

JUN 24 2009

CLERK OF THE SUPERIOR COURT

By \_\_\_\_\_

Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

14 **URBAN HABITAT PROGRAM; AND**  
15 **SANDRA DE GREGORIO,**

16 Petitioners and Plaintiffs,

17 **PEOPLE OF THE STATE OF CALIFORNIA,**  
18 **ex rel. EDMUND G. BROWN JR.,**  
19 **ATTORNEY GENERAL, et al. ,**

20 Plaintiff-Intervenor,

21 v.

22 **CITY OF PLEASANTON, A MUNICIPAL**  
23 **CORPORATION; THE CITY COUNCIL OF**  
24 **PLEASANTON; AND DOES 1-10**

25 Respondents and Defendants.

Case No. RG 06 293831

**COMPLAINT IN**  
**INTERVENTION**

ASSIGNED FOR ALL PURPOSES TO  
JUDGE FRANK ROESCH

Action Filed: October 17, 2006

26 By leave of court, intervenor Attorney General Edmund G. Brown files this complaint in  
27 intervention on behalf of the People of the State of California ("People"). Intervenor joins with  
28 petitioners and plaintiffs in seeking what is claimed in the verified second supplemental and

1 amended petition for writ of mandate and complaint for declaratory and injunctive relief ("Second  
2 Amended Complaint"), alleging as follows:

3 1. As shown in the facts alleged below, the Attorney General is entitled to permissive  
4 intervention in this instance. Under Code of Civil Procedure section 387(a) the party requesting  
5 intervention must file a timely application and demonstrate that the party has an interest in the  
6 matter in litigation. As set forth below, the Attorney General has an interest in cities meeting  
7 their fair share of housing, as adequate housing is a matter of statewide concern.

8 2. The Legislature has declared that the availability of housing is a matter of "vital  
9 statewide importance," and that "the early attainment of decent housing and a suitable living  
10 environment for every Californian... is a priority of the highest order." (Gov. Code §65580 subd.  
11 (a).) More specifically, in adopting the Housing Element Law, Gov. Code sections 65580 *et seq.*,  
12 the Legislature intended, "To assure that counties and cities recognize their responsibilities in  
13 contributing to the attainment of the state housing goal." (Gov. Code §65581(a).)

14 3. Furthermore, California Courts have recognized that it is contrary to the public  
15 interest for local communities to limit their obligations to provide for sufficient housing through  
16 restrictive growth management programs. For example, as Justice Mosk stated in his concurring  
17 opinion in *Building Industry Association v. City of Camarillo* (1986) 41 Cal.3d 810, 825:

18 I must repeat the misgivings I retain about the constitutional validity of no-growth or  
19 limited-growth ordinances. An impermissible elitist concept is invoked when a  
20 community constructs a legal moat around its perimeter to exclude all or most  
21 outsiders. The growing tendency of some communities to arbitrarily restrict housing  
22 to present residents appears at odds with Supreme Court pronouncements from  
*Shelley v. Kraemer* (1948) 334 U.S. 1, to the words of Justice Douglas in *Reitman v.*  
*Mulkey* (1967) 387 U.S. 369, 385: "housing is clearly marked with the public  
interest."

23 4. Given the statewide importance of housing and the recognition that local restrictions  
24 impeding state housing goals are against the public interest, the Attorney General, as the "chief  
25 law officer of the state," has an interest in the claims at issue in this litigation. (See Cal. Const.,  
26 art. V, § 13; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 353.) Moreover, the  
27 Attorney General's intervention will not enlarge the issues of the action. (*Fireman's Fund Ins.*  
28 *Co. v. Gerlach* (1976) 56 Cal.App.3d 299, 303, citing *Muller v. Robinson* (1959) 174 Cal.App.2d

1 511, 515.) As reflected below, the complaint in intervention joins several of the existing causes  
2 of action from the Second Amended Complaint and does not raise any new claims. Therefore,  
3 intervention by the Attorney General is proper in this instance.

