LANDWATCH
MONTEREY COUNTY

September 8, 2023

Andrea Navarrete
Economic Development/Housing Program Administrative Secretary
502 Front Street Soledad, CA 93960
anavarrete@cityofsoledad.com

**Re: City of Soledad's 2023-2031 Housing Element Public Review Draft**

Dear Ms. Navarrete:

I write on behalf of LandWatch Monterey County to comment on the City of Soledad's 2023-2031 Housing Element Public Review Draft.

LandWatch's overarching concern is that the draft Housing Element (HE) fails to discuss the policies, programs, and ordinances that will govern the Miramonte Specific Plan area, which represents 70% of the units identified in the site inventory. Because the Specific Plan area has a Vesting Tentative Map (VTM), it is subject only to the policies, programs, and ordinances in effect when the map application was completed , i.e., the 2005 General Plan and the 2009 Housing Element. The draft Housing Element does not acknowledge this; does not discuss the policies, programs, and ordinances that will govern housing development in the Specific Plan area; and does not acknowledge that the newly proposed policies, programs, and ordinances in the draft Housing Element cannot be imposed on the Specific Plan area. Failure to disclose the actual governmental constraints applicable to 70% of the site inventory is a major shortcoming in the draft Housing Element.

LandWatch has repeatedly asked the City to disclose its plans for affordable housing in the Miramonte Specific Plan area. We have reminded the City of the commitments it made through the 2005 General Plan and the 2009 Housing Element to ensure provision of adequate, concurrent, and integrated affordable housing. As discussed below, these commitments include the following:

- For each development project, a development agreement and/or affordable housing agreement must comply with the VTM Resolution 5436 and the Specific Plan Policy LU-C requirements that the Inclusionary Housing Ordinance (IHO) units, i.e., 20% of the total units built, must be constructed concurrently, on-site, and in each development phase. The concurrency and on-site requirements are mandated for the Miramonte Specific Plan even if they are not mandated for development in other areas of the City.

- The development agreement and/or affordable housing agreement must comply with the 2005 General Plan and 2009 Housing Element requirements that the overall housing "mix" in the Specific Plan area 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.

The mandate in the applicable 2009 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, at minimum, by meeting the specific density mandates.

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.

As LandWatch has observed in its comments on other housing element updates, **Monterey County residents need multifamily housing, not more single-family homes.** The housing local governments have approved is misaligned with the needs of local working families and individuals, especially those who work in Soledad.

According to the U.S. Census, Soledad's median household income is $67,000. As a rule of thumb, for a home to be affordable it should cost 2.5-3 times the homeowners' annual income. Based on this, the average Soledad family can afford a $170,000 home. However, the median Soledad home price is $590,000— impossibly expensive for most working families.

For both equity and environmental reasons, LandWatch and others have advocated for more multifamily housing, which by design is far more affordable than single-family housing. Single-family homes by and large serve the needs of investors, 2nd home owners, and Bay Area commuters, not local working families and individuals.

Unfortunately, Monterey County and its 12 cities, including Soledad, have consistently approved single-family rather than multifamily housing. LandWatch's Monterey County Housing Pipeline documents more than 21,000 residential housing units that have been entitled (approved) but not yet been built. Almost all of the approved units are single-family homes. There are another 13,000 units for which entitlements are being sought, and most of these are also single-family homes. The data show a dire shortage of multifamily rentals, the costs (rents) of which align much more closely with median incomes than the costs (mortgages) of single-family homes.

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. Meanwhile, the draft Housing Element should be revised to reflect the applicable policies, programs, and ordinances in the Miramonte Specific Plan VTM area and the City should share its plans for an Affordable Housing Agreement that is consistent with those policies, programs, and ordinances. Our detailed comments follow.

### A. The draft Housing Element fails to explain what policies, programs, and ordinances apply to the Miramonte Specific Plan.

The draft Housing Element (HE) relies on development of the Miramonte Specific Plan (MSP) area for 70% of the units identified in the Site Inventory, including 43% of the lower income units. (HE, Table 6-2.) Despite this, the draft Housing Element fails to clarify which of the City's existing or proposed policies, programs, and ordinances apply to the MSP.

