

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: March 3, 2014
Reviewed by: PL

SUBJECT: Resolution No. 2014-18 adopting the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the 2007-2014 Housing Element and Resolution No. 2014-19 amending the Albany General Plan by adopting the 2007-2014 Housing Element

REPORT BY: Barry Miller, General Plan Consultant
Anne Hersch, City Planner
Jeff Bond, Community Development Director

STAFF RECOMMENDATION

That the City Council:

1. Conduct a public hearing on the Mitigated Negative Declaration and on the adoption of the 2007-2014 Housing Element
2. Adopt *as revised* Resolution 2014-18 adopting the Initial Study/ Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the 2007-2014 Housing Element.
3. Adopt Resolution 2014-19 amending the Albany General Plan to incorporate the 2007-2014 Housing Element.
4. Authorize staff to submit the 2007-2014 Housing Element to the State Department of Housing and Community Development for review.

BACKGROUND

Following completion of the staff report for this agenda item, the City has received two additional pieces of communications.

DISCUSSION

CEQA Analysis of School Impacts

As preparations of the CEQA document were underway, the City's CEQA consultant contacted AUSD seeking updated information on school facility needs. On Monday, February 24, 2014, following completion of the analysis and past the closure date of the comment period, the City's

CEQA consultant received a response from AUSD. In the response, the AUSD indicated that increased student enrollment could generate a need for additional school facilities.

Because the Housing Element does not contain policies that require rezoning of properties or increases in allowable densities in existing zoning districts, the adoption of the Housing Element in itself does not result in the generation of additional children who would enroll in District schools. Furthermore, as future development occurs, AUSD will receive development fees as allowed by the Leroy F. Greene School Facilities Act of 1998. Pursuant to State Law, the fees will serve as mitigation for potential impacts on school facilities.

In order to ensure a full record of the preparation of the CEQA document, revisions to Resolution 2014-18 have been prepared to acknowledge the communication.

Public Interest Law Project

On Monday, March 3, 2014, the City received correspondence from the Public Interest Law Project asserting that in the past the City has not had adequate sites to accommodate housing development. City staff, consultants, and City Attorney have carefully reviewed this concern and believe that the record is clear that the City's zoning standards could have accommodated additional housing projects had applications been received. The Public Interest Law Project correspondence also indicates a concern that rents at UC Village does not meet moderate-income affordability standards. Attached is a summary table comparing current UC Village rents with current qualifying income thresholds.

Attachments

1. Revised Resolution 2014-18 adopting the Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the 2007-2014 Housing Element.
2. March 3, 2014 correspondence from the Public Interest Law Project
3. UC Village Rents and Moderate Income Thresholds

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RESOLUTION NO. 2014-18

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALBANY,
COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ADOPTING THE INITIAL
STUDY-MITIGATED NEGATIVE DECLARATION AND THE MITIGATION
MONITORING AND REPORTING PROGRAM FOR THE 2007-2014 ALBANY
HOUSING ELEMENT**

WHEREAS, the City of Albany has prepared a Housing Element for the 2007-2014 period in accordance with State Government Code 65580-65589.8; and

WHEREAS, adoption of the 2007-2014 Housing Element constitutes an amendment to the Albany General Plan and is defined as a "project" under the California Environmental Quality Act (CEQA) and is thus subject to environmental review; and

WHEREAS, the City retained the consulting firm The Planning Center/ DC&E to prepare an Initial Study of the proposed 2007-2014 Housing Element and to determine whether a negative declaration or Environmental Impact Report should be prepared; and

WHEREAS, after completion of the Initial Study, on January 31, 2014 the City issued a Notice of Intent to Adopt a Mitigated Negative Declaration for the 2007-2014 Housing Element, published the Notice of Intent in the Contra Costa Times on February 2, 2014, and circulated the Initial Study-Mitigated Negative Declaration (IS-MND) for public review; and considered the proposed IS-MND in making its recommendations to the City Council regarding the 2007-2014 Housing Element; and

WHEREAS, on February 12, 2014, the Albany Planning and Zoning Commission adopted Resolution 2014-01 recommending adoption of the Initial Study-Mitigated

