

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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January 4, 2024

Albert Lopez, Director
Planning Department
Community Development Agency
County of Alameda
224 West Winton Avenue, Room 111
Hayward, CA 94544

Dear Albert Lopez:

RE: County of Alameda's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the County of Alameda's (County) draft housing element that was received for review on October 6, 2023, along with revisions that were received on December 21, 2023. The revisions were made available to the public for seven days prior to the California Department of Housing and Community Development (HCD) review. The review was facilitated by conversations on November 15, 2023 and December 7, 2023, with you and the County's housing element team. In addition, HCD considered comments from East Bay Housing Organizations (EBHO), Michelle Biche, East Bay for Everyone, Kevin Burke, Caleb Smith, John Minot, and Public Advocates, pursuant to Government Code section 65585, subdivision (c). Pursuant to Government Code section 65585, HCD is reporting the results of its review.

The draft element, including revisions, addresses many statutory requirements; however, revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As a reminder, the County's 6th cycle housing element was due January 31, 2023. As of today, the County has not completed the housing element process for the 6th cycle. The County's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the County to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the County did not adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), programs to make prior identified sites available or rezone to accommodate the regional housing need allocation (RHNA) must be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Examples of programs include Program 1.A (Rezone Sites to Meet

RHNA), Program 1.C (Facilitate Housing at Bay Fair and Castro Valley BART Sites), Program 1.D (Facilitating Sheriff's Radio Facility Development), Program 1.G (Lower-Income Sites Modifications to Address Shortfall), and Program 1.J (Rezone 5th Cycle Lower-Income Housing Sites). Please be aware, if the County fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until all necessary rezones are completed pursuant to Government Code sections 65583, subdivision (c)(1)(A) and 65583.2, subdivision (c).

Public participation in the development, adoption, and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the County should continue to engage the community; including organizations that represent lower-income and special needs households; by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Affordable Housing and Sustainable Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the County will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the County to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the dedication, responsiveness, and attentiveness you and the County's housing element team provided during the review. We are committed to assisting the County in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jose Ayala, of our staff, at Jose.Ayala@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX COUNTY OF ALAMEDA

The following changes are necessary to bring the County's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Enforcement and Outreach: The element must describe the capacity to provide enforcement and outreach which can consist of actions such as the ability to investigate complaints, obtain remedies, engage in fair housing testing, and educate the community on fair housing issues. The element currently describes services provided by the Eden Council for Hope and Opportunity (ECHO) but also notes a gap in services needed versus services available. The element should describe efforts to combat this gap in enforcement and outreach services and add or modify programs, as appropriate. In addition, the analysis must address compliance with existing fair housing laws as well as any past or current fair housing lawsuits, findings, settlements, judgments, or complaints.

Racial/Ethnic Areas of Concentration of Poverty and Affluence: The element includes information (maps) relative to Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) and Racially Concentrated Areas of Affluence (RCAA) but must also specifically analyze R/ECAPs and RCAAs throughout the unincorporated County. The analysis should evaluate conditions and trends and compare these areas to other areas, neighborhoods, and the broader region. The analysis should also incorporate local data and knowledge and other relevant factors such as zoning, land use, local initiatives, investment or disinvestment, and neighborhood outreach or engagement with advocacy organizations.

Disparities in Access to Opportunity: The element provides information on disparities in access to opportunity through the TCAC opportunity maps but must also provide a complete analysis of patterns and trends for all components (e.g., education, economic, transportation and environment). A complete analysis should compare areas or neighborhoods within unincorporated areas (local analysis) and unincorporated areas compared to the region (regional analysis). A complete analysis should also incorporate local data and knowledge, including outreach with neighborhoods or advocacy

organizations, and other relevant factors to better understand patterns and trends and formulate appropriate policies and programs.

Please refer to page 35 of the Affirmatively Furthering Fair Housing (AFFH) guidebook (link: https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf) for specific factors that should be considered when analyzing access to opportunities as it pertains to educational, employment, environmental, transportation, and any factors that are unique to the unincorporated County.

