

June 23, 2023

City of Seaside
440 Harcourt Ave.
Seaside, CA 93955

RE: [Seaside Public Review Draft Housing Element](#)

City of Seaside Housing Team:

LandWatch has reviewed [Seaside Public Review Draft Housing Element](#). Generally, we support the goals to eliminate constraints and make it easier to build the housing to meet the City's Regional Housing Needs Allocation (RHNA). Specifically, we support policies and programs to strengthen the West Broadway Urban Village Specific Plan and bring new opportunities to the core of the City. We also support the call for streamlining regulations and increasing regulatory certainty. However, the implementing programs should make clear commitments to ministerial review of qualifying infill projects, especially multi-family projects.

Future growth areas relied on for this 6th Cycle Housing Element should not include residential development of the City's parcels on the former Fort Ord. These sites are very problematic and may not be feasible for residential development. We attach specific comments on the draft site inventory and proposed policies and programs, as well as supporting materials from the Campus Town EIR and MCWD/LandWatch/Keep Fort Ord Wild legal settlement.

Set forth below are comments on implementation programs.

Program 5, Adequate Sites for RHNA and By-right Approval – **shortfall in affordable housing sites:**

The City's RHNA allocation is 616 units, which includes 86 very-low-income units, 55 low-income units, 156 moderate-income units, and 319 market-rate units. The Housing Element credits against this allocation the large Campus Town project and three smaller projects, which it claims will provide all of the RHNA units except 47 very-low-income units, 13 low-income units, and 6 moderate-income units. (Table App-45.) The three smaller projects would provide only 88 of the 616 RHNA units; thus, attainment of the RHNA is critically dependent on the build-out of the Campus Town project.

The Housing Element acknowledges that the City does not have sufficient sites to accommodate the 47 very-low-income units, 13 low-income units, and 6 moderate-income units without amending General Plan land use designations and rezoning. (See Tables App-52, App-53.) The proposed rezoning would provide sites that would accommodate the 47 very-low-income units and

13 low-income units and provide ‘surplus’ sites only for an additional 27 units. (Table App-53 [“+27” in the “shortfall/surplus” row].)

As noted, the Housing Element takes a substantial RHNA credit against the Campus Town project, which includes a credit for attainment of 45 **offsite** inclusionary units consisting of 21 very-low income and 24 low-income units. (Table App. 44.) The Housing Element does not indicate where those offsite units would be constructed, but they would have to be in the City of Seaside if the RHNA credit for the City is justified. However, the Housing Element demonstrates that there would be at most sites for 27 of these offsite units, i.e., the “surplus” shown in Table App-53. Accordingly, the Housing Element fails to identify sufficient sites for very-low-income units and low-income units. Additional sites must be identified. Those sites should be identified by rezoning infill sites for residential uses and by increasing the allowable or minimum density of existing residential infill sites.

Program 5, Adequate Sites for RHNA and By-right Approval – inadequate analysis to support blanket assumption of 70% of maximum density as realistic capacity: In discounting both vacant and non-vacant sites to reflect their realistic capacity for development, the Housing Element arbitrarily applies a uniform 30% discount to both vacant and non-vacant sites. (Table App-54 [showing 70% “adjustment” of density]; HE, p. App-84 [estimating development potential as “70% of the maximum allowable density”].) The only rationale for assuming that the realistic capacity of each of the identified sites is equal to 70% of allowable density is the claim that this “is similar to the density factor used in Salinas based on typical developments in the City.” (HE, p. APP-84.)

VACANT SITES: Use of typical development densities may be a relevant factor in determining the realistic capacity of vacant sites. (HCD, [Site Inventory Guidebook](#), pp. 19.) However, HCD requires that the analysis of the realistic capacity of vacant land also consider other factors:

The analysis must consider the imposition of any development standards that impact the residential development capacity of the sites identified in the inventory. When establishing realistic unit capacity calculations, the jurisdiction must consider the cumulative impact of standards such as maximum lot coverage, height, open space, parking, on-site improvements such as sidewalks or easements, and floor area ratios. The analysis should consider any development standards or the cumulative effect of development standards that would limit the achievable density on a site. For example, if a mixed-use zone requires commercial on the ground floor and has a height limit of three stories along with lot coverage and other development standards, the density that can actually be achieved on that site might be less than the maximum allowable density.

