

Communication from Public

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Comments for Public Posting: Please see the attached letter.

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November 2, 2021

VIA ELECTRONIC MAIL (clerk.plumcommittee@lacity.org,
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Planning and Land Use Management Committee
Los Angeles City Council
c/o City Clerk
200 North Spring Street
Los Angeles, CA 90012

RE: Item Nos. 14, 15, 16 Agenda for November 2, 2021 – CPC-2020-1365-GPA;
ENV-2020-6762-EIR; Council File No. 21-1230 (Housing Element Update);
Council File No. 20-1213 (Safety Element); Council File No. 15-0103-S3 (Health
Element)

Dear Members of the Planning and Land Use Management Committee ("Committee"):

This firm represents AIDS Healthcare Foundation ("AHF"). AIDS Healthcare Foundation hereby adopts all project objections, comments, and all evidence/studies submitted in support thereof, and specifically requests that the City print out or attach to the Council file each and every hyperlinked document cited in all comment letters in the administrative record for this Project.

Additionally, please confirm that the City Clerk has placed an accurate and complete copy of all of our correspondence, including this letter, in each of the following City Council Files: Council File No. 21-1230 (Housing Element Update); Council File No. 20-1213 (Safety Element); Council File No. 15-0103-S3 (Health Element).

There has been a disturbing pattern and practice of the City Clerk's staff NOT posting our letters as separate letters, mixing our letters into the middle of other comment letters, omitting or separating the exhibits from the letter, all of which makes it impossible for decision makers to review and comprehend our comments and concerns. The City's Clerk has a duty to reproduce and maintain an accurate record of proceedings.

Please add this law firm the **list of interested persons** to receive all notices related to this Project.

We bring to the City Council's attention the content and supporting evidence cited in and attached to the October 27, 2021 letter of this firm submitted to the Housing Committee of City Council. In addition to the issues raised in our previous correspondence, we have identified other defects in the City's compliance with applicable State Planning Law and the California Environmental Quality Act ("CEQA"). Those issues are set forth in this correspondence.

The issued outlined herein provide further evidence that City's EIR process is so deficient the EIR must be revised to correct the errors and re-circulated to the public for comment, all in accordance with the mandates of CEQA. Furthermore, as documented herein, the City is proposing to amend three elements of the General Plan, but its outreach and encouragement of public participation falls below that required by the State Planning Code. Accordingly, the failures of public participation further require re-circulation and meaningful opportunities for the public, certified neighborhood councils, and interested parties to comment on the changes to City planning documents that will impact lives and property of owners for years to come.

1. The Project Description Is Not Accurate, Stable or Finite.

Since the issuance of the Notice of Preparation and issuance of the Draft EIR for public review and comment, the City has made numerous significant changes to the size and scope of the Project.

The courts have held that an accurate, stable and finite project description is fundamental to a legally sufficient EIR. This was first explained in *County of Inyo* (1977) 71 Cal.App.3d 185:

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."¹

"A curtailed, enigmatic or unstable project description draws a red herring across the path of public input."²

As further explained by the courts:

"This court is among the many which have recognized that a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading. [Citation.] 'Only through an accurate view of the project may affected outsiders and

¹ *County of Inyo* (1977) 71 Cal.App.3d 185, 192–193.

² *County of Inyo* (1977) 71 Cal.App.3d 185, 198.

public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal i.e., the “no project” alternative[], and weigh other alternatives in the balance.” [Citation].³

“[W]hen an EIR contains unstable or shifting descriptions of the project, meaningful public participation is stultified.”⁴

“A project description that omits, or allows modification of, significant integral components of the project will result in an EIR that fails to disclose the actual impacts of the project.”⁵

The description of the proposed Project reflected in the FEIR is not accurate, stable or finite. The City has made significant changes to the Project since issuance of the DEIR for the Project. These changes are enumerated in and addressed in Chapter 2.0 – Supplemental Analysis Related to Modifications to the Housing Element and Safety Element Updates and New Information. Due to the ongoing unavailability of the Final EIR and its appendices as noted below, the public has been denied its right to review the changes to determine the accuracy of any claims of the City that the changes do not trigger new environmental impacts or severely aggravate existing identified impacts.

a. Lack of An Accurate Stable or Finite Description of the Proposed Housing and Safety Elements

As noted on page 2-1 of the FEIR: “As described in the Draft EIR, the Proposed Project includes the Los Angeles Citywide Housing Element 2021-2029 Update and rezoning Program (“Housing Element Update”) and 2021 Safety Element Update and targeted updates to the Plan for a Healthy Los Angeles (“Safety Element Update”).” However, as we noted in our letter of October 27, 2021, the DEIR failed to provide information on the updates to the Plan for a Healthy Los Angeles. New FEIR Appendix K – Listing of Amendments to the Plan for Healthy Los Angeles (October 2021) is included as part of the FEIR, however, as of the morning of November 2, 2021, this appendix is merely a link to LACity Clerk Connect, which as of the morning of November 2, 2021 includes the same document with the same link back to the LACityClerk Connect file. The same is true for Appendix I – Updated Draft Housing Element Update, and Appendix J – Updated Draft Safety Element Update. (See **Screenshots of these in Exhibit A**) Accordingly, the FEIR as available to the public and PLUM thus does not contain the revised Housing Element, revised Safety Element, or the updates to the Plan for a Healthy Los Angeles. The public and any Council members

³ *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052.

⁴ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656.

⁵ *Santiago County Water District v. County of Orange* (1981) 118 Cal App 3d 818.

trying to access these documents are literally sent in an electronic circle with access to nothing at all.

