



July 12, 2022

Planning and Development Department
City of Berkeley
1947 Center Street, Second Floor
Berkeley, CA 94704

Subject: The Housing Element fails to affirmatively further fair housing

Dear Ms. Pearson and the Housing Element team,

Berkeley Neighbors for Housing and Climate Action (BNHCA) is a 300-member organization of Berkeley residents dedicated to tackling our shared housing and climate crises. We believe it is critical that Berkeley significantly expands the availability of affordable, market-rate, and infill housing along our transit corridors and in walkable neighborhoods, to reduce transportation emissions and automobile trips. BNHCA believes that the addition of new housing throughout our community must be done in a way that corrects historical injustices and the legacy of redlining.

North Berkeley Now! (NBNow, www.northberkeleynow.org) is an all-volunteer group of neighbors working toward a North Berkeley that is welcoming to new neighbors of all kinds through the construction of affordable homes. We know that density is good, NIMBYs are bad, and that sustainable modes of transportation are the future.

East Bay YIMBY fights for an affordable, inclusive, and sustainable East Bay. East Bay YIMBY believes in legalizing housing, especially duplexes, fourplexes, and apartments, by reforming zoning laws; as well as supporting policies that protect tenants and vulnerable communities and increasing the supply of subsidized, income-qualified housing.

We are very concerned that the draft Housing Element does not address Berkeley's legacy of redlining and fails to fulfill State HCD standards for affirmatively furthering fair housing. We believe that the City must, at minimum, increase allowable height and density in the C-SO, C-NS, and C-E zoning districts covering Solano, North Shattuck, and Elmwood. We also believe the City should replace R-1 zoning with R-2 zoning in all areas of the city outside of the Hillside Overlay, including the North Berkeley, Northbrae, Westbrae, Thousand Oaks, Northside, Elmwood, Halcyon, and San Pablo Park neighborhoods. Lastly, the Housing Element needs to incorporate increased height limits in Downtown and Southside.

Failure to Affirmatively Further Fair Housing

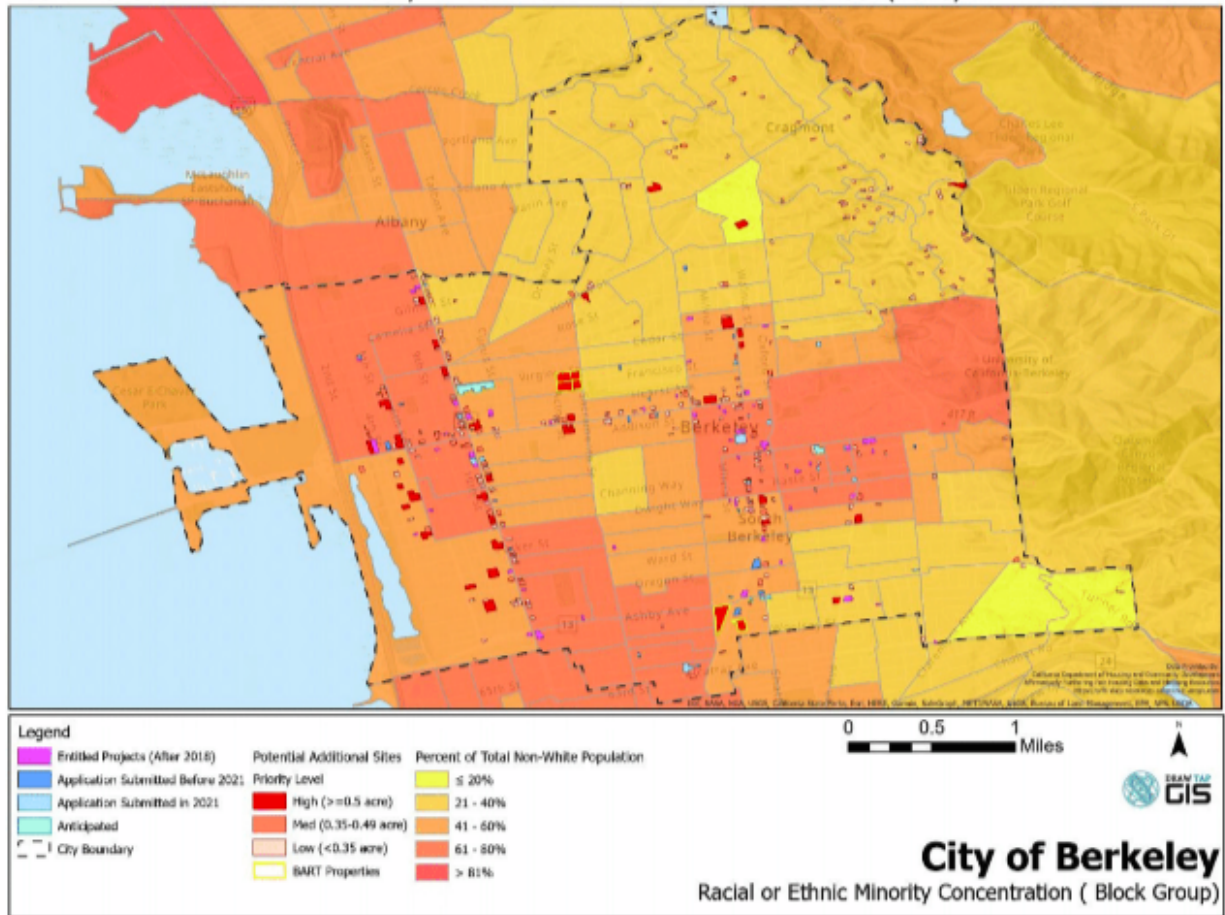
As shown in Appendix E: Affirmatively Furthering Fair Housing of the draft Housing Element, Berkeley's existing zoning - the basis for the site inventory - falls woefully short when it comes to affirmatively furthering fair housing and undoing historical segregation.

