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Written Comments

July 23, 2024, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
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Item 1. Minutes for the July 9, 2024 City Council Meeting

The passages shown in *italics* below are from the draft minutes with suggested corrections shown in ***~~strikeout~~*** ***underline*** format. The page numbers refer to Volume 66.

Page 126, Item SS3, paragraph 1: "*Deputy Community Development Director Murillo and Principal Planner Zdeba utilized a presentation to discuss the City's Regional Housing Needs Assessment (RHNA) assignment, **~~he~~** **the** 2020 Housing Action Plan, the 6th Cycle Housing Element (HE), importance of an income category buffer*, …"

Page 126, Item SS3, paragraph 3, sentence 1: "*In response to Councilmember Weigand's question, Deputy Community Development Director Murillo stated that AB1893 is working its way through the **~~legislation~~** **legislature** and has a January 1st effective date*."

Page 135, full paragraph 7: "*Jennifer Krestan noted revenue opportunities for the City without adding additional services and thought the staff report evades discussion about dock fee determinations **vis-à-vis** **~~(~~**mooring permit fees**~~)~~**. She **~~stated~~** **asked if** that **ongoing** gift **~~giving~~** of public funds is a violation of the City's fiduciary responsibilities as a trustee of the State-owned land*." [See video. In the first sentence, the speaker used the phrase "vis-à-vis" comparing dock to mooring permit fees. It could, alternatively, be rendered as "in relation to." In the second sentence she asked a question and rather than making a statement, and the question was if the low dock fees "constitute a past and ongoing gift of public funds."]

Page 135, full paragraph 3 from end: *"Ira Beer, Harbor Commission Vice Chair and Chair of the Subcommittee for Harbor Commission Objective 2.2, voiced the Subcommittee's unanimous support of the alternate plan and transferability*."

Comment: First, to the best of my knowledge, the 'Subcommittee for Harbor Commission Objective 2.2" consists of just two Harbor Commissioners, the other member being Commissioner Cunningham. Second the phrasing of the sentence distorts what Commissioner Beer said the two members "unanimously" supported. Namely, the draft minutes makes it sound like the subcommittee supports the *continuation* of transferability, when what they in fact support is how the plan "addresses" it, which is to *phase out* transferability. In other words, they support *ending* transferability.

Such distortions and ambiguities are a frequent feature of the present set of draft minutes.

For example, readers of the two paragraphs before the motion on page 137 will understand the Mayor assured the audience that "*surviving spouse language can be accomplished fairly quickly with the recommended language*," and the Mayor Pro Tem "*believed that the City is ensuring public access by continuing transferability*." It is not clear from this what was said, but in an earlier paragraph the City Attorney told the Council the recommended language contains no provision for surviving spouses, and the recommendation was to end transferability in four years, not to continue it.

Other than the one example above, I have not reviewed the video in an attempt to improve the rendering of these, or the many other passages that did not match what I thought was said.

Item 3. Ordinance No. 2024-15: Amending Sections 17.60.010 (Public Trust Lands – General), 17.60.020 (Application for Pier/Mooring Permits or the Lease of Public Trust Lands), 17.60.040 (Mooring Permits), and 17.60.045 (Short-Term Mooring Licenses) of the Newport Beach Municipal Code Related to Mooring Permits and Licenses

The people of Newport Beach, through our City Charter, have broadly empowered our City Council (specifically, in Section 405), but also restricted what its seven members can do "*as otherwise provided in this Charter*." The restrictions are at least as important as the otherwise unlimited powers, and the Council members are not free to pick and choose which they wish to respect or ignore. Among those "otherwise provided" restrictions, the people have invested certain boards and commissions with a "power **and duty**" to advise the Council on "all matters" relating to certain subject areas.

Specifically, in Section 713, with language recently suggested by the Council, the Harbor Commission is invested with the power **and duty** to "*Advise the City Council on **all matters** relating to proposed harbor improvements and the use of Newport Harbor*" as well as "***all matters** pertaining to the use, control, operation, promotion and regulation of all vessels within Newport Harbor.*"

The present agenda item certainly seems to fall within the scope of those words.