4 **FACTUAL ALLEGATIONS**

5 5. In 1996, the City of Pleasanton's ("City") voters adopted an initiative capping total  
6 residential development at 29,000 units. ("Housing Cap" or "Cap"). As incorporated into the  
7 City's General Plan, the policy states:

8 Policy 15: Maintain a maximum housing buildout of 29,000 units within the  
9 Planning Area.

10 Program 15.1: Monitor and zone future residential developments so as not to  
11 exceed the maximum housing buildout.

12 Program 15.2: The foregoing Policy 15 and Program 15.1 and this Program 15.2 shall  
13 be amended only by a vote of the people. (1996 General Plan Land Use Policy 15,  
14 *see also* proposed General Plan Update 2005-2025, Policy 24.)

15 The Housing Cap's rigid numerical limit on residential development does not include an  
16 exception to ensure that the City is able to meet its housing obligations under State law. In  
17 addition to the Housing Cap, the City has adopted a Growth Management Program that limits the  
18 number of residential units that can be approved each year. (Pleasanton Municipal Code 17.36 *et*  
19 *seq.*) These policies prevent the City from complying with state law.

20 6. State law has established a regional housing needs allocation ("RHNA") process, by  
21 which the Department of Housing and Community Development ("HCD") and each Council of  
22 Governments, including the Association of Bay Area Governments, determine existing and  
23 projected housing needs for each city during the housing element planning period. (Gov. Code  
24 §65584 *et seq.*) Pleasanton's share of the RHNA for the 1999-2007 planning period is 5,059  
25 units, and 3,277 units for the 2007-2014 planning period.

26 7. Under California's Housing Element Law, a city is required to identify adequate sites  
27 to accommodate its share of the RHNA at each of four income levels. (Gov. Code §65583).  
28 When the City adopted its Housing Element in 2003, it identified sites for 4,188 units that would  
count toward its RHNA of 5,059 and it included in its program of actions Program 19.1, to  
accommodate the deficit of 871 units. (2003 Housing Element at 47). Program 19.1 states:

1 Within one year of adoption of the Housing Element, complete land use studies to  
2 identify for conversion as many of the sites identified in Table IV-6 from non-  
3 residential to high density residential use as are necessary at appropriate densities (for  
4 example, approximately 30 acres at 30 units per acre or 40 acres at 20 units per acre)  
5 to meet the City's regional housing needs goal. Follow through with the appropriate  
6 modifications to the Land Use Element and rezonings as soon as possible, but no later  
7 than June 2004, so that implementation can occur within the planning period. (2003  
8 Housing Element at p. 79.)

9 Even though the City made this commitment to rezone sufficient land to accommodate its share  
10 of the 1999-2007 RHNA, it has not carried out the rezoning. Thus, the City has not made  
11 sufficient sites available during the 1999-2007 planning period to meet its share of the past  
12 RHNA as required by state law.

13 8. In 2006, in part due to the City's failure to follow-through with Program 19.1, HCD  
14 found the City's Housing Element noncompliant with state Housing Element law. (March 23,  
15 2006, letter from Cathy Creswell to Nelson Fialho re: Status of the City of Pleasanton's Housing  
16 Element is attached as Attachment A.) Despite the HCD finding, the City has done nothing to  
17 modify or repeal these residential development restrictions or to rezone sites to allow for higher  
18 density development. In fact, the City is on the verge of approving a General Plan Update  
19 allowing a large increase in office development (and jobs) while the Cap remains in place. By  
20 maintaining the Cap while encouraging commercial development, the City will worsen the  
21 current jobs/housing imbalance and the negative environmental impacts that come with that  
22 imbalance, including increased greenhouse gas emissions associated with greater VMT.

23 9. The City's continued adherence to and enforcement of the Cap also prevents the City  
24 from meeting its RHNA share for the 2007-2014 and future planning periods. For the new  
25 planning period alone, the City must identify adequate sites for 3,277 residential units; however,  
26 according to the environmental impact report for the City's proposed General Plan 2005-2025,  
27 only 2,007 units remain under the Cap. (General Plan Update DEIR at 5-3, Table 5-2, fn.1.) The  
28 City has recognized that the Cap impedes its ability to comply with state law. In its 2003  
Housing Element the City stated:

Housing Cap: The Pleasanton General Plan includes a maximum number of housing  
units to be developed in the City. This housing cap of 29,000 dwelling units can only  
be changed by a vote of the people. The housing cap is not a factor in the Housing  
Element period since construction of all 5,059 of the units identified as Pleasanton's

1 housing need would still result in fewer than 29,000 units. Although the housing cap  
2 does not impact Pleasanton's ability to meet its housing goals during the current  
Housing Element period [1999-2007], it has the potential to create an impact in future  
3 planning periods, depending on the following factors:

- 4 o Pleasanton's regional housing needs allocation for the next planning  
period;...

