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To: [FGG, Public Comment](#)
Cc: [Lynch, Dahvia](#); [Nicoletti, Vince](#); [Talleh, Rami](#)
Subject: [External] Comments on Agenda Item 3, General Plan Annual Progress Report
Date: Wednesday, April 23, 2025 12:38:30 AM
Attachments: [Item 3 GPAPR Comments_Kilkenny.pdf](#)

Good Evening,

Please find attached comments on Agenda #3, the County's General Plan Annual Progress Report. I plan to attend to give testimony on the contents herein. It would be an honor to discuss these concerns in person with you or your staff if you are interested to hear our thoughts about how the County could better be addressing the housing shortage.

Respectfully,

Sean F. Kilkenny
Partner



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Wednesday, April 23, 2025

Vice Chair Lawson-Remer
San Diego County Board of Supervisors
1600 Pacific Highway
San Diego, CA 92101

Re: Item #3 - San Diego County 2024 General Plan Annual Project Report

Vice Chair Lawson-Remer and Honorable Supervisors,

Nolen Communities, LLC (Nolen) appreciates the opportunity to comment on San Diego County's 2024 General Plan Annual Project Report (APR). The APR is required by State Law to track progress towards a jurisdiction's goals and policies under the Regional Housing Needs Allocation (RHNA) and Housing Element. As the Board letter states, "Annual reporting on the County's General Plan and Housing Element implementation ***provides transparency and keeps the public informed about the impact of the County's programs and initiatives intended to help facilitate the production of housing...***" (p. 1) ***(emphasis added)***

Unfortunately, the 2024 APR continues a concerning trend of presenting data that depicts an inaccurate overview of the impact the County's programs and initiatives are having on housing production. Rather than addressing the core problem – not enough homes and apartments are being approved and built - the County instead is overly relying on one housing typology that is not guaranteed to even be available to renters to meet its RHNA numbers, while slow-playing important Actions from the Housing Element which may improve the conditions for entitling a variety of housing options.

We demand better transparency in the County's APR numbers and a clear explanation of the impact of County policies like vehicle miles traveled (VMT), implementation of required Housing Element Actions, and the results of the Development Feasibility Analysis, on the production of new housing, including deed-restricted units that will actually benefit low- and moderate-income households, rather than ADUs that may never be rented or only used as vacation rentals.

Finally, we insist the County complete the mandatory actions outlined in the Housing Element Update Implementation Plan, in particular Action 3.1.3.A to update the Zoning



Ordinance which was supposed to have been completed by 2023 and is only now starting and not likely to be adopted until at least 2026, three years after the HEU promised and 15 years following the adoption of the “Smart Growth” General Plan Update in 2011.

A. Discretionary Housing Projects

In 2024, the County approved 183 discretionary units. While this was an improvement compared to the 52 units approved in 2023,¹ it remains well below the level needed to ensure a healthy, diverse supply of housing opportunities.

Why?

Because discretion is typically, though not exclusively, required for “subdivisions”, or the creation of individual lots and units “for-sale”. Instead of ministerial projects – typically Accessory Dwelling Units, 100% Affordable Housing projects, and Apartment/Rental projects which result in a uniform housing stock, discretionary permits offer future buyers the opportunity to built wealth through the benefits of homeownership. This benefit is not available for most ministerial projects.

However, since 2021, the County has approved an average of 157 units/year, which is the lowest four-year average for at least the last 11 years. This is reflected in Table 1. At this pace, it would take the County 42 years to meet the RHNA total.

TABLE 1. 4-Year Average of Discretionary Approved Units (2018-Present)

	DISCRETIONARY UNITS APPROVED BY YEAR (SD COUNTY)									
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
TM	128	207	590	196	382	499	120	35	0	176
TPM	18	22	12	24	9	14	9	15	4	5
SDPs	116	60	402	130	20	93	92	108	48	2
UNITS	262	289	1004	350	411	606	221	158	52	183
4yr Average				494.25	530.75	605.5	405.5	358.75	269	157.25