The figures and tables below are drawn from Appendix E. Figure E-3 shows that housing development is conspicuously limited in areas of the city with the lowest racial/ethnic minority populations. Critically, Table E-2 shows that in neighborhoods with $\leq 20\%$ minority population, zero affordable housing is planned. Neighborhoods with 21-40% minority population are only receiving 2.1% of the lower-income housing, and 6% of the moderate-income housing. Berkeley's whitest neighborhoods desperately need more affordable housing; this plan as-is only serves to maintain racial segregation across our city.

TABLE E-2: DISTRIBUTION OF RHNA UNITS BY RACIAL/ETHNIC MINORITY POPULATION

Racial/Ethnic Minority Population (Block Group)	Lower		Moderate		Above Moderate		Total	
	Units	Percent	Units	Percent	Units	Percent	Units	Percent
$\leq 20\%$	0	0.0%	0	0.0%	24	0.3%	24	0.2%
21-40%	94	2.1%	179	6.0%	523	6.6%	796	5.2%
41-60%	2,417	54.3%	1,348	45.5%	3,403	43.0%	7,168	46.8%
61-80%	1,940	43.6%	1,436	48.5%	3,963	50.1%	7,339	47.9%
$> 81\%$	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total	4,451	100.0%	2,963	100.0%	7,913	100.0%	15,327	100.0%

FIGURE E-3: SITES INVENTORY AND RACIAL/ETHNIC MINORITY POPULATION BY BLOCK GROUP (2018)



Source: HCD AFFH Data Viewer (ESRI, 2018), 2022; Veronica Tam & Associates (VTA), 2022.

Table E-6, below, shows the distribution of housing across tracts based on the percent of households in that tract that are low or moderate income. Berkeley's wealthiest neighborhoods, where $<25\%$ of households are low or moderate income, are getting 0.1% of the city's new affordable housing and just 3.6% of its moderate income housing. This maintains and furthers the existing economic segregation in our city.