5 The City will evaluate its regional housing needs of the next planning period based on  
the above factors and will develop an appropriate strategy once this information is  
6 available. (2003 Housing Element at 64-65.)

7 The City has not adopted a strategy for addressing its current and future RHNA share.

8 Because the City has refused to amend the Cap or to cease enforcing it, there is no way for  
9 the City to accommodate the required units.

10 10. In addition to the impediment created by the Housing Cap, the City's Growth  
11 Management Program in its General Plan interferes with its ability to comply with state  
12 law. The Program's implementing ordinance limits the number of building permits that can  
13 be issued each year to a maximum of 750. (Pleasanton Municipal Code  
14 §17.36.080(A)(1)(b).) With this restriction, the maximum number of permits that could  
15 issue between now and the end of the 2007-2014 planning period is 3,750 units (750 per  
16 year for five years). This number is numerically insufficient to meet the unmet balance of  
17 the past RHNA share and the current RHNA share.

18 11. The City acknowledges that the Growth Management Program requires  
19 modification to allow for sufficient development to meet its RHNA. In its 2003 Housing  
20 Element, the City stated:

21 Program 34.5: Amend the Growth Management Ordinance to allow the City Council  
22 to override the annual housing allocations in order to grant approvals to projects so  
23 that the City is able to meet its total regional housing needs goals by the end of the  
24 planning period. Exceptional affordable housing projects which meet the  
community's goals and policies, have mitigated their impacts, and can be served with  
infrastructure and services consistent with City policies are especially encouraged  
with such overrides.

25 Though the City adopted this policy, it failed to make the required changes to the  
26 ordinance. Therefore, like the Cap, the Growth Management Program keeps the City from  
27 complying with state law.

1  
2 **FIRST CAUSE OF ACTION**  
3 **Unlawful Conflict with State Law (Preemption)**  
4 **Cal. Const. art. XI, §7**

5 12. Intervenor incorporates by reference herein each and every allegation of paragraphs 1  
6 – 11, inclusive, above.

7 13. The California Constitution, article XI, section 7 provides that a city may make and  
8 enforce within its limits all ordinances and regulations not in conflict with general laws. A  
9 conflict exists if the local legislation contradicts general law. A city may not adopt ordinances and  
10 regulations that conflict with the state Planning and Zoning Law, Government Code sections  
11 65000 *et seq.*

12 14. Pleasanton's Housing Cap conflicts with several provisions of the state Planning and  
13 Zoning Law, including but not limited to Government Code sections 65583 and 65913.1.

14 15. Under Government Code section 65583, the City must "identify adequate sites for  
15 housing, ... and shall make adequate provision for the existing and projected needs of all  
16 economic segments of the community." The statute also provides, "These existing and projected  
17 needs shall include the locality's share of the regional housing need..." (Gov. Code, §65583  
18 subd. (a)(1).) State law further mandates that "[i]n exercising its authority to zone for land uses  
19 and in revising its housing element ..., a city... shall designate and zone sufficient vacant land for  
20 residential use with appropriate standards, in relation to zoning for nonresidential use, and in  
21 relation to growth projections of the general plan to meet housing needs for all income categories  
22 as identified in the housing element of the general plan." (Gov. Code, §65913.1; *see also*, former  
23 Gov. Code, § 65583 subd. (c)(1)(A).)

24 16. The City's Housing Cap, which is codified as Land Use Element Policy 15 in the  
25 City's 1996 General Plan, limits the City to a maximum housing buildout of 29,000 units. Only  
26 2,007 units remain under the Cap. (General Plan Update DEIR at 5-3, Table 5-2, fn.1.) This  
27 number falls short of the City's current 2007-2014 RHNA, which is 3,277 housing units.

