

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

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August 27, 2024

Mikhail Leza, Deputy Director
Department of Planning and Development
County of Santa Clara
70 W Hedding Street
San Jose, CA 95110

Dear Mikhail Leza:

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

Thank you for submitting the County of Santa Clara's (County) revised draft housing element update received for review on June 28, 2024 along with revisions received on August 26, 2024. The revisions were posted and made available to the public for seven days prior to review. In addition, the California Department of Housing and Community Development (HCD) received Ordinance Number NS 1200.384 and correspondence dated August 14, 2024 from the County regarding rezoning to accommodate the regional housing need allocation (RHNA). Pursuant to Government Code section 65585, HCD is reporting the results of its review. Our review was facilitated by various conversation in February, April, and August, with you, Michael Meehan, Principal Planner, Jacqueline Onciano, Director, and several others from the housing element update team. In addition, HCD considered comments from Stanford University and City of San Jose, pursuant to Government Code section 65585, subdivision (c).

The revised draft housing element addresses most statutory requirements described in HCD's December 18, 2023 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), as follows:

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).)*

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).)

Patterns and Trends in the Unincorporated County: The element now addresses some patterns and trends at a local (patterns within a community) and regional (community compared to the region) level for the unincorporated County, including explaining socio-economic characteristics at a geographic sub-area level. However, this analysis should also address households by income. For example, the analysis could utilize median household income ranges. In addition, the element indicates the presence of Racially Concentrated Areas of Affluence (RCAA) in the unincorporated County but should also include specific analysis of trends and characteristics and incorporate local data and knowledge and other relevant factors.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues and add or modify programs, as appropriate.

Programs: As noted above, the element requires a complete analysis of fair housing conditions. 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. 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 relatively higher opportunity or income areas, place-based strategies toward community revitalization, and displacement protection.

In addition, while the element includes many potential meaningful actions to affirmatively further fair housing (AFFH), it should consider additional actions to address housing mobility actions and place-based strategies toward community revitalization. For example, of potential programs, please see HCDs AFFH guidance Memo (starting on page 72). HCD will send additional examples under separate cover.

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).)*

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... (Gov. Code, § 65583, subd. (c)(1).)

Suitability of Nonvacant Sites: The element now explains some redevelopment trends and discusses existing uses on nonvacant sites. However, the element should also relate recent redevelopment trends to identified sites. For example, the element mentions redevelopment of prior single-family uses and lists sites

with existing single-family uses but should also address the comparability of the trends and identified sites (e.g., existing versus allowable units, age and condition of structure, number of stories). This analysis should specifically address Parkmoor/Burbank and Alum Rock/East Foothills Neighborhoods.

For your information, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households 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.

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/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The County can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Programs: As noted above, the element does not contain a complete site inventory and analysis. Based on the results of a complete site inventory and analysis, 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:

- *Annexation:* Program 4.03 was revised to include a general statement that the County will coordinate with the City of San Jose regarding access to service providers (e.g., infrastructure) if the developer chooses to submit an application to the County; however, the element should be revised with additional actions and specific commitment. For example, the County can coordinate land use and zoning, list anticipated schedule of completion, clarify permitting authority and at least commit to coordinating maximum allowable densities with the City of San Jose, including alternative actions (e.g., identify additional sites and rezoning) by a specified date if necessary.
- *Stanford Specific Plan:* While the program lists a schedule the County anticipates Stanford to submit an application and issue building permits, the County should clarify what alternative actions program 2.26 (mid-cycle Review) will commit to (e.g., identify additional sites and rezoning) by a specified date.

- *Sites Identified in Prior Planning Periods:* As found in HCD prior review, to make prior identified sites available to accommodate lower-income households the County must include a rezone program to comply with Government Code 65583.2 subdivision (c).
3. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

The element contains several programs intended to meet the housing needs of farmworkers. However, Programs 1.29 (Farmworker Affordable Homeownership and Farmworker Housing Pilot), 2.04 (Assess Farmworker Housing Needs and Collaborate with Other Jurisdictions) and 4.02 (Agricultural Worker Housing Workplan) should include discrete timing (e.g., at least annually).

4. *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 Program 2.06 (Streamline Accessory Dwelling Unit (ADU) Processing) now commits to monitor ADUs, it should also commit to act within a specified time (e.g., six months) if assumptions are not realized.

The element will meet the statutory requirements of State Housing Element Law once the element has been revised, adopted, submitted to, and reviewed by HCD to comply with the above requirements and rezones have been completed, as described below, pursuant to Government Code section 65585.

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 if needed, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that failed to adopt a compliant housing element within one year from the statutory deadline (January 31, 2023) cannot be found in compliance until rezones to make prior identified sites available (e.g., Program 2.02 Planning for Housing Development in Unincorporated USAs and Stanford University Lands) or accommodate a shortfall of sites are completed pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c). HCD has reviewed Ordinance 1200.384 that was completed to address these statutory requirements. However, the Ordinance does not appear to meet statutory requirements. Specifically, the zoning does not appear to meet 20 percent affordability, minimum densities and residential only requirements pursuant to Government Code section

65583.2, subdivision (c), (h) and (i). The housing element is out of compliance and will remain out of compliance until the rezoning has been completed to meet all statutory requirements.

In addition, please be aware, the recent California appellate decision in *Martinez v. City of Clovis* found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The County may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities less than 20 dwelling units per acre. *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.

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 must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while 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.

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>.

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 programs, 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.

Mikhail Leza, Deputy Director
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HCD appreciates the hard work and dedication of the housing element team. 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.Jauregui@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager