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December 11, 2018

Via Electronic and Regular Mail

Jeannie Bruins
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

SUBJECT: CASA Compact

Dear Ms. Bruins:

Following adoption of the Bay Area's Sustainable Communities Strategy (SCS), Plan Bay Area, in 2013 (updated in 2017), CASA – the Committee to House the Bay Area (CASA), was convened by the Metropolitan Transportation Commission (MTC), the Bay Area's Regional Transportation Agency to identify innovative methods to meet the housing targets in the Plan. CASA's key principles include (1) increasing housing production at all levels of affordability, (2) preserving existing affordable housing, and (3) protecting vulnerable populations from housing instability and displacement.

From Summer 2017 through Fall 2018 CASA developed a suite of legislative, financial, policy and regulatory recommendations that together form a Regional Housing Implementation Strategy for presentation at state and regional levels. This has been presented to the Bay Area Regional Collaborative (BARC) on November 8, 2018 and the ABAG Executive Board on November 15, 2018 to solicit support on the proposed strategies together called the CASA Compact. It is expected that the Draft Term Sheets will be presented to the MTC Executive Board on December 17, 2018.

Based on comments from the Executive Director of the MTC at the ABAG Executive Board meeting, it is anticipated that the CASA Compact will be forwarded to state legislators for their consideration for implementation without the scope of many (or any) edits by the ABAG or MTC Executive Boards and regardless of the outcome of their voting. Mr. Heminger explained that CASA was not established with the intent of requiring Board Approval on its work product. He also indicated that state legislators

have been closely monitoring CASA's progress and regardless of support or opposition from ABAG and MTC will likely forward many of the recommendations for consideration at the state level. The CASA Compact essentially provides support to existing and future legislative work and intent.

Several members of the ABAG Executive Board expressed concerns about several terms in the Compact at its November 15, 2018 meeting, particularly the proposed changes to regulations that preempt local control over land use matters, including the upzoning along transportation corridors and a "one-size-fits-all" strategy for development. Several concerns were raised about the lack of outreach with smaller jurisdictions and broader participation in the preparation of the Draft Term Sheets. MTC staff indicated that given the schedule, there is no time for the outreach suggested by the Board. However, the ABAG Executive Board recommended a workshop to allow local jurisdictions to provide their input, possibly at a future board meeting. No vote was taken on the Compact at the November meeting.

A preliminary evaluation of the CASA Compact Draft Term Sheets raises the following concerns:

1. *Minimal outreach to local governments* – Local government representation in CASA is limited to the three largest cities in the region and three local jurisdictions (out of over 100 local agencies). Consensus on the CASA Compact has been built around builders, non-profit agencies, labor unions etc. However, most of the affected agencies have not been consulted on the Compact or its elements. It should be noted that many of the action items would impact all local agencies in California including those that may not have finances or staffing to implement the mandates;
2. *Preemption of local control over zoning regulations, inclusionary requirements and design review* – Aggressive density, height, open space and setback standards, suspension of inclusionary requirements if adequate housing not constructed, requiring jurisdictions to grant waivers/reductions to inclusionary requirements. Additionally, local jurisdictions ability to conduct design review would be severely limited to objective standards including disallowing any reductions in established height allowances for architectural articulation;
3. *Freezing fees, community benefits etc. at time of application for 100% affordable projects and at time of completeness for other projects* – While fees in Cupertino are generally frozen to time of completeness, like many other cities, community benefits are generally negotiated through project review and finalized at application approval by the City Council. This would limit cities ability to negotiate community

benefits. All community benefits would have to be established prior to any proposed development;

