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February 7, 2023

J. Edward Tewes
City Manager
City of Soledad
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Re: Affordable Housing for Miramonte Specific Plan

Dear Mr. Tewes:

I write on behalf of LandWatch Monterey County regarding the affordable housing provisions required in development agreements for projects in the Miramonte Specific Plan area. LandWatch has communicated regularly with the City over the past several years with an aim to ensuring that planned housing meets the needs of Soledad's working families and individuals. LandWatch continues to urge the City to require compliance with all applicable affordable housing mandates in the Soledad General Plan and Inclusionary Housing Ordinance.

In connection with the recent annexation action, LandWatch has expressed its concern that the City should commit to provision of sufficient, timely, and integrated affordable housing in the Miramonte Specific Plan area, which constitutes the primary growth area for the City for the next several decades. City officials have consistently responded that the time to raise these concerns would be after LAFCO acts on the annexation and the City begins the process of negotiating Affordable Housing Agreements.[1] With LAFCO's action in December, that time has arrived.

Thus, we write to outline the provisions the City must include in the Affordable Housing Agreements and the development agreements that are required for projects in the Miramonte Specific Plan Area.

In summary, there are two sets of requirements for affordable housing applicable in Soledad:

1. The City's Inclusionary Housing Ordinance (IHO) mandates that 20% of units be deed-restricted to lower and moderate income families.

2. Soledad's 2005 General Plan and its 2009 Housing Element, with which Miramonte development agreements must comply, mandates that 58% of units in specific plan areas be affordable "by design" to lower and moderate income

[1] See, e.g., Brent Slama, email to Michael DeLapa, April 1, 2022.

> households. To achieve affordability by design, the 2009 Housing Element requires that these units be developed at higher densities – 20 units per acre for lower income units and 12 units per acre for medium income units.

Because the IHO and General Plan affordability requirements are distinct, both must be met. The IHO requirements should ensure 20% of units are deed-restricted. The General Plan requirements should ensure that an additional 38% of units (58% of total units less the 20% IHO units) are affordable by design to lower and moderate income households and are built at medium and high density.

The General Plan, Miramonte Specific Plan, Resolution 5436 adopting the Miramonte Vesting Tentative Map, and the Inclusionary Housing Ordinance impose additional requirements: affordable units must be provided concurrently with market-rate units, they must be provided within the Specific Plan area, and they must be integrated with market rate units.

These points are detailed below.

A. Requirement for a development agreement

The City issued a vesting tentative map (VTM) under Resolution 5436. There were various local ordinances, policies, and standards related to affordable housing in effect when the VTM vested, which would normally constitute the only requirements with which a project must comply under Government Code Section 66498.1. Indeed, that is the point of a VTM – to protect the developer from more onerous requirements enacted after the VTM application.[2]

However, the 2005 General Plan, the 2009 Housing Element, the Miramonte Specific Plan, and the VTM resolution all require the developer to enter into a development agreement to specify various matters, including how the developer will provide affordable housing. Because a development agreement is a freely negotiated contract between the developer and a city, it may include terms that go beyond the strict mandates of applicable plans, regulations, and ordinances. However, at minimum, the development agreement must implement the policies and programs of the General Plan and the Inclusionary Housing Ordinance in effect when the VTM vested because a development

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[2] A VTM vests when its application is deemed complete, not when it is approved. Resolution 5436 approving the VTM states: "the Applicant for the Miravale III project resubmitted project applications on July 26, 2017, under the name Miramonte, for a reduced size project." Consistent with this vesting date, the 2018 Specific Plan implies that the project must comply with the policies in effect in the 2005 General Plan and its 2009 Housing Element. (Specific Plan, pp. 2-21 to 2-22.)

agreement must be consistent with the General Plan. (Gov. Code, §§ 65867.5, 65866 [development agreements must be consistent with applicable plans].)

B. Substantive requirements that development agreements must meet.

As noted, there are two distinct sets of requirements for affordable housing applicable in Soledad. First, the Inclusionary Housing Ordinance mandates that 20% of units be deed-restricted to lower and moderate income families. Second, the General Plan and its Housing Element mandate that 58% of units in specific plan areas be affordable to lower and moderate income households and be developed at specified densities. Because these are distinct requirements, both must be met. We discuss them separately below.