Modifications to the Housing Element Update since the DEIR are described in Chapter 2 of the FEIR. Changes include modifications to: the Inventory of Adequate Sites for Housing; the Rezoning Program and Inventory of Candidate Sites for Rezoning; the Affirmatively Furthering Fair Housing Analysis; the Goals, Objectives, Policies, and Programs; and Other Refinements. As noted on FEIR page 2-2: “Changes to the policy document include, but are not limited to, the changes summarized herein.” Thus the FEIR does not provide a full disclosure of the changes made.

b. Lack of a Stable Inventory of Adequate Sites for Housing

As noted on pages 2-1 to 2-5 of the FEIR:

“Inventory of Adequate Sites for Housing

The Inventory of Adequate Sites for Housing in Chapter 4 and associated Appendices were revised to address comments from HCD and comply with the requirements in state law, as well as to reflect the most current information regarding individual components of the Inventory. This includes the following revisions:

- Revised Appendix 4.2 and Appendix 4.3 (pipeline development through private and publicly- funded development projects) to reflect current pipeline development anticipated to be completed during the planning period;
- Revised assumptions regarding pipeline development completion rates, based on detailed review of historical data trends;
- Revised Appendix 4.1 (vacant and non-vacant sites analysis) to remove sites with expected pipeline development potential, so as to eliminate duplication;
- Revised Accessory Dwelling Unit (ADU) estimates to be consistent with data previously reported to HCD;
- Revised assumptions regarding additional, non-site specific development potential associated with public programs such as Project Homekey and the City’s public land development efforts; and

- Added a new Appendix 4.8 listing potential City-owned sites that could be considered for the Public Land Program.”

As a result of these revisions, the overall anticipated development potential identified in the Draft Housing Element was adjusted, reflecting a total development potential of 230,947 units, of which 72,640 are lower income.

c. Lack of An Accurate Stable or Finite Rezoning Program

In the FEIR both the inventory of candidate sites and the amount of rezoning has changed. In addition, the inventory is merely a list of candidate sites, not the list of actual sites to be rezoned, and is thus subject to further change. As explained on FEIR page 2-4 to 2-5:

“Rezoning Program and Inventory of Candidate Sites for Rezoning

The policy document includes revisions to Chapter 4 to provide a more detailed description of the proposed Rezoning Program (Program 121) previously included in the July 2021 draft Housing Element Update and described in the Draft EIR. In addition, the revised Housing Element Update includes a new Appendix 4.7 (Candidate Sites for Rezoning), which identifies potential sites for future rezoning, along with state-required information on each of the properties, including the realistic number of housing units that can be accommodated on each site as a result of the various rezoning strategies. Sites were selected based on the criteria included in the Rezoning Program description. **Sites will not be rezoned as part of the Proposed Project, but rather are identified for further refinement and consideration as part of the implementation of the Rezoning Program prior to the October 2024 adoption deadline.**

A total of at least 243,254 potential sites containing 1,432,059 units are identified as part of the Rezoning Program. Of these, at least 36,446 sites containing 591,726 units have been identified as meeting the state law criteria as lower-income, meaning they can accommodate at least 16 units per site and can include minimum densities of at least 20 units/acre. **The Inventory of Candidate Sites for Rezoning lists many more sites and potential units than are necessary to satisfy the RHNA requirements. This expansive approach is purposeful to allow the flexibility for future refinement of the rezoning strategies and sites. As such, sites included on the list should be considered as potential sites for rezoning consideration, not a final list of sites that will be**

rezoned. Other sites may be added, and listed sites may be removed or amended. A public review process will help guide future recommendations as to which sites are rezoned at which densities, but should follow the Housing Element’s objective of an equitable rezoning program that furthers fair housing goals.” (Emphasis added.)

d. Changes to the Amount of Up-Zoning Included in the Proposed Project

As shown on FEIR page 4.1, the changes made to the Inventory of Adequate Sites resulted in a reduction in the projected development capacity and thus an increase in the amount of up-zoning to be included in the proposed project:

The Inventory of Adequate Sites for Housing identifies a total development potential of ~~230,947~~ ~~266,647~~—units, which is insufficient capacity to accommodate both the RHNA Allocation of 456,643 units and the City’s target capacity of 486,379 units. As a result, the Housing Element identifies a shortfall at all income levels and a total rezoning need of ~~255,432~~ ~~249,732~~—units, including rezoning to accommodate a shortfall of ~~130,553~~ ~~121,881~~—lower income units, ~~72,993~~ ~~72,639~~—moderate income units, and ~~51,887~~ ~~25,212~~—above moderate-income units. As a result, the Rezoning Program must create at least ~~255,432~~ ~~249,732~~—units of new capacity by October 2024.

The basis and analysis used to arrive at these revised numbers is not adequately described, and the information necessary to allow public review of the basis of the changes is thus not included in the FEIR. The project description in the EIR is thus not accurate, stable or finite. The EIR thus violates a fundamental requirement of CEQA. The project with such fundamentally changed characteristics, including potential significant impacts, requires recirculation for public comment.

2. CEQA’s Critical Procedural Mandates Were Violated By The City’s Failure To Timely Release The Final EIR, Revised Plan Documents, and Findings of Overriding Consideration.

As outlined in our previous letter, the City’s agenda for the City Planning Commission (“CPC”) meeting consideration of the project included a recommendation that the City Council certify the Final EIR. But contrary to the meeting agenda and CEQA procedure, the CPC took action to recommend approval of the Project, and certification of the Final EIR without release of the Final EIR.

It was impossible for the CPC to have exercised independent judgment in approving action to recommend that City Council certify the Final EIR: the City had not released the Final EIR to the public, so the CPC could have had no opportunity to even thumb through the Final EIR to form an independent opinion the Final EIR ought to be certified as in compliance with CEQA.

Furthermore, if the City Planning staff somehow released the Final EIR to members of the CPC without release of the same information to public, the City has violated Government Code Section 54957.5 which mandates that a public agency immediately release a document delivered to more than a majority of a legislative body with 72 hours of a meeting. The action of the CPC to recommend City Council certify the Final EIR was a failure to proceed in accordance with law invalidating the CPC's action in recommending project approval and certification of an EIR is had not even seen.

