#### Generic Initial Study Cover Memo

August 8, 2014

#### Overview of the Generic Initial Study

#### The Generic Initial Study document is intended to provide jurisdictions with a starting point for completing the required CEQA environmental review of the updated housing element. The Initial Study assumes there are no significant changes in land use and the projections for the updated housing element are essentially consistent with the 2007-2014 housing element. If you choose to use the document prepared by 21 Elements, there are a couple of items to keep in mind:

1. **Sources List.** Please review the sources list and those noted under each potential impact to make sure any local plans or agencies are included.
2. **Jurisdiction Name.** To modify the document for the jurisdiction, please go to “Replace” and find “CITYNAME” and replace it with the name of your city.
3. **Box Selection.** To change the color of one of the boxes select the box and go to “Format” and select the appropriate fill. Please note the boxes have been included as separate graphics.
4. **General Plan Policies.** Please summarize appropriate policies contained in the City’s General Plan where appropriate.
5. **Municipal Code Sections (Number and Title).** Please cite the appropriate section and title where needed.
6. **Maps.** We have included a countywide map of jurisdictions. You may want to include your own regional location map (Figure 1). Maps should also be inserted showing a more localized map of the city and surrounding areas as appropriate (Figure 2), and map of potential housing sites from the Housing Element (Figure 3)

#### Housing Element Summary Table

We have provided a separate EXCEL document for your use in summarizing the number of housing units anticipated in the 2015-2023 Housing Element (Table 1). You can use this table or insert your own table to summarize development under the Housing Element and the jurisdiction’s ability to meet its RHNA.

#### Additional CEQA Information

There have been two significant recent cases of which the jurisdictions should be aware: *Friends of Aviara v. City of Carlsbad* (2012) and *Latinos Unidos de Napa v. City of Napa* (2013). If either of these cases are of interest to you, we recommend you contact your city attorney since our summary below is only provides a basic overview. We have attempted to provide general guidance via the bolded headings. There are not many housing element-specific cases, so there have not been that many since recently. There is also a recent League of Cities publication that provides a nice overview of certain trends in case law and changes to the statutory scheme.

**Creation of General Plan Inconsistencies After Revision to Housing Element**

*Friends of Aviara v. City of Carlsbad,* 21 0 Cal. App. 4th 1103 (2012)

In *Friends of Aviara,* the City of Carlsbad identified several parcels for multifamily and low-income housing that were designated in the land use element of the general plan as single-family housing. A neighborhood group challenged the revisions to the housing element on the ground that the city's revisions created an inconsistency between the city's housing and land use elements, arguing that the general plan was now internally inconsistent. The court held that Cal. Gov. Code §65583(c) contemplates that cities might have to change current land use regulations in order to meet regional housing needs obligations. The court explained that cities *may revise their housing elements to include proposed changes to other general plan elements (like the land use element) as long as they also include a timeline for the adoption of those proposed changes.*

Thus, when a City updates its Housing Element, it can include proposed changes to other general plan elements (i.e. the Land Use Element) so long as it complies with the court's direction to include a timeline for the adoption of the proposed changes. If the City needs to include designation of more affordable housing and/or make other amendments to comply with ABAG and/or other regional housing obligations, it can do so in its updated Housing Element without worrying that it has created an inconsistency in the General Plan (provided that the aforementioned timeline provisions are included).

**City Not Required to Do Supplemental EIR to Revise Housing Element with Increased Densities**

*Latinos Unidos de Napa v. City of Napa,* 221 Cal. App. 4th 192 (2013)

An affordable housing association challenged the City of Napa's approval of revisions to the housing element of its general plan and related zoning amendments on the grounds that an EIR was required. In updating its housing element, Napa also amended its land use element to increase the minimum residential densities in seven areas zoned as mixed use or community commercial from 10 to 40 residential units per acre, increase the density of 8 multi-family sites by a total of 88 units, and amended its zoning ordinance to comply with state laws for emergency shelters and low-income housing. Napa prepared an initial study for this update and determined that it fit within the scope of its 1998 Program EIR prepared for its General Plan, and adopted the housing and land use elements and zoning amendments (after 28 public meetings).

Latinos Unidos de Napa sued the City arguing that the City should have prepared a supplemental EIR because the traffic analysis (among other things) in the 1998 Program EIR was outdated. The court upheld the City's CEQA determination and subsequent actions. The court said that while the test to determine whether an EIR is required for a project is the "fair argument test" (i.e. an EIR is required if there is a fair argument that more environmental study is needed), the test to determine whether a city's determination that something is a "new project" or a "modified version of a previously studied project" is the "substantial evidence test." Therefore, the court applied the "substantial evidence test" to review the City's determination that a new EIR was not required under CEQA, and found that the City had considered the effects of the then-existing housing element and potential changes to density, public services, and other resources in its 1998 Program EIR.

Most cities consider this case a "big win" because extensive deference was granted to Napa in determining the necessary level of environmental review for a later project. It is important to note, however, that Napa was not approving a *specific* housing project, but rather its housing element update (which, by its nature, was considered in its general plan's EIR). But, the case still demonstrates that jurisdictions in San Mateo County could amend their land use and/or housing elements to increase housing densities without having to conduct additional environmental review, especially with adoption of an update to the jurisdiction’s general plan and any accompanying EIR.