While there is more than one interpretation of what they mean, if the people's intent had been for the Harbor Commission to have a duty to be "ready" to advise the Council only on such matters "when asked," we could easily have said so. We did so in Subsection 713(e), where the Harbor Commission is assigned a duty to advise the Council and Planning Commission on landside issues only if "*referred to the Harbor Commission by the City Council, Planning Commission, or the City Manager*." But we did not insert any such qualifying language into the duty to advise on the previously listed matters. Likewise, the Harbor Commission could have been given a more ambiguous duty to "*Act in an advisory capacity*" (rather than "*Advise*"), as we did with PB&R in Section 709, but, again, we did not.

The advisory duty of the Harbor Commission is actually stronger than that of the Planning Commission, which, pursuant to Section 707, is only required to advise the Council on changes to the General Plan. It is only by ordinance, pursuant to Charter Subsection 707(c) and NBMC Section 20.66.040, that it is required to make recommendations to the Council on proposed changes to the Zoning Code (with a further requirement that any substantial change be referred back to the Commission for a new recommendation).

For these reasons, I continue to believe the ordinance being presented for adoption, resulting from a staff recommendation for a radically new mooring regulation structure, should not have advanced to the City Council without a formal review and recommendation by the Harbor Commission. Just as a restructuring of Title 20 (Zoning Code) could not be adopted without

review by the Planning Commission, a radical restructuring of Title 17 (Harbor Code) should not be adopted without review by the Harbor Commission.

The Harbor Commission does not have to agree with the staff proposal, but they do have to provide the Council with their advice as to its merits and demerits. And the private opinion of two Harbor Commissioners (see comment, above, on page 135 of the draft minutes) is no substitute for that.

As those draft minutes indicate, both Scott Karlin and I thought there were problems with the language, particularly with the accompanying Resolution No. 2024-47[1] (in my view improperly adopted at the last meeting on the assumption the present ordinance will also be adopted, but with no guarantee it will be).[2] The present ordinance likely has problems, as well, and discussion of it before the Harbor Commission would have shed necessary light on them, as well as providing a forum for a broader discussion of the new plan's merits.

As to the substance of the ordinance, I agree that the current system of private permit transferability is much like forcing those seeking a public beach parking space to privately negotiate a payment to the previous occupant of the space, and needs to be phased out. But given the City has long condoned the process, I am not sure four years is an adequate "amortization" period. The Council and public should also be aware a previous Council similarly enacted a 10-year amortization period during which rates would be ramped up to match a new rate equaling 14% of the City's "Marina Index" used to set slip rentals at the Balboa Yacht Basin. But a later Council rescinded that fix and introduced the current rate structure capped at 2% maximum annual increases. While the rate structure is not the subject of the ordinance, I believe the grandfathering of rates that is implicitly tied to the ordinance's elimination of transferability will only exacerbate the large inequities that already exist in tidelands charges.

Item 5. Resolution No. 2024-49: Approving Amendments to the Records Retention Schedule

The Council has before it, a 1,202-page printed agenda, not mentioning the 138 pages of the Records Retention Schedule for this item presented as an online only Exhibit 2 and the 638 pages (plus numerous appendices and addenda) of the Environmental Impact Report for Item 23.

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[1] The intent of Resolution No. 2024-47 was to grandfather the rent for all mooring permits issued on or before the resolution's effective date (stated in Section 5) of August 22, 2024. But it inexplicably grandfathers only a permit that has not only been issued by then, but also "*that **has not been transferred** as of the effective date of this resolution.*" Since nearly all existing mooring permits have a long history of transfers, what this extra language was inserted for, and what this means, is quite open to interpretation.

[2] I have long been puzzled by staff's practice with regard to resolutions whose effectiveness is contingent on the adoption of a related ordinance of presenting those resolutions for Council approval at the meeting where the ordinance is introduced rather than at the meeting where the ordinance is being considered for adoption. If the ordinance was rejected at its second reading, staff would need to go back and prepare a new resolution to rescind the previous one. Not only is this inefficient, but approving the resolution before the fate of the ordinance is known reinforces the impression that the final decision regarding the ordinance was made at its first reading, and subsequent publication and second reading are mere formalities that the Council attaches no significance to.

Because the cost and labor of retaining records that may inform future decisions is far less the cost and labor that went into producing them, particularly in view of the increasingly tiny cost of retaining them electronically, I feel records retention policies are very important.

Why one would want to move into the future ignorant of the past is beyond me, but it happens.