The City Clerk then scheduled hearing on only the Housing Element amendments and certification of the EIR at the Housing Committee of City Council. Although the matter was posting on the agenda for the Housing Committee to consider recommendation of certification of the EIR, once again the Final EIR was not released for public review until literally as the 3:00 p.m. meeting began. Client representatives of AHF watched City Council File No. 21-1230 as the Final EIR was added at the meeting time of 3:00 p.m.

While the City enjoys a presumption of regularity, no reasonable person can believe that the Council committee members had any time to review the Final EIR, the responses to comments on the Housing Element, or the partial appendices posted in the Council File by the time the meeting began. Nonetheless, engaging in this fiction, the Housing Committee voted to recommend approval of the Project and certification of a Final EIR its members could not have seen or reviewed. From these facts, it is clear the Final EIR was complete and ready for release to the public long before the Housing Committee meeting, yet City officials refused to release it so the public could review the responses to comments and submit informed written and oral testimony at the meeting. This is a failure to proceed in accordance with law.

Now the City Clerk has scheduled hearing on all three General Plan Elements (Housing, Safety and Health) before the Planning and Land Use Management Committee. Even as of submission of this letter, the City has failed to circulate the Final EIR via the State Clearinghouse. **Attached at Exhibit B.**

3. Fatal Flaws In The Regression Models Undermine Any Conclusion Rezoning Is Required To Meet RHNA Mandates.

The preparation of any review of the Housing Element, or any Community Plan should begin, as a matter of good planning practice, with the calculation of the unit residential density capacity of the existing zoning for the plan area. For the Housing Element, this inquiry should be a review of all zoning of the City. But the City Planning Department refuses to calculate or show the public the calculation of the zoning capacity of the City. If it did, the public would know that even the unrealistic Regional Housing Needs Assessment goal of 459,000 units of new housing can be accommodated by the existing zoning available, especially within the commercially zoned transit corridors of the City.

In his Housing Element comments, former City Planner Dick Platkin makes this correct observation about the capacity of the City's zoning to accommodate the RHNA

requirements without any requirement for the upzoning currently proposed:

“It has been 25 year since the Los Angeles Department of City Planning (LADCP) last calculated the buildout of LA’s adopted zoning ordinances. This analysis was part of the 1996 General Plan Framework Element’s Environmental Impact Report. In 1996 LA’s population was 3.5 million people, and its zoning build out population was 7.2 million people (FEIR Chapter 7, Table T-1F, Summary of Alternatives by Community Plan Area). Since then, Los Angeles adopted an Accessory Dwelling Unit (ADU) ordinance and two Density Bonus ordinances, SB 1181 and TOC Guidelines. Together they lifted LA’s theoretical zoning build out population to around 9,000,000 people, or more than double LA’s current population of 3.9 million people, according to the 2020 U.S. Census.

Much of this zoning is on under-utilized commercial streets. Their zoning automatically allows R3 and R4 apartments, all of it on transit corridors, with permitted densities of 70 to 100 units per acre. They could easily accommodate the Housing Element’s Very-Low and Low-Income housing requirements, per SCAG’s RHNA allocation to Los Angeles, without any discretionary actions to allow even greater densities. The combination of existing zoning and new density bonus laws that encourage Low and Very-Low income housing would allow most of the existing one and two story commercial buildings on these transit corridors to be replaced by three to six story apartment and/or mixed use retail-residential buildings. These in-fill buildings could consist of Low and Very-Low income apartments.” (See Platkin comments attached as **Exhibit C**.)

As observed in our October 27, 2021 letter to City Council, the regression analysis performed to predict reasonable housing development based upon current zoning within the City appeared to have serious irregularities. We retained Dr. Laura Simms, PhD of the University of Michigan Climate & Space Sciences & Engineering Department and of Augsburg University Department of Mathematics, Statistics, and Computer Science and Department of Physics to review the regression modeling used by the City to support a conclusion that rezoning of significant portions of the City was required in order for the City to meet the Regional Housing Needs Assessment mandates for the next Housing Element Cycle (2021-2029).

Dr. Simm’s task was to review (1) the adequacy of the documentation provided to the public to determine the extent to which the public or reviewing state agencies could independently verify the modeling results, (2) the extent to which the regression model design conforms to best practices of the profession, and (3) the accuracy of the modeling results and level of confidence that the model predicts a reliable result for use by the City in its contention that rezoning of portions of the City are necessary to accommodate growth during the next Housing Element planning period.

As documented in her report attached as **Exhibit D**, Dr. Simms found serious problems in all three areas of inquiry. Dr. Simms concluded that regression model “does not provide the crucial support that planners would need to determine if rezoning was necessary to accommodate projected growth during the relevant period of time” and that “[t]here is insufficient statistical information provided for the public to evaluate the modeling.” Her analysis details how: the choice of variables affects the utility of the model; that statistical test that determine the influence of variables are completely missing from the report; that the validation of the models is insufficient; that no validation of the predictions by income type (low, moderate and above moderate) is provided; and that there are problems with the model validation. She concluded that given the “lack of disclosure of the design of the models, the lack of credible validation of the models, and the failure to utilize confidence intervals to assure the models are reasonably reliable as a future predictor of development of housing without rezoning the City’s documentation . . . does not constitute substantial evidence that these models accurately reflect a reliable prediction of future housing development.”

The City’s justification to then rezone substantial portions of the City rests upon the faulty regression analysis of future probable development under the City’s current zoning. Because the modeling lacks validation, there is literally to no way to say the City’s future probable development projection is not actually much higher, and therefore the “need” to rezone (upzone) is much less or not required at all. For this result, there has been a failure to comply with both State Planning statutes governing the Housing Element process and CEQA.

4. **Appendix 4.7 Lists Five Times The Parcels Necessary To Meet The City’s Bogus Rezoning Needs: Imperiling TOC And Requiring An Inclusionary Housing Requirement Back-Stop.**

Even if the City’s claimed “need” to rezone more land in the City was grounded in reality, which it is not according to independent analysis of the City’s regression modeling, the City has no substantial basis for conducting rezoning at all when, as Mr. Platkin correctly observes, the residential unit density allowed by right within the City’s commercial corridors could be identified as areas where such development ought to be incentivized. However, the City has failed to identify incentivized commercial corridor development as a less environmentally impactful alternative to the Project analyzed in the EIR. This is a failure to provide a reasonable range of Project alternatives for consideration by the public and City Council.

