



09/01/2026

City of Cloverdale
City Council
209 N. Cloverdale Boulevard
Cloverdale, CA 95425

Re: Placing Esmeralda on the ballot risks Housing Element decertification

Dear Members of the Cloverdale City Council:

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law sues municipalities when they fail to comply with state housing laws, including Housing Element Law.

On Wednesday, August 26, at the request of Councilmember Marquez, the City Attorney gave a presentation about the legality of placing the proposed Esmeralda entitlements package on the ballot (as a voter initiative) instead of following the normal, deliberative legislative process and approving (or rejecting) the project at City Council. As you know, Esmeralda proposes to build up to 605 homes in phases over a roughly 10-year period, which would help the City meet its current RHNA housing targets. **Following through on Councilmember Marquez's idea would place Cloverdale at risk of litigation and Housing Element decertification, which would in turn subject the entire city to the Builder's Remedy.**

[The City Attorney's presentation](#) correctly states that quasi-judicial decisions may not be put before voters. It also notes that the price of notices associated with putting the Esmeralda entitlements package on the ballot could be substantial, far exceeding the City's \$34,375 estimate if the measure requires a special election, which it most certainly would. This cost would be exclusively borne by the City, because state election law prohibits cities from passing on these costs to the developer-applicant.

Cloverdale is contemplating an action that would decertify its Housing Element

More to the point, placing the Esmeralda project on the ballot, whether by Council vote or referendum, creates serious legal risks that the City cannot ignore. California's

Department of Housing and Community Development (HCD) has already explained the dangers similar ballot measures pose to California cities. Eureka had launched a program for developing housing on city-owned parking lots. When residents circulated a ballot initiative to prevent it from happening, HCD notified the city that doing so would require an amendment to its Housing Element or the city would be rendered out of compliance.¹ Recently, HCD notified Newport Beach that an initiative would render its Housing Element out of compliance *and* that preliminary SB 330 applications would protect projects from the effects of such an initiative.² HCD has already revoked certification for Norwalk³ and Portola Valley⁴ for taking actions inconsistent with their Housing Elements. **Newport Beach, specifically, lost a lawsuit filed by HCD and the state Attorney General over its efforts to require voter approval for Housing Element implementation.**⁵

HCD has an ongoing statutory duty to review city actions once a Housing Element has been certified. Under CA statute, **HCD must review any city action (or inaction) that is inconsistent with an adopted housing element** or section 65583 generally, and it must issue written findings to the city accordingly.⁶

HCD must give cities a reasonable time, no longer than 30 days, to respond to their findings.⁷ If HCD does not receive a written response from the city within 30 days, or the response does not demonstrate a program action has been implemented (or an obstacle removed), then HCD may revoke its certification of the city's Housing Element.⁸

¹ California Department of Housing & Community Development, *Adopted Housing Element Revision Process – Letter of Technical Assistance*, (October 9, 2024).

<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/eureka-ta-he-compliance-100924.pdf>

² California Department of Housing & Community Development, *Circulating Initiative for a Ballot Measure and Housing Element Compliance – Letter of Technical Assistance* (September 18, 2025)

<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/newport-beach-hau-2031-ta-091825.pdf>

³ California Department of Housing & Community Development, *City of Norwalk – Revocation of Housing Element Compliance Finding*, (Oct. 2, 2024)

<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/norwalk-revocation-he-compliance-100224.pdf>

⁴ California Department of Housing & Community Development, *Revocation of Housing Element Compliance Finding – Town of Portola Valley* (March 26, 2024).

<https://drive.google.com/file/d/180UtRNamsGnz9MATVxrhW0dOPNfdGtA/view>

⁵ Office of the Attorney General, *Attorney General Bonta and Newsom Administration Celebrate Newport Beach Win Allowing the City to Comply with State Housing Law*, (June 29, 2025)

<https://oag.ca.gov/news/press-releases/attorney-general-bonta-and-newsom-administration-celebrate-newport-beach-win>.

⁶ Gov. Code, § 65585, subd. (i)(1).

⁷ Gov. Code, § 65585, subd. (i)(1)(A).)

⁸ Gov. Code, § 65585, subd. (i)(1)(B).

Additionally, HCD may notify the Attorney General when a city takes actions that are inconsistent with an adopted Housing Element or Government Code sections 65583 and 65915, among other laws.⁹

Placing Esmeralda on the ballot would directly contradict Housing Element programs H-2.1 and H-2.3, while also instituting a “new governmental constraint on development.” A Housing Element cannot be considered substantially compliant unless it identifies local constraints to housing development and adopts specific strategies to reduce those constraints.¹⁰ Forcing Esmeralda to seek approval at the ballot by definition is a new constraint on housing development. **If such an initiative were adopted, Cloverdale would be out of compliance until it goes through a new process of redrafting its Housing Element and receiving new certification from HCD.**

Councilmember Marquez’s “just asking questions” idea would be subject to attack under Housing Element law from parties other than just HCD and the Attorney General’s office. Developers would have standing to sue, but so too would interested housing advocacy organizations such as YIMBY Law.¹¹

Separately, a voter initiative that makes a site unreasonably constrained (and excessively risky for future developers) allocates a “density of zero” to that site. California’s **No Net Loss rule** provides that:

(b) (1) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel identified to meet its current share of the regional housing need or any unaccommodated portion of the regional housing need from the prior planning period to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1) and (2) of subdivision (g), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(A) The reduction is consistent with the adopted general plan, including the housing element.