The capacity of a site should also be adjusted for areas that cannot be developed due to environmental factors such as hazards, wetlands, or topography that cannot be mitigated. The capacity of sites subject to specific plans, overlays or other modifications of the base zoning should be adjusted to reflect those factors. For purposes of this analysis, it is recommended that the jurisdiction start with the gross acreage and adjust the buildable acreage accordingly to reach net buildable acreage.

(Id., p. 20.) In addition, when using typical densities attained in other developments, the analysis must separately estimate densities achieved for each affordability class. (Id. At 21.) The Housing Element fails to provide these analyses for vacant sites.

NON-VACANT SITES: Much more problematically, the Housing Element fails to provide any of the analyses required to justify the assumption that 70% of the maximum density of all non-vacant sites is a realistic development capacity. Where a Housing element relies on expected redevelopment of non-vacant sites, HCD requires site-specific analysis that includes the following considerations:

Realistic development capacity for nonresidential, nonvacant, or overlay zoned sites

The capacity calculation must be adjusted to reflect the realistic potential for residential development capacity on the sites in the inventory. Specifically, when the site has the potential to be developed with nonresidential uses, requires redevelopment, or has an overlay zone allowing the underlying zoning to be utilized for residential units, these capacity limits must be reflected in the housing element. Factors used to make this adjustment may include the following:

- Performance standards mandating a specified portion of residential development in mixed use or nonresidential zones (e.g., residential allowed only above first floor commercial).
- The likelihood for residential development such as incentives for residential use, market demand, efforts to attract and assist developers, or allowance of 100 percent residential development.
- Local or regional residential development trends in the same nonresidential zoning districts.
- Local or regional track records, past production trends, or net unit increases/yields for redeveloping sites or site intensification. This estimate may be based on the rate at which similar parcels were developed during the previous planning period, with adjustments as appropriate to reflect new market conditions or changes in the regulatory environment. If no information about the rate of development of similar parcels is available, report the proportion of parcels in the previous housing element's site inventory that were developed during the previous planning period. For example, if past production trends indicate that two out of three similar sites were developed for residential use, and one out of three similar sites was developed for commercial use, an initial estimate of the proportion of new development which is expected to be residential would be two-thirds, i.e., 0.67.
- Local or regional track records, trends, or build out yields for redeveloping sites or site intensification. In addition, the housing element should include monitoring programs with next-step actions to ensure sites are achieving the anticipated development patterns. The programs should identify modifications to incentives, sites, programs, or rezoning the jurisdiction will take should these strategies not yield the expected housing potential.

(Id., pp. 20-21.) The Housing Element does not provide any of this analysis for non-vacant sites.

If, as seems possible, there is insufficient justification to assume that the realistic development capacity of the proposed sites is 70% of allowed density, then additional sites must be identified.

Again, those sites should be identified by rezoning infill sites for residential uses and by increasing the allowable or minimum density of existing residential infill sites.

Program 5, Adequate Sites for RHNA and By-right Approval – **future growth areas**: In support of the program to identify adequate sites, the Housing Element includes the proposal to “pursue development of future growth areas and future specific plan areas.” (HE, p. 11.) These future growth and future specific plan areas should be identified in the Housing Element as infill redevelop areas along existing transit corridors, zoned to accommodate 3 or more story residential projects and where development similar to that envisioned in the West Broadway Urban Village Specific Plan could be replicated.

Future growth areas relied on for this 6th Cycle Housing Element should not include residential development of the City’s parcels on the former Fort Ord. In adopting this 6th Cycle Housing Element, to the extent that the City relies on sites on vacant, greenfield land on the former Fort Ord, it will need to identify and mitigate significant environmental impacts to biological and other resources – additional impacts that would not occur on infill properties and non-vacant land in the urbanized portions of the City. Inclusion of Fort Ord areas as future residential growth areas in this 6th Cycle housing element would require substantial CEQA review of impacts to habitat, water resources, and hazardous materials

As for water, properties on the former Fort Ord proposed for residential service by MCWD can only be served by non-groundwater sources due to the 6,160-unit cap on new residential units served by groundwater, a limitation that does not apply to land within the already urbanized areas of the city. The rationale for this limitation is the well-known condition of overdraft and seawater intrusion caused by excessive coastal area groundwater pumping. As the City acknowledged in its approval of the Campus Town project, after approval of the Campus Town project itself, there were only 10 units remaining in the 6,160-unit cap. (Campus Town FEIR, pp. 3-169 to 3-170.) That unit cap remains in force despite the termination of the Fort Ord Reuse Agency by virtue of a settlement agreement between MCWD, LandWatch, and Keep Fort Ord Wild.