Instead, the City insists on pursuing rezoning (upzoning) of areas of the City that are the most desirable and lucrative for the City Council’s real estate developer supporters. Former Hollywood Community Planner Fran Offenhauser, who has reviewed these appendices in some detail, reports: The City’s rezoning parcel lists contain a potential capacity **more than 5 times that required** to reach the RHNA goals imposed on the City! The City’s rezoning parcel list includes the site of Grumman’s Chinese Theatre – now designated with a residential housing target on its back. In other words, the potential rezoning proposed under the Housing Element is wildly untethered to a principled study, credible regression analysis, reasonable justification, or just plain

reality. This is a broad-based upzoning of the City masquerading as a “planning exercise.”

One thing is certain if upzoning of more potential luxury housing sites occur as proposed in the Project: uncontrolled development of above-moderate income/luxury housing will occur -- without any obligation or incentive for developers to subject themselves to the affordable housing required by Transit Oriented Communities (“TOC”). In other words, as former City Planner Mr. Platkin predicts, developers will build on the upzoned areas without need to provide any affordable units at all.

AHF addressed this problem in its October 27, 2021 letter to City Council members. If any upzoning is adopted by the City as a strategy, to assure affordable units are included for every income level, an immediate inclusionary housing ordinance must be enacted by the City Council as well. Upzoning, **especially more than five times required by the RHNA**, will lead to abandonment of TOC requests. In order to back- stop possible loss of the TOC incentive program (and in fact, replace it), a city-wide inclusionary housing requirement must be imposed to end the wildly disproportionate approval of above-moderate income/luxury housing compared to affordable units. The City must not continue to follow the path proposed by its planners.

5. The City’s Failure To Involve The Public In General Plan Amendment Review Processes Violates State Planning Code Requirements Necessitating Remedial Reopening Of The Public Participation Process.

The lack of transparency in the City’s General Plan and CEQA processes has been evident throughout. The State Housing and Community Development Department’s comments on compliance with Planning Law public participation requirements is substantial evidence that the City has cut the public out of the general planning process by dropping massive plans and revisions at the last minute – all with the result that no reasonable person can review the proposals or changes and comment on them.

Council File 12-1230 contains evidence from Barbara Broide pointing out that the system of official City Neighborhood Councils have been cut out of notices making it impossible for the City’s charter-created input entities from providing input. This is further substantial evidence of ongoing violations of basic public transparency and participation requirements of the state planning process.

Furthermore, it appears that the City undertook no formal notification process to the public when it decided to amend the Health Element of the City’s General Plan. The City attempts to skirt the issue by claiming the amendments are technical changes. Every amendment of a General Plan is a technical change. The City is playing semantic games to downplay the significance of the amendment of the Health Element – acting as if it can spring a General Plan amendment on the public with no notice at all. This is not consistent with the public participation and notice requirements of the State Planning Law.

Furthermore, as documented above, even today after the City Planning Commission meeting, the City Council Housing Committee meeting on October 27, 2021, and now today's PLUM Committee meeting, the public has not seen the Final EIR including all of the supporting appendices, nor has the State Clearinghouse. We have to assume that the City has failed to also provide commenting agencies with the responses to their comments. If the public continues to be denied access to the Final EIR and the revised plan documents, its ability to review the proposed changes and meaningfully participate in all public meetings conducted by the City has been impermissibly thwarted.

For all of these reasons as well as other failures to outreach and allow meaningful public participation, the City has failed to proceed in accordance with law.

6. The City's Statement of Overriding Considerations Were Not Reasonably Available For Public Review And Comment Prior to the PLUM Meeting.

Yesterday afternoon, the City purported to notify the public of the availability of the Statement of Overriding Considerations. The City's drop of these findings at the eleventh hour telegraphs an ongoing intent to deprive the public of its guaranteed right of meaningful participation in the environmental review and planning process of the City. Furthermore, the findings are not supported with substantial evidence and the overriding considerations do not justify the extraordinary list of significant impacts of the Project. Indeed the failure to reasonably circulate a reasonable range of alternatives, and to consider them, establishes that the Statement of Overriding Consideration is unsupported, and the City has failed to proceed in accordance with law.

Most sincerely,



Attachments

Exhibit A - FEIR Appendices I, J and K

Exhibit B - CEQANet Record for EIR printed morning of 11/2/2021 showing no FEIR
has been posted

Exhibit C - Platkin Comment Letter

Exhibit D - Simms Report

cc: Vince Bertoni, Planning Director (vince.bertoni@lacity.org)
Nicolas Maricich, Principal Planner (Nicholas.maricich@lacity.org)
housingelement@lacity.org

Attachments

Exhibit A - FEIR Appendices I, J and K

Exhibit B - CEQANet Record for EIR printed morning of 11/2/2021 showing no FEIR has been posted

Exhibit C - Platkin Comment Letter

Exhibit D - Simms Report

Exhibit A

Appendix I

Updated Draft Housing Element Update (October 2021)

The *Updated* Draft Housing Element Update (October 2021) is available to download using the following link:

<https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=21-1230>

Appendix J

Updated Draft Safety Element Update (October 2021)

The *Updated* Draft Safety Element Update (October 2021) is available to download using the following link:

<https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=20-1213>

Appendix K

Listing of Amendments to the Plan for a Healthy Los Angeles (October 2021)

The Listing of Amendments to the Plan for a Healthy Los Angeles is available to download using the following link:

<https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=15-0103-S3>

Exhibit B

SCH Number 2021010130

Project Info

Title	Los Angeles Citywide Housing Element 2021-2029 Update and Safety Element Update
Description	The project involves updates to the City of Los Angeles General Plan Housing Element and Safety Element, and a Rezoning Program for the creation of additional housing units. The Housing Element Update will: further the goal of meeting the existing and projected housing needs of all family income levels of the community through the construction and operation of 420,327 housing units; provide evidence of the City's ability to accommodate the Regional Housing Needs Assessment (RHNA) Allocation of 456,643 housing units through the year 2029; and identify a Rezoning Program that will create at least 219,732 housing units of new capacity by October 2024 to accommodate both the City's RHNA Allocation and target capacity of 486,379 housing units. The Safety Element Update will formally integrate related long-range planning efforts to ensure compliance with State law, including additions to goals, policies, and objectives to better address climate change; integration of updated background information and mapping; and incorporation and update of various programs. The project also involves a targeted update to the Plan for a Healthy Los Angeles to clarify that it is the City's General Plan Element containing environmental justice goals and policies for the City, in compliance with SB 1000.