#### 1. Background: because the Miramonte Specific Plan area has a Vesting Tentative Map, development in that area is subject only to the policies, programs, and ordinances in effect when the application for that map was completed.

The City issued a vesting tentative map (VTM) for the MSP area under Resolution 5436. The various local ordinances, policies, and standards in effect when the VTM vested, including those related to provision of housing and affordable housing, would normally constitute the only requirements with which a development 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.

A VTM vests when its application is deemed complete. Resolution 5436 approving the MSP 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 MSP implies that the project must comply with the policies in effect in the 2005 General Plan and its 2009 Housing Element. (MSP, pp. 2-21 to 2-22.)

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

#### 2. The draft Housing Element should discuss the housing policies, programs, and ordinances that will be in effect in the MSP area, i.e., those in effect when the VTM application was

**completed. It should also acknowledge that policies, programs, and ordinances that were <u>not</u> in effect when the VTM application was complete, including those newly proposed in this draft Housing Element, cannot be imposed on MSP development.**

The draft Housing Element purports to identify the zoning, development standards, and permitted housing types for the MSP. (HE, p. 146. Tables 5-2, 4, 9.) It also discusses the approval status and phasing plan for the MSP. (HE, pp. 190-191.) Finally, it mentions that the City is "in the process of establishing . . . an Affordable Housing Agreement" for the MSP area. Although these discussions correctly reflect the MSP and its adopting resolutions, they are substantially incomplete.

First, the draft Housing Element fails to disclose that none of the newly proposed policies, programs, or ordinances set out in the draft Housing Element can be imposed in areas subject to the MSP VTM. (Government Code, § 66498.1.) To the extent that the City is relying on development in the MSP VTM area to meet its RHNA obligations – and it is relying on the MSP area for 70% of the site inventory units – it cannot rely on newly proposed policies, programs, and ordinances. It can only rely on the policies, programs, and ordinances in effect when the VTM application was completed.

Second, the draft Housing Element fails to identify the substantive housing related policies, programs, and ordinances in effect when the VTM application was completed and therefore applicable to the MSP. The draft Housing Element also entirely fails to explain what policies, programs, and ordinances will be implemented in the Affordable Housing Agreement that the City is "in the process of establishing." (HE, p. 146.)

As set forth below, the housing policies, programs, and ordinances applicable to the MSP area include

- the 2005 IHO;
- the additional requirements for concurrent and integrated development of IHO units set out in the MSP and Resolution 5436; and
- affordability, density, concurrency, and integration mandates in the 2005 General Plan and the 2009 Housing Element that were in effect when the MSP VTM application was completed.

The draft Housing element should be substantially revised to include a discussion of these requirements and to explain how they will be met in the Affordable Housing Agreement required for development in the MSP area.

**B. Substantive requirements related to affordable housing that MSP development agreements must meet.**

As noted, 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. As a freely negotiated contract, a development agreement may include developer concessions that are not mandated by

applicable policies, programs, or ordinances. However, a development agreement must at least meet the requirements of the applicable programs, policies, and ordinances.

There are two distinct sets of requirements for affordable housing applicable to the MSP area. First, the Inclusionary Housing Ordinance mandates that 20% of units be deed-restricted to lower and moderate-income families. Second, the applicable 2005 General Plan and the 2009 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. We also discuss the mandates for concurrent and integrated provision of affordable housing mandated by the applicable policies, programs, and ordinances.

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%).[1] (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.)

[1] The draft Housing Element claims or at least implies erroneously that the MSP area is not subject to the Inclusionary Housing Ordinance. The draft Housing Element states: "Projects for which an approved tentative map or vesting tentative map exist, or for which a construction permit was issued prior to the effective date of the ordinance, are exempted from the city's inclusionary requirements." (HE, p. 171.) Elsewhere, the draft Housing Element states that the MSP does have a vesting tentative map approval. (HE, p. 188.) However, Because the 2005 IHO was in effect when the VTM vested, a developer must comply with its requirements. Indeed, it is clear from the MSP itself that it is subject to the City's Inclusionary Housing Ordinance (IHO). (See, e.g., MSP, Policy LU-C [reciting these obligations].) The draft HE should clarify that the MSP is subject to the IHO.