The public learned, for example, at the July 15, 2024, City Aviation Committee meeting, that due to a change in the JWA Records Retention Schedule 276C, the JWA Access and Noise Office, which had formerly retained flight and noise data back to 2000, allowing it to conduct studies of how traffic and noise patterns had changed, had deleted all such records more than five years old[3] – forgoing the possibility of repeating or refining any of those studies (and, indeed, the former studies, and all records of them, can, themselves, be discarded). The records lost are not replaceable.

That change that may have allowed that[4] slipped by as Item 22 on the Board of Supervisors November 17, 2020, agenda (near the height of the COVID pandemic), and may not have been reviewed by the Airport Commission. I certainly did not know about it.

I *am* aware of the present revisions, but have not had time to review them. I trust the Council members have.

I do notice the JWA schedule says records "may" be destroyed after a certain time, giving departments some discretion as to whether they will be. The Newport Beach schedule gives the impression destruction is mandatory. In that connection, I recall that the Planning Division once had many years of audio recordings of Planning Commission meetings, stored online at presumably minimal cost. After a previous iteration of the City's retention schedule, and before requiring permanent retention, everything more than 2 years old was deleted, as if doing that was required. Similarly, video tapes of City Council meetings, once held by the Library and going back many years before the current online archive, were discarded. There were likely audio recordings, like those of the Planning Commission, going back even farther, which would have required negligible cost to retain with today's technologies.

Item 13. Amendment to Professional Services Agreement with Sampson Oil Company for Oil Well Management Services

It is interesting to hear the City may be planning to phase out its oil operations.

As alluded to in the report, as Item 8 on the March 13, 2023, agenda, the Council heard staff was looking for a new operator and consultant because the owner of Sampson Oil would be retiring before the current contract ends on July 31, 2024. Apparently that retirement remains a "near future" prospect. One might wonder if the decommissioning will remain so as well.

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[3] The schedule would apparently have allowed, but not required, them to delete any noise or flight record more than three years old.

[4] I do not know if the retention times were changed, or JWA only recently became aware of them and their authority to destroy records.

Item 20. FY 2023-24 Annual District Discretionary Grant Report and the Grants and Donations Report for the Quarter Ending June 30, 2024

Since the City Charter invests power in the City Council acting as a collective body, and no power in individual Council members, I have long thought inappropriate the establishment of the private slush funds called the "District Discretionary Grant" program.

Assuming the report is accurate, I applaud Council member Blom for not using his.

Item 22. Visit Newport Beach, Inc. FY 2025 Destination Business Plan and Budget, and FY 2024 Performance Standards Report

Regarding the Council's need to approve Visit Newport Beach's proposed "Leisure Marketing" budget for the first half of the 2025 fiscal year (buried in the printed 163-page report as "Attachment B" on pages 22-143 through 22-145), the City has an appointed representative on the VNB Board.[5] Does the Council have any recommendation from her?

Item 23. Ordinance Nos. 2024-16 and 2024-17, and Resolution Nos. 2024-50 to 2024-57 for the Necessary Amendments to Implement the 6th Cycle Housing Element and to Place the Major General Plan Amendment on the November 5, 2024 General Election Ballot Pursuant to City Charter Section 423; or Resolution No. 2024-58 to Initiate an Amendment to the 6th Cycle Housing Element

This item is much too voluminous to comment on in a few pages, and I do not expect to have much influence on the outcome, so I will offer just some miscellaneous comments.

Environmental Impact Report

I am one of the only two members of the public to have bothered to offer comments during the 46-day public review period.

As is common with EIR's, I found the responses to my comments and those of others generally unenlightening.

If, as the public is now being told, the certification of a Housing Element in 2022, committed the City to a program of land use changes from which it cannot deviate, then I continue to feel the EIR should have been reviewed and certified *before* the Housing Element was adopted, not after the fact.

I also remain disappointed that the EIR did not analyze at least two distinctly different ways in which the City's RHNA obligation could be met. As I said when I was running for City Council in 2022, that would have provided an opportunity for voters to simultaneously consider two alternative Greenlight proposals, and if both failed, resulting in litigation, at least the result could be the alternative preferred by the most voters.

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[5] It appears the City's Finance Director/Treasurer also sits on the board as a non-voting "advisor."