1. **IHO units: development agreements must comply with the VTM Resolution 5436 and the Specific Plan Policy LU-C requirements that Miramonte's IHO units be constructed concurrently, on-site, and in each development phase.**

IHO requirements: Because it was in effect when the VTM vested, the developer must comply with the 2005 Inclusionary Housing Ordinance, which generally requires 20% of units to be deed-restricted so that are affordable to households with very low incomes (6%), low incomes (6%), and moderate incomes (8%). (SMC, § 17.41.020.) The IHO, as applied throughout the City provides:

- The requirements can be met by constructing the units or by alternative means of compliance, such as dedicating real property for affordable housing or paying in-lieu fees. (SMC, § 17.41.050.)
- The requirements may be met pursuant to an affordable housing agreement with the City or an affordable housing developer. (SMC, §§ 17.41.060, 17.41.120.)
- For a subdivision (e.g., Miramonte), the requirements must be met prior to final map approval. (SMC, § 17.41.060.)
- The required units must be "constructed concurrently with market rate units unless the developer and the city council agree within an affordable housing agreement to an alternative development schedule." (SMC, § 17.41.050.)

Additional requirements for IHO units: Resolution 5436 approving the VTM contains language that goes beyond the IHO requirements. First, it references the affordable housing agreements and specifies that the development agreement must require 12% lower income and 8% moderate income units, consistent with the IHO. (Res. 5436, Exh. B, Conditions 23, 25.) It then specifies that these "ratios shall apply to each residential development phase, and affordable housing units shall be constructed concurrently with the market rate housing units consistent with specific plan Policy LU – C, and the terms of the Development Agreement." (Res. 5436, Exh. B, Condition 25.) The referenced Specific Plan Policy LU-C requires concurrent, on-site units:

> Incorporate affordable housing within the plan area, including housing for senior citizens, workforce, and low and very low income households. Consistent with the Inclusionary Ordinance, provide at least six percent of units for very low income households, six percent for low income households, and eight percent for moderate income households. At least 30 percent of medium density housing units should be available as rentals. The affordable housing units shall be constructed concurrently with the market rate housing units.

(Specific Plan Policy LU-C, emphasis added.)

Furthermore, the Policy LU-C requirement to include affordable housing "within the plan area" effectively mandates that the units must be somewhere in the Specific Plan area.

The provision in Resolution 5436 that the ratio of affordable units "shall apply to each residential development phase" and the concurrency requirement in Policy LU-C mean that each development phase, even a phase consisting exclusively of low density, single family units, must provide 20% deed-restricted affordable units within the Specific Plan area.

These requirements go beyond the IHO because they preclude off-site units, non-concurrent units, or payment of in lieu fees that would not result in on-site, concurrent units.

AB 1505 compliance for rental units: To comply with AB 1505, a state law that may preempt the local requirements, it may be necessary to provide alternatives to a developer's own construction of units to meet the inclusionary housing requirements for rental units. AB 1505 requires that an IHO, when applied to rental units, must provide alternative compliance options "that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units."[3] (Gov. Code, § 65850(g).) However, as discussed below, AB 1505 does not prevent the City from requiring that these alternative means of compliance result in on-site, concurrent units even if the developer does not build these units.

AB 1505 may apply because affordable units are often provided as rentals and because the Specific Plan developments must provide some rental units. The 2009 Housing Element Program 2.1.2 mandates that at least "30 percent of units in each neighborhood shall be designed to accommodate rental households, including medium and higher density housing…" (Specific Plan, p. 2-22, quoting Program 2.2.2.) Resolution 5436 and Specific Plan Policy LU-C both mandate that at least 30% of units in medium density

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[3] AB 1505 provides limited authority for HCD to review an IHO and require a feasibility study of IHO mandates greater than 15% if the jurisdiction revises its IHO after 2017. (Gov. Code, § 65850.01.) However, this provision would not be relevant here since the project must comply with the 2005 IHO.

areas "should be available as rentals." (Res. 5436, Exh. B, Standard Condition 25; Specific Plan, App. A, p. 2.)

AB 1505 may require that the City provide at least one alternative to the developer's own construction of the rental units as a means of compliance. However, the Legislature was clear that AB 1505 does not supersede local authority, but simply affirms that IHO's may apply to rental units.[4] Thus, AB 1505 does not void the requirements in Resolution 5436 and Specific Plan LU-C for concurrent provision of affordable units in each residential development phase and for provision of those units within the Specific Plan area.

Accordingly, any alternative means of compliance should be through a program or contract that will ensure on-site, concurrent construction of the rental units, e.g., through a City program that would reliably result in provision of on-site, concurrent units or simply through a contract with an affordable housing developer for an on-site concurrent project.