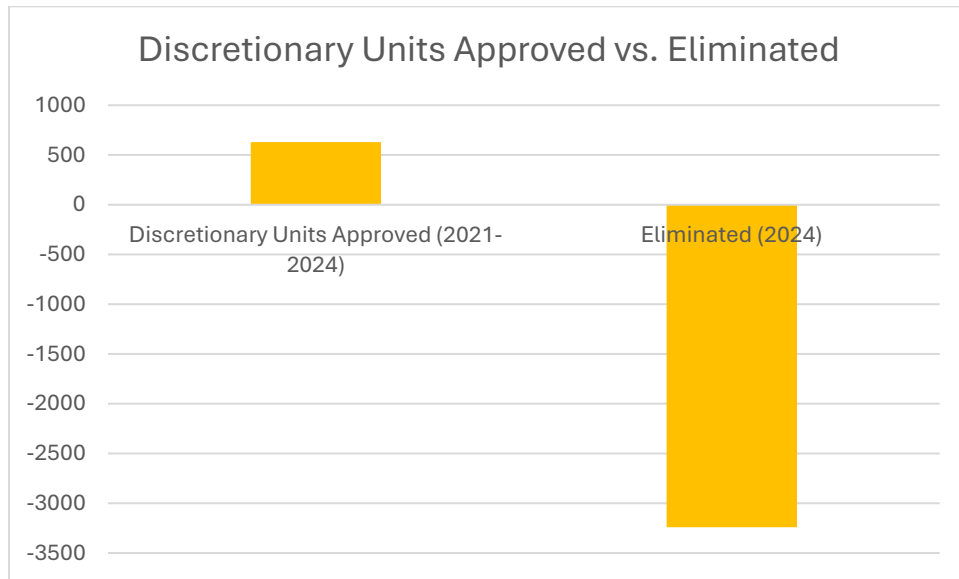
Not only is the County simply not approving discretionary projects, it is actually amending approved projects to REDUCE the number of permitted units. In fact, the County lost FIVE TIMES more entitled units last year (3,241) than it has entitled since the Housing Element Update (629). As shown in Figure 1, the County lost 3,241 units of approved housing

¹ 52 units is the total of new, discretionary units including



between the Otay 250/Otay Majestic and Valiano projects, compared to the 629 units approved since 2021.

FIGURE 1



The conversion of the Otay 250 project, from a Master Plan residential community with 3,158 units to millions of square feet of industrial/warehouse is particularly troubling because this was the single-largest site in the Housing Element Inventory. Accounting for an estimated 2,210 units (including 663 “lower” income units), the Otay 250 project made up about 1/3 of the total RHNA inventory with new, modern, mixed-use units. However, the return of this project to industrial warehouses due to litigation with environmental stakeholders resulted in a vacuum of new units in an area projected to grow. In its place, as described below, the County is relying on ADU’s to meet the “lower” income categories.

Unfortunately, this trend towards losing units, rather than building units, is not new. Over 9,000 housing units have been removed from development, either by legal action from the environmental community (Otay Ranch Village 14, Newland Sierra, Otay 250), acquisition for habitat conservation purposes (Otay Ranch Village 14, Otay Ranch Village 15, Montecito Ranch) or through approving a far-less dense project than permitted by the General Plan (Park Circle). Table 2 summarizes the loss of these units since 2017.



TABLE 2. Loss of Discretionary Approved Housing Units

Project	Units Lost	Reason/Explanation
Otay 250	3,158 units	Converted to industrial due to litigation from environmental groups.
Newland Sierra	2,150 units	Overtured due to litigation from environmental groups.
Otay Ranch Village 14–	1,713 units	Overtured due to litigation from environmental groups and acquisition for conservation purposes.
Otay Ranch Planning Area 16/19	410 units	Overtured due to litigation from environmental groups and acquisition for conservation purposes.
Otay Ranch Village 15	483 units	Eliminated due to acquisition for conservation purposes.
Park Circle	817 units	Reduced unit count below the General Plan allocation.
Montecito Ranch	417 units	Acquired for conservation purposes.
Valiano	83 units	Eliminated due to litigation from community group.
TOTAL	9,231 units	

Eliminating the opportunity for CEQA challenges would materially improve the conditions for housing proponents, homebuilders and property owners to build more housing across the unincorporated County. Updating the Zoning Ordinance to allow projects to achieve their General Plan density and build more modern housing products would facilitate more discretionary projects by providing more flexibility for project proponents.

B. Discretionary Housing Project Applications Submitted (“Pipeline Projects”)

The 2024 APR touts an increase in the number of units in the County “pipeline”, noting a total of 16 housing development applications totaling 2,025 housing units were submitted. However, these statistics belie the reality that most of the projects, 14 of the 16, account for only 144 units, while 93% of these units (1,881 homes) are in just two projects. Over 1,300 are in Borrego Springs, and 575 are in Valley Center, neither of which are VMT efficient areas, and both of which are likely to face immense scrutiny – the same type of legal scrutiny that has overturned the projects referenced above.

