

# EAST BAY FOR EVERYONE

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Mrs. Friedmann, Honorable Members of the Danville Town Council and Planning Commission:

East Bay for Everyone is a network of people fighting for the future of housing, transit, tenant rights, and long-term planning in the East Bay. We are excited that Danville has identified historical issues meeting its fair housing goals, welcomes more density in commercial zones and plans to meet its Housing Element targets by increasing the zoning available on some parcels. We are concerned about the flexibility of the PUD designation and the lack of feasibility of some sites. We think these can be addressed by increasing the density on feasible sites, and committing to practical development standards for the PUD zone.

## Summary

- Both the MF-HD general plan designation and the P-1 zoning designation are vague or unspecified enough that they could be very favorable or very unfavorable to development depending on the ultimate guidelines Danville chooses for these zones. It is impossible to evaluate likelihood of development without more guarantees about these zones.
- Off-street parking requirements are higher than regional averages. Danville incorrectly concludes its parking minimums are not constraints and does not specify the parking standards in the new MF-HD or existing P-1 designations.
- Many nonvacant sites (81% of all capacity, 95% of below-market-rate capacity) have commercial uses and Danville incorrectly assumes 100% likelihood of residential redevelopment. Yield calculations should include a ~50% reduction to all nonvacant sites for likelihood of non development, or commercial development partially or entirely instead of residential.
- Many sites in the inventory are infeasible because of natural features (cover a creek, historic designation scenic hillside) or because the owners are not interested in development.
- About 20% of below-market-rate capacity in inventory is on sites less than 0.5 acres with no AB 1397 explanation about likelihood of redevelopment.

## Analysis of element-wide issues

### Planned Unit District designation

Danville plans to rezone all of the sites in "Table B" of the sites inventory - the majority of its RHNA obligation - using its "Planned Unit District" zoning designation, P-1, plus a new General Plan designation MF-HD. The sites inventory pencils in each of these sites using a density of 40 du/ac. Danville planning staff indicated in conversation that this is tentative, and the actual density at each site may be as low as 30 du/ac, but that the numbers for each site will not be available until the fall.

The current draft specifies almost nothing about what will be allowable on those parcels in practice, because P-1 is a designation that gives the town flexibility to call almost anything the development standards - effectively a zone where anything but a single-family home requires a conditional use permit, but without calling it a CUP.<sup>1</sup> For example, Danville could impose rules related to heights, setbacks, labor standards, or daylight planes for PUD projects that make it impossible to achieve proposed densities, or to build a feasible project.

If the MF-HD general plan designation allows for higher density, plans consistent with MF-HD and not with P-1 might be automatically streamlined under the Housing Accountability Act, but critically, no standards for this GP designation have been disclosed in the current draft. It is therefore very difficult to do a feasibility analysis of any site with this combination of zoning and GP designations. Danville may choose to amend the densities after they have been evaluated by the community and by HCD.

To encourage development and help meet the goals in the Housing Element, we would recommend all P-1/MF-HD sites be rezoned allowing multifamily housing and mixed-use developments as of right with the following development standards:

- Allowable density of 40 du/ac.
- Minimum off-street parking no more than 1 space per dwelling unit, and no mandatory guest parking - see discussion of parking constraint below.
- No more than 5 foot setbacks on all sides and no second or third-story setbacks.

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<sup>1</sup> From municipal code, P-1 permitted uses are single-family housing and "Any land uses permitted by an approved final development plan which are in harmony with each other, serve to fulfill the function of the planned unit development, and are consistent with the General Plan."

In approval procedure: "The Planning Commission may recommend and the Town Council may adopt as part of the preliminary development plan, and **may require** in the final development plan; **standards, regulations, limitations and restrictions which are either more or less restrictive than those specified within an alternate zoning district** which would be applicable if the P-1 district were not proposed, and which are designed to protect and maintain property values and community amenities in the subject community, and which would foster and maintain the health, safety and general welfare of the community." Emphasis added: technically any standards are possible in P-1, but the town has wide latitude, at least under municipal code, to impose any level of restriction, or to deny a plan outright.

### **Affirmatively Furthering Fair Housing**

We appreciate the summary of historical challenges to providing fair housing nationwide and in Danville. We also appreciate that **Action 1.1** recognizes that multifamily housing is "naturally affordable" especially in comparison with single family homes in Danville, which are the dominant housing type and make up a majority of the housing stock. Given existing race and wealth disparities in the Bay Area, simply adding more apartments at a lower price point per square foot is one of the best things Danville can do to help integrate meet its fair housing goals.

**Action 2.1** calls for a by-right program for developers who offer more affordable housing than is required. We are unsure why this would need to be piloted in conjunction with other cities, given Danville is ultimately responsible for building permits for apartments in Danville. We hope Danville will do an economic analysis as part of this program to ensure inclusionary rates are feasible.

**Action 4.1** names the City of Lafayette, "the City," and "City Council" as responsible parties for implementation, which makes us concerned that this section was not read or vetted by Danville staff or consultants. Danville is quite proud of its identity as a Town. We are hopeful that other parts of the Draft were vetted with more scrutiny.

**Constraints for specific sites not analyzed:** Many housing opportunity sites in Tables A and B showed potential constraints that could reduce their capacity.<sup>2</sup> 268 Rose, 254 Rose, 1435 San Ramon Valley, and 2900 Camino Tassajara (Wood Ranch) are historic properties. Several parcels on Hartz, Rose, Diablo, and Front are in FEMA flood zones near the creek; although the environmental analysis notes flood risk as relatively low, it may still deter investors or reduce capacity. Finally, many sites in Table A are on scenic hillsides and/or major ridgelines, where the code limits development further, such as 207-510-004 (Bolero Heights) and 202-050-071 (Diablo). **All of these constraints should be noted and accounted for in a parcel's capacity.**

### **Suggested AFFH policy: Single Family Zoning Reform/Missing Middle**

The primary land use type in Danville is single family homes, but only about fifteen single family home parcels in the entire town, all adjacent to each other, were identified as candidates for additional density. While the parcels chosen by Danville have a logic - six of them share a common owner interested in redevelopment - we are disappointed that Danville could not identify more single family sites as candidates for rezoning. The ~15 parcels in question are also located directly by to the 680 freeway, where new residents will be subject to large amounts of PM 2.5 particulates from rubber tires and disc brakes.

The problems with provisioning "middle housing" - duplexes to tenplexes - are well known. Danville makes it legal to build structures that are the size of "middle housing," but only if they are for a single family. For example:

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<sup>2</sup> We used the Danville Pioneer parcel lookup tool for this analysis.

- 4499 Deer Ridge Rd, 6 beds, 9 baths, 13,748 sq feet, \$7.6m for one family only.
- 756 El Pintado Road, 7 beds, 10 baths, 9,224 sq ft, \$6.8m for one family only.
- 640 El Pintado Road, 6 beds, 10 baths, 11,152 sq ft, \$5.75m for one family only.
- 477 Veda Drive, 4 beds, 5 baths, 4,500 sq ft, \$5m for one family only.

**We do not understand why it is legal to build a 5,000 square foot building for one family but it is not legal to build four 1,250 square foot apartments in the same building envelope.** Very few families can afford a \$5 million home. Fourplexes in the same building envelope would help attract a more diverse set of residents and will trigger increased fire safety and ADA compliance codes.

Danville should consider rezoning all of its single family parcels to permit fourplexes by right. Failing this, Danville should consider rezoning all parcels within a mile of the Hartz Ave commercial areas and the Blackhawk shopping center. This can be achieved without additional CEQA analysis thanks to SB 10.

## Goals, Programs, and Policies

At a high level, we are concerned that the impact of the policy proposals laid out by the Town of Danville is not quantifiable, measurable, or enforceable. For example, in 8.3.a, the Element outlines the intent to abide by the State Density Bonus. It does not offer a timeline for implementing a local Bonus law to meet the requirements set out by state law, nor does it offer an estimate for the number of units this would produce. In Policy 4.1, the Element promises to “continue to facilitate non-discrimination in housing in Danville” - in other words, to continue to comply with state and federal law. It is not clear to us why accommodating existing law is presented as a new policy proposal, especially considering Danville staff is asserting they are aware of people breaking these laws and current enforcement is not stopping it. Non-discrimination in housing is deeply important, and we hope the Town can offer more concrete solutions.

In Goal 6, Danville states that it will “promote the expansion of the housing throughout the Town to accommodate a variety of housing types that are attractive and affordable to potential renters and home buyers at a wide range of income levels.” This is an incredibly important goal—so why do all four policies listed under this goal largely exclude single family zones, which cover most of the Town’s developable area?

## Constraints

### Parking standards

Danville's minimum requirements for off-street parking are high by regional standards: in multifamily zones, 1 space for each studio; 1.5 spaces per one-bedroom; 2 spaces per two- or more-bedroom; plus for each unit, 1/4 guest spaces. For comparison, Lafayette requires 1 space

per one-bedroom; 1.2 spaces per two- or more bedroom;<sup>3</sup> plus, for each unit, 1/5 guest spaces. San Ramon requires 1 space per one-bedroom.<sup>4</sup>

Additionally, at least half of the parking must be covered, and it may not use side yard or setback areas. Even though parking has been demonstrated to add up to \$75,000 per unit in development costs, and to crowd out habitable space, Danville's analysis suggests the town's regulation is not a significant constraint because recent developments have built exactly the minimum required parking. A study from the Victoria Transport Policy Institute showed that each parking space added per unit of housing could increase the development cost per unit by about 12.5 percent.<sup>5</sup> It is hard to believe developers would have chosen to build *exactly* the current minimum amount of parking if Danville had no parking minimums at all, especially given that few, if any, projects built *above* the parking minimum. When other cities, such as Seattle, have reduced parking minimums, the construction of parking in new buildings significantly declined.<sup>6</sup> The Turner Center found that California cities with higher parking requirements—and Danville's certainly put it in the top tier—built less multifamily housing, resulting in lower housing supply, higher prices, and lower rates of homeownership and household formation among young people aged 25-34.<sup>7</sup>

This suggests Danville's parking minimum requirements *do* serve as a constraint.<sup>8</sup>

Although public transportation is limited in Danville, e-bike usage is increasing rapidly and many families would be thrilled to live in Danville if the only sacrifice were keeping one car instead of two. Danville has little hope of attracting better transit if all new residents bring two or three cars with them when they move in. If crowding of street parking is a concern, many tools for on-street parking management are available, and are typically helpful with or without new housing - as many people park on the street due to its convenience even when off-street spaces are available. There is also strong new evidence that the provision of off-street parking makes households more likely to purchase cars when they otherwise would not, increasing congestion and thwarting climate goals.

**Danville's housing element should reduce parking minimums to no more than 1 per unit, with no guest parking or configuration limitations.** This should apply in all single- and multi-family areas, not just the new P-1/MF-HD designation.

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<sup>3</sup> [Lafayette, California Municipal Code, Chapter 6-6 - OFF-STREET PARKING.](#)

<sup>4</sup> [San Ramon, California Municipal Code - Title D - Zoning > Division D3 Site Planning and Project Design Standards > Chapter III - Parking and Loading > D3-28 - Number of Parking Spaces Required](#)

<sup>5</sup> Litman, T. (2014). ["Parking Requirement Impacts on Housing Affordability"](#) Victoria Transport Policy Institute.

<sup>6</sup> ["How Developers Respond to Parking Reform."](#) Transfers Magazine, Fall 2020.

<sup>7</sup> Mawhorter, S. (2019). ["Housing Policies in California Cities: Seeking Local Solutions to a Statewide Shortfall."](#) Land Use Working Paper Series.

<sup>8</sup> In some cases it may suggest they could have waived the rule via the Density Bonus Law and didn't, but it could still easily be the case that other rules such as height were more critical to waive given a limited number of available concessions.

## Impact fees

We appreciate that Danville analyzed impact fees to find that they are much more of a burden on multifamily housing than on single-family (about double the cost when reckoned per square foot), and that the town has initiated a process to reduce this disparity. However, we would like to see more detail on what this process entails, and its timeframe. Given that Danville failed to meet the goals of the last RHNA cycle by a significant margin, the **mere promise** of reform should not be sufficient. Additionally, the town should commit to **not just reduce the disparity, but eliminate it** and reduce multifamily fees to be lower per square foot than current single-family fees. Because apartments don't each have a lawn, driveway, and setbacks, multifamily homes use less water, less asphalt, less electricity, and are quicker for responders to reach by road. Fees should be lower to reflect the lower cost of serving these homes. The Turner Center found that overly high impact fees on multifamily housing development significantly decreased the viability of multifamily housing projects.<sup>9</sup>

## Setbacks

Danville's setback requirements significantly limit the amount of developable land, reducing the financial viability of programs. A minimum front yard setback of 25 feet, side yard setback of 20 feet, rear yard setback of 20 feet, when combined with a maximum Floor Area Ratio (FAR) of 80% and a maximum height limit of 37 feet, significantly constrains the maximum developable area of most, if not all, of the parcels identified as opportunity sites by Danville. 20% of all sites are on less than half an acre—this makes multifamily development incredibly challenging. While the Draft Housing Element suggests that these limits make Danville similar to its neighbors, the fact that none of Danville's peer cities have come close to meeting their RHNA goals in the past, means that this is likely to be a constraint for all of them.