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2 documents in project

Type	Lead/Public Agency	Received	Title
EIR	City of Los Angeles	7/22/2021	Los Angeles Citywide Housing Element 2021-2029 Update and Safety Element Update
NOP	City of Los Angeles	1/13/2021	Los Angeles Citywide Housing Element 2021-2029 Update and Safety Element Update

Exhibit C

To: Los Angeles City Planning Commission
Re: Testimony on the draft Los Angeles Housing Element
CPC-2020-1365-GPA
CPC-2021-5499-GPA
CEQA: ENV-2020-6762-EIR; SCH. NO. 2021010130
Date: October 14, 2021
From: Richard H. Platkin, AICP
Co-Chair, Greater Fairfax Residents Association
rhplatkin@gmail.com
213-308-6354
6400 W. 5th Street, Los Angeles, CA 90048-4710

The Draft Housing Element represents an unsuccessful response to three contradictory realities.

First, LA is vastly over-zoned. It has been 25 years since the Los Angeles Department of City Planning (LADCP) last calculated the buildout of LA's adopted zoning ordinances. This analysis was part of the 1996 [General Plan Framework Element's Environmental Impact Report](#). In 1996 LA's population was 3.5 million people, and its zoning build out population was 7.2 million people ([FEIR Chapter 7, Table T-1F, Summary of Alternatives by Community Plan Area](#)). Since then, Los Angeles adopted an Accessory Dwelling Unit (ADU) ordinance and two Density Bonus ordinances, SB 1181 and TOC Guidelines. Together they lifted LA's theoretical zoning build out population to around 9,000,000 people, or more than double LA's current population of 3.9 million people, according to the 2020 U.S. Census.

Much of this zoning is on under-utilized commercial streets. Their zoning automatically allows R3 and R4 apartments, all of it on transit corridors, with permitted densities of 70 to 100 units per acre. They could easily accommodate the Housing Element's Very-Low and Low-Income housing requirements, [per SCAG's RHNA allocation to Los Angeles](#), without any discretionary actions to allow even greater densities. The combination of existing zoning and new density bonus laws that encourage Low and Very-Low income housing would allow most of the existing one and two story commercial buildings on these transit corridors to be replaced by three to six story apartment and/or mixed use retail-residential buildings. These in-fill buildings could consist of Low and Very-Low income apartments. In fact, the General Plan Framework Element's [Chapter Two](#) states:

"While [the Framework's] housing capacity is more constrained than commercial and industrial uses, the Plan's capacity for growth considerably exceeds any realistic market requirements for the future. For example, there is sufficient capacity for retail and office commercial uses for over 100 years even at optimistic, pre-recession, market growth rates."

Second, most of this available zoning is under-utilized because private sector developers prefer to build in neighborhoods where their expensive apartment buildings generate the highest profits. According to the [LA Development Map](#), these current hot spots are Downtown Los Angeles (DTLA), Westlake, Koreatown, Hollywood, Miracle Mile, the Beverly Center-Pacific

Design Center corridor, Valley Village, and Warner Center. Furthermore, if the zoning the developers require for their mega-projects is not immediately available, they can apply for discretionary zoning waivers, which [City Hall decision makers grant in 90 percent of cases](#).

Third, the draft Housing Element tries to reconcile these contradictory realities with a model from the UC Berkeley-affiliated but [private sector financed](#) Turner Center. The Turner Center model downplays most available zoning, and it conveniently concludes that LA should up-zone in the popular neighborhoods where, quite understandably, private developers prefer to build their expensive and most profitable apartments.

These are some of the methods that the Housing Element model uses to produce exactly what these real estate developers want: up-zoning in neighborhoods that their business models and financial advisors identify. If/when the City Council the Housing Element's, its policies, as implemented through land use ordinances, would save the developers considerable time and money. As a result, the City Council adoption of the 2021-2029 Housing Element would allow their Return on Investment (ROI) to substantially increase.

- 1) **The Turner Center/s model is based on 13 variables.** In combination, they are supposed to reveal the likelihood that any of the 700,000 parcels in Los Angeles that permit residential uses, would be developed at Lower-Income, Moderate-Income, and Above-Moderate-Income levels within the Housing Element's nine year 2021-2029 time period.
- 2) **The draft Housing Element's Chapter 4 claims that all developable sites have sufficient water, sewer, and dry utilities.** This claim is not credible because LA's infrastructure is already at the breaking point. The city's bumpy streets and sidewalks have become an obstacle course, while broken water mains and electric grid blackouts regularly occur. Furthermore, the Department of City Planning has still not established the *infrastructure monitoring unit* that the City Council-adopted 1996 General Plan Framework Element required. Likewise, per the Framework Element's stipulations, LA's Department of City Planning has not prepared a required annual report on user demand and capacity of LA's infrastructure and public services since 1999. This may explain why the draft Housing Element's claim that all developable sites have sufficient infrastructure is immediately contradicted by its next sentence, "*The City's infrastructure capacity and availability are being analyzed in the environmental analysis prepared for this update to the Housing Element.*" When it comes to the affordable housing crisis, the draft Housing Element's commitment to up-zoning supersedes sound planning principles, in particular as the Framework's policy of ensuring sufficient infrastructure capacity prior to up-zoning that increases permitted densities ([General Plan Framework Element Objective 3.3](#)).
- 3) **Because most housing built in Los Angeles results from private investment,** and because investors choose to build the more profitable Above-Moderate-Income housing, the model reveals a major shortfall (Table 4.17) of 130,000 Lower-Income units and 73,000 Moderate-Income units. Given these findings, the obvious question ought