This adds to an existing “pipeline” of projects that will face increasingly difficult entitlements due to the recent appellate court ruling overturning the County’s ability to rely on the Transportation Study Guidelines (TSG) to exempt “infill” areas from further VMT Analysis. The County previously provided a summary of “pipeline” projects (pre-2024) that included 1,371 units within VMT efficient and Infill Areas. However, a closer review of these



projects indicates that 1,184 units (or 86.46%) were in “Infill” areas which no longer have coverage for potential VMT impacts under the County’s TSGs and may be subject to additional environmental review and scrutiny.

When combined with the 1,881 such units submitted in 2024, at least 3,065 units of the pending 3,396 homes (or over 90%) are not in VMT efficient areas. The implications of this are grim for new housing in the County.

C. Regional Housing Needs Assessment (Sixth Cycle) Progress

As noted in the APR, the County has seen a significant decrease in building permit activity, including a 28% decrease between 2022 and 2024. However, despite the fact that 423 FEWER building permits were issued in 2024 than in 223 (and 132 fewer than in 2023), the number of units the County has credited as very-low, low and moderate has INCREASED by 20%, despite record home prices, inflation and high costs. Specifically, in 2024 the County tallied 658 units qualifying as “very-low”, “low”, or “moderate”, compared to 548 in 2022 and 493 in 2023. Table 3 shows how the number of “very-low”, “low,” and “moderate” units have changed while the overall number of building permits has decreased.

TABLE 3. Increase in Very-Low and Low Building Permits (2022-2024)

Affordability Level	2022	2023	2024	% Change (2022-2024)
Very-Low	132	101	149	12.9%
Low	181	176	285	57.5%
Moderate	235	216	224	-4.7%
Above Moderate	963	727	430	-55.3%
TOTAL	1,511	1,220	1,088	-28.0%

This increase can be attributed to the growing number of Accessory Dwelling Units (ADUs) being permitted annually by the County. As shown in Table 4, since 2021 approximately 30% (1,552 or 5,244) of permits issued by the County have been ADUs. 2024 was a high-water mark, with 489 ADU’s permitted, which made up 45% of all building permits. These units make up a significant portion of the “very-low”, “low” or “moderate” income units. Specifically, by our count, the County has attributed 261 ADUs as “very-low”, 422 as “low”, and 565 as “moderate” income.



TABLE 4. Increase in ADUs as % of RHNA Units (2021-2024)

Year	ADUs	BP	%
2021	299	1,425	21.0%
2022	338	1,511	22.4%
2023	426	1,220	34.9%
2024	489	1,088	44.9%
TOTAL	1,552	5,244	29.6%

Accordingly, as shown in Table 5, ADU's compose approximately 59% of "very-low" income units, 43% of "low" income units, and 45.5% of "moderate" income units, despite no assurance at the time of permit issuance that the ADU will be affordable, or even rented. However, according to the Bipartisan Policy Center, only 27% of completed ADU's qualify as low- or moderate-income units²; but in 2024 the County is taking credit for 89.6% (438 of 489) of ADUs as very-low, low or moderate.

TABLE 5. ADU's as % of Building Permits by Income Category

Affordability Level	ADUs	TOTAL BPs	%
Very-Low	261	440	59.3%
Low	422	988	42.7%
Moderate	565	1242	45.5%

This is counter to the County's own Housing Element Goal Housing 1, which states that the FIRST GOAL (H-1) is "**GOAL H-1. Housing Development and Variety. A housing stock comprising a variety of housing and tenancy types at a range of prices**, which meets the varied needs of existing and future unincorporated County residents, who represent a full spectrum of age, income, and other demographic characteristics." (**emphasis added**) In addition to Goal H-1, such an approach also conflicts with Policy H-1.6 which states "H-1.6 Land for All Housing Types Provided in Villages. **Provide opportunities for a variety of housing types, including small-lot single-family, duplex, triplex, and other multi-family building types** in Villages."

² Minott, Owen. September 12, 2023. Dwelling Units (ADU) in California. Bipartisan Policy Center. Accessory. <https://bipartisanpolicy.org/blog/accessory-dwelling-units-adus-in-california/#:~:text=The%20majority%20of%20ADUs%20coming,for%20all%20new%20permitted%20housing>. Last access April 22, 2025



Not only is this reliance on ADUs counter to the Housing Element's Goals and policies, but it also runs afoul of state law. Specifically, California Government Code § 65583.1 which dictates how a jurisdiction can take credit for ADUs in its housing element. It states:

(a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may allow a city or county to identify adequate sites, as required pursuant to [Section 65583](#), by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for accessory dwelling ***units based on the number of accessory dwelling units developed in the prior housing element planning period*** whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

Further, § 65852.2(m) clarifies “A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.”