Not only are setbacks a constraint on development, excessive setbacks can be harmful in of themselves by reducing the amount of shade available, requiring seniors and children to walk longer distances from the street to their home, and make communities feel less intimate and human scale. One of this letter's authors spent his formative years in Danville, and his parents still live there—he can assure you that a long walk from the sidewalk to the house on a hot day isn't always ideal.

## SB330/SB8 Tenant Demolition Protections and Right to Return

SB330/SB8 create demolition protections for protected units (deed-restricted, rent-controlled and those occupied by low-income renters) when demolition is proposed. Development applicants must replace the protected units 1 to 1 and provide a right to return at deed-restricted or rent-control levels for displaced tenants. Danville should codify these protections into its municipal code.

Danville should update its development application to inform potential applicants about SB330/SB8 tenant demolition protections and right to return. In addition, the development

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<sup>9</sup> Raetz, H., Garcia, D., Decker, N. (2019). [“Residential Impact Fees in California.”](#) The Turner Center.

application should require a section requesting information about the existence of SB330/SB8 protected units that may be demolished as part of a project, plans for replacement and right to return of displaced tenants. Oakland and Los Angeles already do this for their development applications.

## Sites Inventory

Danville staff admitted in conversation that several submitted sites may not stand up to scrutiny and need to be withdrawn. We have letters from several property owners who indicate no interest in redeveloping their parcels. Please consider this context when you are evaluating the Sites Inventory.

**AB 1397 requirements:** For parcels smaller than 0.5 acre, Danville is supposed to include evidence that the parcel will be redeveloped or that similar sites were redeveloped in the last Housing Element. We did not find that evidence in the draft, and a large number of parcels were in that size range. Conversations with staff were helpful for understanding the logic for including some sites (the single family parcels on Ilo Lane for example) and we hope that they will include this context in the Housing Element document for HCD as well.

**Surplus Lands Act:** As a statutory requirement<sup>10</sup>, Danville is supposed to explain how the town plans to comply with the Surplus Lands Act for town-owned parcels that it plans to turn into housing. We are encouraged by Danville's plans to convert its town office and police station to affordable housing<sup>11</sup> and hope that they will commit these plans to paper in the draft document.

**San Ramon Creek development:** Several parcels included by Danville in the sites inventory extend over San Ramon Creek. The acreage that covers the creek was included in the yield calculations for each site (for example, St. Isidore's 6.8 acre parcel, 200152008, is given a uniform 40 du/ac even though 1-2 acres are creek). Parcel 216120029 is more creek than dry land.

It is nigh impossible to build over the creek and we think that this constraint in addition to constraints around setbacks and height make several of these parcels infeasible at the density described by Danville. Danville should exclude parts of parcels that extend over the creek before making yield calculations.

### Using pending projects as a benchmark for yield calculations

Table A includes several sites with "project pending" designation. The densities that have been proposed on these sites should be used as a guideline for what sort of densities are feasible on other sites in the inventory.

### Commercial development and non-development reducing feasible capacity

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<sup>10</sup> Page 7 of HCD's "[Housing Element Site Inventory Guidebook](#)," dated June 10, 2020.

<sup>11</sup> The Town is planning to move its offices to a nearby parcel on La Gonda, which it has already purchased.

Most opportunity sites are on commercial parcels, or parcels where commercial use is allowed. We assume in the P-1/MF-HD designation, mixed-use development or entirely commercial development will still be a possibility, which would reduce the number of resulting new homes. As such, **each parcel's capacity should be adjusted down by 25% for new commercial development taking up some or all of the space, and another 25% for the likelihood many eligible parcels are not redeveloped at all in the planning period.** (The latter could also be an estimate based on how many eligible parcels in a representative past period were in fact developed.)

### Issues with individual parcels

The feasibility of individual parcels will depend highly on the choice of parking minimums for the P-1 district. It is impossible for us to evaluate this at the moment; if Danville chooses 2 parking spaces per dwelling unit, sites like 115 Hartz will be difficult to develop, but it is premature to say so without the actual proposal.