28 17. Moreover, the City did not complete rezonings required to meet its past 1999-2007  
RHNA share and therefore, it has not yet accommodated a portion of its allocation from the past

1 planning period. Under Assembly Bill 1233, Government Code section 655084.09(a), the City  
2 will be required to accommodate that portion in the new 2007-2014 planning period, in addition  
3 to its RHNA for this period. Finally, given that it cannot satisfy its past or current RHNA with  
4 the remaining units under the Cap, there is no way for the City to meet any future RHNA  
5 requirements. Thus, the City's enforcement of and failure to amend or repeal the Housing Cap  
6 prevents the City from accommodating its share of the RHNA from 1999-2007, 2007-2014 and  
7 all future planning periods as required state law. (Gov. Code §§ 65583, 65913.1.)

8 18. In addition to the numerical conflict between the Housing Cap policy and state law  
9 requiring accommodation of the RHNA share, the City's implementation of the Cap has resulted  
10 in a conflict with state law. Specifically, Program 15.1 of the Land Use Element in the General  
11 Plan provides: "Monitor and zone future residential developments so as not to exceed the  
12 maximum housing buildout." In applying this policy, the City has refused to zone land for high-  
13 density residential use, which is needed to accommodate its share of the lower-income portion of  
14 the RHNA from 1999-2007 and the 2007-2014 planning periods.

15 19. The City recognizes its inability to comply with state housing law, yet it continues to  
16 enforce the Housing Cap and implement Program 15.1. In the City's 2003 Housing Element, the  
17 City made a commitment in Program 19.1 to rezone enough land to high density to allow for it to  
18 meet its RHNA allocation for the 1999-2007 planning period. It failed to follow through with  
19 Program 19.1 and thus has not allocated sufficient sites for the previous planning period, in  
20 conflict with state law. Additionally, the City recognized in its 2003 Housing Element, that the  
21 Housing Cap would prevent the City from meeting its RHNA for future planning periods, but it  
22 has not taken any action to modify or repeal the Cap. (2003 Housing Element at 64-65.)

23 20. Finally, the City's Growth Management Program is in conflict with state law. Under  
24 this Program, the maximum number of residential building permits available for development  
25 each year is 750. If the City issued all the permits allowable under the Program from 2009-2014,  
26 it would total 3750 permits, which falls short of the total number of permits needed to satisfy the  
27 RHNA - 4148 (3277 from current RHNA and 871 units from last planning period.)  
28

1           21. In sum, there is a numerical conflict between the units remaining under the Housing  
2 Cap and state law that requires the City to identify sites sufficient to accommodate its current and  
3 future RHNA numbers. Second, the City's implementation of the Housing Cap and failure to  
4 rezone sites for high-density development have resulted in a conflict with state law because the  
5 City cannot accommodate its past, present and future RHNA numbers. Third, the Growth  
6 Management Program conflicts with state law, because it is an impediment to accommodating the  
7 unmet portion of the past RHNA and its current RHNA share.

8           22. The California Constitution and Government Code sections 65583 and 65913.1, along  
9 with other state laws, impose present mandatory duties on the City to repeal or modify the  
10 Housing Cap and Growth Management Program. By continuing to implement these programs  
11 that conflict with state law, the City has violated the California Constitution.

12           23. Intervenor as the principal law enforcement officer for the state and intervening on  
13 behalf of the People of the State of California, has standing to bring a claim for writ of mandate in  
14 the public interest.

15           24. At all times relevant to this action, the City has had the ability to perform the duties  
16 set forth herein, and has failed and refused to perform those legal duties.

17           25. Unless compelled by this Court to perform those acts and duties and to refrain from  
18 acts as required by law, the City will continue to refuse to carry out those duties and will continue  
19 to violate the law. The People of the State of California will be injured by this continued  
20 violation.

21  
22   **SECOND CAUSE OF ACTION**  
23   **Violation of Due Process Clause of the California Constitution**  
24   **Cal. Const. art. I, §7(a)**

24           26. Intervenors incorporate by reference herein each and every allegation of paragraphs 1  
25 - 25, inclusive, above.