As shown in Table 6, below, during the prior planning period, the County issued approximately 504 Building Permits for ADUs (based on numbers reported in the General Plan Annual Progress Reports for 2013 through 2020). Accordingly, ADUs comprised approximately 9.1% of the total Building Permits issued during the prior housing element planning period.

TABLE 6

Year	ADUs	BP	%
2013		480	0.0%
2014	27	717	3.8%
2015	25	867	2.9%
2016	24	582	4.1%
2017	52	655	7.9%
2018	80	728	11.0%
2019	137	862	15.9%
2020	159	623	25.5%
TOTAL	504	5,514	9.1%



Projecting this forward to the County’s Sixth Cycle RHNA obligation of 6,700 units would limit the number of ADU’s that could be counted to approximately 612, or over 900 fewer units compared to the 1,552 ADU’s the County has taken credit for during the current cycle, which constitute roughly 30% of the total building permits.

HCD addressed ADUs in a June 2020 memo entitled Housing Element Site Inventory Guidebook Government Code Section 65583.2. The direction from HCD was to [u]se the trends in ADU construction since January 2018 to estimate new production. This is a conservative option to only account for the effect of the new laws without local promotional efforts or incentives (safe harbor option).”

As shown in Table 6, the County experienced an increase in ADUs in 2018 and again in 2019 and 2020. However, even using the increased ADU permitting activity from 2018 to 2020 only accounted for 17% of Building Permits during that timeframe, which, if applied to the current 6th Cycle RHNA total would limit ADUs to 1,149 permits, approximately 400 FEWER than the County is taking credit for during the planning period. Further, when combined with the estimate from the Bipartisan Policy Center that only 27% of ADUs would qualify as low- and moderate-income units, the actual number of such permits the County should reasonably take credit for is reduced to approximately 310 permits. This is a considerable contrast from the 1,248 ADU’s the County has identified as very-low, low, or moderate income units.

Further, it’s not clear that the use of ADUs toward RHNA should even be permitted unless and until the County accomplishes its “Quantified Objectives” with respect to ADUs. Specifically, in 2021, the County’s 6th Cycle Housing Element – certified by HCD, set forward the following Quantified Objectives for meeting it’s RHNA obligation.

Table 6-4-2: Quantified Objectives

	Extremely Low/Very Low		Low	Moderate	Above Moderate	Total
RHNA	807	1,027	992	1,165	2,709	6,700
ADU	270		216	657	657	1,800
New Construction	75		75	500	1500	2,150
Rehabilitation	40	80	120			240
Conservation	22					22

As shown in Table 6-4.2, the County’s compliance with its RHNA obligation of 6,700 was INDEPENDENT of 1,800 ADUs. The County has not yet met its own objective of 1,800ADUs



separate and above the objective for 6,700 RHNA units. Unless and until the County reaches the above identified objective for ADUs, these units should be excluded from the County's RHNA Obligation progress.

Concerns regarding the reliance on ADU's, as well as other housing typologies, to meet the County's "very-low", "low" and "moderate" income RHNA obligations are due to the County's lack of success facilitating the production of actual deed-restricted housing. While it's understood that state law allows for non-deed-restricted units to contribute to a jurisdiction's RHNA credits, the County's track record of failing to generate housing that is guaranteed to be affordable should be met with a healthy dose of skepticism. Consider that, during the current planning cycle, of the 2,670 permits claimed to be "very-low", "low" or "moderate", only 126 (LESS than 5%) are deed-restricted and guaranteed to be available to qualified very-low and low-income earners (and not a single deed-restricted moderate unit has been produced).

D. Housing Element Site Inventory and Implementation Plan

Perhaps the greatest evidence of why the County has not generated meaningful amounts of deed-restricted housing is due to the shortcomings of the Housing Element Sites Inventory to identify quality candidate sites for affordable housing. Evidence of this is clear based on the number of Housing Element Sites that have moved forward to building permits. In the nearly four years since adoption of the 6th Cycle Housing Element, and post-AB1397 when many of the properties identified in the Housing Element qualify as "By-Right", ***only 9 of the 236 Housing Element sites have moved forward to building permits.*** This is a conversion rate of 3.8%.