1 Negative Declaration for the 2007-2014 Albany Housing Element by the Albany City
2 Council; and
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4 WHEREAS, while no written comments have been received on the IS-MND,
5 additional information was received by the City relating to school capacity; and
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7 WHEREAS, although the IS-MND identified potentially significant adverse
8 environmental effects that could result if the 2007-2014 Housing Element were adopted,
9 all significant adverse environmental effects will be avoided or mitigation by the
10 implementation of the mitigation measures as set forth in the Mitigation
11 Monitoring/Reporting Program prepared for the IS/MND; and
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13 WHEREAS, the Albany City Council conducted a duly and properly noticed
14 public hearing on March 3, 2014, and fully reviewed and considered the Initial
15 Study/Mitigated Negative Declaration, the Mitigation Monitoring and Reporting Program
16 attached as Exhibit A to this resolution, and the recommendation of the Planning
17 Commission with respect to the Initial Study/Mitigated Negative Declaration.
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19 **NOW THEREFORE, BE IT RESOLVED THAT THE ALBANY CITY**
20 **COUNCIL MAKES THE FOLLOWING FINDINGS:**
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22 A. The facts and information contained in the above Recitals are true and correct
23 and are incorporated herein by this reference.
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25 B. The City Council has considered the Initial Study/Mitigated Negative Declaration
26 together with any comments received during the public review process.
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1 C. The Initial Study/Mitigated Negative Declaration reflects the City's independent
2 judgment and analysis. The City Council hereby adopts the Initial Study/Mitigated
3 Negative Declaration, with the clarifying revision attached as Exhibit B to this resolution,
4 finding, on the basis of the whole record before it, including the Initial Study, any
5 comments received, and the Mitigation Monitoring and Reporting Program, that there is
6 no substantial evidence that the 2007-2014 Housing Element will have a significant effect
7 on the environment.
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9 D. All potentially significant adverse environmental effects will be avoided or mitigated
10 by the implementation of the mitigation measures set forth in the Mitigation Monitoring
11 and Reporting Program attached to this Resolution as Exhibit A. The City Council hereby
12 adopts the Mitigation Monitoring and Reporting Program.
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14 E. The location and custodian of the documents that constitute the record of proceedings
15 on which the City's action is based are: City of Albany Community Development
16 Department, 1000 San Pablo Avenue, Albany, CA 94706.
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18 F. The adoption of the Initial Study/Mitigated Negative Declaration and the Mitigation
19 Monitoring and Reporting Program shall be effective immediately upon adoption of this
20 Resolution.
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NOW THEREFORE BE IT RESOLVED, that the City Council hereby adopts the Mitigated Negative Declaration for the 2007-2014 Albany Housing Element and the Mitigation Monitoring and Reporting Program contained as Exhibit A.

PASSED, APPROVED AND ADOPTED this 3rd day of March 2014 by the following vote:

AYES-

NOES-

ABSENT-

ABSTENTION-

MAYOR

ATTEST:

Nicole Almaguer, City Clerk

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EXHIBIT A:
MITIGATION MONITORING AND REPORTING PROGRAM (attached)

TABLE 10 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementing Party	Monitoring Party	Monitoring Frequency/Timing
Air Quality			
AIR-1			
Applicants for future development project shall require the project contractor to implement the following BAAQMD Basic Control Measures.			
<ul style="list-style-type: none"> ▪ Water all active construction areas at least twice daily, or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible. ▪ Apply water twice daily or as often as necessary, to control dust, or apply (non-toxic) soil stabilizers on, or pave all unpaved access roads, parking areas, and staging areas at construction sites. ▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer). ▪ Sweep daily (with water sweepers using reclaimed water if possible), or as often as needed, all paved access roads, parking areas and staging areas at the construction site to control dust. ▪ Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the Project site, or as often as needed to keep streets free of visible soil material. ▪ Hydroseed or apply non-toxic soil stabilizers to inactive construction areas. ▪ Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) ▪ Limit vehicle traffic speeds on unpaved roads to 15 mph. ▪ Replant vegetation in disturbed areas as quickly as possible. ▪ Install sandbags or other erosion control measures to prevent silt runoff from public roadways. 	Project Applicant	City of Albany Planning & Building Department	Prior to issuance of building permit

TABLE 10 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementing Party	Monitoring Party	Monitoring Frequency/Timing
<p>AIR-2</p> <p>Project applicants proposing residential development, including emergency shelters, within 1000 feet of major sources of toxic air contaminants (TACs), as mapped in Figure 3, <i>Sources of Toxic Air Contaminants in Proximity to Housing Opportunity Sites</i>, shall submit a Health Risk Assessment (HRA) prepared in accordance with the latest State Office of Environmental Health Hazard Assessment (OEHHA) and Bay Area Air Quality Management District (BAAQMD) guidance. For projects where the incremental cancer risk exceeds ten in one million, PM_{2.5} concentrations exceed 0.3 µg/m³, or the appropriate non-cancer hazard index exceeds 1.0, the HRA shall identify mitigation measures capable of reducing potential cancer and non-cancer risks to acceptable levels per OEHHA and BAAQMD guidance.</p>	Project Applicant	City of Albany Planning & Building Department	Prior to issuance of building permit
<p>Hydrology and Water Quality</p> <p>HYDRO-1</p> <p>The project applicant for potential development of the opportunity site at 1107-1111 San Pablo Avenue (Site 17) shall retain a qualified engineering or surveying professional to prepare a determination, including appropriate site plan sheet of the precise location of the 100-year special flood hazard area boundaries for creeks in the vicinity of the project site. Based on this determination, if the project encroaches into the floodplain, consistent with the City of Albany Flood Damage Prevention Regulations, the applicant shall obtain a flood zone permit. The applicant shall comply with all requirements of the flood zone permit as imposed by the City. These recommendations and requirements are to be implemented in the planning and construction of the proposed project, so as to assure that the project will not impede or redirect flood flows, or present a significant risk of flood-related loss to people or structures.</p>	Project Applicant	City of Albany Planning & Building Department	Prior to issuance of Certificate of Occupancy

