APPENDIX O - DANVILLE RESPONSE LETTER August 13, 2010



"Small Town Atmosphere Outstanding Quality of Life"

August 13, 2010 (Updated September 9, 2010)

Paul McDougall Department of Housing & Community Development -Division of Housing Policy Development 1800 Third Street, Suite 430 P.O. Box 952053 Sacramento, California 94252-2053

RE:

Danville 2007 - 2014 Housing Element

Dear Mr. McDougall:

This letter forwards the Town of Danville's response to Housing and Community Development's (HCD's) concerns with the Danville 2007-2014 Housing Element - as expressed in the March 22, 2010 HCD Review Letter and our telephone conversation in early July. To date HCD has not supplied a written response to the May 14, 2010 letter Danville prepared after receiving the March 22, 2010 Review Letter.

To provide a framework for the analysis contained in this letter, the key comments contained in HCD's March 22, 2010 Review Letter are repeated below.

Excerpt from the March 22, 2010 HCD Review Letter

"However, the following revisions are still necessary [to Danville's 2007-2014 Housing Element] to comply with State housing element law (Article 10.6 of the Government Code):

Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of housing for all income levels, including rental housing, factorybuilt housing, mobile homes, and emergency shelters and transitional housing. inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).

The program shall accommodate 100 percent of the need for housing for very low and lowincome households on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum

510 LA GONDA WAY, DANVILLE, CALIFORNIA 94526

Administration (925) 314-3388

Building (925) 314-3330 Engineering & Planning (925) 314-3310

Transportation (925) 314-3310

Maintenance (925) 314-3450

Police Parks and Recreation (925) 314-3700 (925) 314-3400

density and development standards that permit at least 16 units per site at a density of 20 units per acre (Section 65583.2(h)).

Adequate Sites: The element identifies the shortfall of sites to accommodate the City's housing needs for lower-income households (221 units). To address the shortfall, the element identifies several candidate sites for rezoning (Table 34) and Programs 1.7.1 to 1.7.4. However, the element was not revised to commit to rezone sites that provide a minimum capacity of 16 units per site and several sites permit commercial use. This is particularly important since many sites in Table 34 do not allow 16 units per site and appear to require assemblage. The program should also clarify when sites will be rezoned since it only mentions when sites will be re-designated as part of the General Plan Update.

In addition, pursuant to Section 65583(c)(B), the element must include an analysis of the suitability and availability of candidate sites for rezoning with all components specified in Section 65583.2. For example, the element should list existing uses for non-vacant sites sufficiently to demonstrate their potential for redevelopment and evaluate the extent to which existing uses may impede additional residential development."

TOWN RESPONSE

"Commit to Rezone" Discussion

The May 14, 2010 letter to Deputy Director Cathy E. Creswell addressed at length the "commit to rezone" issue while also providing detailed site-by-site analysis for the Table 34 sites to address HCD concerns expressed about the viability of the sites.

Pages 7 through 9 of the May 14, 2010 letter focused on the "commit to rezone" issue, documenting Danville's understanding and acceptance of the obligation to both change the underlying general plan land use designation of an adequate number of sites to address the RHNA adequate sites shortfall and to rezone those sites to allow multifamily use "by right".

Danville assumes that HCD's ongoing concern with the "commit to rezone" issue may be linked to the language used in Programs 1.7.3 and 1.7.4 on Page 120 of the adopted Housing Element. These two programs forward the Town's commitment to yield "by right" minimum acreages for the 25 units per acre minimum density land use category (7.9 acres minimum to be secured through the Housing Element work program) and for the 20 units per acre minimum density land use category (1.7 acres minimum to be secured through the Housing Element work program). Extensive discussion contained throughout the Housing Element served as the requisite "adequate sites" analysis, with this discussion leading up to the acknowledgement of the need to commit to a work program that would address the identified RHNA adequate sites "gap", or shortfall. The presumed concern is that the "active" verb used in the text for the two programs is the term "designate" — which HCD appears to be choosing to interpret as only covering the action leading to a land use designation change. This assumption is based largely upon the statement in the March 22, 2010

Review Letter wherein HCD indicted "The program should also clarify when sites will be rezoned since it only mentions when sites will be re-designated as part of the General Plan Update."