to be why the private sector produces so few Lower-Income and Moderate-Income units. *Could it be the low profits and low incomes of potential renters and buyers?* The obvious policy response should then be strategies to meet these huge unmet housing needs with non-market, publicly funded housing and by increasing wages among prospective tenants. This makes far more sense than the draft Housing Element's Program 121 of widescale but unmonitored up-zoning, based on the dubious claim that widescale up-zoning will somehow fill the low income housing shortfall.

Furthermore, because zoning laws cannot mandate the rent structure of apartments constructed after 1978, there is no way that the City Hall could prevent developers of Above-Moderate-Income housing from taking advantage of up-zoning, especially in affluent neighborhoods, to build market and even luxury projects. While a comprehensive monitoring program could quickly detect this misuse of the 2021-2019 Housing Element's up-zoning, this appears to be a missing component of the new Housing Element.

- 4) **To meet the shortfall in all housing categories, the Housing Element extensively relies on [enhanced density bonus ordinances](#).** They are renamed Community Plan Implementation Ordinances, but still based on the [legally precarious Transit Oriented Community Guidelines](#). Assuming that these ordinances would be adopted through the 16 Community Plan Updates now underway, there will be considerable hurdles. First, LA's Department of Housing and Community Investment (HCID) does not physically inspect any SB 1818 or TOC apartment projects to confirm that developer-pledged low-income rental units exist. Second, the registry of these low income units is unreliable. In fact, the HCID registry indicates that there are no available density bonus units available in Los Angeles. Third, HCID does not maintain a registry of vetted Extremely-Low-Income, Very-Low-Income, and Low-Income tenants that landlords could refer to when conducting financial checks of prospective tenants.

Until the Housing Element can overcome the political barriers and legal challenges in adopting Community Plan Updates with attached up-zoning and Community Plan Implementation Ordinances, the Housing Element could not successfully address the forecast shortfall in Lower-Income and Moderate-Income units.

There are also serious shortcomings with the Turner Center's model that Los Angeles City Planning (LADCP) is relying on for its 2021-2029 Housing Element:

- 1) **Monitoring.** The City of LA has no ongoing monitoring program to determine if the model's assumptions and forecasts are correct and if any of the regression model's 13 variables should be changed.
- 2) **Limits of regression analysis.** Regression analysis is based on extracting causal connections from correlations. While regression lines can extend these statistical relationships into the future, they cannot anticipate and self-correct for the unpredictable historical events that often confound models. For example, the 1996

General Plan, relying on SCAG's regression-based population model, predicted a 2010 Los Angeles population of 4.3 million residents. Yet, in 2021 LA's population is only 3,900,000 people [based on the 2020 census](#), and no one knows if or when Los Angeles will eventually reach SCAG's prediction of 4.3 million people.

This is because of the weakness of regression models. They cannot readily respond to Pandemics, civil disturbances like 1965 and 1992, recessions, depressions, wars, and climate change induced mega-storms. Parcel levels forecasts from the Turner Center's model also cannot anticipate new government and state housing programs, new tax laws, fluctuations in interest rates, future labor contracts, supply chain breakdowns, changes in consumer housing preferences, amended building codes, inflated transportation costs, and sudden technological breakthroughs. This is why forecasts based on trend analysis often fall short, and why they must be continuously monitored and amended to properly work.

- 3) Inherent weakness of changing zoning laws.** Up-zoning, including density bonuses and tax breaks, cannot force investors and developers to build and operate anything, especially lower-priced housing. In fact, the market housing that it builds eliminates more existing low-income housing than it creates. That is why up-zoning results in gentrification, not a reduction of homelessness, over-crowding, and out-migration.
- 4) Planning out of sequence.** Up-zoning ordinances are not integrated into the planning process, and they therefore often overlook important planning issues. Even though the General Plan Framework's Policies 3.3.1 and 3.3.2 require up-zoning to be based on available infrastructure, the draft Housing Element's extensive up-zoning side-steps this requirement and, therefore, jeopardizes LA's already precarious public services and infrastructure.

City Hall's arcane political processes will determine how much of the proposed Housing Element becomes adopted policy. But, even if the Housing Element survives this hurdle, it will not easily overcome the next barriers, that we live in complicated and difficult to predict times.

Exhibit D

**Memorandum Re: Statistical Analysis and Interpretation of Regression Methodology
City of Los Angeles Housing Element**

Prepared by: Laura Simms, Ph.D.
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Climate & Space Sciences & Engineering

Augsburg University
Department of Mathematics, Statistics, and Computer Science
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To:

Channel Law Group
8383 Wilshire Blvd., Suite 750
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RE: City of Los Angeles Housing Element - Assessment of Regression Analysis Used to Calculate
Rezoning Need

31 Oct 2021

You requested that I review the Regression Analysis and the documentation utilized by the City of Los Angeles in connection with its latest Housing Element Update for 2021-2029. In particular, I reviewed (1) the adequacy of the documentation provided to the public to determine the extent to which the public or reviewing state agencies could independently verify the modeling results, (2) the extent to which the regression model design conforms to best practices of the profession, and (3) accuracy of the modeling results and level of confidence that the model predicts a reliable result for use by the City in its contention that rezoning of portions of the City are necessary to accommodate growth during the next Housing Element planning period.

I have decades of experience in designing and conducting regression analysis in the academic fields of biology and physics, however, regression analysis is a commonly used predictive tool across a broad spectrum of academic areas of inquiry. The tools of regression analysis are well-defined and known to those who use it in their research and work. Therefore, my review of the regression analysis models developed and used by the City of Los Angeles to predict future likely development examined a number of basic and important factors of good practice in the design and application of regression analysis.