Of the alternatives it did consider, I don't think its reasons for rejecting Alternative C ("RHNA only") are correct (page 23-92 of the present staff report). It is not just the absence of a "buffer." It is to meet the shortfall of 2,707 affordable units by allowing 4,845 new units, 56% of them would have to be affordable. That is a higher percentage than is claimed to be reasonably expected.

Overriding Airport Land Use Commission

This is presented as sub-action "1f" on the agenda. I believe it is misplaced. Much as the Council needs to make CEQA findings before it can proceed, my understanding is it has to vote to override the ALUC before it can take most of the other sub-actions.

I continue to think overriding the ALUC is unwise.

It is, in part, a statement that Newport Beach is unconcerned about exposing its residents to 65 dB CNEL, or more, of aviation noise. How, after that, can it continue to those exposed to lower levels, yet are still irritated and hope for relief?

Greenlight Vote

As indicated in my comments on Item 3, above, the Council is not free to pick and choose which City Charter restrictions on its powers it should honor or ignore. In other words, the Charter could have contained a provision empowering the Council to ignore restrictions when doing so is, in the Council's opinion, in the best interests of the City. But it has no such provision.

Given that the Council has to follow the Charter, at the July 9 study session reported in the Item 1 draft minutes, there was debate over what the phrase "*This section shall not apply if state or federal law **precludes** a vote of the voters on the amendment*" in Section 423 (Greenlight) means.

There are examples of state actions adding housing in which a Greenlight vote on the additions has been precluded. They include accessory dwelling units, SB 9 single-family residential lot splits and density bonus units. But in each of those cases, the legislation explicitly said it was allowing development above and beyond that allowed in a local general plan (which is what Greenlight affects) and that the increases were beyond local control.

City staff has pointed to no provision of the RHNA legislation that precludes public votes on a city's particular choice of how to meet its obligation. Indeed, if there were, it seems unlikely the City, in its Housing Element, would have told HCD it planned a vote, and even more improbable that HCD would have certified a plan including one.

In "Option 2," the Council is invited to consider asking HCD to remove these references to Section 423 from the Housing Element. But removing references to a vote is not at all the same as saying a vote is prohibited.

Given that a Greenlight vote is required, the staff proposal does not fit within the parameters of Greenlight, in which each statistical area of the City is regarded separately, and the potential impacts on it disclosed and separately voted on.

Table 3, on page 23-11 of the staff report, indicates voters will be asked to authorize changes to at least 17 statistical areas,[6] but is unable to inform voters by how much, except in aggregate. Moreover, Policy LU 4.4, which voters are being asked to approve, appears to allow the Council, without further amendment to the General Plan, to add, apparently quite arbitrarily,[7] to the focus areas, which means the statistical areas that might be affected are completely undefined.

Ballot Label

The proposed "ballot label" (the 75-words or less explanation that appears next to the "yes" and "no" on the final ballot), that appears in sub-action "1g" (Attachment G on page 23-258):

> "Shall the General Plan's Land Use Element be amended so the City of Newport Beach can avoid fines of up to $600,000 per month, losing local control over land use decisions, suspension of authority to issue building permits, and access to state funding, by adding the following State of California mandated residential housing opportunity units in Coyote Canyon (1,530), Dover-Westcliff (521), West Newport Mesa (1,107), the Airport Area (2,577), and Newport Center (2,439)?"

does not seem to be couched in the kind of "*language that is neither argumentative nor likely to create prejudice for or against the measure*" required by Elections Code Subsection 13119(c).

Instead, by citing the horrible things that will befall the City with a "no" vote, it seems clearly to be urging a "yes."

I find this highly misleading, both because the sanctions are speculative (does City staff know of any city being fined $600,000 per month?) and because a "yes" vote could *also* result in all the same horrible things befalling the City. That is because the sanctions would happen when and if the City loses certification of its Housing Element, which would first require a finding of being out of compliance, yet the City could already be found of compliance for failure to adopt the inclusionary policy promised in Policy Action 1K of the certified Housing Element. And even if the measure based, it is extremely unlikely it will result in fulfilling the City's affordable housing shortfall, which could, again, lead to a find of non-compliance with the Housing Element.

What is Wrong with the Ballot Measure?

Some of the errors in the staff proposal should be obvious, such as the reference in proposed Policy LU 4.4 (e.g., on page 23-261) to "*The maximum density specified for the various overlay districts specified in Policy **LU 4.2** is an average over the entire property or project site*," when it seems to mean Policy **LU 4.4**.

