comments.

We would draw attention to a number of areas where we believe the current draft is particularly lacking.

Public engagement, integration of community input, and affirmatively furthering fair housing through deliberate outreach and inclusion of protected classes likely to suffer disproportionately from housing needs

While early public meetings, events, and discussions drew substantial community interest – including several successful community engagement events held in partnership with West Valley Community Services – the perspective of community members sharing experiences and housing needs do not appear to have been integrated into the document. As the public engagement process proceeded we believe that city leaders deliberately blocked meaningful participation, including by representatives of enumerated protected classes.

Most disturbing was the action by the City Council in March of 2022 to dismiss a Stakeholders Group chosen through a blind review of applications publicly solicited to reflect the breadth of the community and include representatives of protected classes. The

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Re: Administrative Draft Housing Element Update

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Council instead chose an ad hoc Community Engagement Plan-Strategic Advisory Committee, comprised of only elected and appointed officials. This committee held a series of meetings noticed only 24 hours in advance, which failed to actively solicit community input and did not address the substantive requirements of the housing element process. The Council has demonstrated unwillingness to allow the Housing Element process to continue without interference, or to comply with basic statutory requirements and standards.

As a result, the draft does not fully address the housing needs in Cupertino, and has provided vague and inadequate programs and policies -- the document failed because the process failed.

Governmental constraints on housing production, and the barriers to development at the Valco site.

The required assessment of the cumulative constraints of local impact fees and taxes, land use designations, development review and approval process, and design standards has not been completed. The current draft does include a strategy (HE-1.3.10) to lower fees so they are inline with regional averages, but does not assess the cumulative impact of these fees, nor describe how the fee reductions will specifically support lower-income housing development. The City of Cupertino does not have a history of supporting multi-family development, and will likely need to reduce fees significantly, particularly on affordable housing development. This will be particularly true of park fees, which are significantly higher than neighboring cities, and do not appear to be dedicated to new parks as required. Cities throughout the region are assessing the cumulative impact of fees and taxes in recognition that the status quo – or average – is a governmental constraint on residential development.

Similarly, the city should conduct a thorough evaluation of its land use and development review process in order to demonstrate confidence that it will be able to meet the housing need levels as determined through the RHNA process, and distribute lower income housing opportunities around the city as required by AFFH guidelines. While we are pleased to see efforts to develop policies to streamline affordable projects we are concerned that multiple barriers will continue to significantly constrain development.

This is particularly important for the Valco site, which is planned for a mixed-use development that will eventually provide more than half of the 6th Cycle RHNA obligation and well over 100% of its low income units. Any barriers to the development of this site during the planning period should be considered a governmental constraint and be removed. The city has openly fought the development of this site including legal challenges to its SB35 application, and a potentially illegal downzoning of the site in 2019 intended to make the proposed development infeasible. The Cupertino Housing Element update must include explicit General Plan and zoning updates, and fee reviews to accommodate the mixed-use project as proposed. Failure to remove known barriers, and to cease obstructionary actions, should be considered cause for denying state certification.

The City of Cupertino's Draft 6th Cycle Housing Element falls far short of the statutory requirement at multiple levels, from its failure to elicit and reflect community input, to its deficient analysis of needs, to its absence of concrete programs with implementation details and timelines. We also believe the sites inventory falls significantly short of the AFFH requirements for this process. We regret that the Draft Housing Element, as it stands today, does not represent a serious effort for housing and community advocates to engage with. SV@Home strongly recommends that the City's new Housing Element consultant be provided the resources and support needed to produce a compliant Housing Element.