In the Overview, I have summarized a number of key issues in the design and disclosure of the modeling information to the public. Immediately, following this overview, I have provided more detailed analysis of particular modeling factors.

OVERVIEW

The City's modeling created several models to predict housing development, but Model 1 (consisting of 2 regressions) is the one on which most of their report is based.

In reviewing the regression methodology presented in the Housing Element Update for Los Angeles City Planning, I have considered whether the prediction model asks the questions policy makers might want answered, or whether it is merely a model that provides a "black box" prediction of housing development. In other words, is the model transparent in terms of which factors drive housing development, or does it merely present a result without any way of knowing which factors are most important? I have also considered whether there is evidence presented that the model accurately describes the data, whether there is enough information to assess the strength of the model, and whether the model can be expected to apply in the future if there are changes in policy or conditions.

I concluded that the information in the report does not provide the crucial support that planners would need to determine if rezoning was necessary to accommodate projected growth during the relevant period of time. The major focus of the regression methodology portion is the production of a model that can somewhat accurately predict past behavior. However, the choice of variables appears to be driven by what was available rather than what would guide future policy. And even of these, none are assessed for their degree of influence in the models.

There is insufficient statistical information provided for the public to evaluate the modeling. For instance, there is very little information on how well the predictor variables explain the data. No significance tests are reported: there are no p-values for individual predictors nor any reliable tests of goodness of fit for each model. Coefficients for each predictor variable should also be provided so readers can assess whether they make sense and how much each factor matters.

The model described in Appendix 4.6 (Model 1) does not clearly state the research question nor provide an answer to any hypotheses tested. Leaving out the hypothesis tests (p-values) means there is no opportunity to understand the key factors at work. Anything that might inform policy decisions appears to have been left out.

The use of "adjustment factors" to limit the data being predicted may present serious issues. These factors do not appear to be applied during the building of the model (Appendix 4.6), suggesting that these models do not account for these reductions in the data. The result of this is that the training data would be vastly different from the validation data. In that case, none of the predictions could be expected to have anything to do with reality, as described by the models. This is a *serious* flaw and would invalidate anything predicted from the model.

Several predictor variables cover large ranges: using zip code level mean housing value is not very specific. Could these not be determined for smaller areas?

There is no presentation of the response within income level groups. For example, does lower income housing respond differently than other housing groups to these various influences? Testing for this could easily be inserted into the current logistic models with interaction terms. Not having this information seriously reduces the utility of this model.

Predictions should be presented with confidence intervals, not just means. A single number gives no information on how accurate the model may be.

There is no validation of the model. There is an attempt at validating Step 1 of Model 1, but even this validation effort lacks credibility as it appears to validate only the first step of this model (Step 1). (Note that validation is perhaps not required for assessing the model, but if one is going to make the attempt, it should at least validate the full model.)

None of these models are adequate to make accurate predictions within each housing grouping (lower, moderate, and above moderate) and there is no attempt at validating within group.

There is no plan proposed to adjust the models to new conditions such as changes in tax or interest rates. Nor does there appear to be any plan to monitor whether pledged density bonus housing is actually developed and rented to low-income tenants after permits are granted.

MODELING FACTORS

1. Choice of Variables Affects Utility of the Model

How were predictive variables chosen? The most useful model would be one that used variables that could be changed by possible policy modifications – in other words, those that would answer questions policy makers may be interested in. These can, of course, be combined with factors needed to control for excessive variation in the data to produce the best model. However, if variables are only chosen for the latter reason, because it results in good predictions out of the model, then the model is determining which questions can be asked. It does not answer the questions that policy makers might have. A model that predicts an answer that no one needs is a useless model.

2. Statistical Tests That Determine Influence of Variables are Missing

However, even if included variables are the ones policy makers have an interest in, their level of influence is not reported. In other words, the pertinent questions are not being answered. There are no relevant tests of statistical significance to determine which variables actually drive the outcome. Significance tests of each variable should be given so that readers can assess which factors might have any relevance in policy decisions.

Without these hypothesis tests, the results of these models are useless for policy decisions.

Coefficients for each predictor variable should also be provided. As these are logistic regression models, there should be some discussion of transforming the log-odds coefficients back into probabilities so that the reader has a sense of what influence each variable has. This would help in assessing whether the model has any real-world applicability and to consider what variables have been left out of the model that could have been profitably included to inform policy decisions.

There are also no goodness-of-fit tests for whole models. These are basic statistics that show how well a model performs in describing the variation in the data. McFadden's R^2 for logistic regression models is given, but this is not the correct test to use. McFadden's (and in fact, any R^2 from a logistic regression) is

not comparable to the more familiar R^2 usually given for linear regression. The usual R^2 represents the fraction of variation explained by the model. McFadden's R^2 for logistic regression does not do this.

While a McFadden R^2 between 0.2-0.4 may suggest a good fit (McFadden, 1977),¹ there is disagreement about that, and simulations of the statistic suggest that it can take on wildly different values depending on small changes in circumstance. These are problems with any R^2 calculated for logistic regression (McFadden or otherwise). The use of the term " R^2 " for any of these statistics is unfortunate as it leads one to believe it measures the same thing as an actual R^2 . If this were linear regression, the reporting of the R^2 would be somewhat helpful in assessing the overall explanatory value of the model, but McFadden's R^2 (and any of the so-called R^2 statistics one can use for logistic regression) are not as easily interpreted.

However, beyond this, the McFadden R^2 is not an appropriate statistic for this situation, as it is more suited to comparing nested models (i.e., comparing a full model with all variables vs. the same model/dataset with fewer variables). This is not how it's being used here, and it certainly does not give any information about how much of the variation in the data is being modeled (as the more typical R^2 would do). In any case, the 0.126 value of the first model falls below what McFadden himself believed to be an indication of good fit. The 0.038 value for the second model (referenced in footnote 22) is very low no matter which R^2 it is. Nor is it clear which model the 0.126 R^2 refers to. Is it only step 1 of Model 1? If so, why is it not reported for step 2 and what is the number for step 2? If it does refer to both steps, which are separate regression models, how was a single statistic calculated for the two models?