It is appropriate to note that the language in Programs 1.7.3 and 1.7.4 is subservient to the language in Policy 1.7 - which clearly outlines Danville's obligation to sequentially: work off a list of preselected candidate sites; to amend the general plan; to amend the zoning regulations; and to make corresponding changes to land use <u>and</u> zoning designations for a specified minimum acreage of land to address the adequate sites shortage. Further, every staff report and transmittal letter associated with the Danville 2007-2014 Housing Element since the September 17, 2009 HCD Review Letter was received acknowledges the requirement to change both the land use designation <u>and</u> to change the zoning designation for the requisite minimum acreage set forth by the RHNA adequate site shortfall analysis.

In Danville's planning vernacular, this means Danville will move forward to: (a) undertake a detailed review of the sites on Table 34 of the Housing Element; (b) will take action creating the requisite multifamily land use designation categories through an update of the general plan; (c) will take action creating the requisite multifamily zoning categories through zoning text amendments of the municipal code; and (d) will take action changing site-specific land use designations and zoning designations for at least the requisite minimum acreage needed to cover the RHNA adequate site shortfall. The unstated task within this process is the preparation of an EIR for the General Plan Update – which will be at a "project level" of analysis for the sites to have land use designation and zoning designation changes to assure the overall work program effort yields sites allowing multifamily use "by right". That level of review in the EIR (i.e., "project level" vs. "program level") easily doubles the effort that will be involved to prepare and certify the EIR – a fact the Town acknowledges and accepts. A "program level" review will be made for the so-called "value-added" sites – demonstrating the Town's desire to extract more than the minimum acreage from the process.

It remains Danville's position that Policy 1.7 and Programs 1.7.1 through 1.7.4 stand adequate as written to express the Town's understanding and commitment relative the "commit to rezone" issue – particularly given that such language can and should be viewed in light of the other material in the public record.

Underscoring the above stated observations, nothing in the adopted Danville 2007-2014 Housing Element, or within any associated material in the public record (i.e., associated staff reports, transmittal letters, etc.), can be read to be an indication that Danville intends to make this a two-step process. Specifically, nothing in the Housing Element or any associated material can be read as an indication that Danville intends to first change the underlying land use designation of the requisite sites and then later, by a separate and subsequent action, go back and consider rezoning actions for those sites. We understand that such an approach defeats the "by right" directive that is at the heart of the "commit to rezone" obligation. HCD's interpretation that the language in Policy 1.7 and Programs 1.7.1 through 1.7.4 reflect only an intent to modify the underlying land use designations of the requisite sites is puzzling and, in the Town's view, a case of selective reading.

Language contained on Pages 87 and 88 of the adopted Housing Element (under the section entitled "RHNA Shortfalls for Extremely Low, Very Low, and Low Income Units"), as well as language in

Policy 1.7 and in Programs 1.7.3 and 1.7.4, was consciously inserted into the Housing Element to respond to the September 17, 2009 HCD Review Letter. HCD is referred to Comment [kjg23], and similar balloon comments used throughout the "strikeout/redline" version of the Housing Element forwarded to HCD in November 2009, as examples of material in the public record that underscores the Danville's understanding of its obligation to "commit to rezone".

Comment [kjg23] read as follows:

"Edit responds to Comment B.1 – Housing Programs - Adequate Sites of the 9/17/09 HCD Comment Letter, providing clearer acknowledgement of the presence of an adequate sites "gap" that necessitates housing programs to provide adequate sites with zoning that permits owner-occupied and rental multiple family residential use by right for the identified RHNA adequate site shortfall. (See also Programs 1.7.1 through 1.7.4.)" (Emphasis added.)

HCD had over 120 days to react to the edits made to Draft Housing Element and chose to pass on comments via facsimile transmittal sent on the final day of the statutory review period. We commented in the May 14, 2010 letter that HCD's actions did not mesh with the stated commitment in HCD's January 13, 2010 Status Letter to "continue to work with Danville to expeditiously review the element."

Danville's Development Services staff has devoted upwards of 1,000 hours of staff time over the last eleven months for the General Plan Update. Effectively, Danville was three months into the update effort when the Town Council adopted the Danville 2007-2014 Housing Element in mid December of last year. As established above, updating the General Plan is the work program associated with, among other policies and programs in the Housing Element, Policy 1.7 and Programs 1.7.1 through 1.7.4 of the Element. As such, it is fair to state that the Town is actively moving forward with the implementation of the Danville 2007-2014 Housing Element in response to the directive contained in Policy 1.7. These efforts speak directly to HCD's concern of "when the sites will be rezoned."

The most recent work product of the effort the General Plan Update is the "Factual Update of the Danville 2010 General Plan." The Factual Update was reviewed and edited through a series of study sessions involving the Danville Town Council and each of the Town Commissions. The Factual Update will serve as the Draft Danville 2025 General Plan moving forward through the Plan EIR preparation and the subsequent public hearings.

The following excerpt from the Factual Update (taken from Page 14 of the Factual Update) speaks to the "commit to rezone" issue.

"As a result both of the relative diminishment of the amount of land available for development and the pressures exerted on the Town through State housing law, an increasing share of new development has been, and will likely continue to be, in the form of infill or reuse of property that has not been developed to its full potential, typically occurring in the form of multifamily housing. There is still capacity for this type of growth in Danville, particularly in and around the Downtown area.

The Association of Bay Area Governments (ABAG), as directed by the State, developed and assigned Regional Housing Needs Allocation (RHNA) for the Bay Area region for the 2007-2014 housing element planning period. Table 1 of the Danville 2007-2014 Housing Element reflects Danville's assigned share of the RHNA. State law requires that communities document they have sufficient land to accommodate their assigned share of the region's future housing needs as it has been determined that there is a direct relationship between a community's inventory of land that is available for residential development and its ability to meet the adequate sites test set forth in State housing law. The household income components of Danville's RHNA break down to a need to provide for a minimum of 92 extremely low income households; 104 very low income households; 130 low income households; 146 moderate income households; and 111 above moderate income households - for a total requirement of 583 units. and Figure A of the Housing Element identify the development potential of land in Danville available for residential development at the time of adoption of the Housing Element to meet Danville's RHNA. While the information points to a development potential for over 750 units, the mix of the probable units that would occupy these sites points to an adequate sites "gap" for the lower income portions of Danville's RHNA.

In response to the adequate sites "gap", Danville has to plan for more multifamily residential housing. The adopted Danville 2007-2014 Housing Element commits the Town to change the underlying land use and zoning designations of an appropriate number and mix of sites to allow multifamily residential use "by right" at a 25 units per acre minimum density standard. Per the analysis in the Housing Element, a minimum of 7.9 acres was required to receive these new land use and zoning designations to address the identified "gap" for the extremely low and very low income household components of the 2007-2014 RHNA. (Emphasis added.)

On a parallel basis, the Town has committed to change the underlying land use and zoning designations of an appropriate number and mix of sites to allow multifamily residential use "by right" at a 20 units per acre minimum density standard. Per the analysis, a minimum of 1.7 acres was required to receive this designation to address the identified "gap" for the low income household component of the 2007-2014 RHNA. Due to the absence of any measurable amount of undeveloped residential land in Danville, the sites considered through the General Plan Update for the specified multifamily uses were infill sites, generally being underutilized sites with some amount of current development at the time of the change of their land use and zoning designations. The starting point for reviewing potential sites to address these "gaps" was the compilation of a preliminary site listing for possible increased residential densities in the adopted housing element (i.e., Table 34 and Figures B-1 and B-2 of the Danville 2007-2014 Housing Element)."

The above excerpt from the Factual Update is the most recent expression in the public record of the Town's acknowledgement and acceptance of the "commit to rezone" requirement. The Town feels this is a non-issue at this point and is looking forward to continuing its efforts with this work program (i.e., to continue the process of updating the General Plan). It is very clear that it will be only through the process of updating the General Plan and the concurrent zoning actions that Danville will meet the intent and requirements of Housing Element Policy 1.7 and state housing law.

If HCD ultimately determines that the Danville 2007-2014 Housing Element needs to be returned for a new public hearing to amend the document to address the comments in the March 22, 2010 HCD Review Letter, it will likely be necessary to put the General Plan Update effort on hold. The EIR for the General Plan could not proceed without a complete vetting of the "project" to be considered in the Plan EIR. The initial study and the notice of preparation documents for the Plan EIR will need to clearly detail all the sites under review for land use and zoning change - as that level of project definition is a requisite step for identification and mitigation of associated potential environmental impacts. If HCD determines the Town needs to add to, amend, or further clarify the list of viable sites associated with Policy 1.7, the resultant changes to the Housing Element would serve to refine the "project" for the Plan EIR. Under that scenario, the Town would be very hesitant to initiate the Plan EIR, which is the next step in the General Plan Update effort, until the Housing Element was amended through the public hearing process and until HCD had completed another round of review and certified the Element. As such, the Town is looking for clear and immediate direction from HCD.

"Adequate Sites" Discussion

On the related issues forwarded in the March 22, 2010 Review Letter, HCD is correct in noting that Table 34 in the adopted Housing Element includes sites that do not meet the minimum capacity standard of that requires sites to be able to accommodate a minimum of 16 units. HCD is also correct in noting that some of the sites on Table 34 permit commercial use.