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EXHIBIT B:

CLARIFYING REVISION TO MITIGATED NEGATIVE DECLARATION

The discussion of 'Schools' on the top of page 47 is revised to read as follows:

The Albany Unified School District operates three elementary schools, one middle school, one high school, one adult school, and one children's center. The District is in the process of developing a Facilities Master Plan, which was not yet available at the time this Initial Study was released.

The School District has indicated that increased enrollment could generate a need for additional school facilities. However, the Albany Housing Element does not zone any additional sites for housing development or increase the density on any existing sites zoned for residential development and therefore its adoption will not result in the generation of additional children who would enroll in District schools.

Additionally, all future development will pay fees of \$2.97 per square foot of residential space and \$0.47 per square foot of commercial space, or as otherwise adopted by the Albany Unified School District. SB 50 (the Leroy F. Greene School Facilities Act of 1998) states that payment of school impact fees "shall be the exclusive method of considering and mitigating impacts on school facilities," and is "deemed to provide full and complete school facilities mitigation." Therefore this impact is less-than-significant.



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March 3, 2014

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Via electronic mail

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Re: Comments re Agenda Item 7.1, March 3, 2014 City Council Meeting

Lauren Hansen
Attorney Fellow
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Dear Mayor Thomsen, Council Members, and Ms. Almaguer:

Noah Kirshbaum-Ray
Legal Assistant
Extension 110
nkirshbaum@pilpca.org

Bay Area Legal Aid and The Public Interest Law Project submit these comments regarding the above agenda item on behalf of our clients, Amber Whitson, Betty Stephenson, and the Albany Housing Advocates.

Linda Hill
Office Manager
Extension 123
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We appreciate the progress the City has made toward adopting a housing element. We are also pleased that the draft housing element incorporates many of the recommendations we submitted as the draft was made available, including for example:

- Permitting by-right development of emergency shelters in the San Pablo Commercial (SPC) zone in addition to the Commercial Mixed Use (CMX) zone.;
- Permitting transitional and supportive housing by right in all residential zones;
- Extending homeless service programs, including efforts to locate permanent housing for Bulb residents;
- Adoption of a program to waive fees and expedite permit processing;
- Adoption of a program to create an affordable housing fund and dedication of redevelopment "boomerang" funds;
- Revision of the family definition in the City's Municipal Code to clarify regulations applicable to shared housing;

- Inclusion of a program to survey and track second units to assist in determining whether rental units are affordable.

However, the City has still not complied with Govt. C. § 65584.09. When a City “failed to identify or make available adequate sites” to accommodate its regional housing needs allocation (RHNA) for the prior planning period, it must “zone or rezone adequate sites” to accommodate its deficit from the prior planning period within the first year of the next planning period. Subsection (b) provides that such deficit is in addition to any zoning or rezoning required to meet its RHNA for the current planning period. And, subsection (c) provides that nothing in section 65584.09 shall be construed to diminish the City’s requirement to accommodate its share of the regional housing need for each income level, *including* the obligations to (1) implement programs to achieve the goals and objectives of its housing element; and timely adopt a housing element with an inventory as required by section 65583(a)(3) and a program to make sites available pursuant to section 65583(c)(1) to accommodate its share of the RHNA. See Govt. C. § 65584.09; HCD Memo dated June 20, 2007. As we have previously commented, the City did not make adequate sites available to accommodate the RHNA for 277 units for the 1999-2006 planning period and has not rezoned sites during this planning period.

It is undisputed that the City never adopted a housing element for the 1999-2006 planning period. Thus, it never established goals and quantified objectives for the development of any housing; never provided an inventory of sites or analyzed the adequacy of those sites to accommodate its RHNA for 277 units; never adopted or implemented any housing element programs to achieve any goals and objectives; and never implemented an adequate sites program to accommodate its share of the RHNA. Moreover, by failing to timely adopt a housing element for the *current* planning period, the City failed to “zone or rezone” sites within the first year of this planning period to accommodate its outstanding RHNA.