26           27. A land use restriction violates the Due Process Clause of the California Constitution  
27 if it is not reasonably related to the general welfare. (Cal. Const. art I, §7(a).) The  
28



1 constitutionality of a restriction must be measured by its impacts not only upon the welfare of the  
2 enacting community, but upon the welfare of the surrounding region.

3 28. The Housing Cap and Growth Management Program, which prevent the City from  
4 meeting its unmet past, current, and future RHNA numbers, impact the supply and distribution of  
5 housing throughout the Bay Area. These policies do not have a real and substantial relation to the  
6 public welfare and, in fact, adversely impact the region. The City recognizes the detrimental  
7 impact of these policies on the regional welfare in its proposed General Plan Update when it  
8 states that “the consequence of the imbalance between income and the affordability of housing is  
9 the increasing number of Tri-Valley workers who live in east Contra Costa County and in San  
10 Joaquin County resulting in long commutes to work via the congested freeway system.” (General  
11 Plan Update at 14-7). The City’s land use policies result in more greenhouse gas emissions and  
12 other air pollution affecting the region and the state. These adverse impacts to the region are not  
13 reasonably related to the general welfare and are unconstitutional.

14 29. The Due Process Clause of the California Constitution imposes present mandatory  
15 duties on the City to repeal or modify the Housing Cap and Growth Management Program. By  
16 continuing to implement these policies, the City has violated state law.

17 30. Intervenor as the principal law enforcement officer for the state and intervening on  
18 behalf of the People of the State of California, has standing to bring a claim for writ of mandate in  
19 the public interest.

20 31. At all times relevant to this action, the City has had the ability to perform the duties  
21 set forth herein, and has failed and refused to perform those legal duties.

22 32. Unless compelled by this Court to perform those acts and duties and to refrain from  
23 acts as required by law, the City will continue to refuse to carry out those duties and will continue  
24 to violate the law. The People of the State of California will be injured by this continued  
25 violation.

26 **THIRD CAUSE OF ACTION**  
27 **General Plan Inconsistency**  
28 **Gov. Code §65300.5**

1           33. Intervenor incorporate by reference herein each and every allegation of paragraphs 1  
2 - 32, inclusive, above.

3           34. A city's general plan must be internally consistent. (Gov. Code §65300.5.) Any  
4 element that is found to be inconsistent is invalid. Where a general plan on its face, shows  
5 substantial contradictions and inconsistencies, it cannot serve as an effective plan because those  
6 subject to the plan cannot tell what is allowed or forbidden.

7           35. The City's current General Plan contains the Housing Cap and Growth Management  
8 Program in its Land Use Element, while the Housing Element includes policies that acknowledge  
9 the Housing Cap as an impediment to meeting future RHNA and require the City to modify the  
10 Growth Management Program. (e.g., 2003 Housing Element Program 34.5 at 86; see also 2003  
11 Housing Element Housing Cap discussion at 64-65.) The Housing Element also sets as one of its  
12 central goals, "Encourage the production and retention of a sufficient number of moderate-, low-,  
13 and very-low income housing units to meet Pleasanton's needs." (2003 Housing Element Goal 5  
14 at 72.) Other policies in the Housing Element task the City with meeting its share of regional  
15 housing needs. (e.g., Program 19.1, Policy 27, Programs 30.1, 30.2, 30.3, Policy 44, Program  
16 44.3 and Program 48.1.) The Land Use Element is thus inconsistent with the Housing Element.

17           36. Government Code section 65300.5 imposes present mandatory duties on the City to  
18 repeal or modify the Housing Cap and Growth Management Program. By continuing to  
19 implement these policies, the City has violated state law.

20           37. Intervenor as the principal law enforcement officer for the state and intervening on  
21 behalf of the People of the State of California, has standing to bring a claim for writ of mandate in  
22 the public interest.

23           38. At all times relevant to this action, the City has had the ability to perform the duties  
24 set forth herein, and has failed and refused to perform those legal duties.