4. *Overreach in land use regulations by the Regional Transportation Commission* – In addition to a statutory housing overlay near transit, MTC is proposing to establish a new index to evaluate areas based on 5-factors identified by MTC which would allow implementation of state mandated zoning regulations for density, open space, height and parking well beyond the transit focus areas;
5. *Added fiscal pressures on local government due to statutory streamlining requirements and tax relief measures* – Statutory streamlining deadlines (similar to existing SB 35 timelines) by project size could require local agencies to incur expenses to hire additional staff to ensure timely project review. However, a potential 15-year tax relief could impact the General Fund further burdening local agencies. In addition, local agencies would be restricted from charging existing fees if erroneously not identified during the entitlement phase of project;
6. *Suspension of inclusionary requirements* – the legislative agenda proposes a suspension of inclusionary requirements in the event that a finding that inclusionary requirements are not thwarting housing development cannot be made within the first 30 calendar days of the day. Construction of housing cannot be guaranteed by cities upon project approval. For e.g., in Cupertino, 788 residential units were permitted in 2016, however, no building permits have been submitted and construction has not commenced on these projects.
7. *Establishment of a Regional Housing Entity (RHE) that determines disbursement of funds* – this is a concern particularly if a smaller jurisdiction generates much of the revenue. E.g. a gross receipts tax in Cupertino could generate substantial revenue, but only a small portion of that can be expected to be allocated to the City;
8. *Appropriation of local finances* – Cupertino, like several other cities in the region, already has a commercial linkage fee. With establishment of the RHE, it appears that this would be appropriated;
9. *Governmental structure of the RHE* – the proposed structure of the RHE is expected to be similar to the MTC structure. If this is heavily weighted toward the interests of bigger cities in the region, very little of the funds generated by smaller cities can be expected to be allocated back to the cities of origin;
10. *Concerns about use of local agency funds* – Concern raised by one of the ABAG Board members. Require cities to fund legal representation in the event of all kinds of evictions – including just evictions such as not having paid rent.

Cupertino looks forward to a dialogue with ABAG and MTC on formulating strategies to produce, preserve and protect affordable housing. However, the current CASA Compact has several items of concern that need to be restructured or stricken, regardless of whether these are proposed by other state legislators or not. As Cupertino's MTC representative, we hope that you will present our concerns to the MTC Executive Board and encourage broader outreach with local agencies by CASA and MTC staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Chan".

Amy Chan

Interim City Manager

Enclosures: Attachment A – Draft CASA Term Sheets

Excerpts from the CASA Compact

The CASA Compact is described as “A 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area.” The 40 page document includes ten core principles and five “calls to action.” The following lists the principles and calls to action with the summary text as included in the CASA Compact:

- 1. Just Cause Eviction Policy** - Ensure that all Bay Area tenants are protected from arbitrary evictions by adopting a region-wide policy requiring landlords to cite specific “just causes” (both fault and no-fault) for termination of tenancy, such as failure to pay rent or violation of lease terms. Require landlords to provide relocation assistance for covered no-fault evictions.
- 2. Rent Cap** - Establish a Bay Area-wide rent cap that limits annual increases in rent to a reasonable amount.
- 3. Rent Assistance and Access to Legal Counsel** - For low-income tenants facing eviction, provide access to free legal counsel and emergency rent assistance.
- 4. Remove Regulatory Barriers to ADUs** - Extend current Bay Area best practices regarding Accessory Dwelling Units (ADUs) to every jurisdiction in the region. Amend existing state ADU law to remove regulatory barriers including ministerial approval for ADUs and Junior ADUs in residential zones, allowance for multiple ADUs in multi-family homes, and creation of a small homes building code (AB 2890 Ting).
- 5. Minimum Zoning Near Transit** - This element includes three components. In neighborhoods served by high quality bus service, establish minimum zoning on all residential, commercial, and institutional zones to allow ‘missing middle’ housing types up to 36’ tall. In neighborhoods surrounding the region’s major transit stops (rail stations and ferry terminals), establish minimum zoning to allow midrise residential housing up to 55’ tall (75’ tall with a density bonus). Allow sensitive communities to defer rezoning above 36’ while they develop context-sensitive plans. On large commercial-zoned parcels located near job centers, make housing an allowable use. For projects with 20 units or more, require inclusion of affordable units.
- 6. Good Government Reforms to Housing Approval Process** - Establish ‘good government’ standards for the entitlement and permitting of zoning-compliant residential projects. Require transparency and consistency in how residential impact fees are set and enforced.
- 7. Expedited Approvals and Financial Incentives for Select Housing** - Ensure timely approval of zoning-compliant housing projects and create financial incentives for enabling on-site affordability and prevailing wages. This streamlining policy will provide another option for projects that may not benefit from SB 35. This policy does not amend or replace SB 35. Allow Sensitive Communities to defer implementation while they develop a context-sensitive plan.