Moreover, if this 6th Cycle housing element were to include Fort Ord sites, the City would need to address site contamination by hazardous materials. First, the Environmental Services Cooperative Agreement (ESCA) requires that any amount of soil over 10 cubic yards remain on the same parcel it comes from (see [Fort Ord Cleanup](#)). Second, there are a number of questions that would have to be addressed in a CEQA review of the Housing Element if it relies on residential development of Fort Ord land:

- Were the areas being proposed for residential development in housing elements also designated for residential development in the Fort Ord Reuse Plan?
- Was the level of Army cleanup of Fort Ord soils guided by the then-intended uses for specific areas? For example, were areas intended for residential use cleaned up to a higher level than areas intended for industrial use?
- Has the soil on lands now being proposed for residential development in housing elements been contaminated?

- If the soils in areas now being proposed for residential use in housing elements were previously contaminated, were the soils cleaned up before the land was transferred to the City?
 - If it were [cleaned up](#),
 - Was it cleaned up to a level suitable for residential use, or just for other uses (e.g., industrial or commercial use)? If not, on whom would the cost of incremental cleanup to residential standards fall?
 - What restrictions remain on the use of the land, e.g.,
 - allowable use limitations
 - off-site transport of soils,
 - excavation protocols
 - additional testing and cleanup for excavated sites
 - construction worker protections,
 - capping soils
 - What costs will accommodating these restrictions impose on future development? For example, if excavated soils cannot be removed from sites, what cost would be imposed to retain this presumably contaminated soil on site? Would this restrict the amount of land that could be developed?
- Is additional cleanup required? If so, what entity would be responsible for the cleanup, e.g., the current landowner (e.g., the city) or the purchaser (e.g., the developer)?
- Is there a monitoring program in place for soils and waters under lands now being proposed for residential use? What is the purpose of the monitoring? For example, could the monitoring trigger additional cleanup? If so, what entity would be responsible?

If any of the land proposed for residential development or for “future growth areas and future specific plan areas” in Program 5 has been contaminated and has not been fully cleaned up for residential uses without restrictions, or if there are additional costs associated with land use restrictions, then an EIR for a Housing Element that includes Fort Ord lands should evaluate alternatives to developing this land. Alternatives should include (1) siting development on uncontaminated sites, including urban infill sites in the already urbanized portions of Seaside, and (2) where contaminated sites are used, minimizing the development footprint by using clustered, compact development instead of low-density development.

In sum, there are substantial habitat, water supply, and hazardous materials constraints on Fort Ord development sites. If the City chooses to include any vacant Fort Ord land in the Housing Element site inventory or to include any Fort Ord land in the “future growth areas and future specific plan areas” mentioned in Program 5, the EIR for its Housing Element must disclose the significant impacts related to habitat, water supply, and hazardous materials and must propose and evaluate alternatives that avoids or minimizes the use of Fort Ord land in order to reduce those impacts.

We suggest that Program 5 be revised to reference “future growth areas and future specific plan areas within the urbanized portions of Seaside,” thereby excluding Fort Ord lands. Since the Housing Element does not actually identify or rely on any Fort Ord sites in its site inventory, there is no reason to include Fort Ord sites. Omission of Fort Ord sites will greatly simplify the required CEQA review of the Housing Element.

Program 11, Housing Choice Voucher Program – **mandates and incentives**: The program’s language – to “support,” “promote,” or “work with” – may not have any real effect on landlord refusal to accept vouchers. The program should instead contain mandates or substantial incentives to accept vouchers.