2. **Affordable by design units: Development agreements must comply with the 2005 General Plan and 2009 Housing Element requirements that the overall housing "mix" be in "proportion" to and "closely approximate" the RHNA affordability categories and that these units be developed at specified densities. These mandated affordable units – 58% of the total units – must also be developed concurrently and integrated with market rate units.**

Development agreements must comply with the affordable housing mandates in the 2005 General Plan and its 2009 Housing Element and the 2018 Miramonte Specific Plan. (Gov. Code, §§ 65867.5, 65866 [development agreements must be consistent with applicable plans].) These mandates address the overall proportion of affordable units in the units to be developed, the density for those affordable units, concurrent development

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[4] The Legislature declared its intent in enacting AB 1505 simply to legislatively reverse *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 "to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances." (Stats 2017, Chapter 376, § 3(e).) *Palmer* had made IHO's applicable to rental units unenforceable, and the purpose of AB 1505 was to enable these IHOs to apply to rental units. Otherwise the legislature declared its intent not to interfere with local authority when it enacted AB 1505:

> In no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing authority of local jurisdictions to establish, as a condition of development, inclusionary housing requirements, beyond reaffirming their applicability to rental units.

(Stats 2017, Chapter 376, § 3(f).)

of affordable units, and integration of affordable units. These provisions also govern the project because they were in effect when the developer's application for a vesting tentative map was complete. (Gov. Code, § 66498.1.)

Proportion of affordable units: The Development Agreement must reflect or provide a housing mix that complies with the 2005 General Plan Policy H-3 and its implementing Programs 4-2, 4-3, and 4-4. [5] The Development Agreement must also comply with Policy 2.1 of the 2009 Housing Element and its implementing programs. [6]

Compliance with the 2005 General Plan Policy H-3 means that 54% of the units must be affordable, 29% to lower income households and 25% to moderate income households. The requirements of the 2009 Housing Element Policy 2.1 are more stringent: 58% of the units must be affordable, 39% to lower income households and 19% to moderate income families. Since housing affordable to households with moderate or lower incomes is also affordable to households with above moderate income but not necessarily vice versa, the

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[5] Policy H-3 requires "new residential areas to contain a mix of housing types targeted to very low, low, moderate, and above moderate households in approximately the proportion that each of these income categories represent in the AMBAG Fair Share Housing Allocation."

Program 4-2 requires that the Specific Plan "prescribe the proportion of very low, low, and moderate income housing to be built in the area" and that at minimum 29% of units must be affordable to lower income households and 25% to moderate income households; and that this housing be "fully integrated with market rate single family housing."

Program 4-3 requires that a development agreement prescribe "the proportion of very low, low, and moderate-income housing to be built in the project, the location of these units within the subdivision, and the qualifying incomes of families to which the sale and resale of the units shall be limited."

Program 4.4 requires lower income units to achieve 18 units per net acre and moderate income units to achieve 12 units per net acre. Lower densities are permitted only if the City Council finds that "alternative densities and housing types will result in a development plan that" meets Programs 4.2 and 4.3 and "is superior in design to what would otherwise be required." That is, the developer must show that the project will still supply the same proportion of affordable units even at lower densities.

[6] Policy 2.1 requires the "mix of housing types and affordability levels" to "closely approximate the 2007-2014 RHNA", i.e., to provide 39% of units affordable to lower income households and 19% affordable to moderate income households.

Program 2.1.1 requires development agreements to link affordability to density by attaining 20 units per acre for lower income units and 12 units per acre for moderate income units.

58% requirement for the affordable unit proportion should apply rather than the 54% requirement.

Contrary to a discussion of General Plan compliance in the Specific Plan document, these mandates do not merely require enough units to meet the next 8-year RHNA cycle or even several cycles. Programs 4-3 and 4-2 require a development agreement to "prescribe the proportion" of each income category and require that the proportion of the total units "to be built in the area" must match the RHNA affordability levels. Policy 2.1 requires that the "mix of housing types and affordability levels" "closely approximate" the RHNA affordability levels. Thus, it is not sufficient that the project merely provide enough units to meet the current 8-year RHNA cycle or even the next 20 years of RHNA, a target that the Specific Plan arbitrarily adopts to argue for consistency. (Specific Plan, p. 2-22 to 2-23.)