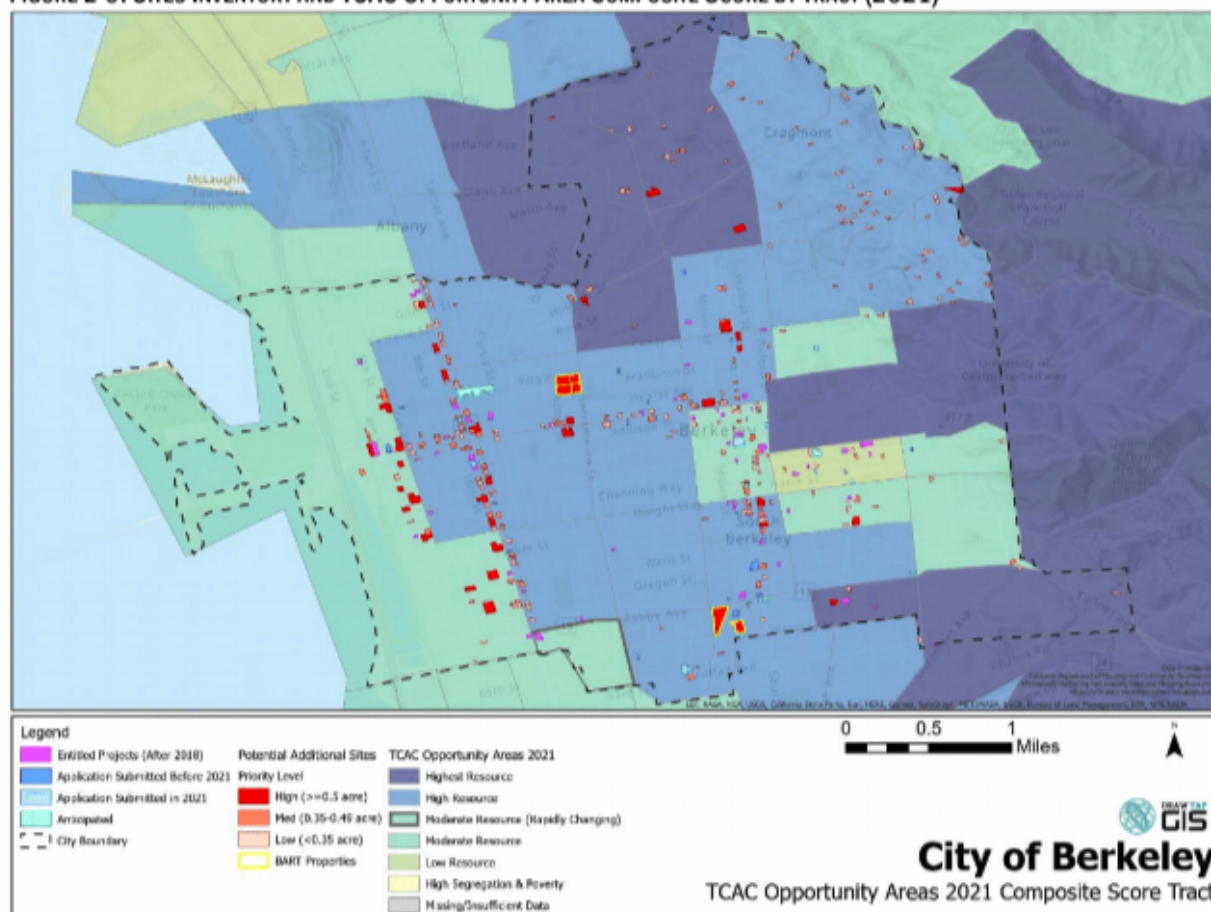
TABLE E-6: DISTRIBUTION OF RHNA UNITS BY LMI HOUSEHOLD POPULATION

LMI Household Population (Tract)	Lower		Moderate		Above Moderate		Total	
	Units	Percent	Units	Percent	Units	Percent	Units	Percent
$<25\%$	5	0.1%	108	3.6%	489	6.2%	602	3.9%
25-50%	2,322	52.2%	1,193	40.3%	3,252	41.1%	6,767	44.2%
50-75%	1,517	34.1%	791	26.7%	1,884	23.8%	4,192	27.4%
75-100%	607	13.6%	871	29.4%	2,288	28.9%	3,766	24.6%
Total	4,451	100.0%	2,963	100.0%	7,913	100.0%	15,327	100.0%

Figure E-9, below, shows sites inventory overlaid with the TCAC Opportunity Areas data by census tract. Because Berkeley is a wealthy city experiencing late-stage gentrification, almost all of the city is classified as highest- or high-resource, with some areas being moderate

resource and only one census tract, on Southside, as low resource. Citywide, only 2.2% of units are proposed for Highest Resource areas, including 1.9% of lower income and 2.4% of moderate income units.

FIGURE E-9: SITES INVENTORY AND TCAC OPPORTUNITY AREA COMPOSITE SCORE BY TRACT (2021)