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."[2] (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.

---

[2] 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, the provision allowing HCD to require a feasibility study would not be relevant here since the project must comply with the 2005 IHO, without revision.

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 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.[3] 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" in the MSP area 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,

---

[3] 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).)

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 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.[4] The Development Agreement must also comply with Policy 2.1 of the 2009 Housing Element and its implementing programs.[5]

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

---

[4] 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.

[5] 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.

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 50 units growth per year.[6] Even if such proportionality were not required in order to meet long-term RHNA, it is clear that, based on its residents' median 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

---

[6] AMBAG, the regional agency responsible to approve the RHNA, projects Soledad's housing demand rate will be about 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.) Realistically, this means that about 400 units will be absorbed in the 8-year planning cycle ending in 2031. The draft Housing Element offers no evidence other than the developer's aspirational phasing plan to support its claim that: "The planning and development horizon for the completion of the MSP is expected to be approximately 10 to 20 years. Based on this, the City conservatively assumes that 50 percent of the Specific Plan can realistically be built out by 2031. . .." (HE, p. 191.) In effect, the draft Housing Element assumes that 1,196 units will be absorbed by the MSP alone in 8 years, in addition to the absorption by the other areas of the City. The expectation that the MSP area alone will triple the AMBAG growth projections is unjustified.

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 do not; and their concurrency requirement would override the ordinance for specific plan areas because an ordinance must be consistent with a general plan or specific plan. The phasing that is "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.);
- 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.)

---

[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.)

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.

**C. Comments on policies and programs applicable outside the MSP VTM area.**

**1. The draft Housing Element should not abandon existing programs that mandate sufficient sites zoned at densities to support the attainment of the RHNA proportion of affordable units.**

As noted above, the 2009 Housing Element Policy 2.1 requires the "mix of housing types and affordability levels" to "closely approximate the 2007-2014 RHNA." Policy 2.1's implementing 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.

Similarly, the 2015 Housing Element Policy 2.1: requires each new subdivision or specific plan areas to include "an integrated mix of housing types and affordability levels that closely approximate the City's 2007–2014 'fair share' housing allocation," i.e., 39% lower income units,

---

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

> Incorporate affordable housing <u>within the plan area</u>, 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.)

19% moderate income units, and 42% above-moderate income units. Again, this mix is to be implemented through Program 2.1.1, which links density to affordability as follows:

> Program 2.1.1: In drafting development or housing agreements per Program 1.2.1, the City shall link housing affordability to housing type, design, and development density to ensure available housing for all income categories. Housing affordable to very low- and low-income persons or families shall achieve a minimum density of 20 dwelling units per net acre, and housing types shall consist of multi-family, housing above commercial use, and single-room occupancy (SRO) units. For the moderate-income category, new development shall achieve, at minimum, a density of 12 dwelling units per net acre, and housing types shall be limited to small-lot single-family dwellings, attached single-family dwellings, detached second units, and multi-family dwellings such as townhouses. Exceptions to the requirements for minimum density and housing types may be allowed for affordable housing that is restricted by sales price or rent and income eligibility.

The idea behind this program is to ensure that each specific plan and residential subdivision contributes its fair share to ensuring that the proportion of residential units in the City actually mirrors the RHNA affordability levels.

The current draft Housing Element abandons these implementing programs that link density to affordability. In effect, there is no longer any assurance that each subdivision or specific plan will contribute a fair share to meeting the RHNA affordability levels. The draft Housing Element provides no rationale for abandoning this program and no assurance that other programs will meet the same policy goal. Program 2.1.1 as set out in the 2015 Housing Element should be continued.

2. **The City should adopt a local density bonus**

Program 2.2.3 would update the density bonus ordinance to comply with state mandates. We recommend that the 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 addition, the City could increase the number of concessions given at specified levels of affordability beyond the number mandated by the State DBL.

Thank you for this opportunity to comment.

Regards,

Michael DeLapa
Executive Director