8. **Unlock Public Land for Affordable Housing** - Promote increased utilization of public land (surplus and underutilized) for affordable housing through a variety of legislative and regulatory changes, as well as the creation of new regional coordination and planning functions.
9. **Funding and Financing the CASA Compact** - Raise \$1.5 billion in new revenue annually from a broad range of sources, including property owners, developers, employers, local governments and the taxpayers, to fund implementation of the CASA Compact. While not all revenue ideas will be implemented, no one sector would bear the burden on its own. No more than one revenue idea should be implemented under each of the five categories.
10. **Regional Housing Enterprise** - Establish a regional leadership entity to implement the CASA Compact, track and report progress, and provide incentives and technical assistance. The entity must be governed by an independent board with representation from key stakeholder groups that helped develop the Compact. The housing entity would not play a regulatory/enforcement role.

The following are the CASA Compact “Calls to Action:”

Redevelopment 2.0 - Pass legislation enabling the re-establishment of redevelopment in California to provide a significant source of new funding for affordable and mixed income development. Redevelopment agencies should be focused on development activities that are audited regularly, with local projects subject to state level reviews. A new redevelopment framework in California should reinforce a strong link between housing and jobs and transit. Funding should be designed to leverage other sources, including new regional funding through the implementation of the CASA Compact.

Lower the Voter Threshold for Housing Funding Measures - Pass legislation that will provide voters statewide with the opportunity to apply a 55 percent threshold for investments in affordable housing and housing production. This legislative priority is critical to the successful implementation of the CASA Compact — and to the Bay Area’s prosperity and quality of life.

Fiscalization of Land Use - Pass legislation that will return e-commerce/internet sales tax revenues to the point of sale — not the point of distribution as currently mandated — to provide cities that have a significant residential base with a commensurate fiscal stimulus for new housing. Also pass legislation that will change the Proposition 13 property tax allocation formula to provide jurisdictions building more housing with a higher share of property tax revenue.

Homelessness - California is experiencing an affordability and housing crisis that is negatively impacting thousands of Californians. The work of CASA has endeavored to put forth a package of policy interventions to house the Bay Area. Homelessness is a humanitarian crisis that is deeply impacting the entire Bay Area. CASA recognizes that homelessness is a regional issue that requires alignment across geographies in order to tackle this problem. CASA’s funding package must include resources that help produce housing for formerly homeless people, prevent homelessness when possible and make homelessness rare, brief and non-reoccurring.

Grow and Stabilize the Construction Labor Force - Growing the construction labor force and improving labor force productivity is critical to expanding the supply of housing. CASA recommends the following as a starting point:

1. Grow the workforce by increasing apprentice training, placement, and payment of prevailing wages when direct public funding, public land, fee abatement, tax abatement, CEQA exemptions, and other fiscal/economic development incentives are provided for housing.
2. Discourage the underground economy and require compliance with existing wage and workforce laws.
3. Create a CASA/State labor workgroup charged with coordinating implementation of CASA policies and needed labor force expansion consistent with CASA principles.
4. Call upon the State to use its workforce development and training programs to improve the construction employment pipeline and create improved pathways from secondary education into apprentice training programs.