Program 13, Affordable Housing Development – **less restrictive development standards**: This program would merely require the City to “consider” less restrictive development standards as part of its General Plan update. The program should be modified to provide that the City shall adopt less restrictive standards that would attain a measurable objective. For example, the program could require that the less restrictive development standards increase effective residential density City-wide by 25%, as measured by the increase in the number of possible residential units at full buildout. The program should require quantification of the increased number of units made possible by allowing additional stories, greater lot coverage, reduced setbacks, and increased floor area ratios. Without substantial increases in allowed density, land owners may not have effective incentives for development and especially for redevelopment and for provision of lower income units. Generally, the Housing element should commit the City to increase densities throughout the City, consistent with New Urbanism principles that require a critical mass of development to create vibrant, walkable communities.

Alternatively, or in addition, the program should provide that these objective development standards cannot be applied so as to restrict attainment of the maximum permitted densities for the site. This approach would be similar to the provisions in AB 2295, under which development standards cannot be applied so as to limit the maximum permitted density or height. (Gov. Code, § 65914.7(a)(8)(i).) It appears that Program 16, Multi-Family and Mixed-Use Development Standards and Design Guidelines, commits the City to objective design standards that would “ensure maximum density can be achieved in each zone.” This program should not be limited to multi-family and mixed-use projects, but should apply to all forms of residential development.

Program 13, Affordable Housing Development – **objective development standards**: The program calls for developing objective development standards “to accommodate SB 35 streamlining of affordable housing projects.”

The City should develop objective development standards and objective design review standards. “Objective zoning standards” and “objective design review standards” could be defined in an implementing ordinance using the language from Government Code Section 65913.4(a)(5) [SB 35] or Government Code Section 65914.7(a)(8)(B) [AB 2295].

And application of these objective standards should not be limited to SB 35 projects. All residential projects in the City should be subject only to objective development and design review standards in order to expedite permitting and to provide the certainty that is required to make development investments.

Program 13, Affordable Housing Development and Program 16, Multi-Family and Mixed Use Development Standards and Design Guidelines - **by-right ministerial permitting**: The Housing Element should require provision of by-right, ministerial permitting for infill multi-family residential projects. The adoption of objective development and design review standards can

eliminate the need for discretionary review and obviate the redundant project-level CEQA review for urban infill projects in areas already subjected to program level CEQA review. CEQA review should take place when the City amends its General Plan or zoning code, not when a developer comes to the City with a conforming project.

Ministerial by-right approval should be applicable to MFR projects on an infill site as defined by the language from SB 35 or the CEQA infill exemption. (Government Code Section 65913.4(a)(2) [SB 35] or Public Resources Code Section 21094.5(e)(1)(B) [CEQA infill exemption].)

The ministerial permitting program should not apply to projects on environmentally sensitive sites, e.g., habitat for endangered, rare or threatened species; farmland of statewide and local importance; wetlands; earthquake/seismic hazard zones; federal, state, and local preserved lands, NCCP and HCP plan areas, and conservation easements; riparian areas; Department of Toxic Substances Control (DTSC) facilities and sites; landslide hazard, flood plains and, floodways; and wildfire hazard as determined by the Department of Forestry and Fire Protection. (See Gov. Code 65913.4(6)(B) through (K) [sites excluded from ministerial permitting in SB 35].)

Concerns for gentrification and loss of historic resources could be addressed by continuing to require discretionary review for projects on existing affordable housing sites, mobile home sites, or historic resources sites. (See Gov. Code 65913.4(a)(7), (10) [SB 35].)

Program 14, Density Bonus Ordinance – **local increase in density bonuses**: Program 14 should include a requirement that the City's implementing ordinance for the state Density Bonus Law include an additional density bonus that goes beyond the state requirements in order to more effectively promote affordable housing development. For example, the City could provide a local density bonus greater than the state DBL bonus, e.g., a 50% bonus for projects providing 8% very low-income units instead of the state DBL's 27.5% bonus. Such an approach is being taken by Sand City, which is proposing a 250% density bonus as long as 15% of the units are affordable to lower income households.

In preparation to accommodate proposals under AB-2011 and SB-6, we also recommend extending the density bonus program to CA=Automotive Commercial, CC=Community Commercial, CMX=Commercial Mixed-Use, and CRG=Regional Commercial zoning districts.

Thank you for this opportunity to comment.

Regards,



Michael DeLapa
Executive Director

Attachments:

Settlement Agreement between MCWD, LandWatch, and Keep Fort Ord Wild
Excerpt from City of Seaside, FEIR for Campus Town project