But its bigger problems, which I have consistently attempted to point out, include:

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[6] Table 3 inexplicably says the statistical area affected by the Coyote Canyon entitlements is "Not Identified." I believe it is in statistical area N, and I am surprised there is any doubt about that.

[7] Proposed Policy 4.4 appears to give the Council fee rein in the rezoning "*unless precluded by state law*." Why that phrase was inserted, or what it means, is quite unclear. What state law would "preclude" the City from rezoning for housing? The only one of know of regards agricultural land, of which we have none.

1. The idea that allowing 8,174 new dwelling units will, according to Housing Element Table B-1, fill the 2,707 unit shortfall of moderate and below homes (with a 15% buffer), is predicated on the assumption that 40% of the housing built will be affordable to moderate and below income families (10% moderate and 30% low and very/extremely low). The measure provides no assurance voter approval will ensure this. In other words, a "yes" may do nothing at all toward filling the City's 2,707 affordable units RHNA obligation, leaving the City in the same place it would be in with a "no" vote. The voter-approved housing could be used entirely for new luxury units, none of which are required by the state.
2. The measure lacks a citywide "shut-off valve" such that if, by some miracle, the entire 6th Cycle affordable housing shortfall were filled (say with units mostly in Newport Center and a few in the Airport Environs), that accessibility to all remaining units in all the areas would end. As it is, the maximum entitlements approved by voters would remain, and more units could be built even though no RHNA requirement remained.

Smaller problems include:

1. The proposal lacks maps and specifics of what would be approved and is tied intimately to the 6th Cycle Housing Element which is good only through 2029. In 2029, it will disappear and be replaced by a 7th Cycle Housing Element. It is completely unclear what the verbiage proposed to be approved now will be interpreted to mean then.
2. The measure seems to use numbers that applied in 2022 or before. Since then, a number of major projects have been approved as well as ADU's. Some of those included affordable units, which should be expected to reduce the City's shortfall. What is being counted, and what the current projected shortfall is, lacks clarity. It is presumably less than the 2,707 units shown in the Housing Element.

Zoning Code Amendments and Objective Design Standards

The agenda proposes to introduce the ordinances to adopt these as sub-actions "1c" and "1d."

I do not see the need for this. The Zoning Changes are not required to be completed until February 12, 2025. While having the Objective Design Standards in place by then is important, introducing them as part of the present, already massive agenda means only they will be inadequately reviewed.

Coastal Commission Submission

Sub-action "1e" is the requested approval of a resolution (Attachment E) submitting proposed Local Coastal Program amendments to the California Coastal Commission.

I believe the CC will find these extremely problematic.

For example, the proposed "New Policy 2.1.11-1" (page 23-222) appears to suffer from one of the Greenlight problems discussed above: it is extremely vague and ambiguous as to how many new housing units the CCC is being asked to allow in the Coastal Zone. Compounding the uncertainty, it refers to "25% of allocated dwelling units within the Coastal Zone" being reserved "until such a time as the City's Local Coastal Program has been amended to allow for housing

consistent with the implementation of the 6th Cycle Housing Element." Isn't this that amendment?

And if adopted, is the CCC being asked to approve, for example, that all 2,577 Airport Environs units could go in the Coastal Zone?

Likewise, the maps following on pages 23-230 through 23-233 seem unlikely to be met with favor. In the Airport Environs, all the lands that would be allowed to convert to residential are currently reserved for open space, recreation or visitor-serving uses (a golf course, YMCA and a hotel). On page 23-231, the CCC is being asked to add a housing overlay to "Banning Ranch" property, which is in a deferred certification area over which the City has no authority. On page 23-233, the CCC is being asked to add a housing overlay to a hotel site (the Newport Center Marriott, or "VEA") where CCC staff strongly objected to a previous conversion to housing, as well as property at the foot of the Balboa Island Bridge reserved for Marine-Serving Commercial uses.

Since the Coastal Act goal is to confine housing to the footprint within which it already exists, it is hard to see how most of this could be approved.

Buffer and No Net Loss Rezoning Requirement

At the July 9 study session, staff explained the buffer is needed to prevent the need to rezone properties within 120 days if an opportunity site redevelops, but without the anticipated number of affordable units.