25           39. Unless compelled by this Court to perform those acts and duties and to refrain from  
26 acts as required by law, the City will continue to refuse to carry out those duties and will continue  
27 to violate the law. The People of the State of California will be injured by this continued  
28 violation.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, intervenor prays for judgment as follows:

3 1. A declaration that:

4 a. The City's Housing Cap provision contained in Policy 15 and Programs 15.1  
5 and 15.2 of the Land Use Element of the General Plan, is inconsistent with state law,  
6 and is invalid and void.

7 b. The City lacked the power to enforce the Housing Cap provision contained in  
8 Policy 15 and Programs 15.1 and 15.2 of the Land Use Element of the General Plan,  
9 beginning at the point at which the enforcement of the Cap came into conflict with  
10 the City's ability to meet its obligation to accommodate its RHNA in each income  
11 category for the current planning period, and/or ceased to be rationally related to the  
12 regional welfare.

13 c. The City's Growth Management Program, contained in Municipal Code  
14 sections 17.36 *et seq*, Land Use Element Program 14.1, and Housing Element 34.1, is  
15 inconsistent with state law and is invalid and void.

16 d. The City lacked the power to enforce its Growth Management Program,  
17 Municipal Code sections 17.36 *et seq*, Land Use Element Program 14.1, and Housing  
18 Element 34.1, beginning at the point at which the enforcement of the Growth  
19 Management Program came into conflict with the City's ability to meet its obligation  
20 to accommodate its RHNA in each income category for the current planning period,  
21 and/or ceased to be rationally related to the regional welfare.

22 e. The Housing Element of the City's General Plan is inconsistent with the Land  
23 Use Element of the City's General Plan.

24 2. For a peremptory writ of mandate, and/or preliminary and permanent injunctive  
25 relief, commanding the City and the City Council to:

26 a. Cease enforcing, administering and implementing the Housing Cap provision  
27 contained in Policy 15 and Programs 15.1 and 15.2 of the Land Use Element of the  
28

1 General Plan, and otherwise cease utilizing or relying on them in any planning or  
2 decision making process.

3 b. Cease enforcing, administering or implementing the Growth Management  
4 Program as set forth in sections 17.36 *et seq* of the City's Municipal Code, Land Use  
5 Element Program 14.1, and Housing Element 34.1.

6 c. Cease implementing and enforcing Program 15.1 of the Land Use Element in a  
7 manner that imposes barriers to the zoning of sufficient vacant land for high density  
8 residential use.

9 d. Pursuant to Government Code section 65754, adopt, within 120 days, and  
10 implement a General Plan and zoning ordinance that are internally consistent and that  
11 actually and substantially complies with state law.

12 e. Pursuant to Government Code section 65584.09(a), zone or rezone adequate  
13 sites to accommodate the City's unmet share of the regional housing needs allocation  
14 from the 1999-2007 planning period.

15 f. Pursuant to Government Code section 65584.09(b), zone or rezone adequate  
16 sites to accommodate the City's share of the regional housing need for the 2007-2014  
17 planning period.


18 3. For an award to intervenor of its costs of suit;

19 4. For such other and further relief as the Court deems just and proper.  
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Dated: June 23, 2009

Respectfully Submitted,  
EDMUND G. BROWN JR.  
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Chief Assistant Attorney General  
CLIFFORD RECHTSCHAFFEN  
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OK2008900604

**EXHIBIT A**

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## Division of Housing Policy Development

1800 Third Street, Suite 430  
P. O. Box 952053  
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March 23, 2006

Mr. Nelson Fialho  
City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94566-0802

Dear Mr. Fialho:

**RE: Status of the City of Pleasanton's Housing Element**

This letter is in response to the City of Pleasanton's submittal of information regarding the City's progress in implementing its housing element, adopted on April 15, 2003. As you know, on March 7, 2005 the Department determined Pleasanton's housing element no longer complied with requirements of State housing element law (Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code) due to the failure to implement Program 19.1 of the City's adopted housing element. This program committed the City to rezone/upzone at least 30 acres to allow development at 30 dwelling units per acre, or 40 acres allowing at least 20 dwelling units per acre by June 2004. Implementation of Program 19.1 was specified as a condition of compliance in the Department's June 2, 2003 review.