There are several more correct statistics that could assess the overall goodness-of-fit of a logistic regression (the deviance test, for example) but these are not given. However, just providing the full coefficient tables for both regressions (with p-values for each variable) would address the issue of whether any of these models have any explanatory power at all. But such tables were not provided for public review.

3. Validation of the Models is Insufficient

Ignoring whether the models are asking the appropriate questions (i.e., including and providing assessments of the correct variables of interest), the model still appears to be only weakly predictive of outcomes in the test (validation) dataset.

I can find only a single validation prediction from the model (Appendix 4.6-17), predicting 2010 units developed. It's noted that this is quite close to the actual value in the 2010 test set, but no confidence interval is given. Also, no predictions are made for the various groupings. Does the accuracy hold for areas of high income vs low income? Does this single prediction answer any question that planners might have about these variables and about other variables that were not included?

Why was only 2010 used as the test set? Did other years give less accurate predictions? The way this is reported, it appears each year is a single observation. If so, this would mean the sample size for building the model is (impossibly) lower than the number of predictor variables.

¹ McFadden, D., 1977, Cowles Foundation Discussion Paper No. 474 (footnote on page 35) available at: <https://cowles.yale.edu/sites/default/files/files/pub/d04/d0474.pdf>

The model should, more appropriately, be validated by using all observations in the test set, not the aggregate over a single year. I believe this is the point of including the ROC (receiver operating characteristic) curve. However, a ROC curve is difficult to interpret for readers who don't have experience with them. It would be better to also provide a truth table as these are easier to interpret.

That the prediction of a single year (2010) barely brings the AUC (area under the curve) into the "excellent" category (as categorized by a single authority) is not much of an endorsement of the predictive ability of this model. First, what happened in the other years? Second, determining whether the AUC is "good" or "excellent" is somewhat dependent on the cost of making mistakes, an assessment of which is not presented here. (As a side note, models I have made with this low of an AUC were not effective enough to use in a situation where reasonably accurate answers were needed.)

In any case, this presentation of the ROC curve is only shown for Step 1, which is really only half of Model 1. It does not provide *any* information about how well the whole model works.

Consequently, there is no validation of the full model presented at all. This only validates Step 1.

Besides this, I would argue that the validation of the model (which is not actually given) is of much less importance than providing significance tests of the variables within the model.

4. Details of Group Responses Are Important

I found no validation of predictions of housing builds *within* each category (i.e., of low vs high income housing). For policy decisions, this is an extremely important piece of information that should come out of this model.

There is mention that the model may differ in intercept between parcels with 1-4, 5-50 and >50 base-zoned units, however no predictions are made for individual groups. Nor is any mention made of how these intercepts vary. Which is larger? Is it what would be expected? If not, why not?

However, I would go one step further. The interaction terms between grouped variables with other variables should have been tested. This would give information on not only whether the intercepts varied between groups, but the response (slope) to the other variables. Without this, this model is nearly useless, particularly here as applied over a large area with a range of incomes, available parcels, etc.

5. Predictions Should Use Same Sample Characteristics as the Model

It is not clear that any of the "adjustment factors" used on the validation dataset were previously applied to the training set data. The reduction of the data using these adjustment factors is not mentioned in the Appendix (4.6) describing the building of the model. This suggests that the data used to build the model is very different from that being used for predictions – *so different, in fact, that the model would have virtually no applicability to future data.*

CONCLUSION

The main model (Model 1) utilized as part of the Los Angeles Housing Element EIR and Planning Process is likely of little use in making planning decisions. It simply doesn't answer the questions posed, nor does it do a particularly good job of explaining what influences the outcomes of the modeling.

There is little evidence that the model accurately describes the data or that, as a result, it is particularly accurate in making predictions.

Based upon the lack of disclosure of the design of the models, the lack of credible validation of the models, and the failure to utilize confidence intervals to assure the models are reasonably reliable as a future predictor of development of housing without rezoning, the City's documentation I reviewed does not constitute substantial evidence that these models accurately reflect a reliable prediction of future housing development. Accordingly, the data output constitutes unreliable information on which to base a prediction of housing development over the next eight years.

Sincerely,

/s/ Laura Simms

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- 15+ years in physics research, specializing in modeling particle transport and wave activity and the statistical analysis of large datasets
- Lead author on numerous published research papers using regression, time series analysis, machine learning techniques, and survival analysis, as well as spectral analysis of magnetospheric waves
- Proficient in MATLAB, R, SPSS, SAS, IDL and other languages
- Ph.D. in ecology
- Master's degrees in statistics and entomology
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Software expertise

MATLAB

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Logistic regression

Non-parametric tests

Time series analysis

Spatial data analysis

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Research Experience

2021 - Visiting Research Scientist (University of Michigan)

ARMAX and neural network models of low energy electrons in the magnetosphere. Model validation using ROC analysis and STONE curves.

2001 – present Researcher (Augsburg University)

Prediction of waves and high-energy electrons in the magnetosphere using regression, time series analysis, logistic regression, and machine learning

1989 - 1996 Research Assistant (with Lowell Getz, Biology, University of Illinois)

Analysis of vole population data using survival analysis and regression

1986 – 1989 Statistical/Computing Consultant (Agricultural Economics, University of Illinois)

1983-1985 Research Assistant (with Gilbert Waldbauer, Entomology, University of Illinois)

Insect mimicry; dietary choices

Teaching Experience

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Statistical Linear Models

Statistics for STEM Majors

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Environmental Biology

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1987 M.S., Statistics

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Thesis: Inheritance of variable instar number in the corn earworm (*Heliothis zea*)

University of California, San Diego

1981 B.A., Biology (minors in Chemistry and Music)

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Publications

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