The 2005 General Plan Policy H-3 and 2009 Housing Element Policy 2.1 policies mandate that the overall proportionality of all of the Specific Plan units match the RHNA affordability mix because the specific plan area is the City's long term growth area, i.e., the area in which the City will need to meet its RHNA for the next 46 years based on the AMBAG growth forecast for Soledad of 52 units growth per year. And even if such proportionality were not required to meet long-term RHNA, it is clear that, based on its residents' average income, Soledad's greatest need is in fact housing affordable to lower and moderate income households.

Minimum density for affordable units: In addition, the affordable housing must achieve specified densities: the 2005 General Plan Program 4.4 requires 18 units per acre for lower income units and 12 units per acre for moderate income units. The 2009 Housing Element Policy 2.1 requires lower income units achieve 20 units per acre and that moderate income units achieve 12 units per acre. Since a project that achieves 20 units per acre also achieves 18 units per acre but not necessarily vice versa, the 20 unit per acre standard applies.

Under General Plan Program 4.4 and 2009 Housing Element Program 1.2.1, density mandates can only be relaxed if the affordability proportions are met through a superior design and the lower density affordable units are deed-restricted.

As the units are currently planned and zoned, the Specific Plan's land use plan does not meet the 58% affordable housing proportionality and density mandates. The only zoning that attains the specified densities is the MMSP-R-V zoning in subareas 6, 8, 9, and 13. These subareas are planned for a total of 1,074 units, which is only 45% of the total of 2,392 units. To meet the 58% target, 13% more units must be zoned, or at least developed, at the specified densities to support more affordable units.

Higher development density might be attained without rezoning by taking advantage of the State Density Bonus Law. Conceivably, even development in the subareas zoned

MMSP-R-1 (10 unit per acre maximum) could attain 15 or even 18 units per acre with available 50% or 80% density bonuses.

Regardless whether the minimum density mandate is met through rezoning or through a density bonus, it must be met. Higher density is a key method to ensure affordability by design.

Concurrency: Concurrent provision of affordable units at the same time as market rate units is mandated by the 2005 General Plan, the 2009 Housing Element, the Miramonte Specific Plan, and Resolution 5436 approving the VTM, as follows:

- 2005 General Plan Policy L-20 requires that the "approval of new residential subdivisions shall incorporate provisions to ensure that an appropriate amount of new multifamily development is constructed concurrently, or in advance of, new single-family residences."

- 2005 General Plan Program 4-6: " In drafting development agreements per Program 4.3, the City of Soledad shall ensure that all affordable housing prescribed for a development area by a specific plan or the Miravale II development plan will be constructed concurrently with any above moderate--income housing being constructed in the area."

- 2009 Housing Element Program 1.2.1: "Enter into development agreements that prescribe the proportion of very low-, low-, and moderate-income housing to be built in a project consistent with the city's Inclusionary Ordinance and Housing Element. Units shall be constructed concurrently with any above moderate-income housing. Alternative densities and housing types can satisfy the requirement if superior in design." (2009 Housing Element Program 1.2.1, as quoted in Specific Plan at p. 2-21)

- Miramonte Specific Plan Land Use Policy LU-C expressly mandates that there be no exception to the concurrency mandate for Miramonte: the affordable housing units required by the City's Inclusionary Ordinance "shall be constructed concurrently with the market rate housing units." (Specific Plan, p. 2-2.)

- VTM Resolution 5436 provides that the "affordable housing units shall be constructed concurrently with the market rate housing units consistent with specific plan Policy LU – C, and the terms of the Development Agreement." (Res. 5436, Exh. B, Standard Condition 25.)

Although Soledad's Inclusionary Ordinance permits the Council to make an exception to the concurrency requirement (SMC, § 17.41.050(C)), the Specific Plan and General Plan policies for new specific plan areas would override the ordinance for specific plan areas because an ordinance must be consistent with a general plan or specific plan.

The phasing "expected" in the Specific Plan would not meet these concurrency mandates. The Specific Plan states that the "first phases of development are expected to occur adjacent to the existing city limit and along San Vicente Road in sub-areas 1, 2, 4, and 10." (Specific Plan, p. 6-7.) These four subareas are designated exclusively for low density residential uses with a maximum of 10 units per acre so they do not provide densities suitable for lower and moderate income units or permit multi-family apartments. These 636 lots represent 9 years of absorption at the recently reported rate of 60 units per year for the past five years.[7] They represent 13 years of absorption at AMBAG's projected absorption rate of 50 units per year for the next twenty years.[8] In short, the "expected" phasing mentioned in the Specific Plan contemplates 9 to 13 years of development of low-density residential areas before any of the areas designated for affordable units are developed.