Below is a list of non-parking problems we have identified with sites.

**699 Old Orchard:** We have a letter from the property owner (SRVUSD) which we will supply, indicating they have no plans at the moment to redevelop this parcel into housing (or a feasible other parcel that could house the district headquarters).

**315/319 Diablo Road:** We have a letter from the property owner indicating that they do not plan to redevelop these parcels any time soon.

**400 El Cerro:** This two-story commercial center is filled with high-margin businesses (dentists and orthodontists). Inventory calculation should be discounted for a) the chance no development occurs, and b) the chance that the property owner redevelops the property into denser commercial instead of housing.

**939 El Pintado:** In a phone conversation a staffer at Fountainhead Montessori said that they have no plans to close and virtually no vacancies for fall 2022 preschool enrollment. The founder of Fountainhead Montessori (four locations) lives onsite. This is a steep lot which would present challenges especially if a large amount of parking is required.

**Parcel 216120015 -** This parcel has a large number of existing apartments on it. Tenants in these apartments would need to be compensated for relocation and return, per SB 330, which would increase the cost of redevelopment.

**455 La Gonda Way / St Isidore's:** Acreage in the inventory includes the part of the parcel over the creek, which cannot be developed. In the middle of the parcel is another parcel it entirely surrounds, which is an existing residence used for retired clergy. The parking lot is used Sundays for church services and during the week as part of school drop-off. Google Maps satellite view



shows cars in this lot in the "school pick-up" alignment. No other site exists at St. Isidore's that can facilitate this many cars, and/or Danville did not identify a TDM strategy for this site.



We would like to see evidence from the property owner that they plan to redevelop the property within the next 8 years before it can be included.

**Wood Ranch:** This ranch, 2900 Camino Tassajara, is listed on both Tables A and B with the same APN, accounting for 54 units in A and 320 in B. (It is listed as 8 acres in A, 17 acres in B, but we know these are not different sections of the property as the area is only 17 acres in grand total.) Only one of these should be retained, and its feasibility should be demonstrated as we know anecdotally the ranch has a longtime owner who appears uninterested in redevelopment, and the town also lists it as a historic property.

### **Sloat Garden Center**

Sloat Garden Center, on 828 Diablo, is also in both tables, with identical APN and acreage, but resulting in capacity of 108 units in Table B and 8 in Table A (the potential without rezoning).

**359 and 375 W El Pintado:** Both sites, in bundle F, are zoned up to 25 units/acre, and 359 matches that (7 for 0.3 acres), but 375 does not (51 for 1.6 acres, should be 40). This appears to match the 20% density bonus for senior housing, matching the Pintado Residences noted elsewhere in the

document. However, the 20% density bonus for senior housing may not be counted in capacity until entitled.

### Suggestions for other parcels to include

The San Ramon Valley Education Association, the SRVUSD employees union, is very interested in making it easier to develop teacher housing, in response to difficulty hiring and retaining teachers due to the cost of housing. While SRVUSD may not have concrete plans to build housing *now*, it will certainly be easier to build teacher housing if **all school parcels (or all school parking lots) are rezoned so that housing could be developed at 40 du/ac.**

If the zoning code allowed 40 du/ac at, say, the Green Valley Elementary parking lot, any proposed development there would be protected from unlawful denial by the Housing Accountability Act (HAA). As it stands, a proposal to build housing would require a General Plan amendment, which could be denied without violating the HAA.

If Danville does not want to rezone every SRVUSD parcel, at a minimum we would recommend rezoning the San Ramon Valley High parking lot, Green Valley parking lot, and open space near Greenbrook Elementary, so that housing could be built there without a general plan amendment.

If rezoned, we think these three parcels could be included toward the RHNA target at 5% of their developed capacity, indicating a 5% likelihood the school district locates funds and a developer in the next 8 years.

Additionally, the **shopping center at 660 San Ramon** sits directly between two other shopping centers on Table B for potential rezoning, so it could be added to the table for a more continuous stretch of developable area.

As we mentioned in the AFFH section, we would also like to see all zones within a mile of Hartz Ave and Blackhawk Plaza commercial centers rezoned to permit four homes within the same building envelope where one large one is currently allowed.

### Conclusion

We look forward to continuing to engage with the Town of Danville in the Housing Element and General Plan rezoning process.