I am almost totally ignorant of the "no net loss" regulations, but this does not seem intuitively correct to me.

As I understand it, the Sites Inventory in the Housing Element has identified parcels with a capacity of something like 22,117 new units in the focus areas, to all of which the housing overlays will apply. Although per Table B-6, only a fraction of the 22,117 are expected to redevelop during the 6th Cycle, that would be sufficient to produce 8,174 units. if a particular parcel fails to deliver as promised, there would still be many remaining parcels available that have *already* been rezoned through the overlays. I do not see the need for any additional rezoning. At most the cap for the focus area would need to be increased to reflect the percentage of units redeveloping as affordable not meeting expectations.

Pipeline and Bonus Units

Another topic of intense comment at the study session was the counting of pipeline and density bonus units.

I believe many speakers misunderstood the counting of pipeline units. They, including the bonus units they entail, have been subtracted from the RHNA requirement. The problem is that few of the pipeline units are affordable, so while subtracting them eliminates any further obligation for above moderate units there is still a shortfall of 2,707 affordable units – and it would take 6,768 new base units to meet that even if 40% of the base units were affordable.

There was additional comment on whether the bonus units should be counted in determining if the focus area caps have been met. Staff indicated language saying they *would not be* counted had long been included in their proposal. Since it had never been suggested this was a negotiable point, I do not think this obviates asking the question of whether the bonus units *could be* counted.

Since they count toward the RHNA goal, my guess is that although bonus units are, by definition, something offered in excess of the maximum densities allowed in a city's general plan, they *could* be included in a count of how many RHNA-qualifying units have been entitled, and that count *could* be used to turn of further entitlements.

However, I think there would be little practical effect in doing so. The reason is our City's entire RHNA shortfall is in the affordable category, and the bonus units will almost certainly fall in the above moderate category. So counting them would cause us to reach the cap without having met the affordable quota, leaving us in hot water with HCD, and simply forcing us to increase the cap to meet the quota – or face the prospect of decertification.

Role of GPAC

At the July 9 study session (see video), the Mayor chastised members of the "General Plan Update Committee" for recommending approval of a proposal to the City Council and then suggesting it needed changes. As a member of the General Plan Advisory Committee, but speaking as an individual, I took offense at this. The Mayor later sent an email to the GPAC members including a 13-page attachment ("Prepared April 29, 2024") detailing the history of revisions and postings of the proposed Land Use Element policies, apparently intended to demonstrate that the language about "*total units do not include units permitted pursuant to State density bonus law*," or more recently "*total units identified in LU 4.4 do not include units identified as pipeline units or units permitted pursuant to State density bonus law*," had long been in the posted versions and not elicited comment.f

I believe this distorts the record.

When the GPAC first met, on January 18, 2023, it was told changes to the Land Use Element related to Housing Element implementation were on a "separate" track and not within the committee's purview.

Given that, it seemed odd that at a special meeting at Marina Park on May 3, 2023, the City's Housing Element consultant, Kimley-Horn, shared with the GPAC and " Initial Draft Land Use Element Policy Matrix," and invited comment.

GPAC's further role in this was never clearly defined, and although a vote was taken on August 21, 2023, a formal vote was taken, it was mostly about whether focus area density limits should be increased above the consultant's original recommendation, and whether references to housing on Banning Ranch should be deleted from the Land Use Element. The votes were not unanimous, but GPAC rejected increasing the densities, and was then urged to at least advance the original recommendation to the GPUSC and Council. Again the vote, even under pressure, was only 10-7, with I, and others, voting against it, at least I feeling it needed considerably more work.

The GPAC also voted strongly in favor (16-2) of removing Banning Ranch, but when the GPUSC reported that to the Council, the Mayor reprimanded the GPAC for considering in any way deviating from the Housing Element.

I believe the language about the counting of density bonus units was similarly assumed to be non-negotiable, and I believe the additional exemption for pipeline units was added at the direction of the Planning Commission without the knowledge of the GPAC.

I, at least, have been consistent this is “not ready for prime time.” But I don’t think I am responsible for it being reviewed by the Council only at the last possible moment.

AB 1893

As to the threat of the builder's remedy, the proposed AB 1893, which looks on its way to adoption and could allow more liberal and more certain application of the builder's remedy starting on January 1, 2025, does seem to change the landscape and is something to worry about.