February 8, 2021

Dear Senator Caballero,

Thank you for your important leadership on SB 6, which the LandWatch board of directors generally supports. We applaud the affordability focus, but seek additional refinements as noted below. We believe that SB 6 should apply to cities, areas within municipal boundaries, rather than unincorporated areas. Finally, we recommend that SB 6 include a reporting provision.

**Affordability provisions**

We applaud you for including three provisions in the bill that address housing affordability, especially the acknowledgement that smaller, higher density housing is more likely than large lot, single family residences to generate "affordability by design."

SB 6's primary material provision is to require local agencies to allow housing on office or retail zoned parcels, but only at relatively high density, in order to make affordability by design possible. This development could proceed with or without legally mandated, deed-restricted affordable units. Indeed, SB 6 is premised on the Legislature's finding "that housing units developed at higher densities may generate affordability by design for California residents, without the necessity of public subsidies, income eligibility, occupancy restrictions, lottery procedures, or other legal requirements applicable to deed restricted affordable housing to serve very low and low-income residents and special needs residents." (Proposed Gov. Code Section 65852.23(a)(2).)

We understand conceptually that higher densities encourage affordability through lower per-unit land cost and by increasing the number of units available to cover a given project's fixed costs. However, we would be interested in any research supporting the premise that the particular densities set out in Section 65852.23(b)(1)(A) will in fact maximize affordability for the geographic areas enumerated. Specifically, Section 65852.23(b)(1)(A) requires that qualifying housing projects must attain the "density deemed appropriate to accommodate housing for lower income households." These densities are enumerated as 30, 20, 15, or 10 units per acre, depending on whether the site is in a metropolitan county; a suburban jurisdiction; a city or micropolitan area in a nonmetropolitan county; or an unincorproated area in a nonmetropolitan county, as defined in the Housing Element Law, Gov. Code Section 65583.2(d), (e), (f). We would appreciate knowing whether and how the authors set these densities at a level that will maximize affordable units, both on the project site and elsewhere through the "filtering" effect of building more market rate units.

SB 6 contains two other material provisions, which, if applied, would require affordable housing through traditional deed-restricted units. SB 6 provides that housing on office or retail zoned parcels would be eligible for the streamlined ministerial approval under SB 35, which requires, inter alia, that a specified percentage of the units be affordable. Specifically, at least 10% of units must be affordable to lower income house if the jurisdiction has not shown that it met its RHNA for above moderate income households; and 50% must be affordable to lower income households if the jurisdiction has not shown it met its RHNA for lower income households.

(Gov. Code Section 65913.4(a)(4)(B).) Rental units must be deed-restricted or 55 years; purchase units for 45 years. (Gov. Code Section 65913.4(a)(3).)

SB 6 also provides that its housing projects are subject to the Housing Accountability Act (HAA), Gov. Code Section 65589.5, which prohibits denial of qualifying affordable housing projects without specific findings. We appreciate the authors' inclusion of these two provisions.

**Limitations on inclusion of unincorporated areas in SB 6**

We believe SB 6 is generally consistent with LandWatch's goals to promote higher density, more climate-friendly housing *in cities* throughout the state. Unlike unincorporated areas, cities generally offer easy access to schools, other public services, jobs, shopping, entertainment, and other daily activities. Cities can be designed (or redesigned) for walking, biking and mass transit. Sprawl development in counties can't. Consequently, we recommend modifying SB 6 to focus on denser, city-centered housing.

As drafted, the bill would mandate that local land use agencies permit qualifying residential development on an office or retail zoned parcel (a "neighborhood lot") as an allowed use not subject to a conditional use permit (via SB 6, Section 1, adding Gov. Code Section 65852.23); bring such uses within the provisions of the Housing Accountability Act, Gov. Code Section 65589.5, which prohibits denial of qualifying affordable housing projects (via SB 6, Section 1, adding Gov. Code Section 65852.23(d)(3));
provide for streamlined, ministerial approval of some of these uses under SB 35, Gov. Code Section 65913.4 (via SB 6, Section 2, amending Gov. Code Section 65913.4).
We recommend that these provisions not be extended to unincorporated areas for two reasons. First, housing and density mandates and incentives make most sense within urban boundaries. Second, we advise that the marginal benefit of mandating or incenting housing on office or retail zoned parcels in unincorporated areas is not significant or likely to result in VMT reductions. For example, Census Bureau maps for Monterey County include significant unincorporated areas that the Census Bureau designates as urbanized where automobiles are virtually mandatory for daily activities. Adding more homes in these areas will increase greenhouse gas emissions and thwart the state's climate goals. Currently 41% of the state's total greenhouse gas emissions are from transportation.