To comply with the applicable concurrency mandates, development agreements must develop MMSP-R-V areas earlier, provide affordable units at mandated densities in the MMSP-R-1 areas via rezoning or density bonuses, or provide concurrent affordable units through some combination of these methods.

Integration: Several policies require that affordable units be integrated. The 2009 Housing Element's Program 2.1.2 requires integration of 30% rental units in "each neighborhood" including "higher density housing." The program requires 20% of the units "in new residential neighborhoods" to be multi-family units.

> 30 percent of units in each neighborhood shall be designed to accommodate rental households, including medium and higher density housing and second dwelling units and meeting these guidelines:
>
> - Minimum average density of seven dwelling units per gross residential acre (not counting accessory dwelling units);
>
> - Up to 10 percent being a second dwelling unit on the same lot (accessory units, duplex, etc.);

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[7] Soledad has permitted 296 market rate units in the most recent 5-year period reported to HCD, about 60 units per year. (HCD, Housing Element Implementation and APR Data Dashboard, available at https://app.powerbigov.us/view?r=eyJrIjoiMDA2YjBmNTItYzYwNS00ZDdiLThmMGMtYmFhMzc1YTAzMDM4IiwidCI6IjJiODI4NjQ2LWIwMzctNGZlNy04NDE1LWU5MzVjZDM0Y2Y5NiJ9&pageName=ReportSection3da4504e0949a7b7a0b0.)

[8] AMBAG projects a housing demand rate of 50 units per year from 2025 to 2045. (AMBAG, 2022 Regional Growth Forecast, adopted June 15, 2022, p. A-101, available at https://www.ambag.org/sites/default/files/2022-05/PDFAAppendix%20A_2022%20RGF.pdf.)

- At least 20 percent of units in new residential neighborhoods should be comprised of duplexes, triplexes, fourplexes and smaller multi-family housing (townhomes, apartments, etc.) of approximately 20 or fewer units and integrated within the specific plan neighborhood sub-areas. Multi-family housing shall be integrated with low density residential development in form, scale, and architectural character.

(2009 Housing Element Program 2.1.2, quoted by Specific Plan at p. 2-22, emphasis added.)

Specific Plan Land Use Policy LU-C[9] requires developers to "incorporate affordable housing within the plan area."

The IHO ban on overconcentration of affordable units also effectively mandates integration of affordable IHO units and market rate units:

> The following principles shall apply to the development of inclusionary housing: (1) The development proposal shall provide for the dispersal of inclusionary units to the maximum extent feasible. (2) Multifamily buildings may contain any proportion of inclusionary units, but no inclusionary housing development should be located to or in the immediate vicinity of another inclusionary housing development.

(SMC, § 17.41.140.) As a practical matter, integration of at least the 20% IHO units into low density subareas would be required simply to meet the concurrency requirements if the low density subareas are developed in an initial phase that does not include higher density subareas.

To meet the requirements for integration of higher density multi-family units in areas now zoned MMSP-R-1, it may be necessary to modify the VTM to include some larger lots that will accommodate up to 20-unit apartment buildings.

Conclusion

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[9] Specific Plan Policy LU-C requires that development shall

> Incorporate affordable housing within the plan area, including housing for senior citizens, workforce, and low and very low income households. Consistent with the Inclusionary Ordinance, provide at least six percent of units for very low income households, six percent for low income households, and eight percent for moderate income households. At least 30 percent of medium density housing units should be available as rentals. The affordable housing units shall be constructed concurrently with the market rate housing units.

(Emphasis added.)

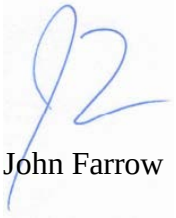
In sum, the mandate in the General Plan Housing Element that 58% of the units be affordable by design at specified densities is distinct from the IHO mandate that 20% of the total units be deed-restricted affordable units. The 20% deed-restricted units would clearly be affordable and they would likely meet the General Plan density mandate or qualify for its exception. But the IHO units would satisfy only 20% of the 58% General Plan mandate for affordable units at specified densities. The remaining 38% would still need to be met. Thus, in effect, the two sets of mandates require at least 20% of units to be affordable by deed restrictions and another 38% to be affordable by design.

Like the IHO units, the affordable by design units must be provided concurrently. And all of the affordable units must be integrated with market rate units.

LandWatch looks forward to working with the City and with Specific Plan developers in structuring Affordable Housing Agreements and development agreements that meet the City's General Plan and IHO mandates.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

cc: Soledad City Council
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