Identified Sites and AFFH: While the element identifies the location of sites relative to AFFH factors, it must specifically analyze the impacts of identified sites on existing patterns of socio-economic characteristics at a local level (e.g., neighborhood to neighborhood) and regional level (e.g., community areas compared to other community areas and the region). The analysis should address whether the location of sites by income group improves or exacerbates existing conditions, including any isolation of the Regional Housing Needs Allocation (RHNA) for all income groups. For example, the element should analyze any preponderance of the RHNA for lower-income households and moderate and above-moderate households relative to fair housing factors such as race, income, poverty, TCAC resource, overpayment, overcrowding and displacement risk. Based on the outcomes of a complete analysis, the element must add or significant and meaningful actions to promote inclusive communities and equitable quality of life. For example, a preponderance of the lower-income RHNA in lower-income areas must be coupled with significant strategies for place-based approaches toward community revitalization, displacement risk and improving housing mobility (housing choices and affordability across greater geographies) in relatively higher income or higher resource areas.

Local Data and Knowledge: The element notes that census tracts do not match the jurisdictional geography of the County and in some cases overlap with neighboring jurisdictions or the data is influenced by demographic information beyond the jurisdiction boundaries. For these reasons, the element should particularly utilize local data and knowledge to better understand any patterns or differences or lack of differences from neighborhood to neighborhood. For example, the element could utilize information from County or City officials (e.g., planners, code enforcement, civil engineers, local legislators), past surveys and assessments, data used for applications for funding, service providers, developers, school representatives, regional planners, service districts, neighborhood groups and advocacy organizations.

Contributing Factors: Upon a complete analysis of AFFH, the element should re-assess and prioritize contributing factors to fair housing issues, as appropriate.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress in Meeting the RHNA: While the element incorporates additional pipeline projects and a description of how pipeline projects will be affordable, it should also demonstrate affordability for moderate-income households (16490 E 14th Street and 21855 Hathaway Ave). In addition, the element (pp. B-5 and B-18) describes “The Lofts on E. 14th” as affordable due to the density, however, pipeline projects must demonstrate affordability based on the actual or projected sale prices, rent levels, or other mechanisms establishing affordability (e.g., deed-restrictions). Absent information demonstrating affordability, these units are not considered suitable to meet the lower-income RHNA.

Publicly-Owned Sites: The element must include additional discussion on each of the publicly-owned sites identified to accommodate the RHNA, including the BART sites and the Sheriff Radio site. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses, status, remaining steps toward entitlement and anticipated schedule and any known conditions that preclude development in the planning period. BART sites should particularly consider BART’s work plan and specific programs to facilitate development (HCD will send a sample program under separate cover). Based on this analysis, the element should add or modify programs. Programs should commit to comply with the Surplus Land Act and commit to numerical objectives consistent with assumptions in the inventory and a schedule of actions to facilitate development in the planning period. Examples of actions include outreach with developers or property owners, predevelopment activities, removing barriers to development, issuing requests for proposals, facilitating entitlements, incentives, funding assistance, issuing building permits and alternative actions completed by a specified date if the sites are not anticipated to be completed in the planning period.

Realistic Capacity: The element mentions an assumption of 70 percent of maximum allowable densities to calculate residential capacity on identified sites and includes a few examples of recent developments. However, the element should include additional and clear supporting information on typical densities of existing or approved residential developments at a similar affordability level. For example, the element could list other recent projects, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus.

In addition, the element appears to assume residential development on sites with zoning that allow 100 percent nonresidential uses. While the element mentions the identified sites represent a substantial opportunity for housing and the area is located near employment, it must still account for the likelihood of 100 percent nonresidential uses. The element should include analysis based on factors such as development trends, performance standards or other relevant factors. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/analysis-sites-and-zoning>.

Suitability of Nonvacant Sites: The element notes three criteria (improvement-to-land value ratio of less than one, owner interest in development, and structure age 30 years or older) to justify the likelihood of redevelopment of nonvacant sites. While these factors are generally indicators of potential for redevelopment, the element should consider additional

factors and must support the validity of these factors based on trends and the County's experience in redevelopment.

Next, the element provides some general information on the existing use, such as "commercial" or "parking". However, the element must demonstrate the potential for redevelopment, including the extent existing uses impede additional development, including current market demand for the existing use, existing leases or contracts that would perpetuate the existing use or prevent additional residential development and other indicators of property turnover such as property for sale, vacancy, abandoned space, structural conditions, expressed interest in residential development, lack of improvements and frequent turnover.