If you agree, then the bill should be modified as follows so that it applies only to housing in incorporated areas:

the definition of "neighborhood lots" in Section 65852.23(h)(3) should be amended to provide that the parcel must be a in an incorporated area, as follows: "'Neighborhood lot' means a parcel in an incorporated area within an office or retail commercial zone that is not adjacent to an industrial use;" the minimum density requirements in in Section 65852.23(b) should be amended to remove references to unincorporated areas; and the definition of "local agency" in Section 65852.23(h)(2) should not include "county."

If, however, you believe the bill should apply to some urbanized unincorporated areas, then we suggest that these areas be further qualified to ensure that they are truly the kind of urbanized

areas in which housing development would likely lead to reduced VMT. We propose two additional qualifications, either or both of which could be added to the definition of "neighborhood lot" in Section 65852.23(h)(3). One qualification is based on SB 35, which mandates ministerial approval of certain multifamily housing developments in both incorporated and unincorporated areas. The other qualification is based on a recommendation by the Planning and Conservation League (PCL) for designation of infill sites subject to legislative incentive programs such as CEQA exemptions or streamlining.

First, we propose that the unincorporated area parcels subject to SB 6 (but not the incorporated areas parcels) meet the same qualification regarding urbanized surroundings that was included in SB 35 mandates in Gov. Code Section 65913.4(a)(2)(B), i.e., that the definition of "neighborhood lot" in Section 65852.23(h)(3) be amended to add the following:

In an unincorporated area, “neighborhood lot” means a parcel within an office or retail commercial zone that is not adjacent to an industrial use and in which at least 75 percent of the perimeter of the parcel adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

Second, we propose that the unincorporated area parcels subject to the mandates (but not the incorporated areas parcels) meet the following qualification for infill definition in programs to incentivize infill development, as suggested in the Planning and Conservation League’s Equitable Infill Incentives Initiative Interim Report, January 2020, p. 27. i.e., that the definition of "neighborhood lot" in Section 65852.23(h)(3) be amended to add the following:

In an unincorporated area, “neighborhood lot” means a parcel within an office or retail commercial zone that is not adjacent to an industrial use and the parcel is an area with less than 85% of regional average per capita VMT or is in an area within a half-mile of a "major transit stop" or a “high-quality transit corridor” as defined by Public Resources Code sections 21064.3 and 21155.

PCL's Equitable Infill Incentives Initiative Interim Report explains that infill development incentives will work best if they are limited to areas with VMT that is at least 15% below the regional or city average, consistent with the Office of Planning and Research guidance for implementing the SB 743 VMT-based CEQA significance thresholds that are intended to encourage infill development. We believe that mandates to encourage infill should similarly be limited to low VMT areas.

We note that there are other qualifications used to identify the urbanzied areas deserving of incentives or mandates for infill housing that could be considered. PCL's Equitable Infill Incentives Initiative Interim Report provides a thoughtful analysis of these alternatives at pages 7 et seq. and Appendix A, which compiles definitions of infill, urban area, urban use, and TOD.

**Require reporting of SB 6 applications and units to track effectiveness**

We recommend that SB 6 include a reporting requirement similar to the mandate in SB 35,

Section 1, so that the Legislature can determine whether SB 6 is effective. In particular, we suggest that SB 6 include a Section 4 that amends the list of annual reporting requirement for local agencies contained in Gov. Code Section 65400 to add a new subdivision (a)(2)(F) as follows:

The number of applications submitted for housing development on neighborhood lots as defined in paragraph (3) of subdivision (h) of Section 65852.23, the location and the total number of developments approved on such on neighborhood lots, the total number of building permits issued on such neighborhood lots, the total number of units including both rental housing and for-sale housing by area median income category constructed on such neighborhood lots.

The existing Gov. Code Section 65400(a)(2)(F) would be renumbered Section 65400(a)(2)(G).

Housing legislation is often experimental. You and other legislators have a hypothesis about what will improve efficiency or equity, but from our perspective it is often difficult to know which legislative experiments work. In general, we feel strongly that the Legislature should, as a "best practice," expect HCD or local governments to collect data and report back on the efficacy of new legislation. You, other Legislators, and the general public should know what legislation works, what does not, why, and how to fix it.

If you have any questions or concerns, I would be glad to schedule a call to talk further about LandWatch's recommendations.

Sincerely,

Michael D. DeLapa
Executive Director