The bulk of the twenty-three pages constituting the Town's May 14, 2010 response letter to HCD, along with the attachments to that letter, focused on these aspects of the "adequate sites" discussion. As indicated both in that letter and within in our recent telephone conversation on this issue, the Town does not see the inclusion of what are effectively "value-added" sites on Table 34 to be a barrier to certification of the Housing Element.

The Town has acknowledged that Table 34 includes sites that would not yield the requisite minimum capacity of 16 units per site without property aggregation. The minimum capacity standard discounts sites on Table 34 that do not include individual properties ≥0.8 acres in size - since that would be the minimum site size at 20 units per acre density to reach a 16 unit minimum site yield.

The May 14, 2010 letter provided clarification as to which of the nineteen sites retained on Table 34 meet the minimum capacity standard. That letter, along with its attachments, documents that Table 34 contains a minimum of 14.89 acres of viable rezoning sites that meet the minimum capacity standard for the 7.9 acre adequate sites gap identified for the extremely low income and very low income household components of Danville's RHNA.

To further assist HCD's understanding of the makeup of the Table 34 sites, we offer the following, rearranged listings of the key Table 34 sites – reformatted to be in a HCD Review Letter-context:

Group A: Table 34 sites which are larger than 0.8 acres and which are currently vacant properties

			Ser than one	acres and which are currently	vacant properties
	Site	Portion	Total Size	Table 34 – Aggressive Alternate	Table 34 – Moderate Alternate
Site #	Identification	Vacant	of Site	GP Designation and Yield	GP Designation and Yield
H-3	W. El Pintado	1.59 acres	3.48 acres	25-35 dus/acre	20-25 dus/acre
	GMMR Llc			40-56 units	32-39 units
H-23	Podva Ln.	1.00 acres	1.69 acres	Site not listed on Table 34 as a	20-25 dus/acre
	Schuler/Buckley	_		potential 25-35 dus/acre site	20-25 units
H-25	Camino Ramon	3.00 acres	7.00 acres	25-35 dus/acre	20-25 dus/acre
ļ	Borel Estate			75-105 units	60-74 units
	Totals	5.59 acres	12.17 acres	4.59 vacant acres@25-35 dus/acre	5.59 vacant acres@20-25dus/ac.
				7.17 total acres@25-35 dus/acre	7.17 total acres@20-25 dus/acre
				115-161 units potential yield	112-138 units potential yield

- Notes: 1. A five acre portion of Site H-25 was recently under contract to multi-family builder D.R. Horton for possible multifamily use. While D.R. Horton is no longer involved with the site, it is now under contract to multifamily builder Ponderosa Homes who has indicated to the Town (at an August 9, 2010 meeting) their intent to pursue either a 30+ units per acre for-rent multifamily project, a 25 units per acre for-sale townhouse project, or a project that combines those two products. This constitutes a change from prior conditions as all indications are that a five acre portion of the property (rather than just three acres) will be pursued for a project that would average 25 units per acre density. If such a project proceeds, the five acre project site would constitute over 60% of the requisite 7.9 acres of 25 units per acre minimum density land called for by Policy 1.7.
 - 2. The four tables (Group A through Group D) focus primarily on the acreage and development yield potential for lands cited in Table 34 for possible consideration in the 25-35 units per acre density range. The adjoining listing for acreage and potential development yield for the 20-25 units per acre density range (left column in each table) includes all the sites listed in the Group table as sites not ultimately designated for the 25-35 units per acre density range remain candidate sites for the 20-25 units per acre density range.

Group B: Table 34 sites which are larger than 0.8 acres and which are currently occupied by commercial uses

Site #	Site Identification	Net Site Area	Gross Site Area	Table 34 – Aggressive Alternate GP Designation and Yield	Table 34 – Moderate Alternate GP Designation and Yield
H-12	El Pintado Rd.	2.20 acres	3.17 acres	Site not listed on Table 34 as a	20-25 dus/acre
	Curtis Family Tr			potential 25-35 dus/acre site	45-55 units
H-19	Diablo Rd.	3.75 acres	4.26 acres	25-35 dus/acre	20-25 dus/acre
	Danville Off Ptrs			94-131 units	75-93 units
H-21	Boone Ct.	1.72 acres	1.62 acres	25-35 dus/acre	20-25 dus/acre
	Glen Arms Est			43-60 units	34-42 units
H-26	Fostoria Way	4.83 acres	4.83 acres	25-35 dus/acre	20-25 dus/acre
	CC Executive Pk	,,		121-169 units	97-120 units
	Totals	12.50 ac	13.88 ac	10.30 acres for 25-35 dus/acre	12.50 acres for 20-25 dus/acre
				182-246 units potential yield	109-135 units potential yield

Notes: 1. Site H-12 is occupied by a 1977-era non-competitive office building (i.e., a converted chiropractic offices with a "bunker" basement) and is a greatly underutilized site given an FAR below 15% of net parcel size. The Town has entertained inquiries about possible multifamily residential reuse on this site over the past couple of months.

- 2. Site H-19 is occupied by three two-story 1979-era non-competitive office buildings (i.e., site has large vacancy factor and leases have generally been month-to-month leases in recognition of probable site reuse). Site has been viewed by more than one dozen multifamily residential builders over the past three years.
- 3. Site H-21 is occupied by a 1961-era bowling alley and is situated at end of Boone Court against the freeway between the north end of Sycamore Square Shopping Center and a 60 unit for-sale multi-family project (built in 1972). Reuse of the site for alternate commercial use, given the above, is considered unlikely.

4. Site H-26 is occupied by an industrial testing facility that was converted to office use in 1980. The offices are approximately 60% vacant, prompting property owner to actively review possible alternate uses for the site. While the site was recently under contract to multifamily builder Trumark Homes (who were pursuing a 20-25 unit per acre for-sale row house project), the site is again in play with some or all of the site still under consideration for multifamily use.

The seven sites listed on the Group A and Group B tables provide 17.47 acres for consideration for the 7.9 acre adequate sites shortfall for the extremely low and very low income household components of the 2007-2014 RHNA – without adjusting Site H-25 upwards from three to five With 17.47 acres available for consideration, the Town will have more than twice the requisite minimum acreage (i.e., 17.47 acres is 221% of the 7.9 acre minimum). Adding two additional acres from the seven acre area for Site H-25 takes the total candidate acreage to 19.47 acres - close to 2 ½ times the requisite minimum acreage (i.e., 19.47 acres is 246% of the 7.9 acre minimum).

The seven sites listed on Group A and Group B tables do not reflect all the potential sites on Table 34 that will be under consideration for the 7.9 acre adequate sites shortfall for the extremely low and very low income household components of the 2007-2014 RHNA. The additional sites listed in the Group C and Group D tables are considered by the Town, based on our local experience and past housing program efforts, to be viable candidate sites - though they either have existing multifamily uses located on the sites (the Group C sites) or do they do not meet the ≥0.8 acre minimum site size standard (the Group D sites).

Group C: Table 34 Sites which are larger than 0.8 acres and which are occupied by older multifamily uses

Site#	Site Identification	Net Site Area	Gross Site Area	Table 34 – Aggressive Alternate GP Designation and Yield	Table 34 – Moderate Alternate GP Designation and Yield
H-16	Ilo Lane	0.86 acres	0.86 астеѕ	Site not listed on Table 34 as a	20-25 dus/acre
	Parks Trust	}		potential 25-35 dus/acre site	17-22 units
H-17	W. El Pintado	4.50 acres	5.88 acres	25-35 dus/acre	20-25 dus/acre
	Dan. Park RE			112-156 units	90-111 units
H-18	Diablo Rd.	1.63 acres	2.12 acres	25-35 dus/acre	20-25 dus/acre
	Janlois Family			41-57 units	33-40 units
	Totals	6.99 acres	8.86acres	6.13 acres for 25-35 dus/acre	6.99 acres for 20-25 dus/acre
				153-215 units potential yield	140-152 units potential yield

- Notes: 1. The three sites are currently occupied by older multifamily for-rent projects (150 total existing units) which have the following characteristics: Site H-16 is occupied by eight 1960 to 1980-era for-rent units operating at <20.0% FAR; Site H-17 is occupied by 96 early 1960's era for-rent units operating at <40.0% FAR; and Site H-18 is occupied by 46 early 1960's era for-rent units operating at <40.0% FAR.
 - 2. Site H-17's ownership ties back to Braddock & Logan Group, a locally based residential builder with recent local experience with low income multifamily housing (e.g., the 96-unit Villas at Monterossa project built in Danville's sphere of influence in 2006).
 - 3. Site H-18's ownership has teamed with a multifamily builder who specializes in "repositioning assets" (i.e., tearing down and rebuilding) who has indicated the partnership's interest in pursuing a 77+/- unit for-rent project invoking density bonus provisions that would seek a 35% bonus over the assumed 25-35 units per acre density range for the site.
 - Partial redevelopment of the project on H-17 could add 16 to 32 more units. Full redevelopment of the three sites could lead to the net addition of 100+/- multifamily units - the equivalent minimum development yield of

four acres of 25-35 units per acre designated land. In the context of the adequate sites analysis, the lands cited in Group C are considered to only provide 4.00 acres towards the aggregate acreage total for the viable rezoning tabulation. This provides for the appropriate accounting of net multifarmily residential yield after the existing 150 multifamily units are taken into account.

Group D: Additional Table 34 sites which are vacant or currently developed sites that are <0.8 acres in size

1	Site	Net Site	Gross	Table 34 - Moderate to Aggressive GP Designation and Yield
Site #	Identification	Area	Site Area	
H-6	North of Chevron	0.88 acres	0.94 acres	Mixed Use Site allowing up to 25-35 dus/acre
	4 property owners			12-16 units within 40% of a residential over retail project
H-7	South of Chevron	1.25 acres	1.35 acres	Mixed Use Site allowing up to 25-35 dus/acre
	8 property owners		Ī	16-23 units within 40% of a residential over retail project
H-8	Rose/Hartz	1.71 acres	1.75 acres	Mixed Use Site allowing up to 25-35 dus/acre
	5 property owners		L [16-23 units within 40% of a residential over retail project
H-9	Railroad Ave	0.52 acres	Portion of	Mixed Use Site allowing up to 25-35 dus/acre
	Town Owned		4.08 acres	12-17 units within 40% of a residential over retail project
H-11	SRV & Sonora	1.23 acres	1.23 acres	Mixed Use Site allowing up to 25-35 dus/acre
	4 property owners			16-23 units within 40% of a residential over retail project
Totals		5.59 acres	8.42 acres	Mixed Use Sites allowing up to 25-35 dus/acre
				72-102 units within 40% of a residential over retail project

- Notes: 1. The Town is one of the four property owners for Site H-6 (Town site is 0.23 acres in size), is one of the five property owners for Site H-8 (Town site is 0.17 acres in size), and is the property owner for Site H-9.
 - 2. The projects envisioned for Sites H-6, H-7, H-8 and H-9 would anticipated to be similar to the project currently under review for the 1.12 acre Danville Hotel site where existing older commercial uses on 80%+/of the site will be removed for a planned mixed use project that will include 14 for-sale residential-over units.
 - 3. The Town previously received preliminary inquiries from two developers interested in the project assumed above for Site H-9 - a mixed use project that would be linked to creation of structured parking on the surrounding Railroad Avenue Municipal Parking Lot.

Taken collectively, the fifteen sites listed on the Group A through Group D tables provide 28.77 (REVISED) aggregate acres for the minimum 7.9 acres needed to address the identified "gap" for the extremely low and very low income household components of the 2007-2014 RHNA - without adjusting Site H-25 upwards from three to five acres and after discounting Group C sites to account for existing multifamily uses. Under any reasonably formulated review criteria, this acreage should be deemed more than adequate to meet the "viable sites" test for the minimum 7.9 acres adequate sites "gap". As stated above (see Note 2 for Group A sites), any site from this list doubles as a candidate site to find the minimum 1.7 acres needed to address the identified "gap" for the low income household components of the 2007-2014 RHNA. The sites cited above that are considered by Table 34 to be only candidate sites for the 20-25 units per acre designation (i.e., Sites H-12, H-16 and H-23) provide another 4.75 acres for consideration.

The Town continues to feel confident that Tables 29, 30, 31 and 34 and the associated text in the adopted Housing Element meet the intent and requirements of state housing law as far as identifying sites that can be developed for housing within the planning period and in terms of documenting that these sites are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels.

Discussion in Adopted Housing Element Acknowledging Constraints to Development

During our telephone conversation you mentioned additional concern about the adequacy of discussion in the Housing Element regarding potential constraints to development created by the presence of development on some of the Table 34 sites and/or the potential constraints to development created by the fact that some of the sites currently allow for commercial uses. This letter, in concert with all the material delivered to HCD within and accompanying the May 14, 2010 Response Letter, provides extensive site-by-site detail for the key Table 34 sites.

The Town is operating under the assumption that HCD no longer has concerns about the potential constraints to development – given the nature, number and characteristics of the sites – but continues to question whether the Housing Element, as a standalone document, gives adequate credence to the presence of such constraints. As indicated in our telephone conversation, this ends up being a judgment call for HCD to make – one that arguably will have no effective bearing on how the Town proceeds through the work programs for the Housing Element.

I indicated in our telephone conversation that I would direct you to the language in the Adopted Housing Element that speaks to, albeit in generic terms, the potential development constraints associated with the presence of existing uses on some of the Table 34 sites. That language is as follows (taken from Page 81 of the Adopted Housing Element):

"While many of the sites are currently vacant, a number of the sites are partially developed/underutilized sites (e.g., sites that currently contain some limited level of activity or development but not fully developed). The inclusion of underutilized sites indicates the determination that the current use of the property, either due to the limited nature of the land use activity as a function of the property's size, the age of structures that may be present and/or the condition of the structure(s) or land use activity, does not constitute a significant obstacle to the redevelopment of the site for its planned use.

A subsequent table/figure pairing (i.e., Table 34 and Figures B-1 and B-2) provide a preliminary listing of sites that would be considered through the scheduled general plan update (as a program of this housing element) to supplement the existing residential sites. That listing of sites has been prepared to address the identified shortfall of sites needed to accommodate Danville's RHNA for lower income households.

There are no identified significant environmental constraints or service limitations that would limit development of residential uses on the sites listed on **Tables 29**, 30 and 31. The sites are within the service boundaries for water, sewer, and other dry utilities supplies, whether public or private. Water delivery systems and sewer treatment capacity, is or will be, available to the identified sites."

It is noteworthy that this language has not changed since the submittal of the Draft Housing Element to HCD in June 2009. A review of HCD's September 17, 2009 Review Letter on the Draft Housing Element did not lead to a HCD comment on the adequacy of discussion relative the constraints to

development presented by the presence of development. While Section A of the September 17, 2009 HCD Review Letter spoke to the "adequate sites" analysis linked to Table 34 sites and strategies to accommodate the Town's RHNA – the specific comments were limited to a request for information on the proposed allocation of nine specific very low income units shown for credit against the RHNA and a request for information to justify the proposed allocation of 42 projected second dwelling units for credit against the RHNA. Section B of the September 17, 2009 HCD Review Letter also touched on the "adequate sites" discussion – but the specific comments were limited to requests for information pertaining to the minimum site size standard and the "commitment to rezone". The Town felt the subsequent changes to the Draft Housing Element – reflected in the strikeout/redline version of the document supplied to HCD a month prior to the Town Council's action to adopt the Housing Element and 120+ days prior to HCD's issuance of a new Review Letter on March 22, 2010 – fully responded to all aspects of the September 17, 2009 HCD Review Letter.

Implications of Reopening the Public Hearing to Amend the Adopted Housing Element

We have previously expressed concern that reopening the public hearing to amend the Housing Element in response to the March 22, 2010 Review Letter will serve to open the entire document to a new 60-day HCD review – and the potential for comments on new, previously unidentified topic areas. HCD's "track record" to date relative the review of Danville's Housing Element is the basis for the concern that a new review would be time intensive and could lead to new "hurdles" to the Element's certification.

Barry Miller, the consultant the Town recently hired to take the General Plan Update effort through the Plan EIR preparation and into the public hearing process, will be contacting you in the next few days to arrange a meeting at your offices to discuss this letter and the steps necessary to complete the HCD review and certification of Danville's 2007-2014 Housing Element. We are anxious to move forward at full speed with the General Plan Update and need to understand precisely what needs to be done to secure HCD certification of our Housing Element. It is likely that Joe Calabrigo, Danville's Town Manager, will attend that meeting along with Barry Miller and me.

Summary of Current Housing Program Activities

The passage of time since our telephone conversation should not be interpreted by HCD as an indication that we do not want this to move forward quickly. The Danville Planning Division staff is operating shorthanded and the person "tag teaming" with me on housing issues (Assistant Planner Corinne Horn) was out on vacation for two weeks during this period.

It is interesting to note the housing-related items the Planning Division was involved with subsequent to our telephone conversation, all being items that further our overall housing program and which stood in the way of the drafting this letter, our second response to the March 22, 2010 HCD Review Letter.

The items of note [and their tie back to Danville's housing program] included the following:

- Completing the hiring process of Barry Miller, the consultant who'll facilitate the
 preparation of the Plan EIR for the General Plan Update, and conducting the kick-off
 meeting allowing his work efforts to commence. [The General Plan Update is the most
 significant work program for the Danville 2007-2014 Housing Element in particular as
 regards Policy 1.7.]
- Preparing the annual update for allowable rents set forth under the Affordable Housing Agreements for the Rose Garden Apartment project. [This 55-unit project was authorized and built during the past housing element planning period on a site redesignated from commercial to multifamily residential and stands as one of several examples where the Town held out for "real" multifamily uses in the face of market pressure to allow high density detached single family uses.]
- Preparing the annual update for allowable rents set forth under the Affordable Housing Agreements for the Sequoia Grove Apartment project. [This 38-unit project was completed during the past housing element planning period as a reuse of a site previously occupied by a public/semi-public use.]
- Tracking sales activity for compliance with the Affordable Housing Agreements for the
 Preserves at Iron Horse Trail project. [This 38-unit/25 units per acre multifamily project
 was authorized and built during the past housing element planning period on a site
 redesignated from commercial to multifamily residential and stands as another example of
 where the Town held out for "real" multifamily uses in the face of market pressure to allow
 high density detached single family uses.]
- Initial processing of the Danville Hotel redevelopment project. [This project is slated to include 14 for-sale condominium units to be built as residential-over-retail units on a 0.8+/-acre portion of the Danville Hotel site as a mixed use redevelopment project tying back to Policy 1.2 of the Adopted Housing Element.]
- Meeting with the potential new owner of one of the properties included in Site H-6 of Table 34. [This discussion focused on the Town's vision for the aggregation of properties in Site H-6, of which the Town is one owner. The discussion revolved around "tissue studies" and Performa analysis from the Adopted Housing Element for the site with a stress on the desirability to include a residential-over-retail component and development concessions available from the Town tying back to Policies 1.2 and 1.7 of the Adopted Housing Element.]
- Amendment of the Affordable Housing Agreement for the deed-restricted below market unit (BMR) at 56 Haskins Ranch Circle. [The amendment served to reset the twenty-year term of affordability for the BMR – the fifth consecutive sale of a BMR where Town

negotiation efforts successfully lead to the resetting of the term of affordability for the BMR.]

- Presubmittal meeting with representatives from Ponderosa Homes for the possible multifamily use on Site H-25 of Table 34. [This possible use of the site envisioned by Ponderosa Homes is discussed in Note 1 for the Group A table above. The environmental work associated with such a multifamily use on the site would be covered by the projectlevel analysis in the Plan EIR for the General Plan Update. The effort ties directly to Policy 1.7 of the Adopted Housing Element.]
- Preparing the annual update for allowable rents set forth under the Affordable Housing Agreements for the Willow Glen Apartment project. [This 22-unit density bonus project was completed during the past housing element planning period as a reuse of a single family residential site serving two special populations – moderate income seniors and very low income developmentally disabled.]
- Discussion of possible amendments to the Affordable Housing Agreement for BMR 01-02 (in response to the recent layoff of the property owner). [This effort is representative of ongoing management efforts associated with the administration of the Affordable Housing Agreements associated with the Town's Inclusionary Housing Program – tying back to Policy 1.6 of the Adopted Housing Element.]
- Presubmittal meeting with design team representing a potential use on Site H-26 of Table
 34. [This effort tied directly to Policy 1.7 of the Adopted Housing Element.]
- Interagency discussions to consider options to facilitate the continued operation of the Tri-Valley Housing Opportunity Center. [These efforts tie into Policy 1.4 of the Adopted Housing Element.]
- Presubmittal meeting with Summerhill Homes for their impending submittal of a planned unit development project providing 60+/- single family units and 15+/- second dwelling units. [Involves sites E-3 through E-6 of Table 29 of the Adopted Housing Element and links back to Policies 1.3 and 1.6 of the Adopted Housing Element.]
- Compilation of Danville's date for ABAG's annual Bay Area housing survey.
- Preparation of review comments for the Contra Costa Transportation Authority/ABAG "second look of ABAG's Projections 2009 data".

As evidenced by this partial list of housing-related work effort for the past month, Danville is actively engaged with its Housing Program, working diligently on implementing the goals and policies set forth in the Adopted Danville 2007-2014 Housing Element. HCD's completion of the review and certification process for Danville's Housing Element would serve as an

acknowledgement of the efforts being directed to our Housing Program and obviously would free up time that could be devoted to important housing-related efforts.

I look forward to a meeting within the next couple of weeks to facilitate the completion of our review/certification process.

Sincerely,

Kevin J. Gailey Chief of Planning

c: Town Council
Planning Commission
Joe Calabrigo, Town Manager
Rob Ewing, City Attorney
Steve Lake, Development Services Director
Barry Miller, General Plan Update Consultant