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Highlights of 2018 Housing Legislation

After adopting far-reaching legislation in 2017, the legislature continued to focus on housing in 2018. The key measures related to housing sought to further limit local control, modify the process for assigning jurisdiction's their share of regional housing goals, and begin to reframe those goals as requirements.

In brief, legislation passed in 2018:

Deletes existing language in the housing laws that acknowledges that cities may *not* meet RHNA and replacing it with language that states "reasonable actions should be taken by local and regional governments to ensure that future housing production meet, at a minimum, the regional housing need established for planning purposes." (SB 828-Wiener)

Reforms the RHNA allocation process to give the State more oversight and require considerably more jurisdiction and specific detail in the RNHA plan. For example, the RHNA document must report on the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction. (SB 828 and AB 1771)

Requires approval of projects consistent with the General Plan at the maximum density allowed by the General Plan and without regard to zoning if the applicant can show that the zoning is inconsistent with the General Plan. (AB 3194 - Daly)

Requires that supportive housing be a "use by right" in zones where multiple family and mixed uses are permitted, including in non-residential zones permitting multifamily uses, if the proposed housing development meets specified criteria. The bill requires local governments to approve supportive housing developments that comply with the requirements. (AB 2162 – Chiu)

The following provides additional information about the bills above but is still just a short summary of complicated legislation.

AB 3194 (Daly) Housing Accountability Act. Project Approval

This measure makes two important changes to the Housing Accountability Act. These changes are as follows:

- Provides that a proposed project is not inconsistent with applicable zoning standards and criteria, and shall not require a rezoning, if the proposed project is consistent with objective general plan standards and criteria but the local agency's adopted zoning for the project site is inconsistent with the general plan; and
- Allows a local agency to require a proposed project to comply with objective standards and criteria of the zoning consistent with the general plan, but requires

the standards and criteria to be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the project.

SB 828 (Wiener) Land Use. Housing Element

This measure makes numerous changes to the regional housing needs allocation (RHNA) process. These changes include:

- Deleting existing language that acknowledges that cities may not meet RHNA and replacing it with language that states “reasonable actions should be taken by local and regional governments to ensure that future housing production meet, at a minimum, the regional housing need established for planning purposes.”
- Expanding the scope of data the Council of Government (COG) must provide to HCD to include a wide range of new items including the percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market. (“Cost burdened” is defined to mean the share of very low-, low-, moderate-, and above moderate-income households that are paying more than 30 percent of household income on housing costs and the “rate of housing cost burden for a healthy housing market” means that the rate of households that are cost burdened is no more than the average rate of households that are cost burdened in comparable regions throughout the nation, as determined by the council of governments.)
- Prohibiting a COG from lowering a jurisdiction’s RHNA based on 1) prior underproduction of housing in a city or county from the previous regional housing need allocation; or 2) stable population numbers in a city or county from the previous regional housing needs cycle.

AB 1771 (Bloom) Planning and Zoning. Regional Housing Needs Assessment

This bill made numerous changes to the State RHNA process. Chief among the changes are an expansion of the RHNA objectives to include:

- Achievement of the region’s greenhouse gas reductions targets;
- Improving the balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction; and
- Affirmatively furthering fair housing. (The bill states that affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of

opportunity, and fostering and maintaining compliance with civil rights and fair housing laws).

The bill sets forth a range of new requirements for highly detailed specific information that must be included for each jurisdiction (such as a requirement to include an estimate of the number of low-wage jobs within each jurisdiction and how many housing units within the jurisdiction are affordable to workers at those wage levels). The bill also establishes a new process for expanded State and public review of the RHNA allocations.

AB 2162 (Chiu) Planning and Zoning. Supportive Housing

This bill requires that supportive housing (an affordable rental with intensive services promoting housing stability) be a “use by right” in zones where multiple family and mixed uses are permitted, including in non-residential zones permitting multifamily uses, if the proposed housing development meets specified criteria. The bill requires local governments to approve supportive housing developments that comply with the requirements.