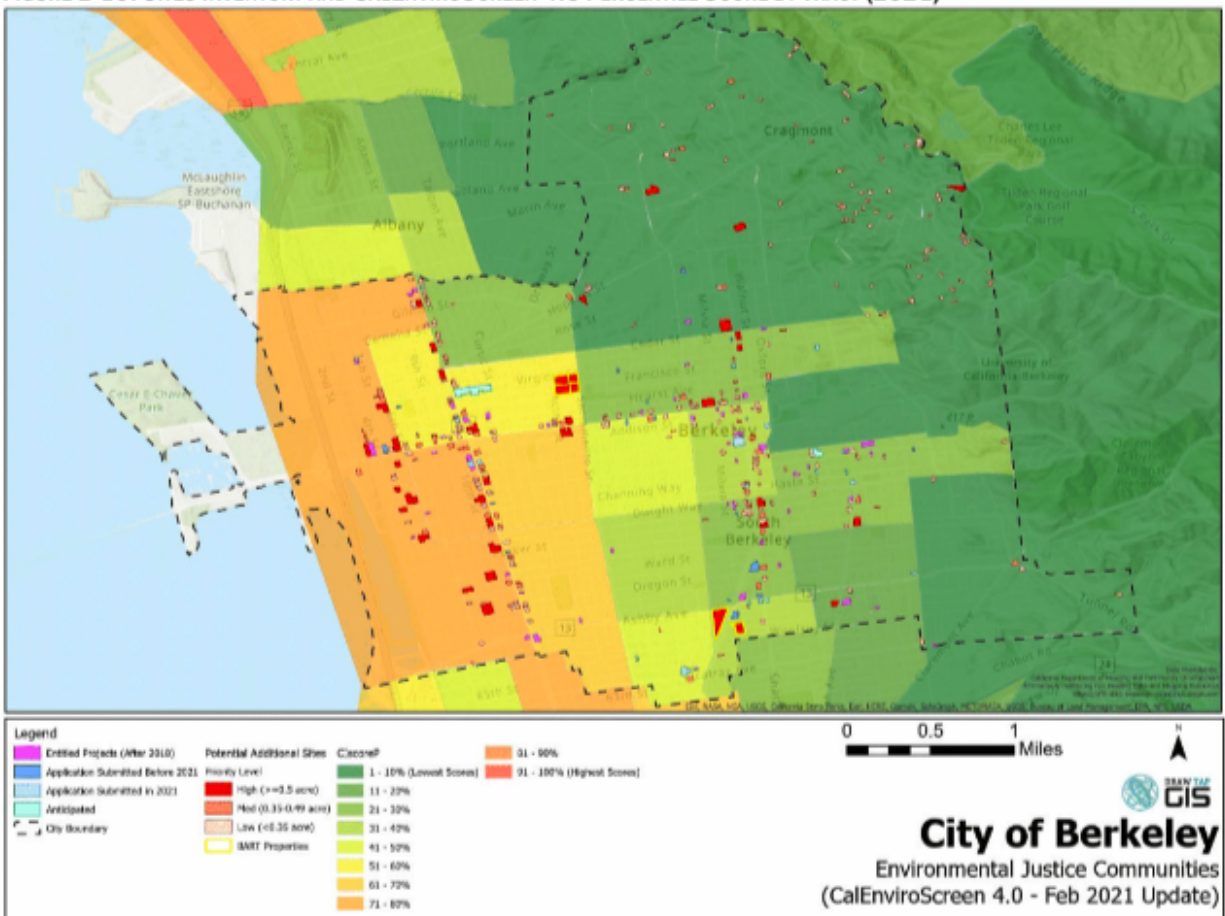


Source: HCD AFFH Data Viewer (HCD and TCAC, 2021), 2022; VTA, 2022.

Lastly, Figure E-10 demonstrates that Berkeley's site inventory is disproportionately concentrated in the neighborhoods with the greatest environmental hazards and pollution. 40.5% of all units included in the site inventory, including 49.5% of lower income units, are in Berkeley's worst census tracts, which rank in the 51-80th percentile of tracts in California. Meanwhile, neighborhoods with the highest CalEnviroScreen 4.0 score (in the top 20% of tracts statewide) are only accounting for 4.1% of all units (1/10th as many as in the more polluted neighborhoods), including 4.2% of lower-income units (1/12th as many as in the more polluted neighborhoods).

As stated in Appendix E, "Areas where CalEnviroScreen 4.0 scores are the highest are predominantly single-family residential neighborhoods (Berkeley Hills, Thousand Oaks, Live Oak, Claremont)." Multi-family zoning districts under the current zoning, meanwhile, "tend to be more concentrated in the central, southern, and western areas of the City... in closer proximity to major vehicular and transit corridors"

FIGURE E-10: SITES INVENTORY AND CALENVIROSCREEN 4.0 PERCENTILE SCORE BY TRACT (2021)



Source: HCD AFFH Data Viewer (CalEnviroScreen 4.0, 2021), 2022; VTA, 2022.