During an April 20, 2005 meeting with you and your staff, the status of the current general plan update, along with options the City could explore to address the "adequate sites" requirement of housing element law was discussed. Specific items and strategies discussed included how the City could more effectively engage the general public and increase understanding on the merits and community-wide benefits resulting from increasing housing opportunities including zoning sufficient sites for multifamily development. City staff also shared information regarding potential residential development opportunities on the Staples Ranch and the Kaiser properties. The Department followed-up by providing planning staff with technical assistance materials.

As you know from the Department's previous review and response letters (June 2, 2003, September 30, 2004, and March 7, 2005), the time specific completion of Program 19.1 was a key factor in the Department's original finding that the City's adopted element conditionally satisfied the requirements of State housing element law. As outlined in the City's housing element implementation status letter, a final decision on the "preferred" land-use and circulation plans was scheduled to be acted upon by the City Council in

Mr. Nelson Fialho

Page 2

December 2005, with final action on the requisite rezone applications to occur in late November or early December 2006. However, according to Ms. Janice Stern, Principal Planner, the update schedule has slipped, extending the completion of the update (including the rezones) to the first or second quarter of 2007.

After thorough review and consideration of the updated information, the Department continues to find the City's proposal to complete the requisite rezones/upzones during the first or second quarter of 2007 does not demonstrate the necessary (and timely) commitment to meet the adequate sites requirement of housing element law. Therefore, the City's housing element remains out of compliance. Once Pleasanton successfully completes the implementation of Program 19.1, the City should submit documentation (e.g., a resolution describing acreage/sites and density) to the Department that indicates the City Council has taken final action to adopt the new land-use designations.

Addressing all provisions of housing element law is both a statutory requirement and provides the policy framework to address the housing and community development needs of your community. The Department remains committed to working in partnership with you and your staff to bring the element back into compliance and to meet the housing needs of Pleasanton. If you have any questions, or if the Department can provide further assistance, please contact Don Thomas, of our staff, at (916) 445-5854.

Sincerely,



Cathy E. Creswell  
Deputy Director

cc: Jerry Iserson, Director of Planning and Community Development, City of Pleasanton  
Janice Stern, Principal Planner, City of Pleasanton



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March 7, 2005

Mr. Nelson Fialho  
City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94566-0802

Dear Mr. Fialho:

**RE: Compliance Status of City of Pleasanton's Adopted Housing Element**

Thank you for your response to the Department's September 30, 2004 letter regarding the implementation status of the City's housing element. To recap, due to the shortfall of appropriately zoned and suitable sites to accommodate Pleasanton's share of the regional housing need for lower-income households, the Department's June 3, 2003 finding that the City's housing element met the statutory requirements set forth in State housing element law was contingent on the City successfully implementing Program 19.1. This Program commits the City to "following through with appropriate modifications to the Land Use Element and rezonings as soon as possible, but no later than June 2004, so that implementation can occur within the planning period".

According to your October 19, 2004 response, the general plan update schedule calls for the City to conduct a series of public workshops during the next few months to consider "recommendations" for specific sites that are appropriate for high density housing. These workshops will culminate with the City Council adopting final "recommendations" in July 2005. It is the Department's understanding that initiation of the rezones will follow the adoption of the General Plan update (e.g., sometime in late Fall 2005). Unfortunately, your response does not commit to a specific date for completing those rezones necessary to address the "adequate sites" requirement in State housing element law and, therefore, does not comply with the Department's conditional compliance finding.

The City's failure to comply with the June 2004 rezone commitment significantly impedes its ability to establish realistic opportunities for the development of housing affordable to the local workforce and lower-income households during the remainder of the current planning period. In addition, continuing to delay the rezone completion date will further exacerbate the City's ability to take additional actions to identify other suitable and available high density zoned sites. Therefore, the Department regrets to find Pleasanton's housing element does not address the "adequate sites" statutory requirement and no longer complies with State housing element law (Article 10.6 of Government Code).

Mr. Nelson Fialho

Page 2

Adequately addressing the City's housing needs not only provides an economic benefit to the community through the creation of jobs and the significant economic multiplier effects of housing construction, but will also promote and maintain a vibrant quality of life for all of Pleasanton residents. An inadequate housing supply, particularly for affordable housing, forces working families to commute longer distances, creates severe burdens on lower-income families and seniors, who are forced to spend more than 50 percent of their income on housing, and puts the dream of homeownership further out of reach. Rent and ownership cost burdens have a negative ripple effect on local economies as residents must spend a disproportionate share of their incomes on housing, and necessarily spend less on local services or in local stores.