(B) The remaining sites identified in the housing element are adequate to meet the requirements of Section 65583.2 and to accommodate the jurisdiction’s share of the regional housing need pursuant to Section 65584. The finding shall include a quantification of the remaining unmet need for the jurisdiction’s share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.

⁹ Gov. Code, § 65585, subd. (j).

¹⁰ Gov. Code § 65583(a)(5)–(a)(6) & (c).

¹¹ Gov. Code § 65589.5, subd. (k)(1)(A)(i).

Cal. Gov. Code § 65863.

The existing zoning on the 261-acre site currently allows up to 170 units of housing. As mentioned earlier, Esmeralda is proposing to amend the existing entitlements to build up to 605 units. Any voter action that disallows or unreasonably constrains future housing would violate the “no net loss” rule, and be subject to litigation by HCD, the Attorney General, or housing advocacy groups, like YIMBY Law.

No Net Loss is not the only law that would be implicated by this change.

State housing element law requires jurisdictions to demonstrate “realistic development capacity” and maintain sites that are “suitable and available for residential development.”¹² Realistic capacity is not purely a legal inquiry; it also considers **practical factors** influencing what can economically be constructed in an area. HCD generally considers lower minimum densities appropriate for residential development.

The underlying zoned capacity of a parcel is only one element of this consideration; HCD guidelines advise that realistic capacity is a combination of the new units that would be developed on a given site *and the likelihood that those units could be developed*. The maximum zoned capacity is irrelevant if other regulations and factors render that capacity infeasible to develop, like excessive entitlement risk. HCD specifically advises analyzing:

the imposition of any development standards that impact the residential development capacity of the sites identified in the inventory. When establishing realistic unit capacity calculations, the jurisdiction must consider existing development trends of existing or approved residential developments at a similar affordability level in that jurisdiction, as well as the cumulative impact of standards such as maximum lot coverage, height, open space, parking, and FARs.

Per HCD guidance, this inquiry must include the likelihood for residential development based on market conditions.

The recent *New Commune DTLA* case held that a city’s Housing Element violates state law if its underlying zoning effectively results in “zero” units. While *New Commune DTLA* concerned parcels which allowed commercial uses, the court discussed the legislature’s intent behind the “realistic capacity” analysis; specifically, the legislature wanted to prevent local governments from circumventing their housing targets by including sites that were not truly feasible for residential development. The court ruled against the city,

¹² Gov. Code §§ 65583.2(c), 65583(a)(3).

YIMBY Law, 2261 Market Street STE 10416, San Francisco, CA 94114

citing the difference between zoned capacity on paper and the practical requirements of financing and building housing.

Local governments must proactively identify and mitigate constraints on residential development. Zoned capacity alone is insufficient to meet RHNA requirements where other constraints exist to limit residential capacity, whether those limitations are legal or factual. A misinformed, NIMBY ballot measure is exactly the kind of unreasonable constraint the law seeks to prevent.

The Requirement for a Public Vote Cannot meet HAA or PSA Standards for protected projects

The Housing Accountability Act (HAA) protects qualifying projects from denial unless specific conditions are met. A local government must make specific findings or the denial will be illegitimate. They must determine BOTH that:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

Gov. Code § 65589.5(j)(1)(A)(B).

The complex and specific findings necessary for a lawful denial cannot reasonably be contained within the text of a ballot question. California’s Housing Crisis Act explicitly prohibits “a moratorium or similar restriction or limitation on housing development... within all or a portion of the (City).”¹³ A requirement for a public vote creates such a moratorium, or creates the possibility that the public could institute one through successive denials.

Conclusion

¹³ Gov. Code, § 66300, subd. (b)(1)(B).

Councilmember Marquez's idea unnecessarily threatens to invalidate Cloverdale's Housing Element, opening up the town to a flood of Builder's Remedy projects. **If enacted, such an initiative would trigger significant, immediate, and ongoing legal problems for the City.** Cloverdale could be sued under Housing Element law, the HAA, and potentially CEQA, if any of the remedies for those violations require environmental review. The obvious alternative is to simply allow the City Council to actually do its job, which is to *factually deliberate* and then *publicly vote* on the project, based on each member's perception of the project's public benefits, costs and policy merits.

Sincerely,

A handwritten signature in black ink that reads "Sonja Trauss". The signature is written in a cursive, flowing style with a large, stylized 'S' and 'T'.

Sonja Trauss
Executive Director
YIMBY Law