According to Government Code 8899.50(a)(1), “Affirmatively furthering fair housing” means **taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities...** Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, **address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, [and] transforming racially and ethnically concentrated areas of poverty into areas of opportunity....**” (emphasis added).

HCD requires that sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing. We believe Appendix E shows quite clearly that Berkeley’s existing zoning *fails* to affirmatively further fair housing. As such, the Housing Element must incorporate zoning changes to meet HCD requirements.

Strategies for Affirmatively Furthering Fair Housing (AFFH)

The shortfalls in meeting AFFH requirements are due to a lack of sites available in Berkeley’s

highest resource, whitest, wealthiest, and least polluted neighborhoods. These neighborhoods are overwhelmingly zoned R-1, with limited sites zoned for low-rise commercial.

However, these areas are also overwhelmingly in Berkeley's higher-risk fire zones, including both the State Very High Fire Hazard Severity Zone (VHFHSZ) and Berkeley's Hillside Overlay / Fire Zone 1, which is a topographically determined region that extends well beyond the limits of the State VHFHSZ. Berkeley's municipal code is quite clear that while part of the purpose of the Hillside Overlay is to protect from wildfire risk, it is also intended to "Protect the character of Berkeley's hillside areas and their immediate environs;" and "Give reasonable protection to views" (BMC 23.210.020(A)).

We believe that protecting the character of Berkeley's wealthiest neighborhoods is incompatible with affirmatively furthering fair housing, but recognize that changing the borders of the Hillside Overlay would require a fire safety analysis that goes beyond the scope of the Housing Element. Therefore, our recommendations for meeting AFFH requirements focus on areas outside the Hillside Overlay.

Increasing Allowable Height and Density along Commercial Corridors in highest-resource areas

Berkeley has historically prioritized development along transit and commercial corridors, following the legacy streetcar network. However, the transit and commercial corridors in Berkeley's highest-resource neighborhoods are currently not zoned for densities which would allow development, much less development of housing affordable to lower-income households. To achieve AFFH goals, Berkeley must align the C-SO, C-NS, and C-E zoning along Solano, North Shattuck, and Elmwood with the city's other high-density commercial zoning on San Pablo, University, South Shattuck & Adeline, and Telegraph, by allowing up to 7 stories of mixed-use development with 100% lot coverage.

Removing R-1 Zoning Outside of the Hillside Overlay

SB 9 and Berkeley's "missing middle" initiatives will eliminate single-family zoning, but R-1 remains at a lower density standard than other residential zoning districts. At a minimum, Berkeley should move to replace all R-1 zoning outside of the Hillside Overlay with R-2 zoning. Under the current proposed standards for Missing Middle housing, R-2 zoning would allow up to 4 units and up to 35 units/acre, allowing developable sites in these new R-2 districts to count towards Berkeley's required zoning capacity for lower or moderate income housing. (In contrast, preserving the R-1 zoning would only allow for 25 units/acre, insufficient to satisfy affordable housing requirements under state law). This would help to address inequitable disparities in zoning and potentially allow for more affordable housing - or at least, "affordable by design" housing - in highest-resource areas.

Increasing Allowable Height in Downtown and Southside

Berkeley City Council directed staff and the consultants to increase allowable height in Downtown and Southside neighborhoods. Because these neighborhoods have the highest share of households without a car in Berkeley (over 60%), and are in extremely close proximity to jobs, transit, and major destinations, we believe that the Housing Element must address Council's request to increase height in these areas.

Other Potential Strategies for Consideration

Even with these proposed changes, we are concerned that HCD may not find that Berkeley has done enough to meet AFFH requirements, or that the site inventory is lacking due to unrealistic and overly generous assumptions about development capacity and likelihood. The following are potential suggestions to explore to further meet AFFH requirements and ensure adequate site capacity:

- Upzoning C-N districts to meet the same development standards as other major commercial areas (up to 7 stories)
- Upzoning R-2 neighborhoods to allow up to 4 stories of multifamily housing
- Increasing allowable height and density in R-3 and R-4, including R-3H and R-4H, to be comparable to R-BMU zoning (up to 7 stories)
- Rezoning R-2A areas along College, MLK, and Hopkins to R-3 and/or R-4

We strongly urge City staff and the consultant team to address these deficiencies in affirmatively furthering fair housing and ensure Berkeley is able to put forward a progressive, equitable, and inclusive Housing Element.

Sincerely,

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