The Department remains committed to working in partnership with you to bring Pleasanton's housing element back into compliance with State housing element law. If you have any questions, would like to schedule another meeting, or to discuss your technical assistance needs, please contact Don Thomas, at (916) 445-5854.

Sincerely,



Cathy E. Creswell  
Deputy Director

cc: Jerry Iserson, Director of Planning and Community Development, City of Pleasanton

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## Division of Housing Policy Development

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September 30, 2004

Ms. Deborah Acosta McKeehan  
City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, California 94566-08026

**RE: City of Pleasanton's Housing Element Compliance**

Dear Ms. Acosta McKeehan:

This letter responds to your recent correspondence to the Department outlining Pleasanton's progress in implementing its key program actions described in the adopted housing element. As you are aware, the Department's June 3, 2003 finding of compliance was conditioned on the successful and timely implementation of the following programs: (1) Program 19.1 (General Plan amendments and rezones) to rezone/upzone a specific amount of land by June of 2004, and (2) Programs 10.3 and 42.2 (second units). The City of Pleasanton's ability to meet the adequate sites requirement as set forth in State housing element law, particularly for lower-income households, hinges on the effective and successful completion of these program actions. Your June 16, 2004 letter describes the City's effort to engage the local residents regarding traffic and housing issues through a series of City Council and Planning Commission workshops. While this effort is laudable, your letter does not indicate when the necessary rezonings will be completed to ensure compliance with the adequate sites requirement of the law.

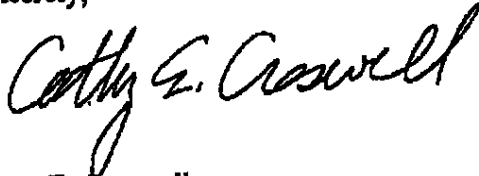
Therefore, within 15 days of the date of this letter, please submit a revised implementation schedule that clearly and definitively commits the City to completing the requisite rezone actions by a date certain. The revised implementation schedule should commit the City to initiating the general plan amendments and rezones by mid-2005. Failure to address the requirements specified in the Department's June 3, 2003 review will impact the compliance status of the City's element.

The Department remains committed to working with the City to address its housing and community development challenges and to ensure compliance with State housing element law.

Ms. Deborah Acosta McKeehan  
Page 2

Thank you in advance for your immediate attention to this matter. If you have any questions regarding our comments and direction, please feel free to contact me at (916) 323-3177 or Don Thomas, of our staff, at (916) 445-5854.

Sincerely,



Cathy E. Creswell  
Deputy Director

cc: Mark Stivers, Senate Committee on Housing & Community Development  
Suzanne Ambrose, Supervising Deputy Attorney General, AG's Office  
Terry Roberts, Governor's Office of Planning and Research  
Nick Cammarota, California Building Industry Association  
Marcia Salkin, California Association of Realtors  
Marc Brown, California Rural Legal Assistance Foundation  
Rob Weiner, California Coalition for Rural Housing  
John Douglas, AICP, Civic Solutions  
Deanna Kitamura, Western Center on Law and Poverty  
S. Lynn Martinez, Western Center on Law and Poverty  
Alexander Abbe, Law Firm of Richards, Watson & Gershon  
Michael G. Colantuono, Colantuono, Levin & Rozell, APC  
Ilene J. Jacobs, California Rural Legal Assistance, Inc.  
Richard Marcantonio, Public Advocates  
Clifford Sweet, Alameda County Legal Aid Society  
Mike Rawson, The Public Interest Law Project  
James W. Sweeney, West Alameda Neighborhood Assoc.  
David Booher, California Housing Council  
Sue Hestor, Attorney at Law  
Paul Campos, Home Builders Assoc. of Northern California  
Shannon Dodge, Non-Profit Housing Association of Northern California  
Eve Bach, Arc Ecology  
Allison Brooks, Livable Communities Initiative  
Charlie Carson, Home Builders Association - Northern Division