In fact, these 9 sites account for a total of 274 units, yet, as explained above, the County has re-zoned the Otay 250 project which previously was identified for 2,210 units in the RHNA; thus, the Site Inventory currently has capacity of at least 1,936 fewer units than the County's RHNA obligation.

Beyond the shortcomings of the Housing Element Sites Inventory, the County has also not met schedules for several critical components of the Housing Element Implementation Plan. Most significant, and relevant to the lack of affordable housing, is the County's outdated Zoning Ordinance. Following the approval of the County's smart-growth inspired General Plan Update in 2011 which significantly shifted County development into Villages and Town Centers, the County failed to prepare a comprehensive update to the 1970's era Zoning Code. This has created several glaring inconsistencies which both the Housing Element Update and pending Development Feasibility Analysis acknowledge.



The Housing Element Update established Action 3.1.3.A which required the County to, “Review the development designators in the Zoning Ordinance, and **amend Code by the end of 2022** as necessary and appropriate **to ensure that a range of housing types and densities can be achieved**, and that the designators **facilitate development at the maximum density allowed by the General Plan.**” (*emphases added*)

Yet, nearly four years after the Housing Element was adopted and certified, the County only recently prepared a scope of work and selected a consultant for what refers to as the “Development Designators” project which is intended to “[combine] multiple Housing Element Implementation actions and a Removing Barriers to Housing Item to analyze the Zoning Ordinance and develop options to align with the General Plan to 1) Expand Housing Diversity and 2) Facilitate RHNA and Multi-Family Site Development and Group Homes.” Omitted from this effort is any effort to ensure the designators “**facilitate development at the maximum density allowed by the General Plan**” as required in the Housing Element.

The expected schedule for this partial completion of Action 3.1.3.A is 2 – 3 years, despite the Housing Element specifying amendments would occur “**by the end of 2022**”. This is at least a four to five year delay, which also affects other Housing Element Implementation Actions including 3.1.1.C, Zoning Ordinance Amendments to Achieve Maximum Density, 3.1.1.D, Diversity of Land Use and Building Type, 3.1.1.H, Housing Yields in Mixed Use Zones, and 3.1.1.K, Expanded Eligibility of Checklist Exemptions. It does not have to take 2-3 years to update the Zoning Ordinance. Nolen has provided a draft plan, the Expedited Permitting and Increased Construction (EPIC) Housing Plan to address select pinch points of the Zoning Ordinance like minimum lot size, building height and typology and the calculation of density based on gross instead of net acres.

E. Development Feasibility Analysis

As referenced above, the County is preparing to distribute the draft findings of the Development Feasibility Analysis (DFA). Based on draft materials and updates generously provided by staff, it is clear that the County has learned through this effort that infill development is simply not feasible because the market does not support the high costs of higher-density product types; however, the County continues to look for ways to force more development into smaller areas. It is the proverbial round peg into a square hole. In this instance though, not only are the shapes wrong, but the “hole” is much too small to accommodate the ever growing housing need.

Our fear is that this is an intentional effort to further constraint and frustrate new housing in the unincorporate area. Based on the numbers in the APR, the County can effectively create a moratorium on housing while it continues efforts like the CAP Fire Safe and VMT



Efficient Alternative, the VMT Phase 2 Mitigation Program as part of the Sustainable Land Use Framework, updating the Zoning Code and other Implementation Actions from the Housing Element Update, implementing recommendations in the DFA areas that don't address the core problems identified in the DFA, re-revising the Transportation Study Guidelines, and considering an Inclusionary Housing Ordinance that punishes infill development in VMT efficient areas.

Instead, the County chooses to make it look like it is doing its fair share to fight the Housing Crisis. Like taking credit for increasing the number of certificates of occupancy, without pointing out that this statistic is the result of PRIOR Board action to approve projects like Horse Creek Ridge, Park Circle, Meadowood and Campus Park West. Nor does the County point out that the % of building permits that convert to Occupancy permits has increased from about 52% to 94% since 2020 (likely because more of the units are lower-cost ADUs).

The home-buying public should expect and demand more from a "Pro-Housing" designated jurisdiction. Please, take the first step by asking staff to review the information contained herein and report back in 90 days on how the County can immediately move to create a variety of housing that has a chance of actually being built. Let's make the impossible, possible. Let's fix the broken system and build more housing.

Respectfully Submitted,

Sean Kilkenny, Partner
Nolen Communities LLC