Lastly, as noted in the housing element, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period (Gov. Code, § 65583.2, subd. (g)(2).). Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Environmental Constraints: While the element discusses environmental constraints, it should also address any other conditions that could preclude development in the planning period. Examples of other conditions include shape, access, contamination, relocation, title conditions, historic preservation, and easements.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the County must submit an electronic sites inventory with its adopted housing element. The County must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The County can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element includes Programs 3.F (Emergency Shelter Parking Requirements) and 4.A (Emergency Shelters) regarding emergency shelters, it should add an action or program to update the definition of emergency shelter to include other interim interventions, including, but not limited to, a navigation center, bridge housing, and respite or recuperative care.
- *Permanent Supportive Housing:* Supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs as appropriate.

3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to parking, heights, lot coverage and limits on allowable densities. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints.

Local Processing and Permit Procedures: The element generally does not meet this requirement. The element describes an overview of the development process for most development including intent related to compatibility and findings of approval for impacts on surrounding property but should specifically analyze the Site Development Review or other reviews for typical developments that are consistent with zoning and the general plan. The analysis should address the approval body, any public hearings, approval findings and evaluate impacts on timing, cost, supply, and approval certainty. Based on the outcomes of the analysis, the element should add or modify programs to address identified constraints.

In addition, while the element notes the County commissioned a report on the County's Development Review Process, it should describe and incorporate these findings into future submittals of the housing element.

Constraints on Housing for Persons with Disabilities: The element (p. C-35) generally describes the reasonable accommodation review process, but it should also analyze the process for constraints on housing for persons with disabilities. For example, the element should evaluate written notices, the ability for any member of the public to request a public hearing and the appeal process. The analysis should address impacts on timing, cost, certainty and objectivity and programs should be added or modified to address identified constraints.

4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2... (Gov. Code, § 65583, subd. (a)(6).)*

Developed Densities: The element must be revised to analyze requests to develop housing at densities below those anticipated in the sites inventory, including hindrance on the construction of a locality's share of the regional housing need.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and achieve the goals and objectives of the housing element, programs should have early or discrete timing and specific commitment, as follows:

- *Earlier Timing:* Several programs have timelines that should be moved earlier in the planning period to ensure a beneficial impact. Examples include Programs 2.J (Accessory Dwelling Units (ADU) with Multi-Family Developments), 6.J (Inclusionary Housing) and 6.K (Translate Housing and Development Applications).
 - *Discrete Timing:* Several programs have an implementation timeframe of “ongoing” although there are new actions the program proposes to implement. Examples include Programs 2.B (Small Lot Consolidation), 2.E (AC Boost First Time Homebuyer), 2.F (Affordable Housing Trust Fund), 2.I (Federal Funding), 2.K (Preserve At-Risk Housing), 3.G (Minimum and Maximum Densities), 4.H (Housing Opportunities for Persons with Disabilities), and 6.A (Housing Outcomes Analysis).
 - *Specific Commitment:* Several programs should be revised with specific commitments that will result in housing outcomes in the planning period, instead of considering potential actions. For example, Programs 3.B (Planning Commission Streamlining Subcommittee), 3.E (Objective Design Standards), 3.G (Minimum and Maximum Densities) and 4.E (Farmworker Housing Analysis) should be revised with specific commitment.
2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the County may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised, as follows:

- *Program 1.A (Rezone Sites to Meet RHNA) and Various Other Programs*: In addition to increasing densities or rezoning sites, the element should commit to appropriate development standards to encourage achieving maximum densities. Examples of programs that should be revised include Program 1.C (Facilitate Housing at Bay Fair and Castro Valley BART Sites), 1.G (Lower-Income Sites Modifications to Address Shortfall), 1.H (General Plan Consistency) and 1.L (Update Castro Valley Business District Specific Plan).
 - *Program 1.C (Facilitate Housing at Bay Fair and Castro Valley BART Sites)*: As noted in Finding A2, the element could consider sample programs to encourage development on BART sites. In addition, the Program should commit to maximum densities or a maximum density range that will be targeted as part of program implementation.
 - *Program 1.I (Monitor and Facilitate Pipeline Housing Projects)*: The Program monitors pipeline projects but should also include a schedule for when projects will be monitored (e.g., by 2027), evaluate whether a project is anticipated to be completed in the planning period as opposed to approval and commit to alternative actions by a specified date including, but not limited to, rezoning if projects are not anticipated to be completed in the planning period.
 - *Program 4.A (Emergency Shelters)*: The Program must commit to a timeframe to occur no later than one year from adoption.
 - *Program 4.C (Transitional and Supportive Housing)*: Transitional and supportive housing should not be limited to special requirements such as person limits. The Program should commit to permitting these uses similar to other residential uses of the same type in the same zone and not subject to special requirements such as limits on the number of persons.
 - *Program 4.D (Farmworker/Employee Housing)*: The Program should also commit to amending zoning in compliance with Health and Safety Code section 17021.8.
3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings A3 and A4 the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the County may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, the element should be revised, as follows:

- *Program 4.L (Reasonable Accommodation)*: The Program includes actions to remove findings from Section 17.60.010 (D) and (E) from the reasonable

accommodation review process but should also commit to removing finding (F) regarding the “consistency of design with the immediate surrounding neighborhood” finding in evaluating reasonable accommodation requests.

- *Program 3.A (Streamline Parking Requirements)*: The Program should also commit to remove or reduce guest parking requirements, reduce parking requirements for SROs and other similar housing types to levels less than the Residential Design Standards and Guidelines and clarify reductions will apply throughout the County.
 - *Program 3.C (Residential Care Facilities and Community Care Facilities)*: The Program should specifically commit to allow residential and community care facilities (regardless of licensing) for seven or more persons in all zones allowing residential uses. Further, the Program should specifically commit to remove or replace the conditional use permit (CUP) process and only subject these residential uses to procedures and standards with objectivity similar to other residential uses of the same type in the same zone.
4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the County may need to revise or add programs. In addition, goals and actions must significantly seek to overcome contributing factors to fair housing issues. Currently, the element identifies programs to encourage and promote affordable housing; however, most of these programs are limited to continuing existing actions and do not appear to facilitate any meaningful change nor address AFFH requirements. Furthermore, programs must include specific commitment, discrete timing, milestones, metrics or numeric targets and geographic targeting and must address; as appropriate, housing mobility enhancement, new housing choices and affordability in higher opportunity areas, place-based strategies toward community revitalization, and displacement protection. For example, the element could focus on place-based strategies for community revitalization and protect residents from disaster driven and investment driven displacement. In addition, given the concentration of the lower-income RHNA in areas that are low- and moderately- resourced, the element should add programs aimed at increasing tenant protections, housing mobility through expanding housing choices in lower-density areas of the County, and providing new housing opportunities in relatively higher income or higher resourced communities.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a)... (Gov. Code, § 65583, subd. (c)(6).)*

While the element includes Program 2.K (Preserve At-Risk Housing) to assist in the preservation of affordable housing units at risk of converting to market rate uses, the program must also include proactive measures from the County to reach out to property owners and assistance with funding.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

While the element includes Program 2.C (ADU One-Stop Shop) to continue the partnership to operate ADU one-stop-shop, it should commit to proactive measures to continue the partnership (e.g., contract renewal, financial support to continue the partnership, other strategies toward the same objective). In addition, given the amount of ADUs projected to meet the lower- and moderate-income RHNA, the element should add actions or describe existing actions to incentivize the creation of ADUs that can be offered at affordable rent. Moreover, the element should include a program action to monitor permitted ADUs and affordability every other year and take appropriate actions such as adjusting assumptions or rezoning within a specified time period (e.g., six months).

C. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

While the County has provided opportunities for public comment throughout the housing element update process, the County must continue to solicit and demonstrate how public comment is incorporated into future versions of the housing element. For example, while the element (Appendix E) now lists commenters, comments, and County response, many of the County's responses are limited to receiving or responding to comments without making actual revisions to the draft housing element – despite many comments being meaningful and reflective of the community's needs. The County should make a diligent effort to re-evaluate specific comments on policies and programs and incorporate comments into the housing element. HCD's future review will consider the extent to which the revised element documents how the County solicited, considered, and addressed public comments in the element. The County's consideration of public comments must not be limited by HCD's findings in this review letter.