Under HCD’s “AB 1233” guidelines, the City can only deduct: (1) the number of units that were actually approved or constructed since the beginning of the last planning period; (2) the number of units that could be accommodated on appropriately zoned sites that were specifically identified in the element adopted for the last planning period; (3) the number of units that could be accommodated on sites that were zoned or rezoned for residential development pursuant to a site identification program in the housing element for the prior period; and (4) the number of units accommodated on sites “rezoned for residential development” independent of number 3. HCD Memorandum regarding Application of AB 1233, updated June 13, 2010.

The City claims it has no carryover based on a retroactive analysis that there were adequate sites available during the last planning period. Although it may be able to reduce its RHNA by the number of units that were actually constructed for each income category, the City has not demonstrated that it had sufficient sites in 1999 to accommodate all of its RHNA for the 1999-2006 planning period. The draft element acknowledges that 57 very low and 16 low income units were not built, but claims that it need only demonstrate that it had the capacity to accommodate these 73 lower income units to meet the requirements of Govt. C. § 65584.09. We do not dispute that the City identified 5 very low and 15 low-income units that were constructed during the 1999-2006 planning period. We also do not dispute that 54 above-moderate income

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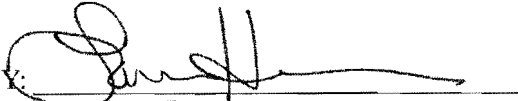
units were constructed at Portland Gardens, Albany Gardens, and Villa de Albany that may be credited against the City's 1999-2006 RHNA of 103 above moderate income units. We continue to dispute the affordability levels attributed to UC Village, other infill homes, and second units described in Table 2-2 of the current draft element. We respectfully disagree with the City's interpretation of state law and the extent of its deficit.

The City's carry-over of regional housing needs for the last planning period is at least 59 very low, 18 low, and 77 moderate for a total of 154 lower income units. The City cannot deduct units that might have been accommodated on appropriately zoned sites (No. 2 above) because no sites were "identified in the element adopted for the last planning period" since no element was adopted. It cannot deduct any sites that were zoned or rezoned for residential development pursuant to a site identification program (No. 3 above), because it had no site identification program. And, it has not identified any sites that were "rezoned for residential development" during the last planning period independent of an adequate sites program (No. 4 above). To construe Govt. C. § 65584.09 as the City suggests would diminish its obligation to accommodate its share of regional housing needs in violation of Govt. C. § 65584.09. Therefore, the City's conclusion that it has no carryover obligation is incorrect. Thank you for your consideration.

Very truly yours,

Naomi Young, Lisa Greif
BAY AREA LEGAL AID

Deborah Collins, Lauren Hansen
PUBLIC INTEREST LAW PROJECT

BY: 
Lauren Hansen

cc (by e-mail):

Jeff Bond, Planning and Zoning Department
Anne Hersch, City Planner

UC VILLAGE RENTS AND MODERATE INCOME THRESHOLDS

UC VILLAGE POSTED RENTS FOR 2013-2014

Type of Apartment	Sq. ft.	Price
EAST VILLAGE		
2 bedroom, 1 bath flat	987	\$1,683
2 bedroom, 2 bath flat	987	\$1,765
2 bedroom, 1 bath townhouse	1055 - 1107	\$1,765
2 bedroom, 2 bath townhouse	1040 -1107	\$1,838
2 bedroom, 2 bath townhouse with study	1197	\$1,915
3 bedroom, 1 bath flat	1085	\$1,915
3 bedroom, 2 bath flat	1085 -1103	\$1,999

Type of Apartment	Sq. ft.	Price
WEST VILLAGE		
1 bedroom, 1 bath	635	\$1,298
2 bedroom, 1 bath	785-806	\$1,550
3 bedroom, 1 bath	1002	\$1,765

Source: <http://www.housing.berkeley.edu/livingatcal/universityvillage.html> (March 3, 2014)

UC Village Website indicates: "Utilities, including water, garbage, recycling, gas, electricity, basic cable, and internet data line are included in the rent"

MODERATE INCOME HOUSING MAXIMUM RENT THRESHOLDS

	Maximum "Affordable" Rent	Utility Allowance	Rent + Utilities
One Bedroom (assumes 2 person HH)	\$ 1,941	\$ 116	\$ 2,057
Two Bedroom (assumes 3 person HH)	\$ 2,171	\$ 143	\$ 2,314
Three Bedroom (assumes 4 person HH)	\$ 2,392	\$ 180	\$ 2,572

Source: HUD Income Limits for Oakland-Fremont HMFA, 2014. Affordable rents calculated at 30% of monthly income for households earning 110% of median, as specified by Health & Safety Code 50053(b)(4). Utility Allowances based on Alameda County Housing Authority allowances. See <http://www.haca.net/index.php/participants/utility-allowance>

